

**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.94/2013

Petitioner : K.Valsala,
Member,
Welfare Standing Committee,
Kannur Block Panchayat,
Pallikkunnu P.O., Kannur District.

(By Adv.B.P.Saseendran)

Respondent : Saneera Shafeeque,
Member,
Welfare Standing Committee,
Kannur Block Panchayat,
Pallikkunnu P.O., Kannur District.

(By Adv. D.R. Rajesh)

This petition having come up for hearing on the 11th day of October 2014, in the presence of Advocate **B.P.Saseendran** for the petitioner and Advocate **D.R. Rajesh** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

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 Kannur Block Panchayat.

2. The short facts are as follows:- The petitioner and respondent are elected members of Kannur Block Panchayat and they are also members of the Welfare Standing Committee. The respondent is not attending the meetings of the Welfare Standing Committee as well as the meetings of the Panchayat Committee often. The respondent had availed three months leave during April, May 2013 and after such leave period, she had attended the Panchayat Committee meeting on 15.06.2013. Thereafter she failed to attend the Standing Committee meetings consecutively on 13.06.2013, 26.07.2013, 23.08.2013, 20.09.2013 and 24.09.2013 for which due notices were served to her. Since the respondent had failed to attend three consecutive meetings of the Welfare Standing Committee held during three months despite getting due notice, she has ceased to function as a member of the Kannur Block Panchayat 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. It is true that the

respondent is a member of Kannur Block Panchayat and she is also a member of the Welfare Standing Committee. The allegation that she is highly irregular in attending the meetings of the Block Panchayat Committee and Welfare Standing Committee is false. The Panchayat Committee granted her leave for three months from 26.03.2013 till 26.06.2013. Even then she had attended the Panchayat Committee Meetings held on 15.06.2013. The Welfare Standing Committee meeting held on 13.06.2013 was within the three months leave period and so she cannot be considered as absent in that meeting. The respondent did not receive the notice for the meetings held on 26.07.2013, 20.09.2013 and 24.09.2013. No notice was served to the respondent regarding these meetings. So her absence in the above meetings cannot be considered for invoking Section 35 (k) of the Kerala Panchayat Raj Act. The respondent delivered a child on 30.03.2013 and the child was suffering from various diseases and was hospitalized repeatedly in several hospitals till 24.09.2013 and her child was discharged only in the evening on 24.09.2013. On account of such ailments of her child, she could not attend certain meetings. The petition is politically motivated and it is filed without bonafides. The respondent has not failed to attend three consecutive meetings of the Welfare Standing Committee as alleged and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PW1 and RW1 and Exts.P1, R1 to R5 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 the meetings of the Welfare Standing Committee consecutively held from 13.06.2013 to 24.09.2013 as alleged?
- (iii) Whether the respondent was given due notice for the meetings held from 13.06.2013 to 24.09.2013?
- (iv) Whether the respondent has become subject to disqualification for being member of Kannur Block Panchayat for her failure to attend three consecutive meetings held in three months for which due notices were given as alleged?
- (v) Reliefs and costs?

7. POINT No.(i): This petition is filed under Section 35(k) of the Kerala Panchayat Raj Act, (hereinafter referred to as the 'Act'). According to the petitioner the respondent who is a member of the Welfare Standing Committee has failed to attend three consecutive meetings held during three continuous months and thereby she has incurred disqualification to continue as a member as provided by Section 35(k) of the Act. The respondent would contend that the petition is not maintainable and that due notices were not

given to her for attending these meetings of the Welfare Standing Committee. The petition is filed as provided by Section 36(1) of the Act. Section 36(1) reads as follows,-

“36. Determination of subsequent disqualification of a member,- 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.”

8. So, whenever a question arises as to whether a member has become disqualified under Section 35, any member of the Panchayat concerned is competent to file a petition before this Commission for decision. The petitioner is a member of the same Block Panchayat of which the respondent also is a member. In the light of the rival claims I find that a question arises as to whether the respondent has become subject to disqualification as provided by Section 35(k) of the Act and as the petition is

filed by a competent person, the petition is found to be maintainable. The point is answered accordingly.

9. POINT Nos.(ii) to (v): The definite case of the petitioner is that the respondent was consecutively absent in the meetings of the Welfare Standing Committee held on 13.06.2013, 26.07.2013, 23.08.2013, 20.09.2013 and 24.09.2013 for which due notices were given to her. The contention of the respondent in this behalf is that she was on leave as granted by the Panchayat Committee till 26.06.2013 and so the meeting held on 13.06.2013 being within three months period of leave cannot be considered for the purpose of Section 35(k) of the Act and that she has not received any notice for the meetings held on 26.07.2013, 20.09.2013 and 24.09.2013 and so she has not incurred any disqualification.

10. The petitioner has been examined as PW1. She has reasserted her allegations in the petition in her chief examination which is by way of an affidavit. It was suggested to PW1 that the meeting held on 13.06.2013 was during her leave period which PW1 denied. It was further suggested to PW1 that the respondent did not receive any notice for the meetings held on 26.07.2013, 20.09.2013 and 24.09.2013 which also PW1 denied. Ext.P1 is the copy of the identity card issued from the Block Panchayat stating that the petitioner is a member of this Panchayat. The respondent has been

examined as RW1. On the side of the respondent Exts.R1 to R5 have been marked. Ext.R1 is a declaration given by the Secretary of the Kannur Block Panchayat stating that the respondent was on maternity leave for three months from 26.03.2013 onwards. Exts.R2 to R5 are documents relating to the treatment of child of the respondent issued from various hospitals. The attendance register of the Block Panchayat relating to the Standing Committees has been marked as Exts.X1 series. From Ext.X1 it is found that the respondent was absent in the Welfare Standing Committee meetings held on 13.06.2013, 26.07.2013, 23.08.2013, 20.09.2013 and 24.09.2013. The fact that the respondent was absent in the above meetings is not in dispute. But the definite case of the respondent is that she was not given any notice for the meetings held on 26.07.2013, 20.09.2013 and 24.09.2013. It is also contended that her absence in the meeting held on 13.06.2013 cannot be considered for invoking Section 35(k) of the Act. Ext.X2 has been produced on the request of the petitioner to show that there was some manipulation regarding the leave granted to the respondent. However it is found that the respondent was granted maternity leave from 26.06.2013 for three months and so Ext.X2 cannot be considered as a relevant document in this regard.

11. The petitioner has not produced the notice book regarding issuance of notice by the Chairman of the Welfare Standing Committee to its members. Instead at the instance of the petitioner the Despatch-Cum-Stamp Account Register has been produced. The learned counsel for the petitioner would argue that From Ext.X3 series, it is found that notices were despatched to the members of the Welfare Standing Committee in respect of all the meetings mentioned in the petition. It is seen that Exts.X3 series contain certain details regarding the letters and other communications despatched from this Panchayat. In Ext.X3(a) dated 04.06.2013, there is an entry that notice has been given to the President, members and implementing officers for a board meeting. In this entry it is stated that the said notices were given to twenty four persons for a 'board meeting'. Ext.X3(b) is stated to be relating to the Welfare Standing Committee meeting held on 26.07.2013. There is an entry on 18.07.2013 stating that notices have been given for a 'board meeting' to the Block Panchayat President, members and implementing officers for which ₹120/- has been credited. Ext.X3(c) is stated to be relating to the notice despatched on 16.08.2013 for the meeting held on 23.08.2013. There is an entry on 16.08.2013 stating that notices have been given to twenty three persons for a 'board meeting'. Ext.X3(d) is stated to be relating to the notice given to the members of the Welfare

Standing Committee held on 20.09.2013 and the said notices are stated to have been despatched on 10.09.2013. There is an entry on 10.09.2013 which is Ext.3(d) stating that notices have been despatched to the President, members and implementing officers numbering to twenty three and ₹150/- has been credited in this behalf. Ext.X3(e) is stated to be relating to the Welfare Standing Committee Meeting held on 22.10.2013. However this meeting is not mentioned in the petition. Moreover the petition has been filed on 19.10.2013 and this meeting was held thereafter, i.e., on 22.10.2013 and so it cannot be considered for this case.

12. On a careful examination of Ext.X3 (b)(c) and (d) it can only be inferred that certain notices were sent to the President and members of this Block Panchayat and such notices were sent for certain 'board meetings.' The entries mentioned under Exts.X3 series do not indicate that the notices referred to therein were given to the members of the Welfare Standing Committee regarding the meetings of that Standing Committee. There is only a bald mention that the notices are for "Board Meeting". Ext.X3 series do not in anyway help the petitioner in proving that due notices were given to the respondent regarding the meetings of the Welfare Standing Committee held on the dates mentioned in the petition. Of course the respondent in all fairness has admitted that she had received the notice for the meeting held on

23.08.2013. There is no evidence to prove that notices were given to the respondent for the meetings held on 26.07.2013, 20.09.2013 and 24.09.2013. Exts.X3 series cannot be accepted as a relevant document for proving the service of notice to the members for the meetings of the Standing Committee. The Panchayat has to maintain notice book or other record regarding issuance of notice to the members for the General Committee and Standing Committee Meetings. But such records are not forthcoming. The petitioner has not taken any steps for production of the records relating to issuance of notice to the members of the Welfare Standing Committee for the meetings held during the relevant period. Mere absence of a member in a Panchayat Committee or Standing Committee cannot be held as sufficient for attracting Section 35(k) of the Act. Section 35(k) of the Act is relevant in this context and it 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 of the

Panchayat or of the Standing Committee of which he is a member for a period of three consecutive months reckoned from the date of the last meeting that he attended and secondly due notices of those meetings should have been served to her. Unless due notice has been given to a member, the provisions of 35 (k) cannot be attracted against him or her. As per Rule 16(3) of the Kerala Panchayat Raj (Standing Committee) Rules, the Chairman of the Standing Committee has to give three clear days notice while convening its meeting. As per Rule 4 of the Kerala Panchayat Raj (Procedure for Panchayat Meetings) Rules, a notice showing the date and time of the meeting and the agenda to be discussed in the meeting shall be given to the members at least three clear days prior to the date fixed for beginning of the meeting. In the case on hand there is no evidence to prove that the Chairman of the Welfare Standing Committee has given notice to the respondent for the meetings held on the dates mentioned in the petition. There is also no evidence to prove that notice was given to the respondent by anybody for the meetings mentioned in the petition. Since no notices are shown to have been given to the respondent for attending the meetings mentioned in the petition, it cannot be held that the respondent had absented herself for such meetings for the purpose of invoking Section 35 (k) of the Act. On a totality of all facts, I find that the petitioner has completely failed

in proving that due notices were given to the respondent for the meetings of the Welfare Standing Committee held on 26.07.2013, 23.08.2013 20.09.2013 and 24.09.2013 and so the 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

Witness examined on the side of the petitioner

PW1 : Smt.K.Valsala, Rayarorathu House, Panangavu

Witness examined on the side of the respondent

RW1 : Smt.Saneera Shafeeque

Document produced on the side of the petitioner

P1 : Copy of the ID card of Smt.K.Valasala

Documents produced on the side of the witnesses

R1 : Certificate No.C2388/2013 dated 03.12.2013
issued by the Secretary, Kannur Block
Panchayat

- R2 : Discharge summary Baby of Zaneera,
Raslock Hospital, Thavakkara, Kannur
- R3 : Discharge card of.Muhammed Hanan, Raslock
Hospital, Thavakkara, Kannur
- R4 : Discharge summary of Master Hanan
Ashirvad Hospital, Kannur
- R5 : Discharge summary of Master Hanan, Unity
Health Complex dated 14.09.2013

Documents produced on the side of the witnesses

- X1 : Attendance Register of members of
Standing Committee meeting Kannur
Block Panchayat
- X1(a) : Page No.123 of X1
- X1(b) : Page No.147 of X1
- X1(c) : Page No.157 of X1
- X1(d) : Page No.163 of X1
- X1(e) : Page No.167 of X1
- X1(f) : Page No.171 of X1
- X1(g) : Page No.179 of X1
- X2 : Distribution register of Kannur Block Panchayat
- X2(a) : Page No.123 of X2
- X3 : Despatch-Cum-Stamp Account Register, Kannur
Block Panchayat
- X3(a) : Page No.101 of X3
- X3(b) : Page No.109 of X3
- X3(c) : Page No.113 of X3
- X3(d) : Page No.117 of X3
- X3(e) : Page No.121 of X3

Sd/-

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

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