



WA NO. 817 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 18<sup>TH</sup> DAY OF JULY 2024 / 27TH ASHADHA, 1946

WA NO. 817 OF 2024

APPELLANT/S:

JIJI SAJI  
AGED 49 YEARS  
W/O SAJI P GEORGE, PUTHENVILAYIL, VELLAPPARA P.O.,  
PATHANAMTHITTA, PIN - 689691

BY ADV V.PHILIP MATHEWS

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF  
GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,  
PIN - 695007
- 2 STATE ELECTION COMMISSION, KERALA  
REPRESENTED BY ITS SECRETARY, KERALA STATE ELECTION  
COMMISSION VIKHAS BHAVAN, JANAHITHAM, NEAR LEGISLATIVE  
ASSEMBLY, THIRUVANANTHAPURAM, PIN - 695033
- 3 PRAVEEN PLAVILAYIL  
AGED 43 YEARS  
S/O VARADARAJAN, PLAVILAYIL VEEDU, MANGARAM, KONNI  
P.O., PATHANAMTHITTA, PIN - 689691
- 4 KONNI GRAMA PANCHAYAT  
KONNI BLOCK PANCHAYAT KIZHAVALLOOR, KERALA, REPRESENTED  
ITS SECRETARY, PIN - 689691

BY ADVS.  
DEEPU LAL MOHAN  
Sradhaxna Mudrika  
MATHEW A KUZHALANADAN (K/1609/2001)



2024:KER:55097

WA NO. 817 OF 2024

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KURIAKOSE VARGHESE (D/2090/2003)  
V. SHYAMOHAN (K/000824/2006)  
BINCY JOB (K/001080/2017)  
KAVERI MOHAN (K/003448/2023)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18.07.2024,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**JUDGMENT**

Dated this the 18<sup>th</sup> day of July 2024

A.Muhamed Mustaque, Acg.C.J.

This writ appeal was filed by the petitioner in the writ petition. The writ petitioner questions an order of the Kerala State Election Commission disqualifying her to continue as a member of Konni Block Panchayat as per section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act 1999 and further declared that she will be disqualified for contesting in any election to any local authorities for a period of six years.

2. Learned Single Judge repelled the challenge. In this appeal, learned Counsel for the appellant raised the following grounds of challenge.

- 1) There was no fair opportunity provided before the Election Commission to contest the matter.
- 2) There were two whips and none of the whips were served on the appellant.
- 3) No opportunity was given to cross examine Secretary in regard to service of whip.



4) She has not contested as a member of Indian National Congress (INC) for election.

5) There is no law in regard to authority conferred on district, head of the political party to issue a whip and rule is vague in regard to the authority to issue whip. We are considering the entire points together.

3. The appellant contested as an INC candidate as seen from the declaration furnished consequent upon election. This is a factual finding entered by the Election Commissioner. The appellant now raises a case that it was a tampered one. It is to be noted that we perused the statement filed by the appellant before the Election Commission. In categorical terms she has admitted that she contested the election in INC symbol.

4. According to her, she agreed to contest the election on the party symbol of INC on condition that she will be adopting independent stand and politics in local body. Therefore, based on the admission itself, it has to be concluded that she contested the election as an INC candidate. As seen from the records, two whips were issued. This whips were issued by the President of District Congress Committee. One urging to vote against No Confidence Motion moved against the Panchayat President. Block panchayat



President at that time was INC. Other whip was to abstain from No Confidence Motion. Admittedly, the appellant supported No Confidence Motion and as a result, the block panchayat President was voted out. The appellant became the President with the support of members of LDF candidates. These facts remain undisputed.

5. The Election Commission perused the records submitted by the Secretary of the Block Panchayat and found that whip was served on the Secretary as well as on the appellant in the manner in which it is envisaged under Rule 4(2) of the Rules. It was affixed on the residence of the appellant in the presence of the witnesses. These finding of facts cannot be reversed in a challenge under Article 226 of the Constitution of India. Apart from that whip also have been communicated to the appellant in WhatsApp. Any way whether it has been communicated to the appellant in WhatsApp or not need not be considered at this stage, as that is not a mode envisaged under rule.

6. The appellant contested the matter before the Election Commission. She also filed a counter affidavit and adduced evidence. We do not find any infirmity with the proceedings of the Election Commission. The argument that no authority has been



prescribed to issue whip under Rule 4 does not require any examination for the simple reason that the if a President of the Political Party of the District unit has given whip, he/she issues such whip as decided by the political party. In Rule 4 it is stipulated that a political party or Coalition may give direction to its members. That indicates a decision by a collective body. The President is the representative of the collective body. The appellant has no case that the President who issued whip is not the President of the political party. There is no vagueness in the rule. The rule clearly indicates that it is a political party, that has to give direction. The political party can only communicate through its office bearers . If that be so, the whip issued by the District President of the INC is sufficiently good and valid under law.

7. Learned Counsel for the appellant has relied on the judgment of the learned Single Judge of this Court. This judgment has no relevance in this case as in that case, learned Single Judge found that no whip was served on the Secretary of the local body and therefore, it has no validity. Here in this case there are materials on record to show that whip was also served on the Secretary of the Local body. We are examining this matter in appeal. Unless and until we feel that the judgment of the learned



Single Judge as well as the order passed by the election commission are perverse and illegal, we will not be justified in entertaining this matter further. The appeal shall stand dismissed.

SD/

**A. MUHAMED MUSTAQUE**  
**ACTING CHIEF JUSTICE**

SD/

**S. MANU**  
**JUDGE**

jm/