

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

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

**Friday, the 11<sup>th</sup> day of April 2014**

**O.P.No.44/2012**

Petitioner : K.V.Velu,  
S/o Vayro,  
Kooliyadu House, Kuraladu,  
Edathala P.O.,  
Ernakulam District 683 561.  
Member, Ward No.11,  
Edathala Grama Panchayat.

**(By Advs.M.Fathahudeen  
& Rubeena Shabu)**

Respondent : A.S.K.Syed Muhammed,  
Member, Ward No.14,  
Edathala Grama Panchayat  
Ernakulam District – 68

**(By Advs. Cherunniyoor P.Sasidharan Nair  
& Kallambalam S.Sreekumar)**

This petition having come up for hearing on the 12<sup>th</sup> day of March 2014, in the presence of Advocates **M.Fathahudeen & Rubeena Shabu** for the petitioner and Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the respondent and having stood over for consideration to this day, the Commission passed the following.

## **ORDER**

Petition filed under Section 35(o) r/w Section 36 of the Kerala Panchayat Raj Act for declaring that the respondent has ceased to hold office as member of Edathala Grama Panchayat.

2. The short facts are as follows:- The petitioner is the member of ward No.11 of Edathala Grama Panchayat and the respondent is the member of ward No.14 of this Panchayat. In the Panchayat Committee meeting held on 02.06.2012, while discussing agenda item No.15, the respondent, being infuriated in not accepting his demand to take up an issue which was not in the agenda and in order to compel and pressurize the chair to take up such issue for discussion, intentionally and willfully picked up a teak wood chair made by FIT, used by the members for sitting for the meetings in the conference hall and slapped the same on to the floor and destroyed it. While lifting the chair, it came into contact with the ceiling fan and caused damage to its leaf. The respondent thereby committed loss to the Panchayat and he also committed waste in the Panchayat Conference Hall. So the respondent is liable for the loss and waste committed by him to the Panchayat as provided by Section 35 (o) of the Kerala Panchayat Raj Act and thus he has ceased to hold office as a member of the Edathala Grama Panchayat. Hence this petition.

3. The respondent filed objection contenting in brief, as follows:-

The petition is not maintainable either in law or on facts. The petitioner has filed the petition to harass the respondent out of his political enmity towards the respondent. The allegation that the respondent while discussing agenda No.15 in the Panchayat meeting held on 02.06.2013 intentionally and willfully picked up a teak wood chair and struck it on the floor and thereby caused loss to the properties of the Panchayat are totally false. The petitioner, in connivance with the officials of the Panchayat, has created false and forged documents with a view to harass this respondent. In the minutes dated 02.06.2012, the Secretary in connivance with the petitioner and some others purposely written certain false statements and the same were discussed in the Panchayat committee meeting held on 26.07.2012 and it was decided to remove the said portion from the minutes. The petitioner had never raised any objection in the committee in removing the alleged portion from the minutes. The respondent has never caused any loss to the Panchayat and he is not liable to be disqualified under Section 35(o) of the Kerala Panchayat Raj Act. There is no cause of action for the petitioner and the alleged cause of action stated is false. The respondent is not liable to be disqualified and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 3 and RW1 and Exts.P1 to P3, R1, R2 and X1 to X5.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent has caused loss to the Panchayat as alleged?
- (iii) Whether the respondent has ceased to hold office as a member of Edathala Grama Panchayat as provided by Section 35 (o) of the Kerala Panchayat Raj Act?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 35(1)(o) of the Kerala Panchayat Raj Act, for declaring that the respondent has ceased to hold office as a member of Edathala Grama Panchayat. It is alleged that on 02.06.2012, while discussing agenda item No.15, the respondent demanded to take up another issue which was not in the agenda and on refusal by the chair, he intentionally and willfully lifted the teak wood chair used by members for sitting in the conference hall and struck it on the floor and caused damage to the same. It is also alleged that he caused damage to the fan while lifting and striking the chair. So according to the petitioner, the respondent is liable for the loss and waste caused to the Panchayat. The

respondent has denied such an incident and states that he has not caused any loss or waste to the Panchayat.

8. As per Section 35(1)(o) of the Kerala Panchayat Raj Act, hereinafter referred to as the 'Act,' a member shall cease to hold office as such if he is liable for the loss, waste or misuse caused to the Panchayat. As per Section 36 (1) of the Act, 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. As a question arises as to whether the respondent has become disqualified under Clause (o) of Section 35 of the Kerala Panchayat Raj Act and since the petition has been filed by an elected member of the same Panchayat, this commission has to take a decision on the same. The contention of the respondent that there is no cause of action for the petition is totally untenable. The allegations raised in the petition constitute a definite cause of action and as a question arises as to whether the respondent has become disqualified under Clause (o) of Section 35 of the Act, the petition is found to be maintainable. The point is answered accordingly.

9. **POINT Nos.(ii) to (iv):** Since common questions of law and facts arise for consideration in all these points, for brevity and convenience, they are being discussed together. The petitioner would allege that during the Panchayat Committee meeting held on 02.06.2013, while discussing agenda No.15, the respondent demanded to take up another issue which was not in the agenda and as the chair did not concede to his request, the respondent in order to compel and pressurize the chair to take up that issue for discussion, intentionally and willfully picked up a teak wood chair and struck it on the floor and while doing so he also caused damaged to the ceiling fan in the conference hall and the respondent thereby caused loss to the Panchayat and damaged its properties.

10. The petitioner has been examined as PW1. He has filed an affidavit in lieu of his chief examination wherein he has reiterated the allegations contained in the petition. He has deposed that the unruly behaviour and conduct of the respondent in having picked up the chair and destroyed it by striking it on the floor was discussed in the same meeting and has been recorded in the minutes. The copy of the relevant page of the said minutes is marked as Ext.P1. PW1 has also deposed that reports were published regarding this incident in Malayala Manorama daily and it is marked as Ext.P2. An FIR was registered by the Aluva Police regarding this

occurrence and the copy of the FIR is marked as Ext.P3. PW1 has also deposed that steps are being taken for recovery of the loss sustained to the Panchayat with respect to this incident. The copies of that record regarding the steps taken by the Panchayat are marked as Ext.P4 series. In cross-examination PW1 has admitted that he was not available in the Panchayat Committee Hall while discussing agenda item No.15 and the facts of his petition are collected from others. According to him he left the conference hall before taking up agenda item No.15 for discussion. So his oral evidence regarding the incident which occurred at the time of discussion of agenda No.15 is not acceptable. So whether there is sufficient evidence to prove the occurrence deserves consideration.

11. The Secretary of the Edathala Grama Panchayat has been examined as PW2. He was present in the Panchayat committee meeting held on 02.06.2012 and he had prepared the minutes of that meeting and the certified photocopy of the minutes of Panchayat committee meetings held from 02.06.2012 to 29.10.2012 is marked as Ext.X1. X1(a) is the photocopy of the minutes of the Panchayat committee meeting held on 02.06.2013. PW2 has deposed that on that day, while the committee was discussing on agenda No.15, this respondent demanded to issue notice to two persons who are reclaiming wet lands situate in ward No.14 and he has

also wanted this matter to be record in the minutes and then the President who chaired the meeting told him that no decision can be taken on that issue and it cannot be recorded in the minutes and the respondent then lifted the chair on which he was sitting and threw it on the floor. PW2 has also deposed that this chair along with 19 chairs were purchased on 09.03.2006 from Forest Industries Travancore Ltd., for a value of ₹2,809/- per chair and Ext.X2 is the file in this regard. PW2 has further deposed that the two legs of the chair were broken while it was thrown to the floor and PW2 has shown the manner in which the chair was put on the floor. PW2 has clarified that the respondent has lifted the chair and threw it at a distance of about 10feet. He has further stated that the above conduct of this member was discussed in the committee on the basis of a note placed before the committee by the President after discussing all the agenda items and the members had expressed their opinions on the same and after discussion regarding the unbecoming conduct of the member, the note was withdrawn as suggested by the members. These matters have been recorded in the decision book maintained by the Panchayat which is marked as Ext.X3. Ext.X3(a) is the note and the discussion over the same. It is further stated by him that the respondent also has involved in the said discussion. PW2 has further stated that the chair when lifted touched the ceiling fan and one leaf



of that ceiling fan was damaged. PW2 has categorically asserted that on account of this act of the respondent, the Panchayat has caused loss and that he had taken steps for assessing the loss sustained by the Panchayat in this regard and it is contained in Ext.X2 file. PW2 had directed the Assistant Engineer to furnish the valuation regarding the damaged chair and fan as per Ext.X2(a) letter and the Assistant Engineer has given a reply stating that the matter should be referred to the FIT which supplied the chair to assess the valuation and that reply is Ext.X2(b). According to PW2 he has again requested the Assistant Engineer to assess the loss sustained to the Panchayat and that letter is marked as Ext.X2(c) and FIT has furnished the value of a similar chair as ₹7,333/-. The leaf of the fan was repaired by the sweeper. The Assistant Engineer has given a report stating the value of the chair after deducting the depreciation as ₹6,350/- and that report is Ext.X2(d). PW2 has clearly deposed that the said loss has been caused by the act of the respondent and that he is a witness to the whole incident. Ext.X4 is the record relating to the discussion over this matter by the Panchayat Committee from 22.06.2012 onwards. Even though PW2 has been cross-examined at length, nothing has been brought out to discredit his evidence. Ext.X5 is the note given by the President regarding the occurrence. PW2 states that after discussing the last agenda No.29, this note

was read over by the President and the matter was discussed. PW2 has stated in cross-examination that in the meeting held on 26.07.2012, it was decided to expunge the remarks and opinions of the members expressed on the note. In re-examination PW2 has stated that the two legs of the chair were completely destroyed.

12. PW3 is the President of the Panchayat. He has also given a moreover similar version regarding the incident. According to him, while discussing agenda item No.15 which was regarding the reclamation of paddy lands on the basis of a Government Order permitting filling up of 10 cents of paddy lands for constructing houses, the respondent who is representing ward No.14 stated that one person in his ward is reclaiming paddy land for doing construction work without the consent of the Panchayat and wanted to discuss that matter and PW3 told him that the matter should be brought to the notice of the Secretary who is the competent person to take action and the respondent insisted to discuss and take decision on that matter in the said committee itself and then PW3 told him that if that is to be discussed and decided in the meeting it should have come as an agenda item and that the committee cannot discuss any matter which is not included in the agenda and the respondent then accused PW3 as politically biased and created an unruly scene in the meeting and as PW3 informed him that the said matter

cannot be discussed without an agenda and proceeded to discuss the next agenda item, the respondent, using filthy language, picked up the chair upon which he was sitting and struck it on the floor and thereby its legs were broken and the respondent then lifted another chair which touched the ceiling fan and the two leaves of that fan were damaged. PW3 has further deposed that the chairs in the conference hall were purchased by the former committee from FIT and that the conduct of the respondent was discussed in the same meeting on the basis of a note submitted by him and on respecting the opinions of the members that no disciplinary action need be taken against the respondent, no further action was taken and this incident was recorded in the minutes. PW3 has further stated that he had given letter to the Secretary stating that the respondent should not be permitted to attend the subsequent committee meetings and that letter is contained in Ext.X2. PW3 has been cross-examined at length. He has stated in cross-examination that the Secretary had issued stop memo regarding the construction being carried out by the person who was mentioned by the respondent in the meeting. PW3 has also deposed that he had withdrawn the note on the basis of the general consensus of the members. To the suggestive question as to why he had then given the letter to the Secretary directing him not to permit the respondent in participating for the meetings, his answer is that since all

the committee members will be held liable for the loss caused to the Panchayat, he gave such a direction. PW3 has also stated that after this meeting there was continuous disturbance in the subsequent committee meetings and so in the meeting held on 26.07.2012 the note given by him was agreed to be withdrawn.

13. The respondent has been examined as RW1. He has denied the entire episode of destroying the chair and causing damage to the fan by him on 02.06.2012. According to him these allegations are raised due to political enmity towards him from the post of the President and others. He has also deposed that the President had placed a note in the Panchayat committee on 02.06.2012 without any basis and as it was politically motivated, it was agreed to be withdrawn and in the subsequent Panchayat committee meetings, all the remarks on the note were expunged and Ext.R1 is stated to the copy of the minutes dated 26.07.2012 recording this fact. RW1 has further stated that no notice has been given to him regarding any loss caused to the Panchayat and that on a private complaint filed before the Criminal Court by another person in collusion with this petitioner, he has deposited a sum of ₹7,500/- for getting bail and the copy of that order is Ext.R2. In cross-examination RW1 has admitted that the Secretary of the Panchayat was present in the committee meeting held on 02.06.2012 and he is fully

aware of all matters which transpired on that day. It was suggested to RW1 that due to his act during the Panchayat committee held on 02.06.2012, a chair was destroyed and one fan was damaged which RW1 had denied and stated that the above allegations are politically motivated.

14. On an examination of Ext.P1 which is the copy of the minutes dated 02.06.2012 it is seen that after the decision taken on agenda item No.29 the President of the Panchayat read out a note and placed it before the committee. In the note it is stated that during the discussion on agenda No.15 the respondent demanded to take a decision regarding the illegal construction of a house and the President informed him that the Secretary has a statutory duty to take action over the same and the matter cannot be discussed in the meeting without an agenda and being infuriated by the refusal to discuss that matter in the committee, the respondent lifted a chair made by FIT and threw it on the floor and it was destroyed and while doing so a fan also was damaged and the President wanted to issue show cause notice and take further action against the respondent and authorized the Secretary to take further action. The members of the committee discussed on the note placed by the President and Ext.P1 contains a brief record regarding such discussion by different committee members and most of them are found to have stated that the conduct of the respondent was totally

unbecoming of a member and a general consensus was arrived at that such instances should not be repeated and for the time being it was decided that no other action will be taken in this matter. The President is found to have agreed to that general consensus. The respondent is found to have involved in the discussion on the note and he in fact did not deny that incident and only cited a similar instance on the part another members in the previous term. Ext.P2 is found to be the copy of the file relating to the further action taken in assessing the loss caused to the chair and the ceiling fan. It contains a letter given by the President to the Secretary authorizing him to take further action and also a letter forwarded by the FIT noting the value of a similar chair as ₹7,333/-. Ext.P3 is the copy of the FIR prepared against the respondent submitted before the Judicial First Class Magistrate – I, Aluva for the offences under Sections 427, 294(b) and 506 (1) of IPC and Section 3(1) of the Prevention of Damage to Public Property Act. The occurrence narrated therein is almost similar to the incident alleged by PW2 in his evidence. Ext.X5 is the note placed by the President before the committee on 02.06.2013 after the discussion of last agenda item and it contains the remarks of the members also. On an evaluation of Ext.X5 it is found that the incident narrated is similar to the evidence let in by PW2, the Secretary of the Panchayat. Ext.X2 is the original file relating to the action taken for

assessing the loss caused to the Panchayat on account of destruction of the chair. On the basis of the letter given by the Assistant Engineer vide Ext.X2(b), the report regarding the value of a similar chair was obtained from the FIT. Ext.X2(c) contains the report of the FIT showing the value of a similar chair as ₹7,333/-. Ext.X2(d) is the assessment made by the Assistant Engineer regarding the value of the chair as ₹6,350/- after deducting the depreciation. Ext.X2(e) is the letter given by the President to the Secretary to take further action against the respondent. Ext.X1 is the copy of the minutes from 02.06.2012 onwards. In this record the incident occurred on 02.06.2012 as well as the further matters transferred over the same in the subsequent committees are recorded. Ext.X3 is the original decision book the copy of which has already been discussed earlier.

15. On an evaluation of the entire evidence as discussed above it is clearly found that the respondent who is an elected member of this Panchayat, being infuriated by the refusal of the President to his demand to discuss a matter not covered by the agenda, lifted the chair upon which he was sitting and willfully threw it on the floor and it was destroyed and while doing so the chair came into contact with the ceiling fan and one leaf of that fan also was damaged. The fact that the chair in the conference hall which was purchased from FIT was damaged by the respondent by throwing it on

the floor is proved beyond any doubt in this case. The value of that chair as assessed by the Assistant Engineer through the FIT is found to be ₹6,350/- after deducting the depreciation. It has come out in evidence that steps are being taken for recovery of the loss. The respondent has not yet remitted the amount. The respondent is definitely liable for the loss caused by him in this incident.

16. The petitioner seeks declaration that the respondent has ceased to hold office as a member of Edathala Grama Panchayat as provided by Section 35(1)(o) of the Act. Section 35(1)(o) of the Act states that a member shall cease to hold office as such if he is liable for the loss, waste or misuse caused to the Panchayat. I have already found that the respondent by way of destroying a chair during the meeting held on 02.06.2012 has caused loss to the property of the Panchayat. The loss has been assessed as ₹ 6,350/-. The manner in which the incident occurred is not in serious doubts. From the evidence on record it is seen that the committee chaired by the President while discussing agenda item No.15 regarding reclamation of lands for the construction of houses, the respondent wanted to discuss and take a decision regarding an alleged illegal construction of a house in his ward and the President informed him that the matter can be taken up with the Secretary who is competent to take action and the respondent was not satisfied with



such a reply and he insisted for discussing the same and being provoked by the refusal of the President to discuss the said issue, he took up the chair upon which he was sitting and threw it on the floor and while doing so it touched the leaf of the ceiling fan and thus he destroyed the chair as well as caused damage to the fan. The above conduct of the respondent was totally unbecoming of a member of the Panchayat. By virtue of the 73<sup>rd</sup> Amendment to the Constitution of India whereby Part – 9 was introduced in the Constitution, Grama Panchayats have become Constitutional Bodies and as per the provisions of the Kerala Panchayat Raj Act, there is substantial Decentralization of powers to the Panchayats. Even though the election to the local bodies in Kerala is on political lines, after election the members become part of the governing body and all of them are bound to govern the Panchayat in a manner befitting to its constitutional position. Section 35 of the Act contains provisions regarding cessation of membership of elected members and these provisions are incorporated with a view to achieve the object of proper and effective administration of the Panchayats at all levels. A member of a Panchayat who is bound to protect its property is not expected to destroy the same. Loss caused to the property of a panchayat would definitely mean loss caused to the Panchayat itself. In the case on hand the respondent is found to have caused destruction of a chair which is

valued at ₹ 6,350/- and so he is liable for the loss caused to the Panchayat as provided by Section 35(1)(o) of the Act. Therefore, he is not entitled to hold office as a member of the Edathala Grama Panchayat. The points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified to hold office as a member of Edathala Grama Panchayat as provided by Section 35(1)(o) r/w Section 36 of the Kerala Panchayat Raj Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 11<sup>th</sup> day of April 2014

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

**Witnesses examined on the side of the petitioner**

- PW1 : Sri.K.V.Velu, Member, Ward No.11,  
Edathala Grama Panchayat
- PW2 : Sri.K.K.Rajikumar, Secretary, Edathala Grama  
Panchayat, Ernakulam
- PW3 : Sri.M.A.M.Muneer, President, Edathala Grama  
Panchayat, Ernakulam

**Witness examined on the side of the respondent**

RW1 : Sri. A.S.K.Syed Mohammed, Member, Ward No.14,  
Edathala Grama Panchayat, Ernakulam

**Documents produced on the side of the petitioner**

P1 : True copy of the minutes of the meeting of Edathala  
Grama Panchayat held on 02.06.2012

P2 : True copy of the file No.8043/2012 of Edathala Grama  
Panchayat

P3 : True Copy of the First Information Report

**Documents produced on the side of the respondent:**

R1 : True copy of the minutes of the meeting of Edathala  
Grama Panchayat held on 26.07.2012

R2 : Order dated 23.06.2012 in CrI.MC No.1224/2012 of  
the Sessions Judge, Ernakulam

**Document produced on the side of the witnesses**

X1 : File containing the copies of minutes of Edathala  
Grama Panchayat

X1(a) : Copy of the minutes of the meeting of Edathala Grama  
Panchayat held on 02.06.2012

X2 : File No.B2 8043/12 of the Edathala Grama Panchayat

X2(a) : Letter No.B2.8043/2012 dated 07.06.2012 of the  
Secretary, Edathala Grama Panchayat

X2(b) : Letter No.LSGD/AE/EP/3/03 dated 12.06.2012 of the  
Assistant Engineer, LSGD, Edathala Grama Panchayat

- X2(c) : Letter No.B2.8043/2012 dated 25.06.2012 of the Secretary, Edathala Grama Panchayat
- X2(d) : Letter No.LSGD/AE/EP/3/03 dated 06.08.2012 of the Assistant Engineer, LSGD, Edathala Grama Panchayat
- X2(e) : The letter given by the President to the Secretary
- X3 : Minutes Book of Edathala Grama Panchayat
- X3(a) : Page Nos.94 and 95 of the Minutes Book of Edathala Grama Panchayat
- X4 : File No.B2.8583/2012 of Edathala Grama Panchayat
- X5 : Proceedings of meeting of Edathala Grama Panchayat held on 02.06.2012

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER.**

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