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കേരള സർക്കാർ  
Government of Kerala  
2015



Regn. No. KERBIL/2012/45073  
dated 5-9-2012 with RNI  
Reg. No. KL/TV(N)/634/2015-17

കേരള ഗസറ്റ്  
KERALA GAZETTE

അസാധാരണം  
EXTRAORDINARY

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്  
PUBLISHED BY AUTHORITY

വാല്യം 4 Vol. IV	തിരുവനന്തപുരം, വെള്ളി Thiruvananthapuram, Friday	2015 നവംബർ 13 13th November 2015	നമ്പർ No. } 2493
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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 4010/Table-1/2015/Leg.

*Dated, Thiruvananthapuram, 13th November, 2015.*

The following decision dated 13th November, 2015 of the Speaker, Kerala Legislative Assembly given under paragraph 2 (1)(a) of the Tenth Schedule to the Constitution of India is notified as required under rule 8 (3) of the Members of the Kerala Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986.

P. D. SARANGADHARAN,  
Secretary,  
Kerala Legislative Assembly.

DECISION OF SPEAKER KERALA LEGISLATIVE ASSEMBLY, ON THE  
PETITION FILED BY SHRI ADV. THOMAS UNNIYADAN M.L.A.  
AGAINST SRI P. C. GEORGE M.L.A. UNDER THE TENTH  
SCHEDULE TO THE CONSTITUTION OF INDIA AND THE  
MEMBERS OF THE KERALA LEGISLATIVE ASSEMBLY  
(DISQUALIFICATION ON GROUND OF DEFECTION)  
RULES, 1986

(FILE NO. 4010/TABLE-1/2015/LEG.)

1. Shri Adv. Thomas Unniyadan, Government Chief Whip and a member of Kerala Legislative Assembly from No. 70- Irinjalakuda Constituency filed this petition under Rule 6(2) of the Members of Kerala Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 (for short hereinafter referred to as Rules) for disqualification of Shri P. C. George who was elected from Constituency No. 101-Poonjar with following allegations;

2. Kerala Congress (M) is a recognised political party with "Randila" ("two leaves") as symbol and respondent Shri P. C. George contested Assembly election and elected from No.101-Poonjar Assembly Constituency as a candidate set up by Kerala Congress (M) and was functioning as Government Chief Whip. Shri K. M. Mani is the party Chairman and Legislature party leader. Legislature party leader submitted Form I showing respondent as a member in accordance with Rule (2g) and Form III under Rule 4(2). Respondents name is shown as the member of Kerala Congress (M) in Form IV and the register kept by Legislature Secretary under Rule 5(1). Kerala Congress (M) is a constituent of UDF coalition. Respondent has voluntarily given up his membership of Kerala Congress (M). He acted against his political party and UDF and issued statements against the party and UDF. On 3-6-2015 he send a letter to Speaker seeking permission to vote against UDF. He revived his political party named Kerala Congress (Secular) and set up his own candidate and campaigned for him in Aruvikara by-election conducted on 27-6-2015 and issued statements in news papers against UDF candidate and in favour of ACDF candidate set up by him. He has filed petition before Election Commission of India and Writ Petition before Hon'ble High Court of

Kerala to de-register Kerala Congress (M). According to the petitioner conduct of the respondent supported by the document would show that he has voluntarily given up his membership of Kerala Congress (M) his political party thereby he has become subject to disqualification on the ground of defection under the Tenth Schedule and petitioner prayed for a declaration.

3. On receipt of the petition, I have verified it and found that it complies the requirements of Rule 6, copies of the petition and the annexures thereto were forwarded to Shri P. C. George and Shri K. M. Mani the Leader of Legislature party for their comments in writing and they filed their comments.

4. On 28-7-2015, Shri K. M. Mani filed his comments agreeing with allegations in the petition and prayed for an early decision.

5. On 10-8-2015 Shri P. C. George filed his comments contenting that petition and the annexures has not been properly verified under rule 15, order 6, C. P. C. Therefore petition is liable to be dismissed as stated in rule 7(2) which is mandatory. Petition did not conform to standard of an election petition both in pleadings and proof and he reserved his right to make his submissions in detail on merits after preliminary objection is disposed of.

6. On 1-9-2015, Shri P. C. George handed over another letter praying that preliminary objection raised by him may be heard and decided before going into the merits of the petition. He also prayed to permit him to avail of the service of a legal practitioner as intricate question of procedure under the Constitution of India arises for consideration.

7. On receiving the letter, after consulting both sides, 15-9-2015 was fixed for hearing the preliminary objection and objections were overruled vide order dated 17-9-2015 which shall form part of this order. Thereafter, after repeated extension of time on the request of respondent finally, he filed following comments.

8. According to him, verification on annexures were subsequently pasted and copies furnished are not true copies. As a political worker, he used fight against corruption and this petition has been filed at instance corrupt persons. Shri K. M. Mani is not the Chairman of Kerala Congress (M). It is true that he was set up as a candidate by Kerala Congress (M) and he was appointed as Chief Whip. He has not given up his membership of his political party and he is still continuing as the member of Kerala Congress (M) and no date of giving up of membership is mentioned in the petition. It is common that constituents of UDF coalition criticising the policies of UDF. Fighting against corruption or criticising policies of UDF is not an act of giving up of membership of political party. Letter send to Speaker intimating his bitter experience from his political party with an intention to obtain his advise on the matters stated therein ought not have been used for filing this petition. No candidate was set up by Kerala Congress (M) in Aruvikara by-poll and no official direction was issued by Kerala Congress (M) regarding Aruvikara by-poll. UDF is not a political party therefore, campaigning against its candidate can not be regarded as giving up of membership of his political party. There is no mention about respondents role/connection in printing the Posters produced by the petitioner. ACDF is an organisation approved by Shri K. M. Mani and Kerala Congress (M) therefore, appearing before a public officer along with its candidate is not an act of defection as alleged. According to him decision in Krishna Pillai case is not applicable to this case and he prayed to dismiss the petition.

9. On the above, following points arises for consideration:

- (1) Whether respondent has voluntarily given his membership of Kerala Congress (M) political party?
- (2) Whether respondent has become subjected to disqualification under Tenth schedule to Indian Constitution?
- (3) Order to be passed?

10. Petitioner examined PW 1 to 10 and marked exhibits P1 to P22, P1 (a) to P1 (c), P4 (a), P5 (a), P7 (a) to P18 (a). Respondent examined RW1 to RW9 and marked R1 to R7, R7(a). Document produced by witness is marked as X1, X2 and X3.

11. Heard the petitioners counsel and perused records and notes on arguments submitted by the respondent on 12-11-2015. He relied on AIR 2008 Guj 20, 2011(7) SCC1 and 2013 (8) SCC271.

12. Before proceeding to decide points on merits, I have to deal with a complaint filed by respondent on 16-9-2015, after hearing the maintainability of the petition which is referred to by Hon'ble High Court in the order. In the complaint respondent alleged that some of the annexures has been pasted with verification and he has doubt about the point of time of the pasting occurred particularly because of intimacy between petitioner and Legislature Secretary and he requested for a probe in to the matter.

13. Petitioner filed objection denying the allegations and contented that verification on all annexures including the verification which are pasted, were done prior to the presentation of original petition before the Speaker. The verifications were pasted to ensure that they are legible and clear. He denied the allegation of subsequent pasting of verification and asserted that verifications were made according to rules before filing the petition and annexures and denied all other allegations.

14. Under Tenth Schedule to the Constitution, Speaker is the final authority to decide issue of disqualification. Rules 1986 was framed to facilitate the Speaker to discharge his function and not to frustrate the procedure adopted by the Speaker. Under Rule 6 reference to question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in writing to the Speaker by any other member in accordance with the provisions, of rule 6. Sub-rule (6) and (7) says that every petition and annexures shall be verified and signed by the petitioner. Rule 7 (1) cast a duty on the Speaker to

satisfy that petition and annexures received by him complies with requirements of rule 6. On filing this petition with two sets of copies, I have verified whether the petition and annexures complies with requirements of rule 6 and on satisfying that petition and annexures complies with requirements of rule 6, I have ordered to furnish copies to respondent and Legislature party leader in accordance with rule 7(3) (a) and (b). Copies forwarded are copies submitted by the petitioner and not the copies taken by my office. The rule did not say that I shall verify and satisfy that copy also contains verification. Even the word "true copy" is omitted from the rule. Verification is not the part of petition and annexure because as per the rule the "petition" and annexure is to be verified. The object of verification is to fix the liability of the person verifying. Majority of the annexures produced are newspapers. Newspapers printed and published from a particular edition will contain similar news. Respondent have no case that copy given to him is not the copy of the petition, documents or newspapers produced.

15. At the time when petitioner was examined, I specifically sought his explanation on the allegations of subsequently pasting of verification and he denied the allegations and asserted that he filed the petition and annexures with requisite signature and verification as per rules. According to him he pasted the verifications in some of the annexures to ensure that they are legible and clear since majority of the documents produced are newspapers and writing over the printed matter may make it illegible. He further stated that before verification of the annexures he took photocopies and produced the same as copies which were served on respondent and Shri K. M. Mani from the office.

16. Respondent deposed that he has doubt about the time of verification particularly due to alleged intimacy of petitioner with secretary. According to him when he happen to see the original, secretary assured him that true copies are like originals. In fact, after service of copies respondent called me and raised a doubt regarding verification of annexure "A". He told that all documents attached to annexure A is not verified separately. As directed by me, secretary shown annexure A. Even now all document attached to annexure A is not separately verified, which is not required under rules and rules did not prohibit petitioner from producing two or more documents as one annexure.

17. Further, respondent has filed the petition on 16-9-2015 suspecting that verification was subsequently pasted taking advantage petitioners intimacy with the Legislature secretary and he requested for a probe into that and he had no allegation against Speakers office in that petition. Subsequently, on 28-9-2015 he filed another petition alleging that "..... the irregularities appearing to have been committed in the office of Hon'ble Speaker regarding tampering with documents presented.....". Secretary is not attached to the office of the Speaker. Speakers office is independent from secretary and his office. So this allegation regarding alleged tampering are inconsistent. Secretary was examined as RW9. Nothing was brought in his evidence to support the allegations of respondent. Except the inconsistent allegations and deposition of RW1, the respondent himself based on his doubt, no other evidence or circumstances has been brought in evidence to support the allegations in petition. On the other hand, petitioner has satisfactorily explained why he had pasted verification in annexures and circumstances under which verification is absent in copies. I have already pointed out that the petition and copies were presented before me by the petitioner and after satisfying that the petition and annexures has been signed and verified, I ordered to furnish copies and that order has been complied with by the office. I do not find any alteration or additions in the petition or annexures other than those which were there at the time of presentation and I have no reasons to doubt either my office or the secretary or his office.

18. Respondent contented that respondent was not served with copies of CDs and copies were served only on 28-9-2015 and non-furnishing of copy of CD produced prevented him from defending the case properly. Counsel for the petitioner submitted that had produced copies of petition and all annexures which were served on petitioner and he filed objections in which he had no complaint regarding non-receipt of any copy of annexures.

19. On filing the petition and annexures and after satisfying that it complies with rule 6, copies of the same were forwarded to respondent along with list of annexures. On receiving copies, on 28-7-2015 he had send a letter acknowledging receipt of copy of petition and annexures

and requested for time to file objection. In that letter he had no complaint regarding non-receipt of copy of any of the annexures. Thereafter, he filed preliminary objection alleging non-verification and insufficiency of verification of petition and annexures. In that objection also he had no complaint regarding non receipt of copies of any annexure. when respondent was examined as RW1 he admitted that he had received petition and annexures and verified it and obtained advice from his counsel and there was no shortage of annexures. Immediately, he added that there was shortage of two CDs and when the counsel asked why the shortage was not brought to notice of the Speaker, he answered that he had other job and he could not rush to Speaker for everything. If copy any of annexures was not supplied to him, it is his duty to bring that to my notice so that I would have verified and corrected it. Without doing so would lead to an inference that respondent had received copies of petition and annexures including copy of CDs as per the list given to him. Respondent filed a petition on 23-9-2015 and on receiving that petition I have furnished copy of CDs. Furnishing copy as per the application is not ground to say that copy was not given to him earlier along with copy of petition and other annexures. Additional copy was given to him with an intention to help him to file objection on merits if copy already given to him is not with him for the reasons known to him. Objection regarding insufficiency or want of verification has been heard and disposed of by me as per my order dated 17-9-2015 and writ petition filed against that order was also dismissed by R3 order.

20. Therefore, I find no merits in the allegations regarding tampering of documents and non-receipt of copy of CDs. Hence petition is dismissed and I also find that there is no need to alter or vary my decision dated 17-9-2015.

**Point No 1 and 2**

21. Petitioner's counsel Shri Sreekumar submitted that statement of witnesses examined by the respondent and documents produced by him and evidence of petitioner would prove that respondent has voluntarily given up the membership of his political party, Kerala Congress (M) thereby he has become subject to disqualification on the ground of defection and he prayed for declaration to that effect.

22. Respondent contented that petition filed by the petitioner is not in conformity with rules framed under the Tenth Schedule and he is still continuing as a member of Kerala Congress (M) legislature party and voted in accordance with whips issued to him. Statements of witness and documents produced is not sufficient to prove that has voluntarily or otherwise given up the membership of his political party. Letter send to the Speaker seeking permission to vote against U.D.F. or abstain from voting is not a ground to hold that he has voluntarily given up the membership of his political party and disqualifying an elected member is a serious matter which require convincing and satisfactory evidence which is lacking in this case. According to him, he campaigned and issued statements against corruption and this petition was filed by the petitioner at the instance of corrupt persons. Hence, he prayed to dismiss the petition.

23. Before considering evidence and arguments, it is highly beneficial to consider the object of Tenth Schedule. The object of the Tenth Schedule is quoted in the decision, *Kihoto Hollohan v. Zachillhu*, 1992Supp(2)SCC651 (668); 1992AIR SCW3497(3512) as follows;

“The evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the every foundations of our democracy and principles which sustain it. With this object, an assurance was given in the address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection bill. This Bill is meant for outlawing defection and fulfilling the above assurance”. When the constitutionality of above provision was challenged, Apex Court, after referring to paragraphs 2, 3 and 4 of Tenth schedule of constitution stated in *Kihoto Hollohan v. Zachillhu* (1992AIR SCW3497atp.3515) as under;

“These provision in Tenth schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidate at the election on basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party, The provisions of paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such person, after the election, changes his, affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the Legislature and go back before the electorate.”

24. Kerala Congress (M) is registered political party with Shri K. M. Mani as its Chairman. Though respondent disputed Chairmanship of Shri K. M. Mani, no evidence has been let in, in support of that contention. On the other hand, in exhibits P2 complaint submitted to Election Commission of India respondent himself stated that Shri K. M. Mani is continuing as party Chairman and Minister against the party constitution. Oral evidence of respondent and witness examined by both sides would also prove that. Kerala Congress (M), a constituent of UDF set up their candidate including the respondent, under the common symbol "Randila". As per Rule 4(1), all members filed statement of particulars and declaration in Form III. As stipulated in Rule 4(3), Bulletin was published showing that Shri K. M. Mani is the leader of Kerala Congress (M) legislature party. It is clear from Form III that respondent is affiliated to Kerala Congress (M) and no change in the information furnished was intimated so far. Respondent has no case otherwise.

25. Petitioner alleged that respondent incurred disqualification under paragraph 2(1)(a) of the Tenth schedule to constitution. Paragraph 2 (1)(a) of Tenth schedule says as follows:

Disqualification on the ground of defection-(1) Subject to the provisions of paragraph 4 and 5, a member of a House belong to any political party shall be disqualified for being a member of the House,—

(a) if he has voluntarily given up his membership of such political party; or

(b).....(omitted).

26. As per explanation (a) to paragraph 2(1) of Tenth schedule of Constitution, an elected member to a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. The evidence let in by the petitioner and forms filed by as per Rules would clearly prove that respondent Sri P. C. George was set up as a candidate of Kerala Congress (M) a political party under the leadership of Shri K. M. Mani under the official symbol, "Randila" and he was elected to the House.

27. The term “Voluntarily giving up” is not defined or explained in Tenth schedule. In *Riva S. Naik v. Union of India* (AIR1994)SUPREME COURT 1558 Para 11) court held that;

“paragraph 2(1)(a) of the Tenth schedule of the Constitution provides for disqualification of a member of a House belonging to a political party “if he has voluntarily given up his membership of such political party” The words voluntarily given up his membership are not synonymous with “resignation” and have wider connotation. A person may voluntarily given up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that, he has voluntarily given up his membership of the political party to which he belongs.”

28. This decision was quoted by Apex court with approval in a decision *G. Viswanathan v. The Holeable Speaker. Tamil Nadu Legislative Assembly, Madras* and another, reported in AIR 1996 SUPREME COURT 1060 Para 13 and held that “the act of voluntarily giving up the membership of the political party may be either express or implied.”

29. In *Rajendra Singh Rana v. Swami Prasad Maurya* [(2007) 4 SCC353] the Apex court held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection based on voluntary giving up membership in the political party.

30. In *Faisal v. Abdulla Kunhi* [2008(3) KLT534] a learned single Judge of Kerala High Court has taken a view that the expression “voluntarily giving up membership of political party” is not to be equated with ceasing to be a member of his party by express resignation; it is to be inferred from the conduct of the member. This decision was referred to by Division Bench in another decision reported *Varghese v. Kerala State Election Commission* [2009 (3) KLT 1]. In another decision reported *Shajahan v. Chathanoor Grama Panchayat* [2002(2)KLJ 451] Division Bench of Kerala High Court observed that Voluntarily giving up of membership has a wider meaning than resignation.

31. In another decision reported in *Joseph K. M. v. Babychan Mulangasseri and Others* [2015(1)KHC 111] Division Bench of Kerala High Court relied on decision *Ravi S. Naik v. Union of India* (AIR 1994SC 1558) *Rajendra Singh Rana v. Swami Prasad Maurya* (AIR 2007 SC1305) to explain meaning of "Voluntarily giving up of membership".

32. In paragraph 8 of petition, petitioner specifically alleged facts and conduct of the respondent constituting voluntarily giving up of membership. In paragraph 8 (12) and (13) it alleged that respondent filed petition before Election Commission of India and Writ before High Court to de-register Kerala Congress (M).

33. Exhibits, P2 is the copy of petition submitted to Election Commission of India by the respondent on 17-4-2015, stating that Shri K. M. Mani, Chairman of the party is continuing as party Chairman and Minister for Finance, Law, and Housing in the state cabinet in Kerala against constitution of political party, Kerala Congress (M) and he requested to cancel the registration of party and proper action against Shri K. M. Mani. It is important to note that above letter was send in the letter head of state committee of Kerala Congress (M) in which respondent name is shown as Vice Chairman along with names of other office bears including Shri K. M. Mani as Chairman. Requesting cancellation of registration of political party by respondent of which he claim to be the Vice chairman is something which will not be done even by an ordinary party member. Making such a self destructing request to a constitutional body against his party of which claims to be the Vice Chairman, shows his disloyalty and hostility towards the political party. Exhibits P3 is the copy of WP(C) No. 13113/2015 filed by respondent on 24-4-2015, praying for a writ of *quo warranto* against Shri K. M. Mani who is the 4th respondent therein and also for a writ of mandamus directing 2nd respondent Election Commission of India, to de-register the political party Kerala Congress (M) who is shown as 7th respondent. This writ petition was filed alleging that no timely action was taken by the Commission on exhibits P2. Exhibits P14 is the Mangalam newspaper dated 15-4-2015 and P14 (a) is the news item therein marked through PW1. In P14 (a) the statement issued by respondent stating that Kerala Congress (M) is under liquidation. Evidence of RW1 along with P20 would show that respondent is still pursuing P2. If respondent has a case that Chairman of his party is

working against the constitution of his party, he has to take action against him as provided that constitution. Even though respondent filed P2 and P3 alleging that party Chairman acting against party constitution, during his examination he stated that Kerala Congress (M) has no constitution and Mani group alone have constitution. Reading of evidence of RW1 in page 53 would show that he is making serious allegations of forgery of documents against party in filing party constitution, list of office bears and other documents before Election Commission of India. If Kerala Congress (M) have no constitution as stated by RW1 it is clear indication that he filed P2 and P3 with false allegations. Filing of P3 writ making his political party as one of the respondents to expedite actions on P2 after 7 days of filing it further prove action of respondent was intentional and he wanted to see that Kerala congress (M) is removed from register of Election Commission of India by any means.

34. In para No. 8 (1) of the petition, petitioner specifically stated that respondent issued a letter to Speaker stating that he didn't belong to Kerala Congress (M) or any of the constituents of the UDF coalition. According to the petitioner, the above letter is sufficient to hold that respondent has given up his membership of political party Kerala Congress (M). Annexure A, is a letter dated 3-6-2015, send by the respondent to Speaker, its reply and covering letter which was marked as P1. In the objection respondent has not disputed P1. In P1 letter, respondent admitted that he contested 2011 general election as a candidate set up by Kerala Congress (M) which is a constituent of UDF coalition and he was elected as the Government Chief Whip and subsequently the post Chief Whip was taken away from him due to difference of opinion and though he was retained as a primary members of Kerala Congress (M), he was not invited either to the party meeting or to the parliamentary party meeting therefore he believe that he is not entitled to vote in favour of Kerala Congress (M) and UDF. In the 3rd paragraph he says that "I humbly submit that, now I am not belonging to any political party attached with UDF. In the peculiar circumstance I am entitled to vote according to my conscience and same has not been prohibited by the Legislation of Anti-Defection Laws." In next paragraph he stated that "since I opposed the merger of the Kerala Congress (J) party in Kerala Congress (M) and my political party Kerala Congress secular is revived,

kindly permit me to abstain from voting in favour of Kerala Congress (M) and UDF or allow me to vote against them as the case may be based on issues." Above letter is dated 3-6-2015, signed and send on 4-6-2015. RW1 admitted that P1 letter was drafted after legal consultation. It is further stated in P1 that he had revived his political party Kerala Congress (secular). RW8 stated that Kerala Congress (secular) was revived during December 2014 but respondent had no role in it. RW8 further stated that Kerala Congress (secular) party was never dissolved by him. This evidence of RW8 is against evidence RW1 who would admit that Kerala Congress (secular) was merged in Mani and Joseph group and formed Kerala Congress (M). Reading of the letter would show that respondent had given up his membership and connections with his political party Kerala Congress (M) and UDF and he is no longer a member of Kerala congress(M). The above documents and evidence produced would show that respondent took a different stand from that of his political party as such and UDF coalition of which Kerala Congress (M) is the one of the constituents and expressively declared that now he did not belong to any political party attached to UDF. The above statement in P1 letter clearly shows that at present respondent did not belong to Kerala Congress (M).

35. Respondent contented that in a democratic set up an elected member is at liberty to cast his vote according to his conscious based on issues. Therefore, the statement in P1 letter cannot be considered to find that he has given up his membership of his political party. P1 letter cannot be read in isolation of P2, P3 and his subsequent conduct in Aruvikara by-poll. P1 is to be considered as a letter in continuation of P2 and P3. His conduct in Aruvikara by-poll reinforced the statement in Exhibit P1. In P1 respondent stated that he is aware of provisions of Tenth Schedule and Anti Defection Laws. Therefore respondent who is aware of Tenth Schedule and Anti Defection Laws is presumed to be aware of the fact that Speaker cannot give permission to any member to cast vote according to his conscious so as to save him from the provisions of the Tenth Schedule and Anti defection Laws. An elected member can cast a conscious vote only if his party permit and he is bound by the policies of his political party. If respondent wanted to cast his vote according to his conscience, he has to make that request to his political party. Request for

casting conscious vote against policies his political party is nothing but manifest expression disloyalty. If a member or a group of elected members of political party takes different stand from that of the political party as such, and act against policies of the political party in which they are members, it is nothing but disloyalty. If one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership [see 2009 (3) KLT1 paragraph 8].

36. Respondent has stated his own justification for giving up his connections with his political party and believed that provisions Anti-Defection Law are not applicable to him. According to him he is not informed of meetings political party or parliamentary party and he has no right or say over the party and his responsibility to vote will work out only when he have any right over the party. According to him the responsibility without any right will not have any legal stand. An elected member cannot be heard to say that he has no responsibility to Stand by the decision and policies of his political party if he has no right or say in his party because, the provisions in the Tenth Schedule give recognition to the role of political party in political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of the political party. The provisions of paragraph 2(1)(a) proceed on the premise that political propriety and morality demands that if such person, after the election, changes his affiliation and leaves the political party which had set up him as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. (see AIR 1993 SC 412. Shri Kihota Hollohon V. Mr. Zachilhu and others.)

37. Meanwhile, bye-election in Aruvikara Constituency was declared. Petitioner in paragraph 8 (2) (3) (10) (11) (15) specifically pleaded anti-party and anti-UDF activities of the respondent. In the petition he stated that respondent had set up his own candidate under the banner of an organisation, ACDF and submitted nomination and actively campaigned for him. In the objection paragraph 20 respondent contented that ACDF is an organisation approved by K. M. Mani therefore appearing before an official with the candidate of ACDF is not a ground to disqualify him. Formation

of ACDF and respondents close association with it is not denied by the respondent but, proved by the evidence of RW1 and all the Witness examined by the respondent. It is also proved through the evidence of RW1 and RW2,3,4 and 5 that in Aruvikara by-poll respondent had set up his own candidate and campaigned for him. Evidence of PW1 about the above allegation is corroborated by the evidence of respondent and his witnesses.

38. Annexure 'D' which is marked as P10 through PW1 and PW10. PW10 reporter who covered news item which is marked as P10 (a) stated that in a convention organised by VSDP, respondent openly declared that he will float an anti-corruption front and contest against UDF. According to PW10, P10 (a) is the true account of statement made by the respondent. Annexure T is the video clippings which is marked as P5. PW3 is cameraman of ACV News channel. He identified P5 as lead news item telecast by them though it was not recorded by them he says that nobody so far has objected P5 news item. Exhibits P5 shows that respondent along with others presented nomination of ACDF candidate and respondent declared that nomination was presented with prayers and they will win the election. Presence of respondent at the time filing nomination of ACDF candidate is not denied but, admitted by the respondent in the objection.

39. Newspapers, Annexures E to O were marked as exhibits P4, P7 and P11 to P18 and particular news items were marked as P4 (a), P7 (a) and P11 (a) to P18 (a). Newspaper reporters were examined as PW4 to PW10 PW4 deposed that P4 (a) news item was correctly and truly reported by him. PW7 stated that he is the news editor of Mathrubhoomi newspaper and P4(a), P7(a), P8(a) and P9 (a) are the news items published by them. According to him above news items published by them are correct and true and nobody so far objected it. PW5 and 6 testified about the correctness of P11(a) news item. PW9 stated that P12(a) news item was correctly reported by him and nobody objected its correctness. PW10 is the reporter who reported P10 (a). He deposed about the correctness of P10(a) report. The evidence would show that in Aruvikara by poll respondent had set up his own candidate and actively campaigned against the UDF candidate of which Kerala Congress (M) is a constituent and issued public statements in newspapers against Kerala

Congress (M) leaders and UDF Annexure B and C are election poster and photos of posters which were marked as exhibits P5(a) and P6. PW2 is the Managing Director Orange printers who printed P5(a) and Exhibit X1 is the file containing details of printing as prescribed by Election Commission of India. Exhibits P5(a) and P6 would show that respondents photograph is printed on posters and boards of his candidate with prominence. Explanation offered by respondent regarding P5(a) and P6 is that in election usually, posters and boards are printed with photographs of leaders and eminent personalities and he named certain national and international leaders and personalities and tried to equate himself with them. Considering behaviour, and active campaigning done by the respondent in Aruvikara by-poll, this explanation of respondent is not satisfactory.

40. Respondent contented that newspaper reports are not evidence and can not be relied on. Evidential value of newspaper reports was considered by Apex Court in so many cases.

41. It has been held by the Honb'le Supreme Court in Balakrishna v. George Fernandes, AIR 1969 SC 1201 that "like any other evidence, a news report does not prove itself and without such proof it is only a secondary evidence and newspaper reports may be taken into account with other evidence." It has been further held that "from circumstantial evidence an inference can be drawn about the happening of events and about the truth of the contents of newspaper reports. Of course, the circumstances must be such that will not admit any explanation."

42. Petitioner has examined PW2 to PW10, reporters who prepared and reported above mentioned reports. According to them they have reported matter truly and correctly. Statements attributed to the Respondent had not been denied by him and so far, nobody objected its correctness. There is no reason why different newspapers which reported about statements issued on different dates should have published wrongly and if they were wrong it was expected that the Respondent forthwith would have denied it. But, no step had been taken by Respondent to issue any denial or to object its correctness.

43. Respondent contented that no candidate was set up by Kerala Congress (M) in Aruvikara by-poll therefore, setting up of a candidate by him for ACDF and campaigning for him can not be considered as an act against the political party, Kerala Congress (M). There is no dispute to the fact that Kerala Congress (M) is one of the constituents of coalition, UDF. Respondent contested general election as a candidate of UDF. UDF or LDF coalition is made between more than one political parties joint together on the basis of common programme agreed up on. RW2 is the leader of UDF and RW3 is the president of Kerala Pradesh Congress Committee. Their evidence would show that in coalition set up, seats are allotted to member political party and they decide their candidates which will be approved by coalition. Once candidate are decided by the party and approved by coalition, that candidate is deemed to be the candidate of all political party which constitute coalition and there will not be separate candidates one for particular political party and another for coalition and political morality and propriety demands that all members shall work for the success of that candidate. If separate candidates are set up by political party and coalition, coalition loses its significance. Respondent was also an UDF. candidate set up Kerala Congress(M). Respondent has no case that Kerala Congress (M) had set up another candidate other than that set up UDF. Principle that made applicable to the respondent while he contested in general election as UDF candidate is applicable to the candidate set up by UDF in Aruvikara by-poll and contenting otherwise is nothing but political impropriety and immorality. When coalition declares that person who contest an election with support of coalition, he is deemed to be the candidate of coalition as well as political party who are the constituents of coalition unless otherwise decided by the political party. There is no evidence to show that Kerala Congress (M) had set up another candidate other than set up by UDF. Evidence of PW1 and witnesses examined by the respondent shows otherwise. In the light of the above facts and evidence, contention of the respondent that setting up of candidate and campaigning for him in Aruvikkara by-poll is not an anti-party activity cannot be accepted.

44. Respondent contented that ACDF being an organisation approved by K. M. Mani, party leader, setting up of candidate and contesting election under the banner of ACDF can not be considered as an anti-party activity and he produced Exhibit R4 and examined RW6 and 7 to show that K. M. Mani had approved ACDF. Exhibit R2 is an uncorrected copy of Assembly proceedings. It seems that Shri K. M. Mani, interfering with discussion said that Kerala Congress (M) has other organisations like the organisation referred to in the discussion. This observation made by Shri K. M. Mani can not be taken as permission to set up candidate against UDF candidate or political party has permitted him to set up candidate in Aruvikara by-poll.

45. Another contention of the respondent is that petitioner issued Whips to him and he voted according to the whips. According to him issuing of Whips, casting of votes according to the Whips issued itself shows that he has not given up membership of his political party. Petitioner specifically alleged that respondent has voluntarily given up his membership of his political party thereby he incurred disqualification under paragraph 2 (1) (a) of the Tenth Schedule. Petitioner never alleged violation of whip as ground for disqualification as stated in paragraph 2(1)(b) of the Tenth Schedule. Grounds stated for incurring disqualification in paragraph 2(1)(a) and 2(1)(b) of Tenth Schedule is distinct and different. Exhibit R1 series are whips issued to the respondent on different dates. No voting had been taken place on the dates mentioned in R1 series. Exhibits X2 and X3 would show that respondent had voted in favour of UDF on 29-7-2015 and 30-7-2015. Respondent himself admitted that no whip had been issued to him after 18-7-2015 since he had complained about the issuance of whip by the petitioner after filing petition to disqualify him. Therefore it is clear from the evidence of RW1 itself that he voted in the Assembly on 29-7-2015 and 30-7-2015 was not as per the whip issued to him. Respondent has no case that he was expelled from the party. Under explanation 2(1)(a) of paragraph 2 of the Tenth Schedule an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. Even if respondent is expelled from his political party, under explanation 2(1)(a) he is deemed to continue as member of the political party which set up him as a candidate. So long as respondent is deemed

to continue as a member as per explanation, issuing of whips to him is correct. If petitioner is able prove ground stated in paragraph 2(a) of Tenth Schedule, issuing of whips to him will not be a valid answer to prevent operation of provisions Tenth Schedule.

46. From the above stated evidence of both side and the circumstance it is proved that from the date of P2, P3 and thereafter respondent was continuously acting against the policies and involved in anti-party activities against all political propriety and morality and finally he issued P1 letter to Speaker declaring that he did not belong to Kerala Congress (M) or any other political party who is a constituent of UDF. The above conduct of the respondent is manifest expression of disloyalty to his political party which set up him as a candidate. Therefore, from the evidence adduced, the inevitable inference is that respondent has voluntarily given up membership of his political party as provided in paragraph 2(1) (a) of the Tenth Schedule and incurred disqualification.

47. In *Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others* (2007) 4 SCC 270 Apex held in paragraph 34 as follows:

“As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntarily giving up, by Speaker at a subsequent point of time cannot and does postpone the incurring of disqualification by the act the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that Speaker takes a decision only thereafter in those cases cannot also pitch the time of disqualification as anything other than the point at which the point at which the whip is defined. Therefore in background of the object sought to be achieved by the Fifty-second Amendment of the constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraph of the Tenth Schedule, the position that emerges is that Speaker has to decide the question of disqualification with reference to the date on which the

member voluntarily gives up his membership or defies the whip. It is really a decision ex-post facto." Decisions relied on the by the respondent in his notes on arguments has no direct application to the facts and circumstances of this case.

48. Therefore, from the above decision it is clear that the member incurred disqualification with reference to the date on which the member voluntarily gives up his membership. From the evidence and circumstances, it is clear that respondent initially shown his disloyalty to his party by filing Exhibits P2 petition before the Election Commission of India followed by filing of P3 writ petition after 7 days of P2 for the same relief. Thereafter he send Exhibit P1 letter declaring that he didn't to belong to any political party attached to UDF and he is not entitled to vote in favour of Kerala Congress (M) and UDF. He further stated that his political party Kerala Congress (Secular) was revived. Therefore, it is clear that respondent has given up his membership of political party Kerala Congress (M) from 3-6-2015. Hence I find that respondent had incurred disqualification from 3-6-2015.

49. On 12-11-2015 respondent along with his notes on arguments submitted his resignation. It appears that resignation was submitted after adjournment of the petition to 13-11-2015 for orders. So I kept the resignation in abeyance pending enquiry. On 12-11-2015, respondent issued a letter requesting to reopen the evidence for the purpose of cross examination of the petitioner in the light of his resignation from the post of Chief Whip. Respondent cross examined the petitioner elaborately on all points. Merely the fact that subsequent to closing the evidence and after posting the petition for orders petitioner had resigned from the post of Chief Whip is a not a valid and sufficient ground to reopen the evidence. Hence respondent's request to reopen the evidence is rejected. Points are so found.

**Point No. 3.**

In the result, on the basis of aforesaid discussion and reasons, I pass the following order in this matter, namely:—

- (a) I, N. SAKTHAN, Speaker, Kerala Legislative Assembly, in exercise of power under Article 191(2) of Constitution of India and Paragraph 2(1)(a) of Tenth Schedule to Constitution of India read with Rule 8 of The Members of The Kerala Legislative Assembly (Disqualification on Ground of Defection) Rules 1986, hereby declare that Shri P. C. George, Member of Kerala Legislative Assembly elected from No.101-Poonjar Assembly Constituency has become subject to disqualification from 3-6-2015 under the Tenth schedule to Constitution of India.
- (b) Copies of the order shall be delivered or forwarded to petitioner, Shri P. C. George and to the Legislature party Leader.
- (c) Report the order to the House immediately after the House reassembles.
- (d) Publish the order in the Bulletin and notify in the Official Gazette.
- (e) Forward copies of order to the Secretary, Election Commission of India and State Government.

Declared by me this the 13th day of November, 2015.

(Sd.)

N. SAKTHAN,  
SPEAKER,  
KERALA LEGISLATIVE ASSEMBLY.

## APPENDIX

**Petitioner's Exhibits**

<i>No.</i>	<i>Description</i>	<i>Date</i>
P1	Letter to Speaker	3-6-2015
P1(a)	Reply	16-6-2015
P1(b)	Reply	25-6-2015
P1(c)	Reply	4-7-2015
P2	Copy of petition filed before the Election Commission of India	17-4-2015
P3	Copy of writ petition WP(C) 13113 of 2015 and Affidavit	24-4-2015
P4	Mathrubhumi Newspaper	10-6-2015
P5	Video Clippings ACV News	Nil
P5(a)	Poster	Nil
P6	CD containing photographs of board and posters	Nil
P7	Mathrubhumi Newspaper	31-3-2015
P7(a)	News item in page No.5	31-3-2015
P8	Mathrubhumi Newspaper	14-4-2015
P9	Mathrubhumi Newspaper	27-3-2015
P9(a)	News item in page No.1	27-3-2015
P10	Times of India, Newspaper	27-4-2015
P10(a)	News item in page No.5	27-4-2015
P11	The New Indian Express	27-4-2015
P11(a)	News item in page No.3	27-4-2015
P12	Malayala Manorama Newspaper	31-3-2015
P12(a)	News item in page No.11	31-3-2015

<i>No.</i>	<i>Description</i>	<i>Date</i>
P13	Mangalam Newspaper	27-3-2015
P13(a)	News item in page No.1	27-3-2015
P14	Mangalam Newspaper	15-4-2015
P14(a)	News item in Page No.5	15-4-2015
P15	Deshabhimani Newspaper	9-4-2015
P15(a)	News item in page No.5	9-4-2015
P16	Deshabhimani Newspaper	16-6-2015
P16(a)	News item in page No.2	16-6-2015
P17	Madhyamam Newspaper	18-4-2015
P17(a)	News item in Page No.5	18-4-2015
P18	Janmabhumi Newspaper	27-4-2015
P18(a)	News item in Page No. 2	27-4-2015
P19	Order passed against Shri R. Balakrishna Pillai	15-1-1990
P20	Copy of reply from Election Commission of India to Shri P. C. George	22-9-2015
P21	Copy of Order of Commission u/s 4 of the Kerala Men (Prevention of Corruption) Act 1983	3-7-1987

#### **Respondent's Exhibits**

R1 series	17 in Number/Whips issued	9-7-2015
R2 series	Copies issued	24-7-2015
R3 series	Copy of Judgement WP(C) 28870 of 2015 (G)	25-9-2015
R4 series	Uncorrected proceedings of K.L.A.	15-7-2014
R5 series	Copy of document showing formation of ACDF	14-7-2014
R6 series	Copy of letter from E.C.I. to Shri R.Radhakrishnan, Janam TV	8-5-2015
R7 series	Copy of Order in VC 6/2014/SPECIAL INVESTIGATION UNIT-I, TVM	29-10-2015

**Exhibits produced by Witness**

- X1 File produced by Pw2 on 8-6-2015
- X2 Copy of Assembly proceedings dated 29-7-2015 produced by RW9 on 9-11-2015.
- X3 Copy of Assembly proceedings dated 30-7-2015 produced by RW9 on 9-11-2015.

**Petitioner's Witness**

<i>No.</i>	<i>Name</i>	<i>Date of Examine</i>
PW1	Shri Thomas Unniyadan M.L.A.	1-10-2015
PW2	Shri Roy Thomas, S.S., M.D, Orange Printers Pvt. Ltd.	1-10-2015
PW3	Shri Pratheesh, S.S. Chief Cameraman, ACV News	1-10-2015
PW4	Shri Sangamesh Varma S/o T. R. Ramavarma, Regional News Co-ordinator, ACV News	1-10-2015
PW5	Shri Anil, S. S/o K.Sukumaran Nair, Chief, The New Indian Express Bureau	1-10-2015
PW6	Shri Mathew, A. Thomas S/o A.M. Thomas Senior Special Correspondent, The New Indian Express	1-10-2015
PW7	Shri B. Rameshkumar S/o K.Balakrishnan Nair, News Editor, Mathrubhumi	1-10-2015
PW8	Shri H. Nandakumar S/o Hemanthkumar, Reporter, Mathrubhumi	1-10-2015
PW9	Shri Sujith Nair S/o C. K. Hareendran Nair, Special Correspondent (Political), Malayala Manorama	1-10-2015
PW10	Shri Rajeev, G. S/o P. Gopalakrishnan Nair, Asst. Editor, Times of India	1-10-2015

**Respondent's Witness**

<i>No.</i>	<i>Name</i>	<i>Date of Examine</i>
RW1	Shri P. C. George, S/o Chackochan Plathottathil House, Aruvithara P. O., Erattupettah-2	17-10-2015 & 26-10-2015
RW2	Shri. Oommen Chandy, Hon'ble Chief Minister, Government of Kerala	17-10-2015
RW3	Shri V. M. Sudheeran, K. P. C. C. President	17-10-2015
RW4	Shri T. N. Prathapan, M. L. A.	17-10-2015
RW5	Shri V. D. Satheesan, M. L. A.	26-10-2015
RW6	Shri V. S. Sunilkumar, M. L. A.	6-11-2015
RW7	Shri A. Pradeepkumar, M. L. A.	6-11-2015
RW8	Shri T. S. John	6-11-2015
RW9	Shri P. D. Sarangadharan, Secretary, KLA	9-11-2015

(Sd.)

**N. SAKTHAN,  
SPEAKER,**

**KERALA LEGISLATIVE ASSEMBLY.**