

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 28058 of 2008 (M)

PETITIONER :

**SMT. JESSY ASOK, MEMBER,
WARD NO. XI, THIRUMARADY GRAMA PANCHAYATH,
KOTHATTUKULAM, ERNAKULAM DISTRICT.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS.SRI.T.RAMPRASAD UNNI
SRI.J.R.PREM NAVAZ
SRI.PREMSON PAUL
SRI.MANU TOM**

RESPONDENT(S):

- 1. V.C. KURIAKOSE,
MEMBER, WARD NO. II, THIRUMARADY GRAMA PANCHAYATH,
KOTHATTUKULAM, ERNAKULAM DISTRICT.**
- 2. SMT. THANKAMMA THOMAS, MEMBER,
WARD NO.X, THIRUMARADY GRAMA PANCHAYATH,
KOTHATTUKULAM, ERNAKULAM DISTRICT.**
- 3. SRI. GEORGE JOSEPH,
MEMBER, WARD NO. III, THIRUMARADY GRAMA PANCHAYATH,
KOTHATTUKULAM, ERNAKULAM DISTRICT.**
- 4. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM.**
- 5. THE THIRUMARADY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY.**

**R1 BY ADVS. SRI.M.R.HARIRAJ
SRI.P.A.KUMARAN
SRI.SURAJ.S
SMT.VINEETHA B.**

R4 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

**R5 BY ADVS. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

WP(C).NO.28058/2008

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PETITION DATED 3/1/2007 FILED BY THE 1ST RESPONDENT BEFORE R4
- P2 COPY OF THE OBJECTION DATED 20/2/2007 SUBMITTED BY THE PETITIONER BEFORE R4.
- P3 COPY OF THE ORDER DATED 18/9/2007 IN O.P.NO.1 OF 2007 ON THE FILE OF THE KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:

- R1(A) COPY OF THE DECLARATION GIVEN BY THE PETITIONER UNDER RULE 3(2) OF THE KERALA (DISQUALIFICATION OF DEFECTED MEMBERS) RULES, 2000
- R1(B) COPY OF THE LETTER AND WHIP DATED 10/1/2007 ALONG WITH THE MINUTES ON 29/12/2006 OF THE KERALA CONGRESS (JACOB)

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.28058 of 2008

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Dated this the 17th day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P3 order passed by the Kerala State Election Commission disqualifying the petitioner.

2. The petitioner was elected from Ward No.11 of Thirumarady Grama Panchayat in Ernakulam district in the elections that were held in September, 2005 as an independent candidate supported by the Democratic Indira Congress (K), a political party then in existence. The petitioner alleges that after the elections, the DIC (K) split and the petitioner has never been part of any coalition.

3. The president of the panchayat belonged to the Communist Party of India (Marxist). A No Confidence Motion was moved against the president by certain Indian National

Congress (I) members. The petitioner along with two others viz., Smt. Thankamma Thomas and Sri. George Joseph also signed the notice. As the petitioner signed a no confidence motion, even without mentioning the date, on 30.1.2007, the 4th respondent filed O.P No.1 of 2007 before the State Election Commission seeking disqualification of the petitioner and two others. Though the petitioner filed objections, the Election Commission has passed Ext.P3 order disqualifying the petitioner. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the first respondent, they have contended that the petitioner was a member of LDF coalition as evident from Ext.R1A declaration. There was an independent candidate set up by the Democratic India Congress (DIC) which was a constituent of the LDF. According to him, before the elections, the Kerala Congress (Jacob) group, which is another political party, have merged with DIC and

thus became the members of the said party. However, after the election, some of the members of DIC reconstituted the Kerala Congress (Jacob) group. Later, the DIC itself was wiped off by Nationalist Congress Party (NCP). As the split from the DIC and reconstitution of Kerala Congress (Jacob) group took place before the merger of the DIC with NCP, there was a clear case of defection by the petitioner; it is contended.

5. The first respondent also relied on Ext.R1B which is the true copy of the whip dated 10.1.2007 along with the minutes on 29.12.2006 which according to the respondent would indicate that the petitioner had joined the political party under the Kerala Congress (Jacob) group.

6. Arguments have been heard.

7. It was submitted by both sides that an interim stay as prayed for was granted by this Court at the time of admission on 22.9.2008 and accordingly, the petitioner continued as a member of the respondent panchayat. However, as the order

impugned casts a stigma on the petitioner, it is necessary to consider whether the findings of the Election Commission that the petitioner has committed defection and the consequent disqualification are valid in the eye of law. The learned counsel for the petitioner would submit that the disqualification of the petitioner was sought only under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short, the Act) on the ground that she signed a no confidence motion against the existing president belonging to the Community Party of India (Marxist). According to the petitioner, it is not a disqualification in the light of the decision in **Pathumma v. State Election Commission** [2004 (2) KLT 568].

8. The Election Commission has disqualified the petitioner on the ground that she has joined the Kerala Congress (Jacob) group having been elected as an independent. The petitioner contended that there is no such pleading at all

and no opportunity was given to the petitioner to make such an argument. It was argued that the Election Commission has no powers *suo motu* without any petition seeking to disqualify an elected member on a new ground not urged before it.

9. It is crucial to note that as against respondents 1 and 2 in the petition, who have joined the Kerala Congress (Jacob) group, the Election Commission has found that they are not disqualified and the distinction applicable to the petitioner is not stated in the order at all. The learned counsel for the petitioner submitted that the order of the Election Commission, therefore, discloses patent errors of law apparent on its fact and it cannot be supported in law at all.

10. Disqualifying an elected member would involve very serious consequences. The petitioner points out that against the petitioner, another petition (O.P No.9 of 2007) was filed by one Sinu M.George on the same allegation and it was dismissed by the Election Commission. The only allegation against the

petitioner, who was the 3rd respondent in the election petition filed before the Election Commission is as under:

“The third respondent is an independent member who belongs to the coalition LDF. It is clear from her act of joining the other members of another coalition to move a non-confidence motion against the president, the petitioner, of the coalition to which she belongs, that she has joined another coalition. She has thus incurred the disqualification under Section 3(1) (b) of the Act.”

11. The definite case of the petitioner is that she has not joined any political party as she had a support of DIC(K) which got split and a section of which became the Kerala Congress (Jacob) group. There is no allegation in the writ petition that the petitioner has joined any other political party. In the petition submitted by the petitioner (Ext.P2) it has been clearly stated that there was no direction by any authority to issue any whip and, therefore, the petitioner has not incurred any

disqualification under Section 3(1)(b) of the Act which alone is the basis for filing the petition.

12. As the petition before the Election Commission did not contain any allegation satisfying even the basis requirement of Section 3(1)(b) of the Act that the petitioner has withdrawn from any coalition and joined any political party, Section 3(1)(b) has no application at all.

On a consideration of the entire materials placed on record, this Court is of the view that the petitioner is entitled to get the relief prayed for.

In the result, the writ petition is allowed. Ext.P3 is quashed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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