

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

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

Friday, the 30th day of May 2014

R.C.No.07/2013

Reference Petitioner : Secretary,
Aluva Municipality,
Aluva 683 101,
Ernakulam District.

(By Adv.V.S.Bhasurendran Nair)

Respondent : K.M.Sukumaran,
Councillor, Aluva Municipality,
Aluva PIN: 683 101,
Ernakulam District.

(By Adv. Manoj Ramaswamy)

This case having been heard on the 8th day of **April 2014**, in the presence of Advocate **V.S.Bhasurendran Nair** for the petitioner and Advocate **Manoj Ramaswamy** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

This is a reference made by Aluva Municipal Secretary under the Proviso to Sub-Section 1 of Section 92 of the Kerala Municipality Act for declaring that the respondent has ceased to hold office as a Councillor of Aluva Municipality as provided by Section 91(j) of the Act.

2. The short facts are as follows:- As per the orders of the Ombudsman for Local Self Government Institutions passed in O.P.No.1135/2011 on 28.04.2012 and 26.07.2013, the respondent, who is a Councillor of Aluva Municipality, was found to have defaulted payment of building tax due for the years from 1993-1994 to 2012-2013. As per the order of the Ombudsman dated 28.04.2012, the Municipality was directed to recover the arrears of building tax due from the respondent. A sum of ₹26,690/- was assessed as the arrears of tax due from the respondent for the above period and notice was given to him to pay the same. But the respondent has failed to remit the amount till now. As per the order of the Ombudsman dated 26.07.13, the Municipality had resorted to attachment steps for recovery of the amount and the respondent created obstructions for the same and criminal case has been registered against him under sections 332 and 341 of IPC and the matter was reported to the District Collector for taking revenue recovery steps. Since the

respondent is in arrears of building tax due by him for his building for the period from the second half of 1993-1994 till 2012-2013 to the tune of ₹26,690/- and as the respondent has failed to remit the said amount in spite of demand notice and attachment steps he is liable to be disqualified for being a Councillor of Aluva Municipality and hence this reference.

3. The respondent has filed objection contending in brief as follows,-
The respondent is a Councillor of Aluva Municipality representing ward No.XVI. It is true that this respondent was the 2nd respondent in O.P.No.1135/2011 before the Ombudsman For Local Self Government Institutions which was filed by one Grigory Joseph. This respondent had constructed a building vide building permit No.185/91-92 issued from the Aluva Municipality and necessary completion certificate was forwarded to the Municipality as early as in 1993. But the occupancy certificate was issued to this respondent only on 17.07.2012. This was purely due to the latches on the part of the concerned officials. As assessment of the building was not completed due to the latches on the part of the officials of the Municipality, no building tax is due from the respondent to the Municipality in connection with his building. The respondent was always willing to pay the building tax once proper assessment is completed. While so this respondent was issued with a demand notice by the Municipality and the respondent filed objection to the

same for which the Municipality had given him a reply. Thereupon the respondent has filed a statutory appeal before the Chairman of the Standing Committee Finance and sought for consideration of appeal. But the Municipality has not taken any decision on the same. The Hon'ble Ombudsman has not considered the arguments put forth by the respondent and the said order is illegal. So the demand notice issued by the respondent also is not legal. There is no compliance of Section 233 of the Kerala Municipality Act . The respondent had already approached the Hon'ble High Court and as per judgment dated 10.09.2013, the Chairman, Standing Committee Finance was directed to consider the Appeal and pass orders within two months from the date of receipt of the copy of judgment. On the next day of the judgment the Secretary had referred this matter to the State Election Commission. No proceedings for recovery as contemplated under Section 538 of the Kerala Municipality Act or the provisions of Kerala Revenue Recovery Act has been followed. Instead the respondent was threatened and intimidated by the officials for which he had filed a complaint before the Superintendent of Police, Ernakulam. The present respondent is having personal enmity towards the respondent and the reference is as a sequel to the same. There is no default from the part of the respondent in payment of the dues and the present

proceedings is not legally sustainable. Therefore the reference deserves only dismissal.

4. The evidence consists of the oral deposition of PW1 and Exts.P1 to P1(h) and R1 to R13.

5. Both parties were heard.

6. The following points arise for consideration.

- (i) Whether the reference is not maintainable?
- (ii) Whether the respondent is in arrears of building tax due for the years from the second half of 1993-1994 till the second half of 2012-2013 as alleged?
- (iii) Whether a bill or notice demanding the arrears has been duly served upon the respondent at the time have any specified therein had expired?
- (iv) Whether the respondent has ceased to hold office as a Councillor of Aluva Municipality as provided by Section 91(j) of the Kerala Municipality Act?
- (v) Reliefs and costs?

7. **POINT No.(i):** This reference has been made by the Secretary of the Aluva Municipality under the proviso to sub-Section (1) of Section 92 of the Kerala Municipality Act. According to the petitioner the respondent is in arrears of the amounts due as building tax for the period from 1992-1993 to 2012-2013 to a tune of ₹26,690/- and in spite of resorting to coercive steps respondent has failed to remit the amount and so he is liable to be disqualified

as provided by Section 91(j) of the Kerala Municipality Act, hereinafter referred to as the 'Act'. The contention of the respondent is that no proper assessment of the building tax was made by the Municipality despite forwarding a completion certificate of his building and that no proper demand notice has been served to him after making a proper assessment and so the reference is not maintainable. From the disputed facts a question arises as to whether the Councillor has become disqualified as provided by clause (j) of Section 91 (1) of the Act. Section 92 of the Act states that when such a question arises it can be considered by it the State Election Commission. Section 92(1) states as follows,-

“92.Determination of Subsequent disqualification of a

Councillor,- Whenever a question arises as to whether a Councillor has become disqualified under section 86 [or section 91, except clause (ll) 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.

Provided that the Secretary or any Officer authorized by the Government in this behalf may refer such a dispute to the State Election Commission for decision.”

In the case on hand, in the light of the rival claims a question arises as to whether the respondent has become disqualified under clause (j) of sub-Section (1) of Section 91 of the Act. As per the proviso to sub-Section (1) of 92 of the Act, the Secretary of the Municipality is entitled to refer such a dispute to this Commission for decision. Therefore I find that this is a proper reference made under the proviso sub Section (1) of Section 92 of the Act and as a question arises as to whether the respondent has become disqualified under clause (j) of sub-Section (1) of Section 91 of the Act, I find that this reference is maintainable. The point is answered accordingly.

11. **POINT Nos.(ii) to (v):** The definite case of the reference petitioner is that a sum of ₹ 26,690/- which has been assessed as the arrears of building tax for the period from the second half of 1993-1994 to 2012 to 2013 is due from the respondent for which demand notice and attachment steps have already been taken and in spite of the same respondent has failed to remit the said amount and so the respondent is disqualified to continue as a Councillor. Admittedly a case was filed by one Grigory Joseph as O.P.No.1135/2011 before the Ombudsman For Local Self Government

Institutions and an order was passed by Ombudsman in the said O.P. on 28.04.2012. This respondent was the 2nd respondent in that case. The copy of that order is marked as Ext.R2. The above order reads as follows,-

“It is really sad that the administration does not know about the existence of a building which has come into being in the year 1993 onwards. Further to crown on it, the occupant of the building is a Councillor of the Municipality also. The Municipality has also issued a ‘No liability certificate’ to him in order to facilitate him to contest the election. I leave it there! Now the question to be resolved is to assess the tax, impose the tax and to collect the tax. The respondent would submit before me that he had intimated the Municipality regarding the construction and he has also produced the completion certificate as early as in 1993 but the Municipality has not moved in the right direction for assessment of the tax or to conduct any hearing. Who is at fault and how is to be resolved are all matters which the Municipality has to consider. Therefore I direct the Municipality to consider the case of the petitioner after giving due notice to the respondent, hear both of them and take appropriate decision and levy the tax as envisaged by law from

the inception and if there are any erring officials, appropriate action may be initiated against them for gross dereliction of duty as well. Let a decision to be taken within a period of two months from the date of receipt of a copy of this order and the tax levied be submitted to this authority for perusal.”

12. The reference petitioner has been examined as PW1. He has deposed that in pursuance of the order of the Ombudsman dated 28.04.2012, the Municipality issued a notice on 09.11.2012 relating to the building tax and its office copy is marked as Ext.P1(a) whereby the respondent was directed to remit a sum of ₹26,690/- as the arrears of tax due from 1993-1994 onwards and the direction was to remit the amount within three days. PW1 has further deposed that the petitioner in O.P.No.1135/2011 had again moved the Ombudsman due to failure of the respondent in remitting the amount and the Ombudsman had considered the steps taken by the Municipality and passed an order on 26.07.2013 which reads as follows,-

“I have passed an order directing the Municipality to take action in the matter. The Municipality in accordance with the same has passed an order directing Sri.Sukumaran to pay a sum of ₹26,640/-. If he is aggrieved by that order, he has to move the appropriate appellate forum under the Building Tax Rules. Instead of that he is trying to agitate and argue with Ombudsman. Now if the order passed by the Municipality is not challenged in

appeal or revision, it will become final and the Municipality has to resort to legal methods enumerated for realization of the amount.”

13. Ext.R1 is the copy of that order produced by the respondent. This order is contained in Ext.P1 file which is separately marked as Exts.P1(b). P1(c) is the copy of the order passed on 28.04.2012. PW1 has further deposed that in pursuance of Ext.P1((b), attachment steps have been taken by the Municipality on 01.08.2013 which is marked as Ext.P1(d). According to PW1 the respondent obstructed the execution of attachment and so the officials had to return and the report of the same is marked as Ext.P1(d1) According to PW1 the Municipality has then resorted to Revenue Recovery Steps for recovery of the arrears due from the respondent and requisition has been made to the District Collector on 28.08.2013 which is marked as Ext.P1(a). PW1 has further stated that the respondent filed WP(c) 22500/2013 before the Hon'ble High Court and the Hon'ble High Court has directed to dispose of the appeal stated as pending before the Chairperson of the Finance Standing Committee within two months and the copy of that judgment is Ext.P1(f). According to PW1 that appeal has been disposed on 06.12.2013 and Ext.P1(g) is the copy of that order. Thereafter Revenue Recovery Steps are being continued by the Deputy Tahsildar (RR) and the report given by the Municipality on 18.12.2013 is marked as Ext.P1 (h).

14. The evidence of PW1 remains unchallenged. There is no cross-examination for evidence tendered by PW1 from the part of respondent. Of course the respondent has produced certain records which have been marked as Exts.R1 to R13. Ext.R1 and R2 have already been discussed Ext.R3 is the demand notice issued by the Municipality on 17.07.2012 whereby a sum of ₹28,880/- is stated as due from the respondent as building tax for the period from second half of 1993-1994 to 2012-2013. Of course this document only supports the reference petitioner. The respondent has submitted objection to Ext.R3 and its copy is marked as Ext.R4. Several objections are raised by him in Ext.R4. The Secretary, Aluva Municipality has sent a reply to Ext.R4 and its copy is Ext.R5. In Ext.R5 it is stated that demand notice has already been served to the respondent to which the respondent had to submit an appeal before the Finance Standing Committee and since Ext.R4 is not an appeal preferred before the Finance Standing Committee, it is not entertainable. The Respondent then submitted an appeal before the Chairperson of Finance Standing Committee and its copy is marked as Ext.R6. Ext.R7 is the copy of the judgment passed by Hon'ble High High Court in WP(c) 22500/2013 whereby the High Court has directed to dispose of the appeal pending with the Chairman Standing Committee for finance in accordance with law as expeditiously as possible and at any rate within a period of two months. In

pursuance of Ext.R7, the Chairman Standing Committee for finance passed an order dated 06.012.2013 holding that the appeal said to have been filed by the respondent is unsustainable in law and it was dismissed. Ext.R13 is the copy of the said order. Exts.R8 to R12 are found to be totally irrelevant documents for considering the facts in issue in this case. These are copies of petitions filed by the respondent before the police, Chairman of the Commission for Scheduled caste and Scheduled Tribe, Joint Director Municipal Administration and Principal Secretary Local Self Government Department.

15. From the facts and materials on record it is clearly found that the respondent who is a Councillor of Aluva Municipality had constructed a building in the year 1993 for which tax has not been paid yet and despite assessing a sum of ₹26,640/- as arrears of tax for the period from the second half of 1993-1994 till 2012-2013 and taking coercive steps for recovery of the same, the respondent has failed to remit the arrears of the tax. The Hon'ble Ombudsman for Local Self Government Institutions as per Ext.R2, after hearing the Municipality and the respondent, directed the Municipality to take decision and levy the tax for the building owned by the respondent as envisaged by law within a period of two months from date of receipt of the copy of order which was passed on 28.04.2012. On the basis of Ext.R2 order, the arrears of tax amount was assessed as ₹26,640 and the same was directed

to be levy from the respondent and demand notice as well as attachment steps were already issued. Despite such attempts on the part of the municipality, the Councillor did not pay the said amount and so the petitioner in O.P.No.1135/2011 before the Ombudsman filed CMP No.246/2013 and as per Ext.R1 order, the Hon'ble Ombudsman has directed the respondent to pay the sum of ₹ 26,640/- as directed in the order passed by the Municipality. It is also observed in Ext.R1 order that the respondent, if aggrieved by the order of the Municipality has to move the appropriate appellate forum and if no such appeal or revision is preferred, the order of the Municipality shall become final and in such an event the Municipality was directed to resort to legal methods for realization the amount. The contention of the respondent that there is no proper assessment order regarding his building cannot stand to legal scrutiny. The respondent would contend that Ext.R5 is the appeal preferred by him before the Chairman Finance Standing Committee. But that appeal has been disposed by the Chairman of Finance Standing Committee by way of Ext.R13 by holding that no appeal as provided by law has been preferred against the order of the Municipality. In this context it is significant notice that as per Section 509(2) of the Kerala Municipality Act, an appeal against any notice or order of the Secretary on levy of tax can be preferred to the Standing Committee for finance. But as per Sub-Section (5) of Section

509, such an appeal should be filed within 30 days from the date of receipt of the order. In the case on hand the respondent has preferred Ext.R5 appeal long after the order was passed by the Secretary demanding arrears of tax. Moreover as per Sub Section (11) of Section 509 of the Kerala Municipality Act, no Appeal or Revision shall be filed against the levy of tax if the tax shown in the demand notice has not been paid. It is not disputed that the appeal petition has been filed by the respondent without paying the arrears of tax demanded by the Municipality. It is in the above context that the Chairman of the Standing Committee has found in Ext.R6 that the appeal petition is not maintainable. From the facts and evidence it is clearly found that the respondent has not filed any proper appeal against the demand for paying arrears of tax made by the reference petitioner.

16. The petition is filed under Section 91(j) of the Kerala Municipality Act. Section 91(j) states as follows,-

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

(j) is in arrears of any kind due by him (otherwise than in a fiduciary capacity) [to the Government or to the Local Self Government Institutions upto and inclusive of the

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.”

From the evidence it is clearly found that the respondent is in arrears of building tax due by him to the Municipality for the period from the second half of 1993-1994 till 2012-2013 for which demand was already made and its term has expired. The evidence tendered by PW1 remains unchallenged. The respondent has not entered the witness box. Even from the records produced by the respondent it is clearly found that he is in arrears of building tax for which demand was already made and the period under the demand had expired and as such Section 91(j) is squarely applicable. There is no justification or sustainable contention for not paying the arrears of tax due to the Municipality. From the discussion held above, I hold that the respondent has ceased to hold office as a Councillor of Aluva Municipality as he is in arrears of building tax due to the Aluva Municipality for the period from the second half of 1993-1994 till the date of the reference and so the petition is only to be allowed. The points are answered accordingly.

In the result, the reference Petition is allowed and it is declared that the respondent has ceased to hold office as a Councillor of Aluva Municipality as provided by Section 91(1)(j) r/w Section 92 of the Kerala Municipality Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 30th day of May 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the petitioner:

PW1 : Sudheer Raj, Secretary, Aluva Municipality

Documents produced on the side of the petitioner

P1 : File No.R2.7767/2011 of Aluva Municipality

P1(a) : Special notice issued to Sri.K.M.Sukumaran from Aluva Municipality

P1(b) : Copy of the order dated 26.07.2013 of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in CMP No.246/2013

P1(c) : Order dated 28.04.2012 of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in O.P. No.1135/2011

P1(d) : Warrant for attachment issued against Sri.K.M.Sukumaran (1st page)

P1(d1) : Warrant for attachment issued against Sri.K.M.Sukumaran (IInd page)

P1(e) : Letter No.R2-2/7767/2011 dated 01.08.2013 of the Secretary, Aluva Municipality

P1(f) : Copy of the Judgment in WP(c) No.22500/2013.J dated 10.09.2013 before the Hon'ble High Court of Kerala

- P1(g) : Resolution in the Finance Standing Committee held on 06.06.2013
- P1(h) : Draft letter No.R2.7767/2011 dated 18.12.2013 of the Secretary, Aluva Municipality

Document produced on the side of the respondent:

- R1 : Copy of the order dated 26.07.2013 of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in CMP No.246/2013
- R2 : Order dated 28.04.2012 of the Ombudsman for Local Self Government Institutions, Thiruvananthapuram in O.P. No.1135/2011
- R3 : Copy of demand notice No.R2.7767/11 dated 17.07.2012
- R4 : Copy of the objection filed by Sri.K.M.Sukumaran, to the Secretary Aluva Municipality
- R5 : Letter No.R3 7767/2011 dated 13.09.2012 of the Secretary, Aluva Municipality
- R6 : Copy of the objection submitted by Sri.K.M.Sukumaran dated 20.09.2012 of the Secretary, Aluva Municipality
- R7 : Copy of the Judgment in WP(c) No.22500/2013.J dated 10.09.2013 before the Hon'ble High Court of Kerala
- R8 : Copy of the application submitted by Sri.K.M.Sukumaran, to the Superintendent of Police, Ernakulam Rural
- R9 : Copy of the letter of Sri.K.M.Sukumaran, addressed to the Chairman, Kerala State Scheduled cast and Scheduled Tribe Commission

- R10 : Copy of the notice No.4008/B1/2012/EKM/KSCSC & ST dated 23.10.2013 issued by Assistance Registrar, Kerala State Scheduled Cast and Scheduled Tribe Commission
- R11 : Copy of the letter dated 14.08.2013 of Sri.K.M.Sukumaran, addressed to the Joint Director Municipal Administration
- R12 : Copy of the letter of Sri.K.M.Sukumaran, dated 19.09.2013 addressed to Sri.James Varghese IAS, Principal Secretary, LSGD
- R13 : Order No.Re-7767/2011 dated 06.12.2013 of the Chairperson, Finance Standing Committee, Aluva Municipality

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER