

Welcome

Qualifications and Disqualifications for membership of Local Self Government Institutions in Kerala

RETURNING OFFICER

S.41 KPR/97 KM Act

The King pin for the conduct of all elections. The officer who holds the election and Returns the Result.

For every Panchayat/ Municipality – one or more RO – SEC in Consultation with Govt. designate. Officers of Govt./ LSGI.

Exercise Quasi judicial powers. Independent function.(Kodikunnil Suresh case)

The R.O. at time of scrutiny acts independently in deciding the validity or otherwise of the nomination paper.

Not bound by any directions or instructions of his superiors including EC in performance of quasi-judicial functions.

FUNCTIONS OF RETURNING OFFICERS

- To receive nominations
 - Scrutiny of Nomination (most important function)
 - Allotment of Symbols
 - Printing of Ballot papers
 - Distribution of polling materials
 - Supervision of poll.
 - Counting of votes. Declaration of results.
 - To do all such acts as may be necessary for the effective conduct of election.
-

ASSISTANT RETURNING OFFICERS

- S.42/98.
 - RO's function so vast – to assist the RO.
 - ARO can subject to the control of the RO perform all functions of RO except scrutiny. However if RO unavoidably prevented even that function.(Shabeer v Niyamathulla -2008 (2) KLT 362).
 - ARO is competent to subscribe oath and accept nomination papers.
 - No separate authorization from RO necessary.
-

Election Process

Announcement of election.

- Non Statutory. Before formal notification.
 - Time Table
 - Two purposes. Alert political parties- Alert electoral machinery.
 - Model Code of Conduct commences.
 - Some days in advance.
-

Election Notification

- S.49/105
 - Formal Notification for election. Gazette
 - Appointment of dates. Statutorily fixed.
 - Receiving Nomination
 - Last day, 7th day after publishing. (8 days) Public holiday.
 - Scrutiny – day following last day –next working
 - Withdrawal-2nd day after date of scrutiny.
 - Poll-Not earlier than 14th day from last date of withdrawal.
-

Presentation of nomination paper

Total period of 8 days available for filing nomination. No nomination can be filed on any intervening public holiday during this 8 days period. Between 11 am and 3 pm.

Nomination can be submitted before RO or ARO at the place mentioned in the public notice of election. Therefore the RO and ARO must remain present at the place mentioned in public notice.

Nomination paper shall be presented by the candidate or the proposer in person and not by post or fax or e-mail.

Can contest election only to one constituency. Three set of nomination papers can be submitted at a time.

Form 2A u/s 52 (1A) – Edu. Qual, criminal cases involved at time of nomi. a
such himself and family, his liability, defection.

Deposit GP-1000; BP Muni- 2000, DP, Corp-3000. SC/ ST 50%. One depos
for three set.

Preliminary scrutiny by RO at time of presentation of nomination paper –
whether the name and electoral number of the candidate and his propose as
entered in the nomination paper are the same as entered in the electoral. Only
preliminary scrutiny and does not extend beyond that.

QUALIFICATIONS AND DISQUALIFICATIONS OF CANDIDATES

QUALIFICATIONS FOR MEMBERSHIP

Any person aspiring to become a member of the Panchayat must be qualified and must not be disqualified.

QUALIFICATIONS FOR MEMBERSHIP (Sec 29 KRP, S.85 KM Act)

To be a candidate - Name shall appear in the electoral roll of any constituency in that Panchayat.

On the date of filing nomination he must have completed 21 years of age (Charan singh – Sonapet – 1984).

In seats reserved for SC/ST/ Women, shall belong to that category

Shall make and subscribe oath before RO / as set out in 1st Schedule (KPR) 2nd Schedule (KM). (Shaiju v SEC 2003(1) KLT

658) Supdt. Prison Med Supdt Hospt. Consalate – MGR-Vallarasu

Brooklin-Andipetty-Consular General. Committee on national integration. 1963 Ladak.

Has not been disqualified u/any other provisions of the KPR/KM Act.

DISQUALIFICATIONS OF CANDIDATES

Disqualifications.....

- Article 243-F/243-V of the Constitution of India provides for disqualification for membership in Panchayats /Municipality. The object of this Article as stated by the Parliamentary Committee on Constitutional Amendment is to prevent undesirable persons from becoming members of the Panchayat.
 - The said Articles in the Constitution provide that a person shall be disqualified for being chosen as, and for being a member of the Panchayat /Municipality:-
 - If he is so disqualified by or under any law for the time being in force for the purpose of elections to the Legislature of the State concerned.
-

Disqualifications.....

The disqualification for elections to the Legislature of the State are provided by the Constitution and the Representation of the People Act, 1951.

Thus if a person is disqualified under the Constitution and the Representation of the People Act, 1951 to contest election to the assembly he is disqualified for being chosen as, and for being a member of the Panchayat /Municipality. (Details of such disqualification u/s 34/90 to avoid repetition).

He is so disqualified by or under any law made by the Legislature of the State. (KPR & KM Acts)

Disqualification of officers and employees of Government, Local authorities eTC

(Sec 30 KPR & S.86 KM Act).

officer or employee----- in the Service of____

Government/

Central Government/

Local Authority /

Or of

Corporation controlled by State/Central Government or Local Authority

Or of

Company in which the State/Central Government or Local Authority has not more than 51% share (Government Company)

Or of

Statutory Board

Or of

University in the State

shall be disqualified for election or for holding office as a member.

Explanation: Co-operative Society – deemed to be a Government Company.

-
- Co-operative society in which the Govt has more than 50% share – Milma,
 - Service includes provisional service also.
 - Employment exchange – 179 days appointment.
 - Empanelled conductor, SLR worker but not aided school teacher.
 - Honorarium – whether received or not. Anganwadi & Asha.
 - Section 30 (2) of the Act provides that an officer or employee coming within the ambit of Sub-section (1) of Section 30 who has been dismissed for **corruption or disloyalty** shall be disqualified for a period of 5 years from the date of such dismissal for election or for holding office as a member of a Panchayat.
-

IPC & RP ACT

- ***Conviction under IPC & RP Act.** (Section 31 KPR Act & S.87 KM Act) – A person convicted for electoral offences under Chapter IX A of IPC or under Section 8 of the Representation of the People Act, 1951 shall be disqualified from being elected in any election to local bodies or from holding the office of a member of a Panchayat for a period of 6 years from the date of his conviction.
 - ***The Offences under Chapter IX A of IPC are offences relating to election like bribery, undue influence, personation etc.**
-

SECTION 8(1)-RP ACT (1951)

- Section 8 (1) of the RP Act, 1951 provides for disqualification for a period of six years from the date of conviction for the specified offence therein i.e. offences like rape, offences under FERA, NDPS, Prevention of Corruption Act, Prevention of Terrorism Act etc.) irrespective of the sentence awarded on such conviction. Even if the convicted person is sentenced to fine for the offences specified under Section 8 (1), he would be disqualified for a period of 6 years from the date of such conviction. In case of imprisonment, disqualification shall be from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.
-

SECTION 8(2)-RP ACT (1951)

- Section 8 (2) of the RP Act, 1951 provides that for conviction of offences specified therein (like Dowry Prohibition Act, Food Adulteration Act etc.) and sentenced to imprisonment for not less than 6 months, such persons shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of 6 years since his release.
-

SECTION 8(3)-RP ACT

- Section 8 (3) of the RP Act provides that a person convicted of any offence and sentenced to imprisonment for not less than two years (for any offence other than referred to S.8 (1) & 8(2) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.
-

Corrupt practice (Section 32/ 88).

- Provides for disqualification on ground of corrupt practices found by Election Tribunal and provides that the disqualification shall not exceed 6 years from the date of order of the Governor. The Governor has to act as per the Opinion of the State Election Commission.
-

Failure to lodge account of election expenses.

- Section 33/89 of the Act provides for disqualification for a period of 5 years from the date of order of the Commission for failure to lodge account of election expenses.
 - Failure to lodge with in the time and manner(Sec 86/142)
 - Accounts lodged are false
 - Expenses exceeding the prescribed limit(Sec.85/141)
 - Gazette publication
 - Individual order need not be published.
-

Disqualification of Candidates.

(Section 34 / 90)

Disqualification under the Constitution and RP Act, 1951

Article 243-F/ V (i) (a) provides that that a person shall be disqualified for being chosen as, and for being a member of the Panchayat /Municipality if he is so disqualified by or under any law for the time being in force for the purpose of elections to the Legislature of the State concerned.

The disqualifications for elections to the Legislature of the State are provided by the Constitution and the Representation of the People Act, 1951.

Thus if a person is disqualified under the Constitution and the Representation of the People Act, 1951 to contest election to the Assembly he is disqualified for being chosen as, and for being a member of the Panchayat /Municipality.

Section 34 (1) (a)/ 90 (1) (a) is similarly worded *i.e.* a person shall be disqualified for being chosen as, and for being a member of the Panchayat /Municipality if he is so disqualified by or under any law for the time being in force , for the purpose of elections to the Legislative Assembly.

The disqualifications for elections to the Legislature of the State are provided by the Constitution and the Representation of the People Act, 1951. They are :

Constitutional Disqualifications:

Article 191 deals with disqualification for being chosen as and for being a member of State Legislature. The fundamental disqualifications are:

1. If he holds an office of profit under the Government of India or the Government of any State.
 2. If he is of unsound mind and so declared by a competent court under the Indian Lunacy Act.
 3. If he is an un-discharged insolvent as adjudged by a competent court under the Insolvency Act.
-

4.If he is not a citizen of India, or has voluntarily acquired the Citizenship of a Foreign State, or is under any acknowledgement of allegiance or adherence to the foreign State.

*Apart from the above disqualification provided by the Constitution itself the Constitution empowers the Parliament to prescribe such other disqualifications. Accordingly the Representation of the People Act, 1951 prescribes the following disqualifications in addition to the disqualification prescribed by the Constitution itself.

Disqualification under the Representation of the People Act, 1951:

- 1. Disqualification on Conviction for certain offences (Sec 8 RP Act, 1951).
 - 2. Disqualification on ground of corrupt practices.
 - 3. Disqualification for dismissal from Government service for corruption or disloyalty.
 - 4. Disqualification on ground of subsisting contract with the Government.
 - 5. Disqualification for holding office under Government Company.
 - 6. Disqualification for failure to lodge account of election expenses
-

Imprisonment for offence involving moral turpitude:

Section 34 (1) (b) (i) / 90 1) (b) (i) provides that a person shall be disqualified for being chosen as and for being a member if he has been sentenced by a Court or Tribunal to imprisonment for a period not less than 3 months for an offence involving moral turpitude.

*Moral turpitude is not defined.

*Usually considered as offence against society.

Guilty of an offence of corruption:

- Section 34 (1) (b) (ii) / 90(1) (b) (ii) provides that a person shall be disqualified for being chosen as and for being a member if he has been found guilty of an offence of corruption by a competent authority under any law in force.
 - *Prevention of Corruption Act.
-

Mal-administration:

- Section 34 (1) (b) (iii) / 90(1) (b) (iii) provides that a person shall be disqualified for being chosen as and for being a member if he has been held personally liable for maladministration by the Ombudsman for Local Self Government Institutions.
-

Unsound mind:

- A person shall be disqualified for being chosen as and for being a member if he has been adjudged to be of unsound mind.
 - * Unsound mind- it has to be so declared by a competent court under the Indian Lunacy Act.
-

Citizenship of a foreign State:

- A person shall be disqualified for being chosen as and for being a member if he has voluntarily acquired the citizenship of a foreign State.
-

Electoral Offences:

- Section 35 (1) (e)/ 90(1) (e) provides that a person shall be disqualified for being chosen as and for being a member if he has been sentenced by a Criminal Court for any electoral offence like destruction of ballot papers etc or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or disqualification.
-

Insolvent:

A person shall be disqualified for being chosen as and for being a member if he has applied to be adjudicated, or is adjudicated, an insolvent.

- By Insolvency Court u/ Insolvency Act.
 - Thampanoor Ravi *V* Charupara Ravi (1999) 8 SCC 74.
-

Subsisting contract:

A person shall be disqualified for being chosen as and for being a member if he is interested in any subsisting contract made with, or work being done for, the government or (any Local Self Government institution) except as a shareholder (other than a director) in a company or except as permitted by rules made under this Act .
Earlier only concerned Panchayat.

RD not a contract with Govt. Mohan Kumar v Rajagopal (2000 (1) KLT677.

Convener of Beneficiary Committee- no disqualification 2010 (2) KLT 1022.

Implementation officer of People's Planning Program and convener of Mahadasekhara Samathy –no disqualification 2000 (1) KLT 712

Legal practitioner:

- A person shall be disqualified for being chosen as and for being a member if he is employed as paid legal practitioner on behalf of the Government or the Panchayat/Municipality.

*Government Pleader.

* Standing Counsel for Panchayat.

rears to the government or to the Local Self Government
stitution:

ection 34 (1) (j)/ 90 (1) (j)_provides that a person shall be disqualified
r being chosen as and for being a member if he is in arrears of any
nd due by him (otherwise than in a fiduciary capacity) to the
overnment or the Local Self Government Institution and a bill or
otice has been duly served on him and the time, if any, specified
erein has expired.

o) Such member is in arrears of any kind due by him to the
overnment or Local Self Government Institution

y) And a bill or a demand notice has been issued to him for payment
of that amount

i) And the period for payment specified therein has already expired
and the amounts are outstanding.

ay of RR. Nomination has to be accepted.

mount due to Kerala State Backward Dev Corp – not due to Govt.

0 (2) KLT 148.

urce.

ies towards co-operative bank not due to Government (2007 (4) K

3).

ovt defined. State of Kerala. So not even instrumentalities.

ven if the arrears is due to some other LSGI other than the one in

hich the candidate contest disqualification is attracted (Mustaffa V.

sheer 2014 (3) KLT 774).

Dismissal or removal from service:

Dismissal or removal from service: Disqualification for dismissal or removal from Central/ State Government service / Local authority or service referred to in sec 30/85 for corruption or disloyalty.

Kerala Local Authorities (Prohibition of Defection) Act, 1999

- A person shall be disqualified for being chosen as and for being a member if he has been disqualified u/the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and has not completed 6 years from the date of disqualification

Black- listed Contractor:

- Section 34 (1) (0) provides for disqualification of persons black listed for any default in connection with any contract or tender with the Government.
-

waste or misuse:

Section 34 (1) (p) provides that a person shall be disqualified for being chosen as and for being a member of a Panchayat if he has been found liable for loss, waste or misuse of money or other property of the Panchayat by the Ombudsman.

Under any other provision:

- Section 34 (1) (n) and 90 (1) (n) provides that a person shall be disqualified for being chosen as and for being a member of a Panchayat he is disqualified under any other provision of this Act.
-

REMEDY UNDER SECTION 34 (2) UNWORKABLE.

reference to SEC.

scrutiny time limit-since scrutiny is done on the 8th day from date of notification and cannot go beyond the 9th day as per statutorily appointed schedule, after withdrawal list of candidate has to be published; scrutiny cannot adjourned at any rate beyond the last date of withdrawal of candidature reference unworkable.

further remedy of Election Petition barred on same issue if commission passes an order on reference.

Mukumara Kurup's case.

if the RO is not sure of the ground of rejection as legally sustainable - E.P. on the Right side.

improper acceptance *ipsofacto* will not invalidate election. Materially affecting the result of election.

Quasi Judicial.

Who can be present at scrutiny

- Candidate, election agent, one proposer, person duly authorized by the candidate (4 persons).
 - The nomination and the papers accompanying thereto can be inspected by the other candidates.
 - No nomination shall be rejected on the ground that the candidate or his representatives were not present at the time of scrutiny.
 - Minor defects shall be permitted to be cured.
-

Who can object a nomination

- By the candidate, proposer, election agent or authorized representative. RO can raise objection *suo-motu*.
 - If nomination is rejected, reason has to be recorded.
 - If nomination is accepted after overruling objection, reason has to be recorded.
 - Summary enquiry.
-

Ground for rejection of nomination

On date of scrutiny, candidate is not qualified or disqualified.

Submitted beyond time.

Nomination submitted in more than one constituency. Then all his nominations are liable to be rejected.

Only defects of substantial character.

defects of substantial character – those material defects which cannot be cured at the stage of scrutiny of nominations.

Failure to declare age in the nomination paper.

Failure to sign the nomination paper by the candidate or proposer.

Failure to make prescribed security deposit.

Failure to produce extract of electoral roll if contesting in different constituency.

Failure to give full address.

Proposer not qualified.

Proposer from different constituency.

Failure to take oath as prescribed.

Markala Kahar's case.

Resurgence's case (mandatory columns to be filled) (2013 (4) KLT 1

Finality of decision of RO

The decision of RO accepting or rejecting nomination can be challenged only in an Election Petition after election is over.

Presented by

MURALI PURUSHOTHAMAN

Advocate
