

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

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

Wednesday, the 12th day of November 2014

O.P.No.82/2013

Petitioner : T.R.Velayudhan Nair,
S/o Narayana Panicker,
Thouzhutharathu house, Aymanam P.O.,
Kottayam District, PIN – 686 015.
Member, Ward No.15,
Aymanam Grama Panchayat.

(By Adv. G.Biju)

Respondent : Soji J.Alumparambil,
S/o Joseph, Alumparambil,
Cheepungal P.O.,
Kottayam District, PIN – 695 016.
Member, Ward No.20,
Aymanam Grama Panchayat

(By Advs.M.Hashim Babu & Sajitha.S)

This petition having come up for hearing on the 14th day of **October 2014**, in the presence of Advocate **G.Biju** for the petitioner and Advocates **M.Hashim Babu & Sajitha.S** 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(k) of the Kerala Panchayat Raj Act for declaring that the respondent has ceased to hold office as a member of Aymanam Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members elected from ward No.15 and 20 respectively of Aymanam Grama Panchayat. The respondent is also a member of the Finance Standing Committee. The respondent was irregular in attending the meetings of Finance Standing Committee. After attending the Finance Standing Committee meetings on 23.01.2013 and 31.01.2013 he failed to attend the meetings held on 04.02.2013, 27.02.2013, 11.03.2013, 13.03.2013, 20.04.2013, 28.05.2013 and 25.06.2013 for which due notices were given to him. The notice for the meeting dated 04.02.2013 was served to him on 31.01.2013, for the meeting held on 27.02.2013 notice was served on 23.02.2013, for the meeting dated 11.03.2013 notice was served on 07.03.2013, for the meeting dated 13.03.2013 notice was served on 11.03.03, for the meeting dated 20.04.2013 notice was served on 16.04.2013, for the meeting dated 28.05.2013 notice was served on 22.05.2013 and for the meeting dated on 25.06.2013 notice was served on 19.06.2013. Since the

respondent has failed to attend three consecutive meetings of the Finance Standing Committee held within a period of three consecutive months with effect from 04.02.2013, he has incurred disqualification. Due to the absence of the respondent in the above meetings notice was given by the Secretary to the respondent intimating cessation membership. Since the respondent willfully failed to attend the Standing Committee meetings as shown above, he has ceased to hold office as a member of this Panchayat. He also did not obtain permission from the Panchayat for absenting himself from the meetings. Therefore the respondent is liable to be disqualified as provided by Section 35 (k) of the Kerala Panchayat Raj Act. 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 respondent has attended all the meetings convened with due notice to him. There is no practice in the Panchayat to issue due notice to the members in time. This petition is filed as a counterblast to the petition filed against Sri.T.K.Rejimon by Smt.Anila Babu for committing defection and that petition is pending consideration of this Commission. It is after receiving notice in that petition that the present petition is filed. The respondent had attended all the meetings of the Panchayat and of the Standing Committee of which he is a member for which due notices were given to him. In the month of March 2013 there were two meetings and so it cannot be

reckoned for the purpose of Section 35 (k) of the Kerala Panchayat Raj Act. Within a period of five months there were seven meetings convened as per records but actually no meetings were convened. The meeting dates were counted as per the calendar months. The time gap beyond 30 days for convening a meeting cannot be treated as the meeting of that month. No meetings were convened with proper notice duly served on the dates mentioned in the petition. The Secretary of the Panchayat has not served any notice to the respondent with regard to the cessation of membership and if such notice is served, the present petition will not lie before this Commission. The petition has been filed to harass the respondent due to inter party politics. The petition is without bonafides and liable to be dismissed with compensatory costs of ₹3,000/-.

4. The evidence consists of the oral depositions of PWs1 and 2 and RW1 and Exts.P1 to P4, R1 and X1 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 Finance Standing Committee of which he is a member for which due notice has been given, as provided by Section 35(k) of the Kerala Panchayat Raj Act?
- (iii) Whether the respondent has ceased to hold office as a member of Aymanam Grama Panchayat as alleged?

(iv) Reliefs and costs?

7. POINT No.(i): This petition is filed under Section 35(k) r/w 36 of the Kerala Panchayat Raj Act, (hereinafter referred to as the 'Act'), for declaring that the respondent has ceased to hold office as a member of Aymanam Grama Panchayat for his failure to attend three consecutive meetings of Finance Standing Committee of which he is a member. The respondent would contend that the petition is not maintainable and that the Secretary of the Panchayat has not taken any steps on the alleged failure of the respondent in attending the meetings of the Standing Committee. 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 for which due notices have been given. Section 36 of the Kerala Panchayat Raj Act states that 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 in which the member was elected, can file a petition before the State Election Commission for decision. The present petition has been filed by a member of the same Panchayat of which the respondent also is a member. So the petitioner is a competent to file the

petition. In the light of the rival claims, definitely a question arises as to whether the respondent has become disqualified under Section 35(k) of the Act. Of course as per Section 37(2) of the Act, where a person ceases to hold office as a member under clause (k) of Section 35, the Secretary of the Panchayat concerned has to intimate the fact in writing to such person and report the same at the next meeting of the Panchayat and if such person applies for restoration on or before the date of its next meeting or within 15 days of the receipt by him of such intimation, the Panchayat committee may at the meeting next after receipt of such application, restore him to his office of member. So it is clear that if an intimation is given by the Secretary to a member as provided by Section 37(2) of the Act, he shall cease to hold office as a member and he has to either apply for restoration as stated above or file a petition before the State Election Commission as provided by Section 36(1) of the Act. The special provision contained under Section 37(2) of the Act, in relation to cessation of membership under Section 35(k) of the Act is not a bar or inhibition to approach the Commission under Section 36(1) of the Act. These two provisions operate under different situations and the remedy provided also are different. In the case of the petition under Section 36(1) or a reference made under its proviso by the Secretary, the cessation of membership would happen only by way of a decision passed by the Commission and in the case of Section 37(2) of the Act, the member will cease to

hold office when an intimation is given and if such member is restoring to the remedy contemplated under Section 37(2) of the Act, he has to accept such cessation of membership and pray for restoration. In the case on hand, the petitioner prays for passing a decision by the Commission that the respondent has ceased to hold office as a member as provided by Section 35 (k) of the Act. It is settled law that any member of the concerned local body or a voter of the constituency from which the member sought to be disqualified was elected can file a petition before the Commission and even the member who is in receipt of an intimation under Section 37(2) of the Act can file a petition under Section 36(1) of the Act challenging such intimation. In the present set of facts, since a question arises as to whether the respondent has ceased to hold office as a member as provided by Section 35(k) of the Kerala Panchayat Raj Act and the petition has been filed by a competent person, I find that the petition is maintainable. The point is answered accordingly.

8. POINT Nos.(ii) to (iv): According to the petitioner the respondent after having attended the Finance Standing Committee meeting held on 31.01.2013 failed to attend the meetings held on 04.02.2013, 27.02.2013, 11.03.2013, 13.03.2013, 20.04.2013, 28.05.2013 and 25.06.2013 for which due notices were given to respondent and as the respondent has failed to attend the meetings held in three consecutive months with due notice, this petition is filed

for declaring that the respondent has ceased to hold office as a member. The main contention of the respondent is that he had attended all meetings of the Standing Committee for which due notices were given and that in the month of March 2013, there were two meetings and within five months there were seven meetings as stated in the records and as the gap between two meetings was more than 30 days such meetings cannot be considered for the purpose of Section 35 (k) of the Act.

9. The petitioner has been examined as PW1. He has deposed in terms of the allegations in the petition. However he is the Chairman of another Standing Committee and so his oral evidence is not of much use to prove his case. The Secretary of the Panchayat has been examined as PW2 and through him the notice book relating to finance Standing Committee and the minutes book showing the attendance of the members of the Finance Standing Committee have been produced and marked as Exts.X1 series and X2 series. He has also deposed that the notice as mentioned in Exts.X1 series were served to the members on the aforementioned dates in the notice. In cross-examination he has deposed that notices have been served to the members by the person authorized by the Panchayat in this behalf and that whether notices have been served before such meetings was being ensured by him. He would also depose that as the members have not put the date under their signatures, he cannot say on what dates the

notices were served to them. A meeting of the Finance Standing was held on 13.03.2013 and the notice for that meeting was given on 11.03.2013 and by mistake that notice date is shown as 13.03.2013 and the meeting date is shown as 11.03.2013. He would admit that there was no due notice for the meeting held on 13.03.2013. The respondent has been examined as RW1. He has deposed in terms the contentions raised by her in the objection. He would depose that he was never given three clear days notice for the meetings mentioned in the petition and for all meetings for which due notices were given he had attended. He has also denied the signatures appearing on several notices marked as Ext.X1(b), X1(c), X1(d), X1(f), X1(h), X1(j) and X1(l). However his denial appears to be without bonafides.

10. The allegation is that the respondent has become disqualified to continue as a member under Section 35(k) of the Act. So it is profitable to extract the above provision which 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.”

11. So for attracting this provision certain conditions are to be satisfied.

Firstly the member should absent himself from the meeting 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. It is also important to point out that if within the said period of three months, only less than three meetings of the Panchayat or of the Standing Committee as a case may be have been held, the member should have failed to attend the meetings of the subsequent three consecutive months to attract disqualification. 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 failed to attend. 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 Singh'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.”

12. In the case on hand the respondent last attended the meeting held on 31.01.2013 and he failed to attend the meetings held from 04.02.2013 onwards. The three meetings held during the months of February, March and April are found to be on 04.02.2013, 27.02.2013, 13.03.2013 and 20.04.2013. However in the month of February two meetings were held which were on 04.02.2013 and 27.02.2013. Since as per Section 35 (k) the date to be reckoned is the meetings held in three months calculated from the date on which the member last attended, the three meetings which are to be considered in this case are on 04.02.2013, 13.03.2013 and 20.04.2013. Admittedly there was no due notice for the meeting held on 13.03.2013. The notice date for this meeting is 11.03.2013. As per sub Rule 3 of Rule 16 of the Kerala Panchayat Raj (Standing Committee) Rules, the Chairman of the Standing Committee shall, at least three clear days before the date fixed for convening the meeting, give the members notice of the date and time of meeting and the subjects to be discussed in the meeting and as per its explanation in the aforesaid clear days, declared holidays shall include but the date of receipt of the notice and the date of the meeting shall not include. So in respect of Ext.X1(c) notice, no three clear days are intervening even when reckoned from the notice date and the meeting date. As per the proviso of

Section 35 (k) of the Act, no meeting from which a member absented himself shall be counted against him under this clause if due notice of that meeting was not given to him or that the meeting was held after giving shorter notice than that is prescribed for an ordinary meeting. Since the meeting held on 13.03.2013 was held after giving shorter notice, that meeting cannot be counted for attracting Section 35(k) of the Act. The next three meetings were held on 20.04.2013, 28.05.2013 and 25.06.2013. As per Sub Rule (1) of Rule 16 of the Kerala Panchayat Raj(Standing Committee) Rules, a Standing Committee shall meet at least once in a month on such date and time as may be fixed by the Chairman from time to time. It is settled law that one month period prescribed under Rule 15(1) is to be calculated from the date of the proceeding meeting date. Even assuming the date to be reckoned is from 20.04.2013, three meetings were not held till 20.06.2013. Only if three meetings were held in three consecutive months calculated either from 20.04.2013 Section 35 (k) of the Act can be attracted. The three months period would expire either on 13.06.2013 or 20.06.2013. In the case on hand, as the Standing Committee meetings were not held once in a month calculated from 20.04.2014 it cannot be held that Section 35(k) is attracted in this case. There is also considerable force in the contention of the respondent that due notices were not given to her as the dates of receipt of the notice are conspicuously absent in the notice book. On a careful

consideration of all facts and materials on record, I am of the view that the respondent will not incur disqualification as provided by Section 35(k) of the Act and the present petition deserves only dismissal. The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

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

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined of the side of the petitioner

- PW1 : Sri.Velayudhan Nair, Thozhutharathu Veedu,
Aymanam P.O. Kottayam District.
- PW2 : Sri.Simon Varghese, Secretary, Aymanam Grama
Panchayat

Witness examined on the side of the respondent

- RW1 : Sri.Soji. J Alumparambil, Alumparambil House,
Cheepunkal

Documents produced on the side of the petitioner

- P1 : Copy of the meeting notice dated 25.01.2013
P1(a) : Copy of the meeting notice dated 31.01.2013

P1(b)	:	Copy of the meeting notice dated 23.02.2013
P1(c)	:	Copy of the meeting notice dated 07.03.2013
P1(d)	:	Copy of the meeting notice dated 11.03.2013
P1(e)	:	Copy of the meeting notice dated 16.04.2013
P1(f)	:	Copy of the meeting notice dated 22.05.2013
P1(g)	:	Copy of the meeting notice dated 19.06.2013
P1(h)	:	Copy of the meeting notice dated 22.07.2013
P1(i)	:	Copy of the meeting notice dated 20.08.2013
P1(j)	:	Copy of the meeting notice dated 24.09.2013
P1(k)	:	Copy of the meeting notice dated 28.10.2013
P1(l)	:	Copy of the meeting notice dated 20.11.2013
P1(m)	:	Copy of the meeting notice dated 20.12.2013
P2	:	Copy of the attendance register dated 31.01.2013
P2(a)	:	Copy of the attendance register dated 04.02.2013
P2(b)	:	Copy of the attendance register dated 27.02.2013
P2(c)	:	Copy of the attendance register dated 11.03.2013
P2(d)	:	Copy of the attendance register dated 13.03.2013
P2(e)	:	Copy of the attendance register dated 20.04.2013
P2(f)	:	Copy of the attendance register dated 28.05.2013
P2(g)	:	Copy of the attendance register dated 25.06.2013
P2(h)	:	Copy of the attendance register dated 26.07.2013
P2(i)	:	Copy of the attendance register dated 27.08.2013
P2(j)	:	Copy of the attendance register dated 28.09.2013
P2(k)	:	Copy of the attendance register dated 31.10.2013
P2(l)	:	Copy of the attendance register dated 27.12.2013
P3	:	Copy of the letter No.Ao.2645/2013 dated 15.07.2013 of the Secretary Aymanam Grama Panchayat

Document produced on the side of the respondent

R1	:	Copy of the attendance register dated 20.02.2013
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Documents produced on the side of the witnesses

X1	:	Meeting notice book of Finance Standing Committee Aymanam Grama Panchayat
X1(a)	:	Page No.32 of X1
X1(b)	:	Page No.33 of X1
X1(c)	:	Page No.35 of X1
X1(d)	:	Page No.36 of X1

- X1(e) : Page No.37 of X1
X1(f) : Page No.38 of X1
X1(g) : Page No.39 of X1
X1(h) : Page No.40 of X1
X1(i) : Page No.41 of X1
X1(j) : Page No.42 of X1
X1(k) : Page No.44 of X1
X1(l) : Page No.45 of X1
X2 : Attendance Register of Finance Standing Committee
X2(a) : Attendance of the meeting held on 04.02.2013,
shown in Page No.24 of X2
X2(b) : Attendance of the meeting held on 27.02.2013,
shown in Page No.25 of X2
X2 (c) : Attendance of the meeting held on 13.03.2013,
shown in Page No.26 of X2
X2(d) : Attendance of the meeting held on 20.04.2013,
shown in Page No.26 of X2
X2(e) : Attendance of the meeting held on 28.05.2013,
shown in Page No.27 of X2
X2(f) : Attendance of the meeting held on 25.06.2013,
shown in Page No.27 of X2
X2(g) : Attendance of the meeting held on 26.07.2013,
shown in Page No.27 of X2
X3 : Copy of the minutes of the Finance Standing
Committee meeting of Aymanam Grama Panchayat
held on 13.03.2013

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