

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

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

Wednesday, the 28th day of May 2014

O.P.No.81/2013

Petitioner : P.A.Shaukathali,
S/o Abdul Kabeer, Padinjarakara
House, Akalur P.O.,
Palakkad District.

(By Advs.M.Hashim Babu & Sajitha.S)

Respondent : T.K.Govindan Kutty,
Member, Ward No.6,
Lakkidi Peroor Grama Panchayat,
Palakkad District, PIN – 679 301.

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

This petition having come up for hearing on the 2nd day of May 2014,
in the presence of Advocates **M.Hashim Babu & Sajitha.S** 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 Sections 35(o) and 35(r) of the Kerala Panchayat Raj Act.

2. The short facts are as follows:- The petitioner and respondent are members of Lakkidi Peroor Grama Panchayat. Out of the total 19 wards in the Panchayat, CPI (M) under LDF coalition secured 7 seats, Congress and Indian Union Muslim League under UDF coalition secured 8 and 4 seats respectively and the remaining 4 seats were won by BJP. In the election to the post of President held on 08.11.2010, Sri.Sreevalsan belonging to Indian National Congress was elected. There was an agreement in the Congress party to share the post of President by Sri.Sreevalsan and the petitioner and accordingly Sri.Sreevalsan resigned on 30.04.2013. Thereupon President election was notified to be held on 23.5.2013. In the election the candidates of UDF, LDF and BJP contested and since no candidates secured the prescribed votes at the first phase of election, voting was again conducted after eliminating the BJP candidate who secured less votes and in the second phase of election the respondent was declared elected with eleven votes. The petitioner secured only eight votes. Since the BJP members also supported the respondent, he did not take charge and the matter was reported to Election Commission. Since the vacancy could not be filled up, election

to the post of President was scheduled to be held on 16.07.2013. In that election also the same pattern as on 23.05.2013 was repeated and in the second phase the BJP candidate Smt.M.Jayasree was eliminated and voting was done between petitioner and respondent. Though the respondent was aware that BJP members also will support him in that election, he did not withdraw and he contested and on securing eleven votes including the votes of BJP he was declared elected. Since the BJP members also supported him for his election, he did not take charge as President and the vacancy was again report to the Election Commission. Being an elected member of the Panchayat, the respondent is having duties and responsibilities towards the electorate and the public. His intentional act has created confusion in the smooth functioning of the Panchayat. On 16.07.2013 also he contested fully knowing that the BJP members also support him and he contested only to create a stumbling block in getting the petitioner elected ignoring the fact that his party was having only seven votes whereas the petitioner had the support of eight members. The respondent ought to have sworn in as President as provided by Sub Section (13a) of Section 153 of the Kerala Panchayat Raj Act and there is no sufficient reason for not taking charge as President on declaring him as elected. After election the respondent failed to enter upon his office without any sufficient cause on two times and thus the

respondent is disqualified to continue as a member of Lakkidi Peroor Grama Panchayat as provided by Section 35(r) of the Kerala Panchayat Raj Act. On account of the action of the respondent, the Panchayat had to spent substantial amounts in the conduct of the elections and thus due to his intentional acts, the Panchayat has caused loss and waste of funds and so the respondent is disqualified to continue as a member under Section 35(o) of the Act. Hence this petition.

3. The respondent filed objection contenting in brief, as follows:-
The petition is not maintainable either in law or on facts. It is true that the petitioner belongs to UDF and the respondent belongs to LDF. The party position as stated in the petition is true. It is also true that after General Election Mr.Sreevalsan from UDF was elected as President. The respondent is a member belonging to CPI(M) which is a major political party strictly following its policies. The respondent stood as a candidate in the election to the post of President on 23.05.2013 strictly obeying the direction of his party. The BJP is one of the rival party of CPI(M). Using the political equations in seats, the BJP members purposely voted in favour of the respondent and they gave wide propaganda that the Panchayat administration is under their control and being an obedient worker of the CPI(M), he obeyed the direction of the party and so he did not take charge as President.

In the election held on 16.07.2013 also, the same pattern of election was repeated. Even though he never asked any support from the BJP to become the President, the members of BJP voted in favour of the respondent. As the respondent could not have secured majority votes without their support, the respondent did not take charge and this was by obeying the direction of his party. The CPI(M) had discussed the issue in detail and the District Secretary of CPI(M) gave direction to the respondent not to become the President with the support of BJP members. The respondent contested the election as per the direction of the party and he did not take charge as President which also was as directed by the party. If he had disobeyed the direction of his party that would amount to defection as provided by the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. Therefore the respondent did not enter upon his office as President on the basis of the direction of his party and he was having sufficient reason for not taking charge as President. The respondent has not caused any loss to the Panchayat and the petition is highly politically motivated. So the petition deserves only dismissal.

4. The evidence consists of the oral deposition of RW1 and Exts.P1,P2 and R1.

5. The following points arise for consideration.

- (I) Whether the petition is not maintainable?
- (ii) Whether the respondent has declined to enter upon his office as President of the Panchayat without sufficient cause within a period of 15 days from the date on which he was declared as elected as provided by Section 153, (13a) of the Kerala Panchayat Raj Act?
- (iii) Whether the respondent has caused any loss waste or misuse to the Panchayat as alleged?
- (iv) Whether the respondent has ceased to hold office as a member of the Panchayat as provided by Section 35 (r) of the Kerala Panchayat Raj Act?
- (v) Whether the respondent has ceased to hold office as a member of the Panchayat as provided by Section 35(o) of the Kerala Panchayat Raj Act?
- (vi) Reliefs and costs?

6. **Point No.(i)**: According to the petitioner the respondent has failed to enter upon the office of the President within 15 days from the date on which he was declared as elected without sufficient cause and so he is not entitled to continue as a member. The petitioner would also allege that the respondent is liable for the loss and waste caused to the Panchayat on account of the repeated elections held to elect the President and his deliberate conduct of not entering upon office after declaring him as President. The respondent would contend that he did not take charge on his declaration as President on the basis of the direction of his political party not to take charge with the support of BJP members who voted in his favour.

He would also contend that he has not caused any loss or waste to the Panchayat fund. As per Section 35(r) of the Kerala Panchayat Raj Act, hereinafter referred to as the 'Act,' a member shall cease to hold office as such if he has failed to enter upon office within the time limit specified in sub-section (13a) of Section 153 of the Act. Sub Section (13a) of Section 153 of the Act states as follows,-

“(13a) The State Election Commission may declare the office of the President or Vice President, as the case may be, as vacated on his own motion where the person has not entered upon his office without sufficient cause by taking oath or affirmation within a period of fifteen days from the date he was declared as elected as President or Vice President of a Panchayat of any level.”

Section 35(o) is attracted when a member is liable for the loss, waste or misuse caused to the Panchayat. As per Section 36 of the Act, 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. In this case a

question arises as to whether a member has become subject to disqualification as provided by Section 35(r) and Section 35 (o) of the Act. The present petition is filed by a member of the same Panchayat of which the respondent is a member. Since a question arises as to whether the respondent has ceased to hold office as provided by Section 35(o) or 35 (r) of the Act and the petition has been filed by a member of the Panchayat as provided by Section 36 of the Act, I hold that the petition is maintainable. The point is answered accordingly.

7. **Point Nos.(ii) and (iv):** The facts are not in dispute. The petitioner and respondent are members of Lakkidi Peroor Grama Panchayat. After the General Election Sri.Sreevalsan belonging to Indian National Congress was elected as President and on 30.04.2013 he resigned from that post. In the subsequent election held on 23.05.2013, the petitioner belonging to Congress party and the respondent belonging to CPI(M) and one Suresh Babu belonging to BJP contested and in the first phase petitioner secured 8 votes, the respondent secured 7 votes and Sri.Suresh Babu secured 4 votes. Rule 7(b) of the Kerala Panchayat Raj (Election of President and Vice President) Rules is to be then followed and it states as follows,-

“If there are more than two contesting candidates and in the first polling no candidate secures more votes than the

aggregate votes secured by all the other candidates together, the candidate, who had secured the least number of votes shall be eliminated and the voting shall be continued by eliminating the candidate who secures more votes than those secured by the remaining candidate or candidates together, as the case may be, and the candidate who thus secures more vote shall be declared as elected.”

8. In the present case since there were three contesting candidates and in the first polling no candidate secured more votes than the aggregate votes secured by the other two candidates, the candidate belonging to BJP was eliminated and voting was conducted between the petitioner and respondent. In that voting the BJP members also supported the respondent and thus he secured eleven votes whereas the petitioner secured only eight votes and so the respondent was declared as elected. But the respondent did not enter upon his office as President by taking oath and he gave a written letter to the Returning Officer stating that he has been elected by securing eleven votes and as the four members belonging to BJP also voted in his favour and thus he secured majority, he was not willing to take charge with the support of BJP members and thus he did not take charge as President. Ext.P2 is the certified copy of the letter issued by the Returning Officer regarding the

election held on 23.05.2013 and the minutes of the election meeting and also the certified copy of the letter given by the respondent to the Returning Officer. From this record it is clear that even though the respondent was declared as elected, he declined to take charge on the reason that he secured more votes than the petitioner as BJP members also supported him and so he is not taking charge. Thereafter the election to the post of President was again notified to be held on 16.07.2013. Everything that happened on 23.05.2013 was repeated in the election held on 16.07.2013. Ext.P1 contains the minutes of the election meeting held on 16.07.2013. From this minutes it is found that the respondent though declared as elected by winning eleven votes, he did not take charge by stating that he is not willing to take oath as the four BJP members also voted in his favour. In the subsequent election held on 02.08.2013 to the post of President, the same pattern of voting was repeated and the respondent was declared as elected as he had secured eleven votes which included four votes of BJP members. He had given a letter to the Returning Officer stating that though he was declared as elected by winning eleven votes, he is not taking charge as the BJP members also supported him in his election to the post of President. Ext.P1 contains the copy of that letter. From the above records it is clear that the respondent though was declared as elected to the post of President in three elections

held at successive intervals, he did not take charge on making oath on account of the reason that he was not willing to function as President with the votes of BJP members. Of course the LDF has only seven members whereas the UDF is having eight members. Four members are belonging to BJP. Unless the BJP members also support the LDF, a member from LDF cannot be elected as President. The respondent was fully aware from what happened in the elections held on 23.05.2013 and 16.07.2013 that the members belonging to BJP would support him. It appears that the BJP wanted to avoid the petitioner from getting elected as President for reasons best known to them alone. As a matter of fact in the election to the post of President held immediately after General Election, Sri.Sreevalsan belonging to Congress party was elected as President only due to the reason that the BJP members kept away from voting. After his resignation, in the elections held to that post, the BJP was supporting the LDF in all the elections in which the respondent contested. It is in the above background, the present petition has been filed mainly under Section 35(r) of the Act.

9. The respondent has been examined as RW1. He has deposed that the CPI(M) in which he belongs had taken a policy decision that its members will not function as office bearers of the Panchayat with the support of BJP members and that the District Secretary of CPI(M) had issued such a

direction to the Ottappalam area Committee Secretary which has been communicated to the respondent. The above communication is marked as Ext.R1. The definite contention of the respondent is that since his party had directed him not to function as President with the support of BJP members, he did not take charge in spite of his election to that post. In Ext.R1 it is stated that the respondent has been decided as the candidate for the post of President and that in the present political equations, the respondent should not take charge as President with the support of any other parties and if elected he should resign immediately from that post. The respondent did not take charge as President. The post of President was declared as vacated as he did not enter upon his office within 15 days from the date on which he was declared as elected as provided by Sub Section (13a) of Section 153 of the Act. Exts.P1 and P2 contains the proceedings of the Commission declaring that the respondent had vacated the office as President without sufficient cause by not taking charge within 15 days from the date on which he was declared as elected. Such a proceedings was issued on the basis of the report that the respondent did not take charge after he was elected as the President. The respondent has not challenged the proceedings of the State Election Commission passed under Sub-Section (13a) of Section 153 of the Act. The above Section states that the State Election Commission may

declare the office of the President or Vice President as the case may be, as vacated on his own motion where the person has not entered upon the office without sufficient cause by taking oath within a period of 15 days from the date he was declared as elected as President or Vice President of a Panchayat. After having accepted such a declaration made by the State Election Commission under Sub-Section (13a) of Section 153 of the Act, the respondent cannot now turn round and say that there was sufficient cause for not taking charge as President. The present petition has been filed after the next election in which the present petitioner was elected as President. The contention of the respondent that he did not take charge on the basis of the direction given by his party cannot be considered as sufficient cause for not taking charge as prescribed by Sub-Section (13a) of Section 153 of Act. This sub-Section cannot take within its fold a failure on the part of the respondent in taking charge as per a party directive, after declaring him as President in the repeated elections held from May 2013 onwards. He should have been very much aware that the members belonging to BJP would be supporting him in the second phase of election as they did not want the petitioner to become the President. The LDF was only having seven members whereas the UDF is having eight members. So without the support of BJP, they will not be able to get the post of President. In the above

circumstances, after having been elected as President in the repeated elections, it is futile to contend that there was sufficient cause for not taking charge in all such elections. On a totality of all facts and materials on record, it is clearly found that the respondent had failed to enter upon office without sufficient cause within the time limit specified in Sub-Section (13a) of Section 153 of the Act and so Section 35 (r) of the Act is attracted against him. The points are answered accordingly.

10. **Point Nos.(iii),(v) & (vi)**:- The petitioner would also allege that the respondent is liable for the loss and waste caused to the Panchayat on account of the repeated elections held to the post of President. The election to the post of President was necessitated as respondent had vacated the office. Such elections are to be conducted on the basis of the statutory mandate and it cannot be considered that the respondent has caused any loss or waste to the Panchayat funds. Therefore I find that the Section 35(o) of the Act is not attracted against the respondent in this case. From the discussion held above I hold that the respondent has ceased to hold office as a member. The points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified to hold the office as a member of Lakkidi Peroor Grama Panchayat as provided by Section 35(r) of the Kerala Panchayat Raj Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 28th day of May 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the respondent

RW1 : T.K.Gonvindan Kutty, Teacher, Thazhatheykoleri,
Nandanam

Document produced on the side of the petitioner

P1 : Letter dated 05.08.2013 of the Returning Officer,
Lakkidi Peroor Grama Panchayat and enclosures

P2 : Letter dated 24.06.2013 of the Returning Officer,
Lakkidi Peroor Grama Panchayat and enclosures

Document produced on the side of the respondent

R1 : Letter dated 20.05.2013 of the Secretary, CPI,
Palakkad District Committee

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.