

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

PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER

Saturday, the 14th day of March 2014

O.P.No.19/2013

Petitioner : Raphel Antony.P.A @ Derson,
S/o Antony.P.D., Residing at
Peedikaparambil House,
C.C.No.9/714 (New No.8/2578),
Pandikudi, Thoppumpady Village
Kochi Taluk, Kochi – 682 002.

(By Adv.N.S.Lal)

Respondents : 1. T.K.Babu,
S/o T.C.Kakko, Residing at
Thyparambil House,
C.C.No.16/374C(1) (New
No.11/18(A), Karuvelippady,
Thoppumpady Village, Kochi Taluk,
Kochi-682 005.

2. Jaseentha Zavier,
W/o T.K.Babu,
Residing at
Thyparambil House,
C.C.No.16/374C(1) (New
No.11/18(A), Karuvelippady,
Thoppumpady Village, Kochi Taluk,
Kochi-682 005.

(By Adv. Suraj Krishna B.S)

This petition having come up for hearing on the 4th **day of February 2014**, in the presence of Advocate **N.S.Lal** for the petitioner and Advocate **Suraj Krishna B.S** 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 91(p) r/w 143A of the Kerala Municipality Act for declaring that the 1st respondent has ceased to hold office as a Councillor of Cochin Corporation.

2. The short facts are as follows:- The petitioner is a voter of ward No.8 of Cochin Corporation as Serial No.411 of booth No.7 and the respondent is the elected Councillor of this ward. As per Section 143A(2) of the Kerala Municipality Act, 1st respondent, during his term as a Councillor, was bound to submit statement regarding acquisition of further assets by him as well as his family members within three months from the date of such acquisition before the competent authority. As per the information gathered by the petitioner, a new house has been acquired by way of new construction by respondent No.1 in the name of 2nd respondent his wife in the year 2012. The said new building was constructed by 2nd respondent as per building permit No. FCP2/37/2010 and the date of its completion was 15.02.2012. The total plinth area of the said two storied building is 110.21M2 and it

would cost more than ₹15lakhs. The above house has been numbered as C.C. XVI/374C(1) with serial No.XI/18(A) in the name of 2nd respondent who is a housewife without any source of income and hence fully depending on 1st respondent for her livelihood. But 1st respondent has not submitted any statement as mandated by Section 143A(2) of the Kerala Municipality Act regarding acquisition of the above assets. The 1st respondent has acquired movable assets Viz., Honda Activa 109CC Scooter bearing registration No.KL-43C/4021 in his name during March 2011 spending more than ₹50,000/-. 1st respondent has failed to file a statement regarding acquisition of this immovable asset also as prescribed by law. Therefore, the 1st respondent has ceased to hold office as a Councillor for his failure to file statement of assets acquired as provided by Section 143A(2) of the Kerala Municipality Act and hence this petition.

3. Respondents 1 and 2 have filed separate objections raising common contentions which are in short as follows:- The allegation that a new building has been acquired by 1st respondent by way of a new construction in the name of 2nd respondent is false. It is true that a new building has been constructed by 2nd respondent by utilizing her own funds. It is also true that the date of completion of the new house was on

15.02.2012 and its plinth area is specified in the completion plan submitted by 2nd respondent before the local authority. The allegation that the cost of construction of the building is ₹15lakhs is not true. The cost of construction was only ₹ 8 lakhs. It is true that the building is numbered by the Corporation of Cochin as XVI/374C in the name of 2nd respondent. It is also true that 2nd respondent is a housewife. But the allegation that 2nd respondent is without any source of income and is fully depending on 1st respondent is not true. The elder son of the respondents is employed in a Quasi Government Industrial undertaking for the last seven years. 2.915 cents of land and an old tiled residential building was purchased by the 2nd respondent in the year 1991 with the funds provided by her two brothers. As the house was very small it was demolished and a new house has been constructed in its place. Since the ancestral property of 2nd respondent is possessed by her brother Varghese who is the sole surviving male heir in the family, it was decided that he would give a share to 2nd respondent and accordingly a sum of ₹ 7 lakhs was given by him for the construction of the new house. A sum of ₹ 25,000/- was contributed from the savings of the elder son of the respondents and the remaining amount, out of the ₹ 8 lakhs, was raised by the elder son by obtaining a loan from Canara Bank. Thus the house has been constructed by utilizing the share given to 2nd respondent by

her brother and also by using the funds given by the elder son. The house and land is absolutely belonging to 2nd respondent and it is not a property acquired by 1st respondent in the name of 2nd respondent. It is true that 1st respondent has not submitted any statement under Section 143A (2) of the Kerala Municipality Act. Since 1st respondent has not acquired any property or assets in his name or in the name of any other members of his family, he is not liable to submit any statement as provided by Section 143A(2) of the Kerala Municipality Act. 1st respondent has not acquired Honda Activa 109CC Scooter in his name during March 2011 spending more than ₹ 50,000/-. In fact a family friend of 1st respondent by name Yoosuf wanted to purchase a Honda Activa Scooter and he approached the 1st respondent and told him that the waiting period after booking Honda Activa was six months and for Councillors and for other people's representatives there was only a short waiting period of two months and Yoosef requested 1st respondent to book a Honda Activa Scooter in his capacity as a Corporation Councillor for him and accordingly 1st respondent booked the Scooter in his name for the said Yoosuf. The Scooter was delivered on 04.03.2011. Even though 1st respondent requested the Dealer to issue the delivery note and deliver the vehicle to Yoosef the dealer told him that the delivery could be given only to the person who has booked the vehicle and it cannot be transferred to a third

person. The dealer also told them that if the delivery of the vehicle was not taken by the person who booked it, the booking would be cancelled and the person who wants to own the vehicle must book it in his own name and wait for the full waiting period. So in order to void the cancellation of the booking, the delivery of the vehicle was taken in the name of 1st respondent and the vehicle was sent for registration in his name. Immediately after taking delivery, 1st respondent had executed and handed over a bill letter and forms of transfer of ownership to Yoosuf. In fact 1st respondent had never used, possessed or owned the Honda Activa Scooter. It was only after receiving the notice in this case that 1st respondent recollected about this Scooter and he contacted Yoosuf and Yoosuf told him that he did not transfer the ownership as he was told by the Auto consultant that if the ownership is changed immediately after purchase, he would become the second owner and when in future if he intends to sell the vehicle it would fetch a lesser value as the vehicle would be a second owned vehicle. Yoosuf did not change the vehicle not out of malafides. As 1st respondent has not acquired the Scooter for himself, he is not bound to furnish any declaration as provided by Section 143A(2) of the Municipality Act. In the above set of facts, 1st respondent was not liable to file statement of any assets as provided by Section 143A(2) of the Act. Hence the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PW1, RWs1 to 3 and Exts.P1 to P3 and R1 to R4.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether 1st respondent was liable to file declarations of assets, in respect of the Honda Active Scooter acquired in his name and for the house constructed in the name of 2nd respondent within three months from the date of such acquisitions?
- (ii) Whether the 1st respondent has ceased to hold office as a Councillor of Cochin Corporation for his failure to file declarations of assets as provided by Section 91(p) of the Kerala Municipality Act?
- (iii) Reliefs and costs?

7. **POINT Nos.(i) to (iii)**: Since common questions of law and facts arise for consideration in all these points, they are being discussed together for brevity and convenience. The petitioner is stated to be the voter of the ward represented by the 1st respondent. This fact contained in Para 1 of the petition has been admitted by the respondents in Para 1 of their objections. As per Section 92 of the Kerala Municipality Act, hereinafter referred to as the 'Act', whenever a question arises as to whether a Councillor has become disqualified under any of the provisions of Section 91 of the Act, any Councillor of the Municipality concerned or any other person entitled to vote

at the election in which the Councillor was elected can file a petition before this Commission for decision. Since the petitioner is a person entitled to vote at the election in which 1st respondent was elected, he is competent to file the present petition.

8. The petitioner as PW1 has deposed that a new house has been constructed in the name of 2nd respondent during the year 2013 and that the said building was constructed as per building permit No.FCP2/37/2010 and its date of completion was 15.02.2012 and the plinth area of the building is 110.21M2 and it would cost more than ₹15lakhs. It is also alleged that 2nd respondent who is a housewife is having no source of income and is solely depending on 1st respondent for her livelihood. Ext.P1 is the property tax assessment list in respect of building number C.C.XVI/374C(1). The fact that the building bearing No.CC XVI/374C has been acquired in the name of 2nd respondent and that the said building has a plinth area on 110.21M2 is admitted by the respondents in their objections. Of course regarding the cause of construction, when the petitioner states that such a building would cost ₹ 15 lakhs the respondents would contend that the construction cost was only ₹ 8 lakhs. The completion date of this building was admittedly on 15.02.2012. The 1st respondent as RW1 has admitted these facts in his oral evidence also.

9. The definite case of the petitioner is that 1st respondent was bound to file a statement regarding the acquisition of the above building in the name of 2nd respondent within three months from the date of its completion before the competent authority as provided by Section 143A (2) of the Act. The contention of the respondents is that this building was constructed by utilizing a sum of ₹ 7 lakhs given by the brother of 2nd respondent and the remaining ₹ 1 lakh from the funds raised by the elder son of the respondent and that as the building is an acquisition of 2nd respondent by utilizing her own funds, 1st respondent is not bound to file a statement of this assets as provided by Section 143A(2) of the Act. So the question to be considered is whether 1st respondent was bound to file statement of assets regarding the house constructed in the name of 2nd respondent within three months from the date of the completion of the building as provided by Section 143A(2) of the Act. Section 143A of the Act is relevant in this context and it reads as follows,-

“143A. Councillors to declare assets,- A Councillor shall within fifteen months from the date of assuming his office submit a statement of assets and liabilities of himself and of other members of his family in the prescribed form, before the competent authority as may

be authorized by the Government by notification in this behalf.

Provided that a person who is a Councillor at the time when this Act comes into force, shall submit such a statement before the competent authority, before the date specified by the Government in this behalf.

(2) Where a Councillor after submitting a statement under sub-section(1), acquires any further assets in his name or in the name of any other members of his family, or disposes of or mortgages any property specified in the statement, he shall submit a statement to that effect before the competent authority within fifteen months from the date of such acquisition or disposal or mortgage; as the case may be.

(3)A Councillor who makes a statement under sub-section (1) and sub-section (2) which is false or which he knows or believes to be false or does not believe to be true; shall be liable to be produced against that Councillor in accordance with law for giving such false declaration.

(4) *Where a Councillor fails to submit the statement before the competent authority within the date specified under sub-section (1) and sub-section (2), action may be taken to disqualify him from continuing as a Councillor under Section 91.*

Explanation 1,- *For the purpose of this section “family” of a Councillor means wife or husband of the Councillor, and his parents and unmarried sisters and children depending on him.”*

Explanation 2,- *For the purpose of this section “asset” means all immovable properties and movable properties worth more than Rupees ten thousand.”*

10. The fact that the above house was constructed in the name of 2nd respondent in 2012 is not in dispute. As per explanation 1 of Section 143A(2) of the Act, as extracted above, for the purpose of this Section ‘family of a Councillor’ means wife or husband of the Councillor and his parents and unmarried sisters and children depending on him and as per explanation 2, ‘asset’ means all immovable and movable properties worth more than ₹10,000/-. From explanation I as mentioned above 2nd respondent would definitely come under the definition of ‘family’ of 1st respondent.

The building which, even according to the respondents is costing ₹ 8/-lakhs and completed construction in 2012, is a 'further asset' acquired in the name of 2nd respondent.

11. The learned Counsel for the respondents would argue that Section 143A(2) of the Act would take within its ambit only the assets acquired by the Councillor either in his own name or in the name of his family members and that this house has having been constructed with the funds of 2nd respondent cannot be considered as an asset acquired by 1st respondent in the name of 2nd respondent and so 1st respondent is not bound to file a statement of this asset as provided by Section 143A(2) of the Act. The learned counsel would bring to the notice of this Commission the words used in sub-section (2) of Section 143A of the Act with particular emphasis to the words "a Councillor after submitting a statement under sub-Section (1), acquires any further assets in his name or in the name of any other members of his family" and argues that the assets should be acquired by the Councillor in the name of his family members so as to attract the above provision. The decisions in **Union of India Vs. Docki Nandan Aggarwal (AIR 1992 SC 96)**, **Dadi.Jagannadham Vs.Jammulu Ramulu (AIR 2001 SC 2699)**, **Unique Butyle Tube Industris (P) Ltd., Vs. U.P. Financial Corporation (2003) 2 SCC 455**, **Magor And St.Mellons Rural District Council Vs.**

Newport Corporation (All England Law Reports, 15th November, 1951-Page 839), Hira Devi Vs. District Board, Shahjanpur (Bhagwati.J) (AIR 1952 SC 362) and Ramavatar Vs. Assistant Sales Tax Officer(AIR 1961 SC 1325) are relied on by the learned counsel for the respondents to canvass for the position that the duty of the court is only to interpret the words that the legislature has used and those words may be ambiguous and even then the power and duty of the court to travel outside them are strictly limited. It is also argued basing on the above decisions that the court cannot add and amend and by construction make up deficiencies in interpreting statutes and it is not the duty of the court to stretch the words used by the legislature to fill the gaps or omissions in the provisions of an Act.

12. As already pointed out, whether the statement of assets to be submitted by a Councillor after submitting a statement under sub section (1) of Section 143A, should include the assets acquired by the family members is the short question for consideration in this case. The fact that the 2nd respondent has acquired further assets in her name after 1st respondent submitted statement under sub-section (1) is not in dispute. Sub Section (2) of Section 143A clearly states of further assets acquired in the name of the Councillor or in the name of the members of his family. Assets acquired in the name of his family would definitely relate to the assets acquired by such

family members. The argument of the learned counsel for the respondents that the assets should have been acquired by the Councillor by utilizing his own funds in the name of his family members for attracting Section 143A(2) cannot legally sustain. As per sub-Section (1) Section 143A the Councillor has to submit a statement of assets of himself and of other members of his family before the competent authority. There cannot be any doubt that the assets mentioned in Sub Section (1) of Section 143A would take within its fold the assets standing in the name of the family members also. As per sub-Section (2) of the above Section such a statement is to be filed in respect of the further assets acquired either by the Councillor or by his family members. To say that the assets of the family members mentioned in sub-Section (2) are only the assets acquired by the Councillor in the name of his family members would amount to recognizing illegal or benamy transactions. Benamy transactions are prohibited by law and as such to say that Section 143A(2) regarding assets of family members are in respect benemy transactions cannot to stand legal scrutiny. It cannot be thought even for a moment that Section 143A(2) of the Act is referring to illegal transactions as regards assets of family members of a Councillor are concerned. If that be the case, then the said provision would become otiose or nugatory because in respect of assets in the name of a family members,

the Councillor can always say that it is their self acquired assets and escape from filing statement under Section 143A(2) of the Act. A rational and legal interpretation of Section 143A(2) of the Act would definitely lead to the conclusion that a Councillor has to file a statement regarding the further assets acquired by him or by his family members within three months from the date of such acquisition to the competent authority. As the house standing in the name of 2nd respondent was acquired after submitting a statement by 1st respondent under sub-section (1) of Section 143A of the Act, he was bound to file a statement regarding the house standing in the name of 2nd respondent before the competent authority within three months of its acquisition. For arriving at this finding there is no need to stretch the provision or to travel outside the same or to fill up any gaps or make up any deficiencies in interpreting the provision. For that, we need only straight away understand the whole provision in the light of the spirit of the incorporating this provision by way of the amendment Act 14 of 1999. The decisions cited by the learned counsel for the respondents do not have any application to the facts of this case. So the failure of 1st respondent to file a statement regarding the further assets acquired in the name of 2nd respondent would definitely attract the penal consequence contemplated by Section 91(p) of the Act.

13. The petitioner would also allege that 1st respondent has acquired movable asset, Viz., Honda Activa Scooter bearing Registration No.KL-43C/4021 in his name during March 2011 spending more than ₹ 50,000/- and he has failed to file statement in this regard before the competent authority as provided by Section 143A(2) of the Act. The 1st respondent has stated in his objection that on the request to his friend one Yoosuf, he booked a Honda Activa Scooter with a view to get delivery of the same without waiting for six months waiting period and that the vehicle was booked for Yoosuf and at the time of delivery even though 1st respondent requested the dealer to deliver the vehicle to Yoosuf it was informed that the vehicle could be delivered only to the person who has booked the vehicle and if delivery of the vehicle was not taken by the person who booked it, the booking would be cancelled and the person who wants to own the vehicle should book the same in his own name and has to wait for the full waiting period and thus the vehicle was got delivered in the name of 1st respondent and immediately after taking the vehicle 1st respondent had executed sale letter and forms of transfer of ownership to Yoosuf and this respondent has never used, possessed or owned the said Scooter and the said Yoosuf delayed the transfer of the vehicle on the instruction of an auto consultant that if the ownership is changed, he would become the second owner and

there would be depreciation in its value while selling it. So the contention of the respondent is that though the Honda Activa Scooter was delivered in his name, he is not the real owner and it is owned by Yoosef on whose behalf he had booked vehicle to reduce the waiting period. According to 1st respondent since he is not the owner of the vehicle, he was not bound to submit statement regarding the same before the competent authority.

14. Ext.P3 is the registration particulars of the Honda Activa Scooter and from this record it is found that said scooter was purchased by 1st respondent on 04.03.2011. 1st respondent as RW1 has deposed in terms of his objection. The said Yoosuf for whom the 1st respondent is stated to have booked the vehicle has been examined as RW2. He has deposed that the vehicle was booked in the name of 1st respondent on his request and that it happened to be delivered in the name of 1st respondent as delivery could be effected only in the name of the person who booked the same and that the said vehicle is owned by RW2. Ext.R3 is produced to prove that the said vehicle has been transferred in the name of RW2. But RW2 has admitted that this vehicle was transferred in his name only in June 2013. He has also stated that it was transferred in his name after filing this petition.

15. On a careful examination of the entire evidence it is found that Honda Activa Scooter having a value of ₹ 54,000/- was purchased by 1st

respondent on 04.03.2011. In the light of Ext.P3 the contention of the respondents that this vehicle was purchased for RW2 cannot legally sustain. Moreover the evidence tendered by respondents that this vehicle was booked and purchased in the name of 1st respondent for and on behalf of RW2 cannot be considered particularly for the reason that the transfer of vehicle evidenced by Ext.R4 in the name of RW2 was only after receiving summons in this case. From Ext.P3 there cannot be any doubt that this vehicle was purchased by 1st respondent. The transfer of the same after receiving summons in this case in the name of RW2 can only be considered as an attempt to put up a plausible defence so as to escape from the penal consequence under Section 143A(2) r/w 91(p) of the Kerala Municipality Act. Any person can put up such a defence to escape from the liability imposed under Section 143A(2) of the Act. This provision only mandates submission of statement regarding the movable and immovable assets acquired in the name of the Councillor or his family members subsequent to filing of the statement of assets under sub Section (1) of Section 143A of the Act and as this Scooter costing ₹ 54,000/- was acquired in the name of 1st respondent after 1st respondent became a Councillor, he was bound to submit statement of assets in respect of this vehicle before the competent authority within three months of such acquisition. As 1st respondent has failed to

submit a statement regarding the further assets acquired in his name as mandated by Section 143A(2) of the Act, I find that the respondent has ceased to hold office as a Councillor of the Cochin Corporation as provided by Section 91(p) of the Act. The points are answered accordingly

In the result, the petition is allowed and 1st respondent is declared as disqualified to hold office as a Councillor of Cochin Corporation as provided by Section 91(p) of the Kerala Municipality Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 15th day of March 2014

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER**

APPENDIX

Witness examined on the side of the petitioner

PW1 : Sri.Raphel Antony, IX/714, Pandikkudi

Witnesses examined on the side of the respondent

RW1 : Sri. T.K.Babu, House No.XVI/374, Kandaveli,
Cochin-5

RW2 : Sri. Yoosuf, Driver, XV/1533, Valiyakulam Road,
Pambayimoola, Edakochi

RW3 : Sri. V.J.Berlin, Valiyathara Veedu, Karuvelippadi,
Cochin – 682 005

Documents produced on the side of the petitioner

- P1 : Property Tax Assessment Register –Page No.30 Cochin Corporation
- P2 : Letter No.G1/212/13 dated 23.04.2013 of the Assistant Public Information Officer, Office of the Regional Joint Direct, Urban Affairs, Kochi
- P3 : Copy of the Registration Particulars of the Vehicle No.KL.43.C.4021

Documents produced on the side of the respondent

- R1 : Copy of the Estimate of the building in Sy.No.1168 of Thoppumpady Village in Kochi Taluk
- R2 : Copy of the deed
- R3 : Copy of the deed
- R4 : True Copy of the Certificate of Registration

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.**