

BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,  
STATE ELECTION COMMISSIONER

Thursday, the 22nd day of February, 2024

O.P. No. 20 of 2022

**Petitioner**

: Munavar P.,  
Palasseri House,  
Karuvambram West P.O.,  
Eranad Taluk, Malappuram

(Voter, Ward No.49,  
Manjeri Municipality)

(By Adv. U.A. Amir &  
Adv. A.Ismail Sait)

**Respondent**

: Viswanathan,  
Puthan Madathil House,  
Karuvambram West P.O.,  
Ernad Taluk, Malappuram

(Councilor, Ward No.49,  
Manjeri Municipality)

(By Adv. P.K. Varghese)



**ORDER**

This is a petition filed under Section 86 of Kerala Municipality Act, 1994 to declare the respondent as disqualified to continue as a Councilor of Manjeri Municipality.

2. The case of the Petitioner in brief is as follows:

The Petitioner is a voter in Ward No.49 of Manjeri Municipality. Both the Petitioner and the Respondent contested Municipal Election from Ward No.49 Karuvambram of Manjeri Municipality General Election held December 2020 and the Respondent won and continuing as a Councilor. The Respondent was an employee as the "Vazhipadu Assistant Clerk" of Shri. Vishnu-Karimkalikavu Temple at Narukara, Manjeri which is under the control of the Malabar Devaswom Board and administered by the Malabar Devaswom Board Commissioner. Since respondent was a paid employee of the said temple at the time of scrutiny of his nomination, objection was raised by one Faisal Mon P.A. another candidate, against the acceptance of his nomination. But the Returning Officer overruled the objection stating that he was resigned from the employment of the temple on 19.11.2020, prior to the date of scrutiny of nominations. After the election the Respondent has submitted an application before the authorities with an intention of withdrawing his resignation from the post of the "Vazhipadu Assistant Clerk" of the temple and further requested to rejoin in the service as an employee. On the basis of his application on 30.10.2021 the Assistant Commissioner, Malabar Devaswom Board, Kozhikode issued an order permitting Respondent to withdraw his resignation from the post of "Vazhipadu Assistant Clerk" and permitted him to re-join in the service of the Devaswom Board. Thereafter as per the above said order he has joined in the duty of the temple controlled by



the Malabar Devaswom Board with effect from 30.10.2021 and has been working as a paid employee at the temple under Malabar Devaswom Board. As per Section 86 of the Kerala Municipality Act, 1994 the petitioner is disqualified to continue as a member of Municipality and is liable to be disqualified from continuing as a Councilor of the Municipality.

3. The Respondent contended that the Petition is not maintainable either in law or in facts. The Petitioner has no locus standi to approach this Commission and file the petition. The Respondent was working as a temporary staff in Narukara Vishnu-Karimkalikavu Temple, Manjeri since 2010 onwards without any remuneration. The Respondent is an employee in a temple and there can be no set up placed on such power by the Malabar Devaswom Board under the guise of superintendence as per Section 20 of the Madras Hindu Charitable Endowments Act, 1951. The salaries, allowances of the employees of Sree Vishnu-Karimkalikavu Temple at Narukara, Manjeri is being met by the income derived from the temple itself and the petitioner is also being paid by using the income derived from the temple. The Board has not paid any amount to this respondent and employees of the temple and it has only a power of superintendence. The Malabar Devaswom Board has issued a circular H2/6360/2015/MDB dated 12.10.2015 permitting the employees of the temple to file nominations with the concurrence of the administrator of the temple. The respondent has contested the election with the permission of temple authorities. The respondent resigned from employment of the temple since otherwise he was not able to take leaves for a longer period in order to have the proper propaganda of the election. The power to appoint employees in the temple is not specifically or otherwise conferred to the Malabar Devaswom Board. The Malabar Devaswom Board



has the power of supervision only. The Executive Officer or the Assistant Commissioner of Malabar Devaswom Board, Kozhikode is not the appointing authority of the employee of the temple as per the Madras Hindu Religious and Charitable Endowments Act, 1951. The respondent is an employee of the temple, not an employee of the Malabar Devaswom Board and therefore in this case Section 86 of the Kerala Municipality Act, 1994 has no application. The petition is liable to be dismissed *in limine*.

4. Heard both sides.
5. The following points arise for consideration
  - (1) Whether the petition is maintainable?
  - (2) Whether the respondent incurred disqualification as provided under section 86 of the Kerala Municipality Act as alleged?
6. The evidence in this case consists of oral deposition of PW1, PW2, PW3, PW4, PW5 and RW1 and Exhibits A1 (a to c), A2, B1, X1 to X4.

Point No. (1): This is a petition under section 92 read with 86 of the Kerala Municipality Act. Respondent is an elected Councilor of Manjeri Municipality in the election held in December, 2020. He represents ward No.49 of Manjeri Municipality. While so was re-appointed in service as Vashipadu Assistant Clerk in Shree Vishnu Karimkalikavu Temple as per Ext X2 order dated 30.10.2021 of the Devaswom Commissioner. Respondent was working in the said post since 2010 onwards, but resigned from the post on 19.11.2020 prior to submission of nomination. According to the petitioner the respondent became disqualified to continue as a Councilor of Manjeri Municipality when he was reappointed as Vashipadu Assistant Clerk in Shree Vishnu Karimkalikavu Temple on 30.10.2021 in view of section 86 of the Kerala Municipality Act. As per section 86 of the Kerala Municipality Act no officer or

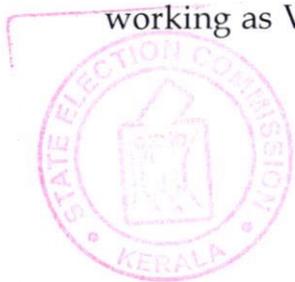


employee in the service of a Board established under a State enactment shall be qualified for election as, or for holding the office of Councillor of a Municipality. The case of the petitioner is that respondent is an employee of Malabar Devaswom Board, which is statutory Board established under the Madras Hindu Religious and Charitable Endowment Act, 1951 and he is liable to be declared as disqualified from continuing as a Councilor of Manjeri Municipality.

7. It is stated by petitioner, who has examined as PW5 that he is a voter of ward No. 49 of the Manjeri Municipality and as a voter he is entitled to file this petition. Ext. A2 is the electoral roll of ward No. 49 of the Manjeri Municipality. Name of the petitioner is shown as serial No.361 of Part I of the electoral roll. As per section 92 of the Kerala Municipality Act, whenever a question arises as to whether a Councillor has become disqualified under section 86 or section 91, except clause (II)] 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. Respondent has no case that petitioner is not a voter of ward No. 49 of Manjeri Municipality. Therefore petitioner is having *locus standi* to file this petition as provided under section 92 of the Act.

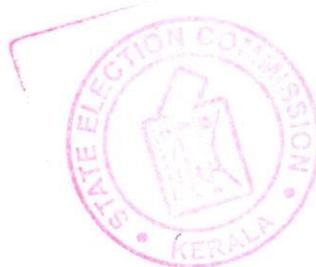
8. Point No. (2) :According to the petitioner respondent incurred disqualification as provided under section 86 of the Kerala Municipality Act. In order to fortify his case petitioner examined PW1 to 5.

PW1, Assistant Commissioner, Malabar Devaswom Board, Kozhikode deposed that Shree Vishnu Karimkalikavu Temple where the Respondent is working as Vazhipadu Assistant Clerk is coming under the jurisdiction of the

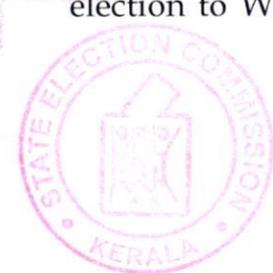


Malabar Devaswom Board, Kozhikode Division. Executive Officer is appointing the temple staff. Executive Officer is the appointing authority of respondent. Executive Officer is appointed by Devaswom Board. The Respondent Viswanathan resigned from the post on 19.11.2020 which was accepted on the same day. In the enquiry report of the Divisional Inspector on the request of the Respondent withdrawing the resignation and request for reappointment. It is stated that he has resigned for contesting the election. He produced the salary statement of temple employees including Shri Vishnu Karimkali Temple in Ernad Taluk of Malappuram District, kept with Malabar Devaswom Assistant Commissioner marked as Exhibit-X1. The letter No.A2/1339/2021/MDB dated 30.10.2021 of Assistant Commissioner, marked as Exhibit-X2 and concerned file pertaining to the re-appointment of respondent which is marked as Exhibit-X3. He stated that the temple is graded as 'D' which comes in the category of low income temples. Devaswom Board is giving grant to temple through Govt. Treasury or Bank account, which is being used for repairs and payment of salary. The Respondent is given with the order treating the period of absence from 19.11.2020 to 30.10.2021 as leave without allowance by the Assistant Commissioner, evident by Exhibit-X2. In the cross examination he has stated that here is an order by the Devasom Board in 2015 permitting its employees to contest the Local Body elections.

9. PW2, Manager, Kerala Gramin Bank, Manjeri Branch produced salary account details of the Respondent with the Bank, is marked as Exhibit-X4. He deposed that there is monthly credit of an amount from the temple. He stated that the amount remitted not from the Devaswom Board account, but from the temple account.



10. PW3 stated that the Respondent contested Local Body Election after resigning from the post of Vazhipadu Assistant of Devaswom Board. He stated the salary to the Respondent is given by the Devaswom Board. PW4, local resident stated that the circular issued by Devaswom Board in 2015 is not applicable for election in 2020. But he has not seen order cancelling 2015 order.
11. PW5, the Petitioner stated that he is a voter of Ward No.49 of Manjeri Municipality and the Respondent is elected to Manjeri Municipality from Ward No.49 in the General Election held in 2020 and the petition filed to declare the Respondent as disqualified to continue as ward Councillor as he is continuing as Vazhipadu Clerk of Shri Vishnu Karimkali temple under Malabar Devaswom Board. He produced the voters list of Ward No.49 of Manjeri Municipality marked as Exhibit-A2. He deposed that he demanded to refuse the nomination paper at the time of scrutiny with the Returning Officer, but the Returning Officer accepted the nomination citing that the Respondent has resigned from the post on 19.11.2020. He produced the explanation given by the Respondent to Returning Officer at the time of nomination is marked as Exhibit-A1 series. However, the Respondent revoked his resignation after becoming as Councillor and on the strength of re appointment order dated 30.10.2021 he is continuing as an employee of Devaswom Board; which is coming under the control of Government of Kerala. In the cross examination, he denied the statement that the salary of the temple is being given by the temple administrative committee and stated that devaswom Board is disbursing salary.
12. The respondent was examined as RW1, he stated that the petitioner in this case was not a candidate in the last General Election to Municipality. The election to Ward No.49 of Manjeri Municipality was held on 14.12.2020 and



Returning Officer declared him as elected on 16.12.2020 and thereafter functioning as a Councillor. He deposed that he was working as a temporary staff of Shri Vishnu Karimkali temple from the year 2010. He was not paid any salary from the temple. In 2017, the temple Executive Officer recommended for the creation of post of Vazhipadu Assistant Clerk which was created by the Assistant Commissioner and he was appointed to the post. He claims that he is an employee of Temple, not that of Devaswom Board. He is getting salary from the Temple Account maintained in the Kerala Gramin Bank. Devaswom Board has no authority in the appointment and giving salary of the Temple employees. Devasom Board has only supervising powers. He has not claimed any salary from the account of Devaswom Board. He has produced a copy of the Circular of Malabar Devaswom Board No.H2/6360/2015/MDB permitting temple employees to contest local body elections, is marked as Exhibit-B1. It is true he resigned from the post of Vazhipadu Assistant at the time of election, since long leave for election campaign might not be granted. After the election realizing that there won't be clash between the work of Councillor and that as Temple Vazhipadu Assistant he applied for withdrawal of resignation and for re-employment, which was granted. He claimed that he is not coming under the purview of Section 86 of Kerala Municipality Act. In the cross examination, he stated that he received the re-employment order from the Temple Executive Officer, not from the Assistant Commissioner of Devaswom Board. He is re-appointed ten months after elected as Councillor. He is maintaining the register recording the income and expenditure of the temple. He stated that he got permission from the Temple authorities to contest the election. He replied to a question that he resigned from the post of Vazhipadu Assistant under the impression



that both work would not be possible. He accepted the job subsequently as public demanded.

13. In this case only question to be answered is whether the post the respondent is holding is, one under the State Government or not.

*In Maulana Abdul Shakur V Rikhab Chand and Another*(1958 3 SCR 387) the factors which were decisive in office of profit are held that (a) the power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor.

14. Admittedly respondent is working as "Vazhipadu Assistant Clerk" in Sree Vishnu Karimkalikavu Temple at Narukara, Manjeri. There is also no dispute that he was contested and elected as councilor in General Election to the local bodies held in December, 2020 and as such he is having a term of 5 years from December, 2020. Respondent himself was examined as RW1. He has produced a Circular dated 12.10.2015 issued by the Commissioner, Malabar Devaswom Board which is marked as Ext. B1, permitting the employees of temple under the Malabar Devaswom to file nomination paper with the concurrence of administrators. But respondent has no case that he filed nomination papers with the concurrence of administrators as stipulated in Ext.B1. However he resigned from the employment of temple on 19.11.2020 since he was not able to take leave for long period in order to have the proper propaganda of the election. After becoming as a Councilor he submitted requests for reappointment. Assistant Devaswom Commissioner as per Ext X2 order dated 30.10.2021 permitted him to rejoin in service treating the period of



absence from 19.11.2020 to date of rejoining duty as Leave without Allowance.

15. Moreover, Ext. B1 is a mere permission to file nomination papers for contesting election issued by Commissioner. It has nothing to do with statutory provisions under section 111 of the Kerala Municipality Act, 1994 governing the qualification of candidate. The qualification or otherwise of a candidate to contest election is determined by the Returning Officer at the time of Scrutiny of nomination paper. Therefore Ext.B1 cannot be relied on for the purpose of determining the qualification of respondent to contest election or his continuance as a councilor.
16. According to the respondent he is not liable for any disqualification under section 86 of the Act. He is an employee of the Sree Vishnu Karimkalikavu Temple and not an employee of Malabar Devaswom Board. His salary allowances are being met by the income derived from the temple. He is not receiving any amount either from Devaswom Board or Government as salary. Respondent is heavily relying the Ext.X4 Statement of accounts issued by Sr. Manager Kerala Gramin Bank Manjeri, which is marked through PW2, to prove that his salary is credited from the account of the temple and not from Devaswom Board. According to him neither Executive Officer of Sree Vishnu Karimkalikavu Temple nor Assistant Commissioner of Devaswom is an appointing authority in case of employees of temple under Madras Hindu Religious and Charitable Endowment Act, 1951. But respondent has not adduced any independent evidence to substantiate his case that he is an employee of temple and not that of Devaswom Board.
17. The Malabar Devaswom Board is constituted under section 7 of the Madras Hindu Religious and Charitable Endowment Act, 1951. As per the preamble



the object of the enactment is to provide better administration and governance of Hindu Religious and Charitable Endowments in the State. By virtue of section 7 Government shall by notification in the Gazette constitute the Board consisting of 9 Hindu members. Council of Ministers shall nominate a member of the Board as its President. Government shall appoint a Secretary to Government as Chief Commissioner to exercise all powers and perform all the duties of the Board under the Act. Section 66 of the Act enables the Commissioner to appoint Executive Officer for every religious institution. The salary and allowances of the Executive Officer so appointed shall be paid from the funds of religious institution. He is a public servant.

18. According to the petitioner respondent is working as Vazhipadu Assistant Clerkin Sree Vishnu Karimkalikavu Temple, which is a temple under Malabar Devaswom Board. He was appointed to the post by Executive Officer, Sree Vishnu Karimkalikavu Temple. PW1 Assistant Commissioner was examined from the side of petitioner. He deposed that respondent is working as Vazhipadu Assistant Clerk in Sree Vishnu Karimkalikavu Temple under the devaswom Board, Kozhikode Division. Executive Officer is the appointing authority of all temple staff including respondent. PW1 clearly stated that Executive Officer has appointed the respondent. Assistant Commissioner is the appointing authority of Executive Officer. Respondent submitted resignation to the Executive Officer on 19.11.2020. He produced the Ext. X1 Salary statement of employees including respondent. He was reappointed as Vazhipadu Assistant Clerk in Sree Vishnu Karimkalikavu Temple by virtue of Ext. X2 orders of Assistant Commissioner. The concerned file pertaining to the re-appointment of respondent is marked as Ext. X3. He stated that the Sree Vishnu Karimkalikavu Temple is graded as 'D' which comes of low income



temples. Devaswom Board is giving grant to the temples for giving salary to its employees. Therefore respondent is appointed by Government and removable by Government and being remunerated by Government.

19. PW1 Assistant Commissioner of Devaswom in his deposition before the Commission categorically said that “വിശ്വനാഥൻ ഉൾപ്പെടെയുള്ള ക്ഷേത്ര ജീവനക്കാർക്ക് ശംഭളം നൽകുന്നതിന് സർക്കാർ അനുവദിക്കുന്ന ഫണ്ടിന്റെ വിഹിതം കൂടി ക്ഷേത്രങ്ങൾക്ക് norms അടിസ്ഥാനത്തിൽ അനുവദിക്കുകയും വിനിയോഗിക്കുകയും ചെയ്യുന്നുണ്ട്”
20. Further, as per section 76 of the Act religious institutions to pay an annual contribution to the Government. However sub section (4) of section 76 provides that the Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of the Act and the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions.
21. Section 81 of the Act empower the Board to constitute a fund called “Malabar Devaswom Fund” Further, in compliance of the directions of Hon’ble High Court in *Re: Temples in erstwhile Malabar area* ( AIR 1995 Ker. 172 ) the Government issued G.O.(MS) No.415/96/RD dated 6.8.1996, unifying the scales of pay of the employees with effect from 01.01.1995. The Government also constituted a separate fund called the 'Malabar Devaswom Management Fund', as per G.O.(MS) No.481/95/Rd dated 10.10.1995. An initial amount of Rs.1 Crore was sanctioned for assisting the needy temples in paying salary to its employees. The amount was enhanced subsequently.



22. Further in W P (C) No. 18537/2020 filed by *E SasidharanEmbrandiri*, who is working as KeezSanthi in *SreeThruppallavoorDevaswom*, ChitturTaluk, against State of Kerala ( Judgment dated 05.07.2022 ) the Hon'ble High Court issued directions the State Government in the following lines

"In my considered opinion, in view of the specific findings and directions in In Re: Temples in the erstwhile Malabar area, it is no longer open for the Malabar Devaswom Board or the Government to contend that they are not vested with the responsibility of paying salary to the temple employees."

.....

"in view of the decision of the Division Bench and the provisions of the Act referred above, the salary of the petitioners is liable to be paid, despite the financial bar fixed by the Government orders. Consequently, the respondents are directed to pay eligible salary to the petitioners as per the pay fixation orders. The necessary funds for this purpose shall be made available by the Government in terms of direction Nos.8 and 9 in In Re: Temples in the erstwhile Malabar area. The arrears of salary due to the petitioners shall be paid within three months of receipt of a copy of this judgment."

In view of the said position it cannot be said that respondent is not receiving any amount from Government, as salary.

23. In *Ashok Kumar Battacharya V Ajoy Biswas and Others*( 1985 SCR (2) 50) held that " The true principle behind this provision that there should not be any conflict between the duties and the interest as an elected member. If such a person is holding an office which brings him remuneration and the Government has voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government .



24. Further, while disposing a question of disqualification under section 86 of the Kerala municipality Act the Hon'ble High Court in *Sulphikar @ SulphikarMayoori V Rafeeq and Others* ( 2018 (5) KHC 927 (DB) held that "the object of section 86(1) is to ensure that a person elected as councilor of a Municipality is utilizing his time for the purpose of serving the Ward and also participate in the meetings of the Municipality without being disturbed in any manner" Therefore the legislative wisdom behind the stringent provision cannot be lost sight while deciding cases.

25. From the evaluation of evidences and circumstances of the case it can be seen that the respondent has incurred disqualification as provided under section 86 of the Act.

In the result the petition is allowed and the respondent is declared as disqualified to continue as a Councilor of Manjeri Municipality as provided under section 86 of the Kerala Municipality Act.

Dated this 22<sup>nd</sup> day of February, 2024

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



**APPENDIX****W/itness examined on the side of the Petitioner**

- PW1 : Sri. Binesh Kumar T.  
 PW2 : Smt. Smeetha S.R.  
 PW3 : Sri. Faisalmon  
 PW4 : Sri. V.P. Jyothindran  
 PW5 : Sri. Munavar P.

**Witness examined on the side of the Petitioner**

- RW1 : Sri. Viswanathan P.

**Documents produced on the side of the Petitioner**

- A1 : Copy of the explanation submitted by Sri. P. Viswanathan to the Returning Officer, Manjeri Municipal Council  
 A1(a) : Copy of the Letter No.E3/Election General/2020 dated 20.11.2020 of the Returning Officer, ManjeriMunicipal Council (from 26-50 wards)  
 A1(b) : Copy of the Resignation Letter submitted by Sri. Viswanathan P. before the Executive Officer, Sri Vishnu Karimakali Temple, Karuvambram.  
 A1(c) : Copy of the proceedings of Executive Officer, Sree Vishnu Karimkali Temple, Karuvambram dated 19.11.2020.  
 A2 : Copy of the Voters List. Manjeri M10046, Malappuram District

**Documents produced from the side of the Respondent**

- B1 : Copy of the Circular No.H2/6360/2015/MDB dated 12.10.2015

**Documents produced on the side of the Witnesses**

- X1 : Document showing the salary details of the employees of Sree Vishnu Karimkali Temple, Karuvambram.



- X2 : Proceedings No.A2/1339/2021/MDB dated 30.10.2021 of Assistant Commissioner, Malabar Devaswom Board.
- X3 : File No.A2/2534/18 of Assistant Commissioner Officer, Malabar Devaswom Board.
- X4 : Copy of the Bank Statement for the A/c No.SBIOI 40208101056051 in respect of Sri. Viswanathan P. at Kerala Gramin Bank, Manjeri (40208).

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

  
**B. SURENDRAN PILLAI**  
Pen No : 101664  
SECRETARY  
State Election Commission  
Kerala, Thiruvananthapuram

