

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

**PRESENT: SHRI.A SHAJAHAN,
STATE ELECTION COMMISSIONER**

Tuesday, the 25th day of February, 2025

O.P. No. 34 of 2021

Petitioner

: Prakashan P.S.
S/o. Subramanian,
Puthukkattil House
Elamthurithi
Kuttanellur P.O.
Thrissur - 680014

(Voter, Ward No. 27,
Thrissur Municipal Corporation)

Respondent

: Shyamala Venugopal
W/o. Venugopal,
House No. 395 A,
Kundoli House
Puthur Grama Panchayat
Marthakara West - 21
Thrissur

(Councillor, Ward No. 27,
Thrissur Municipal Corporation)

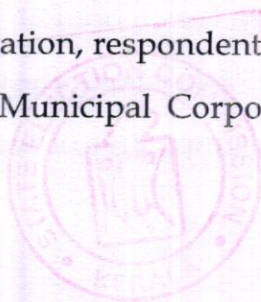
(By Adv. Bobby K. Joseph)

ORDER

This is a petition filed by the petitioner under sections 91 and 92 of the Kerala Municipality Act, 1994 seeking the disqualification of the respondent to continue as an elected Councillor of ward No. 27 of Thrissur Municipal Corporation.

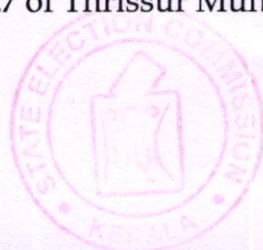


2. The petitioner's case in brief is as follows;- Petitioner is a voter of ward No. 27, Kuttanellur of Thrissur Municipal Corporation. His name is registered in the electoral roll of ward No. 27 as Part No.I, Serial No. 1520 and as such he is competent to file petition before the State Election Commission for determination of disqualification of the respondent. Respondent is an elected Councillor of Ward No. 27 of Thrissur Municipal Corporation, who was elected in the General Election to local self-government institutions held in December, 2020.
3. The case of the petitioner as disclosed from the petition is that respondent was not an ordinarily resident of the ward No. 27 of Thrissur Municipal Corporation at the time of filing her nomination paper for contesting election from ward No. 27. However, respondent managed to include her name in the electoral roll of ward No. 27 for contesting election from ward No. 27 of Thrissur Municipal Corporation by providing false details to the Electoral Registration Officer concerned. Respondent was in fact an ordinarily resident and a voter of ward No. 21, Marthakara West of Puthur Grama Panchayat at the time of contesting election to ward No.27 of Thrissur Municipal Corporation. While so, respondent get her name included in the electoral roll of ward No.27 of Thrissur Municipal Corporation without disclosing the entry of her name in ward No. 21. of Puthur Grama Panchayat. While contesting election as Councillor from ward No. 27 of Thrissur Municipal Corporation, respondent was not qualified to stand as a candidate from ward No. 27 of Thrissur Municipal Corporation. Further, at the time of contesting election from ward No. 27 of Thrissur Municipal Corporation, respondent's name was registered both in ward No. 27 of Thrissur Municipal Corporation and in ward No.21 of



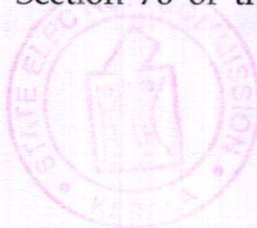
Puthur Grama Panchayat with definite intention to double her votes, in violation of section 75 of the Kerala Municipality Act.

4. As against the inclusion of name of the respondent in the electoral roll of ward No. 27 of Thrissur Municipal Corporation petitioner had filed an objection in Form No. 5 to the Electoral Registration Officer of ward No. 27 of Thrissur Municipal Corporation on 30.10.2020. It further appears from Ext.A5 produced by the petitioner that Electoral Registration Officer after hearing both petitioner and respondent and verification of documents, including the letter issued by the Puthur Grama Panchayat Secretary, passed an order on 18.11.2020 for inclusion of respondent's name in the electoral roll of ward No. 27 of Thrissur Municipal Corporation by rejecting his objection.
5. The consistent case of the petitioner is that respondent was earlier a resident of Thrissur Municipal Corporation, but she had shifted her residence to Puthur Grama Panchayat and has been residing there since last several years. It is for the purpose of contesting election from ward No. 27 of Thrissur Municipal Corporation, the Ext.A7 Rent Deed was created by the respondent and managed to include her name in ward No.27. Respondent was not qualified to stand as a candidate in ward No.27 as she has not satisfied the conditions of registration to electoral roll as provided under section 76 of the Kerala Municipality Act at the time contesting the election. Petitioner seeks the disqualification of the respondent as a Councillor of Thrissur Municipal Corporation.
6. The respondent's case in brief is that;- The original petition is not maintainable either in law or on facts. Respondent denied the allegation in the petition that she was residing at Puthur Grama Panchayat at the time of contesting election to ward No.27 of Thrissur Municipal Corporation and as



such disqualified to contest election. According to respondent she is an ordinarily resident of ward No. 27 of Thrissur Municipal Corporation. She was in earlier a resident of ward No. 21 of Puthur Grama Panchayat and thereafter rented out a building at ward No. 27 of Thrissur Municipal Corporation and residing there since 2020. The original rent deed is produced as Ext. B6. Respondent already submitted a request before the Secretary of Puthur Grama Panchayat for deleting her name from the electoral roll of Puthur Grama panchayat. On 05.10.2019 the Secretary of the Puthur Grama Panchayat issued a certificate of receipt of such a request. Her name was removed from the electoral roll of Puthur Grama panchayat considering her request. Petitioner lacks bonafide's and petition is liable to be dismissed with cost and compensatory cost to the respondent.

7. The evidence in this case consists of oral testimonies of PW1 to PW5, RW1 to RW4 and Exts. A1 to A22, Exts. B1 to B9.
8. Both sides were heard.
9. The following points arise for consideration.
 - (i) Whether the original petition is maintainable before the Commission under section 92 of the Kerala Municipality Act
 - (ii) Whether petitioner got any cause of action against the respondent under any of the provisions of the Kerala Municipality Act
 - (iii) Whether respondent has incurred any disqualification under section 91 of the Kerala Municipality Act.
10. Points No. (i) to (iii);-As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner is a voter of ward No. 27 of Thrissur Municipal Corporation and competent to file a petition under section 92 of the Kerala Municipality Act. Section 76 of the Kerala Municipality Act



provides the conditions of registration in the electoral roll. As per the said provision an ordinarily resident of the ward in a Municipality alone is entitled to register his name in the said ward. According to the petitioner respondent was not an ordinarily resident of ward No. 27 of Thrissur Municipal Corporation. Petitioner filed objection in Form No.5 against the inclusion of respondent's name in the electoral roll on 30.10.2024. The Electoral Registration Officer of Thrissur Municipal Corporation issued notice of hearing to both petitioner and respondent and conducted a summary inquiry into the claim and objection on 05.11.2020. The Electoral Registration Officer afford hearing to both the petitioner and respondent. During the hearing petitioner submitted his case that respondent is residing at Puthur Grama Panchayat and her name is already included in ward No. 21 of Puthur Grama Panchayat. However, respondent submitted her case that she is residing in House No. TMC/UA/27/1742/1 of Thrissur Municipal Corporation for the last 6 months. She is residing there along with her family. The request of the petitioner to remove her name alone from the electoral roll, leaving the names of family members is politically motivated one. Further, she filed application for deleting her name from ward No. 21 of Puthur Grama panchayat, where she was previously resided. Respondent has furnished a copy of application for deletion submitted by her to the Electoral Registration Officer of Puthur Grama Panchayat. After hearing both the parties and perusing the documents Electoral Registration Officer of Thrissur Municipal Corporation has taken decision on 18.11.2020 to retain the name of the respondent in the electoral roll of ward No. 27 of Thrissur Municipal Corporation. The copy of the objection, depositions of the petitioner and respondent and orders passed thereon are produced from the side of petitioner as Ext A5.



11. A person aggrieved by the decision or orders of the Electoral Registration Officer is entitled to file appeal before the Regional Joint Director under rule 22 of the Kerala Municipality (Registration of Electors) Rules or District Election Officer under section 81 of the Kerala Municipality Act, as the case may be. However, petitioner has not preferred any appeal against the order dated 18.11.2020. Therefore, the order of the Electoral Registration Officer become final. As person shall be qualified for being nominated in an election if his name appears in the electoral roll of any of the constituency of the respective local authority by virtue of Section 85 of the Kerala Municipality Act.
12. In *R Chandran V M V Marappan* (AIR 1973 SC 2362) the Supreme Court of India held that once a person's name has been included in the electoral roll, his qualifications to be included in that roll cannot be questioned either when he tries to cast his vote or to stand for election or even after the election is over. The electoral roll is conclusive as to the qualifications of the elector. The Supreme Court held that all the decisions of the Supreme Court on the finality of the electoral roll and they are not being liable to be questioned would be equally apply to the electoral roll of the local bodies.
13. Another contention put forth by the petitioner is that name of the respondent appears in the electoral rolls of both ward No. 21 of Puthur Grama panchayat and ward No. 27 of Thrissur Municipal Corporation. As per section 75 of the Kerala Municipality Act a person registered in the electoral roll of a ward of a Municipality shall not be entitled to be registered in the electoral roll for any other ward of a Municipality or any other Municipality or any constituency of a Grama Panchayat. The respondent has violated the provisions of section 75 of the Kerala Municipality Act.



14. The Hon'ble High Court in *M A Vaheed V Jobai Silva and Ors* (AIR 1998 Kerala 318; (1998 1 KLT 645) examined the above aspect and held that "there is no legal bar for the voter to exercise his right for the reason that his name is found in two places, provided that he votes only in one place. If he cast his vote in more than one place, all such votes shall be void. The legislature has viewed the possibility of a person continuing in more than one ward according to his place of residence or his place of business etc. Therefore, mere presence of a name in more than one ward is not illegal. The provisions dealing with disqualifications do not include such double entry as a disqualification."
15. In effect, the petition made by the petitioner before the Commission is against the election of the respondent. In such cases, election petition before the designated Court is the only remedy available to the petitioner. Section 163 the Kerala Municipality Act provides that no election shall be called in question, except by an election petition presented in accordance with the provisions of Chapter X of the Kerala Municipality Act.
16. However, petitioner filed this petition by invoking the section 92 of the Kerala Municipality Act for determining the disqualification of the respondent being a Councillor of the Municipality. Section 92 reads as follows:-
- "92. Determination of subsequent disqualification of a Councillor.-(1)** Whenever a question arises as to whether a Councillor has become disqualified under section 86 or section 9, except clause (ll) after having 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."

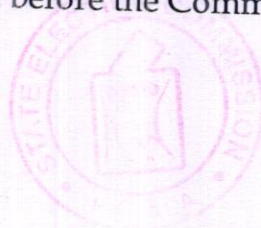


17. Petitioner has no case that respondent after having been elected as Councillor incurred any disqualification. The allegations in the petition is with regard to the disqualification incurred by the respondent prior to his election as Councillor.

18. In *Marykutty Mathew V State Election Commission* (2003) 1 ILR (Ker) 221 the Hon'ble High Court held that:-

"It is clearly provided in section 36 of the Kerala Panchayat Raj Act (corresponding to section 92 of the Kerala Municipality Act) that only those questions regarding disqualification under section 30 or section 35, after having been elected as a member are referable to the State Election Commission. In other words, once a candidate is elected as a member, even assuming he had at the time of election, incurred disqualification under section 30 or 35 of the Kerala Panchayat Raj Act, it is not for the State Election Commission to embark upon an enquiry regarding such disqualification after the election. The jurisdiction of the State Election Commission is confined to disqualification incurred after having been elected as a member. As far as the pre-election disqualification is concerned, the jurisdiction to adjudicate such issues is on the designated courts.

The jurisdiction of the Commission under section 36 is to determining questions in respect of disqualifications incurred after having been elected as a member. The State Election Commission has no jurisdiction to entertain a petition with regard to a disqualification already incurred by a member under section 30 or 35 of the Act (corresponding to section 86 or 91 of the Kerala Municipality Act) prior to the election. Even in cases where such disqualification already incurred before the election continues to exist, the Commission has no jurisdiction to consider the matter. Therefore, the original petition is not maintainable before the Commission.



19. As a necessary corollary to the dictum laid down in the above case, section 86 and 91 are the only provisions by which a Councillor become disqualified after having elected as Councillor of the Municipality. As per section 91 (1) (m), a Councillor shall cease to hold office as such if he is disqualified under any other provisions of the Kerala Municipality Act. On going through the provisions of the Kerala Municipality Act it seems that the disqualification of a person to stand as a candidate in an election does not come under the ambit of either section 86 or 91 of the Kerala Municipality Act or come under scope of enquiry under section 92 of Kerala Municipality Act. Therefore, petitioner has no cause of action against the respondent.

Therefore, respondent has not incurred any disqualification under section 91 of the Kerala Municipality Act as alleged by the petitioner.

In the result, Original Petition is dismissed. However, considering the peculiar facts and circumstances of the case, no orders of cost or compensatory cost as against the petitioner.

Pronounced before the Commission on the 25th day of February 2025.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



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

PW1 : Prakashan P.S.

PW2 : Rajan K.V.

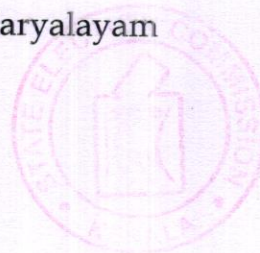
PW3 : Bindhu Kumari V.

PW4 : Himesh M.P.

PW5 : Nineesh M.V.

Documents produced on the side of the Petitioner

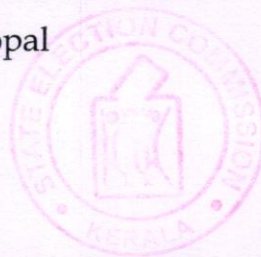
- A1 - Copy of voters list 2020 regarding G08030-Puthur
- A2 - Copy of voters list 2020 regarding C08004-Thrissur
- A3 - Copy of the application submitted by Sri. Prakashan P.S. to Electoral Registration Officer, Thrissur Municipal Corporation dated, 05.11.2020
- A4 - Copy of the letter dated, 05.11.2020 submitted by Sri. Prakashan P.S. to District Collector, Thrissur
- A5 - Copy of the letter dated, 09.11.2020 submitted by Sri. Prakashan P.S. to Electoral Registration Officer, Thrissur Municipal Corporation
- A6 - Copy of the letter submitted under RTI Act, dated 08.02.2021 by Sri. Prakashan P.S. to Electoral Registration Officer and Additional Corporation Secretary, Thrissur Municipal Corporation
- A7 - Copy of the Rental Agreement between Aravindakshan P.K., Salabha Aravindakshan and Syamala Venugopal dated, 30.10.2020
- A8 - Copy of the certificate dated 05.10.2019 issued by Secretary Puthur Grama Panchayat
- A9 - Copy of the letter submitted under RTI Act by Sri. Prakashan dated, 12.03.2021
- A10 - Copy of the letter No. OLR 1 -15521-21 dated, 08.04.2021 issued by Superintendent Ollur Mekhala Karyalayam



- A11 - Copy of the letter submitted under RTI Act by Sri. Prakashan to Assistant Engineer, KSEB, Nadathara dated, 13.03.2021
- A12 - Copy of the letter dated 03.05.2021 submitted by Prakashan P.S. to District Collector, Thrissur
- A13 - Receipt in Petition No. 77570/2021 dated, 29.06.2021
- A14 - Copy of the Petition dated, 01.10.2021 submitted by Prakashan P.S. submitted to Commissioner of Police, Thrissur
- A15 - Copy of the letter submitted under RTI dated, 06.10.2021 to the Secretary, Puthur Grama Panchayat by Prakashan P.S.
- A16 - Copy of the letter issued by SPIO & Junior Superintendent (Election), Collectorate, Thrissur to Sri. Prakashan P.S. dated, 09.11.2021.
- A17 - Copy of the letter submitted by Smt. Syamala Venugopal to Tahsildar and ERO Ollur, Thrissur dated, 27.11.2021
- A18 - Copy of the letter No.129/2021 dated 03.11.2021 issued by Village Officer, Marathekkara to Electoral Registration Officer, and Tahsildar, Thrissur
- A19 - Copy of the letter submitted by Prakashan P.S. to Electoral Registration Officer and Tahsildar dated, 23.12.2021
- A20 - Copy of the letter No. E-2-12345/2021(2) dated, 07.12.2021 issued to Smt. Pankajam V.K.
- A21 - Copy of the letter No. E2-12345/2021dated, 11.02.2022 issued by Electoral Officer and Tahsildar Thrissur to Sri. Prakashan P.S.
- A22 - Copy of the Petition dated 27.04.2022 submitted before the Judicial First Class Magistrate, Thrissur

Witness examined on the side of the Respondent

RW1 : Smt. Syamala Venugopal



PRAKASH B.S.
PEN No : 101482
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram