



2023/KER/68050

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

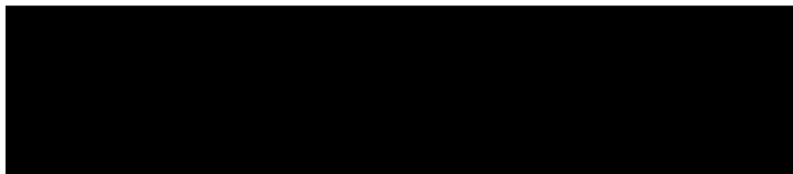
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

WP(C) NO. 15253 OF 2023

PETITIONER :

DEEPAK K. ,

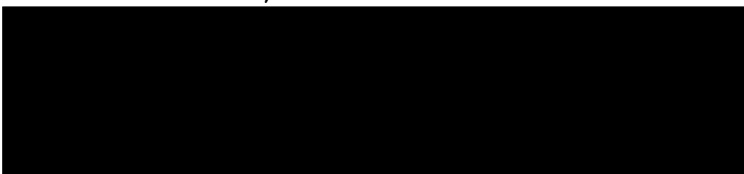


BY ADV MANOJ P.KUNJACHAN

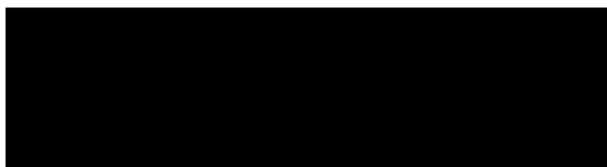
RESPONDENTS :

1 THE KERALA STATE ELECTION COMMISSION,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
PIN - 695033

2 MATHEW JOSEPH,



3 JOSEPH JOHN,



BY ADVS.

R1 BY SHRI.DEEPU LAL MOHAN, SC, STATE ELECTION
COMMISSION, KERALA
Thajudeen



2023/KER/68050

W.P.(C) No.15253 of 2023 &
W.P.(C) No.15289 of 2023

2

R2 BY SRI.P.DEEPAK
R3 BY K.C.VINCENT
IRFAN BASHEER (K/002193/2022)

NAZRIN BANU (K/1317/2020)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.10.2023, ALONG WITH WP(C) NO.15289/2023, THE COURT ON
06.11.2023 PASSED THE FOLLOWING:



W.P.(C) No.15253 of 2023 &
W.P.(C) No.15289 of 2023

3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

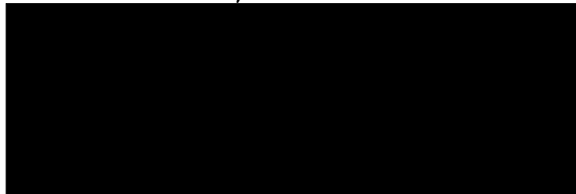
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

WP(C) NO. 15289 OF 2023

PETITIONER :

JOSEPH JOHN,

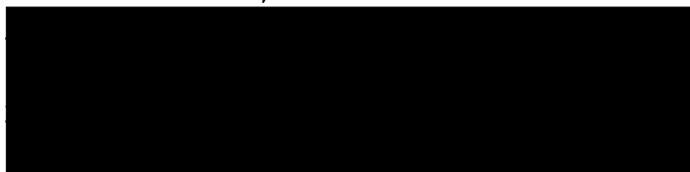


BY ADV K.C.VINCENT

RESPONDENTS :

1 THE KERALA STATE ELECTION COMMISSION,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
PIN - 695 033

2 MATHEW JOSEPH,



3 DEEPAK K.,



BY ADVS.

R1 BY SHRI.DEEPU LAL MOHAN, SC, STATE ELECTION
COMMISSION, KERALA

R2 BY P.DEEPAK



2023/KER/68050

W.P.(C) No.15253 of 2023 &
W.P.(C) No.15289 of 2023

4

Thajudeen

**R3 BY SRI.Manoj P. KUNJACHAN
IRFAN BASHEER (K/002193/2022)**

NAZRIN BANU (K/1317/2020)

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.10.2023, ALONG WITH WP(C)NO.15253/2023, THE COURT ON
06.11.2023 PASSED THE FOLLOWING:**

**BECHU KURIAN THOMAS, J.**

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W.P.(C) No.15253 of 2023**&****W.P.(C) No.15289 of 2023**

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Dated this the 6th day of November, 2023**JUDGMENT**

Sri. Mathew Joseph, an elected member of the Thodupuzha Municipal Council, is alleged to have defected by voluntarily giving up membership of the party under whose banner he was elected. Two petitions were filed before the Kerala State Election Commission alleging that Sri. Mathew Joseph had become disqualified due to defection by voluntarily giving up membership of the party as well as of the coalition of which he was a member. Both petitions were dismissed by the impugned order. These two writ petitions challenge the aforementioned order invoking this Court's jurisdiction under Article 226 of the Constitution of India.

2. Sri. Joseph John and Sri. Deepak, the two writ petitioners, are the elected members representing Ward No.27 and Ward No.3, respectively, while Sri. Mathew Joseph is the elected member from Ward No.11 of Thodupuzha Municipality. The elections to the Local Self Government Institutions were held in the year 2020. Sri. Deepak contested under the



banner of the Indian National Congress, while Sri. Joseph John and Sri. Mathew Joseph contested under the banner of Kerala Congress (M) P.J. Joseph Group. Prior to the election, the party, Kerala Congress (M), had split into two factions - Kerala Congress (M) led by Sri. Jose K. Mani and Kerala Congress (M) P.J. Joseph Group, led by Sri. P.J. Joseph. Though disputes arose between the two factions, pursuant to an order of the Election Commission and of this Court, the Kerala Congress (M) led by Sri. Jose K. Mani was given the symbol 'two leaves' while Kerala Congress (M) led by Shri. P.J. Joseph was given the symbol 'chenda' (drum), resulting in the former becoming known as Kerala Congress (M) (hereafter referred to as 'KCM' for brevity) and the latter as Kerala Congress (M) P.J. Joseph (hereafter referred to as 'KCMPJJ' for short). KCM was part of the Left Democratic Front, while KCMPJJ was part of the coalition of the UDF group. The coalition of UDF included the INC and KCMPJJ, while the coalition of LDF included the CPI, the CPM and KCM.

3. According to the petitioners, Sri. Mathew Joseph had contested the election as a member of the KCMPJJ with the symbol 'chenda', which was part of a coalition with the UDF. After getting elected as a member of the said party, he voluntarily gave up his membership with KCMPJJ and joined the KCM, which is a coalition group with the LDF and thereby acquired disqualification under Section 3A of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short, 'the Act'). When Sri. Joseph John alleged in his petition that Sri. Mathew Joseph voluntarily gave up



membership of KCM, Sri. Deepak alleged that Sri. Mathew Joseph voluntarily gave up membership of the coalition of UDF and thereby incurred disqualification.

4. Sri. Mathew Joseph opposed the petitions and contended that though he contested the elections of the Thodupuzha Municipality under the symbol 'chenda', in the elections of 2020, he had not given up membership of the party - Kerala Congress (M) and that he still continues as a member of KCM as a Councillor in the Thodupuzha Municipality. However, he denied knowledge of any split in the KCM or whether Sri. P.J. Joseph was declared as the Chairman of KCM or of any merger, as alleged. The respondent also denied the allegation of having joined any political party or even having any connection with the CPI (M) party.

5. Both petitions were tried together by the Election Commission. The original petitioners before the Election Commission examined PW1 to PW7 and marked Ext.A1 to A16, while the respondent examined himself as RW1. Seven documents were marked as Ext X1 to Ext X7. By the impugned order, the State Election Commission came to the conclusion that there was no cause of action to construe a situation warranting disqualification and dismissed both petitions.

6. Sri. K.C. Vincent and Sri. Manoj P. Kunjachan, the learned counsel for the petitioners, vehemently contended that the impugned



order of the State Election Commission is bereft of any consideration of the provisions of the Act and has hastily concluded that there was no cause of action. The learned counsel pointed out that every material produced undoubtedly indicated an instance of voluntary giving up of membership of the political party and the coalition, and despite such express evidence available before the Commission, curiously, the petitions were dismissed. The learned Counsel submitted that if such conduct is permitted, the whole purpose of the statute will easily be defeated.

7. Adv. P. Deepak, appearing on behalf of the contesting respondent, submitted that the order of the Election Commission warrants no interference under Article 226 of the Constitution of India. He further submitted that the KCMPJJ is not a registered political party as defined by the Act, and it is, at the most, only a splinter group. The provisions of defection under section 3(1)(a) of the Act will apply only when a person gives up membership in a political party, and hence, as long as KCMPJJ has not registered itself as a political party, section 3(1)(a) of the Act is not attracted. Adv. Deepak further contended with great dexterity that KCM is a recognised, registered State political party while KCMPJJ was never a political party, nor is it even now, and since Sri. Mathew Joseph contested the elections with the symbol allotted from the common symbols, which are allotted to unrecognized political parties, he cannot be treated as an independent candidate as well, so as to attract section 3(1)



(b) of the Act. According to the learned Counsel, the party KCM is still there, which alone is the registered political party, and hence, there cannot be any question of defection as alleged.

8. Sri. Deepu Lal Mohan, the learned Standing Counsel for the Election Commission, submitted that the conduct with reference to the affairs of the local authority alone can be a reason to give up membership of the party as held in **Varghese v. State Election Commission** [(2020) 6 KLT 394]. It was submitted that a distinction has to be drawn as to the conduct which may attract only disciplinary action within the political party and the conduct which attracts disqualification under the Prohibition Act. If the conduct alleged has no relation or bearing with the membership in a local authority, that may only attract disciplinary action within the party.

9. Having considered the rival contentions and having perused the documents handed over by the Standing Counsel, the following issues are to be resolved in the instant two cases: (i) *Whether KCMPJJ, who fielded candidates at the elections to the local authorities in December, 2020 can be treated as a political party* (ii) *Whether, Sri. Mathew Joseph has acquired disqualification under section 3(1)(a) of the Act by voluntarily giving up membership of the political party under which he was elected.* (iii) *Whether Sri. Mathew Joseph has acquired disqualification under section 3(1)(b) of the Act by withdrawing from the coalition of UDF and*



(iv) Whether the impugned order of the Election Commission requires interference.

(i) Whether KCM PJJ, who fielded candidates at the elections to the local authorities in December 2020 can be treated as a political party?

10. Section 2(xi) of the Act defines a political party as a party that is registered under section 29A of the Representation of the Peoples Act 1951. The word 'Coalition' is defined in section 2(ii) of the Act, as "a coalition made between more than one political party or between more than one political parties and one or more independents or between one political party and one or more than one independents or between more than one independents for the purpose of contesting any election of a local authority". The section contains an explanation that "A member who stood as a candidate in an election with the support of any one of the political parties or coalition shall be deemed to be a member included in that political party or coalition".

11. A recapitulation of the circumstances is essential at this stage of the discussion. The KCM is a registered political party under section 29A of the Representation of the People Act, 1951. A factional fight erupted within KCM, resulting in various proceedings before different fora, with one faction led by Shri. P.J. Joseph and the other by Shri. Jose K. Mani. Though initially, the two factions were allotted different symbols for contesting the elections, by order dated 30-08-2020, the Election Commission of India (for short 'the ECI') allowed the claim of the faction



led by Jose K. Mani to use the official name and symbol of Kerala Congress (M) and 'two leaves' respectively. This order was issued under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968. The said order of the ECI was challenged before this Court in W.P.(C) No.18556 of 2020 & W.P.(C) No.18638 of 2020.

12. While the above referred challenge was pending consideration, elections to the Municipal Council and other local authorities in Kerala were notified on 12-11-2020. The State Election Commission had, by an order dated 17.11.2020, suspended the 'two leaves' symbol allotted to the KCM and further allowed the KCMPJJ to contest the ensuing elections to the Local Authorities Institutions 2020 as a faction of KCM with the symbol 'chenda' and the KCM Jose K Mani group to contest with the symbol 'table fan'. In the meantime, the Judgment in WP(C) No. 18556/2020 & WP(C) No. 18638/2020 was delivered on 20-11-2020, upholding the order of allotment of the symbol two leaves to the Jose K Mani group. It was held in the said judgment that the allocation of election symbols is intended to maintain purity in elections and also that such allocation cannot have a direct impact on the registration of a political party. Though a writ appeal was preferred against the said judgment, no interim orders were issued.

13. Following the above judgment, the State Election Commission issued an order on 21-11-2020 allotting the official symbol 'two leaves' to



the Jose K. Mani faction i.e. KCM. However, nothing was mentioned about the earlier order permitting the P.J. Joseph group to contest the election as a faction of Kerala Congress (M). Apprehending that the candidates of KCMPJJ will be treated as independents, which may even lead to disqualification later, a writ petition was filed before this Court as W.P.(C) No. 27221 of 2020. By order dated 07-12-2020, a learned Single Judge of this Court issued the following order:

"taking note of the submission as above, I am of the view that the candidates of the petitioner's group (P.J Joseph) shall be permitted to contest the election as permitted in Ext.P10 as candidates of Kerala Congress (M). Joseph group under the symbol of 'Chenda'".

14. Based on the above interim order, the State Election Commission issued a communication dated 09.12.2020, intimating that the candidates can contest the election as "Kerala Congress (M) P.J Joseph Group" with the symbol 'chenda' and also intimated that in the website, a drop-down menu as "Kerala Congress (M) P. J Joseph group" has been incorporated. Later, by judgment dated 11-12-2020, the learned Single Judge disposed of the writ petition, retaining the interim order but clarifying that the said order was only for the limited purpose of the local body elections and would not enable P.J.Joseph to claim that he has authority to represent Kerala Congress (M).



15. The above-noted circumstances are peculiar to the present dispute. It is evident that the candidates of KCMPJJ were permitted to contest the elections under the said name with a separate symbol of 'chenda'. All the candidates of the said group, including Sri. Mathew Joseph submitted their nominations under the name 'Kerala Congress (M) P.J. Joseph Group'. The candidates, as well as the public, assumed and treated the 'Kerala Congress (M) P.J. Joseph Group' as a political party for that election. The interim order of this Court and the intimation of the State Election Commission pursuant thereto were not challenged by any person. The judgment in W.P.(C) No.27221 of 2020 has also not been challenged.

16. In this context, it is apposite to mention that the anti-defection law was enacted after doubts crept over the functioning of the representative system of democracy. With repeated floor-crossings from one party to another, the country faced a threat to democracy itself due to the evil of political defections. In general parlance, political defection means the joining of another political party other than under whose banner a person stood and got elected. The conduct of political defection betrays not only the party under whose ticket the candidate contested the elections but also the will of the people who elected the candidate. The pivotal role played by political parties in a representative democracy need not be gainsaid. The electorate proceeds on the promises and the



ideology of the political party which a candidate is and projects himself to be a part of. The elected candidate and the party are both accountable to the electorate. Wriggling out of the evil of anti-defection law on technicalities, despite changing sides after the election, erodes the efficiency of the law enacted. Such attempts will be to the peril of democracy itself. Ingenious methods adopted by the defectors to overcome the rigour of anti-defection law must be dealt with sternly, as otherwise, the purpose of the statute itself could be destroyed.

17. Though the word 'political party' is defined in Section 2(xi) of the Act as a 'registered political party', the definition clause starts with the words '*unless the context otherwise requires*'. The normal rule is to apply the definition provided in the statute wherever the said term arises. However, it is not an inflexible rule. The applicability of the definition depends upon the context in which the term has to be interpreted. Even where the definition is exhaustive, and a word is defined to mean a certain thing, it is possible for the word to have a different meaning in even different sections of the Act depending upon the subject or the context. If, in a context, the purpose of the statute will be expressly defeated by a rigid adherence to the definition, a departure can be adopted. If the purpose of the statute could be achieved by such departure, without straining the language of the statute and in tune with the general concept of the term defined, principles of statutory



interpretation permit such a mode. The source for giving such flexibility to the term defined can be traced to the prelude “unless the context otherwise requires” appearing in most statutes.

18. It is apposite to refer to the decision in **K.V. Muthu vs. Angamuthu Ammal** [(1997) 2 SCC 53] wherein it was observed by the Supreme Court that the words ‘Unless the context otherwise requires’ implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature. The Court observed that while interpreting a definition, it has to be borne in mind that the interpretation placed on it should not be repugnant to the context but should also aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or will be likely to defeat the purpose of the Act has to be ignored and not accepted. Reliance was also placed on the decision in **K. Balakrishna Rao and Ors. v. Haji Abdulla Sait and Ors.** [(1980) 1 SCC 321] to hold that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein.

19. Similarly, in the decision in **The Vanguard Fire and General Insurance Co. Ltd. Madras vs. Fraser and Ross and Others** [AIR 1960 SC 971] it was observed while dealing with the definition of the word ‘insurer’ in the Insurance Act 1938 that, “*All Statutory definitions or*



abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances."

20. Bearing in mind the above principles and in the light of the purpose of anti-defection law and having regard to the interim order and the judgment in W.P.(C) No.27221 of 2020, apart from the communication of the State Election Commission on 09-12-2020, which remains unchallenged, it is held that the 'Kerala Congress (M) P.J. Joseph Group' ought to be treated as a 'political party' for the purpose of the



elections held to the Kerala local authorities in the year 2020.

(ii) *Whether, Sri. Mathew Joseph has acquired disqualification under section 3(1)(a) of the Act by voluntarily giving up membership of the political party under which he was elected:*

21. Section 3 of the Act prescribes the conditions for disqualification on the ground of defection. Three broad categories of disqualification are dealt with under the provision as specified in sub-clauses (a), (b) and (c). These three categories relate to disqualification by a member of a political party, disqualification of an independent member of a coalition and disqualification of an independent member not belonging to a coalition. Amongst the above three broad categories, there are sub-categories that deal with different instances of attracting disqualification. The election petitions were filed alleging disqualification incurred under section 3(1)(a) and 3(1)(b) of the Act.

22. A reading of section 3(1)(a) of the Act reveals that defection can occur when a person belonging to a political party and a member of the local authority either (1) voluntarily gives up his membership of such political party or (2) contrary to any direction in writing issued by the political party votes or abstains from voting in a meeting of the Municipality in the circumstances specified therein. Section 3(1)(b) of the Act, on the other hand, deals with disqualification incurred when (1) an independent member of a coalition withdraws from such coalition or (2)



joins another party or (3) contrary to any direction by the coalition votes or abstain from voting in the circumstances specified therein.

23. In the instant case, the issue raised for consideration is whether Sri. Mathew Joseph had defected not because of any vote or abstention from voting but because he allegedly gave up membership of the political party under whose banner he was elected. It must be remembered at this juncture that voluntarily giving up membership of the political party under whose banner he was elected is distinct and different from voting or abstaining from voting against the whip issued by the political party. Though Section 3(1)(a) includes both conditions, they are not connected or interlinked and are distinct. The decision in **Biju R.S. and Others v. Kerala State Election Commission and Others** [2009 (2) KHC 839] is relevant in this context.

24. In the decision in **G.Vishwanathan v. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras and Another** [(1996) 2 SCC 353], the Supreme Court has observed that voluntarily giving up membership of a political party can be expressed or implied. Similarly, in **Rajendra Singh Rana and Others v. Swami Prasad Mouriya and Others** [(2007) 4 SCC 270], which decision has been taken note of by the State Election Commission itself, it was held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection



based on voluntarily giving up of membership in the political party.

25. The evidence adduced includes Ext.A2 - the nomination form submitted by Sri. Mathew Joseph, which shows that he contested the election as a member of the political party KCMPJJ, Ext.A3 - his own declaration in Form 2A affirming that he is part of KCMPJJ, Ext.A4 - letter issued by the President of KCMPJJ of Idukki District addressed to the Returning Officer on 19.11.2020 requesting to allot to Sri. Mathew Joseph, the symbol 'chenda', which is allotted to KCMPJJ and Ext.A7 - the declaration submitted by Sri. Mathew Joseph to the Returning Officer under Form 2, solemnly affirming that he contested the elections as a member of the KCMPJJ, with the symbol 'Chenda', which is part of the coalition of the UDF consisting of 13 persons including him, Ext. A8 - Register of the Municipality showing the party affiliation of each of the Councillors and also Ext.A15 - minutes of the meeting of the Council on 03-12-2021. PW3, the Returning Officer, also deposed that Sri. Mathew Joseph submitted his nomination specifying in column 10 that he belongs to the political party KCMPJJ. It is thus explicitly evident that Sri. Mathew Joseph was elected as a member of Thodupuzha Municipality as a member of the Kerala Congress (M) P.J.Joseph Group and was part of the coalition of UDF. In the elections to the Chairperson and Vice Chairperson also, Sri. Mathew Joseph is seen to have voted in favour of the UDF coalition as per Ext.A9 and Ext.A10.



26. The respondent in his evidence as RW1, mentioned that though he has not joined CPI(M), he contested the election as part of the UDF while Kerala Congress (M) led by Sri.Jose K.Mani is presently in the LDF. He also admitted the signatures appearing in his nomination paper wherein it is noted that he contested the election as part of KCMPJJ. After denying his knowledge about attending any meeting of the CPI(M) on 16.09.2021, he admitted that he is working as part of the LDF at present and also aired differing opinions contradictory to that of the UDF and even voted in favour of the LDF in the Council meeting.

27. In the evidence of PW1 and PW2, they assert that on 16.09.2021, Sri.Mathew Joseph had left the UDF and joined the LDF in the presence of State-level leaders of CPI(M) and thereafter had been taking stances in favour of the LDF at Municipal meetings, thereby voluntarily giving up his membership. PW5 and PW7 are journalists whose news reports have been published in the 'Deepika Daily' and in the 'Mathrubhumi Daily'. They stood by the news reports and asserted that they had personally attended the event and also that the news was published based upon their personal knowledge. It is also seen from the evidence of PW5 and PW7 that the respondent had received the flag and red garland from Sri.M.M.Mani, a member of CPI(M) and that the photos appeared in the newspaper Daily were taken at the time of reception being given to Sri.Mathew Joseph for joining the LDF.



28. During the cross-examination of RW1, Sri. Mathew Joseph admitted that the Chairman of Kerala Congress (M) was Sri Jose K Mani and that the said party is presently working for the LDF. Though he initially stated that he was part of the group of Kerala Congress (M) Jose K. Mani he later admitted in evidence that he was the candidate of UDF of Ward No. 11 in the elections held in December, 2020. He admitted Ext.A2 nomination paper, the declaration that he is contesting in the elections as part of KCMPJJ, and also that the said group had two successful candidates, which included him and Sri. Joseph John, while the candidate Smt. Jessy Antony was the successful candidate from the KCM. He also admitted Ext. A3, Ext. A4 and Ext.A7.

29. Apart from the above, in Ext.A3 declaration submitted under Rule 3(2) of the Act, Sri. Mathew Joseph had affirmed that he belonged to the UDF coalition, of which KCMPJJ was a member. In his deposition as RW1, Sri. Mathew Joseph had deposed that he was the candidate of UDF for Ward No.XI at the elections in 2020 and that Kerala Congress (M) led by Sri. Jose K. Mani was in the LDF. He also admitted that Smt.Jessy Antony was a candidate for LDF. More significantly, it is noticed that he admits, towards the latter half of the cross-examination, that he contested the elections as a candidate of KCMPJJ and also that he was part of the UDF coalition. However, during cross-examination, he admitted that he is now working for LDF and also admitted that he had voted



against the UDF views in the meeting of the Municipal Council on 03.12.2021, as seen from Ext.A15. The conduct of Sri. Mathew Joseph reflected in Ext.A15 relates to the affairs of the local authority to which he was elected. The said conduct attracts disqualification under the Act and satisfies the distinction required to be identified as held in **Varghese v. State Election Commission** [2020 (6) KLT 394].

30. A reading of the deposition of RW1 irrefutably indicates that the respondent had chosen to contest the elections to the Thodupuzha Municipality in the year 2020 as a member of the KCMPJJ and was part of the coalition of UDF. However, for reasons best known, he shifted his allegiance to KCM and worked for LDF, thereby voluntarily giving up membership in the Kerala Congress (M) P.J. Joseph Group as well as the coalition of UDF. He had even deposed that he is now working for LDF, admitting that, by his conduct, he has voluntarily given up membership of the party under whose banner he was elected.

31. As noted earlier, the Supreme Court had, in **G. Vishwanathan's** case (supra), observed that voluntarily giving up membership of a political party can be expressed or implied. In **Rajendra Singh Rana's case** (supra), it was observed that it is the conduct of the elected member that is to be looked into,

32. Taking into reckoning the nature of the evidence adduced, including the admissions of the respondent, the irresistible conclusion that



could be arrived at is that the respondent had voluntarily given up membership of the Kerala Congress (M) P.J Joseph Group, under whose banner he stood for the elections and was elected. In fact, that is the only conclusion that can be arrived at from the evidence adduced and the circumstances arising in the case.

(iii). Whether Sri. Mathew Joseph has acquired disqualification under section 3(1)(b) of the Act by withdrawing from the coalition of UDF?

33. Section 3(1)(b) of the Act applies only if the elected person is an independent member of the coalition. The word 'independent' is defined in 2(vi) of the Act as meaning a person not belonging to any political party. Since it has already been held that Sri. Mathew Joseph was not an independent but a member of a political party, the question of disqualification under Section 3(1)(b) of the Act does not arise. In view of the findings on issue Nos. (i) and (ii) above, this question is not required to be decided.

(iv) Whether the impugned order of the Election Commission requires interference.

34. The Kerala State Election Commission has, in the impugned order, failed to comprehend the nature of the dispute raised between the parties and went on a wrong tangent. The impugned order is perverse and is therefore liable to be interfered with. O.P No.30 of 2021 filed by Sri. Joseph John is, therefore, to be allowed while O.P No.31 of 2021 filed



by Sri. Deepak is to be disposed of in the light of the judgment in O.P No.30 of 2021.

35. Before parting with the case, it is felt essential to observe that defections by elected representatives have been a bane of the Indian democracy. Despite the anti-defection law, unscrupulous persons indulge in baleful acts of defection. The anti-defection law has not been able to curb the menace of defection effectively. Once an elected representative is found disqualified due to defection, the burden on the exchequer is immense due to the inevitable bye-elections. However, the person responsible for such nefarious activity is not affected seriously due to the nature of the orders that can be issued under the existing law. Considering the entire scenario, this Court has a wishful thinking that the time has come to contemplate on including stringent financial penalties for acts of defection. Unless a monetary pinch is felt by the defector, the evil acts that are sought to be remedied by the anti-defection law will continue. However, as it is a matter that requires a legislative exercise, this Court fervently hopes that the legislature will bestow its consideration earnestly.

36. Be that as it may, having regard to the circumstances discussed in the preceding paragraphs, W.P.(C) No.15289 of 2023 and W.P.(C) No.15253 of 2023 are allowed, and the impugned common order dated 04-04-2023 in O.P No.30 of 2021 and O.P No.31 of 2021 on the files of



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W.P.(C) No.15289 of 2023

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the Kerala State Election Commission is hereby set aside. O.P No.30 of 2021 is allowed by declaring that Sri. Mathew Joseph, the respondent, had defected and is therefore disqualified from being a member of the Thodupuzha Municipal Council. O.P No. 31 of 2021 is disposed of in the light of the judgment in O.P No.30 of 2021.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF WP (C) 15253/2023PETITIONER'S EXHIBITS :

- Exhibit P1 A TRUE COPY OF THE COMMON ORDER DATED 04.04.2023 ISSUED BY THE 1ST RESPONDENT IN O.P.NOS.31 OF 2021 AND 30 OF 2021
- Exhibit P2 A TRUE COPY OF THE PETITION IN O.P. NO. 31 OF 2021 WITHOUT DOCUMENTS
- Exhibit P3 A TRUE COPY OF THE PROCEEDINGS OF THE STATE ELECTION COMMISSION DATED 17.11.2020
- Exhibit P4 A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P. (C) NO. 27221 OF 2021 DATED 11.12.2020
- Exhibit P5 A TRUE COPY OF THE NOMINATION DATED 19.11.2020 FILED BY THE 2ND RESPONDENT IN FORM NO.2
- Exhibit P6 A TRUE COPY OF THE RELEVANT PAGES OF FORM NO. 2A DATED 19.11.2020 SUBMITTED BY THE 2ND RESPONDENT
- Exhibit P7 A TRUE COPY OF THE LETTER DATED 19.11.2020 ISSUED BY PROF. M.J. JACOB RECOMMENDING ELECTION SYMBOL "CHENDA" TO THE 2ND RESPONDENT
- Exhibit P8 A TRUE COPY OF THE DECLARATION DATED 21.12.2020 IN FORM NO. 2, UNDER SUB-RULE 2 OF RULE 3 OF THE KERALA LOCAL AUTHORITIES (DISQUALIFICATION OF DEFECTED MEMBERS) RULES, 2000 SUBMITTED BY THE 2ND RESPONDENT
- Exhibit P9 A TRUE COPY OF THE RELEVANT PAGE OF THE FORM NO.1 REGISTER IN RELATION TO THE 1ST RESPONDENT DATED NIL



- Exhibit P10 A TRUE COPY OF THE MINUTES OF THE MEETINGS
IN RELATION TO THE ELECTION OF THE
CHAIRMAN OF THE MUNICIPAL COUNCIL HELD ON
28.12.2020
- Exhibit P11 A TRUE COPY OF THE MINUTES OF THE MEETINGS
IN RELATION TO THE ELECTION OF THE VICE-
CHAIRMAN OF THE MUNICIPAL COUNCIL HELD ON
28.12.2020
- Exhibit P12 A TRUE COPY OF THE RELEVANT NEWS ITEM
PUBLISHED IN MATHRUBHOOMI DATED 17.09.2021
- Exhibit P13 A TRUE COPY OF THE RELEVANT NEWS ITEM
PUBLISHED IN DEEPIKA DATED 17.09.2021
- Exhibit P14 A TRUE COPY OF THE OBJECTION FILED BY THE
2ND RESPONDENT IN O.P. NO. 31 OF 2021
- Exhibit P15 A TRUE COPY OF THE COMMON PROOF AFFIDAVIT
IN O.P. NO. 30 AND 31 OF 2021 DATED
15.12.2022 ALONG WITH THE DEPOSITION IN
CROSS EXAMINATION DATED 15.12.2022 WITH
TYPED COPY

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