

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Wednesday, the 3rd day of July 2019

O.P.No.50/2017

Petitioner : K.C.Sobhitha,
34/1407-A, Florican Road,
Malaparamba,
Kozhikode District- 673009.
Councillor, Ward No.8,
Kozhikode Corporation.

(By Adv.G.K.Sudheer)

Respondent : 1. Secretary,
Kozhikode Corporation,
Kozhikode District ,
PIN: 686 662.

2. Kozhikode Municipal-
Corporation Council
represented by its Secretary,
Corporation Office,
Kozhikode District ,

(By Adv.B.Vasudevan Nair)

This petition having come up for hearing on the 18th day of June 2019,
in the presence of Advocate **G.K.Sudheer** for the petitioner and Advocate
B.Vasudevan Nair for the respondents and having stood over for
consideration to this day, the Commission passed the following.

ORDER

This is a petition filed under Section 92 of the Kerala Municipality Act to declare that the notice bearing No.D-10/B15/83727/17 issued by the Secretary of Kozhikode Municipal Corporation dated 16.10.2017 as null and void.

2. The averments in the petition as amended, in brief are as below:-

The petitioner is an elected Councillor of Kozhikode Municipal Corporation in the election held in November 2015 and she represents ward No.8 of Kozhikode Corporation. Petitioner is a member of the Standing Committee for Education, also. She is an active Councillor of the Kozhikode Corporation. The petitioner contested and was elected as the candidate of Indian National Congress (INC). In the election it was the LDF which got majority of seats. While so, the petitioner became pregnant and certain pregnancy related complications were detected on medical examination. She was undergoing treatment under the Gynecology wing of the Star Care Hospital, Kozhikode and she was advised total bedrest from the final weeks of pregnancy till delivery. She was advised bed rest from 20.12.2016 to 30.06.2017. The delivery was on 25.02.2017 and on the same day she underwent elective LSCS with bilateral tubal sterilization and was kept hospitalized till 01.03.2017.

3. The petitioner attended the council meeting held on 16.12.2016 which was held immediately prior to the commencement of her period of medically advised bed rest. The petitioner was promptly attending all the meetings of the Standing Committee till the above date. There is no practice of intimating the meetings by issuing notices. Initially and during the above period the attendance register was also not properly maintained. The petitioner attends the meeting by making enquiries and by getting telephonic information. On receiving medical advice as above the petitioner has immediately contacted the office of the Mayor as well as of the Secretary by telephone and informed the matter and her inability to attend the meetings of the council and Standing Committee. The prevailing practice for availing leave by the Councillors in Kozhikode Corporation is to give information to the office of Mayor by telephone or otherwise. There was no practice of insisting any written request. Now it is learnt that after issuance of the impugned notice to the petitioner the Secretary is insisting for a written request from the Councillors.

4. As per the practice prevailing then the petitioner made her request for leave for six months from 20.12.2016 from attending the meetings of the council and Standing Committee, to the office of the Mayor and Secretary by telephone. The condition of the petitioner was known to the Mayor, other Councillors and the Corporation Staff who is in charge of arranging the council meetings. The petitioner's leave request was reported in the

council meeting held on 10.01.2017. After delivery the petitioner attended the meeting of the council held on 28.06.2017 and she attended the said meeting as per the notice issued by the Secretary. Nobody has raised any objection in the meeting. Thereafter the petitioner attended the meetings of the council held on 10.07.2017, 27.07.2017, 22.09.2017, 11.10.2017, and 24.10.2017 and also the Standing Committee meetings. As far as the Standing Committee concerned she has received notice of its meetings after her leave period only for the meeting held on 25.09.2017. The next meeting was on 06.10.2017 and she attended that meeting also. Now on 21.10.2017 the petitioner was served with a notice of the Secretary referred to above stating that she was disqualified to be a Councillor of Kozhikode Corporation. The said notice would reveal that it is not on the basis of any proceedings initiated by the Secretary independently or following the procedure contemplated by the statute. The Secretary issued the said notice on the basis of an audit report of the Local Fund Audit. The law does not permit the Secretary to issue such a notice on the basis of the report of the Audit Department or of any such external source. The Secretary has committed serious error by issuing the notice by blindly relying on the letter issued by the Audit officers.

5. The impugned notice issued by the Secretary is illegal and improper. It is not sustainable in law. The said notice was issued by the Secretary under political pressure and at the instance of the ruling party to

harass the petitioner. It was because of the pregnancy related complications and for delivery the petitioner had to abstain from the meetings of the council. She was compelled to apply for leave on medical grounds and denial of the leave applied on medical grounds is violation of human rights. The petitioner has applied for leave for six months and the information of the petitioner was that she was granted leave for six months. But now it is known that in the minutes it was recorded that the leave was granted only for the meeting on 10.01.2017. The petitioner reasonably believes that there is some fabrication in the minutes. The intention of the legislation is to protect the interest of the democratically elected representatives. To throw them away from their position on flimsy ground is not the intention of the law maker. The petitioner is entitled to continue as a member of Kozhikode Corporation.

6. The respondent filed counter statement contending as follows:-
The petition is not maintainable. The petitioner has filed the petition without disclosing the true and material facts. The petitioner is an elected Councillor of Kozhikode Corporation and a member of the Standing Committee for education. Being a Councillor and member of the Standing Committee for Education she ought to have attended the meetings of the council and Standing Committee. She acquired the disqualification under Section 91(1)(k) of the Kerala Municipality Act as she failed to all the meetings held from 27.12.2016 to 08.07.2017 except on 10.01.2017, the

date on which she was granted leave from attending the council meeting. She has failed to attend the meetings of the Standing Committee for Education held from 31.10.2016 to 18.09.2017. The fact of acquisition of disqualification by the petitioner came to the notice of the respondent on receipt of the Audit objection dated 26.09.2017 from the Kerala State Audit Department. Immediately on getting the information about the disqualification the 1st respondent Secretary intimated the said fact to the petitioner as per the letter dated 16.10.2017 as stated in the petition. Thereafter the petitioner submitted a leave application dated 19.10.2017 and the same was rejected as per the letter dated 30.10.2017. The petitioner never intimated any kind of health related problems either to the Secretary or to the council.

7. Each and every meeting of both Standing Committee and council have been intimated to the petitioner complying the provisions of law. The averments that the petitioner attended the meeting on 28.06.2017 is not correct. The petitioner has not attended the meetings of the council held on 10.07.2017, 27.07.2017, 22.09.2017 and 11.10.2017 and the Standing Committee meeting held on 06.10.2017. Though the petitioner received the letter intimating her disqualification on 21.10.2017 she has not submitted any application for restoration of membership to the council as per Section 93(2) of the Kerala Municipality Act. Without exhausting the remedy provided under the said provision the petitioner approached the Commission

raising false and frivolous contentions. The petitioner did not inform the Secretary regarding the alleged medical emergency and she did not apply for leave. The petitioner who was aware of the acquired disqualification willfully abstained from filing the application under Section 93(2) of the Kerala Municipality Act. The petitioner was not attending the meetings for nearly one year. The participation of the petitioner in subsequent meeting of the council after acquiring disqualification under Section 91(1)(k) will not make the disqualification invalid. There is not merit in the petition. The petitioner is not entitled to get any relief in the petition and it is only to be dismissed.

8. The evidence in this case consists of the oral testimonies of PWs1 to PW3 and Exts.A1 to A3 and X1. The respondents did not adduce any evidence (counsel endorsed that the respondents have no oral evidence)

9. Both sides were heard.

10. The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) Whether the petitioner failed to attend three consecutive meetings of the Municipal Council and Standing Committee for Education as alleged?
- (3) Whether the petitioner has incurred disqualification under Section 91(1)(k) of the Kerala Municipality Act as alleged?
- (4) Reliefs and costs?

11. **POINT Nos.1 to 4:** As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. The petitioner is an elected Councillor of Kozhikode Corporation and she is a member of Standing Committee for Education also. 1st Respondent is the Secretary of Kozhikode Municipal Corporation and the 2nd respondent is Kozhikode Municipal Corporation represented by the Secretary. The petitioner filed this original petition under Section 92 of the Kerala Municipality Act challenging Ext.A1 intimation issued by the 1st respondent Secretary intimating her that the petitioner ceased to be a Councillor of Kozhikode Corporation as she failed to attend the meetings of the Municipal Council held from 27.12.2016 to 28.06.2017 and of the Standing Committee for Education held from 31.10.2016 to 18.09.2017.

12. According to PW1, Ext.A1 notice is not proper and legal it was issued on the basis of an audit report without verifying the records and it is not sustainable. It is not the audit party who is to decide the disqualification if any of a Councillor. The petitioner was undergoing treatment for pregnancy related complications and she was advised to take bedrest for six months from December 2016. The petitioner could not attend the meetings of the council during the period mentioned in Ext.A1 on medical grounds and her inability was intimated to the office of the Mayor and Secretary and applied for leave. The office assured the petitioner that her request for leave

for six months would be granted. There was no reason to disbelieve their words. The petitioner did not incur any disqualification under Section 91(1)(k) of the Act as alleged. It is also her case that there was no proper notice for the meetings of the Standing Committee for education and there was no proper meetings also. There was no default on her part to disqualify the petitioner. Ext.A1 is not proper and legal and hence it is to be declared as such, the petitioner further contends.

13. The respondents have a contention that the original petition is not maintainable. According to them the petitioner has not exhausted the remedies available to her under Section 93(2) of the Kerala Municipality Act and hence the original petition is to be dismissed as not maintainable. To the respondents the petitioner should have first approached the Municipal council with a request to restore her Councillorship and as she did not do that the petitioner is not entitled to approach the Commission with a petition under Section 92 of the Kerala Municipality Act. Here itself it is to be stated that such a contention is not sustainable.

14. The 1st respondent Secretary has issued Ext.A1 notice under Section 93(2) of the Kerala Municipality Act stating that the petitioner has become disqualified as provided under Section 91(1)(k) of the Kerala Municipality Act. Section 91(1)(k) of the Act reads as below:-

91. *“Disqualifications of Councillors,-(1) Subject to the provisions of Section 92 or Section 178, a Councillor shall cease to hold office as such, if he..*

X XXXX XXXXXXXXX

(k) absents himself without the permission of the Municipality concerned from the meetings of the council of the Standing Committee as the case may be, for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of the restoration to aoffice, as member under sub-section (1) of Section 93, as the case may be, or if within the said period of three months, less than three meetings have been held, absents himself from three consecutive meetings held after the said date:

Provided that no meeting from which a Councillorabsented 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 Councillors;”*

Provided further that the Municipality in no case, shall give permission to a Councillor from not attending the meetings of the council or the Standing Committee for a continuous period exceeding six months.

15. Section 92(3) of the Act provides a separate procedure in respect of a disqualification under Section 91(1)(k) of the Kerala Municipality Act. As per Section 93(2) of the Act when a member ceases to hold office as provided by clause (k) of section 91, the Secretary of the Municipal Corporation concerned shall at once intimate the fact in writing to such person and report the same at the next meeting of the Council and if such person applies for restoration to the Council on or before the date on which next meeting or within fifteen days of the receipt by him of such intimation, the Council may at the meeting next after the receipt of such application restore him to his office of Councillor. Once an intimation has been given as provided by Section 93(2) of the Kerala Municipality Act the member concerned shall cease to hold office as provided by Section 91(1)(k) of the Kerala Municipality Act. Of course such a member has two options. The member can either apply for restoration of his membership before the Council as provided under Section 93 (2) of the Kerala Municipality Act itself or can file a petition before the State Election Commission challenging such intimation as provided under Section 92(1) of the Kerala Municipality Act. Section 92(1) of the Act reads as below:-

92. Determination of subsequent disqualification of a

Councillor,- (1) Whenever a question arises as to whether a Councillor has become disqualified under Section 86 or section 91, except clause (11) after having been elected as such Councillor, any Councillor of a Municipality concerned or any other person entitled to vote at the election in which the Councillor was elected, may file a petition before the State Election Commission, for decision.

16. It is the settled law that a member who is in receipt of an intimation under Section 93(2) of the Kerala Municipality Act is entitled to file a petition as provided by Section 92(1) of the Act before the State Election Commission. Similar provisions are therein the Panchayat Raj Act also and Sections 37(2) and 36(1) respectively are the corresponding provisions in the Kerala Panchayat Raj Act. Section 35(1)(k) of the Kerala Panchayat Raj Act is the Section corresponding to Section 91(1)(k) of the Kerala Municipality Act. While dealing with the above provisions of the Kerala Panchayat Raj Act our Hon'ble High Court in **Gigi Mathew V. Kerala State Election Commission (2006(3) KLT 141)** held as below,-

“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 an intimation under Section 37(2) of the Act, the cessation of membership provided by the operation of Section 37(2) is made amenable to interfere with 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.” The decision reported in **2007(2) KLT 303 (Anil Kumar V. Kerala State Election Commission)** also clarified the above position.

17. According to the respondents the petitioner failed to attend the meetings of the Council and Standing Committee for Education referred to in Ext.A1 notice and hence she is disqualified. The petitioner denies the allegations and challenges Ext.A1 notice. A question then arises as to whether the petitioner has become disqualified for her failure to attend the meetings of the Council and of the Standing Committee. The petitioner is an elected Councillor of Kozhikode Corporation and being a Councillor she is certainly entitled to file this petition as per law. As this petition is filed by a competent person and a question arises as to whether the respondent has become disqualified as provided under Section 91(1)(k) of the Kerala Municipality Act this petition is held maintainable.

18. Case of the respondents is that the petitioner failed to attend the meetings of the council from 27.12.2016 to 28.06.2017 and the meetings of the Standing Committee for Education from 31.10.2016 to 18.09.2017. As the petitioner failed to attend the meetings of the Council and Standing

Committee for Education as stated above the petitioner incurred disqualification under Section 91(1)(k) of the Kerala Municipality Act and the fact of disqualification was intimated to the petitioner as per Ext.A1 notice, it is further stated. Here itself it is to be stated that the details of the meetings and the dates on which notices were issued to the petitioner are not there in Ext.A1 notice. It seems that Ext.A1 notice was issued on the basis of an audit report. A copy of the audit report showing the dates of the meeting was attached with Ext.A1 notice and Ext.A1(a) is the copy of the audit report. Regarding the meetings and the notices of the meetings I shall discuss a little later.

19. Contention of the petitioner is that she has applied for leave in December, 2016 for a period of six months due to pregnancy related complications on medical advice and for bedrest after delivery. The Doctor who was treating her advised complete bedrest from 20.12.2016 to 30.06.2017. To support that contention PW1 has produced Ext.A2 certificate and examined PW2. Ext.A2 is the Medical Certificate issued by Dr.Sulochana, Star Care Hospital, Kozhikode who was treating the petitioner. Dr.Sulochana was examined as PW2 and she proved Ext.A2 certificate. PW2 has clearly stated about the treatment and the reasons for advising bed rest for PW1 for six months. She has produced the file containing the treatment records of the petitioner kept in the Star Care Hospital, Kozhikode. Ext.X1 is the said file. Ext.X1 would show that the

petitioner was admitted there for treatment on 25.02.2017 and was discharged on 01.03.2017. Details of the operations, delivery and treatment given are there in Ext.X1 file. The delivery was on 25.02.2017. PW1 underwent elective LSCS with bilateral tubal sterilization on 25.02.2017. It was due to the above medical reasons she applied for leave for six months and according to her she was assured that the leave would be granted. There was nothing for her to think otherwise. As she applied for leave for six months for the above reasons her absence during the period mentioned in Ext.A1 cannot be used against her to disqualify the petitioner under Section 91(1) (k) of the Act, it is further contended.

20. It is a fact that the petitioner did not attend the meetings held during the period mentioned in Ext.A1. It is also a fact that there was no written application for leave from the side of the petitioner. According to PW1 she informed the office of the Mayor and of the Secretary about her inability to attend the meetings of medical grounds stated above and applied leave for six months over phone and it was assured from the office that her request for leave would be granted after putting before the council. Submission of the learned counsel for the petitioner is that there was no practice of submitting written application for leave by Councillors in Kozhikode Corporation and the practice then was to inform the office of the Mayor and the office of the Secretary regarding the leave. The leave will be granted by the Mayor and thereafter it will be informed in the Council. The

leave of the petitioner was granted also. But in the minutes the said fact was not properly recorded. Minutes were not properly being recorded and there was not even the minutes for some of the meetings of the council as can be seen from Ext.A1(a) report, the counsel further submits. The evidence and circumstances in this case would only lend support to the above contention of the Counsel.

21. It may be noted that even according to the respondents leave was granted to the petitioner on 10.01.2017. How that leave was granted is not known. There was no written application from the petitioner for any leave on 10.01.2017. So it must be on the basis of the oral request from the side of the petitioner. It may be noted that the petitioner was in an advanced stage of pregnancy during January 2017 and she was admitted in Star Care Hospital, Kozhikode on 25.02.2017 for treatment and delivery and the delivery was on 25.02.2017. So it is difficult to believe that the petitioner would apply on 10.01.2017 for one days leave when she was on bedrest due to pregnancy related complications and undergoing treatment as revealed from Exts.A2, X1 and the evidence of PW2. On 25.02.2017 PW1 underwent LSCS with bilateral tubal sterilisation and she was discharged on 01.03.2017. Thereafter also she was on bedrest. So the question of applying for one days leave under the above circumstances does not arise. Case of the petitioner that she has requested leave for six months over phone due to medical reasons is to be considered under the above background.

22. Further, the evidence of PW3 and Ext.A1(a) also would show that there was no practice of submitting written application for leave by the Councillors. PW3 is another Councillor of Kozhikode Corporation. It is stated by PW3 that there was no practice of submitting written application for leave and the practice was to inform the Mayor or Secretary over phone and in the case of Standing Committee meeting the Chairperson of the Standing Committee also. It is stated by him he makes oral request for leave and it is being allowed. The leave requests of the Councillors will not be discussed in the Council meetings, PW3 further states. Ext.A1(a) report also would give an indication in that regard. As per Ext.A1(a) report Mayor grants leave to the Councillors and later he informs the Council. So only because of the absence of the written application it cannot be said that the petitioner has not applied leave for six months and it was not granted. It may also be noted that the respondents did not adduce any evidence in this case to refute the evidence of PWs1 to 3 and Exts.A2 and X1 documents. The respondents have no case that the medical emergency put forward by the petitioner for her absence is false and that the petitioner was not under the treatment of PW2 as stated by PW1 and PW2. According to the petitioner the request of leave for six months was granted but it was not properly minuted for which the petitioner cannot be penalised.

23. It is submitted by the learned counsel for the respondents that the petitioner has subsequently submitted a leave application on 19.10.2017 and

that would only show that there was no request for leave earlier. It is true that the petitioner submitted a written leave application before the Secretary on 19.10.2017. But PW1 has clearly explained the circumstances under which she submitted the said application. According to PW1 the office staff asked her to submit such an application in the light of the audit objection and at that time she has not received Ext.A1 notice. Her explanation is convincing and there is nothing unusual in it. So the above argument of the counsel is only to be ignored.

24. I do not find any reason to disbelieve the case of the petitioner regarding the leave and the reasons stated for her absence. The absence of any action from the side of the Secretary or Council till the report of the audit party also would indicate that the request of the petitioner for leave was granted. It may be noted that Ext.A1 was issued much after the alleged disqualification. If the contention of the respondents is accepted the disqualification would occur after the three meetings mentioned in Ext.A1(a) ie., the meetings held on 27.12.2016, 10.01.2017 and 27.01.2017. As per their contention the alleged disqualification would happen on 27.01.2017. But Ext.A1 was issued only on 16.10.2017 ie., after more than eight months. So the non issuance of any such notice till the report of the audit party would only support the contention of the petitioner that her application for leave was granted and her abstention was with the permission of the council. As the audit party did not find any written application for

leave they might have prepared a report without being aware of the practice there. The petitioner cannot be blamed for that. When the Secretary got the report of the audit party he issued Ext.A1 notice. It is to be stated here that as per Section 93(2) of the Kerala Municipality Act the intimation of cessation of membership by the Secretary should be given at once and it is not when the same is noticed by the Secretary later as held in the decision reported in 2010(3)KHC 425 (RajanKannath v. P.R.Pradeep Kumar and others). It is specifically provided in Section 93(2) that intimation of cessation of membership by the Secretary should be given at once when the event has happened and not when the same is noticed by the Secretary later.

25. From the evidence and circumstances it can be safely inferred that there was no practice of written application for leave in Kozhikode Corporation and the oral request of the petitioner for leave was actually granted following the practice. Therefore the absence of the petitioner referred to in Ext.A1 cannot be used against the petitioner to invoke Section 91(1)(k) of the Kerala Municipality Act. Further, the delay in issuing Ext.A1 notice as noticed above also would make Ext.A1 notice invalid.

26. Incidentally, it may also be noted that the absence of the petitioner was due to the pregnancy related treatment and delivery. Her concern over the health of her child in the womb and of new born after delivery cannot be overlooked in this case. Insisting the petitioner's presence in the meetings risking her child in the womb is inhuman. Merely because she is a

Councillor she cannot ignore her compelling family responsibility. Absence due to pregnancy and subsequent delivery cannot be taken as a ground to disqualify the petitioner citing technical reasons. It is harsh to punish the petitioner for her absence from the meeting due to her pregnancy related treatment, bedrest and delivery and punishing her will be an act of questioning the dignity of a woman.

27. Now let us verify whether the meetings referred to in Ext.A1 were properly convened and the notice issued were proper. To attract the provision of Section 91(1)(k) of the Kerala Municipality Act certain conditions are to be satisfied. Firstly, the member should absent himself from the meeting of the Council or of the Standing Committee of which he/she 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 Councillors. There should have been three meetings within the period of the above three months. It is to be stated that if within the said period of three months only less than three meetings of the Council and Standing Committee have been held the member should have been failed to attend the meetings of the subsequent three consecutive months to attract disqualification. The said period 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 (Krishnakumar. V. Kerala State Election Commission)** After referring several decisions of the Hon'ble High Court and Supreme Court at Paras 11 and 12 of the above decision it was 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 the 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 Khatoon,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 indicting 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.

12. 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”.

28. As per Section 91(1)(k) of the Kerala Municipality Act the period of three consecutive months for which a Councillor is absent is to be

reckoned from the date of meeting on which a member had last attended. Which were the meeting the petitioner absented are not there in Ext.A1. What is stated in Ext.A1 is that the petitioner failed to attend all the meetings of the Council held from 27.12.2016 to 28.06.2017 and all the meetings of the Standing Committee for Education held from 31.10.2016 to 18.09.2017. The specific dates are not mentioned in Ext.A1 notice. Which was the meeting the petitioner attended last is also not there in Ext.A1. The absence of three consecutive months is to be calculated from the date of the last meeting the petitioner attended. Without knowing that date, the date of the period of three consecutive months and the date of the alleged disqualification cannot be calculated. That is necessary for verifying whether the meeting held and the defaults were as stated in Section 91(1)(k) of the Kerala Municipality Act.

29. In Ext.A1(a) copy of the audit report certain dates of the meetings of the Council and of the Standing Committee for Education are shown. But that will not take us anywhere. As per Ext.A1(a) meetings of the Council were held on 27.12.2016, 10.01.2017, 27.01.2017, 13.02.2017, 14.02.2017, 27.02.2017, 07.03.2017, 13.03.2017, 16.03.2017, 21.03.2017, 23.03.2017, 24.03.2017, 25.03.2017, 27.03.2017, 19.04.2017, 11.05.2017, 22.05.2017, 31.05.2017, 08.06.2017, 24.06.2017 and 28.06.2017. Similarly the date of meetings of the Standing Committee for education are seen shown in Ext.A1(a) as 31.10.2016, 08.11.2016, 17.11.2016, 01.12.2016, 15.12.2016,

07.01.2017, 19.01.2017, 02.02.2017, 16.02.2017, 22.02.2017, 06.03.2017, 13.03.2017, 18.03.2017, 10.04.2017, 12.04.2017, 08.05.2017, 22.05.2017, 26.05.2017, 29.05.2017, 05.06.2017, 23.06.2017, 12.07.2017, 17.07.2017, 26.07.2017, 02.08.2017, 05.08.2017, 22.08.2017, 29.08.2017 and 18.09.2017 Ext.A1(a) will not show which were the meeting held on shorter notice or held on requisition by Councillors.

30. It may be noted that the meetings held after giving shorter notice and the meetings held on a requisition by the Councillors will not be counted against the Councillors for the purpose of Section 91(1)(k) of the Act. The respondents have not produced the notice book, attendance register, and the minutes book of the meetings to verify those matters. Without getting the date of the meeting the petitioner attended last the date on which the period of three consecutive months starts and ends and whether the meeting due once in a month was held as required to attract Section 91(1)(k) of the Act cannot be found out. The respondents have not taken any steps to justify the issuance of Ext.A1 notice. It seems that the 1st respondent has issued Ext.A1 notice to satisfy the audit party and to give a reply to the query of the audit department as submitted by the learned counsel for the petitioner. The attitude of the respondents in the proceedings tempt me also to think on that lines. The respondents did not adduce any evidence in this case. Why they chose to keep away the notice book and minutes book is not known.

31. According to the petitioner she attended the meeting of the Council held on 16.12.2016 and then the last date of the three consecutive months period would fall on 15.03.2017. During that period the first meeting to be counted is the meeting held on 10.01.2017 as the meeting held on 27.12.2016 was in the month of December itself. The next meeting to be counted is the meeting on 13.02.2017 and then 07.03.2017. Out of the said three meetings the meetings held on 10.01.2017 cannot be counted as leave was granted to the petitioner on that day even according to the respondents. So the absence of the petitioner in that meeting cannot be counted. So a fresh period of three months is to be calculated from the next meeting onwards. The next meeting was held on 13.03.2017. The three consecutive months period is to be reckoned from 13.03.2017 and the last date of the three months period would fall on 12.06.2017. It may be noted that after 13.03.2017 six other meetings were held in the month of March itself and that will not satisfy the condition of meetings due once in a month to attract Section 91(1)(k) of the Kerala Municipality Act. There must be a meeting before the corresponding date in the months of April, May and June. But the meeting in April was on 19.04.2017 i.e., after one month period starting from 13.03.2017 which expired on 12.04.2017. So that meeting also cannot be counted for the purpose of Section 91(1)(k) of the Kerala Municipality Act. So a fresh period of three months is to be calculated from the next meeting onwards. The next meeting was on 11.05.2017. The three consecutive

meetings is to be reckoned from 11.05.2017 and the last date of three consecutive months period would fall on 10.08.2017. During the said period also three consecutive meetings due once in a month were not held as stipulated in Section 91(1)(k) of the Act. After the meeting on 11.05.2017 two more meetings were held in the month of May itself as per Ext.A1(a) report ie., on 22.05.2017 and 31.05.2017. Thereafter another three meetings were held in the month of June. The last meeting shown in Ext.A1(a) is 28.06.2017. So that also will not satisfy the requirement in Section 91(1)(k) of the Act. It is not the absence of several meeting that disqualifies a Councillor. It is the absence of the Councillor in three consecutive meetings due once in a month that disqualifies the Councillor. There was no such meetings and absence as contemplated in Section 91(1)(k) of the Kerala Municipality Act in this case.

32. Similar is the situation in the case of the meetings of the Standing Committee also. According to the learned counsel for the petitioner there was no proper meeting of the Standing Committee to attract Section 91(1)(k) of the Act and there was no proper notice also. The Councillors, it is stated, are being informed some times over telephone only regarding the meeting. Here also it is to be stated that the details of the meetings, the date of the meeting the petitioner attended last and the date on which the petitioner became disqualified according to the 1st respondent, are not there in Ext.A1. Without getting the date of the meeting on which the petitioner attended last,

the three consecutive months period due once in a month cannot be calculated.

33. As stated above the respondents did not produce the notice book, the minutes book and the attendance register relating to the Standing Committee. Certain dates of the meeting of the Standing Committee for education are noted in Ext.A1 audit report and they are 31.10.2016, 08.11.2016, 17.11.2016, 01.12.2016, 15.12.2016, 07.01.2017, 19.01.2017, 02.02.2017, 16.02.2017, 22.02.2017, 06.03.2017, 13.03.2017, 18.03.2017, 10.04.2017, 12.04.2017, 08.05.2017, 22.05.2017, 26.05.2017, 29.05.2017, 05.06.2017, 23.06.2017, 12.07.2017, 17.07.2017, 26.07.2017, 02.08.2017, 05.08.2017, 22.08.2017, 29.08.2017 and 18.09.2017. Ext.A1(a) will not show which were the meetings held on short notice or held on requisition of Councillors. The meetings held on short notice and on requisition of Councillors will not be counted against the Councillor for the purpose of Section 91(1)(k) of the Kerala Municipality Act. Nowhere in Ext.A1 or in Ext.A1(a) or in the objection statement we find the date of the meeting which the petitioner attended last. The petitioner also did not state the said date. Without getting that date the period of three consecutive meeting due once in a month and the default cannot be calculated and decided. As stated above it is not the absence of several meetings of the Standing Committee that disqualifies the Councillor. It is the absence of the Councillor in three consecutive meetings due once in a month as stated in

Section 91(1)(k) of the Act disqualifies the Councillor. The respondents have not stated the date of the meeting which the petitioner attended last and when the respondent acquired the disqualification. In the absence of those details a decision is not possible in this case regarding the alleged default of the petitioner.

34. It is also the contention of the petitioner that there was no proper notice for the meetings of the Standing Committee for Education. It may be noted that as per Rule 16(1) of the Kerala Municipality (Standing Committee) Rules, a Standing Committee shall meet in the office of the Municipality at least once in a month on such date and time as may be fixed by the Chairman from time to time and as per Rule 16(3) there must be three clear days notice for the meeting and as per the explanation to sub-rule (3) of Rule 16 the date of receipt of the notice and the date of the meeting shall be excluded from that three days. There should be three clear days notice to the Councillor for attending the meetings. There is nothing from the side of the respondents to show that the notices issued for the Standing Committee for Education are proper. In the absence of the notice book and the copy of the notices if any kept in the office of the Municipality it is not possible to say that the notices issued to the petitioner for the meetings of the Standing Committee are proper.

35. To disqualify a Councillor under Section 91(1)(k) of the Kerala Municipality Act the Councillor should be absent without permission of the

Corporation for a period of three consecutive months reckoned from the date of the last meeting she attended. It is found above that the petitioner applied for leave and her absence was with the permission of the Council. It is also found above that the meeting of the Council and of the Standing Committee were not as stipulated in Section 91(1)(k) of the Kerala Municipality Act and hence the alleged absence of the petitioner cannot be counted against the petitioner to invoke Section 91(1)(k) of the Act. It is also found above that there was no proper notice for the meetings of the Standing Committee.

36. From the available evidence and circumstances it is not possible to say that the petitioner has incurred the disqualification put forward against the petitioner. Therefore I hold that the petitioner has not ceased to be a Councillor of Kozhikode Corporation as alleged. Ext.A1 notice issued by the 1st respondent is not proper and legal and it is not sustainable in law. Points are answered accordingly.

In the result, the petition is allowed and Ext.A1 is declared as not proper and legal. The petitioner is allowed to continue as a Councillor of Kozhikode Corporation.

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 3rd day of June 2019

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER.

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Smt.K.C.Sobhitha
PW2 : Dr.Sulochana.K
PW3 : Adv.P.M.Niyas

Documents produced on the side of the petitioner

A1 : Notice No.D10/B15/83727/17 dated 16.10.2017
issued by the Secretary, Kozhikode Corporation to
Smt.K.C.Sobhitha
A1(a) : Copy of the Audit Report
No.K.S.A/K.O.C.A4/1067/2017 dated 26.09.2017
from Kerala State Audit Department, Corporation
Audit Office, Kozhikode
A2 : Medical Certificate issued by Dr.Sulochana.K to
Smt.Sobhitha.K.C dated 05.07.2017
A3 : Letter No.D10/B15/83727/17 dated 03.05.2018
issued by the Secretary to Smt.K.C.Sobhitha

Document produced on the side of the witness

X1 : Treatment file of Smt.K.C.Sobhitha in Star Care
Hospital, Malaparamba, Kozhikode

V.BHASKARAN,
STATE ELECTION COMMISSIONER