

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

**PRESENT:SHRI.K.SASIDHARAN NAIR, STATE ELECTION
COMMISSIONER**

Thursday the 14th day of May, 2015

RC. No.3/2015

Petitioner : The Secretary
Upputhara Grama Panchayat,
Upputhara P.O.
Idukki District.

Respondent : Mathew P. Joseph @ Sunny,
Member, Ward No.2,
Upputhara Grama Panchayat,
Upputhara P.O., Idukki District

(By Advocate S.Ajith Kumar)

This case having heard on 14th May 2015, in the presence of the Secretary and **Advocate S. Ajith Kumar** for the respondent and having stood over for consideration to this day, the Commission passed the following

ORDER

This is a reference taken on file upon a letter sent by the Secretary, Upputhara Grama Panchayat under the proviso to Section 36(1) of the Kerala Panchayat Raj Act.

2. In the letter dated 28.02.2015, the Secretary has stated that the respondent who is a member elected from ward No.2 of Upputhara Grama Panchayat has been convicted and sentenced to three years imprisonment and to pay a fine of ₹10,000/- in Sessions Case No.556/2013 of Thodupuzha Sessions Court and so the Secretary has prayed for taking further action in the matter.

3. The case was taken on file under the proviso to Section 36(1) of the Kerala Panchayat Raj Act as per Sections 35(1)(a) and 35(1)(l) of the Kerala Panchayat Raj Act r/w Section 8(3) of the Representation of People Act. Summons was issued to the respondent and though he had entered appearance and availed several opportunities to file objection, no objection has been filed. As the respondent remained absent and did not file any objection, he has been set exparte. The Secretary has been examined as PW1 and the copy of judgment in SC No. 556/2013 available in the file has been marked as Ext.C1.

4. On a perusal of Ext.C1 it is found that the respondent has been found guilty and convicted under Sections 324 and 326 IPC and he has been sentenced to undergo Rigorous Imprisonment for three years and in default to undergo Rigorous Imprisonment for a further period of 6 months and also to pay a fine of ₹10,000/-. He also stands sentenced for a period of one year for the offence under Section 324 of IPC.

5. Section 35 of the Kerala Panchayat Raj Act deals with disqualifications of members. Section 35(1)(a) of the Kerala Panchayat Raj Act states that 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 of not less than three months for an offence involving moral turpitude. In this context it is also profitable to refer to Section 35(1) (1) of the Kerala Panchayat Raj Act which states that a member shall cease to hold office as such if he is disqualified under any provisions of the Constitution or under any law for the time being in force for the purpose of elections to the Legislature of the State. Section 8(3) of the Representation of People Act, 1951 which states that a person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. It is seen that the respondent has been convicted and sentenced, under Section 326 of IPC, for a period of three years and so Section 8(3) of the Representation of People Act r/w Section 35(1)(1) of the Kerala Panchayat Raj Act is squarely attracted against him. Even assuming that the respondent has been released

on bail that will not rescue him from the liability of disqualification for the simple reason that he has still to be treated as under conviction and unless the conviction also is stayed, the respondent cannot have any escape from the consequence. Therefore I find that the respondent is disqualified as provided by Section 35(1)(1) of the Kerala Panchayat Raj Act r/w Section 8(3) of the Representation of People Act, 1951 and such disqualification will continue for a period of six years since his release.

In the result, it is declared that the respondent shall cease to hold office as a member of Upputhara Grama Panchayat and such disqualification shall continue for a further period of six years since his release.

Pronounced before the Commission on this the 14th day of May 2015

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.
APPENDIX

Witness examined on the side of the petitioner

PW1 : Secretary, Upputhara Grama Panchayat

Document produced on the side of the petitioner

C1 : Copy of the judgment in SC No.556/2013 dated 17.01.2015 of Thoudupuzha Sessions Court

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

//True Copy//