

**Sanitha Saji vs Salimkumar**

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**SooperKanoon Citation :** [sooperkanoon.com/1285534](https://sooperkanoon.com/1285534)

**Court :** Kerala

**Decided On :** Feb-05-2024

**Judge :** Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No. :** WP(C)/1141/2024

**Appellant :** Sanitha Saji

**Respondent :** Salimkumar

**Judgement :**

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945  
WP(C) NO. 1141 OF 2024 PETITIONER/S: SANITHA SAJI AGED 25  
YEARS D/O. SAJI, EEZHARATTU VEEDU, WARD NO. XIV,  
MANNAMKALA, ADIMALY P.O., IDUKKI, PIN - 685561 BY ADVS.  
LIJI.J.VADAKEDOM ATHUL V. VADAKKEDOM RESPONDENT/S:

1 SALIMKUMAR S/O. THANKAPPAN, KANIYAMPARAMBIL HOUSE,  
OLAMATTAM, THODUPUZHA P.O., IDUKKI, PIN - 685584 2 THE

KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM  
REPRESENTED BY ITS SECRETARY OFFICE OF THE KERALA  
STATE ELECTION COMMISSION, VIKAS BHAVAN,  
THIRUVANANTHAPURAM, PIN - 695033 BY ADVS. Aswini Sankar R. S  
. DEEPU LAL MOHAN P.YADHU KUMAR(K/377/2008)  
K.R.PRATHISH(K/174/2013) MEGHA S.(K/3688/2023)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 05.02.2024, ALONG WITH WP(C).1177/2024, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945  
WP(C) NO. 1177 OF 2024 PETITIONER/S: SANITHA SAJI AGED 25  
YEARS D/O. SAJI, EEZHARATTU VEEDU, WARD NO. XIV,  
MANNAMKALA, ADIMALY P.O., IDUKKI, PIN - 686561 BY ADVS.  
LIJI.J.VADAKEDOM REXY ELIZABETH THOMAS TOM E. JACOB  
ATHUL V. VADAKKEDOM RESPONDENT/S: 1 SOUMYA ANIL AGED  
38 YEARS, W/O. ANIL, THATTAYATHUKUDI, VALARA P.O.,  
CHILLITHODE, IDUKKI DISTRICT, PIN - 685561 2 THE KERALA  
STATE ELECTION COMMISSION, THIRUVANANTHAPURAM  
REPRESENTED BY ITS SECRETARY OFFICE OF THE KERALA  
STATE ELECTION COMMISSION, VIKAS BHAVAN,  
THIRUVANANTHAPURAM, PIN - 695033 BY ADVS. Pramoj Abraham  
DEEPU LAL MOHAN K.A.ANISH(K/741/2007) SARANYA  
CHANDRAN(K/001485/2018) THIS WRIT PETITION (CIVIL) HAVING  
COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH  
WP(C).1141/2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING: C.R.

**P.V.KUNHIKRISHNAN, J.**

----- W.P.(C).Nos.1141 & 1177 of 2024  
----- Dated this the 05th day of February,  
2024

## **JUDGMENT**

An elected representative of a constituency has to represent the will of the electorate of that constituency. He is the representative of the electorate and once he is elected under the banner of a particular political party or political alliance or with an independent status, he cannot change his stand against that political party or that political alliance or his independent status without getting a fresh mandate from the electorate is the fundamental principle of democracy. The elected representative should be the voice of the people of his constituency and he cannot go against the will of his electorate according to his whims and fancies and if this is followed by our elected representatives, that will be an era noted in golden letters in our democracy. Nowadays, there is a tendency to forget this golden rule of democracy by our elected members. That is not only defection but amounts to corruption in democracy. That is the behavior of Chameleons and not that of an elected member of democracy.

2. To caution such elected members, the Kerala Local

Authorities (Prohibition of Defection) Act, 1999 (for short, Act 1999) was enacted by the legislature. This is an Act to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of the local authorities. If the question of disqualification on the ground of defection arises, a member of the local authority or the political party concerned or a person authorized by it on this behalf may file a petition before the State Election Commission for a decision as per Section 4 of Act 1999. Invoking the powers under Sub Section (1) of Section 7 of the Act 1999, the Government of Kerala in consultation with the Kerala State Election Commission, framed the Kerala Local Authorities (Disqualification of Defected Members) Rules 2000 (for short 'Rule 2000'). A petition for disqualification is to be filed within 30 days from the date of deemed disqualification of the member as per Rule 4A (2) of Rule 2000. The proviso to Rule 4A (2) of Rule 2000 says that, if the

petitioner proves that there exists sufficient reason for not filing the petition within the time limit specified, the State Election Commission may accept the petition.

3. Suppose an Election Petition was filed within 30

days by any of the parties mentioned in Section 4 of the Act, 1999 to disqualify a member and for that reason, no others filed any petition for disqualifying that member to avoid multiplicity of cases, and if the person who move the Election Commission is influenced by others to withdraw the case and decided to withdraw the petition based on that reason or for his own reasons, can that member escape from disqualification proceedings? Can any other person or party can file a fresh petition stating the above reason as a sufficient cause for condoning the delay in filing a fresh petition? These are the questions to be decided in these cases.

4. W.P.(C) No.1177/2024 and W.P. No.1141/24 are

connected and therefore, I am disposing of these two writ petitions by a common judgment. I will narrate the facts in W.P.(C)No.1141/2024 first. The petitioner is the respondent in O.P. No. 19/2023 before the Kerala State Election Commission. Ext.P1 is the Original Petition filed before the Commission. The petitioner in Ext.P1 is the District Secretary of the Communist Party of India (CPI), a political party in Idukki District. He is the person authorised to allot the official symbol to the candidates who are contesting in the Local Self Government Institutions in the District under the sponsorship of the said political party. He is also a member of the Adimaly Grama Panchayat elected from Ward No.14 as a candidate of the above said political party, CPI. In the petition, it is submitted that the writ petitioner herein who is the respondent in Ext.P1 petition after getting elected had committed an act of defection on 26.05.2022 by voting in favour of a No confident motion and further standing in the election for vice president against the direction of her political party. Hence the Original petition is filed to disqualify the writ petitioner. Ext.P1 is the petition filed under Rule 4A (1) of Rule, 2000. Ext.P1 petition is filed with a delay condonation petition to condone the delay of 252 days in filing the Original petition. Ext.P2 is the petition to condone the delay filed along with Ext.P1 petition. As per Ext.P2, the 1 st respondent herein submitted that, regarding the act of defection committed by the writ petitioner herein, two members of the

Panchayath had earlier filed O.P.Nos.11/2022 and 12/2022 before the Election Commission for disqualifying the writ petitioner. It is also submitted that, even though the petitioner had an interest in filing a petition for disqualification, he opted not to file a case for disqualification to avoid multiplicity. But later the respective petitioners in O.P.Nos.11/2022 and 12/2022 had withdrawn their Original petitions. In such circumstances, Ext.P1 petition is filed with a delay condonation petition to condone the delay of 252 days. The writ petitioner herein who is the respondent in Ext.P2 filed objection contending that no sufficient ground is raised for condoning the delay. Ext.P3 is the objection. But as per Ext.P4 order, the delay was condoned. Aggrieved by the same, W.P.(C)No.1141/2024 is filed.

5. Similarly, W.P.(C)No.1177/2024 is filed against Ext.P4 order produced in that writ petition by which a delay petition was allowed which was filed to condone the delay in filing O.P. No.18/2023.

6. Heard the learned counsel for the petitioner and the

learned counsel appearing for the 1st respondent in these cases. The short point to be decided in these cases is whether there is sufficient cause to condone the delay in filing the original petition before the Election Commission and whether the order condoning the delay as evident by Ext.P4 orders produced in these writ petitions are to be interfered by this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. The petitioner contends that the statute prescribed a certain period for filing an original petition under Rule 4A(1) of Rules 2000. The 1st respondent in this case opted not to file any petition as per Rule 4A(1) of Rules, 2000. Therefore, the 1st respondent in these cases cannot file a fresh original petition after the period mentioned in Rules 2000 because of the only reason that the petition filed by another person is withdrawn. The counsel also relied on Order 8 Rule 4 of the Civil Procedure Code and submitted that there cannot be any representative proceedings on behalf of the petitioner who withdrew the earlier original petitions. It is also submitted that the right accrued to the 1st respondent in these writ petitions to file an original petition under Rule 4A(1) of the Rules, 2000 will expire once they decide not to approach the Election Commission within 30 days with a defection petition. Since the person who already filed the

original petition withdrew the petition, that is not a reason to condone the delay in filing the second petition is the submission. The counsel appearing for the 1<sup>st</sup> respondent submitted that the Election Commissioner considered the

**matter in detail and thereafter, passed the impugned order**

and there is nothing to interfere with the same. The Standing Counsel appearing for the Election Commission also supported the orders passed by the Election Commission.

7. This Court considered the contention of the

petitioner and the respondents. It is an admitted fact that once C.D.Shaji and one Sherly Mathew filed OP Nos. 11/2022 and 12/2022 for disqualifying the writ petitioner before the State Election Commission, Thiruvananthapuram under Rule 4A(1) of the Rules 2000 within the time prescribed. The learned counsel for C.P.Shaji and Sherly Mathew submitted before the Election Commission that the original petitions are not pressed and accordingly, as per order dated 23.02.2023, O.P.Nos. 11 and 12 of 2022 were dismissed as not pressed by the State Election Commission. Thereafter, O.P. No. 18/2023 was filed on 10.03.2023. Similarly, O.P.No. 19/2023 was also filed on 10.03.2023. These original petitions were filed with a petition to condone the delay. The reason mentioned for condoning the delay in filing Ext.P1 petition is mentioned in Ext.P2 delay condonation petition. It will be better to extract the relevant paragraph of the affidavit filed along with Ext.P2 petition in W.P.(C.) No. 1141/2024.

5. It is submitted that Shri.C.D.Shaji Ward No.3 and Sherly Mathew filed petition before the Honourable Commission against the Respondent on the same ground as OP No. 11/2022 and 12/2022. It is submitted that both petitioners in that case, Shri.Shaji and Smt. Sherly Mathew are the members of LDF/CPI(M). In that cases CPI Party has handed over all relevant records to these petitioners. In that cases the District Secretary of CPI Idukki District was also examined as a witness and marked so many documents also. For avoiding multiplicity of proceedings CPI party

has not filed a similar petition before this Honourable Commission at that time. But now both petitioners in the above said OP ie., OP No. 11/2022 and 12/2022 withdrew their Original petitions against the respondent. It caused damages and hardship to CPI Party and the petitioner herein. In this situation the petitioner has no other option only to file a fresh Original petition before this Honourable Commission. It is submitted that there is a delay of 252 days in filing this Original petition. The delay may be condoned otherwise it will cause irreparable loss and damages to the petitioner. A separate petition for condoning the delay is also filed herewith.

6. The said act of petitioners in OP 11/2022 and 12/2022

caused so many hardship to me and CPI Party. So I could not filed this petition within the period of limitation. So there is a delay of 252 in filing this petition.

7. I bonafidly believe that the petitioners in OP 11/2022 and 12/2022 will properly contested cases but they withdrew their petition in the last stage of the case.

8. There is no wilful negligence or latches on my part for filing this petition.

9. There is a separate petition for condoning the delay is filed herewith. If the delay is not condoned it will cause so many hardship to me.

8. The same reason is mentioned in Ext.P2 filed along with Ext.P1 petition produced in W.P.(C.) No. 1177/2024 before the Election Commission.

9. Whether the above reason is a sufficient reason to

condone the delay is the question to be decided by this Court. The counsel for the petitioner relied the judgment of the Apex Court in Ramla and others v. Rewa Coalfields Ltd. [1962 KHC 465]. The relevant portion is extracted hereunder :

7. In construing S.5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of the limitation prescribed for making an appeal gives rise to a right in

favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as

beyond challenge, and this legal right which has accrued to the decree holder by lapse of time be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in trial behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad 269, "S.5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable in the appellant."

10. The counsel also relied on the judgment of the Supreme Court in Basawaraj and Another v. Special Land Acquisition Officer [2013 KHC 4650]. The relevant portion of the above judgment is extracted hereunder:

'Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done

suffices to accomplish the purpose intended in the

**facts and circumstances existing in a case, duly**

examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a

### **want of bona fide on its part in view of the facts**

and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: *Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee and Other*, AIR 1964 SC 1336; *Lala Matadin v. A. Narayanan*, AIR 1970 SC 1953; *Parimal v. Veena @ Bharti* AIR 2011 SC 1150; and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629.)

11. Based on these decisions, the counsel for the writ

petitioner submitted that, there is no sufficient reason to condone the delay in filing the petition. It is a settled position that, there cannot be any straight jacket formula for deciding a question whether there is sufficient reason to condone the delay in a particular matter. Each case has to be decided based on its own merit and the ultimate object is substantial justice.

12. The Act 1999 is enacted with certain object and reason. The relevant portion of the statement of object and reason in enacting Act 1999 is extracted hereunder:

The defection of the elected members are increasing day by day. The provisions in the concerned Acts do not seem to be sufficient to prohibit

such tendencies and to disqualifying such members to continue as members of the local bodies, and to contest in the election. Therefore, Government have decided to make a comprehensive legislation on the subject and to validate the actions taken by the State Election Commission since 2-10-1995. For implementing the aforesaid matter, amendment to the Kerala

Panchayath Raj/Kerala Municipality Act, 1994 was necessary.

13. The proceedings under Rule 4A(1) are to be

considered in the light of the above object and reason. In this case, admittedly, two original petitions were filed earlier to disqualify the writ petitioner within the time prescribed in Rule 4A(1) of the Rules 2000. Subsequently, those original petitions were withdrawn by the petitioner in those writ petitions for the reason best known to them. Can the defection alleged to be committed by the writ petitioner can be washed off because of the reason that the earlier original petition is withdrawn and the present petitions are time barred? The intention of the defection law itself is to see that the will of the people is exhibited by the elected member till he/she again faces a mandate from the electorate. After getting elected by the people through a political party or political alliance, a person cannot give up the political party and political alliance and act in accordance with his whims and fancies because the people elected him through a political party or political alliance. If he is an independent candidate, supported by a political party or political alliance, he is bound to follow the mandate of the electorate. However, this principle may not be applicable in a case where the candidate himself was an independent candidate without the alliance of any political party or political alliance. But, once a person is elected through the mandate of the electorate under the banner of a political party or political alliance, he must see that the intention of the electorate is spoken out by him in the council or other elected bodies.

14. Similarly, once an original petition is filed before the

Election Commission alleging defection within a statutory period [by a person or party as per the Act and Rules], and suppose the party or the person who filed the

Election Petition is influenced by the elected person and he was able to withdraw the defection petition, the Election Commission is not helpless in such situation. The Election Commission can entertain another original petition if a petition is filed immediately after the earlier cases are withdrawn with a delay condonation petition to condone the delay for the reason that the earlier case is withdrawn by the other original petitioner. The same is a sufficient cause to condone the delay as per proviso to Rule 4A(2) of Rule 2000. The Division Bench of this Court in Varghese V.V. and Another v. Kerala State Election Commission and Another [2009(3) KHC 42] considered the importance of defection laws. It will be better to extract the relevant portion of the above

## **judgment.**

... To vote against the party is disloyalty. It was this principle as stated in Griffith and Ryle on Parliamentary Functions, Practice and Procedure which was taken note of by the Supreme Court in the celebrated decision in Kihota Hollohan v. Zachillhu, 1992 KHC 694, 1992 Supp. (2) SCC 651: AIR 1993 SC 412. The Apex Court held that 'any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed, its very survival. Referring to the object behind the 10th Schedule to the Constitution of India dealing with

disqualification on the ground of defection, it was

## **held therein that, the provision is to curb the evil**

of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member. The Father of our Nation had foreseen the possibility of such cancerous and endangering tendencies in the practice of democracy and hence only the Mahatma

said that politics without principle is a vice. No doubt politics is an art. But the beauty of the art is lost when no value is attached to the art. It is to check erosion of the values in democracy the 10th Schedule to the Constitution of India and the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force. Looking from that angle we find it difficult to agree with the dictum in Naseera Beevi's case. Not only that, there is no party as 'parliamentary party'. That expression only denotes the wing of the elected members of the political party. Therefore, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty.

15. Lord Acton, an English Catholic historian, politician,

and writer said that, "Power tends to corrupt, and absolute power corrupts absolutely". The elected members of democracy should hear these words before they do anything. Their remote control is the electorate which includes poor cooly workers, daily wages workers, sweepers etc.

16. In the facts and circumstances of this case, I am of

the considered opinion that the Commission perfectly justified in condoning the delay in filing O.P. No. 18/23 and O.P. No.19/23. There is nothing to interfere with Ext.P4 orders passed by the State Election Commission in these two writ petitions. But, I make it clear that, the Election Commission shall decide O.P.No.18/23 and O.P.No.19/23 untrammelled by any observations in this judgment. With the above observation, these writ petitions are dismissed. Sd/- P. V. KUNHIKRISHNAN JUDGE smv JV DM SKS Sbna/ APPENDIX OF WP(C) 1177/2024 PETITIONER EXHIBITS Exhibit P1 A COPY OF THE ORIGINAL PETITION NO.18/2023 DATED 6/3/2023 BEFORE THE 2ND RESPONDENT Exhibit P2 A COPY OF THE I.A. 32/2023 DATED 7.3.2023 IN O.P. NO. 18/2023 BEFORE THE 2ND RESPONDENT ELECTION COMMISSION Exhibit P3 . THE COPY OF THE OBJECTION DATED 2.5.2023 FILED BY THE PETITIONER HEREIN IN OP. 18/2023 Exhibit P4 A COPY OF THE ORDER DATED 21.9.2023 IN I.A. NO.

32/2023 IN O.P. NO. 18/2023 BEFORE THE 2ND RESPONDENT ELECTION COMMISSION APPENDIX OF WP(C) 1141/2024 PETITIONER EXHIBITS Exhibit P1 THE COPY OF THE ORIGINAL PETITION NO.19/2023 DATED 3/3/2023 BEFORE THE 2ND RESPONDENT Exhibit P2 A COPY OF THE PETITION IN I.A. 33/2023 DATED 3.3.2023 IN O.P. NO. 19/2023 BEFORE THE 2ND RESPONDENT ELECTION COMMISSION Exhibit P3 THE COPY OF THE OBJECTION DATED 2.5.2023 FILED BY THE PETITIONER HEREIN IN OP. Exhibit P4 THE COPY OF THE ORDER DATED 21.9.2023 IN I.A. NO. 33/2023 IN O.P. NO. 19/2023 BEFORE THE 2ND RESPONDENT ELECTION COMMISSION

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