

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

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

Tuesday, the 22nd day of April 2014

O.P.No.11/2014

Petitioner : K.P.Shaji,
Kambiyakathu,
Muhamma P.O., Alappuzha,
PIN –6888 525.

(By Adv.Aravind Ghosh.T.N)

Respondent : Adv.James Chacko,
Yogyaveettil,
Muhamma.P.O.,
Alappuzha, PIN – 688 525.

(By Adv. Sasthamangalam R.Jayakrishnan)

This petition having come up for hearing on the 25th day of March 2014, in the presence of Advocate **Aravind Ghosh.T.N** for the petitioner and Advocate **Sasthamangalam R.Jayakrishnan** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

Petition filed under Section 36 of the Kerala Panchayat Raj Act for declaring that the respondent has ceased to function as a member of ward No.11 of Muhamma Grama Panhayat as provided by Section 35(1)(g) of that Act.

2. The petitioner would allege as follows:- The petitioner is a public interested person residing in ward No.6 of Muhamma Grama Panchayat and his name is included the voters list as serial No.290 of Part-1 of ward No.6 of this Panchayat. The respondent is a practicing Advocate and also the Vice President of Muhamma Grama Panchayat. He was elected from ward No.11 of this Panchayat. The petitioner filed a petition before the Hon'ble Ombudsman For Local Self Government Institutions as O.P.No.1661/2009 against the then Secretary of Muhamma Grama Panchayat who disbursed benefits to 17 persons for constructing houses by violating the provisions of the Kerala Panchayat Raj Act and the said 17 persons have been impleaded as additional respondents 2 to 18 as directed by the Hon'ble Ombudsman. By the illegal distribution of the benefit, the Government lost ₹8,50,000/-. The respondent has entered appearance for the additional respondents 2 to 18 in O.P.No.1661/2009 before the Hon'ble Ombudsman and objections also are filed by the said respondents. As per Section 35(1)(g) of the Kerala

Panchayat Raj Act any member of a Panchayat would cease to hold office as such, if he is employed as paid legal practitioner on behalf of the Government or the Panchayat concerned or accept employment as legal practitioner against the Panchayat. Since the respondent appeared for the additional respondents 2 to 18 he has become disqualified as provided by Section 35(1)(g) of the Kerala Panchayat Raj Act. The interest of the respondents 2 to 18 in O.P.1661/2009 pending before the Hon'ble Ombudsman is against the interest of the Panchayat and the Government. Therefore the respondent is to be declared as disqualified to continue as a member of Muhamma Grama Panchayat and hence this petition.

3. The respondent filed objection contenting in brief, as follows:-
The petitioner has no locus-standi to file this petition. He is not a resident of the ward from which the respondent is elected. The genesis of the case before the Hon'ble Ombudsman is that under the scheme of EMS Housing Scheme, 17 persons were granted ₹50,000/- each for construction of houses by the Muhamma Grama Panchayat and the petitioner filed the case challenging the said allotment of funds on the ground that the additional respondents were persons not approved by gramasabha held in different wards of the Panchayat. The respondent has given free legal aid to the said

persons who obtained benefits and he had never received any kind of remuneration from any of the parties. It is true that he has filed Vakalath for respondents 2 to 18 in the case pending before the Hon'ble Ombudsman without even accepting any advocate fee or remuneration. The case of the said respondents is not against the Panchayat and the Panchayat committee itself had taken decision on 06.05.2013 authorising this respondent to file Vakalath for the said respondents in O.P. No. 1661/2009 pending before the Hon'ble Ombudsman. The contention of Panchayat before the Hon'ble Ombudsman is that the allotment of funds to respondents 2 to 18 is proper and legal and that they are fully entitled to receive the same. The engagement of this respondent for the respondents 2 to 18 in O.P.No.1661/2009 pending before the Hon'ble Ombudsman will not come under the purview of Section 35(1)(g) of the Kerala Panchayat Raj Act and so the petition deserves only dismissal.

4. On the basis of the pleadings issues have been settled and the 1st and 2nd issues are the following,-

- (1) Whether the petitioner has locus-standi to file the petition?
- (ii) Whether the respondent is employed as a paid legal practitioner on behalf of or accepted employment as legal practitioner against Muhamma Grama Panchayat?

5. Since the above issues are relating to the maintainability of the case they have been taken up as preliminary points and both sides were heard.

6. Ext.P1 has been marked for reference.

7. **ISSUE Nos.(i) & (ii)**: The petition has been filed under Section 36 of the Kerala Panchayat Raj Act for declaring that the respondent has become subject to disqualification for being a member of the Muhamma Grama Panchayat as provided by Section 35(1)(g) of the Act. Section 36(1) of the Act is relevant in this context and it reads as follows,-

“36. Determination of subsequent disqualification of a member,- (1) Whenever a question arises as to whether a member has become disqualified under Section 30 or Section 35 except clause (n) thereof after having been elected as a member, any member of the Panchayat concerned or any other person entitled to vote at the election which the member was elected, may file a petition before the State Election Commission, for decision.

Provided that, the Secretary or the Officer authorized by the Government in this behalf may refer such a question to the State Election Commission for decisions.”

8. According to the petitioner, the respondent has ceased to hold office as a member of the Panchayat as provided by Section 35(1)(g) of the Act. Section 35(1)(g) of the Act states that a member shall cease to hold office as such if he is employed as paid legal practitioner on behalf of the Government or the Panchayat concerned or accepts employment as legal practitioner against the Panchayat. The petitioner is admittedly a person residing in ward No.6 of this Panchayat and his name is included in the voters list of this ward as serial No.290 in Part-1. Ext.P1 is the certificate issued by the Muhamma Grama Panchayat stating that the petitioner is a permanent resident of Ward No.6 and his name is included in the voters list of this ward as serial No.290 of Part-1 thereof. The petitioner admits that the respondent was elected as a member from ward No.11 of this Panchayat. As per Section 36(1) of the Act, when a question arises as to whether a member has become disqualified under any of the provisions of Section 35, after having been elected as a member, either a member of the Panchayat or a voter of the Constituency from which the concerned member has been elected can file a petition before this Commission for decision. Of course the Secretary of the Panchayat can refer such a question for a decision to this Commission under the proviso to Section 36(1) of the Act. Admittedly the petitioner is neither a member of the Muhamma Grama Panchayat nor a

voter of ward No.11 which the respondent represents. Therefore the petitioner is found to be a person not competent to file a petition under Section 36(1) of the Act against the respondent. Even on the face of the allegations contained in the petition, it is clearly found that the petitioner has no locus standi to file a petition against the respondent for his disqualification under Section 36 of the Kerala Panchayat Raj Act on this score itself, the petition deserves only dismissal.

9. Section 35(1)(g) of the Act states that a member shall cease to hold office as such if he is employed as paid legal practitioner on behalf of the Government or the Panchayat or accepts employment as legal practitioner against the Panchayat. So the engagement as a legal practitioner should either be on behalf of the Government or the Panchayat concerned or against the Panchayat. In the case on hand the respondent has only taken up Vakalath on behalf of additional respondents 2 to 18 in the O.P.No.1661/2009 pending before the Hon'ble Ombudsman. In a case of disqualification it is not possible to enlarge the scope of the provision under which the disqualification is sought. It cannot be doubted that the petitioner is not employed as a paid legal practitioner for and on behalf of the Government or of the Panchayat and he has also not accepted any employment as legal practitioner against the Panchayat. For attracting

Section 35(1)(g) of the Act, the Vakalath accepted by the concerned member should be either on behalf of the Government or the Panchayat or against the Panchayat. Additional respondents 2 to 18 in O.P.No.1661/2009 pending before the Hon'ble Ombudsman cannot be considered as the Muhamma Grama Panchayat or persons representing that Panchayat. Therefore accepting Vakalath for or against the said additional respondents will not come under the scope of Section 35(1)(g) of the Kerala Panchayat Raj Act and on this score also the petition deserves only dismissal. The issues are answered accordingly.

In the result, the petition is dismissed.

In the circumstances both parties shall bear their respective costs.

Pronounced before the Commission on this the 22nd day of April 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Document produced on the side of the petitioner

P1 : Certificate issued by the Muhamma Grama Panchayat

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

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