

B.Muhammedkunhi Vs. K.Abdulla

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SooperKanoon Citation : sooperkanoon.com/917541

Court : Kerala

Decided On : Sep-30-2010

Reported in : ILR2010(4)Ker224

Judge : T.R.Ramachandran Nair

Acts : Kerala Local Authorities Act 1999 - Sections 3(1)(a), 3(1)(b)(ii); [Kerala Panchayat Raj Act 1994](#); [Constitution of India](#) - Article 226

Appeal No. : WP(C).No. 28051 of 2010(F)

Appellant : B.Muhammedkunhi

Respondent : K.Abdulla

Judgement :

1. In both these writ petitions, the petitioners are challenging the common order passed by the State Election Commission in O.P.Nos.76/2009 and 77/2009, produced as Ext.P4, whereby the petitioners have been disqualified from the membership of Meenja Grama Panchayat in terms of the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

2. The first respondent in the writ petitions is the petitioner before the State Election Commission. The petitioners and the first respondent were elected in the elections conducted in September, 2005 from different wards of Meencha Grama Panchayat. They contested as candidates of a political party, viz. Indian Union Muslim League which is a constituent of the United Democratic Front (UDF). The

Indian Union Muslim League had three members, Indian National Congress two and Kerala Congress (M) one and all these parties formed the constituents of U.D.F. The L.D.F. had four members and B.J.P. had also four members.

3. The first respondent was elected as President of Meenja Grama Panchayat by the support of the elected members of U.D.F. The Vice President elected was Ms. Sobha from Indian National Congress. The dispute leading to the present proceedings arose when a no-confidence motion was moved against the first respondent which was discussed in the meeting of the Panchayat on 9.11.2009. Both the petitioners herein are signatories to the no-confidence motion along with the members of the B.J.P. and they have also voted in favour of the motion along with four members of the B.J.P. and two members belonging to CPI (M). The motion was thus adopted. Another motion was similarly moved against the Vice President which was also adopted.

4. The petitions seeking disqualification were filed on two grounds, viz. violation of the whip issued by the first respondent and for voluntarily giving up the membership of the political party which elected them as members of the Panchayat.

5. After examining various contentions the State Election Commission allowed both the original petitions on the ground that the petitioners have voluntarily given up their membership in the Indian Union Muslim League in joining with the rival B.J.P. It was also noticed by the Commission therein that in the election to the post of President, the petitioner in W.P.(C) No.28051/2010 contested and won against the candidate of the Indian National Congress with the support of the petitioner in W.P.(C) No.28056/2010 and members of the B.J.P.

6. The petitioners, in their written statements contended mainly that there was no direction from the party not to vote against the no confidence motion and they have voted based on the discussion of the no confidence motion against the first respondent and they are still loyal workers of the Muslim League.

7. The oral evidence consists of the evidence of P.Ws.1 to 4 for the first respondent and Rws.1 to 4 for the petitioners. That the petitioners have been

elected as members of the Indian Union Muslim League is not disputed. From the declarations filed by all the 14 members of the Panchayat, this fact has been further evidenced. It shows that the petitioners herein and the first respondent are official members of the Muslim League in the U.D.F. which has got a total number of six members including two from Indian National Congress and one from Kerala Congress (M). The B.J.P. as well as the L.D.F. has four members and of the four members of the LDF, two members each belong to CPI (M) and CPI.

8. Ext.X2 is the attested copy of the minutes of the meeting of the Panchayat held on 9.11.2009 to discuss the no confidence motion moved against the President. It was passed with eight votes against four. Ext.X2 also contains the minutes of meeting of the Panchayat held at 2.30 p.m. on the same day to discuss the no confidence motion moved against the Vice President of the Panchayat. It was also passed with eight votes against four. Two members of the CPI did not cast their vote and the motion was supported by the petitioners, two members of the CPI (M) and four members of the BJP. Ext.X3 is the minutes of the meetings of the Panchayat held on 30.11.2009 forenoon to elect the President and in the afternoon to elect the Vice President. It shows that the petitioner in W.P.(C) No.28051/2009, Shri B. Mohammed Kunhi contested for the post of President against Shri K. Bhaskara, a member from Congress. His name was proposed by Smt. Ashalatha, member from BJP and supported by the petitioner in W.P.(C) No.28056/2010. He was elected with six votes against four votes by the Congress nominee. Thus, apart from the votes of petitioners, he got four votes from the BJP. In the election conducted to elect the Vice President, Smt. Sylvia Santanese was a candidate supported by the UDF who belongs to Kerala Congress (M) and the contest was against Smt. Chandrika from BJP. The name of Smt. Chandrika was proposed by the petitioner in W.P. (C) No.28051/2010 and supported by Smt. Savitha from BJP. Smt. Chandrika from BJP got elected as the Vice President with six votes, four from BJP and two from both the petitioners herein. Exts.X4 to X6 is the documents produced by the Secretary of the Block Panchayat, PW3.

9. From Ext.P4 it is evident that the issue with regard to voluntary giving up of the membership of the party has been discussed by the Election Commission in paragraphs 7 and 8. The following items of evidence have been discussed and

relied on in support of the conclusion reached by the Election Commission: (a) the declaration signed by the respondents, (petitioners herein) that they were elected as the official candidates of the Muslim League (Ext.X1); (b) Admission that they have signed the no confidence motion against the President and Vice President. The other signatories of the non confidence motion against the President and Vice President belong to BJP; (c) The stand taken by the petitioners that they had not taken any initiative in moving the no confidence motion is belied, because of Ext.X5 which shows that the notice of no confidence motion against the President was handed over to PW.3, the Authorized Officer by the petitioner in W.P.(C) No.28051/2010, Shri Mohammed Kunhi himself; (d) They have admitted in their evidence that they have not obtained permission of the Muslim League party to move the no confidence motion against the President, their own colleague in the party and the Vice President, a nominee of the constituent of UDF; and (e) In the election to the posts of President and Vice President the petitioners aligned with the BJP, and voted against the candidates of UDF. Accordingly, the Commission concluded that the petitioners have deliberately acted against the interest of the party by joining the rival BJP members in the Panchayat and the denial of these aspects by the petitioner was found against.

10. The happenings at the time of election to fill up the posts of President and Vice President after the no confidence motions were adopted, have also been discussed in Para 8. It was found that the name of the petitioner in W.P.(C) No.28051/2010 was proposed by a member from B.J.P. and supported by the petitioner in W.P.(C) No.28056/2010. He obtained six votes including four from BJP apart from that of the petitioners. He contested against the nominee from Congress representing UDF. The name of Smt. Chandrika from B.J.P. was proposed by the petitioner in W.P.(C) No.28051/2010, Shri Muhammed Kunhi as Vice President against the candidate of the UDF and accordingly the Commission concluded that both the petitioners have aligned themselves against the U.D.F. and joined hands with the BJP. The evidence of RW.3 was relied upon to show that Muslim League Panchayat Committee has not taken any decision to share power with the BJP. Thus, it was concluded that because of the voting in favour of the no confidence motion and other factors, they betrayed the party, against the known stand of their party.

11. Learned counsel for the petitioners Shri M. Sasindran submitted that the view taken by the Commission cannot be supported at all. It is pointed out that the support given to the no confidence motion against one of the party members by two members of the same party cannot be termed as a factor to show that they have voluntarily given up membership of the party. It is pointed out that Rws.3 and 4 who were respectively the Treasurer and General Secretary of the IUML Meenja Grama Panchayat Committee, have deposed that the petitioners are still participating in the functions and programmes of the party and this aspect has not been considered by the Commission. By contesting the election to the office of President, they ensured that the Presidentship remained with the I.U.M.L. Therefore, it is contended that the petitioners have never left the party and the party has not taken any action against them for defying any orders of the party. It is pointed out that in the absence of any allegation of disobedience of the directions of the party and as the violation of whip has not been proved, it cannot be said that the petitioners have voluntarily given up the membership of the party. Reliance is placed on a recent decision of a Division Bench of this Court in Chinnamma Varghese v. State Election Commission (2010 (3) KLT 426). Thus, the argument centres on the absence of any direction from the party to defeat the no confidence motion against the first respondent. Thus, it is contended that the participation in meeting to consider the no confidence motion and taking part in the voting therein, in the absence of such a direction from the party, cannot be termed as voluntarily giving up of the membership of the party. It is submitted that they have only acted in a democratic manner, in exercising their vote, even if it was against the member of their party.

12. Learned counsel appearing for the contesting respondent Shri S. Santhoshkumar and learned Standing Counsel for the Election Commission, Shri Murali Purushothaman opposed the contentions of the learned counsel for the petitioners by relying upon the evidence adduced in the case and the various decisions of this Court and that of the Apex Court. They relied upon the principles stated by the Apex Court in Ravi S. Naik v. Union of India {(1994) Suppl. (2) SCC 641}, Jagjit Singh v. State of Haryana {(2006) 11 SCC 1}, Rajendra Singh Rana v. Swamy Prasad Maurya {(2007) 4 SCC 274} and that of this Court in Shajahan v. Chathannoor Grama Panchayat & others (2000 (2) KLJ 451), Nazeerkhan v.

Kerala State Election Commission and another (2008 (3) KHC 322), Faisal v. Abdulla Kunhi (2008 (3) KLT 534), Varghese v. Kerala State Election Commission (2009 (3) KLT 1), Dharma Mani v. Parassala Block Panchayat (2009 (3) KLT 29) and 2009 (4) Shiney Augustine v. Kerala State Election Commission (2009 (4) KHC 527) and the judgment in W.A. No.1774/2009.

13. The main question therefore is whether the disqualification of the petitioners ordered on the ground that they have voluntarily given up their membership of the political party in terms of the provisions for disqualification under the Act, viz. Section 3(1)(a) of the Act is vitiated in the light of any of the circumstances relied upon by them. Sections 3(1)(a) and 3 (1)(b)(ii) of the Act provides as follows:

3. Disqualification on ground of Defection.-- (1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) or in any other law for the time being in force subject to the provisions of this Act.-

(a) "if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting; (b)(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in a voting on a no confidence motion against any one of them except a member of a Standing Committee."

14. The Act was brought in with the avowed object of prohibiting 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. The admitted facts show that they have been elected as official candidates of the Indian Union Muslim League. The no confidence motion against the first respondent herein and the Vice President, who belongs to Indian National Congress, was signed by them along with a member of BJP, the opposite political party. The petitioner in W.P. (C) No.28051/2010 contested and won against the candidate of the UDF, in the subsequent election to the post of President of the

Panchayat. In the election to the post of Vice President of the Panchayat also, they have voted along with the four members of the BJP. Learned counsel for the petitioners heavily relied upon the observations made by the Division Bench in Chinnamma Varghese's case (2010 (3) KLT 426), in Para 22 to contend that signing of the notice of no confidence motion cannot attract the vice of disqualification. Therein, the member who was sought to be disqualified was an independent member who was supported by CPI (M). The no confidence motion was moved by the UDF and the independent member also signed the notice. In the subsequent election to the post of President, she contested and won. It was alleged that as she was elected as an independent member supported by CPI (M), she is also a member of a political party, viz. CPI (M) for the purpose of applicability of the provisions of the Act. Accordingly, it was contended that she has voluntarily given up her membership of the political party, CPI (M). The Commission's finding was that she withdrew from the coalition LDF. While examining the question whether the signing of the notice of no confidence motion by such an independent member can be said to be a conduct amounting to withdrawal from the coalition, the Bench observed thus in Para 22: "Taking the case on hand, the activity of the appellant which was found to tantamount to withdrawal from the coalition is stated to be signing of the notice in the no confidence motion by the appellant herein. Even in the matter of an elected representative belonging to a political party such a signing of the notice of no confidence motion per se is not declared under the above mentioned Act to be an activity attracting disqualification on the ground of defection. It is only the specific overt act of voting or abstaining from voting contrary to any written directions issued by the political party on a no confidence motion that tantamount to defection. If that is the legal position with regard to a member of the Panchayat belonging to a political party, a member of a coalition, in our opinion, cannot be logically said to have committed an act of withdrawal from the coalition which has the serious consequences of rendering such a member disqualified from being a member of the Panchayat, on the mere ground that he or she has signed the notice of no confidence motion."

15. It is clear from Para 23 that the Bench was of the view that coming to the question of voting there is nothing in the law which binds the appellant who is

established to be an independent member of the Panchayat to vote in accordance with the desires of the coalition partners since no binding legal direction was ever issued against the said member. While examining the question as to what extent the restrictions with regard to the free choice of voting of a member of Panchayat will apply to independent members, the Bench speaking through the learned Chief Justice, held thus:

"No binding legal direction was ever issued against the appellant. A no confidence motion is essentially a matter of conscience of the voter (member of the Panchayat). The Kerala Local Authorities (Prohibition of Defection) Act, 1999, to some extent, restricts the free choice of the voter (member of the Panchayat) in this regard. Such restriction first came to be introduced by the amendment to the Constitution and introduction of the Tenth Schedule to the Constitution with reference to the Members of the Parliament and the State Legislatures. The law makers thought it fit to bring in such restrictions on the free choice of the holders of the elected offices to vote in any manner as they please during their tenure. The perceived distortions in the political morality prompted the law makers to introduce such provisions which curtail the right of the elected representatives of the various bodies to exercise their voting rights freely in certain contingencies. In the ultimate analysis voting is nothing but a mode of expression of the opinion. Such restrictions, in our view, are required to be enforced strictly in accordance with the tenor of the law. If under the scheme of the Act voting or abstaining from voting contrary to the specific direction of either the political party or the coalition renders the person violating the whip disqualified on the ground of defection, the same conclusion cannot be logically reached in the cases of persons who are not obliged to obey such directions or against whom no direction whatsoever was ever legally issued on the ground that such a conduct would render such a person disqualified on the ground that the conduct would tantamount to withdrawing from the coalition." Evidently, these findings were rendered on the basis of the question involved therein whether the independent member could be said to have withdrew from the coalition. They will be of no help to the petitioners herein, as the facts and the situations emanating herein are quite different.

16. The Apex Court and this Court had occasion to address the pleas made similar to that of the petitioners herein in various cases. The Apex Court in Ravi S. Naik's case (1994 Suppl. (2) SCC 641) examined the scope of the expression "voluntarily giving up membership of the political party" and it was held that "the words voluntarily give up his membership are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. It follows that even in the absence of a formal resignation 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." It was further held by the Supreme Court that "from the fact that the member in question accompanied the leader of opposite party to the Governor and told that the member supported to form a Council of Ministers, show that he is voluntarily giving up his membership from the original party." Following the said dictum, a Division Bench of this Court in Shajahan's case (2000 (2) KLJ 451) held thus in Para 3:

"Similarly, the words used in section 3(1)(a) of the Act 'voluntarily gives up his membership' has a wider meaning than resignation. In this case, it is admitted by the petitioner that after submission of his resignation he did not vote for the person who was supported by the 'A' party. The State Election Commission took a clear inference from the conduct that he has voluntarily given up his membership in the party." The Bench did not interfere with the order disqualifying the member.

17. In Jagjit Singh's case {(2006) 11 SCC 1} while considering the object for enacting the defection law, it was held thus in para 29:

"It is also essential to bear in mind the objects for enacting the defection law also, namely, to curb the menace of defection. Despite defection a Member cannot be permitted to get away with it without facing the consequences of such defection only because of mere technicalities." Still later, in Rajendra Singh Rana and others v. Swami Prasad Maurya and others {(2007) 4 SCC 270}, a Constitution Bench considered a case where 13 MLAs from BSP legislative party in U.P. Legislative Assembly approached the Governor to call upon leader of opposition of SP party

to form Government, though BSP Government had recommended dissolution of Assembly. The Dictum laid down in Ravi S. Naik's case ((1994 Suppl. (2) SCC 641) was approved and it was held thus in paragraphs 48 and 49:

"48. The Act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. Be it noted that on 26.8.2003, the leader of their party had recommended to the Governor, a dissolution of the Assembly. The first eight were accompanied by Shivpal Singh Yadav, the General Secretary of the Samajwadi Party. In Ravi Naik this Court observed {(1994 Suppl.(2) SCC 641, p.649.para 11) "A person may voluntarily give 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."

49. Clearly, from the conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the party in opposition and the submission of letters requesting the Governor to invite the leader of that opposition party to form a Government as against the advise of the Chief Minister belonging to their original party to dissolve the assembly, an irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within Para 2(1)(a) of the Tenth Schedule."

18. Coming to the decisions of this Court, in practically similar circumstances, this Court held in Shiney Augustine's case (2009 (4) KHC 527), that if a member was instrumental in moving, voting and carrying the no confidence motion against another party member, though no whip was issued, it can be concluded that the member had voluntarily given up membership of the political party to which she belonged. It was held thus in Para 12:

"The pleadings in Ext.P1 petition relates fundamentally to the accusation that the writ petitioner had also, along with others, been instrumental in moving, voting and

carrying the no confidence motion against A.J. Jose. The fact that A.J. Jose comes in the canopy of LDF is not disputed by the writ petitioner. As noted by the Commission, the clear version in Ext.P2 written statement of the writ petitioner is that she was considered as the Parliamentary Party Leader and Chief Whip of the Kerala Congress (J) and LDF and therefore, such repealed statements in Ext.P2 written statement are sufficient to nail down the write petitioner to the fact situation that she belonged to the political party which was, for all intents and purposes, part of LDF. With these pleadings and evidences, the Commission cannot be found fault with, for having concluded that the writ petitioner had voluntarily given up her membership in the political party to which she belonged, namely, Kerala Congress (J). Therefore, it cannot be held that the finding of the Commission in that regard is unavailable on the materials on record or is vitiated by any error of law in the matter of appreciation of evidence or otherwise, warranting interference under Article 226 of the Constitution."

19. Similar question, as raised herein, came up for consideration in Dharma Mani's case (2009 (3) KLT 29) which was affirmed in W.A. No.795/2009. It was found that it is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. After elaborately considering the dictum laid down in Ravi Naik's case {1994 Suppl. (2) SCC 641}, Rajendra Singh Rana's case {(2007) 4 SCC 270}, Shajahan's case (2000 (2) KLJ 451), Faisal's case (2008 (3) KLT 534) and Nazeerkhan's case (2008 (3) KHC 322), it was held thus in Para 17:

"Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one's party is not dependent on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked....." After analyzing the evidence, it was held thus in Para 18:

"From the conduct of the petitioners in moving the No Confidence Motions against the President and the Vice President of the Panchayat and voting in favour of the No Confidence Motions and their subsequent conduct in getting the petitioner in W.P.(C) No.337 of 2009 elected as the President with the support of the Left Democratic Front, an irresistible inference can be drawn that they have voluntarily given up their membership in the Indian National Congress."

20. In the decision of a Division Bench of this Court in Varghese's case (2009 (3) KLT 1), the Bench took the view that the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The Bench considered the question whether the members of the political parties, after being elected as members of the Committee, can have free volition as regards voting rights either in the election to the office bearers of the Panchayat or in the no confidence motion. It was held that "in the absence of a specific whip for conscience vote, an elected member is entitled and liable to cast only a conscious vote, and the elected member is bound by the policies of the political party." The argument whether the member of a Panchayat can have a free will to exercise the vote, in the absence of a specific direction or whip, was considered by the Bench in paragraphs 7 and 8. After considering Section 3(1)(a) of the Act in detail and the principles stated by the Apex Court and this Court in *Kihoto Hollohan v. Zachillu* (1992 Supp. (2) SCC 651) *Ravi Naik's case* (1994 suppl. (2) SCC 641), *Shajahan's case* (2000 (2) KLJ 451), *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly* ((1996) 2 SCC 353), *Rajendra Singh Rana's case* (2007 (4) SCC 270) and *Faisal's case* (2008 (3) KLT 534), it was held thus in para 8: "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. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. In *Naseera Beevi's case* the rebel group in the parliamentary wing of the political party concerned had not only formed a separate group, but they had voted in favour of the no confidence motion moved by the rival political party. Thus, by their conduct of being disloyal to the political party in which they were members and by voting as they pleased independent of the political

party's declared policy, they had incurred the disqualification. In view of both factual and legal position as above, the dictum laid in Naseera Beevi's case that leaving the parliamentary party and exercising the right to vote according to the choice of the elected member would not attract the disqualification on the ground of voluntarily giving up membership in the political party is not good in law. Hence the same is overruled." It was also held in Para 9 as follows:

"The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean "the part of your mind that tells you whether your actions are right or wrong". In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decisions, in terms of S.3 of the Kerala Local authorities (Prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law. According to Harry S. Truman "Democracy is based on the conviction that man has the moral and intellectual capacity as well as the inalienable right, to govern himself with reason and justice". The reason and justice are the two mandates of the conscious vote under S.3 of the Act. There is no case that the political party in which they belonged had given them the whip to vote according to their conscience." The action of the appellants in voting in favour of the no confidence motion moved by the rival political parties was held as sufficient conduct for incurring disqualification for voluntarily giving up membership of the political party.

21. In fact, it is evident from the decision of the Apex Court in G. Viswanathan's case {(1996) 2 SCC 353}, that "the act of voluntary giving up the membership of the political party may be either express or implied." Herein, the plea raised by the learned counsel for the petitioners, as noticed already, is that the party has not taken any action against them and even thereafter they have been associating with the affairs of the party. The evidence of Ext.P7 series photographs, etc. and the evidence of Rws.3 and 4 have been relied upon in this context. With regard to these arguments, it was held by the Commission in Para 8 that "the most important fact is that at the crucial day of the voting on the no confidence motion both the respondents betrayed the party by supporting the no confidence motion against the known stand of the party. Hence the photographs etc. produced by the respondents to show that they are still in the party have no evidentiary value. The contention that the party has not taken any disciplinary action against them cannot be flaunted in the support of their stand at the no confidence motion. It is on record that the party is waiting for the decision of the State Election Commission to initiate action against them." What is evident from Section 3(1)(a) of the Act is that the act of voting in the election of the office bearers or in support of the no confidence motion, is a crucial aspect. Therefore, the subsequent conduct cannot justify the same. This aspect was considered in Nazeer Khan's case (2008 (3) KHC 322). On the question whether the disqualification has to be decided with regard to the conduct of the person on the date of election, it was held thus in Para 24:

"Counsel contended that even his party did not treat him as having given up his membership and relies on Exts.P5 and P7 whips issued on 16.8.2006 and 02/08/2006, which is subsequent to 17.7.2006 when the election in question was held. The question of disqualification is a matter to be decided with reference to his conduct on 17/07/2006 and therefore even if he obeyed the subsequent whips, it is immaterial."

In Faisal's case (2008 (3) KLT 534) also the very same question was considered and in Para 14 it was held thus:

"The relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership or defies the whip. The fact that

an application subsequently made for recognizing split in the original political party was held of no relevance to decide the issue of disqualification, which was to be decided with reference to the date of defection. An interpretation of that nature would lead the disqualification to an indiscriminate point of time and to the whims of the decision making authority defeating the very object of enacting the law."

Therein, the conduct of the member in accepting nomination as President by the members of rival coalition was held as sufficient to attract the mischief of Section 3(1)(a) and the following dictum was laid down in paragraphs 11 and 12:

"A person may voluntarily give 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, 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. By accepting the nomination by members of the rival coalition, he had voluntarily abandoned membership of his political party. Since the words 'voluntarily giving up membership of his political party' is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. It is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation."

22. The respondents have also relied upon the decision of a Division Bench of this Court in W.A. No.1774/2009 and connected cases, wherein the appellants contended that they had not tendered the resignation and continued to be with the party. After examining the question in the light of Ravi S. Naik's case (1994 Supp. (2) SCC 641), G. Viswanathan's case {(1996) 2 SCC 353}, Kihoto Hollohan's case (1992 Supp. (2) SCC 651} and Dharma Mani's case (2009 (3) KLT 29), it was held that abstinence from voting is nothing but betrayal of the collective decision of the political party which they belonged and acting in violation of the instructions of the political party alone is sufficient to hold that the person concerned has voluntarily

given up the membership from the party.

23. There cannot be any dispute that the object of the enactment could be considered while interpreting the provisions of the Act. The mischief of defection has led to the introduction of the Tenth Schedule as far as the members of Legislature and Parliament are concerned. In *Kihoto Hollohan's case* (1992 Suppl. 2 SCC 651), a Constitution Bench of the Apex Court considered the challenge against the constitutional validity of the Tenth Schedule. The disqualification from membership of Parliament and Legislatures were provided to a member on his voluntarily giving up membership by which he was set up as a candidate. The underlying object of the provisions was examined and it was held thus in Para 49:

"Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently have grown distrustful of the emotive political exultations that such floor-crossing belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognize the practical need to place the proprieties of political and personal conduct -- whose awkward erosion and grotesque manifestations have been the bane of the times -- above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception."

While considering the object underlying the provisions, it was observed thus in Para 9:

"The object 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."

In paragraphs 43 and 44, their Lordships while considering the freedom of members who belong to a political party, to vote as they please, held as follows:

"43. Parliamentary democracy envisages that matters involving implementation of policies of the government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not un-often the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines.

44. But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. 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. Intra-party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things....." These give a complete answer to the contentions raised herein.

24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S. Naik's case (1994 Supp. (2) SCC 641), the conduct of the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the first respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the UDF in the subsequent election and the conduct of the petitioner in W.P.(C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they have voluntarily given up membership of the political party which set them up as

candidates in the election.

25. Thus, the contention raised by the learned counsel for the petitioners that they had a free choice to vote in favour of the no confidence motion, that too in a democratic way, after actively participating in the discussions as to the allegations raised in the no confidence motion, cannot at all be countenanced, as they have chosen to unseat the elected President, a member from the same political party to which they belonged, by aligning themselves with political parties opposing their political parties and Front. The evidence adduced, therefore, to show that they are still participating in the affairs of the party, cannot efface the disqualification that was incurred under Section 3(1)(a) of the Act. The bald claim therefore that their right to have a free will to vote in favour of the no confidence motion and to vote in accordance with their conscience to the election of the President and Vice President subsequently held, cannot be accepted, as otherwise it will clearly defeat the object and purpose of the enactment itself. They have been elected as members of a particular political party and Front by the electorate and are answerable to the electorate. Disloyalty to the party to which they were members, is evident and will attract the vice of disqualification as held by the Division Bench in Varghese's case (2009 (3) KLT 1).

The write petitions thus fail and are hence dismissed. No costs.

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