

**BEFORE THE KERALASTATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM**

**PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION MMISSIONER**

**Friday, the 16<sup>th</sup> day of October 2015**

**R.C.No.07/2015**

Reference Petitioner : Returning Officer,  
D2-Kollam District Panchayat &  
District Collector, Kollam.

Respondent : Asad,  
Iqbal Manzil, Kadathur P.O.,  
Thazhava, PIN 690 523.

This case having been heard on 16<sup>th</sup> October 2015, the Commission passed the following.

**ORDER**

This is a reference made by the District Election Officer in her capacity as the Returning Officer of the Kollam District Panchayat under Section 34(2) of the Kerala Panchayat Raj Act.

2. The reference petitioner states that Sri.Asad has submitted nomination to the Division No.2 of Kollam District Panchayat and during the scrutiny of such nomination, another candidate by name Sri.Anil Kumar has raised objection stating that Sri.Asad is in arrears of ₹47,02,848/- to the

Kerala Khadi and Village Industries Board and even though Sri.Asad has stated that there is stay against the said liability, he did not produce any record and as there is no specific instruction from the State Election Commission as to whether the liability to the Kerala Khadi and Village Industries Board would incur disqualification, the Returning Officer has forwarded this reference as provided under Section 34(2) of the Kerala Panchayat Raj Act, for taking a decision by the State Election Commission.

3. On receipt of this reference, notice was given to Sri.Asad, the candidate and Sri.Anil Kumar, the objector to appear before the State Election Commission with records, if any, at 4pm today for hearing and both parties were present and they were heard.

4. The point for consideration is,-

“Whether the candidate has become subject to disqualification under Section 34(1)(j) of the Kerala Panchayat Raj Act as alleged by the objector?”

5. **THE POINT**: The short question that arises for consideration is whether the arrears due to the Kerala Khadi and Village Industries Board by Sri.Asad is a disqualification for contesting in the election to Division No.2 of Kollam District Panchayat. Section 34(1)(j) of the Kerala Panchayat Raj Act, for short the Act, is extracted as follows,-

*'34. Disqualification of candidates,- (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat at any level, if he—*

.....  
 .....  
 .....

*(j) is in arrears of any kind due by him to the Government [or the Local Self Government Institution] (otherwise than in a fiduciary capacity) up to and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired; or”*

6. So, from the above provision it is clear that for incurring disqualification under Section 34(1)(j) of the Act, the arrears should be due by the candidate to the Government or to a Local Self Government Institution. Sri.Asad, the candidate would argue that arrears due by him to the Kerala Khadi and Village Industries Board cannot be construed as an arrears due by him to the Government. On the other hand Sri.Anil Kumar, the objector states that Kerala Khadi and Village Industries Board is an instrumentality of the State which is run by the funds provided by a Central Commission and also by the State Government and so the arrears due to this institution would

come within the ambit of arrears to the Government. It is also argued that Revenue Recovery steps have already been initiated against Sri.Asad for recovery of this amount. The candidate Sri.Asad admits that his property is already under attachment in connection with the recovery steps in relation to this arrears.

7. For attracting Section 34(1)(j) of the Kerala Panchayat Raj Act, the arrears due by the candidate should be either to the Government or to a Local Self Government Institution. Admittedly the above arrear is due by the candidate to the Kerala Khadi and Village Industries Board. Whether the Kerala Khadi and Village Industries Board can be construed as ‘Government’ deserves consideration. Government is defined under Section 2 (xviii) of the Act as follows,-

“2. **Definitions**,- *In this Act, unless the context otherwise requires,-*

.....

*(xvii) ‘Government’ means the Government of Kerala.”*

8. So it is clear that the arrears should be to the Government of Kerala. So it is clear that an instrumentality of a state would never come within the meaning of Government. In *Malathi Rai Vs. Suhara Abbas Ali* (2007 (4) KLT 153) (DB), it has been held that dues to Co-operative Societies, Co-

operative Banks, Nationalized Banks, Commercial Banks or Government Companies are not dues to the Government. In Karunakaran Vs. Chandran Panicker (2010 (2) KLT 379) the Hon'ble High Court has held that any liability or dues of a Public Sector Undertaking cannot be construed as dues to the Government. This position is further clarified in Shaji Mathew Vs. Thomas Chacko (2010 (2) KLT 148) wherein at Para 3 it has been held that dues to Kerala State Backward Development Corporation is not dues to the Government. Since the Government as defined under Section 2(xviii) of the Act means the 'Government of Kerala,' it will not take within its meaning any instrumentality of the state as clarified by the above decisions. So I am of the view that the Kerala Khadi and Village Industries Board will not come within the meaning of the 'Government' under this Act. Therefore the arrears due to the Kerala Khadi and Village Industries Board cannot be construed as arrears to the Government.

9. The learned counsel for the objector would then argue that Revenue Recovery steps have already been initiated for recovery of the arrears due by the candidate to the Kerala Khadi and Village Industries Board and therefore this amount would come as arrears to the Government. Simply because Revenue Recovery steps have been initiated for recovery of an amount due to the Kerala Khadi and Village Industries Board, it will not alter the character of

the debt. The candidate would state that the revenue recovery is initiated by invoking Section 71 of the Kerala Revenue Recovery Act and he would also state that Kerala Khadi and Village Industries Board is empowered to recover its arrears through Revenue Recovery Proceedings by virtue of including this Board by invoking Section 71 of the Kerala Revenue Recovery Act. Of course the Kerala Khadi and Village Industries Board is included in the list of institutions as provided by Section 71 of the Kerala Revenue Recovery Act so as to enable it to recover the debts due to it by resorting to such provisions and it is not by treating such amounts as an arrear to the Government. Considering all the above facts and the position of law, I hold that the arrears due by Sri.Asad is not arrears due by him to the Government and so Sri.Asad is found to be not disqualified under Section 34(1)(j) of the Kerala Panchayat Raj Act.

Hence the reference is answered by holding that Sri.Asad, the candidate has not become subject to disqualification mentioned under Section 34(1)(j) of the Kerala Panchayat Raj Act.

Dated this the 16<sup>th</sup> day of October 2015

Sd/-  
K.SASIDHARAN NAIR,  
STATE ELECTION COMMISSIONER

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