

BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,  
STATE ELECTION COMMISSIONER

Tuesday, the 7<sup>th</sup> day of May, 2024

O.P. No. 26 of 2022

**Petitioner**

: Muhammed Sha  
S/o. Badharudeen  
Pongamootil House, K.T. Kunnu,  
K.T. Kunnu P.O., Kallara,  
Trivandrum

(Member, Ward No.7,  
Kallara Grama Panchayat)

(By Adv. Sajitha S.)

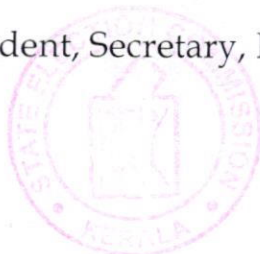
**Respondent**

: Secretary,  
Kallara Grama Panchayat)

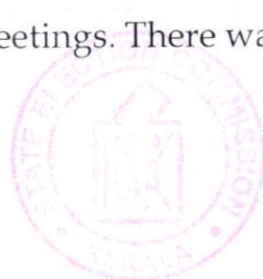
(By Adv. Pallichal S.K. Pramod)

ORDER

This is a petition filed under Section 36 (1) of the Kerala Panchayat Raj Act, 1994 to set aside the notice No. JC1-1486/2022 dated 02.11.2022 issued by the Respondent, Secretary, Kallara Grama Panchayat.



2. Petitioner's case in brief is as below:- The petitioner is an elected member of ward No. 7 of Kallara Grama panchayat. He was elected as a candidate of Indian National Congress in the election held on 23.05.2022. After the election he was elected as member of Finance standing committee. Chairman of Finance standing committee belongs to LDF. The Finance standing committee consists of 4 members, 2 UDF members, including the petitioner, 1 BJP member and 1 ex-officio member and Chairman belongs to LDF. All the time the ruling party tried to remove UDF members from the standing committee for which they abuse their administrative and political powers. In the panchayat there was no proper issuance of the notices regarding the meetings of standing committees as well as general committees. On 02.11.2022 the petitioner received a notice having No. J C 1-1486/2022 dated 02.11.2022 issued by the respondent-Secretary alleging that the petitioner has not attended the Finance Standing Committee meeting held on 20.08.2022, 24.09.2022 and 26.10.2022 and hence the petitioner has ceased to be a member of Kallara Grama panchayat under section 35 (k) of the Kerala Panchayat Raj Act. The said notice dated 02.11.2022 is marked as Ext. A1. According to the petitioner the meetings of Finance Standing Committee in which he is a member are not convened in accordance with law. He has attended the standing committee meeting held on 23.07.2022. Next meeting of Standing Committee was held on 20.08.2022, thereafter on 24.09.2022 and on 26.10.2022. Petitioner did not attend the meeting held on 20.08.2022, 24.09.2022 and 26.10.2022 as no proper notices were issued to the petitioner for the above meetings. There was no meeting once in a month

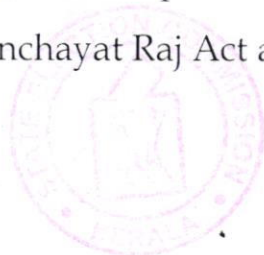


as stipulated in standing committee rules. The Ext.A1 notice is illegal and without authority of law. Hence petitioner filed this petition to set aside the Ext.A1 notice issued by the respondent.

3. The respondent filed objection contending as follows:- The petitioner failed to attend the consecutive meetings of Finance Standing Committee held on 20.08.2022,24.09.2022 and 26.10.2022 even after receipt of meeting notices. The absence of the petitioner in the standing committee meetings was reported to the respondent by Finance Standing Committee Chairman. On verifying the records, it is seen that his absence was intentional and deliberate and notice under section 37 (2) was warranted. All the meetings were held with proper notices including the publication of notice in the notice board of the panchayat. The petitioner who is always taking hostile attitude to accept the notice in person and so the respondent, Secretary, Kallara Grama Panchayat served the notice through post.
4. During the trial, petitioner appeared before the Commission, deposed in terms of the petition and section 37(2) notice was marked as Ext. A1 on his side. Despite opportunities were given to the respondent he has not cared to adduce any evidence in support of his case.
5. Both sides were heard

The following points arise for consideration

- (1) Whether the petitioner failed to attend three consecutive meetings of Finance Standing Committee after receipt of notice of meetings?
- (2) Whether petitioner incurred disqualification as provided under section 35 (k) of the Kerala Panchayat Raj Act as alleged



6. Point No. (1) and (2): As per section 35 (1) (k) of the Kerala Panchayat Raj Act the period of three consecutive months for which a member is absent is to be reckoned from the date of meeting on which a member had last attended. Admittedly the petitioner attended the meeting held on 23.07.2022 and he did not attend the meetings held thereafter on 20.08.2022, 24.09.2022 and 26.10.2022. So as per section 35(1) (k) of the Act the first period is to be reckoned is from 23.07.2022 and the last date of three consecutive months period would fall on 26.10.2022. But during the said period due once in a month meetings were not held even according to the version of respondent himself. The meetings dated 20.08.2022, 24.09.2022 and 26.10.2022 were convened beyond the statutory period and therefore these meetings cannot be reckoned against the petitioner. Here three consecutive meetings due once in a month meetings were not held and that fact has been admitted by the respondent. Therefore the frequency of monthly meetings are not in accordance with section 35 (1) (k) of the Act as laid down in the judgment *Krishakumar C V State Election Commission* and another ( 2010 (3) KHC 344). This issue is found in favour of the petitioner.
7. Further, as per rule 16 (3) of the Kerala Panchayat Raj (Standing Committee) Rules the Chairman has to give three clear days notice while convening its meeting. As per explanation to sub-rule (3) of rule 16 the date of notice and date of meeting shall not be included in the said three clear days.



8. Further, Rules 3 of the Kerala Panchayat Raj ( Manner of service of notices) Rules, 1996 provides that

"3. Serving of notice.-- (1) in case the Act or rules or bye-laws made thereunder requires the Panchayat to serve any notice or document to a person, such service or sending shall, unless otherwise provided in the Act or rules or bye-laws made,thereunder, be done.--

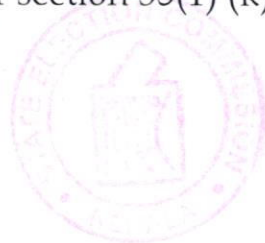
(a) by service or sending of notice or document to such person; or

(b) If such person cannot found out, by leaving such notice or document at his last known place of abode or business or by entrusting the same to some adult member or servant of his family and in the case of employees working in firms, factories, plants and workshops where admission to notice server is prohibited or where service of notice cannot be possible in the ordinary course, by entrusting the same to the head of the institution or to any authorised person, or

(c) if such person's address elsewhere is known to the Secretary, by sending the same to that address by registered post; or

(d) if none of the aforesaid means are available, by affixing the notice in some conspicuous part of his abode or work place."

9. As regards of service of meeting notices petitioner deposed during cross examination by respondent that notices of meetings held on 20.08.2022, 24.09.2022 and 26.10.2022 were received by him belatedly and after the meetings . The consistent case of the petitioner is that there is non compliance of provisions of section 35(1) (k) of the Kerala Panchayat Raj



Act while issuing notices and convening meeting of the standing committees. But surprisingly the respondent has not produced the meeting notice Book of the Finance standing committee meetings, copy of notice issued to the petitioner and despatch register in proof of service of notice of meetings to rebut the case of petitioner. Respondent has also not produced the attendance register of elected members.

10. At this juncture it is pertinent to examine the provisions of Indian Evidence Act as to whom burden of proof lies.

Section 101 of the Indian Evidence Act provides that whoever desires the Court to give any judgment regarding any right or liability that is *"dependent on the existence of facts which he asserts, must prove that those facts exist."* Such boundation to prove is said to be the Burden of Proof on that person. However, Section 106 of the Indian Evidence Act - burden of proving fact especially within knowledge - provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Section 106 of the Indian Evidence Act is an exception to the general rule under section 101 of the evidence Act, which places the burden of proof on the petitioner. Therefore when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

11. Therefore matters such issuance of meeting notice to the petitioner, service of three clear days notice, absence of the petitioner in the meeting etc. are come with the special knowledge of the respondent. But the



respondent has neither examined before the Commission nor produced any documents to rebut the case of the petitioner.

12. From the evidence on record it is not possible to say that the petitioner has incurred any disqualification under section 35 (1) (k) of the Kerala Panchayat Raj Act. Therefore I hold that the petitioner has not ceased to be a member of Kallara Grama Panchayat as alleged. Ext.A1 notice issued by the respondent is not proper and legal. Points are answered accordingly.

In the result, the petition is allowed and Ext.A1 is declared as illegal. Petitioner is allowed to continue as member of Kallara Grama Panchayat.

Pronounced before the Commission on the 7<sup>th</sup> day of May, 2024.



Sd/-  
A. SHAJAHAN  
SECRETARY  
STATE ELECTION COMMISSIONER  
Kerala, Thiruvananthapuram

APPENDIX

Witness examined on the side of the Petitioner

- 1) PW1 : Sri. Muhammed Sha

Documents produced on the side of the Petitioner

- 1) A1 : Copy of the Letter No.J.C.I-1486/2022 dated 02.11.2022

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//



**B. SURENDRAN PILLAI**  
Pen No : 101664  
**SECRETARY**  
State Election Commission  
Kerala, Thiruvananthapuram

