

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

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

**Tuesday, the 5<sup>th</sup> day of August, 2025**

**IA 35/2025**

**IN**

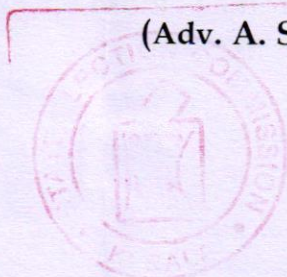
**O.P. No.62 of 2024**

**Petitioner/Respondent** : Smt. Saly Kuriachan.  
W/o. Kuriachan,  
Kochupurackal House,  
Parathodu, Konnathady,  
Idukki- 685571  
Idukki District  
  
(Member, Ward No.10,  
Konnathady Grama Panchayat)

**(Adv. Praveen C. P.)**

**Respondent/ Petitioner** : Sri. Rejimon Thomas,  
S/o. Thomas,  
Idiyakunnel House,  
Mullarikudy,  
Konnathady, Idukki - 685571  
Idukki District  
  
(Member, Ward No.07,  
Konnathady Grama Panchayat)

**(Adv. A. Santhosh Kumar)**



## ORDER

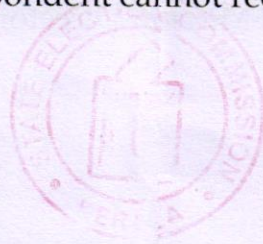
The IA is filed by the respondent in original petition for hearing the question of maintainability of the original petition as a preliminary issue. For the sake of convenience, the parties shall be referred to in the same manner as were referred in the Original Petition.

2. The original petition is filed by the petitioner, who is an elected member of ward No.7 of Konnathady grama panchayat against respondent, who is elected member of ward No. 10 of the same grama panchayat, for determination of the disqualification of latter under section 36 of the Kerala Panchayat Raj Act, alleging that she has ceased to hold office of a member of panchayat under section 35 (1) (o) of the Kerala Panchayat Raj Act.
3. The allegations in the original petition against the respondent is that respondent while holding the office of elected member and Vice President of the Konnathady grama panchayat abused her official position for personal gain and caused financial loss to the grama panchayat as evident from the Award dated 03.09.2024 of the Ombudsman for Mahathma Gandhi NREGS, which is marked as Ext.A1. It appears from the Ext.A1 Award that respondent collected dual benefits as a worker under Mahathma Gandhi NREGS and sitting fee as an elected member of Konnathady grama panchayat for 39 days, during a period from 09.08.2021 to 18.11.2023. It further appears from Ext.A1 Award that the Ombudsman for Mahathma Gandhi NREGS had verified the Reports regarding the Muster roll of workers under the Scheme and Attendance Register of elected members, before arriving at the conclusions at Ext.A1. Further, by virtue Ext.A1 Award the Ombudsman for Mahathma Gandhi NREGS directed the respondent to remit back the amount of Rs.16,391/- collected her as wages for 39 days, with interest thereon to the account of Mahathma Gandhi NREGS. Accordingly, respondent remitted back the amount in the account of Mission Director, Mahathma Gandhi NREGS through Kerala State Cooperative Bank, Konnathady Branch as per Customer Acknowledgment dated 27.03.2024, which is marked as Ext.A2. The definite case of the petitioner is that respondent received sitting fee as elected member and Vice President of the Panchayat from the Panchayat and wages as a worker under the Mahathma Gandhi NREGS during the same period and she



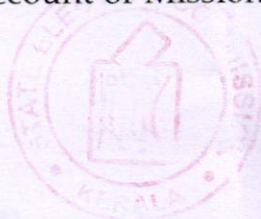
caused loss, waste and misuse to the panchayat and thereby she incurred a disqualification as contemplated under section 35 (1) (o) of the Act.

4. Respondent filed objection *inter alia* contending that the original petition is not maintainable either in law or on facts. The original petition is filed with an intention to harass the respondent. Respondent was elected as Vice President of the Panchayat in the year 2024 and not officiating in the post from 2021 onwards as alleged. Respondent got enrolled in Mahathma Gandhi NREGS on 06.08.2015 and from that date onwards she has been working as a worker under the Scheme and drawing emoluments. Even after having elected as a member of Konnathady grama panchayat, she continued as a worker under the Scheme. The work under the Scheme starts at 9 am and end by 5 pm every day. The work sites were within the close vicinity of her residence. Due to inadvertent mistake/omission respondent participated in the official meetings of the panchayat, which were held at 11.30 am or 2 pm after having attended the work under the Scheme. Being a housewife, he did not have the exposure in public life or even aware of the intricacies of procedure/law which bars her from participating in panchayat meeting, after having participated employment under Mahathma Gandhi NREGS. The moment when she came to know about discrepancy, she remitted back the amount with interest to the credit of Mahathma Gandhi NREGS as per Ext.A2. The Ext.A1 Award of Ombudsman for Mahathma Gandhi NREGS is bad in law as the same is passed without any authority or jurisdiction. She has preferred an appeal against the Ext.A1 Award of the Ombudsman for Mahathma Gandhi NREGS before the Appellate Authority. The order passed by Ombudsman for Mahathma Gandhi NREGS is not a ground for disqualifying the respondent under section 35 (1) (o) of the Act.
5. On 17.07.2025 respondent filed the present IA for hearing the question of maintainability of the original petition as a preliminary issue. Meanwhile petitioner examined PW1 and PW2 and marked Ext.A1 and A2 and Ext.X1 to X5 documents in his side. The definite case of the petitioner as disclosed from para 4 of the petition is that "respondent received salary as Vice President of the Grama Panchayath and at the same time worked under the Mahathma Gandhi NREGS. The respondent cannot receive salary as Vice President when



engaged in works under the employment guarantee scheme. The respondent by receiving salary as Vice President of the Grama Panchayat caused loss and waste of money of the panchayat and hence liable for misuse of the funds of the panchayat".

6. As per rule 6 of the Kerala Panchayat Raj (Honorarium and Allowances to Representatives of People) Rules, 1995 attendance allowance (sitting fee) may be allowed to President, Vice President, members etc at different rates provided therein, to participate the meeting of the panchayat in accordance with the provisions of the Kerala Service Rules. According to the respondent she has attended the meetings of the panchayat committee and claimed the admissible amount of sitting fees. Further, Ext.X1 Attendance Register of the panchayat meeting would go to show that respondent had been attended the relevant panchayat meetings held during 09.08.2021 to 18.11.2023. Therefore, there is no question that respondent being wilfully received any ineligible amount from panchayat as sitting fee, which tends to cause loss to the panchayat. Moreover, the petitioner has no case that respondent has received sitting fee from the panchayat without attending the meetings of the panchayat and therefore there is no question of loss, waste or misuse of the fund of the panchayat arose.
7. The Ombudsman for Mahathma Gandhi NREGS is appointed under Mahathma Gandhi National Rural Employment Guarantee Act, 2005 for each district for receiving grievances etc and passing awards thereof. In the instant case, the findings of Ombudsman vide Ext.A1 Award is to refund the amount collected by respondent as wages under Mahathma Gandhi NREGS during the sitting days of panchayat. There is also a direction to the Government to take appropriate action against Smt. Saly Kuriachan, the elected member of Konnathady grama panchayat. Commission is not supposed to examine the correctness or legality of the findings of the Ombudsman for Mahathma Gandhi NREGS constituted for the purpose envisaged under 2005 Act. There is also no finding in the Ext.A1 Award of the Ombudsman for Mahathma Gandhi NREGS that respondent caused any loss to the panchayat.
8. Ext.A2 would goes to show that respondent has remitted back an amount of Rs.16,411/- to the account of Mission Director, Mahathma Gandhi NREGS as



directed by Ombudsman for Mahathma Gandhi NREGS in Ext.A1 Award. This act is only a positive gesture to comply with the order of Ombudsman for Mahathma Gandhi NREGS, appropriate authority under the Act. The remittance made by the respondent to the credit of Mahathma Gandhi NREGS cannot be considered as admission of guilt that she caused loss to the panchayat. Moreover, Mahatma Gandhi NREGS is funded by both the Central Government and State Government, with Central Government providing 90 percent fund and the State Government providing 10 percent fund. Therefore, the alleged loss caused to the Mahathma Gandhi NREGS would not *ipso facto* attract the loss " caused to the panchayat" for the purpose of section 35 (1) (o) of the Act.

9. Heard the petitioner and respondent on 17.07.2025
10. Respondent has filed this IA raising the question of maintainability of the original petition, after the conclusion of the evidence of the petitioner. However, it is well settled that a legal issue can be raised at any stage of suit or proceedings. Once, legal issue regarding the maintainability of the petition has been raised by the respondent, the burden is upon the petitioner to satisfy the Court that the petition is maintainable. The question of maintainability/ jurisdiction goes to the root of the matter. Therefore, the IA is maintainable.
11. Further, as per section 35 (1) (o) of the Act "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" In the present case there is no pleadings that respondent has caused loss to the panchayat to attract section 35 (1) (o) of the Act.

It is well settled that incurring of disqualifications under any one of the contingencies depends upon the existence of a definite set of facts, which are required to be specifically pleaded before they are sought to be proved to establish the allegations of disqualification. However, there is no adequate pleadings in the original petition. It also well settled that if a party raises an objection to the maintainability of the petition and then the Court should form a *prima facie* satisfaction that the suit is maintainable.



In the result IA is allowed and original petition is dismissed as not maintainable.

Dated this 5<sup>th</sup> day of August, 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//



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

