

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

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

Tuesday, the 28th day of January 2014

O.P.No.30/2012

Petitioner : Mr.Varghese,
S/o Yesudas,
Residing at Pallipura Padinjattathil,
Residency Nagar 102, Asramam South,
Vadakkum Bhagam Division No.9,
Kollam 691 001.

**(By Advs. A.M.Mukthar
& S.Gopalakrishnan Potty)**

Respondent : 1. Secretary,
Kollam Coporation, Kollam.

(By Adv.Mini P Danial)

2. Honey,
Councillor, Division No.9,
Kollam Corporation.
Residing at Sandra Dale,
Kavadippuram Nagar – 85,
Asramam, Kollam 691 002.

(By Adv. Dinesh Sajan.K)

This petition having come up for hearing on the 7th day of January 2014, in the presence of **Adv.s.A.M.Mukthar & S.Gopalakrishnan Potty** for the petitioner and **Adv.s. Mini P Danial & Dinesh Sajan.K** for the respondent and having stood over for consideration to this day, the Commission passed the following

ORDER

Petition filed under Section 92(1) of the Kerala Municipality Act for declaring that the respondent has ceased to function as Councillor of Ward No.9 of Kollam Corporation.

2. The short facts are as follows:- The petitioner is a voter of Division No.9 of Kollam Corporation and his electoral roll No. is 738 in the voters list. The 2nd respondent is the councillor of division No.9 of Kollam Corporation. The 2nd respondent has failed to submit a statement of assets and liabilities of herself and her family members within three months from the date of assuming her office. This is clearly a violation under Section 143A and Section 91(P) of the Kerala Municipality Act. 2nd respondent has also failed to convene the meetings of the ward committees due once in three months, twice consecutively and she has fraudulently created minutes so as to make it appear that ward committees were convened on 31.01.2011,

24.07.2011 and 23.10.2011. The 2nd respondent is the owner of a residential building bearing No.423 in Ward No.4 of Kollam Corporation. After receiving the notice from the Kollam Corporation, the respondent has willfully defaulted payment of building tax for the above building from 2009 onwards. Thus she is disqualified under Section 91(j) of the Kerala Municipality Act. Therefore, 2nd respondent has ceased to function as a Councillor of Kollam Corporation as provided by Section 91(j), 91(o) and 91(p) r/w 92 of the Kerala Municipality Act. Hence this petition.

3. The contentions raised by 2nd respondent in the objection as amended are as follows,- The petition is not maintainable either in law or on facts. This respondent has filed statement of assets within the time as provided by the Kerala Municipality Act. The respondent has convened the meetings of the ward committee as provided by the Kerala Municipality Act and she has not manipulated or fraudulently created any documents as alleged. At the time of presentation of the nomination paper by 2nd respondent, there was no arrears of tax and the Corporation also had issued no objection certificate in this regard. The petitioner is not entitled to get any relief and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 4 and RWs 1 and 2 and Exts.P1 to P7, R1 to R5 and X1 to X4 series.

5. Both sides were heard.

6. The following points arise for consideration.

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent has failed to file statement of assets of herself and other family members within the time prescribed by the Kerala Municipality Act as alleged?
- (iii) Whether the respondent has failed to convene the meetings of the ward committees due once in three months, twice consecutively as alleged?
- (iv) Whether the respondent has failed to remit the arrears of building tax in spite of notice received by her?
- (v) Reliefs and costs?

7. **POINT No.(i)**: The petitioner would allege that 2nd respondent has failed to file statement of assets of herself and her family members within the time prescribed by the Kerala Municipality Act and he would also allege that the respondent has failed to convene the meetings of the ward committee, due once in three months, twice consecutively and he further states that 2nd respondent has failed to remit the building tax of her building in spite of the demand notice issued by the Corporation in this behalf. Thus, according to the petitioner 2nd respondent has ceased to function as a Councillor as provided by Section 91(o), 91(p) and 91(j) of the Kerala Municipality Act. The 2nd respondent would deny the allegations and

contend that she has filed statement of assets of herself and her family members within the time prescribed by law and she also has convened the meetings of the ward committee as provided by law and that there is no arrears of tax to be paid by the respondent in respect of her building for which demand notice has been issued. From the above rival claims, a question arises as to whether the respondent has become ceased to function as a Councillor as provided by Section 91(o), 91(p) and 91(j) of the Kerala Municipality Act. As per Section 92 of the Kerala Municipality Act whenever a question arises as to whether a Councillor has become disqualified under any of the provisions of Section 91, after having been elected as such Councillor, any other Councillor or any person entitled to vote at the election in which the Councillor was elected may file a petition to this Commission for decision. The present petition is seen to have been filed by a voter as provided by Section 92 of the Act. Nothing has been brought out to show that the petition is defective or not maintainable. On a careful analysis of the entire facts, I am of the view that the petition is maintainable and the point is answered accordingly.

8. POINT No.(ii) : The petitioner as PW1 has deposed that 2nd respondent has failed to file statement of assets and liabilities of herself and her family members before the Competent Authority within three months of

her taking charge as provided by Section 143A of the Kerala Municipality Act (hereinafter referred to as the 'Act'). In cross-examination PW1 has admitted that the period of three months for filing the statement of assets has been enhanced to 15 months by way of an amendment to Section 143A of the Act. PW1 has also admitted that 2nd respondent has filed Ext.P2 statement regarding the assets. Ext.P2 is found to be the statement of assets and liabilities submitted before the Regional Joint Director, the Competent Authority. This statement is found to have been received by the competent authority on 29.01.2011 as seen from the endorsement. So from Ext.P2 it is found that 2nd respondent has filed the statement of assets of herself and her family members on 29.01.2011. So she is found to have submitted the statement within the time prescribed by Section 143A of the Act. Section **143A of the Act** reads as follows:-

“143A Councillors to declare assets,- A Councillor shall within three months from the date of assuming his office submit a statement of assets and liabilities of herself and of other members of her family in the prescribed form, before the competent authority as may be authorized by the Government by notification in this behalf.”

9. Admittedly the period of three months under this section has been amended as 15 months from the date of assuming office. Section 91(p) of the Act states that a Councillor shall cease to hold office as such if he has failed to file declaration of assets within the time limit prescribed under Section 143A of the Act. Section 91(p) mandates only a statement regarding the assets to be filed within the time prescribed under Section 143A of the Act. It is settled law that even if a Councillor files a statement which is not true, he cannot be disqualified and he can only be proceeded with as provided sub Section 3 of Section 143A of the Act. The Competent Authority has been examined as PW4. According to him the respondent has failed statements on 29.01.2011 and 08.06.2012. The above said section states that 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 proceeded against in accordance with law for giving such false declaration. In the case on hand 2nd respondent has already filed the statement of assets of herself and her family members within the time prescribed under Section 143A of the Act. Whether the facts stated in Ext.P2 are correct or not is not relevant for consideration in this case. As 2nd respondent has filed a statement, she

cannot be disqualified as provided by Section 91(p) of the Act. The point is answered accordingly.

10. **POINT No.3:** The petitioner as PW1 has deposed that the respondent has failed twice consecutively to convene the meetings of ward committee. due once in three months and that she has created fraudulent records to make it appear that ward committees were convened. On the side of the petitioner PW2 has been examined and he states that even though he is a member of the ward committee, no committee was convened on 24.07.2011 and he has also deposed that the respondent did not convene the ward committee as provided by law.

11. The respondent as RW1 has deposed that the meetings of the ward committee of her ward were convened on 31.01.2011, 24.7.2011 and 23.10.2011. Ext.R1 is the copy of the minutes regarding these committees. RW2, the co-ordinator has deposed that he had recorded the minutes of these meetings. From Ext.R1 and other evidence it is found that the respondent has convened the meetings of the ward committee on 31.01.2011, 24.7.2011 and 23.10.2011. There is nothing to disbelieve the evidence adduced by RW2 in this behalf. So the allegation of the petitioner that the respondent has failed to convene the meetings of the ward committee as provided by law and that the records were fraudulently created are found to be totally

unsustainable. Therefore, Section 91(o) of the Act is not attracted against her. The point is answered accordingly.

12. POINT No.4: The petitioner would also allege that the respondent has failed to pay the building tax of her house No.423 situate in division No.4 of Kollam Corporation from 2009 onwards and that these facts have been suppressed while filing the nomination. The Corporation Secretary has been examined as PW3. He has produced the receipt books regarding payment of the building tax of building No.432 situate in the 4th division and the copies of these receipts have been marked as Exts.X1 and X2. PW3 has deposed that the respondent has remitted the tax for the period up to 2012-13 as per receipts dated 04.10.2010, 10.07.2012 respectively. PW2 has also deposed that even though a notice dated 02.09.2010 is seen available in the file, there is no record to show that the said notice was issued to 2nd respondent. The Secretary has also deposed that the tax stated in the said notice is seen to have been paid on 28.08.10 itself. PW2 has further deposed that notice regarding the building tax for the year from 2011 has not been issued to the respondent. The learned counsel for the petitioner would argue that the respondent has failed to remit the tax of the said building for the first half of 2011 and Ext.P4 is relied on to support above argument. Ext.P5 which is a notice to show cause regarding fixation of the

building tax in respect of building No.423/IV also has been produced by 2nd petitioner. But this is only show cause notice and it cannot be considered as a bill for payment of any tax arrears. Ext.P6, a record showing the payment of the tax for this building also is relied on by the petitioner. None of these records show that the respondent has failed to remit tax of her building after having been issued with a bill or notice as provided by law. Section 91(j) of the Act states that a Councillor shall cease to hold office as such if he is in arrears of any kind due by him to the Government or to the Local Self Government Institutions up to and inclusive of previous year in respect of which a bill or notice has been duly served upon him and the time if any, specified therein, has expired. For attracting the above provision the petitioner has to prove firstly that 2nd respondent was in arrears of any kind due to the Government or the Kollam Corporation, secondly that a bill or notice was duly served upon her and thirdly that the time specified in the bill or notice had expired. There is no evidence to prove that the respondent was in arrears of the building tax for which a bill or notice has been issued or that the respondent has failed to remit the building tax despite expiry of the period specified in the bill or notice. In addition to the above, for attracting Section 91(j) of the Act, the respondent should have become in arrears of the building tax after she has been elected as a Councillor. Section 92 of the

Act, clearly states that when a question arises as to whether a Councillor has been become disqualified after having been elected as a Councillor, he would become disqualified under the provisions of Section 91 of the Act. Any arrears of building tax prior to her election to the office as a Councillor will not come under the purview of Section 91(j) of the Act unless a notice or bill has been served to her and the time for payment has expired. On an analysis of the entire facts it is found that the petitioner has completely failed in proving that the respondent was in arrears of any kind to the Kollam Corporation after having been elected as a Councillor in respect of which a bill or notices has been duly served and the time if any specified therein has been expired. Therefore, the respondent cannot be disqualified as provided by Section 91(j) of the Act also. The point is answered accordingly.

13. POINT No. 5: From the discussion held above, I hold that the petitioner is not entitled to any relief and the petition deserves only dismissal.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 28th day of January 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

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

- PW1 : Varghese, Pallippura Padinjattathil, RN.102,
Asramam South, Kollam
- PW2 : Joseph Ugen, House No.IX/110,
Lake Darshan Nagar, Kollam – 691001
- PW3 : V.R.Raju, Vettamala, Kootharappally P.O.,
Kottayam
- PW4 : V.Gopakumar, Senior Superintendent, RJDUA Office,
Kollam

Witnesses examined on the side of the respondent

- RW1 : Honey, Sandra Dale, Kavadippuram Nagar-85,
Asramam, Kollam
- RW2 : Vinod.G., Sivam, Mukkuvarazhikathu, Nithavil,
Perinadu P.O. Kollam

Documents produced on the side of the Petitioner

- P1 : Copy of the voters list 2010 of Ward No.9 of
Kollam Corporation
- P1(a) : Sl.No.738 of voters list 2010, Ward No.9 of Kollam
Corporation
- P2 : Copy of the statement of assets submitted by Smt.Honey,
Councillor, Vadakkumbhagam Ward, Kollam Corporation
- P3 : Letter No.G8.27806/05 dated 23.11.2011 and copies attached
herewith

- P4 : Letter No.G8.27806/05 dated 02.07.2012
- P5 : True Copy of notice dated 30.08.2010 issued from Kollam Corporation Vide Section 233(3) of Kerala Municipality Act, 1994
- P6 : Copy of the letter No.6/12-13 dated 16.07.2012 of the Public Information Officer, Village Office Perinad
- P7 : Copy of the letter No. A 3084/2013 dated 12.11.2013 of the Regional Joint Director, Urban affairs, Kollam

Documents produced on the side of the respondent:

- R1 : Copy of the minutes division committee dated 31.01.2011 of Vadakkumbhagam division
- R2 : Receipt No.7678/77 dated 10.07.12, Kollam Corporation
- R3 : Non liability Certificate No.A2-29661/10 dated 04.10.10 issued to Smt.Honey
- R4 : Possession and Non-attachment certificate No.KDis.40478/10/B3 dated 05.10.2010 issued by Tahsildar, Kollam
- R5 : Receipt of under certificate of posting from Smt.Honey to the Joint Director.

Documents produced on the side of the witnesses:

- X1 : True copy of the Receipt No.27600/76 dated 04.10.2010 of Kollam Corporation
- X2 : True Copy of the Receipt No.7678/77 dated 10.07.2012 of Kollam Corporation
- X3 : File No.R2.27436/10 of Kollam Corporation

- X4 : Copy of the statement of Assets submitted by Smt.Honey,
Councillor, Vadkkumbhagam Ward, Kollam Corporation
- X4(a) : Copy of the statement of Assets submitted by Smt.Honey,
Councillor, Vadkkumbhagam Ward, Kollam Corporation

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER