

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

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

**Wednesday, the 4<sup>th</sup> day of February 2015**

**O.P.No.37/2014**

Petitioner : Suresh.K.,  
S/o Karunakaran Pillai,  
Kizhakkedathu, Cherummoodu,  
Vellimon P.O., Kollam,  
Chairman,  
Perinadu Grama Panchayat.

**(By Adv. Parippally.R.Raveendran)**

Respondent : Y.Antony,  
S/o Yohannan, Mundapoika,  
Thadathil Veedu, Kaithakodu,  
Vellimon P.O., Kollam.

**(By Adv.B.Vijayakumar)**

This petition having come up for hearing on the 10<sup>th</sup> day of **December 2014**, in the presence of Advocate **Parippally.R.Raveendran** for the petitioner and Advocate **B.Vijayakumar** for the respondent and having stood over for consideration to this day, the Commission passed the following.

**ORDER**

This is a petition filed under Section 35(1)(k) of the Kerala Panchayat Raj Act for declaring that the respondent has ceased to hold office as a member of Perinadu Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are elected members from ward Nos.5 and 4 respectively of Perinadu Grama Panchayat. The respondent was continuously absent from the Standing Committee meetings of the Panchayat in five consecutive meetings; ie., on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.04.2014. Notices of all such meetings were duly intimated to the respondent and he had properly acknowledged the same. The Secretary of the Panchayat has not taken any steps to initiate proceedings against the respondent. Due to the continuous non attendance of the respondent in the Standing Committee meetings, his membership in the Panchayat has already ceased and he is liable to be disqualified for being a member of Perinadu 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 petition is filed out of political vengeance. The respondent was not absent from the meetings of the Panchayat as alleged in the petition. The respondent is an elected member from ward No.4 and he is also a member of the Welfare Standing Committee of the Panchayat. The petitioner has falsely stated that the respondent was absent for the meetings held on 28.02.2014 and 25.04.2014. He was present on those days. The respondent was also present in the Welfare Standing Committee meetings

held on 23.12.2013, 30.12.2013, 23.01.2014, 14.02.2014, 31.5.2014, 06.03.2014, 24.04.2014 and 27.05.2014. The respondent had specifically requested the Secretary of the Panchayat for granting leave from attending the meetings of the Welfare Standing Committee held on 11.03.2014 and 28.02.2014 due to certain unavoidable personal inconvenience. So the allegation that the respondent had not informed about his absence from the Standing Committee meetings held on 11.03.2014 and 28.02.2014 is false. There is no cause of action for the petition and the dates mentioned are false. The allegation that the respondent was continuously absent from the meetings of the Panchayat is totally false. Hence the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 and 2 and RWs1 and 2 and Exts.R1 to R3, X1series to X3 Series.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent has failed to attend three consecutive meetings of the Welfare Standing Committee as alleged?
- (iii) Whether the respondent has incurred disqualification as provided by Section 35(k) of the Kerala Panchayat Raj Act?
- (iv) Reliefs and costs?

**7. POINT No.(i):** This petition is filed under Section 35(k) r/w 36(1) of the Kerala Panchayat Raj Act, for short the 'Act'. According to the petitioner,

the respondent who is a member of the Welfare Standing Committee has failed to attend five consecutive meetings held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014 for which due notices were given to him and thus he has incurred disqualification for being a member of Perinadu Grama Panchayat. The respondent would contend that the petition is not maintainable. Apart from raising such a plea, no contention is seen stated as to why or how the petition becomes not maintainable. Section 35(k) of the Act states that a member shall cease to hold office as such if he absents himself without permission of the Panchayat concerned from its meetings or the meetings of the Standing Committee of which he is a member, for a period of three consecutive months. Section 36 (1) of the Kerala Panchayat Raj Act states that whenever a question arises as to whether a member has become disqualified under any of the provisions of 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 in which the member was elected, can file a petition before the State Election Commission for decision. So the only pre-requisite for entertaining such a petition is that the petition can be filed whenever a question arises as to whether the respondent has become disqualified under the provisions of Section 35 by any member of the local authority or a voter of the constituency from which the concerned member was elected. In the case on hand the

petitioner is none other than a member of the same local authority of which the respondent also is a member. Moreover he was the then the Chairman of the Welfare Standing Committee of which the respondent also is a member. Whether the respondent has incurred any disqualification is a question of fact which is to be decided on merits. No specific grounds are raised so as to challenge the maintainability of the petition. From the facts and the position of law as discussed above, I find that a question arises as to whether the respondent has ceased to hold office as a member of the Panchayat for his alleged failure to attend three consecutive meetings of the Standing Committee of which he is a member and that the petitioner is a member of the same Panchayat who is competent to file such a petition. Hence I find that the petition is maintainable. The point is answered accordingly.

**8. POINT Nos.(ii) to (iv):** The definite case of the petitioner is that the respondent was absent for five consecutive meetings of the Welfare Standing Committee held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014 for which due notices were given to him. Exts. X2(a) to (e) are the copies of the notices said to have been given to the respondent for the aforesaid meetings. The petitioner has been examined as PW2. He has deposed that he was the Chairman of the Welfare Standing Committee during the above period and that due notices were given to the respondent as shown in Exts.X2 series.

Ext.X3 series are the copies of the attendance register in respect of the above meetings and as per these records it is found that the respondent has not attended the said meetings held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014. PW2 has also deposed that the respondent has not filed any leave application for his absence in the above meetings. In cross-examination PW2 has stated that he is a member belonging to CPI (M) and that the respondent is a member belonging to Congress party. PW2 would further state that he was removed from the post of Chairman by way of a no confidence motion and the present Welfare Standing Committee Chairman is the respondent. It was suggested to PW2 that the respondent had filed leave applications on 10.03.2014 and 26.02.2014 which PW2 denied and he states that no leave applications were given to him. Exts.R1 and R2 were shown to PW2 with a suggestion that these are copies of leave applications which were given to the Secretary to which PW2 has stated that no such leave applications were received by him. It was further suggested to PW2 that during the above period the respondent had attended the General Committee meetings and PW2 has answered that the respondent may have attended such meetings. PW2 has further deposed that Exts.R1 and R2 are fabricated records created in collusion with the then Secretary after the filing of this case.

9. The Secretary of the Panchayat has been examined as PW1. He has stated that there is no record showing that the respondent had given any leave applications for absentsing himself from attending any meetings of the Welfare Standing Committee and Ext.X1 is the copy of the inward register marked through him. No leave application is seen to have been filed on 26.02.2014 or 10.03.2014 as per Ext.X1 inward register and that all the applications and papers submitted before the Panchayat will be entered in the inward register. PW1 has further deposed that only after entering such papers in the inward register they are distributed to the concerned section. Exts.X2 series and X3 series also are marked through PW1. In Cross-examination PW1 has admitted that Exts.R1 and R2 contained the signatures of the then Secretary and they also have been marked through him. Ext.R3 the attendance register of the Panchayat Committee meetings also is marked through PW1. In re-examination PW1 has admitted that there is no entry in the inward register regarding Exts.R1 and R2 and he further deposed that these applications were not received through the front office and they may have been submitted to the then Secretary as unofficial papers.

10. The respondent has been examined as RW1. He has deposed that he is a member belonging to Congress party and now he is the Chairman of the Welfare Standing Committee. He has categorically admitted in his chief-examination itself that he was absent in the meetings of the Welfare Standing

Committee held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014. According to him he had filed leave applications in respect of the meetings held on 28.02.2014 and 11.03.2014 before the petitioner who was then the Chairman of the Standing Committee. RW1 has further deposed that he had given copies of such letters to the then Secretary of the Panchayat and the copies of the same are Exts.R1 and R2. RW1 has further stated that the said leave applications were given to the Standing Committee Chairman directly. He has also deposed that he had informed his inability to attend in the other meetings to the Chairman of the Standing Committee as well as to the Secretary over phone. He has also deposed that members of the Panchayat need not submit applications through front office and they can submit the same directly to the President or the Secretary or to the Chairman of the Standing Committee. According to RW1 this case has been filed out of political vendetta. In cross-examination RW1 has admitted that he was aware of the provision that failure to attend three consecutive meetings of the Standing Committee would incur cessation of membership. He has also admitted that there is no official record to prove that he had given leave applications for absenting from the meetings of the Standing Committee and that Exts.R1 and R2 are copies of the applications which were received by the then secretary and the Secretary had put his initial in these records as token up his acceptance. But he has admitted that neither the



Chairman nor the President of the Panchayat has given any record to him in token up acceptance of any applications submitted by him. It is also admitted that there was no difficulty for submitting the leave applications through front office or to enter the same records in the inward register. It was suggested to RW1 that Exts.R1 and R2 were fabricated records in collusion with the then Secretary which RW1 denied. RW1 has further stated that on 28.02.2014 the Welfare standing Committee meeting was held at 2pm and that the Panchayat Committee meeting was held on the same date at 3pm in which he had attended. It was suggested to RW1 that he had purposely boycotted the Standing Committee meetings held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014 on account of his difference of opinion with the petitioner who was then the Standing Committee Chairman which he denied. RW1 has further deposed that he had informed his inability to attend the other meetings to the Chairman over phone. But he has not taken any such contention in his objection.

11. RW2 was the Secretary of this Panchayat till July 2014 and he has deposed that the respondent had given the copies of the leave letters submitted to the Chairman and on receiving such copies he had given acknowledgment to the same and they have been identified as Exts.R1 and R2. According to RW2 Exts.R1 and R2 are copies of the leave letters said to have been submitted to the Chairman. RW2 has stated that such applications could be given either through

front office or directly. RW2 has admitted that he did not inform about these leave applications to the Standing Committee Chairman and that these copies were given only for his information. RW2 has admitted that the leave applications for exempting a member from attending the General Committee or Standing Committee meeting is an official record and that he was given only a copy of the same. RW2 was asked whether there was any difficulty for affixing his seal in Exts.R1 and R2 and his answer is that there was no such difficulty. He has also admitted that there is overwriting in the date for Ext.R1. According to RW2 Exts.R1 and R2 were given to the section for keeping them in the file. RW2 has admitted that Exts.R1 and R2 were not routed through the front office. It was suggested to RW2 that these are fabricated records created by the respondent in collusion and with him which he denied.

12. From the evidence on record it is found that the respondent was given due notices for the meetings held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014 and that the respondent was admittedly absent in those meetings. There is no contention for the respondent that due notices of such meetings were not given to him. His only defence is that he had given leave applications to the Welfare Standing Committee Chairman for leave from attending the meetings held on 28.02.2014 and 11.03.2014. But no acceptable record or evidence is forthcoming to prove that leave applications were given

either to the Chairman or to the President in respect of those meetings. If a member wants to abstain from attending the meeting of a Standing Committee of which he is a member, he should get sanction for the same by submitting leave applications. Of course a member can take leave from the Panchayat up to six months by applying before the Committee and getting sanction from the same. The respondent does not have a case that he had obtained any such leave from the Panchayat. His contention is that he had submitted leave applications before the Welfare Standing Committee Chairman for abstaining from attending the meetings held on 28.02.2014 and 11.03.2014 and to buttress this contention he has produced Exts.R1 and R2 and examined RW2. Neither the evidence of RW2 nor Exts.R1 and R2 would show that the respondent had submitted leave applications to the Chairman of the Welfare Standing Committee for absenting himself from those meetings. There is no evidence to show that leave was granted to the respondent for abstaining from attending the meetings held on 28.02.2014 or 11.03.2014. It is significant note that even the respondent does not have a case that leave was granted to him for absenting from the meetings of the Welfare Standing Committee held on 28.02.2014 and 11.03.2014. On a careful appreciation of all facts and materials on record I find that the respondent was absent for the meetings of the Welfare Standing Committee held on 27.01.2014, 19.02.2014, 28.02.2014, 11.03.2014 and 25.4.2014 for which due notices were

given to him and that he was not granted any leave for absenting from those meetings.

13. Whether the failure of the respondent in attending the five consecutive Welfare Standing Committee meetings held from 28.02.2014 would incur disqualification as provided by Section 35(k) of the Act requires consideration.

**Section 35(k) of the Act** reads as follows,-

*“35. 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..*

.....  
.....

*(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; or*

*Provided further that no permission shall be granted by the Panchayat to a member for absenting himself from meetings of the Panchayat or of the Standing Committee for a continuous period of more than six months.”*

14. So for attracting this provision certain conditions are to be satisfied. Firstly the member should absent himself from the meetings, without permission, of the Panchyat 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 that 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. The period of three consecutive months to be

reckoned from the last date that the member has attended is to be calculated not on the basis of calendar months but on the basis of the month starting from the date of the meeting from which he last attended. This position has been clarified in Krishna Kumar C. V. Kerala State Election Commission (2010 (3) KLT 315).

At Paras 11 and 12 of the above decision it has been held as follows,-

*“11.It is clear from the principles laid down in the above decisions that the word “month” has to be reckoned, and the period has to be computed in the light of the language employed in the provision itself. When a particular date which is not the first of the month has to be reckoned, the first month will have to be computed by reckoning the said factor. When the period has to be counted from a date which is not the first day of the month, the method of computation as described in Halsbury’s Laws of England has to be adopted which is the safest method. This is clear from the decisions in Daryoth Sigh’s case, Bibi Salma Khatoon’s case and Surabhi’s case. In all these three cases the word “month” is qualified by the words “from the date” etc. Therefore, when the word “month” is followed by such an expression indicating the date from*

*which it has to be computed, the principles stated in the above three decisions will squarely apply and the period will expire upon the day in the succeeding month corresponding to the date upon which the period starts. Evidently, in Surabhi;s case (supra), this Court considered an identical situation like one herein, wherein under the Land Acquisition Act, viz. Section 28A(1), the application had to be made within “ three months from the date of award of the Court.” Therefore, the calendar month has to be reckoned from the date of the award. The Apex Court in Bibi Salma Khatoon,s case (supra), also has considered a similar issue. Therefore, the said dictum alone will apply to the facts of this case. The decision of this Court in Radhakrishnan’s case,” was one considering a case where the wording of Section 33(1) of the Kerala Co-operative Societies Act, 1969 was not the like one in Section 35(k) of the Panchayat Raj Act. Therefore, it is in that context this Court said that when ‘month’ followed by the words, “consecutively six months” has to be reckoned*

*based on British calendar, till the end of the six months period.*

*12. Herein, going by the facts of the case, the last meeting which the petitioner had attended, was on 16.10.2008. The notice Ext.P1 was issued on 24.01.2009. Therefore reckoned from the date 16.10.2008, on which he last attended the meeting and even excluding one day, the period of three months will expire before 24.01.2009, the date of Ext.P1 notice. It is not as if the Secretary should have waited till the end of January, ie., 31.01.2009. Therefore, the contention raised by the petitioner that the notice itself is without jurisdiction, cannot be accepted.”*

15. In the case on hand it is clearly found that the respondent was absent from the meetings of the Welfare Standing Committee of which he is a member for a period of three consecutive months. He was absent in the meetings held on 27.01.2014, 19.02.2014 and 11.03.2014. The meeting held on 28.02.2014 need not be counted as only one meeting in a month alone needs to be counted. So the first condition has been satisfied in this case. Admittedly due notices were given to him for all these meetings. Ext.X1 series also clearly prove that due notices as



required by law were given to him for these meetings. It is also found that three consecutive meetings were held within the period of the above three months calculated in accordance with the settled position of law as clarified in the decision cited above. The above meetings were not held on the requisition of members and they were regular meetings. It is clearly found that he had absented in the above meetings without the permission of the Panchayat or of the Chairman of the Welfare Standing Committee. So from the discussion held above I hold that the respondent has ceased to hold office as a member of the Panchayat as provided by Section 35(k) of the Kerala Panchayat Raj Act. The points are answered accordingly.

In the result, the petition is allowed and it is declared that the respondent has ceased to hold office as a member of the Perinadu Grama Panchayat as provided by Section 35(k) of the Kerala Panchayat Raj Act.

The parties shall bear their respective Costs.

Pronounced before the Commission on this the 4<sup>th</sup> day of February 2015

Sd/-

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

**Witnesses examined of the side of the petitioner**

PW1 : Sri.Gopalakrishnapilla.P, Secretary,  
Perinadu Grama Panchayat

PW2 : Sri.K.Suresh, Kizhakkadath Veedu, Velliman P.O.

**Witnesses examined on the side of the respondent**

RW1 : Sri.Y.Antony, Pongumvila Veedu, Kaithakodi,  
Velliman P.O., Kollam

RW2 : Sri.Sarojakshan Pilla, Secretary,  
Thodiyoor Grama Panchayat

**Documents produced on the side of the respondent**

R1 : Copy of the leave application dated 10.03.2014  
given by Sri.Y.Antony before the Chairman of the  
Welfare Standing Committee, Perinadu Grama  
Panchayat (Subject to proof)

R2 : Copy of the leave application dated 26.02.2014  
given by Sri.Y.Antony before the Chairman of the  
Welfare Standing Committee, Perinadu Grama  
Panchayat (Subject to proof)

R3 : Copy of the attendance register of Welfare Standing  
Committee Meeting held on 28.01.2014

**Documents produced on the side of the witnesses**

X1 : Copy of the inward register dated 26.02.2014 Perinadu  
Grama Panchayat

X1(a) : Copy of the inward register dated 10.03.2014 Perinadu  
Grama Panchayat

X2 : Copy of the letter No.P.3-4089/14 dated 25.08.2014 of  
Perinadu Grama Panchayat

X2(a) : Copy of the notice of the meeting dated 23.01.2014

X2(b) : Copy of the notice of the meeting dated 14.02.2014

X2 (c) : Copy of the notice of the meeting dated 24.02.2014

- X2(d) : Copy of the notice of the meeting dated 06.03.2014
- X2(e) : Copy of the notice of the meeting dated 22.04.2014
- X3 : Copy of the Attendance Register of Members in Perinadu Grama Panchayat
- X3(a) : Copy of the Attendance Register of Members held on 27.01.2014 in Perinadu Grama Panchayat
- X3(b) : Copy of the Attendance Register of Members held on 19.02.2014 in Perinadu Grama Panchayat
- X3(c) : Copy of the Attendance Register of Members held on 28.02.2014 in Perinadu Grama Panchayat
- X3(d) : Copy of the Attendance Register of Members held on 11.03.2014 in Perinadu Grama Panchayat
- X3(e) : Copy of the Attendance Register of Members held on 25.04.2014 in Perinadu Grama Panchayat

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