

## **Election Commission of India**

*In re :* KERALA CONGRESS , a recognised State Party in the State of Kerala - Merger of the party with KERALA CONGRESS (M), a recognised State Party in the State Kerala.

Between

Shri P. J. Joseph .....(Pro-merger group)

AND

Shri P.C. Thomas .....(Anti-merger group)

### **ORDER**

The issue relates to the reported merger of Kerala Congress (hereinafter as 'the Party'), a recognized State Party in the State of Kerala having the Symbol 'Bicycle' reserved for it in that State, with the Kerala Congress(M), another recognized party in the State of Kerala having the reserved symbol 'Two Leaves' in that State.

2. In May, 2010, certain communications were received by the Commission which showed that there were differences among the leadership of the Party. The letters from Shri K. Francis George( Shri P. J. Joseph group) and Shri V. Surendran Pillai (Shri P. C. Thomas group) purported to give intimation about removal/relieving of Shri P.C. Thomas (General Secretary of the party as per the Commission's record) and Shri P.J. Joseph (Chairman of the Party as per the Commission's record) by each

other group. Since the organizational election of the party was due in April, 2010 as per the Party's constitution, the Commission vide its letter dated 14<sup>th</sup> June, 2010, asked both the groups to inform about the status on organizational election of the Party.

3. In response to the Commission's aforesaid letter, both the groups intimated that organizational elections of the party had not been conducted so far. Whereas, the anti-merger group ( Shri P. C. Thomas group) vide its letter dated nil received in the Commission on 05.07.2010, intimated that they were in the process of conducting organizational elections, the pro-merger group (Shri P. J. Joseph group) intimated by its letters dated 23.06.2010 and 26.06.2010, that the party had decided to unite with the Kerala Congress (M) to form one party and that the organizational elections of the unified party would be started immediately. In the meanwhile, a joint application was also submitted on 17.07.2010, by Shri K.M. Mani, Chairman and Leader of Kerala Congress(M), Shri C.F.Thomas, MLA, former Chairman, Kerala Congress(M) and Shri P.J.Joseph, MLA, former chairman, Kerala Congress. In the joint application, they submitted that in a combined State Committee meeting of the two parties held on 24.5.2010 at Kottayam, it was decided to unite the two parties under one flag and one symbol and requested the Commission, inter-alia, to approve:-

- (i) the unification of ` Kerala Congress (M)' and ` Kerala Congress';
- (ii) to treat the unified party as a recognized political party in the State of Kerala with the name `Kerala Congress' under section 29A of the Representation of the People Act, 1951;
- (iii) to allot the symbol `Two Leaves' to the new party taking into account the fact that the unified party has one member in the House of the People and eleven members in the Kerala Legislative Assembly; and
- (iv) to freeze the symbol `Bicycle' in the State of Kerala, taking into account the fact that the symbol `Bicycle' has been reserved as the election symbol of ` Kerala Congress' led by Shri P.J. Joseph since

1996 and if the said symbol was allotted to any other political party or candidates it may create confusion among electors.

4. Thereupon, the pro-merger group was asked on 14.09.2010, to submit documents to show that the reported decision of merger was taken as per the provisions of the party's Constitution.

5. In reply, the pro-merger group submitted certain documents on 14.10.2010, but it was noticed that the same did not give the requisite information fully. They also submitted a copy of the party's Constitution, which was totally different from the party's Constitution available in the Commission's record. Therefore, some further clarifications were sought from the pro-merger group on 09.12.2010, and simultaneously documents received from pro-merger group were also sent to the anti-merger group for its comments.

6. The pro-merger group intimated on 31.12.2010, that :-

- (i) The party constitution was amended on 07.06.2001, and as per the amended constitution, the State Committee of the Party is supreme body to decide or ratify any policy decision being taken at the state level and there is no provision regarding merger/amalgamation/unification with other parties and such major decisions are to be decided on majority vote in the State Committee as has been done in the instant case. They also enclosed a list of State Committee members district-wise that were said to have been elected in the last organizational election and further stated that out of total number of 427 members, 347 members participated in the State Committee meeting held on 30.04.2010 where the Party took the decision of merger with the 'Kerala Congress (M)'.
- (ii) That the copy of the party constitution amended as on 07.06.2001 was filed with the Commission in the year 2001 when a similar dispute arose about the formation of the faction 'Kerala Congress-Secular'. (It needs to be pointed out that no amended constitution was then received from the party for the Commission's acceptance

as is now being stated by the pro-merger group).

- (iii) As regards the post dated resolutions passed by the District and Constituency Committees, they admitted that the unification proposal was not discussed with these committees in time, but that they ratified and subsequently sent the resolutions approving the merger proposal.

7. The anti-merger group submitted on 12.01.2011, that all the documents submitted by the pro-merger group in support of their claim were allegedly concocted and made on the basis of after-thought and that the signatures of some of the persons were forged.

8. After considering the clarifications submitted by the pro-merger group and comments furnished by the anti-merger group, it was intimated to the pro-merger group on 18.02.2011, that the decision of the Party to merge with the “Kerala Congress(M)”, had not been done as per the principles laid down by the Hon'ble Supreme Court in the APHLC Vs. Capt. Sangma (1977 AIR 2155) .

9. In response to the Commission's aforesaid letter, Shri K. Francis George of pro-merger group mainly submitted in his letter dated 14.03.2011, that :-

- (iv) The principles laid down by the Supreme Court. in the case of APHLC were related to the merger of two different political parties, whereas the Kerala Congress and Kerala Congress(M) were originally one party under one flag and symbol, which subsequently split into two factions. However, as laid down in the Supreme Court decision, the merger proposal was discussed in the district and constituency committees through out the State and unanimous/majority resolutions were sought and obtained from all the committees in favour of the merger.

(v) In a similar situation, in 1985, relating to merger of the two factions of the Kerala Congress Party, Kerala Congress-J and Kerala Congress-M, the Commission had accepted the prayer of both factions to allot the name “Kerala Congress” to the unified party and also to reserve the symbol “Horse”, till then held by the Kerala Congress-M faction, to the unified party.

(vi) The dissident faction headed by Shri P.C. Thomas does not have the requisite strength in any forum of the party or in the Kerala Legislative Assembly to be recognized as a State party as stipulated in the APHLC's case.

In view of the above, he made the following prayers:-

(a) To dismiss the petition of dissident group of Kerala Congress and not to allow them to use the name “Kerala Congress” and the reserved symbol “Bicycle”;

(b) in view of the impending Kerala Assembly election, if a decision is not possible within the short time span, the status quo be maintained and the dissident group be allotted a separate name and symbol as was done in the Local Bodies election, in Kerala, to avoid confusion among the voters; and

(c) to give 'Kerala Congress' name to the united party and also to freeze the symbol “Bicycle” to avoid confusion among the voters.

10 On 07.03.2011, Shri P. C. Thomas (anti merger group) submitted another representation stating that even after Shri P.J. Joseph and others left the Kerala Congress on 30.04.2010, and became the office-bearers in 'Kerala Congress(M)', another recognised party of the State, the party, i.e., Kerala Congress, still exists as a State party in the State of Kerala with its reserved symbol 'Bicycle'. He added that recently some officers were denying them free voters list, though they were given free voters lists during the local body election and he had

been invited as the Chairman, Kerala Congress in several meetings by the State Election Commission. In support of his claim of existence of the Party, he further submitted that several office-bearers of the Kerala Congress, who were also the office-bearers at the time of chairmanship of Shri P. J. Joseph, were still continuing to hold posts of office-bearers in the party even now.

11. In view of the current general election to the Kerala Legislative Assembly, the Commission decided to hear both groups (i.e. 'pro-merger group' and 'anti merger group') urgently and fixed a hearing under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968 on 21.03.2011 at 4.00 PM.

12. Shri K. Francis George of pro-merger group and Shri P. C. Thomas of anti-merger group appeared for the hearing on the scheduled date. Both the groups made submissions in support of their respective claims and reiterated their points made earlier in their written representations. The main point which emerged were :

(i) Out of the four members of the Kerala Legislative Assembly elected on the reserved symbol of "Bicycle" of 'Kerala Congress' in 2006, three were in favour of merger and only one was left with the anti-merger group.

(ii) Also, it was not clearly coming out that the resolutions passed on 30-04-2010 meeting were taken in accordance with the prescribed procedure in the party constitution. It was not clear as to when and to whom the notice for the meeting in which the decision to merge with the Kerala Congress (M) was taken, was issued, and what was the agenda for the said meeting indicated in that notice.

13. In view of the above, the Commission cannot come to a conclusive determination that the Kerala Congress has followed the principle laid down by the Hon'ble Supreme Court in APHLC's case (supra) while taking the decision to merge with the Kerala Congress (M).

14. The matter, therefore, needs to be examined further. But in view of the general elections to the State Legislative Assemblies of Assam, Kerala, Tamil Nadu

and West Bengal and Legislative Assembly of the Union Territory of Puducherry having been already notified and the process set in motion since 19.03.2011, the Commission is not in a position to decide the issue finally at present.

15. In the above facts and circumstances, some interim arrangement needs to be made in the interest of both the groups. While making such interim arrangement, the Commission has to keep in mind the following considerations:

- (i) that the anti merger group has a right to contest the current general election to the Kerala Legislative Assembly, as a party under a name showing its linkage with the Kerala Congress;
- (ii) that at the recently held local bodies election in the State of Kerala, they were not allotted the reserved symbol by the State Election Commission and they contested on another symbol “Chair”;
- (iii) that the pro-merger group candidates (who were elected in 2006 to the Kerala Legislative Assembly on the reserved symbol “Bicycle”) will be at disadvantage if the anti-merger group is allowed to contest on that symbol as it will cause confusion in the minds of the electors.

16. Now, therefore, having regard to the above and in exercise of its powers under Article 324 of the Constitution of India and paras 16, 17 and 18 of the Election Symbols (Reservation & Allotment) Order, 1968, the Commission hereby directs that, pending final disposal of the matter after the ongoing elections and as an interim arrangement in view of the current general election to the Legislative Assembly of Kerala --

- (a) the anti-merger group led by Shri P. C. Thomas be known, and recognised, as “Kerala Congress (Anti-merger Group)”;
- (b) the said group may choose, and be allotted, another election symbol from the list of free symbols ;

(c) the symbol “Bicycle” reserved for the Kerala Congress be frozen; and

(d) The pro-merger group led by Shri P. J. Joseph is free to contest election on the symbol of the party which they have joined, i.e. Kerala Congress (M).

ORDERED ACCORDINGLY

sd/-

(H.S. Brahma)

Election Commissioner of India

sd/-

(Dr. S.Y. Quraishi)

Chief Election Commissioner  
of India

sd/-

(V.S. Sampath)

Election Commissioner of India

New Delhi  
24<sup>th</sup> March, 2011