

**BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM**

**PRESENT: SHRI.V.BHASKARAN, STATE ELECTION
COMMISSIONER**

Friday, the 28th day of June 2019

R.C.No.03/2018

Reference Petitioner : Secretary,
Udumpannur Grama Panchayat,
Idukki District.

(By Adv.Sajitha.S)

Respondents : 1. T.C.Rajan
S/o Varkey,
Thyparambil Veedu,
Chamakayam, Malayinchi,
Idukki District.

(By Adv.Bhagavathsingh)

2. Ashraf P.A.,
S/o Alikunju,
Chottaparambil,
Malanji P.O.
Udumbannoor Village,
Thoudupuzha.

(By Adv. Nemo V.Sanjeev)

ORDER

This is a case referred by the Secretary of Udumbannur Grama Panchayat as per letter dated 09.07.2018 under proviso to Section 36(1) of

the Kerala Panchayat Raj Act. The 1st respondent is an elected member of Udumbannur Grama Panchayat in the election held in November 2015.

2. The Secretary, earlier as per letter dated 16.05.2018 reported that the Additional Sessions Judge, Thoudupuzha convicted the 1st respondent and two others for the offences punishable under Section 333r/w 34 of IPC and they were sentenced to undergo rigorous imprisonment for two years each and fine of ₹1,000/- each as per judgment dated 06.12.2004 in sessions case No.195/2003. Thereafter he referred the matter as per the above letter dated 09.07.2018 for a decision regarding the disqualification of the 1st respondent to continue as a member on account of his conviction in the above criminal case. It is also stated in the letter that the 1st respondent failed to attend the meetings of the Panchayat Committee held on 15.05.2018, 28.05.2018, 11.06.2018, 19.06.2018, 26.06.2018, 02.07.2018 and 07.07.2018. The Secretary referred the case for a decision in that matter also.

3. The case was taken on file as per the proviso to Section 36(1) of the Kerala Panchayat Raj Act and notice was issued to the 1st respondent.

4. The 1st respondent appeared through counsel and filed objection contending as below.- It is true that the 1st respondent was convicted and sentenced to undergo rigorous imprisonment for two years for the offence under Section 333 r/w 34 of IPC. As against that the 1st respondent filed criminal appeal No.2177/2004 before the Hon'ble High Court and in appeal

the sentence was reduced to one year. The offence alleged against the 1st respondent will not come under the purview of moral turpitude and hence the 1st respondent is not liable to be disqualified under Section 35(1)(a) of the Kerala Panchayat Raj Act.

5. The 2nd respondent is a voter of ward No.6 of Udumbannur Grama Panchayat from where the 1st respondent was elected as a member. The 2nd respondent got himself impleaded in the proceedings and he supports the Secretary of the Panchayat. His contention is that the 1st respondent incurred disqualification under Section 35(1)(a) of the Kerala Panchayat Raj Act as he was convicted for the offence under Section 333 of IPC and sentenced to undergo for two years which was later reduced to one year in appeal.

6. The evidence in this case consists of the oral testimony of PW1 and Exts.A1 to A1(k).The respondents did not adduce any evidence.

7. Both sides were heard.

8. The following points arise for consideration.

(1) Whether the 1st respondent has become subject to disqualification under Section 35(1)(a) of the Kerala Panchayat Raj Act as alleged?

(2) Whether the 1st respondent has incurred disqualification under Section 35(1)(k) of the Kerala Panchayat Raj Act as alleged.

9. **POINT No.1:** The 1st respondent is an elected member of

UdumbannurGrama Panchayat in the election held in November 2015. A criminal case was registered against to the 1st respondent and two others by the Karimannur Police as Crime No.43/2002 on that station for offences under Sections 333 and 332 of IPC. Allegation is that the 1st respondent and two others attacked and caused grievous hurt to forest officials while they are discharging their duties as publicservants in the forest area, with intent to prevent them from discharging their duties. After trial of the case the 1st respondent and two others were convicted by the Additional Sessions Judge, Thodupuzha in Sessions case No.195/2003 for the offence under Section 333 r/w 34 of IPC and sentenced to undergo rigorous imprisonment for two years each as per Judgement dated 06.12.2004. Ext.A1 is the file relating to the reference and Ext.A1(d) is the copy of the judgment in Sessions case No.195/2003. As against Ext.A1(d) judgment the 1st respondent and two others filed appeal before the Hon'ble High Court as Criminal Appeal No.2177/2004 and in appeal the conviction was confirmed and the sentence was modified and reduced to rigorous imprisonment for one year each and fine of ₹25,000/- each. Ext.A1(e) is the copy of the judgment in the criminal appeal.

10. The Secretary of the UdumbannurGrama Panchayat who referred the case for decision regarding the disqualification was examined as PW1. The respondent did not adduce any evidence.

11. When a member is convicted and sentenced to imprisonment for a period not less than three months for an offence involving moral turpitude he would certainly invite the disqualification under Section 35(1)(a) of the Act. Section 35 of the Kerala Panchayat Raj Act deals with disqualifications of members. Section 35(1)(a) and Section 35(1)(k) are the provisions relevant in this case. As per Section 35(1)(a) of the Act a member shall cease to hold office as such, if he is found guilty as described under clause (b) of sub Section(1) of Section 34 or is sentenced for such an offence. Section 34(1)(b) of the Kerala Panchayat Raj Act states that a person shall be disqualified for being chosen as and for being a member of a Panchayat at any level if he has been sentenced by a court or tribunal to imprisonment for a period not less than three months for an offence involving moral turpitude.

12. It is a fact that the 1st respondent was found guilty and convicted for an offence under Section 333 of IPC and that he was sentenced to undergo rigorous imprisonment for two years as per Ext.A1(d) judgment dated 06.12.2004 and later in appeal reduced to one year. To attract Section 35(1)(a) the period of imprisonment should be three months and above and admittedly in this case it is above three months. Contention of the 1st respondent in the objection statement is that the offence for which he was convicted is not an offence involving moral turpitude. It may be noted that the 1st respondent was convicted for the offence under Section 333 of IPC. It is certainly a grave offence. Allegation is that the 1st respondent and two

others attacked and caused grievous hurt to forest officials while they were discharging their duties as public servants in the forest area, with intent to prevent them from discharging their official duties. One of the forest officers sustained fracture on his hand. The allegations were found true and they were convicted as above.

13. It is to be stated that the concept of moral turpitude depends upon the conduct for which the offender stands convicted and sentenced. Moral Turpitude as per Black's Law Dictionary is as follows:-

“The Act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man”.

“Implies something immoral in itself regardless of it being punishable by law”. “restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind.”

14. It may be noted that the 1st respondent was convicted for his act of entering into the forest area and attacking and causing serious injuries to the forest officer while they are discharging their official duties, with intent to prevent them from discharging their duties. Certainly his act would shock the moral conscience or society in general and therefore it cannot be contended that the offence for which the 1st respondent was

convicted is not an offence involving moral turpitude. The contention of the 1st respondent that it is not so is only to be ignored.

15. Now let us consider whether the 1st respondent can be disqualified in this proceedings initiated under Section 36(1) of the Kerala Panchayat Raj Act invoking Section 35(1)(a) of the Act. It may be noted that the 1st respondent was convicted for the above offence by the Additional Sessions Judge on 06.12.2004. Ext.A1(d) Judgment would show the said fact. Admittedly the conviction was not stayed by the Appellate Court and the execution of sentence alone was stayed. The 1st respondent was elected as a member of Udumbannur Grama Panchayat in the election held in November 2015. So the 1st respondent had the disqualification in question prior to the election itself and it is a pre-election disqualification.

16. The State Election Commission has no jurisdiction to entertain a petition with regard to a disqualification already incurred by a member prior to the election and even continues to exist, as held in the decision reported in 2002(3)KLT 773 (Marykutty Mathew V. State Election Commission).

17. As per Section 36 of the Kerala Panchayat Raj Act only those questions regarding disqualification under Section 30 or Section 35 after having been elected as a member are referable to the State Election Commission. Once a candidate is elected as a member, even assuming that

he had at the time of election incurred disqualifications under Section 30 or 35 of the Kerala Panchayat Raj Act it is not for the State Election Commission to embark upon an enquiry regarding such disqualification after the election. The jurisdiction of the State Election Commission is confined to disqualification incurred after having been elected as a member. As far as the pre-election disqualification is concerned the jurisdiction to adjudicate such issues is only on designated Courts. At Paras 7 and 8 of the above decision it was held as below:-

7. It is pertinent to note that Section 36 provides for “Determination of subsequent disqualification of a member” and it is clearly provided in the Section that only those questions regarding disqualification under Section 30 or 35 after having been elected as a member are referable to the State Election Commission. In other words, once a candidate is elected as a member, even assuming he had at the time of election, incurred disqualifications under Section 30 or Section 35 of the Kerala Panchayat Raj Act it is not for the State Election Commission to embark upon an enquiry regarding such disqualification after the election. The jurisdiction of the State Election Commission is confined to disqualification incurred after having been elected as a member. Needless to say, in case a member accepts employment in a Cooperative Society, it is a matter for the Commission to consider, being a post election disqualification.

8. *As far as the pre-election disqualification is concerned, the jurisdiction to adjudicate such issues is as provided under Chapter X, comprising of Section 87 to 119. Disputes Regarding Election, is on the designated courts. Section 87 dealing with election petitions provides that “No election shall be called in question except by an Election Petition presented in accordance with the provisions of this Chapter”. Section 88 deals with designated Courts,- the Munsiff Court or the District Court, as the case may be Section 102 deals with the grounds. Section 102(1)(a) is the ground on disqualification- “that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act”. Since all the petitioners are elected members, the questions pertaining to their qualification or disqualification as on the date of election, being a pre-election issue, can be decided only in an Election Petition by the designated court under Section 88 of the Act.*

Same was the view expressed by the Hon’ble High Court in an earlier decision reported in 1999 (3) KLT 754 (AntappanV.Asokan)

18. It is a matter of admission that the conviction by the Additional Sessions Judge was on 06.12.2004 and it was much prior to the election of the 1st respondent as member of UdumbannurGrama Panchayat. Argument of the learned counsels for the Secretary and the 2nd respondent is that the sentence passed by the Additional Sessions Judge, Thoudupuzha in SC No.195/2003 was suspended by the Hon’ble High Court as per order in

Criminal MA No.1/2004 dated 21.12.2004 and hence there was no disqualification at the time of the nomination and election. The disqualification revived and came into effect only on 06.06.2017 when the Criminal Appeal was disposed by the Hon'ble High Court as per Ext.A1(e) judgment. The reference is hence maintainable and the Commission has jurisdiction to consider the reference, the counsels further submit.

19. It is true that the sentence passed by the Sessions Court was suspended by the Hon'ble High Court. But mere suspension of sentence will not take away the effect of conviction and it will not qualify the 1st respondent to contest the election and to become a member as the conviction continues to operate and disqualifies him from contesting the election. It may be noted that the 1st respondent did not seek for a stay of conviction and the conviction was not stayed also. So the disqualification arising out of conviction continues to operate even after the suspension of sentence or stay of execution of sentence. The contention of the learned counsels that there was no disqualification for the respondent at the time of filing nomination and election as the sentence stood suspended at that time therefore cannot be accepted.

20. Another argument of the learned counsel for the 2nd respondent is that the word used in Section 34(1)(b) and 35(1)(a) is "Sentenced and the word conviction" is not there in the Sections and therefore suspension of sentence would qualify the 1st respondent to contest the election and the

alleged disqualification was not there at that time till Ext.A1(e) judgment dated 06.06.2017. As there was no pre poll disqualification the State Election Commission has jurisdiction to consider the reference under Section 36(1) of the Act. It is to be stated that there cannot be a sentence without conviction and the word conviction need not be specifically stated in the Section. Further, it is not there in the sections that suspension of sentence will take away the effect of conviction and that is not the law also. Unless the conviction is stayed the disqualification arising out of conviction continues to operate and hence the above argument of the counsel is not sustainable.

21. It can be seen from the above that the conviction of the 1st respondent for the offence put forward above was on 06.12.2004, ie., much prior to his election as a member of Udumbannur Grama Panchayat. At the time of the election itself the 1st respondent had incurred the disqualification. The conviction was not stayed by the Appellate Court. As stated above the stay of the execution of the sentence will not alter the situation. As the disqualification incurred by the 1st respondent was prior to the election the State Election Commission has no jurisdiction to consider that matter in the proceedings under Section 36 of the Kerala Panchayat Raj Act. Reference is answered accordingly.

22. POINT No.2:- It is also stated in the reference that the 1st respondent incurred disqualification under Section 35(1)(k) of the Kerala

Panchayat Raj Act as he failed to attend the Panchayat Committee meetings held on 15.05.2018, 28.05.2018, 11.06.2018, 19.06.2018, 26.06.2018, 02.07.2018 and 07.07.2018. But at the time of evidence PW1 has confined the dates of absence to 15.05.2018, 28.05.2018 and 11.06.2018. In Ext.A1(j) notice also the dates stated were on 15.05.2018, 28.05.2018 and 11.06.2018. Ext.A1(j) is the notice said to have been issued to the 1st respondent under Section 37(2) of the Act stating that the 1st respondent has become disqualified as provided under Section 35(1)(k) of the Kerala Panchayat Raj Act. Section 35(1)(k) of the Act reads as below:-

“Disqualifications of members,-(1) Subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such, if he..

X XXXX XXXXXXXXXXXX

(k) absents himself without the permission of the Panchayat concerned from its meeting or the meeting of the Standing Committee thereof for a period of three consecutive months reckoned from the date of commencement of his term of office or of the last meeting that he attended, or of the restoration to office as member under sub-section (1) of Section 37, as the case may be, or if within the said period, only in less than three

meetings of the panchayat or of the Standing Committee as the case may be, have been held, absents himself from three consecutive meetings held after the said date:

Provided that no meeting from which a member absented himself shall be counted against him under this clause if,-

- (i) due notice of that meeting was not given to him; or*
- (ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or*
- (iii) the meeting was held on a requisition of members;”*

23. To attract the provision of Section 35(1)(k) of the Act certain conditions are to be satisfied. Firstly the member should absent himself from the meeting of the Panchayat or of the Standing Committee of which he is a member for a period of three consecutive months reckoned from the date on which his term of office starts or of the last meeting which he attended. Secondly due notices of those meetings should have been served to him and such meetings were not held on requisition of members. There should have been three meetings within the period of the above three months. It is also to be noted that if within the said period of three months only less than three meetings of the Standing Committee have been held the member should have failed to attend the meetings of the subsequent three consecutive months to attract disqualification. The said period of

three consecutive months is to be calculated on the basis of the month starting from the date of the meeting he last attended.

24. As the question of disqualification under Section 35(1)(k) of the Act is also referred for decision it is to be verified whether the meeting was properly conducted and whether proper notice was issued to the 1st respondent. From the evidence of PW1 and Ext.A1(j) notice it can be seen that there was no proper notice to the 1st respondent regarding the meeting and that the meetings convened were not as stated in Section 35(1)(k) of the Act. Evidence of PW1 is that he does not know on which dates notice for the above meetings were issued to the respondent. The notice book or the copy of the notice are not produced in this case. As per Rule 4(1) of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules the President of the Panchayat Committee has to give three clear days notice while convening its meeting. As per the proviso to Rule 4(1) the date of receipt of notice and the date of meeting shall not be included in the said three clear days. It can be seen from the evidence that no such notice was issued in this case. According to PW1 notices for the above meetings on 15.05.2018, 28.05.2018 and 11.06.2018 were sent to the 1st respondent by registered post and the same were returned unserved. It is stated by PW1 that Ext.A1(g), A1(h) and A1(i) are those returned postal covers. But on verification of Ext.A1(g), A1(h) and A1(i) it can be seen that Ext.A1(h) is for the meeting held on 08.05.2018 and Ext.A1(i) is a notice for the

meeting of Standing Committee for Finance. It seems that PW1 has no idea about the notices issued to the 1st respondent regarding the meetings referred to in Ext.A1(j).

25. To disqualify a member under Section 35(1)(k) of the Kerala Panchayat Raj Act he must be absent without permission of the Panchayat for a period of three consecutive months reckoned from the date of the last meeting he attended. In is an evidence that the 1st respondent attended the meeting held on 24.04.2018. So as per Section 35(1)(k) of the Act the period of three consecutive months is to be reckoned from 24.04.2018 and the last date of three consecutive months period would fall on 25.07.2018. The first month will be the period in between 24.04.2018 and 23.05.2018, then between 23.05.2018 and 22.06.2018 and the third consecutive month will be the period between 22.06.2018 and 21.07.2018. It may be noted that in the third month starting from 22.06.2018 to 21.07.2018 no meeting was admittedly held in this case. So it cannot be said that there were proper meetings and absence as stated in Section 35(1)(k) of the Kerala Panchayat Raj Act and therefore the absence for a period of three consecutive months due once in a month to attract that section does not arise in this case. Anyway a detailed discussion on that aspect is not necessary in this case as it is already found above that there was no proper notice to the respondent for the meetings referred to in Ext.A1(j) notice, as

contemplated by Rule 4(1) of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules.

26. From the available evidence in this case it is not possible to say that the 1st respondent has incurred the disqualifications put forward against him and therefore I will have to necessarily hold and I hold that the 1st respondent has not ceased to be a member of UdumbannurGrama Panchayat as alleged. The 1st respondent is hence allowed to continue as a member of UdumbannurGrama Panchayat. Reference is answered as above.

Pronounced before the Commission on this the 28th day of June 2019

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the petitioner

PW1 : Shri.George Joseph, Secretary,
UdumbannurGrama Panchayat

Documents produced on the side of the Petitioner

A1 : File maintained in UdumbannurGrama Panchayat relating to the alleged disqualification of the 1st respondent

A1(a) : Leave application submitted by Shri.Rajan to the President, UdumbannurGrama Panchayat dated 25.04.2018

- A1(b) : Letter No.275/TDR//18-KMNR dated 07.05.2018 issued by the Station House Officer, Karimannur Police Station to the President, Udumbannur Grama Panchayat
- A1(c) : Copy of the letter No.A4-2547/18 dated 16.05.2018 issued by the Secretary, Udumbannur Grama Panchayat to the Secretary, State Election Commission
- A1(d) : Copy of the judgment in Sessions case No.195/2003 in the court of Additional Sessions Judge, Thoudupuzha dated 06.12.2004
- A1(e) : Copy of the judgment in Criminal Appeal No.2177/2004 dated 06.06.2017
- A1(f) : Copy of the FIR of Karimannur Police Station Crime No.43/2002 dated 18.02.2002
- A1(g) : Returned postal cover
- A1(h) : Returned postal cover
- A1(i) : Returned postal cover
- A1(j) : Notice No.44-2547/2018 dated 01.11.2018 issued by the Secretary, Udumbannur Grama Panchayat to Shri.T.C.Rajan
- A1(k) : Returned postal cover

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//

To disqualify a member under Section 35(1)(k) of the Kerala Panchayat Raj Act he must be absent without permission of the Panchayat for a period of three consecutive months reckoned from the date of the last meeting he attended. In is an evidence that the 1st respondent attended the meeting held on 24.04.2018. So as per Section 35(1)(k) of the Act the period of three consecutive months is to be reckoned from 24.04.2018 and the last date of three consecutive months period would fall on 25.07.2018. The first month will be the period in between 24.04.2018 and 23.05.2018 then between 23.05.2018 and 22.06.2018 and the third consecutive months will be the period between 22.06.2018 and 21.07.2018. It may be noted that in the third month starting from 22.06.2018 to 21.07.2018 no meeting was admittedly held in this case. So it cannot be said that there was proper meeting as stated in Section 35(1)(k) of the Kerala Panchayat Raj Act and therefore the absence for a period of three consecutive months due once in a month does not arise in this case. Anyway a detailed discussion on that aspect is not necessary in this case as it is found above that there was no proper notice to the respondent for the meetings referred to in Ext.A1(j) notice, as contemplated by Rule 3(1) of the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules.

From the available evidence in this case it can be seen that there was no proper meeting and no proper notice also. Under the circumstances it is not possible to say that the 1st respondent has incurred

the disqualifications put forward against him and therefore I will have to necessarily hold and I hold that the 1st respondent has not ceased to be a member of UdumbannurGrama Panchayat as alleged. The 1st respondent is hence allowed to continue as a member of UdumbannurGrama Panchayat. Reference is answered accordingly as above.