

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

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

Tuesday, the 5th day of August, 2025

O.P. No.27 of 2024

Petitioner : Sajimon Varghese
S/o Varghese
Naduvilekurichiyil House
Thalayolaparambu P.O
Kottayam - 686605

(Member: Ward No.05,
Thalayolaparambu Grama Panchayat)

(By Advs. A.Anand & C.Vincent)

Respondent : Secretary
Thalayolaparambu Grama Panchayat,

(By Adv. D. R. Rajesh)

ORDER

This is a petition filed under section 36 of the Kerala Panchayat Raj Act, 1994 to declare that the Notice bearing No. 400473/DGER04/GPO/2024/ 2614(1) dated 20.05.2024 issued by respondent Secretary as illegal and to allow the petitioner to continue as a member of Thalayolaparamb Grama Panchayat.



2. The petitioner's case in brief is as follows; - Petitioner was contested and elected as a candidate of Kerala Congress (PJ Joseph group), which is part of UDF coalition, in the General Election to local self government institutions held in 2020. Respondent is the Secretary of Thalayolaparamb Grama Panchayat. Altogether 15 elected members in the Thalayolaparamb Grama Panchayat. Out of which 8 members belongs to LDF, 6 members belongs to UDF and 1 member was elected as purely independent. Thus, LDF got majority of seats and ruling the Panchayat. According to the petitioner, LDF members in the panchayat are in enmity with the petitioner and the impugned notice was issued with the connivance of the respondent Secretary out of this enmity. The respondent Secretary issued the impugned notice on the basis of a frivolous complaint made by Adv. Antony Kalambukadan, who claims to be the Convenor of LDF Thalayolaparamb unit. The impugned notice dated 20.05.2024 is marked as Ext.A1.
3. It is stated in Ext.A1 notice that petitioner was not attended the panchayat committee meetings for 3 consecutive months held after 17.02.2024. Ext.A1 notice does not contain the details of meetings in which petitioner was absent. There is no mention in the notice that petitioner was ceased to a member of the panchayat. However, Ext.A1 notice is issued purportedly under section 35 (1) (k) and 37 (2) of the Kerala Panchayat Raj Act, relating to the disqualification of members. Petitioner further submitted that the allegations in Ext.A1 are false. No proper notice was issued to the petitioner for the ordinary meetings of the panchayat, which alone is reckoned for the purpose of section 35 (1) (k). The Ext.A1 notice was issued without giving proper enquiry and without satisfying the legal requirements and therefore Ext.A1 notice is unsustainable. According to the petitioner that he was restrained from attending the panchayat committee meetings held after the date of Ext.A1 by reason of said disqualification and hence the original petition.
4. As regards of the meetings held in the panchayat, petitioner states that he was attended the panchayat committee meeting held on 17.02.2024. The next meeting held on 07.03.2024 was an urgent meeting. A



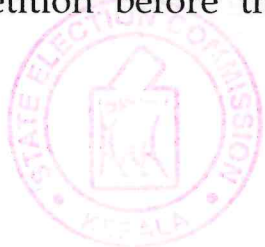
panchayat committee meeting was held on 15.03.2024 without giving notice to the petitioner. Again, an urgent panchayat committee was held on 06.04.2024. Thereafter another panchayat committee meeting was held on 08.05.2024 without serving meeting notice on the petitioner. As per section 35 (1) (k) of the Act, no meeting from which petitioner was absented shall be counted against him if due notice of that meeting was not given to him and in case of urgent meetings with shorter notice. Petitioner has a further case that no enquiry as contemplated under section 35 (1) (k) had been conducted and the impugned notice does not state the requirements of a notice under section 35 (1) (k) or section 37 (2). There is also no application of mind and lack of following the procedure while issuing the impugned notice.

5. The definite case of the petitioner is that no meeting notice was served to him prior to the panchayat committee meetings held on 15.03.2024 and 08.05.2024. Petitioner is seriously prejudiced by the non-receipt of notices of meeting reckoned against him. According to him such meetings were not liable to be counted against him for pursuing an action under section 37 (1) (k) of the Act. Therefore, the impugned Ext.A1 notice issued by the respondent is liable to be set aside by the Commission.
6. Respondent's case in brief is as follows; - The original petition is not maintainable either in law or on facts. The impugned Ext.A1 notice is not a final notice under section 37 (2) of the Act. It is only a show cause notice calling upon the petitioner to submit his explanation as to why he should not be disqualified under section 35 (1) (k) of the Act. However, instead of submitting his explanation to the said notice, petitioner rushed to the Commission challenging the Ext.A1 show cause notice. The original petition is therefore premature and hence not maintainable before the Commission.
7. It is admitted that petitioner is an elected member of ward No. 5 and by virtue of that position he was subsequently elected as a member of Welfare Standing Committee of the panchayat. According to the respondent the last meeting attended by the petitioner was on



17.02.2024 and thereafter he was failed to attend the consecutive meeting of the panchayat committee for three months, held on 07.03.2024, 15.03.2024. 06.04.2024 and 08.05.2024. Accordingly, the matter was intimated to the President of the panchayat and an urgent meeting of the panchayat committee was convened on 07.06.2024. In the said meeting panchayat committee had passed a resolution as Resolution No. 6 (1) authorising the Secretary of the panchayat to refer the question of nonattendance of the petitioner from the consecutive meetings of the panchayat, for determination by the Commission. In the meanwhile, as mandated under section 37 (2) of the Act the respondent in his capacity as Secretary of the panchayat issued impugned Ext.A1 notice, informing the fact of continuous absence of the petitioner in the meetings of the panchayat and sought for his explanation.

8. Respondent further admitted that as per rule 4 of the Kerala Panchayat Raj (Procedure for Panchayat Committee meetings) Rules, 1995, the notice of the meetings is to be served to the members of the panchayat 3 days prior to the date fixed for the meetings. However, nowadays notice of committee meetings are being generated through Sakarma software and messages are sent to mobile phones of the members informing about the date and time of meetings and thereafter the print outs of the said notice were taken and same would be served to the members directly through Office Attenders and to obtain their signature in the notice book maintained for the purpose. Respondent further admitted that for serving the notice of panchayat committee meeting held on 08.05.2024, the Office Attendant had contacted the petitioner over phone on 04.05.2024, but as it was informed by the petitioner that he was out of station, the notice was sent through whatsapp number of the petitioner. Therefore, meeting notice was neither served directly to the respondent nor affixed at the residence of the petitioner as mandated in rule 3 of the Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996. Petitioner failed to submitted his explanation to the Ext.A1 show cause notice. Instead, he preferred petition before the Commission challenging the Ext.A1



notice. Therefore, the original petition is premature and hence liable to be dismissed.

9. The evidence in this case consists of the oral testimony of PW1 and document Ext.A1.

10. Both sides were heard.

11. The following points arise for consideration, namely; -

- (i) Whether the petition is maintainable?
- (ii) Whether petitioner failed to attend the meetings of panchayat committee for three consecutive months as alleged?
- (iii) Whether the meetings of the panchayat committee were convened after giving due notice of those meetings to the petitioner?
- (iv) Whether petitioner has been intimated the fact of disqualification as mandated under section 37 (2) so that he can apply for other remedies available under section 37 (2)?
- (v) Whether petitioner incurred disqualification as provided under section 35 (1) (k) of the Kerala Panchayat Raj Act?

12. Point No. (i) to (v); - As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner is an elected member of ward No.5 of the Thalayolaparamb Grama Panchayat and as such he is having *locus standi* to prefer the original petition before the Commission under section 36 of the Act for determination of his disqualification in view of Ext.A1 notice issued by the respondent. In the original petition respondent has raised a contention that the petition is not maintainable since Ext.A1 being a show cause notice calling upon the petitioner to submit his explanation as to why he should not be disqualified from the membership of the panchayat under section 35 (1) (k) and section 37 (2) of the Act. However, there is definite pleadings in the original petition as well as chief affidavit filed by the petitioner that in pursuance of Ext.A1 notice he was prevented from attending the subsequent meetings of the panchayat. There is no cross examination in this aspect by the respondent. It is well settled that once an intimation has been given as provided under section 37(2)



of the Act, the member concerned shall cease to hold office. Therefore Ext.A1 notice issued under the provisions of section 35 (k) read with section 37 (2) of the Act cannot be considered as a mere show cause notice. Ext.A1 also debars the petitioner from pursuing his remedies as provided under section 36 and 37 (2) of the Act. Therefore, the original petition is maintainable.

13. The Hon'ble High Court in *Rajan V Kerala State Election Commission* (AIR 1999 Ker 399; 1999 3 KLT 601) examined this aspect and observed as follows; -

" Notice is issued by a Secretary of the panchayat under section 37 (2) of the Act only in discharge of his administrative function on finding that the member had absented himself without permission for the meetings stipulated in section 35 (1) (k) of the Kerala Panchayat Raj Act. The Act does not contemplate any adjudication by the Secretary either before the issuance of the notice under section 37 (2) of the Act or subsequent to the issuance of the notice under section 37 (2) of the Act. A member who receives a notice under section 37 (2) of the Act, is given the right to dispute the alleged disqualification by seeking a determination of that question from the State Election Commission by approaching that Commission under section 36 of the Act. Sub-section 3 of section 36 contemplates an enquiry of the State Election Commission, if a motion is made before it for determination of the question of disqualification. Sub-rule 2 of the section 36 provides that the procedure for trying a suit in terms of the Code of Civil Procedure will apply to such an enquiry. It is therefore clear that the Act does not contemplate issuance of show cause by the Secretary of the panchayat to the member to whom intimation is given under section 37 (2) of the Act about his having incurred the disqualification under section 35 (1) (k) of the Act." (emphasis supplied) Therefore the contention of the respondent that he had issued Ext.A1 show cause of notice to the petitioner and he failed to submit any explanation are unsustainable.

14. Admittedly, the meeting of panchayat last attended by the petitioner was held on 17.02.2024. According to the petitioner the next meeting held on 07.03.2024 was an urgent meeting. The panchayat committee



meeting held on 15.03.2024 was without giving notice to the petitioner. Again, an urgent meeting of panchayat was held on 06.04.2024. Thereafter another meeting of the panchayat was held on 08.05.2024 without serving notice to the petitioner. However, he has attended the welfare standing committee meeting held on 15.05.2024.

15. According to the petitioner respondent did not consider the provisions of law under section 35 (1) (k) of the Act before issuing 37 (2) notice to the respondent. If the respondent had taken into account the non service of the notices in relation to the meetings held on 15.03.2024 and on 08.05.2024 and that the meeting held on 07.03.2024 and on 06.04.2024 were with shorter notice than that prescribed for an ordinary meeting, a notice under section 37 (2) would not have been issued.

In the light of the first proviso to section 35 (1) (k) of the Act, no meeting from which a member absented himself shall be counted against him under section 35 (1) (k), if,-

- (i) due notice of that meeting was not given to him; or
- (ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or
- (iii) the meeting was held on a requestion of members.

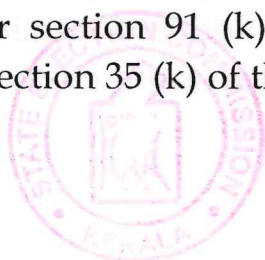
16. The Ext.A1 notice issued by the respondent is pertinently silent about the date of meetings of the panchayat committee held in interregnum or date of meeting in which petitioner was absent. Ext.A1 notice is vitiated for want of legal requirements under section 37 (2). Petitioner is seriously prejudiced by want of prior meeting notice. However, in the objection filed respondent explained that after attending the meetings of panchayat committee held on 17.02.2024, petitioner failed to attend the consecutive meeting of the panchayat held on 07.03.2024, 15.03.2024, 06.04.2024 and 08.05.2024. Petitioner too admitted his absence in the urgent meetings held on 07.03.2024 and 06.04.2024, which was held after giving shorter notice than that prescribed and panchayat committee meeting held on 15.03.2024 and 08.05.2024 both held without giving prior notice of meeting. In para 6 of the objection respondent admitted that no meeting notice as mandated under Kerala



Panchayat Raj (Manner of Service of notice) Rules has been given to the petitioner with regard to the meeting held on 08.05.2024. Respondent has further admitted that 3 clear days' notice as provided under rule 4 of the Kerala Panchayat Raj (Procedure for Panchayat Committee meetings) Rules, 1995 has not been issued to the respondent prior to the meeting.

17. Ext.A1 notice was issued by respondent by virtue of section 37 (2) in his capacity as Secretary of the panchayat and in a proceeding challenging the said notice by an aggrieved person. Therefore, law cast a primary duty upon the respondent to plead and prove the contents of section 37 (2) notice. However, respondent has not discharged his said burden by producing the meeting notice book, copy of notices or proof of service of notice to the petitioner. Section 109 of the Bharathiya Sakshya Adhiniyam, 2023 (corresponding to section 106 of the Indian Evidence Act, 1872) deals with the burden of proving a fact within the special knowledge of a particular person. It says that when any fact is specially within the knowledge of a person the burden of proving the fact is upon him. Therefore, the burden of proving the fact that due meeting notices have been served to the petitioner before the meeting lies upon the respondent being the Secretary of the panchayat and not upon the petitioner who has no access over the official records maintained by the respondent. However, respondent has not adduced any oral or documentary evidence to substantiate his case. Further, after the panchayat committee meeting held on 06.04.2024, the next panchayat committee meeting was admittedly held on 08.05.2024, which is beyond the period of one month mandated under section 35 (1) (k) for frequency of meetings as held in *Krishankumar V Kerala State Election Commission* (2010 (3) KLT 315). Therefore, there is legal infirmity in proceeding against the petitioner under the provisions of section 35 (1) (k) of the Act.

18. In *Rajan Kannath V P R Pradeep Kumar & Others* (2010 (3) KHC 425 (DB)) the Hon'ble High Court held that a member will suffer cessation of membership as per section 91 (k) of the Kerala Municipality Act (corresponding to section 35 (k) of the Kerala Panchayat Raj Act) only



if Secretary of the local body initiate proceedings as prescribed under section 93 (2) of the Kerala Municipality Act (corresponding to section 37 (2) of the Kerala Panchayat Raj Act) either suo moto or on the basis of a request. In the present case respondent himself has no case that he issued notice under section 37 (2) to the petitioner intimating the fact of cessation of his membership from panchayat. Therefore, it is declared that petitioner has suffered no cessation of membership from the panchayat on account of section 35 (1) (k) of the Act.

19. In the result, the original petition is allowed and Ext.A1 notice No. 400473/DGER04/GPO/2024/2614 (1) dated 20.05.2024 is declared as illegal. The petitioner is allowed to continue as a member of ward No. 5 of Thalayolaparamb Grama Panchayat.

Pronounced before the Commission on the 5th day of August 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

PW1 - Sajimon Varghese

Documents produced on the side of the Petitioner

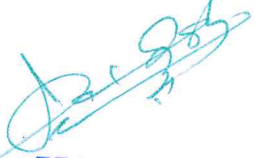
A1 - Copy of the notice No. 4000473/DGER04/GPO/2024/2614(1)
dated, 20.05.2024

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

