

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.

3. Since the organizational election of the party was due in April, 2010 as per the Party's constitution, on being asked about the status on organizational election of the Party, both the groups intimated that organizational elections of the party had not been conducted so far. While, the anti-merger group (Shri P. C. Thomas group), 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. In response to the Commission's aforesaid letter, 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, however, that as per the available records in the Commission no amended constitution has been 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 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, prima-facie, 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 on behalf of pro-merger group submitted in his letter dated 14.03.2011, that :-

- (i) 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. Moreover, 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.
- (ii) In a similar situation, in 1985, relating to merger of the two factions of the Kerala Congress Party, namely, 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.

- (iii) 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 anti-merger 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, which was then due in March’2011, if a decision was not possible within the short time span, the status quo be maintained and the anti-merger 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)', 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 then ensuing general election to the Kerala Legislative Assembly scheduled for 2011, the process of which was then already set in motion, the Commission urgently heard both the groups (i.e. 'pro-merger group' and 'anti-merger group') on 21.3.2011. The Commission could not, however, decide the matter finally in view of disputed facts, and pending final disposal of the matter after the aforesaid election and as an interim arrangement, passed its interim Order dated 24.3.2011. In the interim Order, the Commission directed that, -

- (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).

12. While making the above interim order, the Commission observed that it could not come to a conclusive determination that the pro-merger

group of Kerala Congress had 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) and the matter needed to be examined further.

13. As decided, the matter was again taken up on completion of the general election to the Kerala Legislative Assembly '2011 and, accordingly, both groups were asked to submit further documents, if any, in the matter vide Commission's letter dated 30.09.2011.

14. In reply to the above Commission's letter, replies have come from both pro-merger group and anti-merger group under the signature of Shri K. Francis George and Shri P. C. Thomas respectively.

15. Before taking any final decision in the matter, the Commission considered it appropriate to afford a further opportunity of hearing to both the contending groups. Accordingly, a further hearing was held in the matter under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968, on 17.05.2012 at 4.00 PM .

16. Shri K. Francis George of pro-merger group and Shri P. C. Thomas of anti-merger group appeared and reiterated their submissions in support of their respective claims.

17. Apart from reiterating his earlier submissions, Shri P.C.Thomas submitted as follows:-

- (a) The meeting dated 30.04.2010 is vitiated because the meeting was chaired and convened at the instance of

Shri. P.J. Joseph, who could not be the chairman as per clause 22 of the Party constitution, which mandates that the office-bearers shall have to resign from the post on becoming a Minister in the State Cabinet. As such any decision, especially one to merge, or unify, or leave the political front the LDF, or the decision to take disciplinary actions, has no legal effect and is null and void. Further, the argument that Shri P.C Thomas knew about this and had not objected is absolutely no argument to overcome the violation of the mandatory provision in clause – 22. In fact, there were differences in the Party on this issue and that is why democratic processes of calling meetings of committees, and even holding Party Elections were avoided.

(b) Meeting dated 30.04.2010 was not called as per the constitution as Prof. E.P. Mathew, the convener of Media Cell of the party has given affidavit that there was no 'notice' to delegates for the meeting of 30.04.2010. Neither the Press note regarding the decision to call such meeting nor any notice to delegates was issued. Further, the copy of Notice produced by the pro-merger group is concocted and no postage receipt or acknowledgement was produced by them to show that they have genuinely given notice for the meeting.

(c) In no committee, merger was discussed. It was only a sudden move executed by an illegal meeting of 30.04.2010, without notice to delegates. The several resolutions produced

several months after present matter was initiated, are all concocted.

(d) Shri. P.J. Joseph and others who declared on 30.04.2010 their decision to leave the original party Kerala Congress have not complied with the principles laid down by the Hon. Supreme Court in APHLC's case (supra), when they merged with another Party.

(e) The wish of the members of the Party, not that of their delegates, was to be taken while a fundamental decision was taken.

(f) The original Party stays and is entitled to continue its reserved symbol.

(g) The contention of the pro-merger group that the APHLC's case (supra) is not applicable as there is only unification of originally one party, which subsequently split into two factions is wrong because in the instant case there is merger of two different political parties. In other-words, Kerala Congress (M) is another political party with a separate constitution from 1987 onwards. It was in another political front, the U.D.F and for the past 25 years fighting with Kerala Congress. In elections the candidates of Kerala Congress and Kerala Congress(M) contested and defeated each other. Moreover, the APHLC case does not differentiate between parties who were once together. It talks about two parties who unify or merge.

In view of the above, the interim decisions of the Commission designating them as Kerala Congress (anti – merger group) and freezing their symbol “Bicycle” amounts to penalizing them for the wrong, undemocratic, stand taken by some erstwhile members, who have joined another party, for their temporary prospects. Hence, he requested that the nomenclature, Kerala Congress (anti – merger group), should be taken away and they be allowed to stay as Kerala Congress, in accordance with the principles laid down by the Hon’ble Supreme Court in APHLC’s case.

18. At the hearing, Shri K. Francis George has mainly contended that the principles laid down in APHLC's case (supra) is not applicable in their case for the following reasons:-

(a) Kerala Congress and the Kerala Congress (M) are ideologically compatible parties, with the same goals and similar programmes, being the offshoots of the original “Kerala Congress” party that was formed in 1964 in the State of Kerala.

(b) Both factions decided to ‘Unify’, in fact not merge, i.e. not any one faction merging with the other, or into the other, but decided to unite the two parties into one strong State party.

(c) Unlike in the APHLC’s case (supra), the party “Kerala Congress” led by Shri P.J. Joseph, did not decide in the State Committee meeting on 30.04.2010 to dissolve the party, leading to the elimination of its name and symbol, but only decided to unite the party with the Kerala Congress (M).

(d) Unlike in the APHLC's case, on unification, both factions, resolved to adopt the name of the original party, held by the faction headed by Shri P. J. Joseph, i.e " Kerala Congress". So the faction headed by Shri P. J. Joseph has not at any time in the unification process decided or agreed to discard the name of the party " Kerala Congress" and has not requested the Commission to de-recognise the party "Kerala Congress" and to cancel the party symbol "Bicycle" which it was holding for the last two decades.

(e) Unlike in the APHLC case, the State Committee of the Kerala Congress party held on 30.04.2010 had elected representatives from all the 14 districts of Kerala State, and had only decided on the unification of the party and had authorised the party chairman Shri P. J. Joseph to work out the modalities of unification. Subsequently, in a Combined State Committee meeting of both Kerala Congress and Kerala Congress(M), it was resolved to adopt the name " Kerala Congress" and the symbol "Two Leaves" of the Kerala Congress Party and the Kerala Congress (M) party respectively, for the unified party.

(f) The dissident faction headed by Shri P. C. Thomas had only one member in the Kerala Legislative Assembly after they deserted the party before the Assembly elections in April 2011, and have none in the Assembly after the election in April 2011, and so do not fulfil any of the conditions for getting recognised as a State Political Party, whereas the unified party, which is as of now known as the "Kerala Congress (M)" has 9 members in the Kerala Legislative

Assembly, one member in the House of the People, more than six hundred members in the Panchayath Raj Institutions and thousands and thousands of party members in Kerala State.

(g) He also submitted that the direction of the Commission to use the name “Kerala Congress- Anti-merger Group” has been flouted ever since 24.03.2011, by Shri P.C.Thomas and his men in their press releases and publicity materials by using the name “Kerala Congress”, instead of ‘ Kerala Congress- Anti Merger Group’, which had created confusion among the public.

In view of the above, he prayed that the Commission reject the contentions of the Anti- Merger group led by shri P.C. Thomas and to grant the name “Kerala Congress” to the unified party and reserve the symbol “Two Leaves” to the unified party and freeze the symbol ‘Bicycle’ reserved for the recognised State party “Kerala Congress”

19. After completion of the hearing, both the groups were advised to file their written submissions by 25.05.2012. The written submissions filed by them subsequently on 24.05.2012 and 22.5.2012 have also been taken on record.

20. The relevant records of the case and the documentary evidence that has been placed on record by the parties concerned have been carefully examined. Further, the legal submissions and contentions raised by both sides in their oral submissions as well as in their written submissions have also been analysed.

21. The main issue that arises for consideration is whether the Kerala Congress has merged or united with the Kerala Congress(M).

22. This requires examination of the procedure of merger given in the party's constitution. At the hearing, Shri K. Francis George submitted that the party constitution was amended on 7.6.2001, and filed by them on 7.6.2001 to the Commission. They had also filed the copy of the constitution in the year 2005 on 1.6.2005 in response to a communication from the Commission vide letter no. 56/Misc(Cons)/2005-JS-III dated 9.5.2005 and requested the Commission to verify the records. A copy thereof was also enclosed by them vide their letter dated 14.10.2010. It has been examined from the records that the said constitution has not been received and approved by the Commission. Even if it is assumed that the said constitution has been filed before the Commission but on perusal of the copy of that constitution it is found that there is no provision of merger or even the mandatory provision as required under Section 29A (5) is not provided in that constitution. The pro-merger group has also not produced any documentary proof to show that the Commission has approved the said constitution. However, it is relevant to note here that though the provision with regard to merger or split exist in the party's constitution in Commission's record but from the averments and assertions of both the pro and anti merger groups, it is seen that both the groups have relied upon the constitution which was stated to be filed by the pro-merger where there is no provision of merger. In fact, averments of the pro-merger group with regard to the amended constitution have not been controverted by the group led by Shri P.C. Thomas (Anti-merger group) and the anti-merger group has admitted that there is no provision of merger in the constitution of Kerala Congress.

Therefore, for the purpose of resolving the present issue, it is not necessary to go into the question of what is the procedure of merger in the party's constitution.

23. The contention made by the pro-merger group that in absence of any provision in the constitution regarding merger/amalgamation/ unification, the State Committee is the competent body to take decision on the issue of merger and the decision was validly passed in the meeting of the State Committee on 30.04.2010 in which 347 members out of the 427 elected members have attended does not also hold good as the organizational elections of the party were due in the month of April, 2010 but instead of going for organizational election, the pro-merger group decided to merge the party with the Kerala Congress (M). The competent body should have taken this decision after properly conducting of organizational elections.

24. The Supreme Court has observed that the decision to merge a political party with another political party has to be taken by it by involving the general membership of the party, and not by a handful of its leaders or office-bearers, as the merger of the party amounts to wiping off its existence and signing its death warrant. It would therefore be imperative to examine whether the above principle as laid down by the Supreme Court has been followed by the pro-merger group of Kerala Congress.

25. Before examining the issue of merger of Kerala Congress in the light of the principles laid down by the Supreme Court in APHLC's case (supra), it would be appropriate to first examine whether in the facts and

circumstances of the instant case the principle laid down by the Supreme Court in the APHLC case is applicable to the instant case.

26. Shri K. Francis George has contended that the APHLC's case is not applicable in their case as unlike APHLC there is no merger of two different political parties but it is only unification of two parties which were offshoots of the originally one party i.e. Kerala Congress. It has been observed that during the entire proceedings, the words, 'merger' and 'unification' have been used interchangeably. Even in the communications with the Commission, these two terms have been used to denote the synonymous meaning. The Commission does not wish to dilate on the controversy with regard to the use of these two terms, because, in common parlance, these two terms are understood to have the same meaning, that is, to say, the joining of two or more parties either to form a new party or to inflate the rolls of the already existing party. Moreover, even the Hon'ble Supreme Court in the case of Samyukt Socialist Party Vs the Election Commission of India, (AIR 1967, SC 898) has described the formation of the Samyukt Socialist Party as a merger of the Praja Socialist Party and the Socialist Party and not as the amalgamation of those two parties. Moreover, the history of any political party does not have any significance and bearing in deciding such matters. What matters is the status of the party prior to the dispute and as per Commission's record the status of these parties were that Kerala Congress and Kerala Congress(M) are two different political parties registered with the Commission under Section 29A of the Representation of the People Act, 1951 with its two separate constitutions. Further, the facts and circumstances of the instant case are similar to the APHLC's case. In that case also there was merger of the All Party Hill Leaders'

Conference (APHLC) with the Indian National Congress in 1977, and one of the groups of the APHLC was claiming that the party had merged with the Indian National Congress and the other group was contending otherwise. Therefore, the Commission does not agree with this contention of Shri K. Francis George and holds that the issues involved in the present case are almost similar and, therefore, the principles laid down in the APHLC's case (Supra) would be applicable in the instant case.

27. Having decided that the principles laid down by the Supreme Court in APHLC's are applicable to the instant case, the next and important question for consideration and decision is whether the reported merger of Kerala Congress with the Kerala Congress(M) has been done as per the principles laid down by the Supreme Court in APHLC's case.

28. In the instant case, there are two groups - one group led by Shri P.J. Joseph claims that the Kerala Congress has merged with the Kerala Congress(M) and that it has ceased to exist as a separate party, whereas the other group led by Shri P. C. Thomas refutes that claim and makes a counter claim that the party continues to exist and function as a separate entity under his leadership. It is evident from the records that it was the group led by Shri P. J. Joseph that had made the initial claim that the Kerala Congress had merged with Kerala Congress(M). Therefore, the onus of proof to establish their claim initially lies on that group. It is to be seen whether such onus has been discharged by that group to the satisfaction of the Commission.

29. The pro-merger group has initially vide its letter dated 18.5.2010

informed about the removal of Shri P. C. Thomas, General Secretary of the party as per the Commission's record. Thereupon, since the organizational election of the party was due in April, 2010, on being asked about the status on organizational election of the party, vide their letter dated 26.6.2010, inter-alia intimated that the party has 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 P.J. Joseph, MLA, former chairman, Kerala Congress countersigned by others intimating 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 symbol and requesting for approval of the unification. On 20.8.2010, Shri K. Francis George again submitted an application reiterating the facts and in support of his contention enclosed (i) copies of unanimous resolutions passed in the State Committee meeting of the Kerala Congress Party, and in the combined State Committee meeting of both parties, approving the unification of both parties and (ii) copies of affidavits of one MP and 10 MLAs of the two parties. Further, on being asked to show that the merger of the party has been as per the provisions of the party's constitution, the pro-merger group on 14.10.2010, furnished (a) Copy of the party circular dated 12.4.2010, directing party district and constituency committees to discuss and inform their views regarding the unification proposal, (b) Notice of State Committee meeting stated to be held on 30.4.2010 with the agenda to discuss and decide on the proposals of "unification of Kerala Congress and Kerala Congress (M)", (c) Copy of the attendance sheet and minutes of the State Committee meeting dated 30.4.2010, (d) Copy of the notice dated 1.5.2010 sent to Shri P. C. Thomas, General

Secretary regarding his removal from the primary membership of the party, (e) Copy of the resolution passed in favour of unification of the party at the State Committee meeting dated 30.4.2010, (f) Resolutions from District and Constituency Committees of the party in favour of the unification proposal.

30. It is relevant to note here that the events relating to merger of the Kerala Congress with the Kerala Congress(M) started from 12.4.2010 (date of notice) and 30.4.2010 (date of meeting) as claimed by the pro-merger group in their later references made to the Commission but in the letter dated 18.5.2010, received from the pro-merger group, there was no mention about any such merger or events. In the said letter there was only information about the removal of Shri P. C. Thomas. The information about merger or unification was communicated by the pro-merger group vide their letter dated 26.6.2010 only when they were asked to inform about the status on organisational election of the party vide Commission's letter dated 14.6.2010. Further, during April'2010 to September'2010 though several correspondences were received in the Commission from the pro-merger group but no substantial documentary proof, except a copy of resolution of the meeting dated 30.4.2010 stated to have been passed by the State Committee of the party, was submitted by the pro-merger group to substantiate the averment that the State Committee of the party in the meeting dated 30.4.2010, has decided to merge with the Kerala Congress(M). The resolution was also not accompanied with the attendance register of the meeting dated 30.4.2010, at which such decision of merger was taken. This, in itself, should be reason to raise suspicion on the validity of the meeting dated 30.4.2010, at which it has

been claimed by the pro-merger group that the decision to merge with the Kerala Congress was taken by the State Committee of the party.

31. Further, though pro-merger group has submitted a copy of the party circular dated 12.4.2010, directing party district and constituency committees to discuss and inform their views regarding the unification proposal and notice of State Committee meeting proposed to be held on 30.4.2010 with the agenda to discuss and decide on the proposals of unification of Kerala Congress and Kerala Congress (M) but no evidence, whatsoever, has been adduced to show as to what was the mode of despatch of that letter to them and whether the notice was actually received by them. No record of any kind has been produced to show that the decision to merge the Kerala Congress with the Kerala Congress(M) has been taken with the approval of the general membership of the party, as was enjoined upon in the light of the Supreme Court's dictum in the case of APHLC(supra).

32. On the other hand, it has been averred by Shri P.C.Thomas that meeting stated to be held on 30.04.2010 was not called as per the constitution as Prof. E.P. Mathew, the convener of Media Cell of the party, has given affidavit that there was no 'notice' to delegates for the meeting of 30.04.2010. Neither any Press Note regarding the decision to call such meeting nor any notice to delegates was issued. Further, the copy of notice produced by the pro-merger group is allegedly concocted and no postage receipt or acknowledgement was produced by them to show that they have genuinely given notice for the meeting. In no committee, according to him, merger was discussed. It was only a sudden story evolved by an illegal meeting of 30.04.2010, without notice

to delegates. The several resolutions produced months after date of meeting, are all allegedly concocted.

33. Having regard to the above, the only conclusion which can be arrived at is that the Kerala Congress has not merged with the Kerala Congress(M) and that and it continues to exist and function as a separate party. It is only some leaders of the Kerala Congress who have joined the Kerala Congress(M), but the party has not fully merged/integrated with the Kerala Congress(M) enbloc.

34. Having decided that the party continues to exist, the next question for consideration and decision of the Commission is whether the party is still a State recognized party or has lost its status as a State party.

35. The recognition and de-recognition of political parties as State parties is governed by the provisions of paragraph 6A and 6C of the Election Symbols (Reservation and Allotment) Order, 1968.

36. After the aforesaid interim Order, the anti-merger group contested the general election to the Legislative Assembly of Kerala'2011 with the name "Kerala Congress (Anti-merger Group)" and symbol 'Ceiling Fan'. It had set up 2 candidates in the said election but did not win any seat and secured only 0.51% votes. Therefore, it does not satisfy any of the criteria laid down for the continued recognition of the said party as recognised State party in the State of Kerala.

37. The request of the anti-merger group of the party to grant the status of recognized State party in the State of Kerala in the light of judgment of APHLC's case cannot be accepted because the new assembly of the Kerala State has been constituted after the general election to the

Legislative Assembly of Kerala'2011 whereas in the APHLC's case there was no such development in the Legislative Assembly of the State.

38. Having regard to the above, the Commission is satisfied that the Kerala Congress is no longer entitled to recognition as a State party under paragraphs 6A and 6C of the Election Symbols (Reservation and Allotment) Order, 1968. Accordingly, the said party shall cease to be recognized as a State party in the State of Kerala and shall not be entitled to the exclusive use of the symbol "Bicycle" earlier reserved for it in that State. It shall hereafter be a registered-unrecognised political party for the purposes of the said Symbol Order.

39. In view of the above, the petition dated 17.07.2010, filed by pro-merger group led by Shri P.J. Thomas is hereby dismissed. Accordingly, Kerala Congress continues to exist and function as a separate party. The Kerala Congress party is advised to hold organisational elections of the party, in accordance with its constitution within six months of the issue of this order.

This order has the approval of the Commission.

(Sudhir Tripathi)
Deputy Election Commissioner

New Delhi
11th June, 2012

