



STATE ELECTION COMMISSION, KERALA

THIRUVANANTHAPURAM – 695 033

No. 11496/H/2015/SEC

Dated: 01.12.2015.

To

All District Election Officers & District Collectors.

Sir,

Sub:- General Election to Local bodies 2015 – Election Petition – instruction to defend the case on behalf of State Election Commission - reg.

It is brought to the notice of the State Election Commission that some of the Election Petitioners have filed Election Petitions before the Munsiff Court/District Court with Returning Officer, District Collector or the State Election Commission as Respondents in addition to other candidates who contested the election.

2. You know that the filing of Election Petition is a statutory right. The statutory right can be enjoyed or exercised only as per the provisions of the statute which provides that particular right. Section 90 of the Kerala Panchayat Raj Act, 1994 and Section 166 of the Kerala Municipality Act, 1994 provide that only candidates can be parties to Election Petition. Therefore, all petitions in which Returning Officer, District Collector or the Election Commission is included in the list of Respondents are liable to be dismissed on the very first question of maintainability.

3. The above legal position is quite clear from the decisions of the Supreme Court. Supreme Court in B.Sundara Rami Reddy Vs Election Commission of India 1991 Suppl.(2) SCC 624 held the Election Commission can not be made a party in an Election Petition. In the said case, an Election petition was filed before the Andra Pradesh High Court challenging the election of Sri. B.Sundara Rami Reddy from the Atmakur Assembly constituency. The Election Commission of India was impleaded as one of the respondents in the Election Petition. The Election Commission moved the High Court and got its name deleted from the array of parties. The said order of the High Court deleting the Election Commission from the list of Respondents was challenged before the Supreme Court in Appeal. The Supreme Court dismissed the Appeal holding that only those parties mentioned in law alone could be impleaded as parties to an election Petition.

4. In Jyothi Basu, vs.Debi Ghosal (AIR 1982 SC 983) the Supreme Court held that no person other than the persons mentioned in law can be joined as a party to an election Petition.

5. In Michael B.Fernandes V.C.K.Jaffer Sharief (AIR 2002 SC 1041) Supreme Court held that it has already been held by the Supreme Court that right to elector to be elected or dispute regarding election are neither fundamental rights or common law rights but are confined to the provisions of the Act and Rules made there under and consequently, rights and remedies are all limited to those provided by the statutory provisions. The contest of the election petition is designed to be confined to the candidates at the election and all others are excluded and, therefore, only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) and no others. The argument that even if somebody may not be a necessary party under Section 82 of the Act, but yet he could be added as a proper party as provided in Order 1 Rule 10 of the Code of Civil Procedure cannot be accepted as the provisions of the Civil procedure Code apply to election disputes only as far as may be and subject to the provisions of the Act and any rules made there under and the provisions of the Code cannot be invoked to permit which is not permissible under the Act. It is not possible to accept the submission that where allegations are made against the Returning Officer or the Chief Electoral Officer with regard to the conduct of the election, there should be no bar to array them as parties.

6. Going by the aforesaid decisions and Sections 90 of the Kerala Panchayat Raj Act and Section 166 of the Kerala Municipality Act, neither the Election Commission nor the Returning Officer, nor the District Collector, nor any other Officer connected with election can be made a party to an Election Petition. Misjoinder of parties is fatal to Election Petitions since the Election Petition which does not comply with the provisions of Section 90 or 166 of the Kerala Panchayat Raj Act, 1994 and Kerala Municipality Act, 1994 respectively will have to be dismissed at the threshold.

7. All District Election Officers & District Collectors, (except District Collector, Ernakulam) are requested to instruct the concerned Advocate for Government and District Government Pleaders (or other Advocate specially engaged for the purpose) to take necessary steps before the Munsiff Court/District Court to get the names of the State Election Commission, District Election Officer, Returning Officer or other election related officers removed from the array of parties in the Election Petition. In Ernakulam District, the District Collector is requested to get the assistance of Shri.Murali Purushothaman, Counsel for State Election Commission in the matter.

A copy of the affidavit and Interlocutory Application filed in one such case is also enclosed as specimen.

Yours faithfully,

Sd/-
P.Geetha
Secretary

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Presented on: -11-2010

**BEFORE THE HON'BLE MUNSIFF'S
COURT II, KOCHI**

I.A. No. _____ OF 2010

IN

O. P (Election) No. 6 OF 2010

Ambrose Kolenchery - Petitioner

V.

The Returning Officer and others - Respondents

**APPLICATION FILED UNDER ORDER I
RULE 10 (2) OF THE
CODE OF CIVIL PROCEDURE**

MURALI PURUSHOTHAMAN

&

BENZIR P. M.

Counsel for the Applicants
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Dr. O.K. Madhavi Amma Road,
Near Cemetery Junction, Ernakulam - 18.

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BEFORE THE HON'BLE MUNSIFF'S COURT II, KOCHI

O. P (Election) No. 6 OF 2010

Ambrose Kolenchery - Petitioner

V.

The Returning Officer and others - Respondents

AFFIDAVIT FILED BY THE 1st RESPONDENT

I, T. Aboobacker, aged 54 years, S/o. Late T. Kuttimammed, residing at Rakendu, Thirumangalam, Naduvannur P. O., Kozhikode District do hereby solemnly affirm and state as follows: -

1. I am the 1st Respondent in the above Election Petition and the Returning Officer for election to G 34, Njarakkal Grama Panchayat appointed by the State Election Commission under Section 41 of the Kerala Panchayat Raj Act. I have read and understood the various averments in the Election Petition and I am conversant with the facts of the case. I am swearing to this affidavit for and on behalf of the State Election Commissioner also as duly authorized. _____
2. It is submitted that neither the Returning Officer nor the State Election Commission are necessary parties to the above Election Petition. The parties to an Election Petition have been statutorily determined under Section 90 of the Kerala Panchayat Raj Act.
3. The Hon'ble Supreme Court in **Jyoti Basu V. Debi Ghosal (1982) 1 SCC 691**, **B. Sundara Rami Reddy V. Election Commission of India and others 1991 Supp (2) SCC 624** and **Michael B. Fernandes V. C.K. Jaffer Sharief and others (2002) 3 SCC 521** have held that the Returning Officer or the Election Commission are not to be impleaded as Respondents in an Election Petition and that the Election officers are neither necessary nor proper

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parties to the Election Petition. It is submitted that Section 82 of the Representation of the People Act, 1951 corresponds to Section 90 of the Kerala Panchayat Raj Act and it is interpreting Section 82 of the Representation of the People Act, 1951, that the Hon'ble Supreme Court has held that the Returning officer or the Election Commission are not necessary or proper party to an Election Petition.

4. The Hon'ble High Court of Kerala has in **Chintha Dharmarajan V. Mary Anto (2002) (2) KLT 478** interpreting Section 90 of the Kerala Panchayat Raj Act held that the Returning officer is neither a necessary nor a proper party to an Election Petition and that the Court can strike out the party who is not necessary to the *lis*. In view of the above it is most humbly prayed that this Hon'ble Court may be pleased to strike out the Returning officer and the State Election Commission from the array of Respondents in the above Election Petition.

A separate application for the said purpose is filed herewith and the same may kindly be allowed.

All the facts stated above are true and correct.

Dated this the 3rd day of November 2010.

Deponent

Solemnly affirmed and signed before me by the deponent whom I know on the 3rd day of November 2010 at my office at Ernakulam.

MURALI PURUSHOTHAMAN
Counsel for the Respondents 1 and 2

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BEFORE THE HON'BLE MUNSIFF'S COURT II, KOCHI**I.A. No. _____ OF 2010****IN****O. P (Election) No. 6 OF 2010****Applicants/Respondents 1 & 2 :**

1. The Returning Officer, G 34,
Njarakkal Grama Panchayat,
AEO Vyppin, Edavanakkad - 682 502.
2. The State Election Commissioner, Kerala,
O/o. State Election commissioner,
Thiruvananthapuram - 695 033.

V.**Respondents/ Petitioner & Respondent No.3.**

1. Ambrose Kolenchery, Aged 41, S/o Avarachan,
Kolenchery Veedu, Njarakkal.
2. Dinesan K. M., Aged about 55, S/o Madhavan,
Kallumadathil, CRA Lane, Njarakkal.

**APPLICATION FILED UNDER ORDER I RULE 10 (2) OF THE
CODE OF CIVIL PROCEDURE**

For the reasons stated in the accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to strike out the Respondents 1 and 2 from the array of Respondents in O. P. (Election) No. 6 of 2010.

Dated this the 3rd day of November 2010.

*Deletad as
order
6-11-2010*

MURALI PURUSHOTHAMAN
Counsel for the Applicants