

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

**PRESENT: SHRI.A SHAJAHAN, STATE ELECTION  
COMMISSIONER**

**Tuesday, the 17<sup>th</sup> day of December, 2024**

**O.P. No. 32 of 2023**

**Petitioner** : Ubaid  
S/o Suphihaji  
Illikkal House  
Pang P.O.  
Malappuram (Dist.)

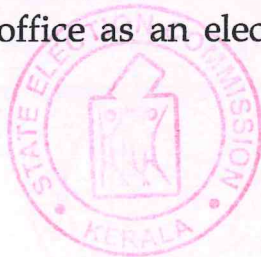
**(By Adv. Sajitha S. & Hisana Babu)**

**Respondent** : Abdhu Rahiman  
S/o Abdulla  
Akayichollakal House  
Pang P.O.  
Malappuram (Dist.)  
(Member, Ward No. 15, Kuruva Grama  
Panchayat)

**(By Adv. Abdul Shukkur Arakkal)**

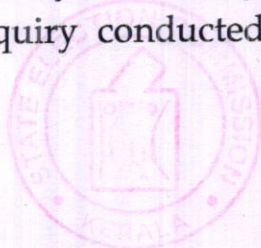
**ORDER**

This is a petition filed under section 36 (1) of the Kerala Panchayat Raj Act for declaring that this respondent has incurred a disqualification as provided under section 35 (1) (o) of the Kerala Panchayat Raj Act and thereby ceased to hold office as an elected member of Kuruva Grama Panchayat.





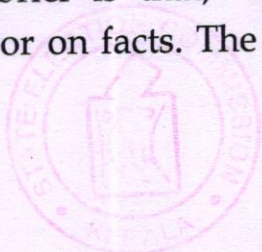
2. The petitioner's case in brief is as follows;- Petitioner is a voter of ward No.15 of Kuruva Grama Panchayat. His name is included in the voters list as Part 81, serial No. 685. Ext.A1 is the copy of the voters list. Respondent was elected as member of ward No.15 of the Kuruva Grama Panchayat in the general election to local self-government institutions held in December, 2020 as an independent candidate of CPI (M). After the election he was elected as the Vice President of the Kuruva Grama Panchayat.
3. Petitioner further submitted that on 10.07.2020, respondent had submitted an application before the Panchayat Secretary of Kuruva Grama Panchayat for availing the social security pension under Indira Gandhi National Old Age Pension Scheme. The application submitted by the respondent along with declaration and verification report prepared thereon are marked as Ext.A4 series. After processing his application by the Panchayat he had been granted pension from August 2020 onwards as evident from Ext.A5.
4. The specific case of the petitioner is that respondent is ineligible to get pension under Indira Gandhi National Old Age Pension Scheme. His son is working as Secretariat Assistant and residing along with him in family residence and therefore his family income is much higher than that shown in the application. Further, respondent holds a ration card under non priority non - subsidy (NPNS), category, where among other family members, name of his son is also included. Moreover, along with the application he submitted a declaration, wherein it is stated that the plinth area of his residence is below 2000 square feet. Actually the respondent is residing in a house having plinth area of more than 1000 square meters. The details provided by the respondent in the application for pension is false and incorrect.
5. According to the petitioner, citing the above irregularities he had filed a petition in this regard before the Hon'ble Ombusman for local self-government institutions. At the time of hearing the petition before the Hon'ble Ombudsman, Panchayat Secretary of Kuruva Grama Panchayat submitted that on an enquiry conducted by him, it was found that





respondent is not eligible for getting the social security pension under the Old Age Pension Scheme and hence social security pension given to him had been cancelled.

6. After hearing both the parties Hon'ble Ombudsman for local self-government institutions passed an order dated 08.02.2023 directing the Secretary of Kuruva Grama Panchayat to take a decision on the recovery of the amount of pension after affording an opportunity of being heard to the respondent. The Order dated 08.02.2023 is marked as Ext.A6.
7. Further, petitioner has produced the criteria for sanctioning the pension under Indira Gandhi National Old Age Pension Scheme, which is marked as Ext. A3. He has also produced the details of amount disbursed to the respondent's downloaded from the Sevana Pension Portal, which is marked as Ext.A5. It appears from Ext.A5 that respondent was in receipt of the monthly pension at the rate of Rs.1600 per month from August, 2020 to a period up to November, 2022, through direct to home mode.
8. According to the petitioner, respondent filed application with false details to get the social security pension sanctioned in his favour. Respondent as a Vice President of the Kuruva Grama Panchayat misused his official position for sanctioning the social security pension in his favour. Respondent was in receipt of pension from August, 2020 onwards, which he is ineligible and thereby respondent caused loss to the Panchayat. There is clear finding by the Hon'ble Ombudsman that respondent received the pension which he was ineligible and directed him to remit back the amount. Further, there is evidence that respondent illegally received pension under social security pension scheme and thereby caused loss to the Panchayat. The respondent has incurred disqualification as provided under section 35 (1) (o) of the Kerala Panchayat Raj Act and therefore liable to be disqualified as an elected member of Kuruva Grama Panchayat as provided under section 36 (2) of the Act.
9. The respondent's case in brief is that;- The original petition is not maintainable either on law or on facts. The OP is liable to be dismissed *in*





*limine* with costs. This OP is filed only to gain political advantage by harassing the respondent, who is an elected member of the Panchayat. Petitioner has no cause of action against the respondent. Respondent and his wife are not residing with his younger son as alleged. His younger son Idris Abdulla is working as a Government servant and residing with his family about 12 KM away from the residence of the respondent. The name of his son was removed from ration card of the respondent as evident from Ext.B4 Ration Card. The Ext.A2 produced by the petitioner is a copy an outdated and lapsed ration card. Moreover as per order No. 2443287/SFO B1/120/2023 dated 25.05.2023 it is clarified that in order to sanction the social security pension, the income of the married offspring need not be considered even if the offspring is residing along with the parents.

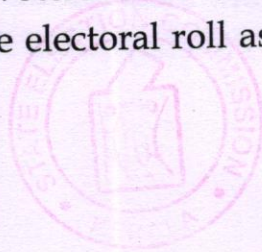
10. The respondent applied for social security pension prior to the general election to local self-government institutions held in December, 2020. He was elected as member of Panchayat in December, 2020 and thereafter elected as Vice President of the Panchayat. Prior to December, 2020 he was not a member of the Panchayat. He was sanctioned the social security pension during the tenure of his opposite political coalition. Therefore there is no question of any misuse of his official position as alleged. The application submitted by him was thoroughly scrutinized by the appropriate authorities and found that he is eligible to get the pension. The respondent furnished correct details pertaining to plinth area of his house at the time of submitting application. The house owned by him is 32 years old and having a plinth area of 100 square meter. During 2022 respondent renovated his house with the permission of Panchayat, which necessitated the revision of property tax of the building.
11. The Secretary of the Panchayat has never made a statement before the Hon'ble Ombudsman that respondent is ineligible to get the pension or that he received pension illegally. In fact, Hon'ble Ombudsman after hearing the parties directed the Secretary to dispose the matter after giving an opportunity of being heard to the respondent. Accordingly, the Secretary of the Panchayat heard the respondent and passed an order





dated 20.06.2023 cancelling the pension directing him to remit back an amount of ₹ 12,800/-, the amount received by the respondent during the period from April, 2022 to November, 2022 @ Rs.1600/- . The order dated 20.06.2023 is marked as Ext.B2. According to the respondent, actually he had informed the Secretary to revoke the pension, if the renovation of his house done in 2022 is beyond the criteria of social security pension scheme. The respondent has not caused any monetary loss to the Panchayat and hence not incurred any disqualification under section 35 (1) (o) of the Kerala Panchayat Raj Act.

12. The evidence in this case consists of the oral depositions of PW1 to PW3 and RW1 and Ext A1 to A6, B1 to B8 and Ext.X1 series.
13. Both sides were heard.
14. The following points arise for consideration
  - i. Whether petitioner has got the necessary *locus standi* to file the original petition as per the provisions of section 36 (1) of the Kerala Panchayat Raj Act?
  - ii. Whether the original petition is maintainable before the State Election Commission under section 36 of the Kerala Panchayat Raj Act?
  - iii. Whether respondent has incurred any disqualification under section 35 (1) (o) of the Kerala Panchayat Raj Act?
15. Point No. (i) :- Section 36 (1) of the Kerala Panchayat Raj Act provides that, among others a person entitled to vote at the election in which the member was elected is having locus standi to file the petition before the Commission for determining the question of disqualification under section 30 or 35 of the Kerala Panchayat Raj Act. The respondent herein is an elected member of ward No. 15 of Kuruva grama Panchayat. Hence from the side of voter, a voter of ward No. 15 alone is entitled to file a petition before the Commission. At the outset of the petition petitioner stated that he is a voter of ward No. 15 of the Kuruva grama Panchayat and his name included in the voters list as Part 81, serial No. 685. Petitioner has produced the copy of the electoral roll as Ext.A1.However on going

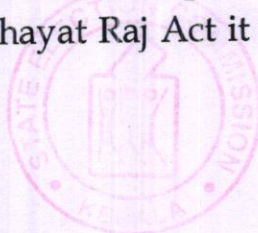




through Ext.A1 it appears that the electoral roll produced by him is prepared by Election Commission of India for elections to Mankada Legislative Assembly Constituency. It has nothing to do with elections to ward No. 15 of Kuruva Grama Panchayat. The electoral roll published by Election Commission of India is prepared polling station wise within the Assembly constituency. Such an electoral roll does not contain exact data regarding the ward to which an elector of local authority constituency belong. Petitioner has also failed to produce any alternative documents to prove that he is a voter of ward No. 15 of the Kuruva grama Panchayat. Therefore the petitioner has failed to prove his *locus standi* to file the petition before the Commission.

16. Point No. (ii):- On going through the pleadings in the petition and evidence adduced by the petitioner, it appears that it was during August, 2020 respondent has applied for social security pension allegedly making false statements and Panchayat sanctioned social security pension to him. Petitioner has no case that respondent has caused any loss to the Panchayat after having been elected as a member of Kuruva Panchayat in December, 2020. Section 36 (1) of the Kerala Panchayat Raj Act provides that whenever a question arises as to whether a member has become disqualified under section 30 or section 35 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 elected, may file a petition before the State Election Commission, for decision.
17. Elucidating the provision, Hon'ble High Court in *Marykutty Mathew V State Election Commission* ( Judgment dated 08.11.2002 in O P No. 15863/2002) observed as follows:-

"It is clearly provided in section 36 of the Act that only those questions regarding disqualification under section 30 or section 35 after having been elected as a member are referable to the State Election Commission. In other words, once a candidate is elected as a member, even assuming he had at the time of election, incurred disqualification under section 30 or section 35 of the Kerala Panchayat Raj Act it is not for the State Election

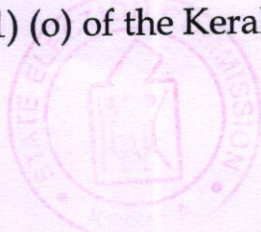




Commission to embark upon an enquiry regarding such disqualification after the election. The jurisdiction of the State Election Commission is confined to disqualification incurred after having been elected as a member. As far as pre-election disqualification is concerned, the jurisdiction to adjudicate such issues is on the designated Courts.

.....  
The State Election Commission has no jurisdiction to entertain a petition with regard to a disqualification already incurred by a member under section 30 or 35 of the Act prior to the election. Even in cases where such disqualification already incurred before the election continues to exist, the Commission has no jurisdiction to consider the matter."

18. The Hon'ble High Court in *Abdul Gafoor T P V Kerala State Election Commission and Others* (2015 (2) KHC 231) reiterated the legal position and further clarified that State Election Commission has no jurisdiction to entertain a petition with regard to a disqualification incurred by a member either under section 30 or section 35 of the Act prior to election. However, on an application made under section 36, if a person is able to substantiate his case that a member has caused loss to the Panchayat. Election Commission is perfectly within its rights to entertain a plea under section 35 (1) (o) of the Act.
19. In the present case it is very well clear that respondent has applied for social security pension as a member of public and Panchayat sanctioned the pension to him after verification of his eligibility at that time. After being elected as a member, he continued to receive the monthly pension. Petitioner has no case that after being elected as a member he has caused any loss to the Panchayat. The allegations in the petition are in the nature of pre-election disqualification. There is also no findings by the Hon'ble Ombudsman that respondent is guilty of maladministration, one of the grounds under section 35 (a) of the Act for disqualifying a member. Therefore this petition is not maintainable before Commission under the provisions of section 36 of the Kerala Panchayat Raj Act.
20. Point No.(iii);- Section 35 (1) (o) of the Kerala Panchayat Raj Act provides





that subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such if he is liable, for the loss, waste or misuse caused to the Panchayat. It has come in evidence that respondent was not a member of Panchayat at the time of sanctioning pension to him. PW3 then Panchayat Secretary categorically deposed before the Commission that respondent was eligible to get the social security pension. She further explained the procedures for sanctioning social security pension. PW3 states that an application for social security pension, along with enquiry reports and certificates issued by appropriate authorities shall be first placed before the Standing Committee for Welfare for consideration. Thereafter the proposal, along with the recommendations of Standing Committee shall be placed before the Panchayat committee for decision. After the decision by Panchayat committee it shall be placed before the next Grama Sabha. From this it appears that sanctioning a social security pension is not the sole discretion of the Panchayat secretary as alleged. Further, the legality of the decisions of the Panchayat committee can be challenged before the Government under the provisions of the section 191 of the Kerala Panchayat Raj Act. However, it seems that petitioner has not invoked such a remedy. Commission cannot sit in appeal over the said decisions of the Panchayat committee. The evidence on the record goes to show that liability created towards Panchayat in this transaction is not on account of any loss caused to the Panchayat by a member, but in the nature of a quasi-contractual liability of a beneficiary to restore. Therefore the disqualification provided under Section 35 (1) (o) of the Kerala Panchayat Raj Act would not be attracted in this case. Hence respondent has not incurred any disqualification as provided under Section 35 (1) (o) of the Act.

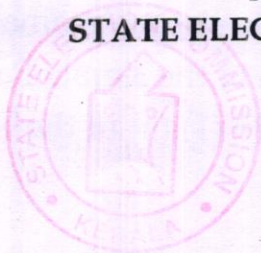
In the result original petition is dismissed

Pronounced before the Commission on the 17<sup>th</sup> day of December 2024.

Sd/-

**A.SHAJAHAN**

**STATE ELECTION COMMISSIONER**





## **APPENDIX**

### **Witness examined on the side of the Petitioner**

- PW1 : Ubaid  
 PW2 : M. Majeed  
 PW3 : Jayasree R

### **Witness examined on the side of the Respondent**

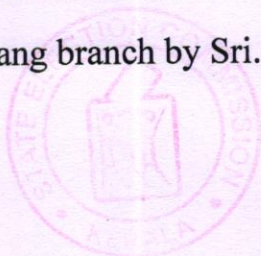
- RW1 : Sri. Abdhu Rahiman

### **Documents produced on the side of the Petitioner**

- A1 : Copy of voters list 39 Mankada (General) Part - 81  
 A2 : Copy of Ration Card No. 2053029506  
 A3 : Copy showing the conditions to allow Indira Gandhi National Oldage Pension  
 A4 : Copy of the application submitted by Abdhu Rahiman to allow Indira Gandhi National Oldage Pension  
 A5 : Copy of the details of Social Security Pension received by Abdhu Rahiman  
 A6 : Order Dated, 08.02.2023 in Petition No. 1076/2022 by the Hon'ble Ombudsman for LSG Institutions

### **Documents produced on the saide of the Respondent**

- B1 : Copy of the building age certificate dated, 27.01.2023 of the building owned by Akayichola Abdhu Rahiman  
 B2 : letter No. A2 1274/2023 dated, 20.06.2023 from Secretary, Kuruva Grama Panchayat issued to Abdhu Rahiman A.C.  
 B3 : Certificate dated, 23.06.2023 of Secretary showing the remittance of ₹ 12800/- at SBI Pang branch by Sri. Abdhu Rahiman





- B4 : Copy of the relevant pages of Ration Card No. 2053029506
- B5 : Copy of the Building Certificate of the building owned by Akayichola Abdhu Rahiman dated, 27.01.2023.
- B6 : Copy of the certificate issued by Secretary Kurava Grama Panchayat showing the remittance of ₹ 12800/- at SBI Pang branch by Sri. Abdhu Rahiman A.C.
- B7 : G.O. (MS) No. 97/2020/Fin. Dated, 23.09.2020
- B8 : Copy of the letter from Land Revenue Commissioner dated, 26.06.2023 in connection with the order No. 2443287/SFO-B1/120/2023/Fin. dated, 25.05.2023

**Documents produced by Witnesses**

- X1 : File No. A2-3134/2020 dated, 13.07.2020 of Kuruva Grama Panchayat

//True Copy//

  
**PRAKASH B.S**  
**PEN No : 101452**  
**SECRETARY**  
**State Election Commission**  
**Kerala, Thiruvananthapuram**

Sd/-  
**A.SHAJAHAN**  
**STATE ELECTION COMMISSIONER**

