

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

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

Thursday, the 23rd day of October, 2025

O.P. No.11/2024

Petitioner : Cissy Jaison
Kattrukudiyil House
Kadavoor PO
Panamkara 686671
Ernakulam
(Member, Ward No.11
Paingottoor Grama Panchayat)

(Adv. A.Santhosh Kumar)

Respondent : The Secretary
Paingottoor Grama Panchayat

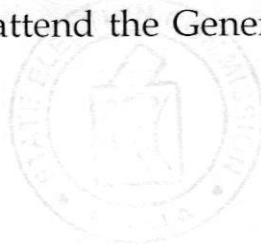
(Adv. B. Vasudevan Nair)

ORDER

This is a petition filed under Section 36 of the Kerala Panchayat Raj Act for a declaration that the Notice No.SC2/111/2024 dated 09.01.2024 issued by the Respondent, Secretary to the Petitioner as illegal and to allow the petitioner to continue as a member of Paingottoor Grama Panchayat.

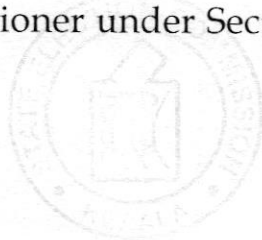


2. The Petitioner case in brief is as below: - The petitioner is an elected member of Ward No.11 of Paingottoor Grama Panchayat in Ernakulam district in the election held in December 2020. Petitioner was contested as an independent candidate. Subsequently she was elected as a member of Finance Standing Committee of the said Panchayat. There was altogether 13 members in Paingottoor Grama Panchayat. CPI(M) has 6 members. UDF having 6 members and one independent candidate was also elected. LDF is ruling the Panchayat with the support of one of UDF member.
3. After the election, petitioner was regularly attending the meeting of the Panchayat and Finance Standing Committee on getting notices. On 10.01.2024, the petitioner received a notice from the respondent - Secretary dated 09.01.2024 stating that the petitioner did not attend the General Committee of the Panchayat consecutively for 3 months after the meeting held on 29.09.2023 and she ceased to be a member of Paingottoor Grama Panchayat. There is no absence by the petitioner in the meeting of the Panchayat for a consecutive period of 3 months so as to incur disqualification under section 35(k) of the Kerala Panchayat Raj Act. No proper notices were issued for the meeting held after 29.09.2023, which amounts to fracture of the procedure laid down in Rule 3(1) of the Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996. The said notice is illegal and without any authority of law. No proper notice was served on the petitioner regarding the meeting held on 28.10.2023, 09.11.2023, 23.11.2023, 08.12.2023 and 18.12.2023. As the petitioner reacts against the illegal administration, the ruling party in collusion with the Respondent Secretary tries to disqualify him as a part of political vengeance. The respondent issued the above notice only to harass the petitioner. The above notice is invalid and legally unsustainable. Hence the petitioner filed this petition to set aside the impugned Ext. A1 notice issued by the respondent.
4. The respondent filed objection contending as follows: - It is true that the respondent has issued the Ext A1 notice referred to in the petition to the petitioner. Petitioner did not attend the General Committee meeting of



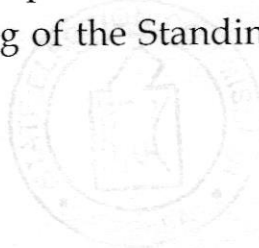
the Panchayat held on 28.10.2023, 09.11.2023, 08.12.2023 and 18.12.2023 despite issuance of due meeting notices to her. It is not correct to say that notice was not issued to her for the above meetings. The averments that she had attended all the meetings of the committee where notice was given to her are false. The respondent executes only the decision of the Panchayat. The notice issued is proper and legal. There is no merit in the petition and hence the petition is only to be dismissed.

5. The evidence in this case consists of the oral testimonies of PW1 & RW1 Exts.A1 to A6, B1 to B3.
6. Both sides were heard.
7. The following points arise for consideration
 - I. Whether the petitioner failed to attend three consecutive meetings of the General Committee as stated in the impugned notice?
 - II. Whether there is proper issuance by of meeting notice to the petitioner?
 - III. Where there is proper service of notice to the petitioner?
 - IV. Whether the petitioner incurred disqualification as provided under Section 35(k) of the Kerala Panchayat Raj Act as alleged?
8. POINT No.1 to 4: The petitioner is an elected member of Paingottoor Grama Panchayat in the election held in December, 2020. The respondent, Secretary of Paingottoor Grama Panchayat issued a notice/intimation to the petitioner stating that the petitioner ceased to be a member of Paingottoor Grama Panchayat as she failed to attend the meetings of General Committee of Panchayat held on 28.10.2023, 09.11.2023, 23.11.2023, 08.12.2023, 18.12.2023. Ext.A1 is the said notice/intimation. As the petitioner failed to attend the Committee for a period of three consecutive months incurred disqualification as provided under Section 35(k) of the Kerala Panchayat Raj Act, it is further stated. The petitioner challenges the said notice in this original petition. To her the said notice is illegal and unsustainable. PW1 is the petitioner. On the side of the respondent, the Secretary was examined as RW1. As regards of Ext A1 notice issued to the petitioner under Section 37(2) informing cessation of



her membership in the Panchayat, it does not contain the details of three consecutive meeting held during the period from 29.09.2023 which is counted against the petitioner by the respondent. The Ext.A1 also lacks material particulars such as frequency of meeting viz whether due once in a month meeting was held during the said period and whether it is ordinary meeting or urgent meetings etc. Further, the relevant materials such as issuance of 3 clear days' notice to the petitioner and the mode of service of notice to the petitioner were also not stated in the Ext A1 notice. The petitioner who allegedly incurs disqualification on account of section 37(2) notice is having every right to know such details to agitate the matter before the Commission by filing a petition under Section 36(1). Withholding of such relevant information from the petitioner is definitely not the intention of section 37(2) of the Act and it caused serious prejudice to the petitioner in challenging the action of respondent. Hence Ext A1 notices appear to be defective.

9. As per section 35(1) of the Kerala Panchayat Raj Act, the period of three consecutive months for which a member is absent is to be reckoned from the last meeting that he attended or at the restoration of office as member under sub-section (2) of section 37 as the case may be. In the original petition, petitioner has alleged non-compliance of the provision of section 35(k) of the Kerala Panchayat Raj Act, while issuing the impugned Ext A1 notice.
10. According to PW1, he has been attending all the meetings of the Panchayat Committee whenever due notice was issued on him. To him Ext A1 intimation/notice is against law and, the order disqualifying him is not sustainable. He has not violated the provisions of Section 35(k).
11. Now, let us examine whether the petitioner has incurred disqualification under Section 35(k) of the Act. Section 35(k) of the Act read as below: -
"Disqualification of members, - (1) Subject to the provisions of section 36 or Section 102, a member shall cease to hold office as such, if he.
(k) absents himself without the permission of the Panchayat concerned from its meeting or the meeting of the Standing Committee thereof for a



period of three consecutive months reckoned from the date of commencement of his term of office or of the last meeting that he attended, or of the restoration to office as member under sub-section (1) of Section 37, as the case may be, or if within the said period, only in less than three meetings of the Panchayat or of the Standing Committee as the case may be, have been held, absents himself from three consecutive meetings held after the said date:

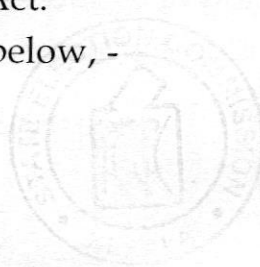
Provided that no meeting from which a member absented himself shall be counted against him under this clause if, -

- (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 requisition of members;"

Provided further that no permission shall be granted by the Panchayat to a member for absenting himself from meetings of the Panchayat or of the Standing Committee for a continuous period of more than six months.

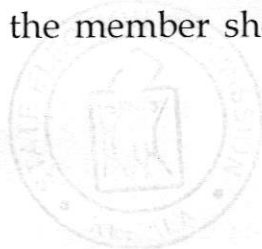
12. As per Section 37(2) of the Act, when a member ceases to hold office as provided by clause (k) of Section 35, the Secretary of the Panchayat concerned shall at once intimate the fact in writing to such person and report the same at the next meeting of the Panchayat and if such person applies for restoration to the Panchayat on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation, the Panchayat may at the meeting next after the receipt of such application restore him to his office as member. Once an intimation has been given as provided by Section 37(2) of the Act the member concerned shall cease to hold office as provided by Section 35 (1) (K) of the Act. Of course, such a member has two options. The member can either apply for restoration of his membership before the Panchayat Committee as provided under Section 37(2) of the Act itself or can file a petition before the State Election Commission challenging such intimation as provided under Section 36(1) of the Kerala Panchayat Raj Act.

Section 36(1) of the Act is as below, -




"36.Determination of subsequent disqualification of a member.- (1) Whenever a question arises as to whether a member has become disqualified under any of the provisions of 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, can file a petition before the State Election Commission, for decision.

13. Thus, a member who is in receipt of an intimation/notice under Section 37(2) of the Kerala Panchayat Raj Act is entitled to file a petition as provided by Section 36(1) of the Act before the State Election Commission.
14. The power to determine the alleged disqualification of the member under Section 36(1) includes the power to decide as to whether such a member has incurred the disqualification under Section 35(k) of the Act. Even a member who has been given intimation under Section 37(2) of the Act, the cessation of membership provided by the operation of Section 37(2) is made amenable to interference by a decision of the State Election Commission, if proceedings are initiated in terms of Section 36(1) in relation to any such alleged disqualification.
15. In the light of the above provision, the absence should be for the meetings of the Panchayat for a period of three consecutive months reckoned from the last meeting she attended. As stated above the General Committee including urgent meeting of the Panchayat were held on 28.10.2023, 09.11.2023, 23.11.2023 08.12.2023 and 18.12.2023. Contention of the learned counsel for the petitioner is that no proper notice was served on her, as claimed by the respondent. A3(a-d) and A4(a-b) are the meeting notices in respect of the General Committee meeting of the Panchayat. These Exhibits are the certified copy of the Meeting notice Book. It appears that neither any purpose of the meeting nor agenda of the meeting is mentioned in the Notice Board. This notice Book is prima facie an irregular and illegal one.
16. So, to attract the provision of Section 35(k) of the Act certain conditions are to be satisfied. Firstly, the member should absent himself from the



meeting of the Panchayat or of the Standing Committee of which he is a member for a period of three consecutive months reckoned from the date on which his term of office starts or of the last meeting which he attended. Secondly due notices of those meetings should have been served to him and such meetings were not held on requisition of members. There should have been three meetings within the period of the above three months. It is also to be noted that if within the said period of three months, only less than three meetings of the Standing Committee have been held the member should have failed to attend the meetings of the subsequent three consecutive months to attract disqualification. The said period of the three consecutive months is to be calculated on the basis of the month starting from the date of the meeting he last attended. This position has been clarified in the decision reported in **(2010(3) KLT 315 (Krishna Kumar C. V. Kerala State Election Commission))** after referring several decisions of Hon'ble High Court and Supreme Court. At paras 11 and 12 of the above decision it is held as below: -

"11. It is clear from the principles laid down in the above decisions that the word "month" has to be reckoned, and the period has to be computed in the light of the language employed in the provision itself. When a particular date which is not the first of month has to be reckoned, the first month will have to be computed by reckoning the said factor. When the period has to be counted from a date which is not the first day of the month, the method of computation as described in Halsbury's Laws of England has to be adopted which is the safest method. This is clear from the decisions in Daryoth Singh's case, Bibi Salma Khatoons's case and Surabhi's case. In all these three cases the word "month" is qualified by the words "from the date" etc. Therefore, when the word "month" is followed by such an expression indicating the date from which it has to be computed, the principles stated in the above three decisions will squarely apply and the period will expire upon the day in the succeeding month corresponding to the date upon which the period starts. Evidently, in Surabhi's case (supra), this Court considered an identical situation like one herein, wherein under the Land Acquisition Act, viz. Section 28A (1), the application had to be made within "three months from the date of award of the Court." Therefore, the calendar month has to be reckoned from



the date of the award. The apex Court in *Bibi Salma Khatoon's case* (supra), also has considered a similar issue. Therefore, the said dictum alone will apply to the facts of this case. The decision of this Court in *Radhakrishnan's case*, was one considering a case where the wording of Section 33(1) of the Kerala Co-operative Societies Act, 1969 was not the like one in Section 35(k) of the Panchayat Raj Act. Therefore, it is in that context this Court said that when 'month' followed by the words, "consecutively six months" has to be reckoned based on British calendar, till the end of the six months period.

17. Herein, going by the facts of the case, the last meeting which the petitioner had attended, was on 16.10.2008. The notice Ext.P1 was issued on 24.01.2009. Therefore, reckoned from the date 16.10.2008, on which he last attended the meeting and even excluding one day, the period of three months will expire before 24.01.2009, the date of Ext.P1 notice. It is not as if the Secretary should have waited till the end of January, ie. 31.01.2009. Therefore, the contention raised by the petitioner that the notice itself is without jurisdiction, cannot be accepted."

18. As per Section 35(k) of the Act the period of three consecutive months for which a member is absent is to be reckoned from the date of meeting on which the member had last attended. The General Committee meeting of the Panchayat was held on 28.10.2023, 09.11.2023 and 18.12.2023 as evidenced from Ext.A2. Urgent meetings of the committee were held on 22.11.2023 and 08.12.2023 where notices of the meeting were given to the member on 21.11.2023 and 07.12.2023 respectively as can be seen from Ext.A6. Hence, the last General Committee meeting was held on 18.12.2023 and the Committee meeting before it was held on 09.11.2023. Hence it can be concluded that more than 30 days have elapsed between the 2nd and the 3rd meeting. The last meeting ought to have conducted before 08.12.2023. It can be seen from Ext.A6 that a meeting was conducted on 08.12.2023. But it was an emergency meeting for which notice was served to the member on 07.12.2023. Thus, the meeting held on 18.12.2023 was convened much after 30 days from 09.11.2023. So, the absence of the petitioner in that meeting cannot be used against him by virtue of proviso to 35(k). him. The next meeting was held on 10.01.2024, which was attended by the petitioner.

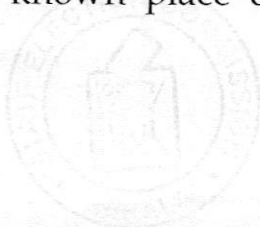


19. Submission of the learned for the respondent on the other hand is that proper notice was issued to the petitioner for the meeting in question and Ex B1 would show the said fact. As per rule 4 (1) of the Kerala Panchayat Raj (Procedure for Panchayat committee meetings) Rules, 1995 the notice regarding the place, date and time of the meeting and subject to be discussed in the meeting shall be given to the members at least three clear days prior to the date fixed for beginning of the meeting. Provided that, in the above said clear days, declared holidays shall be included but the date receipt of notice and date of meeting shall not be included. In view of the rule 4(1) notice of meeting should be served at least three clear days prior to the date fixed for the meeting. According to the petitioner she was made to sign in a document without any entries of date and time of meeting or having any seal as signature which is corrected for the purpose of proceeding against the petitioner. In order to substantiate her contention, she produced the certified copy of Meeting Notice Book (Ext. A3 series). It appears from Exhibits that much any purpose of the meeting or agenda of the meeting is mentioned in the Notice Book. In Ext. A3(a-b) submitted by the petitioner obtained by the petitioner under Right to Information Act; in page No. 45, the place for the signature of the President is lying vacant. But the same page which is show by the Respondent as Ex B2, the signature of Panchayat President can be seen. Hence it can be concluded that, it can be the result of an afterthought of the respondent.

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

"3. Serving of notice. – in case the Act or rules or bye-laws made there under 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."

However, the method of service of meeting notices to the petitioner has neither pleaded in the objection. Respondent has also failed to adduce evidence to controvert the case of petitioner.

21. 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 "depend on the existence of facts which he asserts, must prove that those facts exist." Law casts a primary burden upon the petitioner to prove her case. 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.

22. From the pleadings and 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 Paingottoor Grama Panchayat as alleged. Ext



A1 notice issued by the respondent is not proper and legal. Points are answered accordingly.

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

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

PW1 - Cissy Jaison

Witness examined on the side of the Respondent

RW1 - M. Faisal

Documents produced on the side of the Petitioner

- A1 - Notice as per Section 37 (2) of Kerala Panchayat Raj Act, (SC2/111/2024 dated, 09.01.2024) of Paingottoor Grama Panchayat.
- A2(a-d) - Copy of the attendance register of members of Paingottoor Grama Panchayat dated (a) 06.10.2023, (b) 06.11.2023, (c) 08.12.2023, (d) 15.12.2023.
- A3(a-d) - Copy of meeting notice book of Paingottoor Grama Panchayat collected via RTI (Relevant pages).
- A4(a) - Copy of meeting notice book dated, 07.12.2023 of Paingottoor Grama Panchayat issued as per RTI.
- (b) - Copy of meeting notice book of Paingottoor Grama Panchayat issued as per RTI dated, 14.12.2023.
- A5 - Copy of meeting notice book of Paingottoor Grama Panchayat dated, 06.01.2024.
- A6 - Copy of petition filed by Smt. Cissy Jaison under section 37(2) of Kerala Panchayat Raj Act. 1994 for restoration of membership to the Panchayat committee.

Documents produced on the side of the Respondent

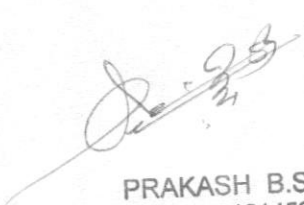
- B1 - Decision No. 4 of Paingottoor Grama Panchayat committee ordinary meeting held on 22.01.2024.
- B2 - Copy of meeting notice book of Paingottoor Grama Panchayat from 21.10.2023 to 14.12.2023.
- B3 - Copy of attendance register of members of Paingottoor Grama Panchayat from 28.10.2023 to 18.12.2023.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

