

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 16th day of April, 2024

O.P. No. 15 of 2022

Petitioner

: Sulfikar,
S/o. Subair,
Valiyaparambil House,
Alappuza - 688 004

(Member, Ward No.12,
Punnappa South Grama Panchayat)

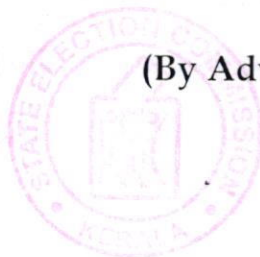
(By Adv. S. Shanavas Khan)

Respondent

: Punnappa South Grama Panchayat
Punnappa P.O.
Alappuzha - 688 004
Represented by its Secretary

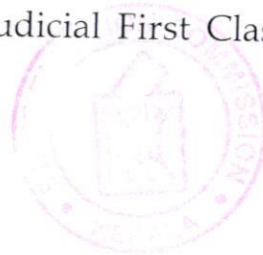
: Secretary,
Punnappa South Grama Panchayat

(By Adv. Cyril Joseph)



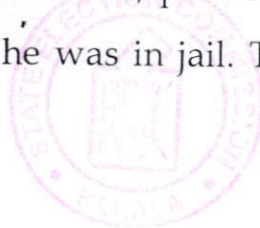
ORDER

1. This petition is filed on 07.07.2022 under 36(1) of the Kerala Panchayat Raj Act, 1994 *inter alia* prying for the reliefs of setting aside Ext. P4, Ext. P8 and Ext. P9 and to restore the membership of petitioner as an elected member of ward No. XII of Punnappra South Grama Panchayat. Ext.P4 is the intimation dated 27.04.2022 issued by the Secretary, Punnappra South Grama Panchayat under section 37(2) of Kerala Panchayat Raj Act. The panchayat Committee as per resolution No.1 (1) dated 30.05.2022 has taken a decision not to restore the membership of petitioner. Ext. P8 is the communication regarding the decision to the petitioner. Ext P 9 is the resolution No.1 (1) dated 30.05.2022 of the panchayat committee.
2. Petitioner's case is that he is the elected member of ward No.12 of Punnappra South Grama Panchayat. While so petitioner could not attend the meetings of the panchayat committee from 01.01.2022 onwards. Therefore he filed Ext.A1 leave application dated 04.02.2022 for seeking leave for 3 months. Thereafter petitioner was arrested on 02.03.2022 in connection with crime No. 897/2021 of Alappuzha Police Station registered against him under the various provisions of Arms Act and IPC, including section 302 of IPC. His arrest was also recorded in Crime No. 1379/2021 registered by Punnappra South Police Station. While he was in judicial custody he filed a petition before the Hon'ble Judicial First Class Magistrate



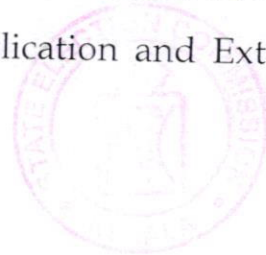
Court-I for allowing escort parole to attend the meeting of Grama Panchayat on 07.04.2022. The said petition was dismissed by the Hon'ble Judicial First Class Magistrate Court as per Ext.A3 order dated 06.04.2022. Meanwhile Ext A1 leave application submitted by him was rejected by panchayat committee as per decision dated 07.03.2022. While so, petitioner received Ext A4 intimation dated 27.04.2022 from the respondent, who is the Secretary of Punnappa South Grama Panchayat stating that the petitioner was disqualified to continue as member of Punnappa South Grama Panchayat as he failed to attend the consecutive meetings of panchayat committee and meeting of standing committee from 01.01.2022 onwards. Petitioner as per Ext. A5 dated 01.05.2022 submitted an explanation to Ext.A4 intimation stating that he is in judicial custody for the last 60 days. Thereafter petitioner filed Ext.A6 a petition dated 11.05.2022 for restoring his membership in the panchayat committee. Panchayat Committee as per Ext.A9 resolution dated 30.05.2022 declined his request and it was communicated to the petitioner as per Ext.A8.

3. The grounds urged by the petitioner for the reliefs are that petitioner submitted proper leave application prior to the first meeting, which is legally permissible and should have been considered by the respondent panchayat committee. In so far as second and third meetings are concerned, petitioner was prevented from attending the meeting as he was in jail. Though he attempted to attend the



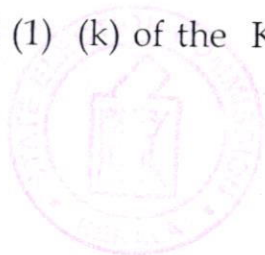
meeting by obtaining parole the said prayer was declined by the Court. Petitioner further states that he was not even served with copy of Ext A9 resolution within time.

4. 2nd Respondent, who is the panchayat secretary of Punnappra South Grama Panchayat, filed objection on 23.08.2022. He submitted that petitioner has not attended the consecutive meetings of the panchayat held on 01.01.2022, 13.01.2022, 21.01.2022, 31.01.2022, 07.02.2022, 16.02.2022, 22.02.2022, 26.02.2022, 07.03.2022 and thereafter. The meetings of the panchayat committee were intimated to the petitioner. The proof of service of notice of meetings to the petitioner are produced and marked as Ext. B1(h) series, Ext. B1(i) series, Ext. B1 (j) series, Ext. B1(k), Ext. B1(l) series, Ext. B1(m) series, Ext B1(n), Ext. B1(o) series, Ext. B1 (r) series, Ext B1(s), Ext B1(t) and Ext. B1(u) series.
5. Leave application submitted by the petitioner was considered in the meeting of the panchayat committee held on 07.03.2022 and decided to reject it vide resolution No. 4 (1) dated 07.03.2022. The Ext. A4 intimation dated 27.04.2022 was given to the petitioner under section 37 (2) of the Act since the petitioner had not attended the meeting of panchayat committee held from 01.01.2022 onwards for a period of 3 months in spite of receipt of notice as he has ceased to be a member under section 35 (k) of the Kerala Panchayat Raj Act. The rejection of Ext. A1 leave application and Ext A4 intimation



under section 37(2) of the Act were intimated to the petitioner by affixture as evident from Ext. B1(X) series.

6. The Ext. A6 application of restoration of his membership in the panchayat committee was discussed in the meeting held on 18.05.2022 and by decision No. 8 (1) it was postponed to 30.05.2022. In the meeting held on 30.05.2022 the matter was discussed in detail and by resolution No. 1(1) it was decided that the membership of the petitioner need not be restored. According to the respondent there is no merit in the original petition and it is liable to be dismissed.
7. The evidence in this case consists of the oral testimonies of PW1, RW1 and Ext.s A1 to A11, B1 to B3
8. Both sides were heard
9. The following points arise for consideration
 - i. Whether the petition is maintainable?
 - ii. Whether the petitioner failed to attend three consecutive meetings of the panchayat committee as alleged?
 - iii. Whether challenge against the Ext. A9 resolution of the panchayat committee is maintainable before the Commission?
 - iv. Whether the petitioner incurred disqualification as provided under section 35 (1) (k) of the Kerala Panchaya Raj Act as alleged?



10. Point No. i to iv: The petitioner is an elected member of Punnappa South Grama Panchayat. 1st Respondent is the Punnappa South Grama Panchayat. 2nd Respondent is the Secretary of Punnappa South Grama Panchayat. The petitioner filed this petition under section 36 read with section 35(1) (k) of the Kerala Panchayat Raj Act challenging Ext. A4 intimation of the respondent secretary, Ext. A9 resolution of the panchayat committee and Ext. A8 communication thereof. Panchayat Secretary has issued the impugned Ext. A4 notice intimating the petitioner that he ceased to be a member of Punnappa South Grama Panchayat under section 35(1)(k) of the Kerala Panchayat Raj Act as he failed to attend the consecutive meetings of the panchayat committee held on 01.01.2022, 13.01.2022, 21.01.2022, 31.01.2022, 07.02.2022, 16.02.2022, 22.02.2022, 26.02.2022 and 07.03.2022 and thereafter.

11. The Secretary has issued Ext. A4 intimation under section 37(2) of the Act stating that the petitioner has become disqualified as provided under section 35(1) (k) of the Act, which reads as below:-

“35. Disqualifications of members.- 61 [(1)] Subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such, if he-

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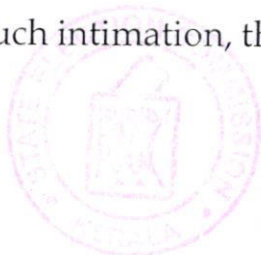
(k) absents himself without the permission of the Panchayat concerned from its meeting or the meeting of the Standing Committee thereof for a period of three consecutive months reckoned from the date of commencement of his term of office or of the last meeting that he attended, or of the restoration 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.”

12. Further, as per section 37(2) of the Act when a member ceases to hold office as provided by clause (k) of sub section (1) of section 35 (1) the Secretary of the panchayat concerned shall at once 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 to the panchayat on or before the date of its next meeting or within fifteen days of the receipt by him such intimation, the panchayat may at the

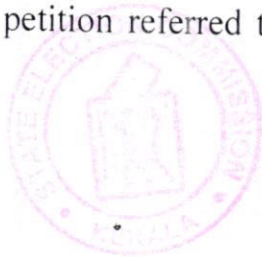


meeting next after the receipt of such application restore him to his office as member. Once an intimation has been given as provided by section 37 (2) of the Act the member concerned shall cease to hold office. In such a situation the member concerned has two options. The member can either apply for restoration of membership before the panchayat committee as provided under section 37 (k) of the Act or can file a petition before the State Election Commission challenging such intimation as provided under section 36(1) of the Kerala Panchayat Raj Act. Section 36 of the Act is as below;-

“36. Determination of subsequent disqualification of a member.— (1) 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, may file a petition before the State Election Commission, for decision.

Provided that, the Secretary or the Officer authorised by the Government in this behalf may refer such a question to the State Election Commission for decisions.

(1) The State Election Commission, after making such enquiry as it considers necessary in the petition referred to in or the reference made thereunder in sub-section



(2) Whether so however that the State Election Commission may pass an interim order as to whether a member may continue in office or not till a decision is taken on the petition or the matter involved in the reference.”

(3)A petition or reference referred to in sub-section (1) shall be disposed of in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when trying a suit.”

13. In the instant case panchayat committee has rejected his application under sub section (1) of section 37 for restoration membership through Ext A9 resolution dated 30.05.2022.

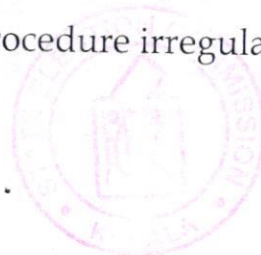
14. In *Anilkumar V and another V Kerala State Election Commission and others* (2007 (2) KHC 273) the Hon'ble High Court considered the question that whether a member has become disqualified under section 35 (k) can invoke section 36 (1) of the Act and seek decision from the Election Commission. In the said case court held that an elected member can always invoke sub section (1) of 36 even if the panchayat committee has rejected his application under sub section (1) of section 37 for restoration of membership. Therefore the petition is *prima facie* maintainable.

15. On going through the pleading of the petition as well as evidence on record it appears that petitioner has admitted that he could not attend the meetings of the panchayat committee from 01.01.2022

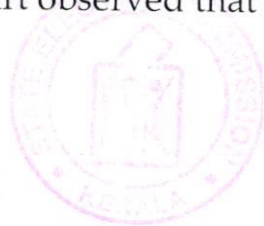


onwards. It is consistent case of the petitioner that he filed application for leave for 3 months citing his physical ailments and thereafter he was arrested in connection with crime No. 897/2021 and crime No.20/2022 and was in judicial custody. His request to allow parole so as to attend the meeting of Grama panchayat held on 07.04.2022 was rejected by Hon'ble Judicial First Class Magistrate Court as per Ext. A3 order. According to the petitioner he cannot be blamed for not attending the three consecutive meeting of the panchayat as the same was due to the reasons beyond his control.

16. These contentions are not sufficient to assail that Ext.A4 intimation issued by Secretary in an enquiry under section 36 (1) of the Kerala Panchayat Raj Act. In a petition calling for a decision to whether a member of local authority has become disqualified on any ground referable to section 30 or section 35 except under clause (n) of section 35 of the Act, in the light of section 36 of the Act, power to decide such a dispute vested with the State Election Commission. However it is pertinent to note that no allegations of non compliance with any of the provisions of section 36 (k) or procedural irregularity in issuing intimation under section 37 (2) are raised in the petition to attract the jurisdiction of the Commission. Petitioner has no case that the procedure adopted by Secretary either in section 35 (1) (k) proceedings or section 37 (2) proceedings are irregular and he suffered prejudice out of such procedure irregularity.



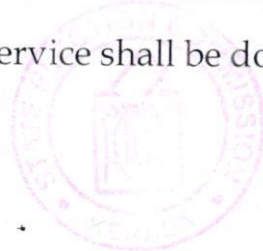
17. Petitioner has also no case that notice has not been properly served for the meetings concerned by the Secretary as laid down in the rule 3 (1) (d) of the Kerala Panchayat Raj (Manner of service of Notice) Rules, 1996. Petitioner has also no dispute as to the frequency of monthly meeting of the panchayat committee held during the period under consideration.
18. In *Trojan & Co. v. Nagappa* (AIR 1953 SC 235 : AIR 1953 KHC 345) the Apex Court held that *"it is well settled that decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It was held further that without an amendment of the plaint, the Court was not entitled to grant the relief not asked for."*
19. In *Sri Venkataramana Devaru & Qrs. v. The State of Mysore and Others* (AIR 1958 SC 255), the Apex Court held that *"the object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding."*
20. Both judgments are applied by the Hon'ble High Court in *M N Saji V K R Krishna kumar* (judgment dated 20.09.2023 in RSA No. 186/2022), in which Court observed that



"Thus, the object and purpose of pleading are to enable the adversary party to know the case it has to meet. In order to have a fair trial, it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise. Pleadings help the court in determining the burden of proof. The burden of proof is fixed on the basis of the contentions of the aggrieved party. If some evidence has been produced which is not in conformation with the written statement or plaint, it may disturb the position of the whole case."

21. Further, petitioner has a case that he has not received copy of resolutions rejecting leave application and declining his request for restoration of membership in time. But during cross examination petitioner admitted that he ceased to reside in the address Valiyaparambil House, Ward No.12, Punnappara South shown in the petition by January, 2022 and thereafter he is residing in the address Nalussery vazhi, Punnappara in the same ward. He admitted that there is change of residence during January 2022 due to the fact that he sold his existing house. He further admitted in cross examination that the change of address has not been communicated to the panchayat so far and address change was not even mentioned in the petition.

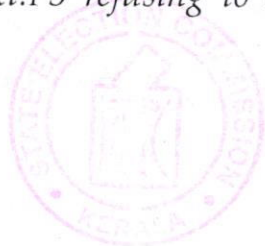
22. Further, under rule 3 (1) of the Kerala Panchayat Raj (Manner of service of Notices) Rules 1996, service shall be done by serving or by



sending notice to such person or leaving such notice at the last known place of abode, if he cannot be found or even by affixing in conspicuous part of his abode. Therefore there is legal infirmity attached to the service of copy of resolutions rejecting his leave application and declining his request for restoration of membership. Petitioner has not substantiated any grounds for declaring that Ext.A4 intimation issued by the respondent secretary as illegal.

23. In the petition, petitioner has also challenged the legality and propriety of Ext.A9 resolution declining his request for restoration of membership in the panchayat committee.

24. In *M P Rajan V Kerala State Election Commission* (AIR 1999 Ker 399 (DB) the Hon'ble High Court examined this aspect and held that "*it is clear that against the order on application under section 37 (2) of the Act for restoration of membership, no proceedings can be initiated before the Election Commission. Nor does an appeal lay to the State Election Commission. The decision to restore or not to restore, is that of the panchayat and it is in terms of a resolution of the panchayat. At best, the same could be got rescinded by invoking section 191 of the Kerala Panchayat Raj Act and that power is vested in the Government. It cannot therefore be held that the State Election Commission was not justified in holding that it had no authority to interfere with the resolution of the panchayat marked as Ext.P5 refusing to restore the membership of the petitioner.*"

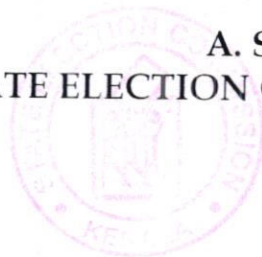


25. In *Malathi Prabhakaran and Ors V Ombudsman for Local Self Government Institutions and Ors* (2021 KHC 800) the Hon'ble High Court held that *against the resolution passed by the panchayat, which is illegal, the officer of the panchayat, any member of the panchayat or any third person can file suitable application before the Government under section 191 of the Kerala Panchayat Raj Act for cancellation of the resolution.* The dictum laid down in the said judgment was reiterated in *Dr. V V Haridas MD V State of Kerala* (judgment dated 29.11.2022 in WP(C) 24389/2021).

26. To sum up, petitioner has not shown any legal grounds to assail Ext. A4. Further, challenge against Ext. A8 and Ext. A9 resolutions are not maintainable before the Commission. Hence I have no hesitation to dismiss the petition. I do so. In the result Ext. A4 order is confirmed and consequently petitioner is ceased to hold office as member in ward No. XII of Punnappra South Grama Panchayat under section 35 (1) (k) of the Kerala Panchayat Raj Act. In view of this final order, *interim* order passed by Commission in IA No. 55/2022 dated 11.10.2022 stands vacated.

Pronounced before the Commission on the 16th day of April, 2024.

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER.



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

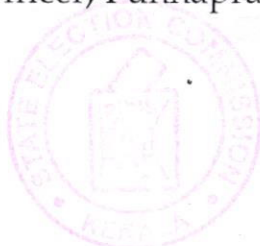
1) PW1 : Sri. Sulficker S.

Witness examined on the side of the Respondent

1) RW1 : Sri. V.M. Saji

Documents produced on the side of the Petitioner

- 1) A1 : Copy of the leave application submitted by Sri, Sulficker to Secretary, Punnapra Grama Panchayat
- 2) A2 : Postal Receipt
- 3) A3 : Copy of Order No. C.M.P. No.862/2022 in Crime No.897/2021 Alappuzha South Police Station dated 08.04.2022
- 4) A4 : Notice dated 27.04.2022 by the Secretary, Punnapra South Grama Panchayat
- 5) A5 : Copy of the explanation submitted by Sulficker to Secretary, Punnapra South Grama Panchayat through Special Subjail Superintendent, Mavelikkara
- 6) A6 : Copy of the application submitted to Secretary, Punnapra South Grama Panchayat, by Sulficker, through the Special Subjail Superintendent, Mavelikkara
- 7) A7 : Letter No.A6/2022/490 dated 30.05.2022 and State Public Information Officer, Punnapra South Grama Panchayat



- 8) A8 : Letter No.A6/850/2022 dated 07.06.2022 of Secretary, Punnapra South Grama Panchayat
- 9) A9 : Copy of the Resolution No.1(1) dated 30.05.2022 of the Punnapra South Grama Panchayat
- 10) A10 : Copy of the notification dated 05.09.2022 issued by Kerala State Election Commission
- 11) A11 : C.M.P. No.1274/2022 in Crime No.1379/2021 of Punnapra Police Station of Judicial First Class Magistrate, Ambalappuzha

Documents produced by the Respondent

- 1) B1 : File No.A6/850/2022 of Punnapra South Grama Panchayat
- 2) B1(a) : Leave application dated 04.02.2022 submitted by Sri. Sulficker to Secretary, Punnapra South Grama Panchayat
- 3) B1(b) : Letter No.A6/850/2022 dated 23.02.2022 of Secretary, Punnapra South Grama Panchayat
- 4) B1(c) : Relevant page of Oath Register in respect of Sri. Sulficker
- 5) B1(d) : Resolution No.4/1 of the committee meeting held on 07.03.2022
- 6) B1(e) : Letter No.A6/850/22 dated 09.03.2022 of Secretary, Punnapra South Grama Panchayat
- 7) B1(f) : Copy of the envelope showing returned postal article addressed to Sri. Sulficker
- 8) B1(g) : Copy of the Submission by Sri. A.K. Ajayakhosh, Member dated 03.03.2022



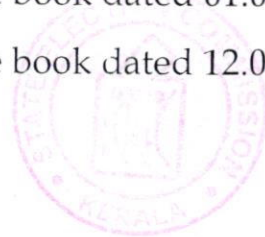
- 9) B1(h) : Copy of the meeting notice No.02/2022 dated 07.01.2022,
Punnapra South Grama Panchayat
- 10) B1(i) : Copy of the meeting notice No.03/2022 dated 18.01.2022,
Punnapra South Grama Panchayat
- 11) B1(j) : Copy of the meeting notice No.04/2022 dated 28.01.2022,
Punnapra South Grama Panchayat
- 12) B1(k) : Copy of the Envelope showing Returned Postal article as
addressed to Sri. Sulficker
- 13) B1(l) : Copy of the meeting notice No.07/2022 dated 15.02.2022,
Punnapra South Grama Panchayat
- 14) B1(m) : Copy of the meeting notice No.08/2022 dated 21.02.2022,
Punnapra South Grama Panchayat
- 15) B1(n) : Copy of the meeting notice No.09/2022 dated 24.02.2022,
Punnapra South Grama Panchayat
- 16) B1(o) : Copy of the meeting notice No.10/2022 dated 02.03.2022,
Punnapra South Grama Panchayat
- 17) B1(p) : Copy of the envelope showing returned postal article
addressed to Sri. Sulficker
- 18) B1(q) : Copy of the acknowledgement card
- 19) B1(r) : Copy of the meeting notice No.11/2022 dated 15.03.2022,
Punnapra South Grama Panchayat
- 20) B1(s) : Copy of the meeting notice No.12/2022 dated 16.03.2022,
Punnapra South Grama Panchayat
- 21) B1(t) : Copy of the meeting notice No.15/2022 dated 04.04.2022,
Punnapra South Grama Panchayat



- 22) B1(u) : Copy of the meeting notice No.16/2022 dated 13.04.2022,
Punnapra South Grama Panchayat
- 23) B1(v) : Copy of the meeting notice No.17/2022 dated 30.04.2022,
Punnapra South Grama Panchayat
- 24) B1(w) : Copy of the meeting notice No.19/2022 dated 12.05.2022,
Punnapra South Grama Panchayat
- 25) B1(x) : Notice No.A6/850/2022 dated 27.04.2022 of Secretary,
Punnapra South Grama Panchayat
- 26) B1(y) : Copy of the postal envelop of returned postal article
addressed to Sri. Sulficker
- 27) B1(z) : Copy of the explanation submitted by Sri. Sulficker through
Special Subjail Superintendent, Mavelikkara to Secretary
Punnapra South Grama Panchayat
- 28) B1(aa) : Lettter No.SSJM2-638/2020/SSJMVK dated 04.05.2022 of
Superintendent, Special Subjail, Mavelikkara
- 29) B1(ab) : Copy of the application submitted by Sri. Sulficker to
Secretary, Punnapra South Grama Panchayat through
Superintendent, Special Subjail, Mavelikkara
- 30) B1(ac) : Letter No.SSJM-03/22-23 dated 11.05.2022 of
Superintendent, Special Subjail, Mavelikkara
- 31) B1(ad) : Copy of the Resolution No.1/1 of the committee meeting
dated 30.05.2022, Punnapra South Grama Panchayat
- 32) B1(ae) : Letter No.A6/850/2022 dated 02.06.2022 of Secretary,
Punnapra South Grama Panchayat



- 33) B1(af) : Letter No.A6/850/2022 dated 07.06.2022 of Secretary,
Punnapra South Grama Panchayat
- 34) B1(ag) : Letter No.A6/850/2022 dated 07.06.2022 of Secretary,
Punnapra South Grama Panchayat
- 35) B1(ah) : Letter No.A6/850/2022 dated 08.06.2022 of Secretary,
Punnapra South Grama Panchayat
- 36) B1(ai) : Letter No.A6/1149/2022 dated 23.02.2022 of Secretary,
Punnapra South Grama Panchayat
- 37) B2 : Copy of the file containing the minutes of the meeting of
panchayat committee from 01.01.2022 to 30.05.2022 (Page
No.01-119).
- 38) B3 : Copy of the meeting notice book dated 07.01.2022
- 39) B3(a) : Copy of the meeting notice book dated 17.01.2022
- 40) B3(b) : Copy of the meeting notice book dated 28.01.2022
- 41) B3(c) : Copy of the meeting notice book dated 28.01.2022
- 42) B3(d) : Copy of the meeting notice book dated 14.02.2022
- 43) B3(e) : Copy of the meeting notice book dated 21.02.2022
- 44) B3(f) : Copy of the meeting notice book dated 24.02.2022
- 45) B3(g) : Copy of the meeting notice book dated 02.03.2022
- 46) B3(h) : Copy of the meeting notice book dated 10.03.2022
- 47) B3(i) : Copy of the meeting notice book dated 16.03.2022
- 48) B3(j) : Copy of the meeting notice book dated 16.03.2022
- 49) B3(k) : Copy of the meeting notice book dated 23.03.2022
- 50) B3(l) : Copy of the meeting notice book dated 01.04.2022
- 51) B3(m) : Copy of the meeting notice book dated 12.04.2022



- 52) B3(n) : Copy of the meeting notice book dated 29.04.2022
- 53) B3(o) : Copy of the meeting notice book dated 12.05.2022
- 54) B3(p) : Copy of the meeting notice book dated 13.05.2022
- 55) B3(q) : Copy of the meeting notice book dated 25.05.2022

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

