

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

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

Tuesday, the 5th day of August, 2025

O.P. No. 04 of 2025

Petitioner

: Adv. M. K. Baburajan
S/o Kunhiraman,
K. K. Sadanam,
Kalliot, Kanhiradukkam P. O,
Kasaragod District-671351

(Mermber, Ward No. 05,
Kanhangad Block Panchayath)

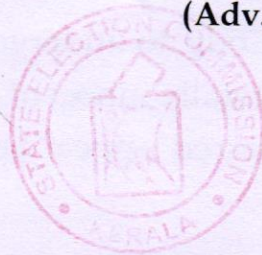
(Adv. A. Santhosh Kumar)

Respondent

: Manikantan
S/o. Narayanan Nair,
Velutholi,
Panayal, Hosdurg,
Kasaragod District-671318

(Member, Ward No.04,
Kanhangad Block Panchayath)

(Adv. Hari S. Nair & Subha S)



ORDER

This petition is filed by the petitioner under section 36 of the Kerala Panchayat Raj Act, 1994 alleging that respondent has incurred disqualification as provided under section 35 (1) (I) of the Kerala Panchayat Raj Act, 1994 upon his conviction by Hon'ble Special Judge (SPE/CBI), Ernakulam in S C No. 260/2022 to undergo imprisonment for a period of 5 years and thereby respondent disqualified from holding the office of elected member of Ward No. 4 of the Kanhangad Block Panchayat.

2. Petitioner is an elected member of ward No. 5 of Kanhangad Block Panchayat. Respondent is an elected member of ward No. 4 of Kanhangad Block Panchayat and by virtue of said position he was subsequently elected as President of the Kanhangad Block Panchayat. While so, he was convicted and sentenced by the Hon'ble Special Judge (SPE/CBI), Ernakulam as per judgment dated 03.01.2025 in S C No. 260/2022 under section 225 of the Indian Penal Code to undergo imprisonment for a period of 5 years. The full text of judgment dated 03.01.2025 is produced as Ext.A1. According to petitioner on account of conviction respondent has incurred disqualification and ceased to be a member of Kanhangad Block Panchayat and hence he filed this petition under section 36 of the Act for determining the disqualification of the respondent.
3. Respondent filed Counter statement admitting that he is an elected member of ward No. 4 of Kanhangad Block Panchayat and presently holding the office of President of Kanhangad Block Panchayat. Respondent further admitted that he has been convicted and sentenced by the Hon'ble Special Judge (SPE/CBI), Ernakulam as per judgment dated 03.01.2025 in S C No. 260/2022, tried under section 225 of the Indian Penal Code, to undergo imprisonment for a period of 5 years. However, he is totally innocent of the charges levelled against him. Therefore, he preferred appeal before the Hon'ble High Court



against the judgment dated 03.01.2025 of the Special Judge (SPE/CBI), Ernakulam and appellate court pleased to suspend the execution of sentence. He further moved a petition for getting his conviction suspended by High Court, as upon suspension of conviction the disqualification of elected member would not operate. In the Counter Statement itself respondent has prayed for two weeks' time for producing the copy of the said order.

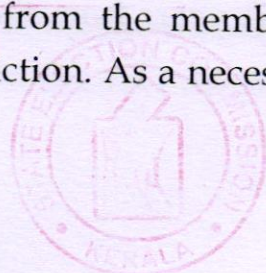
4. However, in the subsequent affidavit filed by the respondent before the Commission on 23.06.2025 he conceded that finding of conviction of trial court has not been suspended by the appellate Court. He further stated that he is not intending to continue as a member of Kanhangad Block Panchayat and hence he resigned from the post of elected member of ward No. 4 of Kanhangad Block Panchayat with effect from 21.06.2025 and the same was duly accepted by the Secretary of the Kanhangad Block Panchayat. Respondent has produced the acknowledgment of receipt of resignation duly issued by the Secretary of the Kanhangad Block Panchayat on 21.06.2025. The prayer of the respondent in the affidavit is to drop all further proceedings against him in OP No.04/2025 on the file of Commission, in view of his resignation from the membership of Kanhangad Block Panchayat with effect from 21.06.2025.
5. The evidence in this consists of oral testimony of PW1 and Ext.A1.
6. Both sides were heard.
7. The following points arise for consideration, namely;-
 - (i) Whether respondent has incurred disqualification under section 35 (1) (l) of the Act on account of his conviction and sentence by Court to undergo imprisonment for 5 years?



- (ii) Whether the subsequent resignation of the respondent from the post of elected member would absolve him from the trigger of disqualification under 35 (1) (l) of the Act?
8. Point No.(i) and (ii); - This petition is filed by the petitioner for determining the disqualification of the respondent under section 36 of the Kerala Panchayat Raj Act. According to the petitioner respondent has been convicted and sentenced by the Hon'ble Special Judge (SPE/CBI), Ernakulam as per judgment dated 03.01.2025 in S C No. 260/2022 to undergo imprisonment for a period of 5 years and respondent thereby acquired a disqualification provided under section 35 of the Kerala Panchayat Raj Act.
9. As per section 35 (1) (l) of the Act a member shall cease to hold office as such, if he is disqualified under any provisions of the Constitution or under any law for the time being in force for the purpose of elections to the Legislature of the State. It is very well clear that the law for the time being force for the purpose of election to Legislature of the State, referred in 35 (1) (l) of the Act is the Representation of People Act, 1951.
10. Further, section 8 (3) of the Representation of People Act, 1951 provides that "A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release." (emphasis supplied). The offence found against the respondent would not come under section 8 (2) referred above but come under section 8 (3). Therefore, the provisions of section 8 (3) of the Representation of People Act, 1951 is *mutatis mutandis* applicable in determining the disqualification of members of panchayat, as provided under section 35 (1) (f) of the Kerala Panchayat Raj Act.

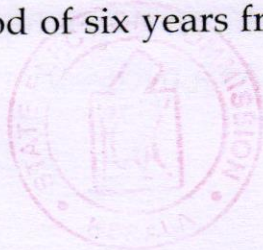


11. In the Counter Statement filed by the respondent, he admitted the fact that he was convicted and sentenced to undergo imprisonment for 5 years. In the subsequent affidavit filed by the respondent he further admitted that though he prayed for suspension of his conviction, the appellate Court has not inclined to allow the relief. Therefore the provisions of section 35 (1) (l) of the Kerala Panchayat Raj Act and section 8 (3) of the Representation of People Act, 1951 would come into play from the date of conviction of the respondent viz. 03.01.2025 and by operation of law itself respondent has ceased to be a member of Kanhangad Block Panchayat with effect from 03.01.2025 and he continue to be disqualified from holding the office of a member of any panchayat for a further period of six years since his release.
12. However, in the subsequent affidavit filed by the respondent on 23.06.2025 he has taken another plea that as he had been resigned from the membership of Kanhangad Block Panchayat on 21.06.2025, the proceedings pending before the Commission in OP No.04/2025 are liable to be dropped. Respondent has produced the acknowledgment of receipt issued by the Secretary of Kanhangad Block Panchayat under the provisions of Kerala Panchayat Raj (Resignation of President, Vice President and Members) Rules on acceptance of resignation letter. As per rule 3 (5) the Rules the resignation shall take effect from the date on which the resignation letter is received by the Secretary. At this juncture, it is pertinent to examine whether the proceedings before the Commission under section 36 is abated in view of the subsequent resignation of the respondent from the membership of the panchayat.
13. As a matter of fact, respondent has been convicted by the Hon'ble High Court for imprisonment for a period of 5 years on 03.01.2025. As per section 8 (3) of the the Representation of People Act, 1951, the disqualification from the membership will take effect immediately upon such conviction. As a necessary corollary the disqualification as



enumerated under section 35 (1) shall be incurred by a member upon such conviction and he shall cease to hold office of the member. The only thing deferred is determination of his disqualification by the Commission upon considering a petition under section 36 (1) of the Act.

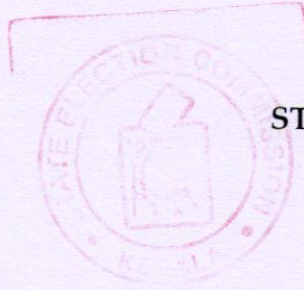
14. Therefore, the resignation allegedly submitted by the respondent has no bearing and impact to the present proceedings before the Commission. It will neither abate the proceedings before the Commission nor sufficient to absolve the respondent from the disqualification under section 35 (1) (l) of the Kerala Panchayat Raj Act.
15. The Hon'ble High Court in *Pushpam Simon V Karakulam Grama Panchayat* (2009 (4) KHC 319: 2009 (4) KLT 561) held that
" Therefore, if any among the disqualifications enumerated under section 34 or under section 35 is incurred by a member, he shall cease to hold office. The cessation of office is an automatic consequence of incurring any of those disqualifications and that does not depend upon any adjudication and decision resulting in the imposition of the disqualification." (para 5) The said position is reiterated in *Pradeep Kumar P R and another V Chegannur Municipality* (2010 (2) KHC 373 :2010 (2) KLT 484).
16. Further, as per section 31 of the Kerala Panchayat Raj Act " every person convicted of an offence punishable under Chapter IX-A of the Indian Penal Code, 1860 (Central Act 45 of 1860) or under any other provision of law mentioned in section 8 of the Representation of People Act, 1951 (Central Act 43 of 1951) or under any law or rule relating to the infringement of the Secrecy of an election shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of a member of panchayat at any level for a period of six years from the date of his conviction."



Therefore, the law will take its own course in the said legal provision also.

In the result, original petition is allowed. The respondent has ceased to hold office as an elected member of ward No. 4 of the Kanhangad Block Panchayat from the date of his conviction and sentence in S C No. 260/2022 on the file of Hon'ble Special Judge (SPE/CBI), Ernakulam and resultantly he has vacated the office of elected member on account of his disqualification under section 35 (1) (I) of the Kerala Panchayat Raj Act. The respondent is further disqualified from voting or from being elected in any election to which the Kerala Panchayat Raj Act applies and shall continue to be disqualified for a further period of six years since his release.

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 - Adv. M. K. Baburajan

Documents produced on the side of the Petitioner


A1 - Copy of the Judgement in Sessions Case No. 260/2022 of the Additional District and Sessions judge - IV Ernakulam dated, 03.01.2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

