

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 15TH DAY OF OCTOBER 2020 / 23RD ASWINA, 1942

WP(C).No.31773 OF 2019(V)

PETITIONER/S:

BOBY ABRAHAM, AGED 47 YEARS, KIZHAKKEMURIYIL, ITHALA P.O.,
RANNY, PATHANAMTHITTA DISTRICT, PIN-689673.

BY ADVS.

SRI.JACOB P.ALEX

SRI.JOSEPH P.ALEX

SHRI.MANU SANKAR P.

RESPONDENT/S:

- 1 ABRAHAM @ ANIL THUNDIYIL, S/O.T.A.THOMAS, THUNDIYIL HOUSE,
CHELLAKKAD PO, RANNY, PATHANAMTHITTA DISTRICT, PIN-689677.
(MEMBER, WARD NO.5, RANNY- PAZHAVANGADI GRAMA PANCHAYAT).
- 2 RANNY - PAZHAVANGADI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PAZHAVANGADI P.O., RANNI
TALUK, PATHANAMTHITTA DISTRICT, PIN-689673.
- 3 THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM, PIN-
691033.

R1 BY ADV. SRI.NAGARAJ NARAYANAN

R1 BY ADV. SRI.SAIJO HASSAN

R1-2 BY ADV. SRI.BENOJ C AUGUSTIN

R1 BY ADV. SRI.RAFEEL. V.K.

R1 BY ADV. SRI.U.M.HASSAN

R1 BY ADV. SMT.P.PARVATHY

R1 BY ADV. SMT.SURYA P SHAJI

R1 BY ADV. SHRI.MANAS P HAMEED

R2 BY ADV. ELDHO.N.MONCY

R3 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMISSION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2020, ALONG
WITH WP(C).31796/2019(Y), WP(C).31824/2019(C), THE COURT ON 15-10-2020
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 15TH DAY OF OCTOBER 2020 / 23RD ASWINA, 1942

WP(C).No.31796 OF 2019(Y)

PETITIONER/S:

LIJI CHACKO, AGED 47 YEARS,
KURISUMUTTATHU, KARIKULAM P.O., RANNY, PATHANAMTHITTA
DISTRICT, PIN-689 673.

BY ADVS.

SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX
SHRI.MANU SANKAR P.

RESPONDENT/S:

- 1 ABRAHAM @ ANIL THUNDIYIL, S/O. T.A.THOMAS, THUNDIYIL
HOUSE, CHELLAKKAD. P.O., RANNY, PATHANAMTHITTA DISTRICT,
PIN-689 677, (MEMBER, WARD N.5, RANNY-PAZHAVANGADI GRAMA
PANCHAYAT)
- 2 RANNY-PAZHAVANGADI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PAZHAVANGADI P.O., RANNI
TALUK, PATHANAMTHITTA DISTRICT, PIN-689 673.
- 3 THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM, PIN-
691 033.

R1 BY ADV. SRI.NAGARAJ NARAYANAN
R1 BY ADV. SRI.SAIJO HASSAN
R1-2 BY ADV. SRI.BENOJ C AUGUSTIN

R1 BY ADV. SRI.RAFEEL. V.K.

R1 BY ADV. SRI.U.M.HASSAN

R1 BY ADV. SMT.P.PARVATHY

R1 BY ADV. SMT.SURYA P SHAJI

R1 BY ADV. SHRI.MANAS P HAMEED

R2 BY ADV. ELDHO.N.MONCY

R3 BY SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.COMMISSION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2020,
ALONG WITH WP(C).31773/2019(V), WP(C).31824/2019(C), THE COURT ON
15-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 15TH DAY OF OCTOBER 2020 / 23RD ASWINA, 1942

WP(C).No.31824 OF 2019(C)

PETITIONER/S:

BINU C.MATHEW, AGED 43 YEARS, CHARUVIL, MAKKAPPUZHA
P.O., RANNY, PATHANAMTHITTA DISTRICT, PIN-689 676.

BY ADVS.

SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX
SHRI.MANU SANKAR P.

RESPONDENT/S:

- 1 ABRAHAM @ ANIL THUNDIYIL, S/O.T.A.THOMAS, THUNDIYIL
HOUSE, CHELLAKKAD P.O., RANNY, PATHANAMTHITTA DISTRICT,
PIN-689 677, (MEMBER, WARD NO.5, RANNY PAZHAVANGADI
GRAMA PANCHAYAT).
- 2 RANNY-PAZHAVANGADI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PAZHAVANGADI P.O., RANNI
TALUK, PATHANAMTHITTA DISTRICT, PIN-689 673.
- 3 THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM, PIN-
691 033.

R1 BY ADV. SRI.NAGARAJ NARAYANAN
R1 BY ADV. SRI.SAIJO HASSAN
R1-2 BY ADV. SRI.BENOJ C AUGUSTIN
R1 BY ADV. SRI.RAFEEL. V.K.
R1 BY ADV. SRI.U.M.HASSAN
R1 BY ADV. SMT.P.PARVATHY
R1 BY ADV. SMT.SURYA P SHAJI
R1 BY ADV. SHRI.MANAS P HAMEED
R2 BY ADV. ELDHO N. MONCY
R3 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMISSION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2020,
ALONG WITH WP(C).31773/2019(V), WP(C).31796/2019(Y), THE COURT ON
15-10-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 15th day of October 2020

(W.P.(C) Nos.31773, 31796 & 31824/2019)

These three writ petitions were filed by the members of Ranny-Pazhavangadi Grama Panchayath aggrieved by the decision of the Kerala State Election Commission (for short, the 'Election Commission') declaring the petitioners are disqualified for being members of Ranny-Pazhavangadi Grama Panchayath as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short, the 'Act') and disqualified to contest as candidates in any election of the local body for a period of six years.

2. The Election Commission issued a common order as above. Assailing this common order, these three writ petitions were filed. Since common question of facts and law involved, all these cases are being disposed of by a common judgment.

3. The essential question in these writ petitions revolves around the nature of candidature of the petitioners in the election held on November, 2015 for the Grama

Panchayath. The petitioners would contend that they were independent candidates and any whip issued by the political party would not bind them. On the other hand, Sri.Abraham @ Anil Thundiyl, the petitioner before the Election Commission and member of the Grama Panchayath would contend that the petitioners were contested with the support of the political parties forming part of the LDF coalition.

4. It is alleged by Sri.Abraham, the petitioner before the Election Commission, Sri.Binu C. Mathew, the petitioner in W.P.(C) No.31824/2019 contested in the election as a candidate of CPI with an independent symbol, Smt.Liji Chacko, the petitioner in W.P.(C) No.31796/2019 contested as the candidate of JD(S) with an independent symbol, Sri.Boby Abraham, the petitioner in W.P.(C) No.31773/2019 contested as a candidate of CPI(M) with an independent symbol.

5. The cause of action for disqualification arose on 23.5.2017. Abraham from LDF was the President of the Grama Panchayath at that time. A No Confidence Motion was moved against him. A whip was issued by the parties of LDF

coalition to all its members. However, it was alleged that defying the whip all these petitioners voted in favour of motion. The petitioners would contend that the whip alleged to have been issued was a fabricated one. They alleged that they did not receive the whips. The petitioners originally admitted that they contested the election as the nominees of political parties forming part of the LDF coalition. However, after closing the evidence, they filed an application for amendment and deleted those admissions.

6. The Election Commission found that there were valid whips and service of the whips. The Election Commission also found that the petitioners were liable to be declared on the ground of defection relatable to both limbs under Section 3(1)(a) of the Act.

7. The learned counsel for the petitioners, Mr.Jacob P.Alex assailing the decision of the Election Commission submitted that the declaration submitted by the petitioners would clearly show that they were part of the coalition as an independent member and not belonging to a particular political party. Therefore, any whip issued by a political

party would not bind them. It is submitted that the person authorised to issue such whip under coalition had not issued any whip. This argument was apart from raising the argument that there was no proof about the genuineness of the whip issued. It is to be noted that the petitioners raised a contention that the alleged whip was a forged one in the statement filed before the Election Commission.

8. Per contra, the learned counsel for Abraham referred to the declaration of each of the petitioners. The learned counsel argued in the declaration, it was clearly mentioned that each of the petitioners belonged to the different political party of the LDF coalition.

9. The learned Standing Counsel for the Election Commission referred to Rule 3(2)(a) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 (for short, the 'Rules') and argued that a person who contested election as a candidate in support of a political party shall be treated as a member of that political party. It is further argued that even if the whip was found invalid supporting 'No Confidence Motion' against his own party

would attract the first limb of Section 3(1)(a) of the Act, the ground of defection relatable to voluntarily giving up membership of such political party.

10. It is appropriate to refer the relevant finding of Election Commission in paragraph-22 of the Common Order, produced as Ext.P4 in the writ petitions, as follows:

“As noticed above the contention of the respondents is that they contested the election as independents without the support of any political party or coalition. But the evidence and circumstances in these cases would only falsify the said contention of the respondents. Exts.X4 to X7 and XII to X13 would show that the respondents contested the election with the support of the respective political parties as stated by the petitioner. Admittedly Exts.X4 to X6 are the declarations filed by the respondents before the Panchayat Secretary after their election as members. Ext.X4 is the declaration filed by the respondent Smt.Liji Chacko. In Ext.X4 it is clearly stated that she contested the election and was elected with the support of JD(S) and LDF. Ext.X5 is the declaration filed by the respondent Shri.Boby Abraham and he declared therein that he contested the election and was elected with the support of CPI(M). Ext.X6 is the declaration filed by the respondent Shri.Binu C.Mathew and in that he had clearly declared that he contested and was elected with the support of CPI. Further, the entries in Ext.X7

register also would show that the respondents' party affiliation is as stated above. Ext.X7 is the register showing the party affiliation of the elected members of Ranni Pazhavangadi Grama Panchayat. The entries regarding the respondent Smt.Liji Chacko can be seen in page No.7 and of Shri.Boby Abraham and Shri.Binu C.Mathew in pages 12 and 17 respectively. The respective entries in Ext.X7 register would show that Smt.Liji Chacko was elected with the support of JD(S)/LDF, Shri.Boby Abraham was elected with the support of CPI(M)/LDF and Shri.Binu C.Mathew was elected with the support of CPI/LDF. It may be noted that Ext.X7 register is prepared on the basis the declarations filed by the elected members. In the nomination papers submitted by the respondents also they have shown their respective party affiliation. When we consider Exts.X4 to X6, X7 and X1 to X13 along with the evidence adduced on the side of the petitioner it can be clearly seen that the respondents were set up by the respective parties and they contested as independent candidates with the support of respective parties as stated by the petitioner. The respondents had accepted that they were the candidates of the above political parties and the parties had also accepted them as their candidates. The contention of the respondents that they contested the election as independents without the support of any political parties or coalition is the result of an afterthought as submitted by the Learned counsel for the petitioner.”

11. This would clearly show that the petitioners contested the election with the support of the political party. The whip issued by the political party, therefore, assumes significance. As rightly pointed out by the learned Standing Counsel for the Election Commission that the petitioners can only be treated as the member of the political party as they won the election with the support of that political party. This is so clear from Rule 3 (2)(a) of the Rules.

12. There are two limbs under Section 3(1)(a) of the Act, second limb would be attracted only when there was a valid whip and servicing the whip in a manner referred under Section 3(2) r/w 4(2) of the Rules. The service referred as above is mandatory. There is no dispute in regard to the fact that the whip was not served on the Secretary of the Local Self Government Institutions. Therefore, the second limb cannot be attracted to this matter. The finding of the Election Commission would also show that no copy of the whip was served on the Secretary.

13. Then, the only question arises whether the first limb under Section 3(1)(a) of the Act is attracted or not, which is related to voluntarily giving up the membership. The petitioners were found part of the political party. The moment they become disloyal to their own party, it amounts to a declaration that they have voluntarily given up the membership of such party. (See the judgments of this Court in **Rama Bhaskaran v. Kerala State Election Commission [2018(2) KLT 600]**, **Manoj Madhavasseril v. Kerala State Election Commission [2018(1) KLT 1047]** and **Chandran v. Kerala State Election Commission [2019(1) KLT SN 18 (C.NO.27)]**). The petitioners' support to the No Confidence Motion was against the interest of the political parties which supported them as candidates. This amounts to voluntarily giving up of the membership. It is to be noted that there was no dispute on CPI(M), CPI and JD(S) were part of the coalition. Thus acting against the interest of coalition by party members of the constituents of the coalition amount to acting against their own party. The Election Commission entered into a finding based on the

materials before it, there was valid whip and the petitioners were aware of such whip. Though such whip cannot be relied to attract second limb of Section 3(1)(a) of the Act, nothing bars the Election Commission for placing reliance on it for disqualifying a member based on the ground referred in the first limb of Section 3(1)(a). The Division Bench of this Court in **Lizy Valsan v. Suja Salim [2015 (3) KLT SN 61]**, in such circumstances, held that voting in violation of whip amounts to voluntarily abandoning their membership. Accordingly, these writ petitions are dismissed. No costs.

The records produced by the Standing Counsel appearing for the Election Commission be returned to him.

sd/-

A.MUHAMED MUSTAQUE

JUDGE

APPENDIX OF WP (C) NO. 31773/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT IN OP NO.30 OF 2017 BEFORE THE 3RD RESPONDENT.
- EXHIBIT P2** TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN OP NO.30 OF 2017 BEFORE THE 3RD RESPONDENT.
- EXHIBIT P3** TRUE COPY OF THE AMENDMENT PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 12.11.2019 IN OP NO.30 OF 2017 AND CONNECTED CASES OF THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS:NIL.

//TRUE COPY//

P.A.TO JUDGE

APPENDIX OF WP(C)NO.31796/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT IN OP NO.29 OF 2017 BEFORE THE 3RD RESPONDENT
- EXHIBIT P2** TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN OP NO.29 OF 2017 BEFORE THE 3RD RESPONDENT.
- EXHIBIT P3** TRUE COPY OF THE AMENDMENT PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 12.11.2019 IN OP NO.29 OF 2017 AND CONNECTED CASES OF THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS:NIL.

//TRUE COPY//

P.A.TO JUDGE

APPENDIX OF WP(C)NO.31824/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT IN OP NO.28 OF 2017 BEFORE THE 3RD RESPONDENT.
- EXHIBIT P2** TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN O.P.NO.28 OF 2017 BEFORE THE 3RD RESPONDENT.
- EXHIBIT P3** TRUE COPY OF THE AMENDMENT PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 12.11.2019 IN O.P. NO.28 OF 2017 AND CONNECTED CASES OF THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS:NIL.

//TRUE COPY//

P.A.TO JUDGE