



2023/KER/77977

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

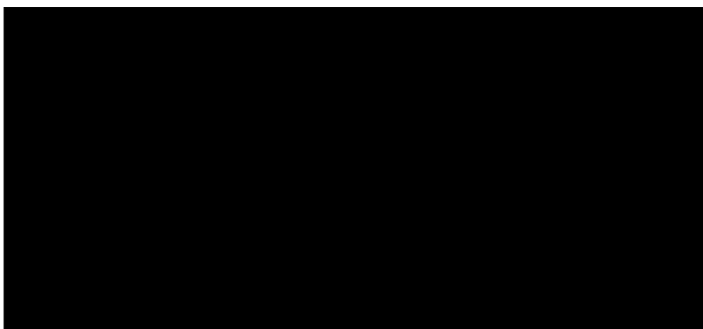
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 8TH DAY OF DECEMBER 2023 / 17TH AGRAHAYANA, 1945

WP(C) NO. 36155 OF 2023

PETITIONER:

PRAVEENA RAVIKUMAR



BY ADVS.

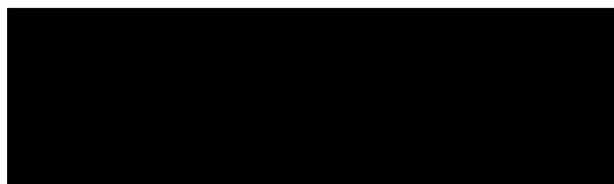
SMT.ASWINI SANKAR R.S.

SRI.P.YADHU KUMAR

RESPONDENTS:

1 STATE ELECTION COMMISSION
KERALA JANAHITHAM TC-27/6(2)
VIKAS BHAVAN P.O
THIRUVANANTHAPURAM, PIN - 695033

2 MARSH PETER



BY ADVS.

S.SREEKUMAR (SR.)

SRI.DEEPULAL MOHAN, SC

SRI.MARTIN JOSE P

SRI.P.PRIJITH

SRI.THOMAS P.KURUVILLA

SRI.R.GITESH

SRI.AJAY BEN JOSE

SRI.MANJUNATH MENON



2023/KER/77977

W.P.(C) Nos.36155 & 36144/2023

-:2:-

SRI.SACHIN JACOB AMBAT
SMT.ANNA LINDA EDEN
SRI.HARIKRISHNAN S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.11.2023, ALONG WITH WP(C)NO.36144/2023, THE
COURT ON 08.12.2023 DELIVERED THE FOLLOWING:



2023/KER/77977

W.P.(C) Nos.36155 & 36144/2023

-:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

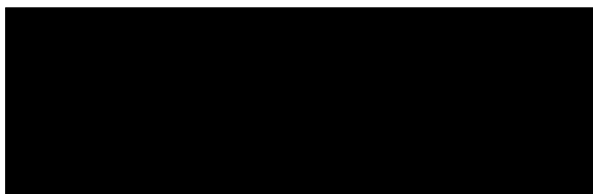
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 8TH DAY OF DECEMBER 2023 / 17TH AGRAHAYANA, 1945

WP(C) NO. 36144 OF 2023

PETITIONER:

M. RAJENDRAN



BY ADVS.

SMT.ASWINI SANKAR R.S.

SRI.P.YADHU KUMAR

RESPONDENTS:

1 STATE ELECTION COMMISSION
KERALA JANAHITHAM TC-27/6(2)
VIKAS BHAVAN P.O
THIRUVANANTHAPURAM, PIN - 695033

2 MARSH PETER

S/O. SUBRAMANIAM



BY ADVS.

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SRI.DEEPULAL MOHAN, SC

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W.P.(C) Nos.36155 & 36144/2023

-:4:-

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ADMISSION ON 29.11.2023, ALONG WITH WP(C)NO.36155/2023, THE
COURT ON 08.12.2023 DELIVERED THE FOLLOWING:



“C.R.”

BECHU KURIAN THOMAS, J.**-----
W.P.(C) Nos.36155 & 36144 of 2023
-----**Dated this the 8th day of December, 2023**JUDGMENT**

Writ petitioners have been disqualified by the Kerala State Election Commission (for short 'the Election Commission') for violating the directions in writing issued by the political party. Writ petitioners were the respondents in O.P. No.1 of 2022 and O.P. No.2 of 2022, both of which were filed by the second respondent. The Election Commission allowed both original petitions, hence these two writ petitions.

2. The facts of these two writ petitions as revealed from the pleadings and the arguments raised before the Court are briefly narrated below:

The individuals before the Court are Sri.Marsh Peter, Smt.Praveena Ravikumar and Sri.M.Rajendran. They had contested and won from different Wards in the election to the Munnar Grama



Panchayat in the year 2020. All three of them were the official candidates of the Indian National Congress (for short 'INC') with the symbol of "hand". They were part of the coalition of United Democratic Front (for short 'the UDF'). As elected members of the Panchayat, they had given declarations before the Secretary of the Panchayat showing their association with the political party and affirmed that they belonged to the political party INC based on which the register showing the political affiliation was also prepared.

3. Out of a total of 21 Ward Members in the Munnar Grama Panchayat, 11 belonged to the INC under the UDF banner while LDF had 10 members of which 8 belonged to CPI and 2 belonged to CPI(M). Initially, Smt. Manimozhi of the UDF was elected as the President of the Panchayat while Sri. Marsh Peter became the Vice-President, both of whom belonged to the INC. While so, no-confidence motions were brought against the President and the Vice-President of the Panchayat. Smt. Manimozhi resigned before the motion was put to vote and Sri. Marsh Peter was removed through the motion on 10.12.2021.

4. After the no-confidence motion, elections for the new President and Vice-President were scheduled to be held on



03.01.2022. The INC decided to field Smt. Deepa Rajkumar, elected from Ward 3 as its Presidential candidate and Sri. Marsh Peter again as the Vice-Presidential candidate. Directions in writing were issued on 24.12.2021 to all the members belonging to the INC to attend the meeting and to cast their vote in favour of INC candidates in the elections to be held on 03.01.2022. However, Smt.Praveena Ravikumar and Sri. M.Rajendran were reluctant to accept the whip directly in person, and therefore, the whip was sent through registered post on 24.12.2021. Since both of them refused to accept the notice, it was returned as 'unclaimed'. In the meantime, the whips issued to Smt.Praveena Ravikumar and Sri. M.Rajendran were affixed in their respective residences and also communicated to the Secretary of the Munnar Grama Panchayat. Smt. Praveena Ravikumar, who was elected under the banner of INC, stood as the Presidential candidate against the official candidate of INC.

5. In the elections held on 03.01.2022, the official candidates of INC secured only 9 votes and failed to win the elections. Smt. Praveena Ravikumar not only defied the written directions given by the party but also stood as a candidate nominated by the LDF and won the election. Smt. Praveena Ravikumar and Sri. M.Rajendran



voted against the written directions of the INC and voted in favour of the candidates fielded by the LDF resulting in those candidates winning the elections. Sri. Marsh Peter filed O.P. No.1 of 2022 and O.P No.2 of 2022 alleging that Smt. Praveena Ravikumar and Sri.M.Rajendran had become disqualified under section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999, (for short ' the Act').

6. Sri. Marsh Peter, who was the original petitioner before the Election Commission, is hereafter referred to as the 'petitioner' while the original respondents - Smt.Praveena Ravikumar and Sri.M.Rajendran are referred to as 'respondents' collectively.

7. In the separate objections filed by the respondents, it was alleged that they were unaware of any direction issued in writing and also that they had not been served with any whip. It was further stated that there was no valid whip which was complete in all respects and that the affixture and the alleged service of the whip were not to their knowledge. It was also pleaded that respondents did not have any knowledge of the alleged decision of the political party CPI to nominate Smt.Praveena Ravikumar as the Presidential candidate and that too against the official candidates of the INC. The



respondents denied any defiance of the direction given by the District President of the INC or any voluntary abandonment of membership.

8. In order to prove his case, the petitioner examined PW1 to PW7 and marked Ext.A1 to Ext.A25, while the respondents examined RW1 to RW7 and marked Ext.B1 and Ext.B2. Ext.X1 to Ext.X7 were also marked as third-party exhibits.

9. After analysing the evidence, the Election Commission found that the respondents had defected and declared them as disqualified for contesting as candidates in any election to the local authority for a period of six years, as provided under section 4(3) of the Act. Aggrieved by the aforementioned orders, these two writ petitions have been filed.

10. Adv. Aswini Sankar R.S., appearing on behalf of Smt.Praveena Ravikumar and Sri. M.Rajendran, vehemently contended that the Election Commission had egregiously erred in disqualifying the petitioners. It was submitted that the person who issued the whip was not authorised and the whip allegedly issued was not complete as the Tamil translation allegedly attached to the whip was not served on them, and since the respondents did not know how to read Malayalam, there was no valid whip. It was also



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argued that since the direction in writing referred to a Tamil translation as attached, in the absence of such a translation, there was no proper and complete whip even to allege a violation.

11. Adv. Aswini further submitted that the service of whip addressed to Smt. Praveena Ravikumar's old address cannot be deemed to be sufficient service. As far as the voluntary giving up of membership is concerned, Adv. Aswini argued that there was nothing on record to show who was the official candidate of the INC and whether Smt. Praveena Ravikumar was supported by the rival party members. It was also submitted that merely because the rival party supported the respondent is not a reason to assume that she had voluntarily given up membership. The learned counsel further referred to Rule 26(4) of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules 1995 and stated that the minutes prepared and produced as Ext.A20 was not read at the meeting and also that it is not valid as the same was not properly marked through the Returning Officer. Reliance was placed on the decisions in **Sandeep M.T. v. Kerala State Election Commission** [2015 (4) KLJ 347] and also **Hindustan Construction Company Ltd. v. Union of India (UOI)** (MANU/SC/006/1966), to support her contentions.



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12. Sri.S.Sreekumar, the learned Senior Counsel appearing on behalf of Sri.Marsh Peter, argued that out of 21 members, 11 belonged to the UDF and 10 to the LDF and in the elections, the official candidates of the UDF lost only because the respondents had defected. He further contended that the copy of the whip, which contained the Tamil translation, was served on the respondents in accordance with law including on the Secretary of the Panchayat. It was further contended that the allegation of non-service of the whip in the Tamil translation is a new contention being taken up at the appellate stage and was neither pleaded nor questioned during the cross-examination of the witnesses. The learned counsel also submitted that Smt. Praveena Ravikumar had voluntarily given up membership by standing as a candidate for the post of president against the official candidate of the INC, which by itself proves voluntarily giving up of membership.

13. I have considered the submissions of the learned Counsel, including those of Sri. Deepu Lal Mohan, the learned Standing Counsel for the Election Commission, who handed over the records of the case.

14. The three elected members of the Munnar Grama



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Panchayat who are parties before the Election Commission had submitted their declarations in Form No.2 to the Panchayat. Ext.A1 and Ext.A2 are copies of the declarations submitted by Smt. Praveena Ravikumar and Sri. M. Rajendran. A perusal of those declarations reveals that both of them had stood as official candidates of the INC at the Panchayat elections, and they had affirmed through the declaration that they belonged to the INC, which is a constituent of the UDF. It is also evident from the above two documents that the UDF had 11 members elected from their fold to the Grama Panchayat. In Ext.A1, Smt.Praveena Ravikumar has shown Sri. M. Rajendran as Serial No.6, while in Ext.A2, Sri. M. Rajendran has shown Smt. Praveena Ravikumar as Serial No.9. Both of them are also shown as members of INC and part of UDF. Further, Ext.A3, the party affiliation register maintained by the Grama Panchayat, shows the two respondents as having been elected under the INC and as part of UDF with the symbol "hand". It is thus evident that the petitioner, as well as the two respondents, were elected as candidates of the INC forming part of the UDF to the Munnar Grama Panchayat.

15. The contention regarding the authority of PW2 to issue the



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whip cannot be called into question in view of section 3(3) of the Act. The said provision creates a fiction that the whip issued by the person authorised to recommend the symbol of the political party for contesting in the election shall be deemed to be valid. PW2 in his deposition, had stated that he is the authorised person of the INC to allot the official symbol to the candidates. There is neither any contra evidence nor any cross-examination on that point. Hence it has to be found that PW2 was the authorised person to issue the direction in writing to the elected members of the INC.

16. Ext.A4 and Ext.A5 are the copies of the whips allegedly issued to Smt. Praveena Ravikumar and Sri. M. Rajendran, respectively. Those whips were posted to the respondents in the addresses given to the Panchayat. The postal receipts are produced as Ext.A6 and Ext.A8, along with the postal covers as Ext.A7 and Ext.A9, respectively. The postal articles are seen returned with the endorsement 'unclaimed'. PW2 is the person who allegedly issued the whip. During his cross-examination, the returned postal covers were opened at the request of the counsel for the respondents. The opened covers contained the directions in writing issued by PW2 to the respondents in both Malayalam and Tamil. Therefore, the



contention of the respondents that the whip was not complete since the Tamil translation was not attached as mentioned in the whip has no merit.

17. However, the question that arises is whether the unclaimed postal article could be deemed to be a service of notice on the respondents. The postal receipts affixed on the returned postal covers - Ext.A6 and Ext.A8, show that the articles were posted on 24.12.2021 at 5.09 pm. The endorsement on the postal cover indicates that intimations were given to the addressees on 27.12.2021, and it was not claimed and hence returned to the sender on 08.01.2022. Though respondents contended that Smt. Praveena Ravikumar had shifted her residence to another place, and had intimated the change to the panchayat, during her evidence as RW1, she admitted that it was her own name and address that is mentioned in Ext.A4. She also admitted that the alleged address change was not mentioned in her objection and further that Ext.X1 was not registered in the inward register of the panchayat or at its front office. Thus, there is nothing conclusive to show that such an alleged change of address was informed to the Panchayat or that the address was changed in the official records. Though RW3 was



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examined to prove that she had intimated the change of address to the panchayat, the deposition is not supported by any documents maintained with the Panchayat. Moreover, the address change was never informed to the postal authorities. Apart from all the above, the address shown in both envelopes tally with the address shown in the writ petitions filed before this Court by the respective respondents.

18. In this context, it is essential to refer to Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, which states that while sending the direction by registered post, it shall be done along with the acknowledgement due. The purpose of sending an article by registered post along with acknowledgement due is to ensure that the postal article is served on the addressee. The crucial word is 'send' which in the context mean served.

19. In section 26 of the Kerala Interpretation and General Clauses Act, 1125, which reads as below: S. 26. *"Where any Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly*



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addressing, pre-paying and posting by registered post or anchal, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post or anchal.” Applying the principle of section 26 referred to above, the respondents can be deemed to have been served with the postal article containing the whip on 27-12-2021, especially since there is no proof of any address change officially.

20. Further, under Rule 3(1) of the Kerala Panchayat Raj (Manner of Service of Notices) Rules 1996, service shall be done by serving or by sending notice to such person or leaving such notice at the last known place of abode, if he cannot be found or even by affixing in conspicuous part of his abode. Thus, when a registered letter is addressed to a person's last known address, the very sending itself is sufficient, as per the panchayat rules to be deemed to have served notice.

21. Apart from the above, if the notice sent to the correct address is returned either as unclaimed or as addressee left, the failure to serve the notice can only be attributed to the addressee and not to the sender. In such circumstances, the addressee should leave



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necessary instructions with the postal authorities either to redirect the letter to his new address or authorize a person to receive such postal articles. Failure to provide the new address to the postal authorities cannot prejudice the sender in such circumstances. Reference to the decision in **M/s Madan and Co. v. Wazir Jaivir Chand** [(1989) 1 SCC 264] is relevant.

22. Refusal of notice and notice returned as unclaimed, both tantamount to service of notice if it was intimated within time especially in the context of the Act. Otherwise, every wily recipient would be able to defeat the process of law by allowing the postal article to be returned as unclaimed. In **Harcharan Singh v. Smt.Shivrani and Others** [(1981) 2 SCC 535] and in **Jagdish Singh v. Natthu Singh** [(1992) 1 SCC 647], the Supreme Court had observed that a notice refused to be accepted can be presumed to have been served on him. In the said decisions, the Supreme Court observed that when a notice is sent to the correct address, the obligation of the sender ends with that, and if he does not claim the notice, it shall be deemed that there was valid service of notice. Viewed in the above perspective, it is evident that the respondents were served with the whip.



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23. Even otherwise, by virtue of Ext.A10 and Ext.A11, the President of the DCC authorised Sri. S. Vijayakumar to affix the whip on the residents of the respondent's house. Ext.A10 and Ext.A11 are the whips affixed on 30.12.2021 at 3 pm in the presence of the witnesses at the front door of Smt. Praveena Ravikumar and Ext.A12 series and Ext.A13, apart from Ext.A14 photographs, are the evidence adduced showing affixture of notice to Sri. M. Rajendran. The copy of the whip was sent to the Secretary of the Munnar Grama Panchayat, as evidenced by Ext.A15 and Ext.A16, respectively, and the acknowledgements were also produced as Ext.A17 and Ext.A18 and further by Ext.A19 the whips were again handed over to the Secretary of the Panchayat personally. Thus, it is evident that there was a valid whip issued in writing to the respondents, and even served on each of them apart from the secretary of the Panchayat.

24. In the elections to the President and Vice-President, the respondents voted contrary to the direction in writing issued to them. When the UDF had 11 members and the LDF had only 10 members, the candidates fielded by the LDF won the elections solely because the respondents violated the whip issued to them. Therefore, the finding of the Tribunal that both the respondents i.e., Smt.Praveena



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Ravikumar and Sri. M. Rajendran, acted in violation of the whip, is proved. The finding of the Election Commission to that effect, therefore, does not warrant any interference.

25. As far as the voluntary giving up of membership of the party is concerned, the same is confined only to Smt.Praveena Ravikumar. Ext.A20 is the minutes of the meeting of the election. The said minutes prepared by the Returning Officer clearly mention that Sri T. Ganeshan nominated her as the Presidential candidate, and it was seconded by Smt. Reena S. Muthukumar. The contention based on Rule 26(4) of the Kerala Panchayat Raj (Procedure for Panchayat Meeting Rules 1995) has no applicability in the instant case since RW1 in her evidence, had admitted that several things were read from Ext.A20 and that she does not remember specifically anything else.

26. A perusal of Ext.A20 reveals that Smt.Praveena Ravikumar was the LDF candidate and had obtained 12 votes as against 9 votes of the UDF candidate and she was declared as elected. There is no dispute either in the pleadings or during the evidence of Smt. Praveena Ravikumar that she is not the President of the Grama Panchayat. Even in the evidence stage, she had no case that the



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UDF had nominated her to stand as the candidate. Ext.A20 is not a disputed document and there was no objection regarding its marking at the time of evidence. No questions were also put to the witnesses challenging the said document. In such circumstances, the contention raised on the basis of the Returning Officer having not been examined, does not hold any merit.

27. As far as Sri. M.Rajendran is concerned, there is no evidence that he had voluntarily given up membership of the party and his defection is based on violation of the whip alone.

28. The writ petitions are filed challenging the order of the Election Commission. The conclusions arrived at by the Election Commission are based upon materials produced before it. There is no perversity or irregularity in the findings rendered therein. In the absence of any perversity, even if a different view is possible from the circumstances, this Court has time and again observed that an interference should not be made under Article 226 of the Constitution of India.

29. In the instant case, a different view from that arrived at by the Election Commission is not even possible since the entire materials adduced clearly show that the respondents had violated the



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direction in writing and Smt. Praveena Ravikumar had voluntarily given up her membership from the party under whose banner she was elected.

In the result, I find no merit in these two writ petitions and they are dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF WP(C) 36155/2023

PETITIONER EXHIBITS

- EXHIBIT P1 O.P.NO.1 OF 2022 FILED BY THE 2ND RESPONDNET ON 07.1.2022
- EXHIBIT P2 PORTION OF THE WHIP DATED 24.12.2021 ISSUED BY THE DCC PRESIDENT, IDUKKI
- EXHIBIT P3 OBJECTION FILED 2.6.2022 BY THE PETIITONER IN O.P.NO.1 OF 2022
- EXHIBIT P4 ARGUMENT NOTE SUBMITTED BY THE COUNSEL FOR THE PETIITONER HEREIN IN O.P.NO.1 OF 2022
- EXHIBIT P5 LETTER ISSUED BY THE PEITIONER DATED 22/12/2020
- EXHIBIT P6 JUDGEMENT IN O.P.NO.1 OF 2022 BY THE 1ST RESPONDNET DATED 12.10.2023



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W.P.(C) Nos.36155 & 36144/2023

-:23:-

APPENDIX OF WP(C) 36144/2023

PETITIONER EXHIBITS

EXHIBIT P1	COPY OF OP NO. 2/2022 BEFORE THE STATE ELECTION COMMISSION DATED 07.01.2022
EXHIBIT P2	WHIP ISSUED BY THE DCC PRESIDENT IDUKKI TO THE PETITIONER DATED 24.12.2021
EXHIBIT P3	TRUE COPY OF THE OBJECTION IN NO.2/2022 DATED 31.05.2022
EXHIBIT P4	ARGUMENT NOTE DATED NIL SUBMITTED BY RAJENDRAN
EXHIBIT P5	COMMON JUDGEMENT DATED 12.10.2023 IN O.P. NO. 1 OF 2022 AND O.P.NO.2 OF 2022