

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

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

**Saturday, the 18<sup>th</sup> day of October 2014**

**O.P.No.20/2013**

Petitioner : Purushothaman,  
Karaparambil Veedu,  
Nedungode Vayal,  
Maniyamcode P.O.  
Kalpetta, Wayanad.

**(By Adv. Pallichal S.K.Pramod)**

Respondents : 1. P.P.Ali,  
Councillor, Ward No.03,  
Kalpetta Municipality.  
Wayanad District.

**(By Adv.S.Mahesh)**

2. Secretary,  
Kalpetta Municipality  
Wayanad District.

**(By Adv. T.J.Sundar Ram)**

This petition having come up for hearing on the 27<sup>th</sup> day of August 2014, in the presence of **Adv.Pallichal S.K.Pramod** for the petitioner and **Advs. S.Mahesh and T.J.Sundar Ram** for the respondents and having

stood over for consideration to this day, the Commission passed the following,-

## **ORDER**

This is a petition filed against the respondent for declaring that the respondent has become subject to disqualification for being a Councillor of Kalpetta Municipality and for granting an interim order restraining the respondent from acting as Chairman of the Municipality till the disposal of the petition.

2. The short facts are as follows:- The respondent is residing in Muttill Grama Panchayat. For the purpose of contesting for the election in Kalpetta Municipality in the General Election held in 2010, the respondent applied for including his name in the voters list of booth No.17 of Kalpetta Municipality and for this purpose created he had produced false records stating that he is residing within the time limits of Kalpetta Municipality. Since the respondent, at the time including his name in the voters list of Kalpetta Municipality and after becoming a Councillor is permanently residing within the limits of Muttill Grama Panchayat, he is not entitled to continue as a Councillor of Kalpetta Municipality and hence this petition.

3. The 1<sup>st</sup> respondent has filed objection contending in brief, as follows,- The petition is not maintainable either in law or on facts. The

allegations raised in the petition were already raised before the Commission and such complaints were dismissed by the Commission. Thereafter the present petition is now filed for reviewing the order of the Commission without bonafides and it is not maintainable. The allegations raised in this petition were raised before the Returning Officer also at the time of scrutiny of the nomination and those objections were rejected by the Returning Officer and thereupon this respondent had contested the election in Kalpetta Municipality and was elected as a Councillor. The allegation that the respondent filed application for including his name in the voters list of Kalpetta Municipality while he was residing along with his family within the limits of Muttill Panchayat is totally false. The family house of the respondent is at Eranjikunnu in Thurky ward of Kalpetta Municipality and he was residing in this place at the time of filing application for including his name in the voters list and he has been continuously residing in that ward of Kalpetta Municipality and he has never shifted his residence from the Municipality. His election ID also is issued in the name of his house in Thurki ward of Kalpetta Municipality. The house of his wife is situate in Muttill Panchayat. But the respondent has never resided in his wife's house. However his name was included in the voters list of Muttill Panchayat earlier and before the General Election held in 2010, his name was removed from

the voters list of that Panchayat and his name has been included in the voters list of Kalpetta Municipality. The final voters list of ward No.25 of Kalpetta Municipality contains his name and so he was entitled to contest the election and thus became a Councillor. His name was at first included in polling booth No.69 of Kalpetta Municipality and on request his name has been transferred to booth No.70 of this Municipality. All these have been done legally the petitioner who is entertaining political enmity towards the respondent has raised false allegations. The petition is without bonafides and it is only to be dismissed.

4. The 2<sup>nd</sup> respondent the Secretary of the Municipality has filed objection contending in brief as follows,- This Commission has already dismissed the complaints filed by the petitioner and so the present petition filed for reviewing that order is not maintainable. This respondent has not done anything illegal in the matter of including the name of 1<sup>st</sup> respondent in the electoral roll of Kalpetta Municipality. The 1<sup>st</sup> respondent is residing at a place Eranjikunnu which is in Kalpetta Municipality and he had produced the election ID to prove the same and so his name has been included in the voters list of ward No.25 of this municipality. It is further seen that his name included in the voters list of Muttill Grama Panchayat was already removed from the list. The first respondent is now included in the voters list

of ward No.25 of Kalpetta Municipality and so he was fully entitled to contest the election in Kalpetta Municipality. His name has been included after following the legal procedures and satisfying that he is residing within the limits of Kalpetta Municipality. So the petition deserves only dismissal

5. The evidence consists of the oral depositions of PWs1 to 3 and RW1 and Exts.P1 to P24, X1 to X10, R1 to R12 and C1 to C3.

6. All parties are heard

7. The following points arise for consideration.

(i) Whether the petition is not maintainable?

(ii) Whether the respondent has become subject to disqualification for being a Councillor of Kalpetta Municipality as alleged?

(iii) Reliefs and costs?

8. **POINT Nos.(i) to (iii)**: Since common questions of law and facts arise for consideration all these points they are considered together for brevity and convenience. The petition appears to have been filed as provided by Section 92 of the Kerala Municipality Act. The petitioner has been examined as PW1. He has deposed that he is residing in ward No.3 of Kalpetta Municipality. Ext.P1 is the voters list of ward No.3 of Kalpetta Municipality. The petitioner has deposed that he is included in this voters list as serial No.249 and the said entry is marked as Ext.P1(a). From

Ext.P1(a) it is found that the petitioner is a voter of ward No.3 of Kalpetta Municipality. The petitioner as PW1 has deposed that the 1<sup>st</sup> respondent has been elected as a Councillor from ward No.3 and now the 1<sup>st</sup> respondent is the Chairman of the Municipality also the above fact is not denied by the 1<sup>st</sup> respondent. Section 92 of the Kerala Municipality Act states that whenever a question arises as to whether a Councillor has become disqualified under the provisions of Section 91 after having been elected as such Councillor, 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 the State Election Commission, for decision. Since the petitioner is a person entitled to vote at the election in which the respondent was elected as Councillor, he is competent to file the petition.

9. According to the petitioner the 1<sup>st</sup> respondent was a voter in the voters list of ward No.25 of Kalpetta Municipality whereas he was permanently residing in ward No.9 of Muttill Panchayat and his inclusion in the voters list of Kalpetta Municipality was illegal. It is also alleged that 1<sup>st</sup> respondent was not a permanent resident of Kalpetta Municipality and he was permanently residing in Muttill Panchayat and thus his inclusion in the voters list of Kalpetta Municipality being illegal and since he is residing within the limits of Kalpetta Municipality he is not entitled to continue as a

Councillor of Kalpetta Municipality. The 1<sup>st</sup> respondent on the other hand would contend that he is a permanent resident of ward No.25 of Kalpetta Municipality and the inclusion of his name in the voters list of this ward was legal. It is also contended that his family house is in ward No.25 of Kalpetta Municipality and his wife's house is in Muttill Panchayat and that he has never resided in Muttill Panchayat. It is alleged in the original petition itself that earlier three complaints filed by the petitioner before this Commission were rejected by stating that no sufficient ground has been disclosed to entertain them as petition and that the petitioner has also requested now to review the order on such complaints. The petitioner has failed to mention the ground upon which the prayer seeking disqualification of 1<sup>st</sup> respondent as a Councillor is raised in the petition. The definite case of the petitioner is that 1<sup>st</sup> respondent was residing in Muttill Panchayat at the time when his name was included in ward No.25 of Kalpetta Municipality and as such he was not entitled to be nominated as a candidate for election in ward No.3 of Kalpetta Municipality and further it is alleged that the respondent is not residing in the Municipality even after such election. The petitioner does not have a case that the 1<sup>st</sup> respondent has shifted his residence after having been elected as a Councillor from Kalpetta Municipality. As per Section 21(1)(h) of the Kerala Municipality Act, a Councillor who ceases to reside in the

Municipality from where he has been elected would become disqualified. However a Councillor would incur such disqualification only when he ceased to reside in the Municipality after having been elected as a Councillor. Of course inclusion of the name of a person in the voters list of a Municipality is a pre-requisite for contesting as a candidate in the election to such Municipality. Whether the acceptance of the nomination of the 1<sup>st</sup> respondent was illegal or whether he was not entitled to be included as a voter in Kalpetta Municipality are matters which cannot be considered by this Commission. As per Section 85(a) of the Kerala Municipality Act no person shall be qualified for election as a Councillor of a Municipality unless his name appears in the electoral roll in any of the wards in that Municipality. Admittedly the name of the 1<sup>st</sup> respondent is appearing in the voters list of ward No.25 of Kalpetta Municipality at the time when he submitted nomination to contest as a candidate in ward No.3 of Kalpetta Municipality. As per Section 80 of the Kerala Municipality Act, any person whose name is not included in the electoral roll for a ward can apply to the Electoral Registration Officer for the inclusion of his name in that roll and as per sub Section (2) of this Section the Electoral Registration Officer shall, if he is satisfied that the applicant is entitled to be registered in the electoral roll, direct that his name be included therein. As per Section 81 of the Act,

an appeal is provided before the District Election Officer in respect of any order passed by the Electoral Registration Officer under Section 80 of the Act without resorting to such remedy it is futile to claim that the name of 1<sup>st</sup> respondent was included in the electoral roll of Kalpetta Municipality illegally. If the petitioner had objection in including in the name of 1<sup>st</sup> respondent as a voter he would have raised the objection before the Electoral Registration Officer at the appropriate time. Moreover the petitioner is not entitled to challenge the correctness or otherwise of the inclusion of the name of 1<sup>st</sup> respondent as a voter in the electoral roll of Kalpetta Municipality directly before this Commission. When the statute provides a procedure and a remedy in respect of the inclusion of a person as a voter and the challenge to the same, that procedure and remedy should be followed. It has already come out in evidence that the petitioner had objected the nomination of 1<sup>st</sup> respondent as a candidate and such objections were over rule by the Returning Officer. In such a case the remedy of the petitioner was to file an election petition before the appropriate court. The challenge against nomination as a candidate cannot be raised before this Commission and it can only be by way of an election petition before the appropriate court.

10. However, though the petitioner has produced enormous records to indicate that the inclusion of the name of the 1<sup>st</sup> respondent as a voter in electoral roll of Kalpetta Municipality was illegal and to support his claim that 1<sup>st</sup> respondent is not residing within the limits of Kalpetta Municipality, such evidence is not at all relevant for deciding the issue involved in this case. On the face of the petition itself it is found to be an alleged pre-election disqualification. A pre-election disqualification can be challenged only by way of an election petition and it cannot be filed under Section 92 of the Kerala Municipality Act. **Section 92 of the Act** reads as follows,-

*“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 (ii)] after having been elected as such Councillor, any Councillor or a Municipality concerned or any other person entitled to vote at the election in which the Councillor was elected, can file a petition before the State Election Commission, for decision.”*

11. From the above provision it is clear that only when a question arises as to whether the Councillor has become disqualified after having

been elected as such Councillor, that question can be decided by this Commission as provided by Section 92(1) of the Act. A pre-election disqualification though continues as such as a disqualification for holding the post of a Councillor also cannot be considered by the State Election Commission under Section 92 of the Act. This position is clarified in **Marykutty Mathew V. State Election Commission (2002 (3) KLT 773)**.

In the above decision it has been held at **Paras 7 and 8** as follows,

*“ 7.It is pertinent to note that Section 36 provides for “Determination of subsequent disqualification of a member” and it is clearly provided in the Section that only those questions regarding disqualification Section 30 or Section 35 after having been elected as a member are referable to the State Election Commission. In other words, once a candidate is elected as a member, even assuming he had at the time of election, incurred disqualifications under Section 30 or Section 35 of the Kerala Panchayat Raj Act it is not for the State Election Commission to embark upon an*

*enquiry regarding such disqualification after the election. The jurisdiction of the State Election Commission is confined to disqualification incurred after having been elected as a member. Needless to say, in case a member accepts employment in a Cooperative Society, it is a matter for the Commission to consider, being a post election disqualification.*

8. *As far as the pre-election disqualification is concerned, the jurisdiction to adjudicate such issues is as provided under Chapter X, comprising of Section 87 to 119, Disputes Regarding Election, is on the designated courts. Section 87 dealing with election petitions provides that “No election shall be called in question except by an Election Petition presented in accordance with the provisions of this Chapter”. Section 88 deals with designated Courts,- the Munsiff Court or the District Court, as the case may be Section 102*

*deals with the grounds. Section 102(1)(a) is the ground on disqualification- “that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act”. Since all the petitioners are elected members, the questions pertaining to their qualification or disqualification as on the date of election, being a pre-election issue, can be decided only in an Election Petition by the designated court under Section 88 of the Ac.,”*

12. Section 36 of the Kerala Panchayat Raj Act is in pari materia with Section 92 of the Kerala Municipality Act. Similar are the provisions relating to disqualifications under Sections 30 and 35 of the Kerala Panchayat Raj Act with reference to Sections 86 and 91 of the Kerala Municipality Act respectively. So the above decision is squarely applicable to the facts of this case. Even assuming that the 1<sup>st</sup> respondent was illegally included as a voter in ward No.25 of Kalpetta Municipality for the reason that he was residing in Muttill Panchayat, that could have been only a pre-election disqualification and such a disqualification though continues after

his election cannot be decided by this Commission under Section 92 of the Act. The petitioner does not have a case that 1<sup>st</sup> respondent had shifted his residence from Kalpetta Municipality to Muttill Panchayat after having been elected as a Councillor. He also does not have a case that 1<sup>st</sup> respondent is not residing within the limits of Kalpetta Municipality. The allegations raised by the petitioner is regarding the false inclusion of the name of 1<sup>st</sup> respondent in the voters list of Kalpetta Municipality for the purpose of enabling him to stand as a candidate of ward No.3 of that Municipality. The petitioner has not chosen to challenge the said matter at the appropriate time before the appropriate authority. Now the petitioner cannot turn round and come to the Commission seeking disqualification under Section 92 of the Act alleging that he was having a pre-election disqualification. Moreover the 1<sup>st</sup> respondent has adduced sufficient evidence to prove that he is residing within the limits of Kalpetta Municipality. It is not necessary to deal with the evidence adduced by both sides in detail. Suffice to say that the pre-election disqualification alleged in the petition cannot be considered as a ground for declaring that the 1<sup>st</sup> respondent is at present disqualified as provided by Section 91(h) of the Kerala Municipality Act and therefore the petition deserves only dismissal. The points are answered accordingly.

In the result, the petition is dismissed.

In the circumstances the parties shall bear their respective costs.

Pronounced before the Commission on this the 18<sup>th</sup> day of October 2014

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

**APPENDIX**

**Witness examined on the side of the petitioner**

- PW1 : Sri.Purushothaman, Karaparambil, Nedungode Vayal,  
Maniyamkode, Kalpetta, Wayanad
- PW2 : Smt. Sherly, Secretary, Muttill Grama Panchayat
- PW3 : Sri.K.N.Krishnan Kutty, Municipal Secretary,  
Kalpetta Municipality

**Witness examined on the side of the respondent:**

- RW1 : Sri.P.P.Ali, Parappuram Veedu, Eranjikunnu, Vikas Nagar,  
Kalpetta P.O.

**Documents produced on the side of the Petitioner**

- P1 : Electoral Roll of ward No.3, Kalpetta Municipality
- P1(a) : Page No.6 of Electoral Roll of Ward No.3, Kalpetta  
Municipality
- P2 : Electoral Roll of ward No.8, Theneri of  
Muttill Grama Panchayat
- P2(a) : Serial No.538, entry in the electoral roll of ward No.8,  
Muttill Grama Panchayat
- P2(b) : Serial No.539, entry in the electoral roll of ward No.8,  
Muttill Grama Panchayat

- P3 : Copy of the application submitted by Smt.Sakkena in Form No.8
- P4 : Copy of the electoral roll of ward No.25, Kalpetta Municipality
- P5 : Copy of the application in Form No.4 for including the name in to the electoral roll submitted by Sri.P.P.Ali
- P6 : Copy of the notice in Form 12 issued to Sri.P.P.Ali
- P7 : Electoral roll of ward No.25, Kalpetta Municipality
- P7(a) : Serial No.758, entry in the electoral roll of ward No.25, Kalpetta Municipality
- P8 : Electoral roll of Kalpetta LA Constituency Part- 64
- P8(a) : Page No.34 of electoral roll in P8
- P9 : Electoral roll of Kalpetta LA Constituency Part-64
- P10 : Electoral roll of Kalpetta LA Constituency Part-53
- P10(a) : Serial No.536 in P10
- P10(b) : Serial No.537 in P10
- P11 : Electoral roll of Kalpetta LA Constituency Part-53
- P11(a) : Serial No.546 in P11
- P11(b) : Serial No.547in P11
- P12 : Copy of the application for renewing ration card of Sri.P.P.Ali
- P13 : Copy of the ration card owned by Sri.P.P.Ali
- P14 : Electoral roll of Kalpetta LA Constituency, Part 70
- P14(a) : Serial No.1316in P14
- P15 : Electoral roll of LA Constituency Kalpetta Part-57
- P15(a) : Serial No.528 in P15
- P15(b) : Serial No.529 in P15
- P16 : Copy of the application as per Right to Information Act
- P17 : Letter No.E1 8773/13 dated 24.07.2013 of the State Public Information Officer, Taluk Office Vythiri
- P18 : Copy of the electoral identity card of Sri.Purushothaman
- P19 : Electoral Roll of Kalpetta LA Constituency Part 64
- P19(a) : Serial No.1150 in P19
- P20 : Electoral Roll of Kalpetta LA Constituency, Part-65
- P20(a) : Serial No.581 in P20
- P20(b) : Serial No.582 in P20
- P20(c) : Serial No.583 in P20
- P20(d) : Serial No.584 in P20
- P20(e) : Serial No.585 in P20
- P20(f ) : Serial No.586 in P20

- P21 : Copy of the application dated 03.09.2013  
of Sri.Purushothaman
- P22 : Letter No.E1.12919/13 dated 01.10.2013 of the Public  
Information Officer, Taluk Office, Vythiri
- P23 : Letter No.E1.18806/13 dated 03.01.2014 of the SPIO,  
Taluk Office, Vythiri
- P24 : Draft list of Social Economic and Community survey

**Documents produced on the side of the respondent:**

- R1 : Copy of the electoral identity card of Sri.Ali
- R2 : Copy of the electoral roll of ward No.25,  
Kalpetta Municipality
- R2(a) : Serial No.756 in Page No.18 of R2
- R3 : Copy of the electoral roll of ward No.8,  
Muttill Grama Panchayat
- R3(a) : Serial No.538 in R3
- R4 : Electoral roll of Kalpetta LA Constituency Part – 69
- R4(a) : Serial No.108 in page 6 of R4
- R5 : Electoral Roll of Kalapetta LA Constituency Part-60
- R5(a) : Serial No.1316 in R5
- R6 : Electoral Roll of Kalapetta LA Constituency Part-70
- R6(a) : Serial No.1154 in R6
- R6(b) : Serial No.1153 in R6
- R6(c) : Serial No.1155 in R6
- R6(d) : Serial No.1156 in R6
- R6(e) : Serial No.1157 in R6
- R6(f) : Serial No.1158 in R6
- R7 : Copy of the Aadhar Card of Sri.P.P.Ali
- R8 : Copy of Form B, Social economic and  
Community census 2011
- R9 : Front office receipt No.1978/14, Muttill Grama Panchayat
- R10 : Voters slip to Sri.Ali in Parliament election 2014
- R11 : Telephone bill of mobile phone
- R12 : Certificate No.R1-8064/1dated 09.05.2014 of the Secretary,  
Kalpetta Municipality.

**Documents produced on the side of the witnesses:**

- X1 : Electoral roll of Ward No.8, Muttill Grama Panchayat, Part -2

- X1(a) : Serial No.538 in X1  
 X2 : Electoral roll of ward No.8, Muttill Grama Panchayat Part-1  
 X2(a) : Serial No.538 in X2  
 X3 : Application in Form No.8 submitted by Sri.Ali  
 X3(a) : The 2<sup>nd</sup> page of X3  
 X4 : Notice issued by the Electoral Registration Officer  
 in Form 15  
 X5 : Notice issued by the ERO in Form No.14  
 X6 : Copy of the notice in Form No.3 issued by the ERO,  
 Kalpetta Municipality  
 X7 : Electoral roll of ward No.25, Kalpetta Municipality  
 X7(a) : Amended list in X7  
 X8 : Application in Form No.4 submitted by Sri.P.P.Ali  
 X8(a) : Entry in the 2<sup>nd</sup> page 1<sup>st</sup> part of X8  
 X8(b) : Entry in the 2<sup>nd</sup> page 2<sup>nd</sup> part of X8  
 X9 : Electoral Identity card of Sri.Ali  
 X10 : Notice issued by the ERO in Form No.2

**Documents Produced on the side of the Court witnesses:**

- C1 : Petition submitted by Sri.Purushothaman on 03.04.2013  
 C1(a) : Petition submitted by Sri.Purushothaman on 22.04.2013  
 C1(b) : Petition submitted by Sri.Purushothaman on 06.05.2013  
 C2 : Letter No.1827/C/2013/SEC dated 30.04.2013 (Draft)  
 C2(a) : Letter No.1827/C/2013/SEC dated 20.05.2014 (Draft)  
 C3 : Letter No.C-1485/13 dated 04.05.2013 of the Regional  
 Joint Director, Urban affairs, Kozhikode

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