

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

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

Tuesday, the 5th day of August, 2025

O.P. No.46 of 2024

Petitioner

: Sri. Ahmed Basheer,
S/o. Mohammed Kunhi,
Jameela Manzil,
Bekal Kunnil, Haddad Nagar,
Bekal Fort P. O,
Kasaragod District-671316

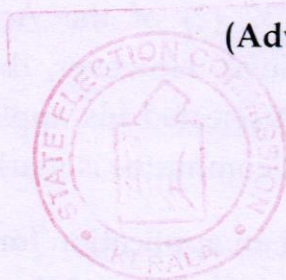
(Member, Ward No.02,
Pallikkara Grama Panchayat)

(Adv. P. A. Muhammed Sha)

Respondent

: The Secretary.
Pallikkara Grama Panchayath,
Bekal Fort P.O,
Kasaragod District-671316

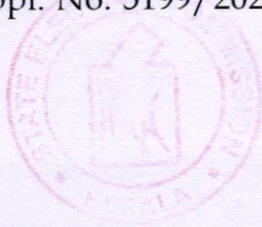
(Adv. P. Nanda Kumar)



ORDER

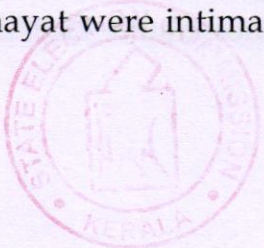
This is a petition filed under section 36 of the Kerala Panchayat Raj Act, 1994 for setting aside the Notice bearing No. 40115/DGER04/GPO/ 2024/ 4229(1) dated 11.07.2024 issued by respondent Secretary under the provisions of section 37 (2) read with section 35 (1) (k) of the Kerala Panchayat Raj Act and allowing the petitioner to continue as a member of Pallikkara Grama Panchayat.

2. The petitioner's case in brief is as follows; - The petitioner is an elected member of ward No. 2 of Pallikkara Grama Panchayat. Respondent is the Secretary of Pallikkara grama panchayat. Petitioner admitted that the last meeting of the panchayat committee attended by him was held on 08.04.2024. He could not attend the subsequent meetings of panchayat committee held on 29.04.2024 and 13.05.2024 as no notices of meeting were given to him as mandated under the Rules. Meeting held thereafter on 15.05.2024 was a emergency meeting, which cannot be counted against him for the purpose of section 35 (1) (k). Thereafter petitioner was arrested in a criminal case and remaining in judicial coustody for a period of 94 days from 17.05.2024 to 19.08.2024.
3. However, on 11.07.2024 the respondent Secretary issued a notice under section 37 (2) of the Kerala Panchayat Raj Act, informing him of his disqualification under section 35 (1) (k) of the Act allegedly for his absence from the consecutive meetings of the panchayat committee held on 29.04.2024, 13.05.2024, 15.05.2024, 25.05.2024, 10.06.2024, 12.06.2024, 26.06.2024, 29.06.2024 and 10.07.2024, ignoring the fact that he was in judicial custody during the period. The notice dated 11.07.2024 is marked as Ext.A4. Against the said notice petitioner filed an application before the panchayat committee under section 37 (2) of the Act seeking restoration of his membership in the panchayat. However, the panchayat committee vide resolution dated 05.08.2024 rejected his application. The resolution dated 05.08.2024 of the panchayat committee is marked as Ext.A7.
4. While so, petitioner moved an application for bail before the Hon'ble High Court of Kerala as Bail Appl. No. 5199/2024 and Hon'ble High Court vide



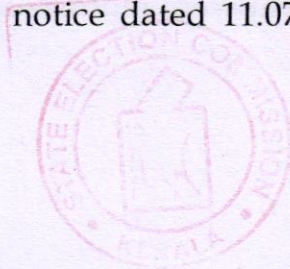
order dated 19.08.2024 enlarged him on bail with certain specific conditions. The Bail Order dated 19.08.2024 is marked as Ext.A2. The original petition is filed by the petitioner against the Ext.A4 notice dated 11.07.2024 issued by the respondent Secretary under the provisions of section 37 (2) of the Act.

5. According to the petitioner he does not entail disqualification under section 35 (1) (k) of the Act since the period from 17.05.2024 to 19.08.2024 during which he was in judicial custody cannot be considered a voluntarily absenteeism for determining the period of consecutive 3 months. Petitioner has relied on the judgments of the Hon'ble High Court in *Rajan V Thomas* (1964 KHC 257) and the subsequent *Sulfikar V Kerala State Election Commission* (decided on 03.07.2024 in WP (c) 18248/2024. Petitioner prays for setting aside the impugned Ext.A4 notice issued to him by the respondent so that he can continue as an elected member.
6. Respondent's case in brief is as follows; - Petitioner while holding the office of elected member of ward No. 2 of Pallikkara grama panchayat incurred disqualification as provided under section 35 (1) (k) on account of his failure in attending the consecutive meetings of panchayat committee for three months without the permission of panchayat. Therefore, respondent in his capacity as Secretary of the panchayat issued Ext.A4 notice dated 11.07.2024 under section 37 (2) of the Act. The fact of his arrest or subsequent remand in judicial custody were not informed to the panchayat till 29.07.2024, when petitioner filed the Ext.A5 application dated 26.07.2024 for restoration of his membership.
7. The last meeting of the panchayat committee attended by petitioner was held on 08.04.2024. Thereafter he was absented from the consecutive meeting of the panchayat held on 29.04.2024, 13.05.2024, 15.05.2024, 25.05.2024, 10.06.2024, 12.06.2024, 26.06.2024, 29.06.2024 and 10.07.2024. The meeting notices of above meetings were served to the respondent in the address provided by him in the panchayat. There is no communication from the petitioner as to his change of address. Since petitioner was ceased to hold office as member on account of his failure to attend the panchayat meetings, the said fact and his right to apply for restoration of membership by applying to the panchayat were intimated to him by the respondent in his



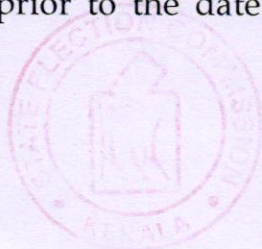
capacity as Secretary of the panchayat, under the provisions of section 37 (2). The said Ext.A4 notice was duly served to his address and it was received by his wife Smt. Suhara on 15.07.2024. In addition to it said notice was also served to the petitioner by registered post. However, it was returned unserved to the sender. The Ext.A7 resolution not to restore membership of the petitioner in the panchayat committee was taken by panchayat committee and respondent was not a part of said decision making. Original petition lacks merit and hence liable to be dismissed.

8. The evidence in this case consists of oral testimony of PW1 and documents Ext.A1 to A8.
9. Both sides were heard.
10. The following points arise for consideration, namely; -
 - i. Whether petitioner failed to attend the meetings of the panchayat committee for three consecutive months as alleged?
 - ii. Whether the said meetings of panchayat committee were convened after giving due notice of meeting to the petitioner?
 - iii. Whether petitioner has been intimated the fact of his disqualification as mandated under section 37 (2) so that he can apply for restoration of membership?
 - iv. Whether petitioner was prevented from attending the meeting of panchayat committee by reason of his arrest and consequent remand in judicial custody for a period of 94 days?
 - v. Whether petitioner has incurred disqualification as provided under section 35 (1) (k) of the Kerala Panchayat Raj Act?
11. Point No. (i) to (v); -As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner is an elected member of ward No. 2 of Pallikkara grama panchayat. Respondent is the Secretary of the Pallikkara grama panchayat. The Original Petition is filed under section 36 of the Act challenging the Ext.A4 notice dated 11.07.2024 issued by the respondent



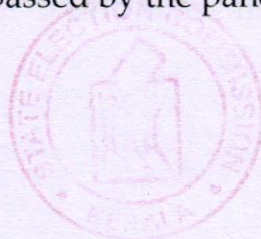
under section 37 (2) of the Act, stating that petitioner has been incurred disqualification under section 35 (1) (k) of the Act on account of his failure to attend the meeting of the panchayat committee for three months.

12. Admittedly, the last meeting attended by the petitioner was held on 08.04.2024. Thereafter he was absented from the consecutive meeting of the panchayat held on 29.04.2024, 13.05.2024, 15.05.2024, 25.05.2024, 10.06.2024, 12.06.2024, 26.06.2024, 29.06.2024 and 10.07.2024. Accordingly, the petitioner was allegedly absent from the meeting of the panchayat committee for a period of three consecutive months from the date of last meeting attended by him. Therefore, respondent issued Ext.A4 notice as mandated under section 37 (2) informing the petitioner that he had become disqualified to be a member of the panchayat in terms of section 35 (1) (k) of the Act.
13. According to the petitioner he has not been issued any notice of meetings held on 29.04.2024 and 13.05.2024 and therefore he had not acquired any disqualification under section 35(1) (k) of the Act. As per the first proviso to section 35(1) (k) of the Act no meeting from which a member absented himself shall be counted against him 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.
14. According to the respondent he had served the notice of meetings to the petitioner in the address provided by him in the panchayat and it was duly accepted by his wife. The subsequent intimation under section 37 (2) also accepted by her on 15.07.2024. However, the intimation under section 37 (2) served by registered post to the address of the petitioner was returned unserved.
15. As per rule 4 of the Kerala Panchayat Raj (Procedure for panchayat meeting) 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 the meeting. Further, Kerala



Panchayat Raj (Manner of service of notices) Rules, 1996 provides mode of service of notices. Ext.A4 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 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 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. Therefore, respondent failed to prove that there is sufficient notice as mandated under the above Rules prior to the meeting.

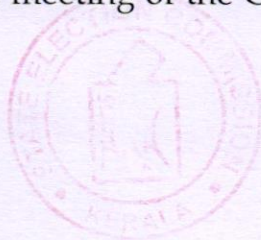
16. Further, according to the petitioner the Ext.A4 notice was not received by him since he was in judicial custody, but that fact was intimated him by his colleagues in the panchayat committee. Whereupon he preferred Ext.A5 application dated 26.07.2024 under section 37 (2) of the Act before the panchayat committee seeking restoration of his membership. According to the respondent Ext.A5 is filed in a defective format. However, it appears from Ext.A6 and Ext.A7 that panchayat committee its meeting held on 05.08.2024 considered the Ext.A5 application of the petitioner and resolved to reject it, by majority. Hon'ble High Court in *Anilkumar and Another V Kerala State Election Commission and Others* (2007b (2) KHC 273) held that an elected member, who was disqualified for remaining absent for the consecutive meetings of the panchayat committee can seek a decision from the Election Commission, even if panchayat committee rejects application for restoration of membership. However, the grievances of the petitioner against the resolution passed by the panchayat committee are not amenable



to the jurisdiction of the Commission. As per section 191 of the Kerala panchayat Raj Act power of cancellation of a resolution passed by a panchayat is vested with the Government. The said legal position is reiterated by the Hon'ble High Court in *Dr.V V Haridas MD V State of Kerala* (2022 Live Law (Ker) 632)

17. As discussed above, the last meeting of the panchayat committee attended by the petitioner was held on 08.04.2024. Thereafter petitioner was arrested and remaining in judicial custody for a period of 94 days from 17.05.2024 to 19.08.2024 as an accused in Crime No. 158/2024 of Adhur Police Station registered under the provisions of Section 409, 420, 120 (B), 465, 468 and 477 (A) and 380 read with 34 of the Indian Penal Code. The said facts are duly recorded in the Ext.A2 order dated 19.08.2024 of the Hon'ble High Court of Kerala in Bail Appl No.5199/2024. It would further show that he was remained in judicial custody for a period up to 19.08.2024, when he was released on bail.
18. Further, it is clear case of the petitioner that during the period when he was under remand in judicial custody, it cannot be treated as "absenting himself" for the purpose of section 35 (1) (k) of the Act and said period should be excluded. It is the case of the petitioner that he was arrested on 17.05.2024 and could not attend the meeting held thereafter as it was beyond his control. It cannot be treated as wilfully "absenting himself" for the purpose of section 35 (1) (k) of the Act.
19. In this connection, the Hon'ble High Court in the judgment dated 03.07.2024 in WP(C) No. 18248/2024 (*Zulfikar V Kerala State Election Commission and Ors*) has examined a similar matter and observed as follows; -

" 13. This Court, in the decision *Rajan v Thomas* reported in 1964 KHC 257 construing a provision under section 63(1) of the Kerala Municipality Act, 1960, which also contained a provision "absenting himself without the permission of the Council" held that, during the time the respondent therein was under detention in the Central Jail, he cannot be said to have absented himself from the meeting of the Council as the expression "absents himself



" has to be construed as voluntarily or deliberately absented himself without leave for the period mentioned.

.....

20. Even otherwise, on the doctrine of impossibility, which is based on the doctrine "*lex non cogit and impossibila*" (the law does not compel a man to do what he cannot possibly perform). "*impossibilium nulla obligatio est*" (the law does not expect a party to do the impossible) and "*impotentia excusat legem*" in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory.
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Therefore, when it appears that the performance of the formalities prescribed by the statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. The above maxims are founded upon justice and good sense and serve as a safe and certain guide for the administration of law.

.....

In the instant case, the petitioner did make an unsuccessful attempt even when he was in judicial custody to attend the meeting.

Accordingly, the period between 02.03.2022 (when the petitioner was arrested) and 10.06.2022 (when the petitioner was released on bail) cannot be treated as a voluntary act and since his absence was involuntary, it should be held that the said period has to be excluded from computing the number of meetings he absented."

21. In the light of the dictum laid down in above judgment, in the instant case, the period of absence between 17.05.2024 (when the petitioner was arrested) and 19.08.2024 (when the petitioner was released on bail) is to be excluded from the computing the number of meetings he absented. Therefore, Ext A4 notice dated 11.07.2024 and further proceedings thereto are unsustainable. I found so.



22. From the available evidence and in the light of the dictum laid down by the Hon'ble High Court, it is not possible to say that the petitioner has incurred the disqualification put forward against him. The respondent failed to make out a case 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 Pallikkara Grama Panchayats alleged. The Ext.A4 notice issued by the respondent is not proper and legal. Points answered accordingly.

In the result, the petition is allowed and Ext.A 4 notice is declared as illegal. The petitioner is allowed to continue as a member of Pallikkara Grama Panchayat.

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

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



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

APPENDIX

Witness examined on the side of the Petitioner

PW1 - Sri. Ahamed Basheer

Documents produced on the side of the Petitioner

- A1 - Certificate of Election dated, 16.12.2020 given to Sri. Ahamed Basheer, Ward No. 02 of Pallikkara Grama Panchayath.
- A2 - Order of Hon'ble High Court dated, 19.08.2024 in the bail application No. 5199/2024
- A3 - Copy of the Minutes dated, 08.04.2024 of Pallikkara Grama Panchayath committee.
- A4 - Letter No. 40115/DGERO4/GPO/2024/4229(1) dated 11.07.2024 of Secretary Pallikkara Grama Panchayath notice under Section 35k, 370 of Kerala Panchayath Raj Act.
- A5 - Request letter dated, 26.07.2024 by Ahamed Basheer for examining him from attending Panchayath Committee meeting.
- A6 - Copy of decision register Pallikkra Grama Panchayath dated, 05.08.2024 with regard to Panchayath Committee meeting held on 05.08.2024
- A7 - Copy of the 7th numbered decision taken in the meeting dated, 05.08.2024 of Pallikkara Grama Panchayath.
- A8 - Copy of the 3rd decision taken in the meeting dated, 24.08.2024 of Pallikkara Grama Panchayath.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

