

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

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

**Wednesday, the 14<sup>th</sup> day of May 2014**

**O.P. No.88/2013**

Petitioner : V.K.Vinod,  
S/o V.K.Kunjan,  
Sunilnivas, Karassery P.O.,  
Kozhikode.

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

Respondent : The Secretary,  
Karasseri Grama Panchayat,  
Karasseri P.O., Mukkam,  
Kozhikode 673 602.

**(By Adv. E.Sulficker)**

This application having come up for hearing on the 22<sup>nd</sup> day of April 2014, in the presence of Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the petitioner and **Adv.E.Sulficker** for the respondent and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

This petition is filed under Section 36 read with Section 35(k) of the Kerala Panchayat Raj Act for setting aside the notice No.A3-8986/2013 dated 04.10.2013 issued by the Secretary under Section 37(2) of the above Act.

2. The short facts are as follows:- The petitioner is a member representing ward No.10 of Karassery Grama Panchayat and he is belonging to CPI(M). Out of the 18 wards in this Panchayat, LDF secured 8 seats and UDF found victory in 10 seats. After election the petitioner was elected as member of Development Standing Committee and it consists of 4 members out of which the petitioner alone is belonging to CPI(M). The Congress party is a partner of UDF and its District leaders are trying to oust the LDF members by hook or crook. The petitioner was regularly attending the Standing Committee Meetings for which notices were served to him. The Development Standing Committee Chairperson at present is Smt. Suhara belonging to UDF. On 05.10.2013 the counter petitioner issued a notice dated 04.10.2013 stating that the petitioner has not attended the Development Standing Committee meetings held on 24.07.2013, 23.08.2013 and 24.09.2013 and so he has ceased to hold office as a member of this Panchayat as provided by Section 35(k) of the Act. The petitioner has attended all the Development Standing Committee Meetings in which notices were served to him. He was never served with the notices in respect of the meetings held on 24.07.2013 and 24.09.2013. He had attended

the Development Standing Committee meetings held on 23.08.2013 and signed the attendance register. The petitioner was having no knowledge regarding the meetings held on 24.07.2013 and 24.09.2013 and so he could not attend the said meetings. The notice issued to him is illegal and without any bonafides and it is with the intention to help the ruling party through crooked means. The respondent is dancing in tune with the ruling party and their intention is to oust the petitioner. So there is no meaning in filing a petition for restoration u/s 37(2) of the Kerala Panchayat Raj Act. Therefore the petitioner has filed the original petition for setting aside the notice dated 04.10.2013 and to allow him to continue as a member.

3. The contentions raised by the respondent are in short the following; The petition is not maintainable and it is filed with an ulterior intention to continue as a member of the Panchayat. The respondent issued the notice stated on 04.10.2013 by complying with all the formalities for the reason that the petitioner was absent consecutively for three meetings of the Development Standing Committee of which he was a member. The petitioner unlawfully entered into the cabin of the respondent on 26.09.2013 and took away the attendance register of the members of the Grama Panchayat without the knowledge and consent of the respondent and he fraudulently entered his name and signature in the attendance register of the members of the Development

Standing Committee held on 23.08.2013. The petitioner has dishonestly and fraudulently altered the record which was in the custody of a Government Servant and complaint has been filed before the Sub Inspector, Mukkam Police Station alleging forgery against the petitioner and a case is registered as Crime No.814/2013 under Sections 448, 463 and 465 IPC. The petitioner has written his name and signature in the said register over the crossed line. The respondent issued the notice only due to the willful absence of the petitioner from the Development Standing Committee meetings and there was no influence from any political parties in this respect. The respondent was absent in the Development Standing Committee held on 24.07.2013, 23.08.2013 and 24.09.2013 and so intimation notice was given to him. All the Development Standing Committee meetings were held after giving statutory notice to the petitioner and all legal formalities are observed in this regard. The petitioner has no right or authority to continue as a member and the petition deserves only dismissal.

4. The evidence consists of the oral deposition of PW1 and Exts.P1 series and P2 for the petitioner. The respondent remained absent and was set exparte on 25.03.2014.

5. The petitioner has been heard.

6. From the unchallenged testimony of PW1 and Exts.P1 series and P2 it is clearly found that no proper notice was given to the petitioner in respect of the Development Standing Committee meetings held on 24.07.2013 and 24.09.2013. From Exts.P1 series it is seen that the notices for the above meetings are stated to have been served to one Ammalu. What is the relationship between the said Ammalu and the petitioner is not mentioned in the notice book. Her name is stated in the column for the members of the Standing Committee. Why the petitioner was not served with the notice directly or by post also has not been explained by the respondent. As per Section 35(k) of the Act, three clear days notice is to be given to the members in respect of a meeting of the Standing Committee. In the case on hand the notice stated to have been given to one Ammalu for the meetings on 24.07.2013 and 24.09.2013 are found to be totally illegal and there is no evidence to show that the petitioner was aware of such meetings. Therefore the non-participation of the petitioner in those meetings cannot be taken as a ground to disqualify him under Section 37(2) of the Act. So it is not necessary to consider any other aspects for coming to a conclusion that the notice issued by the respondent under Section 37(2) of the Act is illegal. Therefore I find that the notice issued by the respondent under Section 37(2) of the Act is illegal and it is liable to be set aside as prayed for.

Hence the petition is allowed and the notice issued by the respondent under Section 37(2) of the Kerala Panchayat Raj Act informing that the petitioner has ceased to hold office as a member of the Panchayat is set aside and the petitioner is allowed to continue as a member.

Pronounced before the Commission on this the 14<sup>th</sup> day of May, 2014

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

**APPENDIX**

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

- P1 -- Copy of the notice dated 26.06.2013 to the meeting of  
Development Standing Committee held on 29.06.2013, Karassery  
Grama Panchayat.
- P1(a) -- Copy of the notice dated 20.07.2013 to the meeting of  
Development Standing Committee held on 24.07.2013
- P1(b) -- Copy of the notice dated 17.08.2013 to the meeting of  
Development Standing Committee held on 23.08.2013
- P1(c) -- Copy of the notice dated 19.09.2013 to the meeting of  
Development Standing Committee held on 24.09.2013
- P2 -- Notice No.A3 8986/13 dated 04.10.2013 issued by the Secretary,  
Karassery Grama Panchayat

Sd/-  
K.SASIDHARAN NAIR,  
STATE ELECTION COMMISSIONER

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