

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 17TH DAY OF NOVEMBER 2020 / 26TH KARTHIKA, 1942

WP (C) .No.13002 OF 2017 (A)

PETITIONER/S:

K.SIVADASAN  
AGED 51 YEARS  
S/O.IMPICHIKANDAN, KANHIRATTU KUNNEMMEL, KODUVALLY  
P.O, KOZHIKODE-673572.

BY ADVS.  
SRI.T.R.HARIKUMAR  
SRI.SANTHOSH MATHEW  
SRI.ARJUN RAGHAVAN

RESPONDENT/S:

- 1 THE KERALA STATE ELECTION COMMISSION  
THIRUVANANTHAPURAM-695001.
- 2 E C MOHAMMED  
S/O.ANIL KUNJU, ELAVANCHALL HOUSE, KODUVALLY P O,  
KOZHIKODE 673572.

R1 BY ADV. SHRI MURALI PURUSHOTHAMAN, SC  
R2 BY ADV. SRI.K.M.FIROZ  
R2 BY ADV. SMT.M.SHAJNA  
R2 BY ADV. SRI.E.C.AHAMED FAZIL  
R2 BY ADV. SMT.UMMUL FIDA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16.11.2020, THE COURT ON 17.11.2020 DELIVERED THE FOLLOWING:

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**JUDGMENT**

**Dated this the 17th day of November 2020**

The writ petitioner, Shri K.Sivadasan won the election as a member to the Koduvally Municipality from Ward No.28, (Koduvally East Ward), East Hill, defeating two candidates. But his hard-won election is surmounted by a legal challenge under the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as the 'Defection Act'). The conundrum faced by Sivadasan is more intricate and a difficult problem for this Court to resolve at the first instance. So Sivadasan came with a review. The review petition was allowed. The matter was heard at length and breadth again. Sivadasan won again from the defeat he suffered by the dismissal of the writ petition through the review.

2. The case of Sivadasan is a creation of the law. Difficulty to understand the law, arising from doubtful preposition added to the disadvantage of Sivadas, before the

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Election Commission. Paradoxically enough the Court failed to read the law in a perspective which is required, perhaps for the reason that everyone in the litigation failed to understand the ambiguity revolved around arrangement of “coalition” as referred in the Defection Act.

3. Sivadasan submitted the nomination to contest from Ward No.28 as an Indian National Congress (INC) candidate on 14/10/2015 at 1.38 p.m. On the same day, one Shri C.M.Gopalan of Congress party submitted another nomination at 3 p.m. to contest as a candidate nominated by Congress. The District Congress President, Shri Abu allotted party symbol 'Palm' to Gopalan. This turned Sivadasan to contest as an independent candidate. Sivadasan was allowed with a symbol 'Bus' to contest as an independent candidate. The contest was mainly between two coalitions, Left Democratic Front (LDF) and UDF. Congress was constituent of UDF. Indian Union Muslim League was another constituent of UDF. As revealed from the pleadings and evidence, UDF coalition of the Municipal Committee supported Sivadasan as an independent candidate. However, the District Congress

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Committee supported Gopalan as an official candidate. Sivadasan won. Immediately, as required under Rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 a declaration was submitted by Sivadasan declaring that he is an independent member belonging to UDF.

4. One Shri E.C.Mohammed, a rival party member, elected to the Koduvally Municipality from LDF, sensing an opportunity to disqualify Sivadasan moved an election petition to declare that Sivadasan is liable to be disqualified. This was on an allegation that Sivadasan who was elected as an independent member has defected to the coalition and, therefore, he is liable to be declared disqualified under Section 3(1)(c) of the Defection Act.

5. Section 3(1)(c) of the Defection Act would be attracted for disqualification if an independent member not belonging to any coalition joins coalition after being elected as a local authority.

6. The conundrum faced by Sivadasan appears to be that, if he has not filed a declaration as an independent

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member supported by the coalition, he may face disqualification on the ground of defection from the persons who supported him under Section 3(1)(b). Section 3(1)(b) refers to the disqualification of an independent member belonged to any coalition. If such independent member withdraws from such coalition, he is liable to be disqualified on the ground of defection.

7. The Election Commission found that Sivadasan was an independent member as there was an official candidate of INC, a constituent of UDF and brushed aside the evidence produced by Sivadasan that he is having the support of Municipal Committee (UDF), allowed the petition for disqualification and declared that Sivadasan is disqualified from continuing as a member.

8. The legal conundrum related to the coalition, as noted above, could not be resolved by this Court at the first instance. This Court on an impression that there cannot be two candidates in fray from one coalition, dismissed the writ petition. A review petition was filed pointing out that this Court overlooked the evidence adduced

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by Sivadasan that he had support of Municipal Committee of UDF coalition.

9. The law of defection as enumerated under the Defection Act has its roots to the Tenth Schedule of the Constitution of India. The peculiar problem, in this case, has arisen on account of the fact that there is no arrangement under the law to record pre-election arrangement made by the coalition. The legal provisions related to disqualification noted in Section 3(1)(b) & (c) only refers to the grounds of defection based on the conduct of an independent member after being elected as a member. There is no provision prescribed by the Election Commission or under the Statute to record the arrangements made among political parties or independents for the purpose of contesting an election under the umbrella of 'coalition'. Section 2(ii) defines 'coalition' as follows:

(ii) "coalition" means a coalition made between more than one political parties 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.

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The definition of the 'coalition' does not define the geographical boundaries of the arrangement among political parties or independents. It only speaks about arrangement made between political parties or independents to contest any election to local authorities. In what manner that arrangement has to be understood is left to the choice of the parties at such arrangement. It is here the exact problem arisen in this case; is the arrangement made by the local branches of the political party will prevail over any arrangement made in District level or State-wise or not appears to be a matter of irresolvable problem. The arrangements can be made between the political parties or persons either locally or District wise or State-wise. If the local arrangement is to be understood as a coalition, it has to be held that Sivadasan is very much part of UDF. The nominee of the Congress party then has to be understood as a nominee of the District Congress party who has no support of any local coalition. His claim then would be based on coalition made elsewhere. The ambiguity as above cannot be resolved for the reason that there is no procedure for

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recording coalition arrangement before the election. If an insistence is made to produce the declaration of a convener of the coalition before nomination, the entire issue could have been easily resolved. If the local units of the political parties take a different stand departing from the stand of the District Committee or the State Committee, problem may persist in the future as well.

10. If the issue is examined in that background, it can be easily found out that the problem presented in this case is owing to ambiguity in the law. If there is no clarity as to the arrangement of the coalition for a local authority, that law becomes vague. The dilemma faced by Sivadasan cannot be overlooked. Had Sivadasan declared as an independent member not belonged to the coalition, he would have faced the same proceedings under the Defection Act as referred in Section 3(1)(b). The Anti-Defection Law has to be understood in perspective; one become disloyal to his own party or coalition which supported him. One cannot be penalised for being loyal to his supporters under the shades of disqualification law for the reason of ambiguity of the

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law related to coalition arrangement prior to the election. This case depicts that the District Committee of the Congress took a stand to support Gopalan as an official nominee. That itself cannot be reckoned to hold that Gopalan was an official nominee of a coalition. A constituent of a coalition cannot be itself considered as a coalition. The coalition itself in an association of a collective minds of different political entities. That collectiveness must reflect through the representative act of the collective body. Law, unfortunately, have not made a provision to reflect the views of the collective body prior to the election. That is the legal conundrum faced by this Court.

11. A classical judgment in **Richard Grayned v. City of Rockford** [408 US 104] of the U.S. Supreme Court perhaps adept on this occasion. I may quote the relevant paragraphs of the judgment which reads thus:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.

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Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A Vague Policy matters to policemen, judges, and juries for resolution on an adhoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute “abut upon sensitive areas of basic First Amendment freedoms, it “operates to inhibit the exercise of (those) freedoms”. Uncertain meanings inevitably lead citizens to “'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked.

12. Sivadasan, honestly enough, immediately after he got elected, declared himself that he was a part of UDF coalition and elected as an independent member. He could have declared so even prior to the election, had the law provided for recording. Evidence shows that vote canvassed by him was by way of UDF. All other local constituents supported him. Law of anti-defection is not intended to punish a loyalist and one who has shown allegiance; it intended only to bridle who has the tendency to jump over. Sivadasan cannot, therefore, be faulted for the ambiguity and lack of clarity that existed in the law. Our Supreme Court and other Courts also invoked Doctrine of Vagueness to

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give relief. *Shreya Singhal V. Union of India* [2015 (2) KLT 1 (SC)] and *State of West Bengal and others v. Purvi Communications Pvt. Ltd and others* [(2005) 3 SCC 711], *Federation of Obstetrics and Gynaecological Societies of India (FOGSI) v. Union of India and others* [(2019) 6 SCC 283] and *K.A.Abbas v. The Union of India and another* [(1970) 2 SCC 780] epitomize the approach made by the Courts in dealing with the vague law. Anti-Defection law is in the nature of a punishment depriving one's status as a member and to debar him from contesting future elections. Therefore, one cannot be punished on account of lack of clarity and shortcomings in the law. It will be a great injustice to deprive a person, who declared himself as a loyal to the coalition, by stretching the meaning of 'coalition' out of the context of anti-defection law; that too at the hands of a rival political party member.

Before parting with this judgment, it is appropriate to direct the Election Commission to insist on obtaining a declaration from the contestants of a coalition to produce

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the declaration that the contestant is part of the coalition.

In light of the above, the writ petition is only to be allowed. The impugned order is set aside. The writ petition is allowed. No costs.

**A.MUHAMED MUSTAQUE**

**JUDGE**

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**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                    A TRUE COPY OF THE ORDER DTD 4/4/2017 IN  
O.P.NO.82 OF 2015 OF THE IST RESPONDENT
- EXHIBIT P2                    A TRUE COPY OF THE MINUTES OF THE MEEING OF  
THE UDF COMMITTEE HELD ON 7/10/2015
- EXHIBIT P3                    A TRUE COPY OF THE MINUTES OF THE MEETING  
OF THE UDF COMMITTEE HELD ON 9/10/2015
- EXHIBIT P4                    A TRUE COPY OF THE MINUTES OF THE UDF  
MEETING HELD ON 13/10/2015
- EXHIBIT P5                    A TRUE COPY OF THE MINUTES OF THE UDF  
MEETING HELD ON 14/10/2015
- EXHIBIT P6                    A TRUE COPYOF THE DECLARATION PUBLISHED BY  
THE UDF KODUVALLY PANCHAYATH COMMITTEE DTD  
14/10/2015
- EXHIBIT P7                    A TRUE COPY OF THE NOMINATION PAPER  
SUBMITTED BY THE PETITIONER DTD 14/10/2015
- EXHIBIT P8                    A TRUE COPY OF THE MINUTES OF THE UDF  
COMMITTEE MEETING HELD ON 15/10/2015
- EXHIBIT P9                    A TRUE COPYOF THE MINUTES OF HE UDF  
COMMITTEE DTD 17/10/2015
- EXHIBIT P10                    A TRUE COPY OF THE MINUTES OF THE UDF  
COMMITTEE DTD 21/10/2015
- EXHIBIT P11                    A TRUE COPY OF THE COMPLAINT DTD 24/10/2015  
SUBMITTED BY THE PETITIONER BEFORE THE  
S.I.OF POLICE, KODUVALLY
- EXHIBIT P12                    A TRUE COPY OF THE RECEIPT DTD 28/10/2015  
ISSUED FROM THE OFFICE OF THE C.I.OF  
POLICE, KODUVALLY
- EXHIBIT P13                    A TRUE COPY OF THE COMPLAINT DTD NIL  
SUBMITTED BEFORE THE IST RESPONDENT
- EXHIBIT P14                    A TRUE COPY OF THE REQUEST DTD 17/10/2015  
SUBMITTED BY THE PETITIONER BEFORE THE  
RETURNING OFFICER.

- EXHIBIT P15                    A TRUE COPY OF THE ELECTION MANIFESTO  
PUBLISHED BY THE UDF KODUVALLY ELECTION  
COMMITTEE, CONTAINING THE PHOTOGRAPH OF ITS  
OFFICIAL CANDIDATES.
- EXHIBIT P16                    A TRUE COPY OF THE CAMPAIGN NOTICE  
PUBLISHED BY THE UDF KODUVALLY ELECTION  
COMMITTEE
- EXHIBIT P17                    A TRUE COPY OF THE AFFIDAVIT DTD 4/11/2015  
SUBMITTED BY THE PETITIONER BEFORE THE  
SECRETARY OF THE KODUVALLY MUNICIPALITY
- EXHIBIT P18                    A TRUE COPY OF THE ORIGINAL PETITION  
(O.P.82/2015) FILED BY THE 2ND RESPONDENT  
BEFORE THE 1ST RESPONDENT DTD 5/12/2015.
- EXHIBIT P19                    A TRUE COPY OF THE WRITTEN STATEMENT FILED  
BY THE PETITIONER IN OP 82/2015 DTD  
20/1/2016.