

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

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

Wednesday, the 12th day of February 2014

O.P.No.115/2012

Petitioner : Sasidharan Nair,
S/o Velayudhapillai,
Edukkathu Mekkumkara Veedu,
Narani, Kunnathukal Village.

(By Adv.T.Raja Raja Singh)

Respondent : George Wilson,
Member, Ward No.06,
(Kaivankala Ward),
Kunnathukal Grama Panchayat

**(By Adv. Kulathoor
S.V. Premakumaran Nair)**

This petition having come up for hearing on 1st day of February 2014, in the presence of Advocate **T.Raja Raja Singh** for the petitioner and Advocate **Kulathoor S.V.Premakumaran Nair** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

This Petition is filed under Section 35 (1)(o) of the Kerala Panchayat Raj Act for declaring that the respondent has ceased to function as a member of the Kunnathukal Grama Panhayat.

2. The short facts are as follows:- The petitioner is a voter of Kaivankala ward of Kunnathukal Grama Panchayat and his name is included in the voters list as serial No.106 in part II of this ward. The respondent is the elected member from Kaivankala ward of this Panchayat in the General Election held in October 2010. The respondent in his capacity as a member has misused his official position and with a view to loot the funds of the Panchayat, he has accepted the Travelling Allowances on 03.10.2011, 10.10.2011 and 14.10.2011 on which days he also signed the muster roll of the 'Mahatma Gandhi Desiya Gramina Thozhilurappu Padhathi' and received wages. The respondent is liable for the losses caused to the Panchayat and so he is not entitled to continue as a member of Kunnathukal Grama Panchayat. Hence this petition.

3. The respondent filed objection contenting in brief as follows:- The petition is not maintainable either in law or on facts. The petitioner has no locus-standi to file the petition. It is true that the respondent is the elected member of Kaivankala ward. The respondent has never misused his official position nor obtained any unlawful gain. No monetary loss caused to the Panchayat by the

respondent. There is no legal bar for a member to take part in the work of 'Mahatma Gandhi Desiya Grameena Thozhilurappu Padhathi' and to receive wages for the same. On 03.10.2011 after the days' work respondent went to Perumkadavila Block Panchayat to see the Block President and other officials in connection with his function as a member and on 10.10.2011 after the days' work he went to see the Superintendent of Kerala Water Authority for extending the pipe line of Japan Drinking Water Scheme and on 14.10.2011 the respondent went to see and submit his opinion to the AEO, PWD, Neyyattinkara Office in connection with the placing of slabs and the respondent went to the above said places after his days' work under 'Mahatma Gandhi Desiya Grameena Thozhilurappu Padhathi'. The respondent has acted only legally and the petition has been filed due to political enmity. Hence the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 and 2 and RW1 and Exts.P1 to P4, R1 and R2, and X1series and X2.

5. Both sides were heard.

6. The following points arise for consideration;

(i) Whether the petition is not maintainable?

(ii) Whether the respondent has ceased to function as a member of Kunnathukal Grama Panchayat as provided by Section 35(1)(o) of the Kerala Panchayat Raj Act?

(iii) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 35(1)(o) of the Kerala Panchayat Raj Act, for short the 'Act'. The petitioner as PW1 has deposed that he is a voter of Kaivankala ward (Ward No.6) of Kunnathukal Grama Panchayat. Ext.P1 is the voters list and his name appears as serial No.250 in part II of this ward. The above entry is separately marked as Ext.P1(a). Ext.P2 is the copy of the identity card issued by the Election Commission of India. Even though PW1 was cross-examined at length challenging the correctness of his residence in ward No.6, from Ext.P1, it is clearly found that he is a voter of this ward and his name appears at serial No.250 of Ext.P1. The respondent has been elected from this ward. Ext.P1 is prepared for the purpose of the General Election held in October 2010. As per Section 36 of the Act, whenever a question arises as to whether a member has become disqualified under the provisions of Section 35, after having being elected as a member, any other member of the Panchayat concerned or any person entitled to vote at the election in which the member was elected can file a petition before this Commission for decision. Since the petitioner is found to be a voter of the same ward from which the respondent was elected, he is entitled to maintain a petition against the respondent as provided by Section 36 of the Act. No doubt in the light of the pleadings, a question arises as to whether the respondent has ceased

to hold office as a member as provided by Section 35(1)(o) of the Act and that question has to be decided by the Commission in this case. Therefore the petition is found to be maintainable. The point is answered accordingly.

8. **POINT Nos.2 & 3:** The definite case of the petitioner is that the respondent has accepted the Travelling allowances on 03.10.2011, 10.10.2011 and 14.10.2011 from the Panchayat and on the very same days she signed the Muster Roll of the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' and received wages and thus caused loss to the Panchayat. The petitioner as PW1 has deposed in terms of the petition. Ext.P3 is the muster roll regarding the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' and from this record it is found that he has received wages for his work done on 03.10.11, 10.10.11 and 14.10.11 under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme'. PW1 would further depose that on the same days he received traveling allowances for conducting journey from the Panchayat and Ext.P4 is stated to the copy of the bill regarding the receipt of Travelling Allowances. The Secretary of the Panchayat has been examined as PW2 and muster rolls for 03.10.2011, 10.10.2011 and 14.10.2011 regarding the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' are marked as Exts.X1,X1(a) & X1(b). He has also deposed that the respondent has received Travelling Allowance for the journey in connection with his function as member

from the Panchayat on 03,10.2011 and 10.10.2011 and regarding the Travelling Allowance on 14.10.11, he states that the said amount was not received by the respondent. Ext.X2 is the record relating to the payment of Travelling Allowances.

9. The respondent as RW1 has stated that he did not receive any Travelling Allowance on 14.10.11 and on 03.10.2011 and 10.10.2011 he undertook the journey after his days' work under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme'.

10. From Exts.X1 series and X2 it is found that the respondent has received wages for doing work under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' and also received Travelling Allowance for undertaking journey in connection with his function as a member of the Panchayat. The version of RW1 is that he had gone for meeting the officials on the above days after his days' work under 'Mahatma Gandhi National Rural Employment Guarantee Scheme' and as such he cannot be made liable for any loss to the Panchayat. There is nothing on record to prove that he has undertaken the journey during the time in which he had to work under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme'. As a member of the panchayat he is entitled to receive the Travelling Allowance for undertaking journey in connection with his function as such member. The work under 'Mahatma

Gandhi National Rural Employment Guarantee Scheme' is from 8 am to 4 pm. The member of a Panchayat also can work under that scheme and such a member is entitled to receive the wages for the work done under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme'. The contention of the respondent that he has gone for seeing the officials after his days' work under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' cannot be disbelieved in the present set of facts. Ext.X2 does not indicate the time of the journey undertaken by the respondent. So from the evidence it cannot be held that the respondent had undertaken journey during the time in which he was to work under the 'Mahatma Gandhi National Rural Employment Guarantee Scheme' scheme and so it cannot be said that he has caused loss to the Panchayat by receiving the wages and the Travelling Allowance on the above two days. In the above circumstances I hold that the petitioner has failed to prove that the respondent has caused any loss to the Panchayat. The points are answered accordingly.

Hence the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 12th day of February 2014

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri. Sasidharan Nair, Edukkathu Mekkumkara Veedu,
Narani, Kunnathukal
- PW2 : Sri. Sugathan Y.L, Secretary, Kunnathukal Grama
Panchayat

Witness examined on the side of the respondent

- RW1 : Sri.George Wilson, Member, Kunnathukal Grama Panchayt

Documents produced on the side of the petitioner

- P1 : Voters list 2010 of Ward No.VI, Kunnathukal Grama
Panchayat
- P2 : Copy of the electoral identity card of Sri.Sasidharan Nair
- P3 : Copy of muster rolls
- P4 : Copy of TA Bill of President/Vice-President/
Chairman/Member, Kunnathukal Grama Panchayat

Documents produced on the side of the respondent

- R1 : Copy of Pass book of Smt.Sajitha, Vallichira Pattikajathi
Service Co-operative Society
- R2 : Copy of letter No.A3.656/08 dated 05.09.2011 of the
Secretary, Kunnathukal Grama Panchayat addressed to the
Secretary,Pattikajathi Service Co-operative Society,
Vallichira

Documents produced on the side of the witnesses

- X1 : Muster Roll No.21929

- X1(a) : Muster Roll No.21931
- X1(b) : Muster Roll No.21934
- X2 : T.A Bill of President/Vice-President/Chairman/Members of
Kunnathukal Grama Panchayat

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.**