

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

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

Friday, the 26th day of July 2013

R.C.No.03/2013

Petitioner : Secretary,
Angamali Municipality

(By Advocate E.Sulficker)

Respondent : M.S.Gireesh Kumar,
Councillor, Ward No.16,
Angamali Municipality

**(By Advocates B.Vasudevan Nair
& A.R. Shaji)**

This petition having been heard on 23rd July 2013, in the presence of Advocate **E.Sulficker** for the petitioner and Advocates **B.Vasudevan Nair and A.R. Shaji** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

This is a reference made by the Secretary, Angamali Municipality under the proviso to sub-Section (1) of Section 92 r/w Section 9 1(k) of the Kerala Municipality Act.

2. The Secretary of the Angamali Municipality has stated in his reference letter that the Councillor Shri.M.S.GireeshKumar, the respondent herein absented himself for a continuous period of six months from the meetings of the Finance Standing Committee of which he is a member after having received the notice of such meetings and thus he has become disqualified to continue as a Councillor.

3. The respondent has filed objection contending that the reference is not maintainable that he has not absented himself in the meetings of the Finance Standing Committee for a period of six years as alleged that he has participated in the meetings of the Municipal Council held on 9.08.2012 and 24.08.2012 and in the Finance Standing Committee meetings held on 17.08.2012, that he did not receive any notice in respect of the Finance Standing Committee stated as held on 17.09.2012, that several meetings could not be convened for want of quorum, that due notice was not given to the respondent regarding several meetings of the Finance Standing Committee, that the allegation regarding the absence of the respondent as stated in the reference petition is totally false and the reference is liable to be dismissed.

3. The following point arises for consideration.

“Whether the respondent has ceased to hold office as a Councillor of the Angamali Municipality on account of his absence from the meetings of the Finance Standing Committee for a period of three consecutive months reckoned from the date of the last meeting he

attended as alleged?

4. Booth sides were heard.

5. According to the Secretary of the Municipality, the respondent absented himself from the meetings of the Standing Committee held from 17.09.2012 to 13.02.2013 and the details in the letter the following facts are clear. As there was no quorum for the meeting called on 17.09.2012, the meeting was not conducted. Then on 20.09.2012 and 17.10.2012, the meetings were held. There was no quorum for the meetings on 29.10.2012 and 20.11.2012 and so the meetings could not be conducted. On 30.11.2012, 31.12.2012, 18.01.2013 and 21.01.2013, the meetings were conducted and on 31.01.2013 and 13.02.2013 the meetings could not be held for want of quorum upon above facts, it is prayed that the respondent should be disqualified for being a Councillor of the Angamali Municipality. A very detailed written statement has been filed by the respondent denying the allegations contained in the reference letter.

6. Section 91(i)(k) is the relevant provision relating to disqualification of a Councillor for his absence without the permission of the Municipality concerned from the meetings of the Council of the Standing Committee for a period of three consecutive months. The above Section reads as follows:-

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

(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 a office, 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 Councillor absented 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 by the Concillors.*

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;”

7. So the question to be considered is whether the respondent had absented himself from the meetings of the Finance Standing Committee for a period of three consecutive months reckoned from the date of last meeting which he attended. There cannot be any doubt that if a Councillor is absent in the meeting which could not be held for want of quorum that will not come under the purview of Section 91(i)(k) of the Act. Even going by the reference letter, it is found that the meetings of the Finance Standing Committee could not be held on 17.09.2012, 29.10.2012, 20.11.2012, 31.01.2013 and 13.02.2013 for want of quorum. It is further found that during the period from 17.10.2012 to 20.11.2012 there was no possibility to hold three meetings for three consecutive months. Then his failure to attend meetings held from 30.11.2012 to 21.01.2013 alone is too reckoned for considering whether he has incurred any disqualification. As per the above Section it is clear that the meeting of the Finance Standing Committee has to be held once in a month and the month is to be calculated from the date of the previous meeting. So after the meeting held on 30.11.2012, the next meeting should have been held

within one month ie., on or before 31.12.2012. But the next meeting after 30.11.2012 has been held only on 31.12.2012. As it is not a meeting held within one month from 30.11.2012 his failure to attend the meeting held on 30.11.2012 will not come under the purview of this Section and his default has to be reckoned from 31.12.2012. After 31.12.2012 two meetings were held in January 2013 which were on 18.01.2013 and 21.01.2013. Only one such meeting can be wanted for the purpose of Section 91(i)(k) of the Act. Then the next meeting called on 13.02.2013 was not held for want of quorum. So reckoning from 31.12.2012 there was only the meeting in January and that failure will not entail his disqualification u/s 9 1(i)(k) of the Act. So even on the face of this reference letter it cannot be found that the respondent was absent from the Finance Standing Committee meetings for a period of three consecutive months and therefore, the prayer in the reference is only to be disallowed. The point is answered accordingly.

In the result, the reference petition is dismissed. No costs.

Pronounced before the Commission on this the 26th day of July 2013

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