

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937**

**WP(C).No. 30176 of 2011 (V)**  
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**PETITIONER(S):**  
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**C.K.SASI,  
S/O.KUTTAPPAN, MEMBER, WARD NO.3,  
KADUTHURUTHI GRAMA PANCHAYATH, KOTTAYAM DISTRICT,  
RESIDING AT VALIYAKAROTTU, ARUNOOTTIMANGALAM,  
K.S.PURAM P.O, KOTTAYAM.**

**BY ADV. SRI.M.SREEKUMAR**

**RESPONDENT(S):**  
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- 1. KERALA STATE ELECTION COMMISSION,  
REPRESENTED BY IT SECRETARY, PALAYAM  
THIRUVANANTHAPURAM.**
- 2. SRI.MATHEW GEORGE,  
MEMBER, WARD NO.7, KADUTHURUTHY GRAMA PANCHAYATH  
KOTTAYAM DISTRICT, PIN 686 604.**
- 3. P.K.SUKUMARAN NAIR,  
S/O.VELAYUDHAN NAIR, VRINDAVAN, KADUTHURUTHY PO.,  
KOTTAYAM - 686 604, MEMBER, WARD NO.2  
KADUTHURUTHY GRAMA PANCHAYATH.**

**R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**PJ**

**APPENDIX**

**PETITIONER(S) EXHIBITS**  
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- EXT.P1**        **TRUE COPY OF THE ORIGINAL PETITION NO.1/2008 FILED BY  
2ND RESPONDENT BEFORE THE 1ST RESPONDENT DATED 27.12.07**
- EXT.P2**        **TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN  
OP NO.1/08 DATED 10.5.08 BEFORE THE 1ST RESPONDENT.**
- EXT.P3**        **TRUE COPY OF THE ORIGINAL PETITION NO.2/08 FILED BY THE R3  
BEFORE THE R1 DATED 1/1/08**
- EXT.P4**        **TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE  
R1 IN OP2/08 DATED 10/5/08**
- EXT.P5**        **TRUE COPY OF COMMON ORDER OF THE R1 IN OP.NOS.1/08 & 2/08  
DATED 22/7/11.**

**RESPONDENTS' EXHIBITS**  
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**NIL.**

**/ TRUE COPY**

**P.S. TO JUDGE**

**PJ**

**K. ABRAHAM MATHEW, J.**

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**W.P.(C). No. 30176 of 2011**  
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**Dated this the 8<sup>th</sup> day of October, 2015**

**J U D G M E N T**

Petitioner was a member of Democratic Indira Congress (Karunakaran) which was part of Left Democratic Front in Kerala. He was elected a member of the Kaduthuruthi Grama Panchayat. Apart from him only one more candidate of his party was elected. The other member, Sri.P.T.Manoj, was elected vice president of the Panchayat as the LDF had majority in the Panchayat. After about two years, the opposite coalition UDF moved a no confidence motion against Sri.P.T.Manoj. On the allegation that the petitioner signed the no confidence motion the second respondent in this petition filed O.P.No.1 of 2008 before the Kerala State Election Commission to disqualify him. On the allegation that the petitioner violated the whip of his party the third respondent filed O.P.No.2 of 2008 for the same purpose. By the impugned order, the Election Commission found that no whip had been issued but it disqualified the petitioner on the ground that he voluntarily gave up his membership of his party by signing

the no confidence motion and also by voting in favour of the motion. This is challenged in this writ petition.

2. Heard the learned counsel for the petitioner and the learned standing counsel for the first respondent Election Commission.

3. In Ext.P1 O.P.No. 1 of 2008 the only ground on which the petitioner was sought to be disqualified was that he voluntarily gave up the membership of his political party by signing the no confidence motion moved against the other member of his party. In ***Chinnamma Varghese V. State Election Commission (2010 (3) KLT 426)*** a Division Bench of this court held as follows:-

***"Even in the matter of an elected representative belonging to a political party such a signing of the notice of no confidence motion per se is not declared under the above mentioned Act to be an activity attracting disqualification on the ground of defection".***

So there cannot be any doubt that the petitioner could not have been disqualified on the ground that he signed the no confidence motion.

4. In O.P.No.2 of 2008 (Ext.P3) the ground alleged for disqualification is that the respondent violated the whip of his political party. The election commission found that

no whip had been issued to him. So the ground alleged in this writ petition was not available for the election commission to disqualify him.

5. But the election commission disqualified the petitioner on the ground that the petitioner voted against the vice president who was his own party member. This is not at all a ground alleged in either O.P.No.1 of 2008 or O.P.No 2 of 2008. The Election Commission travelled beyond the pleadings of the parties to enter a finding that the petitioner voted in favour of the no confidence motion and thus attracted disqualification. The finding cannot be upheld. It is liable to be set aside.

In the result, this writ petition is allowed. Ext.P5 order of the first respondent is set aside.

sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

R.AV

//True Copy//

PA to Judge