BEFORE THE KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN, STATE ELECTION COMMISSIONER

Thursday, the 23rd day of October, 2025

O.P. No. 01 of 2025

Petitioner	:	Smt. Suni Kailasan, W/o kailasan, Mekkara House, Thengode P.O, Kakkanad Kochi - 682030 Ernakulam District (Councilor, Ward No. 06 Thrikkakkara Municipality) **(Adv. K. R. Vinod)**
Respondent	:	Secretary, Thrikkakkara Municipality

ORDER

This petition is filed under Section 92(1) of the Kerala Municipality Act by the petitioner, who is a Councilor of Ward No.6 of the Thrikakkara Municipality, challenging Exhibit A2 notice issued by Respondent Secretary, Thrikkakkara Municipality intimating her that she ceased to be a Councilor of Thrikkakkara Municipality under Section 91(1)(k) of the Kerala Municipality Act.

2. The petitioner's case in brief is as follows. The petitioner is the elected Councilor of Ward No.6 of Thrikkakkara Municipality in the election held in December, 2020. While so, on 13.12.2024 she was served with a notice issued by the Respondent herein by which she was disqualified to continue as Councilor of the Municipality under Section 91(k) of the Kerala Municipality Act, upon the reason that she was consecutively absent from the meeting of Municipality for more than three months. The copy of the notice dated 13.12.2024 is marked as Ext. A2. According to the petitioner Ext. A2 notice is not maintainable either in law or on facts. She had attended the meetings of the Municipal Council without any default. It is submitted that the last three Council meeting of Thrikkakkara Municipality was held on 13.11.2024, 22.11.2024 and 10.12.2024. The petitioner had attended the said meetings without any fail. Petitioner contended that for counting the attendance of petitioner in the Standing Committee meeting of three consecutive months, ought to have been counted backwards from 13.12.2024 as she was issued Ext A2 notice of disqualification dated 13.12.2024 after her attendance in the meeting held on 10.12.2024. Hence there was no continuous absence of the petitioner in attending the Council meeting for three consecutive months prior to the issuance of notice under Section 93 (2) of Kerala Municipality Act. Copy of the Attendance Register is Marked as Exhibit A3. Vide information obtained under Right to Information Act by the petitioner, on 15.01.2025, it was informed on the query No.6, by the State Public Information Officer, that petitioner was absent for the Council meetings held on 12.09.2024, 19.10.2024, 13.11.2024 and 22.11.2024. She further contends that Section 93(2) of the Kerala Municipality Act categorically mandate the Secretary to intimate the fact to the person at once that a person cease to be Councilor under clause (k) of Section 91. She attended the next meeting on 10/12/2024. Hence the notice dated 13.12.2024 is illegal. Ext A2 notice has never stated the period of absence of the petitioner in attending the Standing Committee meeting

but vaguely stated that she has failed to attend Council meeting for a continuous period of three months. The impugned notice under challenge itself is not a proper notice as provided under the Act and Rules.

3. Respondent filed objection as follows: - It is true that notice was issued under Section 91 (k) and 93(2) of the Kerala Municipality Act, for disqualifying the petitioner from holding the office of Councilor. It is solely based on the statutory grounds. Respondent remained absent from the committee meeting held on 11.03.2024, 14.03.2024, 04.05.2024 and 14.05.2024 respectively she didn't inform about her leave of absence during those days and no application was submitted before the Council for granting the approval. The attendance register dated, 28.10.2024 produced by the petitioner is a forged one. The petition is not maintainable before the Commission.
4. The evidence in this case consists of documents viz Ext. A1 to A15.

   From the pleadings following points arise for consideration;

   I. Whether the petitioner failed to attend the meetings of the Municipality for a period of the three consecutive months.
   II. Whether respondent Secretary has complied with the provision of Section 93(2) of Kerala Municipality Act, 1994.
   III. Whether the petitioner incurred disqualification as provided under Section 91(k) of the Act as alleged.

5. Point No.1, 2 & 3;- this petition is filed under section 92(1) of the Kerala Municipality Act to declare that the petitioner incurred disqualification under Section 91(1)(k) of the Kerala Municipality Act. Petitioner is the elected Councilor of Ward No.06 of Thrikkakkara Municipality. Respondent is the Secretary of Thrikkakkara Municipality. The petitioner filed this original petition under Section

92 of the Kerala Municipality Act Challenging Ext. A2 intimation issued by the Respondent intimating the petitioner that she ceased to a Councilor of the Thrikkakara Municipality as she failed to attend the meeting of the Municipal Council for a consecutive period of three months.

6. As regards of Exhibit A2 notice issued by the respondent under Section 93(2) informing the cessation of membership of the petitioner in the Municipality, it does not contain the details of three consecutive meetings which is counted against the petitioner. The Ext. A2 also lacks material particulars such as frequency of meeting viz whether due once in a month meeting were held during the said period and whether it is ordinary meeting or urgent meeting etc. Further, the relevant materials such as issuance of three clear days' notice to the petition and the mode of service to the petitioner were also not stated in Ext A2 notice. The petitioner who allegedly incurs disqualification on account of Section 93(2) is having every right to know such details to agitate the matter before the Commission by filing a petition under Section 91(1). Withholding as such relevant information from the petitioner is definitely not the intention of Section 93 (2) of the Act and it caused serious prejudice to the petitioner in challenging the action of respondent. Hence Ext A2 notice appears to be defective.
7. As per Section 91 (k) of the Kerala Municipality Act, the period of three consecutive months for which as member is absent is to be reckoned from the last Committee meeting that she attended or the restoration of the office as member under sub-section (2) of Section 93 as the case may be. In the OP, petitioner has alleged noncompliance of the provision of Section 91(1)(k) of the Kerala Municipality Act while issuing the impugned Ext A2 notice.

   Section 91(1)(k) read as follows.

   91. "Disqualifications of Councilors, - *(1) Subject to the provisions of Section 92 or Section 178, a Councilor shall cease to hold office as such, if he.*

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(k) absents himself without the permission of the Municipality concerned from the meetings of the council of the Standing Committee as the case may be, for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of the restoration to a office, as member under sub-section (1) of Section 93, as the case may be, or if within the said period of three months, less than three meetings have been held, absents himself from three consecutive meetings held after the said date: Provided that no meeting from which a Councilor absented himself shall be counted against him under this clause if.-

(i) due notice of that meeting was not given to him; or

(ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or

(iii) the meeting was held on a requisition of Councilors;"

Provided further that the Municipality in no case, shall give permission to a Councilor from not attending the meetings of the council or the Standing Committee for a continuous period exceeding six months.

8. Now let us verify whether the meetings referred to in Ext.A2 were properly convened and the notice issued were proper. To attract the provision of Section 91(1)(k) of the Kerala Municipality Act certain conditions are to be satisfied. Firstly, the member should absent himself from the meeting of the Council or of the Standing Committee of which he/she is a member for a period of three consecutive months reckoned from the date on which his term of office starts or of the last meeting which he attended. Secondly due notices of those meetings should have been served to him and such meetings were not held on requisition of Councilors. There should have been three meetings within the period of the above three months. It is to be stated that if within the said period of three months only less than three meetings of the Council and Standing Committee have been held the member should have been failed to attend the meetings of the subsequent three consecutive months to attract disqualification. The said period three

consecutive months is to be calculated on the basis of the month starting from the date of the meeting he last attended. This position has been clarified in the decision reported in 2010 (3) KLT 315 (Krishnakumar. V. Kerala State Election Commission) after referring several decisions of the Hon'ble High Court and Supreme Court as Paras 11 and 12 it was held as below.

"11. It is clear from the principles laid down in the above decisions that the word "month" has to be reckoned and the period has to be computed in the light of the language employed in the provision itself. When a particular date which is not the first of the months has to be reckoned, the first month will have to be computed by reckoning the said factor. When the period has to be counted from a date which is not the first day of the month, the method of computation as described in Halsbury's Laws of England has to be adopted which is the safest method. This is clear from the decisions in Daryoth Sigh's case, Bibi Salma Khatoon's case and Surabhi's case. In all these three cases the word "month" is qualified by the words "from the date" etc. Therefore, when the word "month" is followed by such an expression indicting the date from which it has to be computed, the principles stated in the above three decisions will squarely apply and the period will expire upon the day in the succeeding month corresponding to the date upon which the period starts. Evidently, in Surabhi'scse (supra), this Court considered and identical situation like one herein, wherein under the Land Acquisition Act, viz Section 28A(1), the application had to be made within "three months from the date of award of the Court". Therefore, the calendar month has to be reckoned from the date of the award. The Apex Court in Bibi Salma Khatoon's case (supra), also has considered a similar issue. Therefore, the said dictum alone will apply to the facts of this case. The decision of this Court in Radhakrishnan's case, was one considering a case where the wording of Section 33(1) of the Kerala Co-operative Societies act, 1969 was not the like one in Section 35(k) of the Panchayat Raj Act. Therefore, it is in that context this Court said that when 'month' followed by the words, "consecutively six months" has to be reckoned based on British calendar, till the end of the six months period.

12. Herein, going by the facts of the case, the last meeting which the petitioner had attended, was on 16.10.2008. The notice Ext P1 was issued on 24.01.2009. Therefore, reckoned from the date 16.10.2008, on which he last attended the meeting and even excluding one day, the period of three months will expire before 24.01.2009, the date of Ext.P1 notice. It is not as if the Secretary should have waited till the end of the January, ie., 31.01.2009. Therefore, the contentions raised by the petitioner that the notice itself is without jurisdiction, cannot be accepted".

9. As per Section 91(1) (k) of the Kerala Municipality Act the period of three consecutive months for which a Councilor is absent is to be reckoned from the date of meeting on which a member had last attended. The details of last meeting attended by the petitioner and the meetings which were absented by her are not there in Ext A2. Even in the objection filed by the respondent does not contain the details of meeting last attended by the petitioner. What is stated in Ext.A2 is that the petitioner failed to attend the meetings of the Standing Committee continuously for three months. The specific dates are not mentioned in Ext.A2 notice. Which was the meeting the petitioner attended last is also not there in Ext.A2. The absence of three consecutive months is to be calculated from the date of the last meeting the petitioner attended. Without knowing that, the date of the period of three consecutive months and the date of the alleged disqualification cannot be calculated. That is necessary for verifying whether the meeting held and the defaults were as stated in Section 91(1)(k) of the Kerala Municipality Act.

10. Going by the provisions of Section 91 (1) (k) it seems that in order to attract the penal provisions, a member should have absent himself from the meeting of committees of which he is a member for a period of three consecutive months. Even admitted the version of the respondent Secretary in the objection filed by him petition was remained absent from committee meetings held on 11.03.2024, 14.03.2024, 04.05.2024 and 14.05.2024. The respondent himself has no

case that petition remained absent for consecutive three months. Therefore, this is not a fit case for disqualifying the petition under Section 91 (k) of the Act,

11. Further, it may be noted that the meetings held after giving shorter notice and the meetings held on a requisition by the Councilors will not be counted against the Councilors for the purpose of Section 91(1)(k) of the Act. The respondent has not produced the notice book, attendance register, and the minute's book of the meetings to verify those matters. Without getting the date of the meeting the petitioner attended last the date on which the period of three consecutive months starts and ends and whether the meeting due once in a month was held as required to attract Section 91(1)(k) of the Act cannot be found out. The respondents have not taken any steps to justify the issuance of Ext. A2 notice.

12. As per Section 91(1)(k) of the Kerala Panchayat Raj Act, the period of three consecutive months for which a member is to be reckoned from the date of the meeting on which the member had last attended. It is in evidence that the petitioner attended the meeting of the council held on 10.12.2024. Ext. A3 copy of the Attendance register would show that the respondent attended the Council meeting held on 10.12.2024. So as per Section 91(1)(k) of the Act, the period of three consecutive months would fall on 10.03.2024. The first month will be the period in between 10.12.2024 and 10.01.2024, then between 10.01.2025 and 10.02.2024 and the then consecutive month will be period between 10.02.2025 and 10.03.2024. It may be noted that in the third month starting from 10.02.2024 to 10.03.2024, no meeting was admittedly held in this case. So, it cannot be said that there were proper meetings and absence as stated in 91(k) of the Kerala Municipality Act and therefore the absence for a period of three consecutive months due once in a month does not arise in this case. Anyway, a detailed discussion on that aspect is not necessary in this case, as it is already found that there was no absence of consecutive meeting for three months as alleged and

no proper notice to the petitioner under Section 93(2) of Kerala Municipality Act.

13. It is evidenced that Ext.A2 is defective, since it has never stated the period of absence of the petitioner in attending the council meeting, the petitioner obtained the details of her absence in the council meeting under the provision of Right to Information Act, through another councilor and produced as Ext.A14. As per the information dated 15.01.2025 under RTI to the query No.6 about the date of absence in the council meeting which leads to the issuance of 93(2) notice, it is evidenced as 11.03.2024. 14.03.2024, 04.05.2024 and 19.06.2024. After the disqualified date, she attended 12 meetings of, in which the meeting dated 10.12.2024 was the last meeting before the issuance of 93(2) notice dated 13.12.2024. If a person absents herself from the prescribed number of meetings, anything more, he will cease to be a member. In Pradeep Kumar P.R V Chengannur Municipality, the Hon'ble High Court held that if a Councilor is continued to be at membership despite of being absent from attending the meeting for more than three consecutive months, the Secretary has not exercised his power of disqualification and it would be deemed that the council which is empowered to restore his membership under section 93(2) of the Act, has restored his membership and hence the petitioner could not have been proceeded against or prevented from participating in the meeting. Here the petitioner attended the meeting on council held on 10.12.2024. Hence taking into consideration the decision of the Hon'ble High Court in Pradeep Kumar's case and also the provision of the Section 93(2) the petitioner is deemed to have restored his membership and she continued to attend the meeting of the Council till 10.12.2024.

14. Notice under Section 93(2) of the Kerala Municipality Act, categorically mandates that upon the failure of a councilor in attending the Council meeting for a consecutive period of three months, action shall be taken under 91(1)(k) of the Act and intimate the said fact to the

delinquent councilor at once. Ext A2 is the Communication issued by the respondent under Section 93(2) of the Act to intimate the cessation of her membership is dated 13.12.2024.

15. From the available evidence and circumstances, it is not possible to say that the petitioner has incurred the disqualification put forward against him. Therefore, I hold that the petitioner has not ceased to be a Councilor of Thrikkakara Municipality as alleged. Ext.A2 notice issued by the respondent is not proper and legal and it is not sustainable in law. Points are answered accordingly.

16. In the result, the petition is allowed and Ext. A2 is declared not proper and legal. The petitioner is allowed to continue as a Councilor of Thrikkakara Municipality.

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

APPENDIX

Documents produced on the side of the Petitioner

A1 - Copy of ID Card issued by Secretary, Thrikkakkara Municipality to Smt.Suni Kailasan, Councilor, Ward No.6 Thrikkakkara Municipality

A2 - Copy of the letter No.2698243/2024 dated 13/12/2024 issued by Secretary, Thrikkakara Municipality to Smt.Suni Kailasan

A3 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 13/11/2024 (Relevant page)

A4 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 27/11/2024 (Relevant page)

A5 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 10/12/2024 (Relevant page)

A6 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 05/09/2024 (Relevant page)

A7 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 11/09/2024 (Relevant page)

A8 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 04/10/2024 (Relevant page)

A9 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 23/10/2024 (Relevant page)

A10 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 28/10/2024 (Relevant page)

A11 - Copy of the letter dated 16/12/2024 & copy of Hospital documents from Suni Kailasan, Councilor, Ward No.06, Thrikkakara Municipality to Secretary, Thrikkakara Municipality.

A12 - Copy of the minutes of ordinary meeting of Thrikkakara Municipality

dated 06/01/2025.

A13 - Copy of the letter No.C1-2835899/2024 dated 13/01/2025 issued by Municipal Secretary, Thrikkakara Municipality to Smt.Suni Kailasan.

A14 - Copy of the letter No.P1/100632/2025 dated 15/01/2025 issued as per RTI Act to Smt. Usha Praveen.

A15 - Copy of the attendance register of Councilors of Thrikkakara Municipality dated 27/05/2024 (Relevant Page)

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

//True Copy//

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SECRETARY
State Election Commission
Kerala, Thiruvananthapuram