

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 20TH DAY OF NOVEMBER 2020/29TH KARTHIKA, 1942

WP(C) .No.18556 OF 2020(T)

PETITIONER:

P.J. JOSEPH, MLA,
AGED 79 YEARS
S/O. LATE P.O. JOSEPH, PALATHINAL HOUSE,
PURAPPUZHA P.O., THODUPUZHA, IDUKKI,
KERALA-685 583

BY ADVS.
SRI.P.B. KRISHNAN
SRI.K.C.VINCENT
SRI.P.S.GEORGE
BHASAVA PRABHU PATIL

RESPONDENTS:

- 1 ELECTION COMMISSION OF INDIA
REPRESENTED BY SECRETARY, NIRVACHAN SADAN,
ASHOKA ROAD, NEW DELHI-110 001
- 2 JOSE.K.MANI., M.P.,
AGED 56 YEARS
S/O. LATE K.M.MANI, 601, KAVERI APARTMENTS,
DR.B.D.MARG, NEW DELHI-110 001, RESIDING AT
KARINGOZHACKAL HOUSE, PALA P.O.,
KOTTAYAM, KERALA-686 575
- 3 THOMAS CHAZHIKADAN.M.P.
AGED 67 YEARS
S/O. CYRIAC, CHAZHIKATTU HOUSE, SH MOUNT P.O.,
KOTTAYAM, KERALA-686 006

- 4 ROSHY AUGUSTINE MLA
AGED 52 YEARS
S/O. AUGUSTINE, CHERUNILATHUCHALIL HOUSE,
VAZHATHOPPU, IDUKKI COLONY P.O., IDUKKI,
KERALA-685 602
- 5 DR.N.JAYARAJ,MLA
AGED 63 YEARS
S/O. LATE NARAYANKURUPPU, INDEEVARAM HOUSE,
CHAMPAKKARA P.O., KARUKACHAL, KOTTAYAM,
KERALA-686 540
- 6 JOY ABRAHAM,
AGED 68 YEARS
S/O. ITTYAVIRA, MAZHUVANNOOR HOUSE, MELAMPARA
P.O., THALAPPALAM, KOTTAYAM, KERALA-686 578
- 7 MONS JOSEPH,MLA
AGED 55 YEARS
S/O.JOSEPH, NARIMATTAM HOUSE, POOZHICKLE
P.O., KOTTAYAM,KERALA-686 604
- 8 KURIAKOSE P.C.,
AGED 55 YEARS
S/O. CHERIAN, PADAVIL HOUSE, KIZHATHADIYOOR
P.O., KOTTAYAM DISTRICT, KERALA-686 574
- R1 BY SRI.MURALI PURUSHOTHAMAN, SC,ELE.COMMN.
R2 BY ADV. SRI.G.SHRIKUMAR (SR.)
R2 BY ADV. SRI.GEORGIE JOHNY
R3 BY ADV. SRI.K.GOPALAKRISHNA KURUP (SR.)
R3 BY ADV. SMT.ANUROOPA JAYADEVAN
R3 BY ADV. SHRI.ASHRUTH NASER
R3 BY ADV. SRI.JUSTINE JACOB
R6-7 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R8 BY ADV.ROY CHACKO
R8 BY ADV. SRI.MANU VYASAN PETER
R8 BY ADV. SRI.JOJO JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 17-11-2020, ALONG WITH WP(C).18638/2020(D), THE
COURT ON 20-11-2020 DELIVERED THE FOLLOWING:

WPC Nos.18556 & 18638 of 2020

: 3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 20TH DAY OF NOVEMBER 2020 / 29TH KARTHIKA, 1942

WP(C) .No.18638 OF 2020(D)

PETITIONER:

KURIAKOSE P.C
AGED 55 YEARS
S/O.CHERIAN, PADAVIL HOUSE,
KIZHATHADIYOR P.O., KOTTAYAM DISTRICT,
KERALA-686 574

BY ADVS.
SRI.MANU VYASAN PETER
SRI.JOJO JOSEPH

RESPONDENTS:

- 1 ELECTION COMMISSION OF INDIA
REPRESENTED BY ITS SECRETARY,
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DELHI-110 001
- 2 JOSE.K.MANI.M.P.
AGED 56 YEARS
S/O. LATE K.M.MANI, KARINGOZHACKAL HOUSE,
PALA P.O., KOTTAYAM, KERALA-686 575
- 3 P.J.JOSEPH,MLA
AGED 79 YEARS
S/O. LATE P.O.JOSEPH, PALATHINAL HOUSE,
PURAPPUZHA. P.O., THODUPUZHA, IDUKKI,
KERALA-685 583

- 4 JOY ABRAHAM
AGED 68 YEARS
S/O. ITTYAVIRA, MAZHUVANNOOR HOUSE,
MELAMPARA P.O., THALAPPALAM,
KOTTAYAM, KERALA-686 578
- 5 MONS JOSEPH
AGED 55 YEARS
S/O. JOSEPH, NARIMATTAM HOUSE,
POOZHICKOLE P.O., KOTTAYAM, KERALA-686 604
- 6 KERALA CONGRESS (M) HAVING ITS STATE
COMMITTEE OFFICE,
NEAR FIRE STATION KOTTAYAM, PIN-686 001,
REPRESENTED BY ITS WORKING CHAIRMAN,
SHRI.P.J.JOSEPH
- R1 BY ADV. SRI.MURALI PURUSHOTHAMAN
R2 BY ADV. SRI.G.SHRIKUMAR (SR.)
R2 BY ADV. SRI.GEORGIE JOHNY
R3 BY ADV. SRI.P.B.KRISHNAN
R3 BY ADV. SRI.K.C.VINCENT
R4-5 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 17-11-2020, ALONG WITH WP(C).18556/2020(T), THE
COURT ON 20-11-2020 DELIVERED THE FOLLOWING:

[CR]

N. NAGARESH, J.

.....
W.P.(C) Nos.18556 and 18638 of 2020
.....

Dated this the 20th day of November, 2020

J U D G M E N T

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Two writ petitions have been filed, one by Working Chairman of a recognised State Political Party, Kerala Congress (Mani) and the other by a Member of the said party, aggrieved by Ext.P1 order dated 30.08.2020 in Dispute Case No.2 of 2019 of the 1st respondent-Election Commission of India. In Ext.P1, by a majority of 2:1, the Election Commission of India held that the group of the said Party led by the 2nd respondent, is the Kerala Congress (Mani) and is entitled to use its name and its reserved symbol "Two Leaves" for the purpose of the Election Symbols (Reservation and Allotment) Order, 1968.

2. Respondents 2 to 5 filed a petition before the 1st respondent-Election Commission invoking Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'the Symbols Order', for short) claiming that two rival factions were existing in Kerala Congress (Mani) (hereinafter referred to as 'the KC(M)', for short) and seeking to declare that the faction led by the 2nd respondent be declared as the KC(M), entitled to use the name "Kerala Congress (Mani)" and entitled to use its name and symbol "Two Leaves" for the purposes of Symbols Order.

3. The Election Commission noted that the last organisational Election of of KC(M) was held on 20.04.2018 and results intimated to the Commission by letter dated 30.04.2018. As per the said letter, 351 State Committee Members (out of a total 450 Members) who were present, elected Sri. K.M. Mani as Chairman, the petitioner in W.P.(C) No.18556/2020 as Working Chairman and the 2nd respondent as Vice Chairman. Apart from five office bearers,

the State Committee also elected 99 members to State Steering Committee. The State Steering Committee further elected 29 Members to the High Power Committee. However, the list of 450 Members of the State Committee was not provided to the Election Commission.

4. Sri. K.M. Mani, Chairman of KC(M) passed away on 09.04.2019. Article XXIX of the Constitution of KC(M) provided that in the absence of the Chairman, all functions and powers of the Chairman will vest in the Working Chairman. On 30.05.2019, the petitioner in W.P.(C) No.18556/2020 (hereinafter referred to as 'the petitioner'. The 'petitioner in W.P.(C) No.18638/2020' will be referred to as such) sent a letter to the Commission stating that on the demise of the Party Chairman, he has assumed charge as 'Acting Chairman' and that election to the vacancies of Party Chairman and leader of Legislative Party would be held as per law in due course.

5. The 2nd respondent submitted before the Tribunal that by representation dated 29.05.2019 signed by himself

and 1/4th members of the State Committee, the petitioner was asked to convene State Committee meeting to elect Chairman, but the petitioner did not take any action on the representation. Thereupon, a Member of the High Power Committee called for a State Committee meeting on 16.04.2019(sic). The meeting attended by 314 Members unanimously elected the 2nd respondent as Chairman, which election was communicated to the Election Commission. On 19.06.2019, the Commission received communication from two members of the KC(M) stating that election of the 2nd respondent a Chairman has been stayed in OS No.166/2019 of Munsiff's Court, Thodupuzha as per order dated 17.06.2019 of the Court. The 2nd respondent, however, informed the Election Commission that order dated 17.06.2019 is only an ex-parte interim order of temporary injunction.

6. On 28.08.2019, the Election Commission announced by-poll for 93 – Pala Assembly Constituency to fill the vacancy caused by the death of Sri. K.M. Mani. The

petitioner, according to the Election Commission, informed that the party would not contest the by-election. The 2nd respondent, however, stated that a Sub Committee formed by the Steering Committee of the Party decided to field Sri. Jose Tom Pullikkunnel, in the election. The Returning Officer rejected his nomination paper as candidate of KC(M), on the ground that Form-A and Form-B of nomination paper did not contain signature of the Chief Executive Officer of the Party. The candidate thereupon contested as independent candidate and eventually lost the election. The 2nd respondent thereupon approached the Election Commission stating that rival factions had emerged in KC(M) and the faction led by him should be declared as KC(M).

7. The Commission considered the written submission of the parties and instructed the Director (Law) to verify the authenticity of the separate lists of State Committee Members submitted by both sides and make a report on his findings. The Director (Law) submitted his Report dated 05.02.2020, with the following important

findings:-

“(i) That there is a discrepancy in relation to the authority who finalized the State Committee list of KC(M) after the 2018 organizational elections. The State Committee List submitted by the Petitioner was issued and signed by the State Returning Officer of the Party. On the contrary, the list submitted by the Respondents was signed by the State Election Committee of the Party. It is pertinent to note that the Party Constitution does not provide for the authority responsible for finalizing the list of Party State Committee members.

(ii) That after taking into account the allegations made by both the Parties against each other's list, it was noted that possibility of forgery and manipulation by both the parties regarding their respective lists could not be ruled out.

(iii) That both the lists had 305 names in common. It is proposed that the Commission may consider only these undisputed members of the State Committee for the purpose of deciding the dispute under Paragraph 15 of the Symbols Order.

(iv) That the Commission may ask both the Parties to submit affidavits of their supporters from the State Committee (Organizational Wing) and the Legislative Wing of the Party.”

8. The Commission framed two preliminary issues, which were as follows:-

“(i) Whether the omission of Paragraph 3 of the Tenth Schedule by the 91st Constitutional Amendment Act, 2003 has made redundant the power of this Commission to decide dispute case under the Symbols Order.

(ii) Which representative body of the Kerala Congress (Mani) can be considered as its 'Organizational Wing' for the purpose of deciding this dispute?”

On the first issue, the Commission considered the impact of omission of Paragraph 3 from the Xth Schedule by the 91st Constitution Amendment Act, 2003 on the Symbols Order as it exists and relying on its own orders in Samajwadi Party Case (Dispute 1 of 2017), AIADMK Case (Dispute 2 of 2017) and Janata Dal (United) Case (Dispute 5 of 2017), the Commission held that the argument that Paragraph 15 of Symbols Order has become redundant, is without merits. On preliminary issue (ii), relying on its own order in Sri. E. Madhusudhan and others v. Smt. V.K. Sasikala and another (AIADMK Case – Dispute 2 of 2017), the Commission concluded that the Commission will look into the relative strength of the two groups in the apex representative body, of the organisational structure of the party as provided for in the Party Constitution. The Commission held that it will consider the State Committee of KC(M) as the 'Organisational Wing' of the party for deciding the dispute.

9. After answering the preliminary issues so, the Commission framed the following issues for consideration:-

“(i) Whether the Commission is satisfied that there is a split in the Kerala Congress (Mani) resulting in the formation of two rival sections or groups in the party-one, led by Sh.Jose K. Mani and the other, led by Sh.P.J. Joseph – within the meaning of Paragraph 15 of the Symbols Order:

(ii) If so, which of the said factions or groups is the Kerala Congress (Mani) for the purposes of the Symbol Order?”

After considering the rival contentions, the Commission held that legality of the meeting held on 16.06.2019 and disputed election of the 2nd respondent as Chairman of the KC(M) are not determinative factors in deciding whether a split has occurred in the party. Considering (1) the fact of holding separate State Steering Committee meetings by both groups, (2) the decision of the petitioner's group not to field candidate in Pala by-election and of the faction led by the 2nd respondent, to field a party candidate and (3) the action of four out of the seven elected legislatures, who signed the petition dated 18.10.2019 stating that rival factions had emerged in KC(M), the Commission held that a split has arisen in the KC(M), one led by the 2nd respondent and the other by the petitioner.

10. On the issue as to which of the said sections or groups is the KC(M), the Commission applied the 'Test of Majority' in numerical strength of rival groups, both in the legislative and organisational wings of the Party. To decide majority in organisational wing, the Commission prepared a list of 305 common names in both lists, which were submitted by either side. The Commission held that the list of 305 is undisputed. After taking into account three persons who have remained neutral, after a close scrutiny of affidavits, and after discarding affidavits of those who signed affidavit in support of both the factions, the Commission assessed the relative strength of the two factions, as follows:-

Sl. No.	Category of Members	Number of members supporting the Petitioner	Number of members supporting the Respondent
1.	Members of Kerala Legislative Assembly	2/5	3/5
2.	Members of Parliament (Lok Sabha and Rajya Sabha)	2/2	0/2
3.	Members of the State Committee (excluding the names of disputed members and those who have submitted affidavits in support of both the factions)	174/305	117/305

The Commission accordingly passed Ext.P1 Order with a 2:1 majority that the group led by the 2nd respondent is the KC(M) and is entitled to use its name and its reserved symbol 'Two Leaves' for the purpose of Symbols Order.

11. The learned counsel for the petitioner Advocate P.K. Krishnan urged that Paragraph 15 of the Symbols Order has become redundant. The contention is that the Xth Schedule added in the Constitution as per Constitution (52nd Amendment) Act, 1985 had limited the scope of split in the legislative wing of political parties. By the Constitution (91st Amendment) Act, 2003, Paragraph 3 of Xth Schedule was deleted as a consequence of which the concept of split ceased to exist and the Election Commission therefore has no jurisdiction to look into split in legislative wing of any political party under Paragraph 15 of the Symbols Order. The Symbols Order to the extent it permits the Election Commission to enter into a finding that there are rival factions in a recognised political party, is ultravires. After the 91st Amendment Act, 2003, no elected member belonging to

a party can approach Election Commission claiming that there is a split in the party and he belongs to one group, which should be recognised by the Commission.

12. Even otherwise, Paragraph 15 of the Symbols Order can be invoked by the Commission only if sufficient materials for the information of the Commission, are available, argued the learned counsel for the petitioner. The only fact alleged by the 2nd respondent before the Commission was that he has been unanimously elected as the Chairman of the Party in a meeting held on 16.04.2019(sic). At the most, it can only be a dispute as to who the Chairman of the Party is. If a member has a dispute as to who the Chairman of the Party is, it does not follow that there are rival factions in the Party. The 2nd respondent has no dispute as regards other office-bearers of the Party. There was no allegation that parallel set of office-bearers exist in the party. The 2nd respondent has no case that the petitioner is not the Working Chairman of the Party. The list of State Committee members submitted by the 2nd

respondent is also more or less the same list maintained by the Party. Therefore, the Election Commission had no materials available with it, except a bald statement made by the 2nd respondent in his complaint, to arrive at a conclusion that there are two groups or rival factions or that there is a split in the party. Even if all the allegations made in Ext.P23 are assumed as correct, the same are not sufficient to attract jurisdiction under Paragraph 15 of the Symbols Order.

13. The learned counsel for the petitioner pointed out that rejection of nomination of the candidate in Pala by-election by the Returning Officer can also not be considered as evidencing split. If nomination is rejected, parties had a remedy to file Election Petition. The Election Commission committed grave mistake in not placing reliance on the party Constitution and the powers conferred on Working Chairman therein. The Election Commission ought to have noted that a competent Civil Court had found that the State Committee meeting on 16.06.2019 which allegedly elected the 2nd respondent as Chairman, was void.

14. The learned counsel for the petitioner further argued that admittedly the membership of the State Committee of the Party is 450 and as against this, the Election Commission created a Committee of 305 Members. The supporters to the 2nd respondent assumed by the Commission are only 174, which is far less than the majority mark in a 450 strong committee. The so-called Test of Majority has been made a farce by the Election Commission.

15. The Election Commission misappreciated the affidavits filed by State Committee Members, contended the learned counsel for the petitioner. A majority of the affidavits made available by the 2nd respondent did not declare allegiance to the 2nd respondent or spoke of any split or rival factions in the party. Those affidavits only stated factual aspects in respect of the so-called meeting held on 16.06.2019. Ext.P1 is liable to be interfered with for that reason also.

16. The learned counsel for the petitioner submitted that the Election Commission is exercising jurisdiction in a

grey area which was once occupied by Symbols Order, when there were no legislation governing the field. The Symbols Order governed registration and recognition of political parties and allocation of election symbols. When Section 29-A was inserted in the Representation of the People Act, 1951 in the year 1989, the jurisdictional area of the Election Commission under the Symbols Order shrunk and was confined to matters relating to recognition and allocation of election symbols. The judgment of the Apex Court in ***Sadiq Ali and another v. The Election Commission of India, New Delhi and others*** [AIR 1972 SC 187] was delivered in a legal context when the Symbols Order governed a larger area. After the insertion of Part IV-A in the Representation of the People Act, 1951, the Election Commission is exercising only a peripheral jurisdiction. The judgment of the Apex Court in ***Sadiq Ali*** (supra) should be read in the context as it existed prior to the insertion of Part IV-A in the Representation of the People Act, 1951.

17. The learned counsel for the petitioner further

submitted that a political party is a structure with three elements, namely the foundation, building and a flag atop, registration of the party being its foundation, recognition being the building and the symbol, its flag. After the insertion of Section 29-A in the Act, 1951, the Election Commission cannot touch the foundation in exercise of the powers under Paragraph 15. The Commission can only deal with the building and the flag. When one of the three pillars, namely registration, being out of the purview of the Symbols Order, the Election Commission should not delve on to decide matters relating to registration even indirectly by deciding on allocation of symbols, in exercise of its powers under Paragraph 15 of the Symbols Order. The judgment of the Apex Court in **Sadiq Ali** (supra) should not be applied blindly.

18. On facts, the learned counsel for the petitioner further argued that even to apply the Test of Majority, the Election Commission should be able to identify as to who are the 450 members of the State Committee as provided in the

party's Constitution, which admittedly the Election Commission could not. This is a basic problem. When the Election Commission cannot resolve that problem, the Commission ought not have exercised its peripheral jurisdiction. The learned counsel pointed out that though decision of the Election Commission in Ext.P1 is summary in nature, the decision cannot be said to be tentative, it is final. Relying on the judgment of the Hon'ble Apex Court in ***All Party Hill Leaders' Conference, Shillong v. Captain W.A. Sangma and others*** [(1977) 4 SCC 161], the counsel for the petitioner urged that the Commission should be able to give a definitive decision in the matter. Such decision should not be one to annihilate a party.

19. Advocate Roy Chacko representing the petitioner in W.P.(C) No.18638/2020 argued that when the concept of split of political parties, is taken away by deleting Paragraph 3 of the Xth Schedule to the Constitution, the Commission should not have permitted the 2nd respondent to maintain a petition based on split in the party. Relying on the judgment

of the Apex Court in ***Kihoto Hollohan v. Zachillhu and others*** [1992 Suppl 2 SCC 651], the counsel urged that defection in any form in a political party is unacceptable now and in such circumstances, the Election Commission cannot recognise a split or defection in a political party. The Election Commission is bound to act in accordance with the Constitutional provisions.

20. Relying on the judgment of the Apex Court in ***Shailesh Manubhai Parmar v. Election Commission of India*** [(2018) 9 SCC 100], Advocate Roy Chacko argued that what cannot be done by an authority directly, cannot be permitted to be done indirectly. After the insertion of Section 29-A, the Election Commission cannot exercise its powers under Symbols Order in the matter of registration of a party. But, by deciding on the issue of allocation of symbol of the KC(M), the Election Commission has in effect undermined the very registration of KC(M) under Section 29-A. The learned counsel relying on ***A.C. Jose v. Sivan Pillai and others*** [(1984) 2 SCC 656], argued that the

plenary powers of the Election Commission of India under Article 324 cannot override the Constitutional provisions.

21. The learned counsel for the petitioner referred the judgment of this Court in ***Mani C. Kappan v. Mani K.M.*** [ILR 2006 (4) Kerala 927], to contend that orders issued by the Election Commission exercising its powers under Article 324, cannot be treated as Constitutional provisions. The orders of the Commission will remain as executive orders only. To underline the point that the general powers of the Election Commission of India is subject to statutory laws made by the legislatures, the counsel relied on the judgment in 'In the matter of Special Reference No.1 of 2002' (Gujarat Assembly Election matter) [(2002) 8 SCC 237].

22. Based on the judgment of the Hon'ble Apex Court in ***Sarah Mathew v. Institute of Cardio Vascular Diseases*** [(2014) 2 SCC 62], the counsel argued that a Court of Law or judicial authority shall interpret a provision to sustain the validity of law. By Ext.P1, what has been done by the Election Commission is to uphold a split in KC(M), which

concept itself has been done away by the amendment to the Xth Schedule to the Constitution.

23. Counsel for respondents 6 and 7, Advocate Sreekumar Chelur submitted that registration, recognition and symbol of a political party are deeply inter-related. It is the party, more specifically its registration, is that matters and allocation of symbol is only consequential. Therefore, when the KC(M) of which the petitioner is the Working Chairman, is still remaining as the registered political party under Section 29-A of the Act, 1951, the Election Commission cannot allocate the symbol to a faction led by the 2nd respondent. The learned counsel further argued that what is resorted to by the 2nd respondent before the Election Commission, is a class action and hence the Election Commission ought to have issued notice to all members of the KC(M) through public notice.

24. Relying on **Sadiq Ali** (supra), the learned counsel argued that there should be sufficient material to evidence existence of two or more split groups in the party in order to

exercise jurisdiction under Paragraph 15 of the Symbols Order. "Split" is a precondition. Existence of a split is not reflected in Ext.P23 petition dated 18.10.2019 of the 2nd respondent. The learned counsel argued that the KC(M) is still continuing as one unit and therefore the decision of the Commission to allocate party symbol to a faction led by the 2nd respondent is unsustainable.

25. The learned Senior Counsel Sri. G. Shrikumar appearing on behalf of the 2nd respondent, pointed out that though as per the Constitution of KC(M), the Working Chairman of the party can discharge the duties of the Chairman in his absence, such assumption of office cannot be ad infinitum. The petitioner, in spite of request made by the State Committee Members, refused to convene State Committee meeting, after the demise of the Chairman of the party. Under the Constitution of KC(M), the petitioner was duty bound to convene meeting, which was not done. It was under such circumstances that the State Committee members convened a meeting and elected the 2nd

respondent as Chairman. OS No.166/2019 in the Munsiff's Court, Thodupuzha is only a declaratory suit and what was passed by the Court therein was an ex-parte injunction. The learned Senior Counsel underlined the fact that what is under consideration by the civil court is basically the issue of the election of the 2nd respondent as Chairman of the party. Assuming that the said dispute does not exist, even then a petition under Paragraph 15 of the Symbols Order is maintainable before the Election Commission, if there are sufficient materials to show that there are two rival factions or groups within the party.

26. According to the Senior Counsel, the fact that a faction of the party has convened a meeting of the State Committee and certain others have approached the civil court questioning such meeting, would itself show that there are rival factions in the party. The fact that the Working Chairman of the party decided not to field any candidate of the party in Pala by-election and the Steering Committee decided to field a candidate in the by-election, would further

show that there is cleavage in the party. The suspension of 23 members by the State Steering Committee would again establish that there are two rival factions. The very fact that the petitioner has subjected himself to the jurisdiction of the Election Commission and joined issues, is sufficient to show that there are rival factions in the party, contended the learned Senior Counsel. Therefore, the Election Commission was amply justified in entertaining the petition filed by the 2nd respondent.

27. The learned Senior Counsel argued that in exercise of the powers of judicial review, this Court cannot revisit the order of the Election Commission on the basis of new or additional materials. The learned counsel relied on the judgments in ***Harivishnu Kamath v. Syed Ahmad Ishaque and others*** [(1955) 25 AWR 339], ***State of UP and others v. Johrimal*** [(2004) 4 SCC 714], ***KCT Steels Pvt. Ltd. v. State of Kerala*** [2016 (3) KLT 712], ***P. Ramakrishnan v. Union of India and others*** [2017 (1) KHC 801] and ***Municipal Council, Neemuch v. Mahadev Real Estate and***

others [2019 KHC 6930] in support of his argument.

28. The learned Senior Counsel Sri. Gopalakrishna Kurup representing the 3rd respondent pointed out that the judgment of the Apex Court in **Sadiq Ali** (supra), All Hill Party (supra) and **Subramanian Swamy v. Election Commission of India [(2008) 14 SCC 318]** would show the scope and powers of the Election Commission in the matter of allocation of symbols. A perusal of the judgments of the Apex Court till date on the subject would only show that the decision of the Hon'ble Apex Court in **Sadiq Ali** (supra) still holds the field.

29. The learned Senior Counsel argued that insertion of Section 29-A and Part IV-A in the Representation of the People Act, 1951 was intended for a defined purpose. A reading of the provisions contained in Part IVA would show that it was intended to enable political parties to accept donations. Part IV-A does not in any manner affect the powers of the Commission under Paragraph 15 of the Symbols Order.

30. The fact that the petitioner himself wrote a letter to

the Election Commission after the demise of its Chairman, to the effect that he is the Acting Chairman, would establish that there was split in the party. The averments made by the petitioner in paragraph 12 of the writ petition are enough to show existence of rival factions within the party. Paragraph 15 of the Symbols Order is not a dead letter. There is no other statutory provision governing allocation of symbols to political parties. There is no illegality or procedural irregularity in Ext.P1 order of the Election Commission and the writ petitions are liable to be dismissed, contended the learned Senior Counsel.

31. Advocate Murali Purushothaman, representing the 1st respondent-Election Commission stated that Ext.P1 being a quasi judicial order passed by the 1st respondent, it is for this Court to decide the issue on merits and the Election Commission shall not join issue on merits of the case. The learned counsel pointed out that this Court is not exercising appellate jurisdiction over Ext.P1 order and hence should confine to the well defined parameters of judicial review. The

power of the Commission in the matter of allocation of symbols to political parties is already upheld by the Hon'ble Apex Court in ***Kanhiya Lal Omar v. R.K. Trivedi and others*** [AIR 1986 SC 111].

32. The 91st Constitution amendment Act has no impact on the powers of the Election Commission under the Symbols Order. The Election Commission has only followed the 'Test of Majority' laid down by the Hon'ble Apex Court in ***Sadiq Ali*** (supra) and followed by the subsequent judgments.

33. Heard learned counsel appearing for the petitioners and respondents.

34. The prime grounds on which the petitioners in the writ petitions seek relief are that (1) consequent to deletion of Paragraph 3 from the Xth Schedule to the Constitution of India and after the insertion of Part IV-A in the Representation of the People Act, 1951 especially Section 29-A therein, Paragraph 15 of the Symbols Order has become redundant; (2) that the Election Commission is

exercising only a peripheral jurisdiction in the matter of recognition and allocation of symbols and when the prime pillars of the dispute are outside the jurisdictional authority of the Election Commission, the Commission ought not have ventured to decide on allocation of symbol; and (3) that even assuming that the Election Commission has jurisdiction to entertain petition for allocation of symbol, the facts of the case available and relied on in the petition filed by the 2nd respondent, do not disclose any material for the Election Commission to entertain the petition.

35. Article 324 of the Constitution of India provides for establishment of an Election Commission for superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the Parliament and Legislatures of the States. Article 327 empowers the Parliament to make laws for all matters relating to or in connection with elections. With the plenary powers available to it under Article 324, the Election Commission has framed the Symbols Order in 1968.

Originally, the Symbols Order provided for registration of political parties, recognition of political parties and allocation of symbols to the candidates contesting in elections.

Paragraph 15 of the Symbols Order reads as follows:-

“15. Power of Commission in relation to splinter groups or rival sections of a recognised political party—When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.”

It is to be noted that even prior to 1968, Rule 5 of the Conduct of Election Rules, 1961 empowered the Election Commission to specify symbols. Rule 10 vested the powers on Returning Officers to allot symbols to the candidates in elections.

36. By the 52nd Constitution Amendment Act, the Xth Schedule was added to the Constitution of India, with the avowed object of eliminating defections of Legislators from

one political party to another.

37. Section 29-A was inserted in the Representation of the People Act, 1951 on 15.03.1989. Section 29-A provided for registration of political parties with the Election Commission. Section 29-A of the Representation of the People Act, 1951 reads as follows:-

“29-A. Registration with the Election Commission of associations and bodies as political parties — (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,—

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.”

By the insertion of Section 29-A in the year 1989, the power of the Election Commission to register political parties under the Symbols Order ceased to exist. The Election Commission also deleted Paragraph 3 dealing with registration of political parties, from the Election Symbols Order in the year 1992. It is to be noted that neither Section 29-A nor any of the provisions in Part IV-A provides for de-recognition of a registered political party.

38. The Hon'ble Apex Court considered the powers of the Election Commission under Article 324 of the Constitution of India and under different Paragraphs of the Symbols Order in **Sadiq Ali** (supra) and held that the Election Commission has been clothed with plenary powers in the matter of allotment of symbols. If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbols

of a political party is made by two rival claimants. Paragraph 15 of the Symbols Order is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught.

39. In ***All Party Hill Leaders' Conference, Shillong*** (supra), the Apex Court again considered the powers of the Election Commission. The Apex Court held that the power to decide dispute is a part of the State's judicial power and that power is conferred on the Election Commission by Article 324 of the Constitution. The Commission exclusively resolves disputes between rival parties with regard to claims for being a recognised political party for the purpose of electoral symbol. The Apex Court specifically held that the decision with regard to the reserved symbol or for that matter of that any symbol for the purpose of election is within the special jurisdiction of the Election Commission and it is not permissible for the ordinary hierarchy of courts to entertain

such a dispute.

40. In ***Mohinder Singh Gill and another v. Chief Election Commissioner*** [AIR 1978 SC 851], a Constitution Bench of the Hon'ble Apex Court held that Article 324 of the Constitution is a plenary provision for vesting the whole responsibility for National and State elections and therefore, the necessary powers to discharge that function. The Commission cannot defy any law made by the Parliament, armed by Article 324. The power under Article 324 has to be exercised keeping with the guidelines of the Rule of law. Article 324 operates in areas left unoccupied by the Legislation. The words “superintendence, direction and control” as well as “conduct of all elections” appearing in Article 324 are in broadest terms and operate in areas left unoccupied by Legislation.

41. In ***A.C. Jose*** (supra), the Apex Court held that the intention of the founding fathers of our Constitution was to make the Commission a separate and independent body so that the Election machinery may not be outside the control of

the executive government. The superintendence, direction and control of the preparation of electoral rolls and all election to Parliament and State legislatures should be left to the Election Commission. This object has been fully carried out in the provisions in Articles 324 to 329. The said judgment was delivered placing reliance on the earlier decision of the Apex Court in **Sadiq Ali** (supra).

42. In **Kanhiya Lal Omar** (supra), the Apex Court upheld the power of the Commission to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party and the power of the Commission to issue the Symbols Order. The Apex Court noted that it could not be said that when the Commission issued the Symbols Order, it was not doing so on its own behalf but as the delegate of some other authority. The power to issue the Symbols Order was held to be comprehended in the power of superintendence, direction and control of elections vested in the Commission. The Apex Court held that Article 324 of the Constitution operates in

areas left unoccupied by Legislation and the words “superintendence, direction and control” would include the power to make all such provisions.

43. The contention of the counsel for the petitioners is that the afore judgments of the Apex Court were delivered prior to the amendment incorporating Section 29-A in the Representation of the People Act, 1951 with effect from 15.03.1989 and therefore those judgments cannot be applied as such, once the power of the Election Commission to register political parties under the Symbols Order, 1968 is taken away.

44. It is to be noted that even after insertion of Section 29-A in the year 1988, the Hon'ble Apex Court in the judgment in **Subramanian Swamy** (supra) quoted **Sadiq Ali** (supra) with approval in which judgment it was held that in case of split, the Commission has been authorised to determine which of the rival groups or sections is the party which was entitled to symbol.

45. The validity of amendment to Election Symbols

Order, 1968 came up for consideration before the Apex Court in the year 2012 also in ***Desiya Murpokku Dravida Kazhakom and others v. Election Commission of India [(2012) 7 SCC 340]*** and the Hon'ble Apex Court held as follows:-

“31. The submissions made on behalf of the writ petitioners regarding the constitutional validity of the Election Symbols Order, 1968 and the power of the Election Commission to settle issues relating to claims of splinter groups to be the original party, had fallen for the decision of this Court about 40 years ago in Sadiq Ali's Case, when this Court had occasion to observe that the Election Commission had been clothed with plenary power by Rules 5 and 10 of the conduct of Election Rules, 1961, in the matter of conducting of elections, which included the power to allot symbols to candidates during elections. The challenge to the vires of the symbols order, 1968, was, accordingly, repelled.

32. The view in Sadiq Ali's Case has since been followed in the All Party Hills Conference Case (supra), Rooplal Sati's Case (supra) and as recently as in Subramaniam Swamy's Case (supra), to which reference has been made in the earlier part of this judgment, where the provisions of Article 324 of the Constitution vesting the superintendence, direction and control of elections, were considered in detail and it was, inter alia, held that in addition to Rules 5 and 10 of the Conduct of Election Rules, 1961, the power vested in the Election Commission could be raised to Article 324 of the Constitution.”

46. The Hon'ble Apex Court had occasion to consider Paragraph 15 of the Symbols Order recently in the year 2019, in ***Edapaddi K. Palaniswami v. T.T.V. Dhinakaran***

[2019 (3) SCALE 309]. The issue involved in the said judgment was entitlement to use Election Symbols among two rival factions in a recognised State Political Party in Tamil Nadu. In the said judgment, the Hon'ble Apex Court held as follows:-

“The closest provision is Paragraph 15 of the Symbols Order, which deals with the powers of the Election Commission in relation to splinter groups or rival factions of the political party. But, once that dispute is answered by the Election Commission and that decision attains finality, the splinter group will have no other option but to register itself as a political party and only after fulfillment of the requirement specified in paragraphs 6A to 6C of the Symbols Order, 1968, as applicable, may be given recognition as a National or State political party.”

The said judgment related to a dispute which had arisen in the year 2017. The aforesaid judgments would indicate that the law laid down by the Hon'ble Apex Court with regard to the power of the Election Commission in allocating Election Symbols to political parties in the judgment in **Sadiq Ali** (supra), has been consistently followed by the Hon'ble Apex Court even after the incorporation of Section 29-A in the Representation of the People Act, 1951.

47. The contention of the petitioners is that no arguments based on redundancy of Paragraph 15 of the Election Symbols Order were made in any of the said judgments pronounced after 1989. Therefore, this Court shall consider the issue without regard to the afore judgments.

48. It is not in dispute that the Election Commission has plenary powers under Article 324 of the Constitution. The power of the Commission to frame the Symbols Order in exercise of its plenary powers, is also not under dispute. The argument is that once Section 29-A has been incorporated in the Representation of the People Act, 1951 for registration of political parties, orders passed by the Election Commission allocating Election Symbols to one of the rival factions of a political party, may go against Section 29-A itself. This Court is of the opinion that Section 29-A and Paragraph 15 of the Symbols Order operate in different areas. Registration of a political party under Section 29-A, need not necessarily have a direct relation to allocation of symbols. Allocation of

election symbols is intended to maintain purity in elections. Section 29-A does not speak of election symbols. Therefore, any order passed by the Election Commission allocating election symbol to any one of the rival factions of a political party cannot have a direct impact on registration of a political party.

49. It is also to be noted that election symbols are considered essential in a country like India where literacy level of voters are not satisfactory. It is also a statutory requirement under the Conduct of Elections Rules, 1961. Therefore, even if it is assumed that Paragraph 15 of the Symbols Order is redundant, allocation of election symbols to political parties is indispensable. As there is no statutory provision regulating allocation of symbols to political parties and candidates in elections, the duty and power to regulate allocation of symbols would vest with the Election Commission even in the absence of Paragraph 15, in view of Article 324 of the Constitution of India. Under the circumstances, this Court is not inclined to accept the

arguments raised by the petitioners in this regard.

50. The further contention of the petitioners is that under the Symbols Order, in view of the fact that registration of political parties now falls under Part IV-A of the Representation of the People Act, 1951, the Election Commission is exercising only a peripheral jurisdiction. In view of the judgments of the Apex Court in ***Jai Mahal Hotels Pvt. Ltd. v. Rajkumar Devraj and others*** [(2016) 1 SCC 423] and in ***Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd.*** [(1998) 7 SCC 105], if for reasons of complexity or otherwise the matter could be more conveniently decided in a Suit, the Election Tribunal ought to relegate the parties to such remedy. The argument is not acceptable for two reasons. Firstly, even according to the petitioners, a decision taken by the Election Commission in exercise of its powers under Article 324 and Paragraph 15 of the Symbols Order is not tentative, but final. When a Constitutional functionary exercises powers and passes orders which are final in nature, subject only to judicial review

under Constitutional provisions, it cannot be said that such Constitutional functionary's jurisdiction is peripheral. Secondly, the Hon'ble Apex Court has in ***All Party Hill Leaders' Conference, Shillong*** (supra) has held that the decision with regard to the reserved symbol is within the special jurisdiction of the Election Commission and it is not permissible for the ordinary hierarchy of courts to entertain such a dispute. In such circumstances, it cannot be held that the adjudicatory powers exercised by the Election Commission are peripheral in nature.

51. Yet another ground urged by the petitioners is that the Election Commission can invoke Paragraph 15 only when the Commission has sufficient information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party. The argument is that the 2nd respondent has raised a dispute only as to who is the Chairman of the KC(M) and that by itself is not sufficient to hold that there are rival groups/factions in KC(M).

52. The Election Commission, in fact, did not consider the dispute as to the Election of Chairman held on 16.06.2019. The Election Commission noted the following facts:-

(1) Both groups held separate Steering Committee Meetings in relation to by-election in Pala Assembly Constituency and took divergent decisions in fielding a candidate.

(2) Four out of the seven elected legislators had signed the petition dated 18.10.2019 stating that rival factions exist, which is an indicator of split in the legislative wing.

(3) Both parties claimed majority support in the State Committee and submitted affidavits in support of them. Both parties failed to submit original list of the State Committee Members.

53. It was on the basis of the aforesaid undisputed facts that the Election Commission came to the conclusion that there are two factions/groups in the KC(M). The conclusions arrived at by the Election Commission were

based on materials available before the Commission. The conclusions of the Commission cannot be said to be perverse and it cannot be said that no reasonable person can arrive at such conclusions. This Court cannot, in exercise of the jurisdiction under Article 226 of the Constitution of India, interfere with the said finding of fact.

54. The further argument on behalf of the petitioners is that when the strength of the State Committee of KC(M) is admittedly 450, the Election Commission ought not have ventured to hold a Test of Majority in numerical strength, with a collegium of 305 members. It is evident from Ext.P1 order that the Party Constitution does not provide for the authority responsible for finalising list of State Committee Members. There is discrepancy in relation to the authority who finalised the State Committee list. The Director (Law) who verified the authenticity of affidavits, reported that after taking into account the allegations made by both parties, the possibility of forgery and manipulation by both the parties could not be ruled out.

55. It may be noted that in Ext.P14 Order in IA No.295/2019 in OS No.53/2019, the Munsiff's Court, Idukki also also doubted the authenticity of list and observed that the custodian of the list has not produced the list of State Committee Members before the Court. As both the lists produced by the rival factions were unreliable, the Election Commission proceeded to decide the numerical strength based on majority of members admitted by both sides. Such action of the Commission cannot be found fault with, in the circumstances of the case. It is further to be noted that the Commission based on its decision, not only considering the support of undisputed State Committee members, but also on the numerical strength of legislative party members of the party. Therefore, the Election Commission was justified in adopting a course available to it, in the facts and circumstances of the case.

56. This Court is also not inclined to accept the argument that the petition of the 2nd respondent claiming Party Symbol is a class action and all members of the KC(M)

ought to have been put to notice. On a similar situation, the Apex Court in **Sadiq Ali** (supra) held as follows:-

“25. It is no doubt true that the mass of Congress members are its primary members. There were obvious difficulties in ascertaining who were the primary members because there would in that events have been allegations of fictitious and bogus members and it would have been difficult for the commission to go into those allegations and find the truth within a short span of time. The Commission in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. This apart, there was practical difficulty in ascertaining the wishes of those members. The Commission for this purpose could obviously be not expected to take referendum in all the towns and villages in the country in which there were the primary members of the Congress. It can, in our opinion, be legitimately considered that the members of All India Congress Committee and the delegates reflected by and large the views of the primary members.”

The KC(M) being a State Party, the Election Commission treated the State Committee of KC(M) as the representative organisational wing and proceeded to determine comparative strength of both factions in the said Committee. Respondents 6 and 7 therefore cannot be heard to contend that petitions before the Commission is a class action and all members of KC(M) ought to have been put to notice.

WPC Nos.18556 & 18638 of 2020

: 49 :

In view of the findings as stated above, this Court finds no reason to interfere with the impugned order of the 1st respondent-Election Commission of India. The writ petitions therefore stand dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/19.11.2020

APPENDIX OF WP (C) 18556/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ORDER DISPUTE CASE NO.2 OF 2019 DATED 30.8.2020 PASSED BY THE ELECTION COMMISSION OF INDIA
- EXHIBIT P2 TRUE COPY OF THE CONSTITUTION OF KERALA CONGRESS (M) APPROVED BY THE STATE COMMITTEE OF THE PARTY AND WHICH CAME INTO FORCE ON 01.08.2013
- EXHIBIT P3 TRUE COPY OF THE LIST OF STATE COMMITTEE MEMBERS APPROVED BY THE STATE ELECTION COMMITTEE ON 08.04.2018
- EXHIBIT P4 TRUE COPY OF THE COMMUNICATION DATED 30.04.2018 SENT TO THE COMMISSION
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 15.05.2019 IN IA NO.1685 OF 2019 IN OS 714 OF 2019
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 30.05.2019
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION BEFORE THE COMMISSION DATED 31.05.2019
- EXHIBIT P8 TRUE COPY OF THE COVERING LETTER OF THE REPRESENTATION DATED 29.05.2019 SERVED ON THE PETITIONER ON 03.06.2019
- EXHIBIT P9 TRUE COPY OF THE COMMUNICATION DATED 16.06.2019
- EXHIBIT P10 TRUE COPY OF AFFIDAVIT PETITION AND THE ORDER DATED 17.06.2019 IN IA NO.8822 OF 2019 IN OS 166 OF 2019

- EXHIBIT P11 TRUE COPY OF THE LETTER SERVED ON THE COMMISSION ON 22.06.2019
- EXHIBIT P12 TRUE COPY OF OBJECTION/COMMENTS DATED 15.07.2019 BY THE PETITIONER
- EXHIBIT P13 TRUE COPY OF THE OBJECTION DATED 15.07.2019 FILED BY THE 2ND RESPONDENT
- EXHIBIT P14 TRUE COPY OF THE ORDER OF THE HONOURABLE MUNSIF COURT, IDUKKI, DATED 03.08.2019, IN IA NO.295 OF 2019 IN OS 53 OF 2019
- EXHIBIT P15 TRUE COPY OF THE REPLY BY 2ND RESPONDENT DATED 10.08.2019
- EXHIBIT P16 TRUE COPY OF THE REPLY BY THE PETITIONER DATED 12.08.2019
- EXHIBIT P17 TRUE COPY OF THE PLAINT IN OS NO.505 OF 2019 BEFORE THE HON'BLE MUNSIF COURT, KOTTAYAM
- EXHIBIT P18 TRUE COPY OF LETTER SENT TO THE COMMISSION DATED 20.08.2019
- EXHIBIT P19 TRUE COPY OF THE LETTER DATED 22.08.2019 SENT BY THE 2ND RESPONDENT
- EXHIBIT P20 TRUE COPY OF THE COMMUNICATION DATED 30.08.2019 RECEIVED FROM THE COMMISSION, THE 1ST RESPONDENT
- EXHIBIT P21 TRUE COPY OF THE LETTER DATED 03.09.2019 SENT BY THE PETITIONER TO THE COMMISSION AND RETURNING OFFICER
- EXHIBIT P22 TRUE PRINT OUT OF THE E-MAIL DATED 04.09.2019 SENT BY THE 2ND RESPONDENT TO THE PETITIONER

- EXHIBIT P23 TRUE COPY OF THE PETITION SUBMITTED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT ENCLOSED WITH THE PETITION BY RESPONDENTS 2 TO 5 BOTH DATED 18.10.2019
- EXHIBIT P24 TRUE COPY OF THE LETTER DATED 23.10.2019 SENT BY 4TH RESPONDENT
- EXHIBIT P25 TRUE COPY OF THE LETTER DATED 23.10.2019 SENT BY 5TH RESPONDENT
- EXHIBIT P26 TRUE COPY OF LETTER DATED 30.10.2019 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT
- EXHIBIT P27 TRUE COPY OF COMMON JUDGMENT OF SUB COURT KATTAPPANA IN CMA NO.26 & 27 OF 2019 DT 01.11.2019
- EXHIBIT P28 TRUE COPY OF THE VERSION FILED BY THE PETITIONER DATED 25.11.2019 SUBMITTED ON 26.1.2019
- EXHIBIT P29 TRUE COPY OF THE VERSION FILED BY THE 1ST RESPONDENT ON 26.11.2019 WITHOUT ANNEXURES
- EXHIBIT P30 TRUE COPY OF THE CERTIFICATE OF ELECTION DATED 20.04.2018 ISSUED BY RETURNING OFFICER
- EXHIBIT P31 TRUE COPY OF THE INTERIM APPLICATION DATED 10.12.2019 FILED ON BEHALF OF THE 2ND RESPONDENT
- EXHIBIT P32 TRUE COPY OF ORDER DATED 13.12.2019 IN IA N.2683/2019 IN OS NO.510/2019
- EXHIBIT P33 TRUE COPY OF REPLY /REJOINDER DATED 19.12.2019 BY THE 2ND RESPONDENT, WITHOUT ANNEXURES
- EXHIBIT P34 TRUE COPY OF REPLY/REJOINDER DATED 04.01.2020 BY THE PETITIONER, WITHOUT ANNEXURES

- EXHIBIT P35 TRUE COPY OF PROCEEDINGS OF THE ELECTION COMMISSION DATED 12.1.2020 ALONG WITH COVERING LETTER DATED 15.01.2020
- EXHIBIT P36 TRUE COPY OF AFFIDAVITS AND PETITION TO ACCEPT ADDITIONAL DOCUMENTS DATED 15.01.2020
- EXHIBIT P37 TRUE COPY OF NOTES DATED 17.1.2020 SUBMITTED ON BEHALF OF THE PETITIONER BEFORE THE DIRECTOR (LAW)
- EXHIBIT P38 TRUE COPY OF THE AFFIDAVIT DATED 04.02.2020 SWORN BY THE PETITIONER
- EXHIBIT P39 TRUE COPY OF THE REPORT OF THE DIRECTOR (LAW) DATED 11.02.2020
- EXHIBIT P40 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 13.02.2020
- EXHIBIT P41 TRUE COPY OF THE ORDER SHEET OF THE 1ST RESPONDENT DATED 13.02.2020
- EXHIBIT P42 TRUE COPY OF THE PROCEEDINGS OF THE ELECTION COMMISSION DATED 17.02.2020 ALONG WITH COVERING LETTER DATED 19.02.2020
- EXHIBIT P43 TRUE COPY OF THE WRITTEN SUBMISSIONS FILED ON BEHALF OF THE PETITIONER ON 21.02.2020
- EXHIBIT P44 TRUE COPY OF JUDGMENT IN WPC NO.5295 OF 2020 DATED 17.08.2020 OF HON'BLE HIGH COURT OF KERALA
- EXHIBIT P45 TRUE COPY OF THE ELECTION SYMBOLS (RESERVATION AND ALLOTMENT) ORDER, 1968
- EXHIBIT P46 TRUE COPY OF THE 10TH SCHEDULE OF THE CONSTITUTION OF INDIA

EXHIBIT P47	TRUE COPY OF THE AFFIDAVIT DATED 08.11.2019 SWORN BY SRI.BABU JOSEPH
EXHIBIT P47A	TRUE COPY OF THE AFFIDAVIT DATED 08.11.2019 SWORN BY SRI.BABY UZHUTHUVAL
EXHIBIT P47B	TRUE COPY OF THE AFFIDAVIT DATED 11.11.2019 SWORN BY SRI.CHERIAN POLACHIRACKAL
EXHIBIT P47C	TRUE COPY OF THE AFFIDAVIT DATED 08.11.2019 SWORN BY SRI.E.J.AUGUSTY
EXHIBIT P47D	TRUE COPY OF THE AFFIDAVIT DATED 10.11.2019 SWORN BY SRI.JOHN POOTHAKUZHY
EXHIBIT P48	TRUE COPY OF THE AFFIDAVIT DATED 12.07.2019 SWORN BY SRI.JACOB PONNAN
EXHIBIT P48A	TRUE COPY OF THE AFFIDAVIT DATED 24.06.2019 SWORN BY ADV.JAIMON JOSE
EXHIBIT P48B	TRUE COPY OF THE AFFIDAVIT DATED 07.07.2019 SWORN BY SRI.JINSON VARKEY
EXHIBIT P48C	TRUE COPY OF THE AFFIDAVIT DATED 13.07.2019 SWORN BY SRI.JOSE THOMAS
EXHIBIT P48D	TRUE COPY OF THE AFFIDAVIT DATED 14.07.2019 SWORN BY SRI.SONY JOB
EXHIBIT P49	TRUE COPY OF THE AFFIDAVIT DATED 23.11.2019 SWORN BY SRI.C.F.THOMAS
EXHIBIT P49A	TRUE COPY OF THE AFFIDAVIT DATED 15.11.2019 SWORN BY SRI.E.A.JOY
EXHIBIT P49B	TRUE COPY OF THE AFFIDAVIT DATED 23.11.2019 SWORN BY SRI.JERARD MATHEW
EXHIBIT P49C	TRUE COPY OF THE AFFIDAVIT DATED 15.11.2019 SWORN BY SRI.JOY KOCUKOROTTU

- EXHIBIT P49D TRUE COPY OF THE AFFIDAVIT DATED 23.11.2019 SWORN BY SRI.MONS JOSEPH
- EXHIBIT P50 TRUE COPY OF AFFIDAVIT DT 22.06.2019 BY MARY SEBASTIAN
- EXHIBIT P50A TRUE COPY OF AFFIDAVIT DATED 23.11.2019 BY MARY SEBASTIAN
- EXHIBIT P51 TRUE COPY OF AFFIDAVIT DT 24.06.2019 BY SRI.JOSE VADAKEKARA
- EXHIBIT P51A TRUE COPY OF AFFIDAVIT DT 23.11.2019 BY SRI.JOSE VADAKEKARA
- EXHIBIT P52 A TRUE COPY OF THE GUIDELINES/RULES APPROVED AND PUBLISHED BEFORE THE ORGANISATIONAL ELECTIONS AND DATED 22/2/2017
- EXHIBIT P53 PHOTOGRAPHS SHOWING THE PETITIONER AND 2ND RESPONDENT CAMPAIGNING FOR SRI.JOSE TOM
- EXHIBIT P54 A TRUE COPY OF THE COMMUNICATION RECEIVED FROM THE SECRETARIAT OF THE KERALA LEGISLATURE DATED 10/1/2020
- EXHIBIT P55 THE FULL TEXT OF THE PETITION DATED 18/10/2019 ALONG WITH ANNEXURES, FILED BY SHRI,JOSE.K.MANI BEFORE THE ELECTION COMMISSION OF INDIA.
- EXHIBIT P56 A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.JOSE.K.MANI DATED 14/11/2019.
- EXHIBIT P56 (a) : A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.THOMAS CHAZHIKADAN DATED 11/11/2019.
- EXHIBIT P56 (b) : A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.ROSHY AUGUSTINE DATED 08/11/2019.
- EXHIBIT P56 (c) : A TRUE COPY OF THE AFFIDAVIT SWORN BY DR.N.JAYARAJ DATED 08/11/2019.

EXHIBIT P56 (d) : A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.C.F.THOMAS DATED 23/11/2019.

EXHIBIT P56 (e) : A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.MONS JOSEPJ DATED 23/11/2019.

EXHIBIT P56 (f) : A TRUE COPY OF THE AFFIDAVIT SWORN BY SHRI.P.J.JOSEPH DATED 23/11/2019.

EXHIBIT P57: A COPY OF THE PETITION FILED BY SRI.ROSHY AUGUSTINE, UNDER THE TENTH SCHEDULE OF THE CONSTITUTION OF INDIA RECEIVED FROM THE HONOURABLE SPEAKER, KERALA LEGISLATIVE ASSEMBLY ALONG WITH A COVERING LETTER DATED 14/10/2020, WITHOUT EXHIBITS.

EXHIBIT P59 COPY OF THE PLAINT IN OS.166/2019 NOW RENUMBERED AS OS.53/2019 PENDING ON THE FILES OF MUNSIFF COURT, IDUKKI.

EXHIBIT P59(A) COPY OF THE WRITTEN STATEMENT IN OS.166/19 NOW RENUMBERED AS OS.53/2019 PENDING ON THE FILES OF MUNSIFF COURT, IDUKKI

EXHIBIT P60 TRUE COPY OF THE SO CALLED MINUTES OF THE MEETING HELD ON 20.5.2019 WITHOUT ATTENDANCE LIST

EXHIBIT P61 TRUE COPY OF THE FULL TEXT OF THE REPRESENTATION DT 29.5.2019 SERVED ON THE PETITIONER ON 3.6.2019.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R6 (a) TRUE COPY OF THE LIST OF PERSONS WHO UNDERWENT DISCIPLINARY ACTION DATED NIL.

EXHIBIT R6 (b) A COPY OF THE ARGUMENT NOTE DATED 18.02.2020 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXHIBIT R6 (c) A COPY OF THE SO CALLED LIST ALONG WITH A CERTIFICATE OF ELECTION DATED 20.04.2018.

WPC Nos.18556 & 18638 of 2020

: 57 :

EXHIBIT R6(d) TRUE COPY OF THE PETITION FILED BY
SRI.ROSHY AUGUSTINE, 4TH RESPONDENT UNDER THE TENTH
SCHEDULE OF THE CONSTITUTION OF INDIA RECEIVED FROM THE
SPEAKER, KERALA LEGISLATIVE ASSEMBLY ALONG WITH A
COVERING LETTER DT 14.10.2020.

APPENDIX OF WP (C) 18638/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE ORDER DATED 30.08.2020 IN DISPUTE NO.1 OF 2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P2 A TRUE COPY OF THE CONSTITUTION OF KERALA CONGRESS (M) APPROVED BY THE STATE COMMITTEE OF THE PARTY AND WHICH CAME INTO FORCE ON 01.08.2013
- EXHIBIT P3 A TRUE COPY OF THE PETITION FILED BY THE 2ND RESPONDENT ON 18.10.2019
- EXHIBIT P4 A TRUE COPY OF APPLICATION FOR IMPLEMENT DATED 17.02.2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXHIBIT P5 A TRUE COPY OF THE PETITION AND ORDER DATED 17.06.2019 IN IA 8222 OF 2019 IN OS 166 OF 2019 ON THE FILE OF LD MUNSIFF, THODUPUZHA
- EXHIBIT P6 A TRUE COPY OF THE COMMON JUDGMENT DATED 01.1.2019 IN CMA NO.26 AND 27 OF 2019 ON THE FILES OF THE SUB COURT, KATTAPPANA
- EXHIBIT P7 A TRUE COPY OF THE CERTIFICATE OF ELECTION DATED 20.04.2018 PRODUCED BY THE 2ND RESPONDENT BEFORE THE COMMISSION, WITHOUT ANNEXURES
- EXHIBIT P8 A TRUE OF THE ORDER OF THE 1ST RESPONDENT DATED 13.01.2020
- EXHIBIT P9 A TRUE COPY OF THE REPORT OF THE DIRECTOR (LAW) DATED 11.02.2020

WPC Nos.18556 & 18638 of 2020

: 59 :

EXHIBIT P10	TRUE COPY OF THE ORDER SHEET OF THE 1ST RESPONDENT DATED 17.02.2020
EXHIBIT P11	TRUE COPY OF THE COMMUNICATION DATED 19.02.2020 RECEIVED FROM THE OFFICE OF THE 1ST RESPONDENT
EXHIBIT P12	A TRUE COPY OF THE JUDGMENT DATED 17.08.2020 IN WPC 5295 OF 2020 ON THE FILE OF THE HON'BLE HIGH COURT OF DELHI