

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 5th day of July 2019

O.P.No.57/2017

Petitioner : Aravindakshan K.R,
KoovakadanHouse,
Near KSRTC Stand,
Chalakkudy
Thrissur District – 680 307.

(By Adv. AjithKumar.S)

Respondent : U.V.Martin,
Councillor, Ward No.21,
Chalakkudy Municipality,
Thrissur District, PIN: 680 307

(By Adv. Fathahudeen)

This petition having come up for hearing on the 21st day of June 2019, in the presence of **Adv.AjithKumar.S** for the petitioner and **Adv.Fathahudeen** for the respondent and having stood over for consideration to this day, the Commission passed the following ,-

ORDER

This is a petition filed under Sections 92 r/w 91(1)(j) of the Kerala Municipality Act for a declaration that the respondent is disqualified to continue as a Councillor of Chalakkudy Municipality.

2. The petitioner's case in brief is as below,- The petitioner is a voter of ward No.21 of Chalakkudy Municipality and the respondent is the elected Councillor of that ward in the election held in November 2015. The respondent is corrupt and he has violated the election Rules. He and his family members own unauthorised buildings constructed without taking permits from the Municipality. He is not paying building tax for the buildings owned by him despite demand notice. A sum of ₹11,30,316/- was due from the respondent by way of building tax when he contested the election held in November 2015 to the Chalakkudy Municipality. The said amount was paid only on 31.03.2016 though notice demanding the tax was issued to him on 01.03.2014 ie., before the local body election in 2015. At the time of filing nomination and election he was a defaulter and as he kept the tax in arrears at the time of filing nomination he is liable to be disqualified invoking Section 91(1)(j) of the Kerala Municipality Act. He did not disclose the details of all of his properties when he submitted his nomination paper on 15.10.2015 as a candidate. His property in Survey Nos.291/2 and 201/3 of Chalakkudy Village were not shown in the nomination paper.

3. The respondent filed counter statement contending as below,- The petition is not maintainable. The allegations raised in the petition are the ones which ought to have been raised in an election petition filed before a competent court within the prescribed time. The allegations that the respondent is involved in corrupt practices nepotism, mal-administration are all false.

Further, those allegations are not grounds to disqualify a MunicipalCouncillor under Section 91(1)(j) of the Kerala Municipality Act. It is not correct to say that the respondent and his family members own unauthorised buildings constructed without permits. The averment that the respondent kept the building tax in arrears at the time of his election is false. No demand notice for tax was issued to him as alleged. It is not correct to say that the respondent has not disclosed all of his property in the nomination paper. He has disclosed 9 acres 33 cents of land as 36 items as an appendix to his nomination paper. His 1/3 right over 21 cents of property and 12.65 cents of property purchased by the respondent's father in the names of his three children was omitted to be included as he was not aware of the purchase by his father at the time of filing the nomination. The allegations in the petition are false, frivolous and vexatious. There is no merit in the petition and it is only to be dismissed.

4 The evidence in this case consists of the oral testimonies of PW1 and PW2 and Exts.A1 to A23 and X1 to X10.

5. Both sides were heard.

6. The following points arise for consideration.

- (1) Whether the petition is maintainable?
- (2) Whether the respondent has become subject to disqualification under Section 91(1)(j) of the Kerala Municipality Act as alleged?
- (3) Whether the petitioner is entitled to the declaration prayed for?

(4) Reliefs and costs?

7. **POINT Nos.1 to 4:** As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. Respondent is an elected Councillor of Chalakkudy Municipality in the election held in November 2015 and he represents ward No.21. According to the petitioner he is a voter of ward No.21 of Chalakkudy Municipality and as a voter he is entitled to file this petition. But to show that the petitioner is a voter of ward No.21 there is absolutely no evidence in this case except the oral version of the petitioner as PW1. He did not produce any document to show that he is a voter of ward No.21. The petitioner could have produced a copy of the voters list relating to his ward as the respondent has a contention that the petitioner is not a voter of ward No.21. PW1 was specifically cross-examined on that aspect.

8. As stated above this is a petition filed under Section 92 of the Kerala Municipality Act. As per Section 92 of the Act a petition like this can be filed only by a Councillor of the Municipality or any person entitled to vote at the time of election in which the Councillor was elected. As per the proviso to Section 92(1) the Secretary of the Municipality or any officer authorised by the Government in this behalf may refer the dispute to the State Election Commission. Though the petitioner claims to be a voter of ward No.21 of Chalakkudy Municipality there is no evidence to substantiate his claim. As there is no evidence to show that the petitioner is a voter of ward No.21 he

has no locustandi to file this petition. The petitioner is not entitled to file a petition like this against the respondent and on that ground itself it is to be held that the petition is not maintainable.

9. Even assuming that the petitioner is a voter of ward No.21 the State Election Commission has no jurisdiction to consider this petition as the disqualification alleged in the petition is a pre-election disqualification. Case of the petitioner is that the respondent kept the building tax due to the Municipality from 01.04.2011 onwards in arrears at the time of filing the nomination. Notice demanding the building tax due as above was issued to the respondent on 01.03.2014. Though demand notice was issued on 01.03.2014 payment was made only 31.03.2016. As the building tax due from the respondent was in arrears at the time of filing the nomination as a candidate and he failed to pay the arrears despite notice to him the respondent is liable to be disqualified under Section 91(1)(j) of the Kerala Municipality Act, the petitioner further contends. Even according to the petitioner the respondent had the disqualification at the time of filing the nomination itself and the election. So it is a pre-election disqualification.

10. The State Election Commission has no jurisdiction to entertain a petition with regard to a disqualification already incurred by a member prior to the election and even continues to exist, as held in the decision reported in 2002(3)KLT 773 (Marykutty Mathew V. State Election Commission).

11. As per Section 92 of the Kerala Municipality Act only those questions regarding disqualification under Sections 86 or Section 91 except clause (II) after having been elected as a Councillor are referable to the State Election Commission. Once a candidate is elected as a member, even assuming that he had at the time of election incurred disqualifications under Sections 86 or 91 of the Kerala Municipality 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 only on designated Courts. While dealing with similar provisions in the Kerala Panchayat Raj Act the Hon'ble High held in Paras 7 and 8 of the above decision as below:-

7. It is pertinent to note that Section 36 provides for "Determination of subsequent disqualification of a member" and it is clearly provided in the Section that only those questions regarding disqualification under Section 30 or 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 disqualifications under Section 30 or Section 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. Needless to say, in case a member accepts employment in a Cooperative Society, it is a matter for the Commission to consider, being a post election disqualification.

8. *As far as the pre-election disqualification is concerned, the jurisdiction to adjudicate such issues is as provided under Chapter X, comprising of Section 87 to 119. Disputes Regarding Election, is on the designated courts. Section 87 dealing with election petitions provides that “No election shall be called in question except by an Election Petition presented in accordance with the provisions of this Chapter”. Section 88 deals with designated Courts,- the Munsiff Court or the District Court, as the case may be Section 102 deals with the grounds. Section 102(1)(a) is the ground on disqualification- “that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act”. Since all the petitioners are elected members, the questions pertaining to their qualification or disqualification as on the date of election, being a pre-election issue, can be decided only in an Election Petition by the designated court under Section 88 of the Act.*

Same was the view expressed by the Hon’ble High Court in an earlier decision reported in 1999 (3) KLT 754 (AntappanV.Asokan).

12. It may be noted that even according to the petitioner the alleged demand notice was issued to the respondent much prior to the election of the

respondent as Councillor of Chalakkudy Municipality. So the disqualification alleged must be there at the time of the election itself. As the disqualification incurred by the respondent was prior to the election, the State Election Commission has no jurisdiction to consider that matter in a proceedings under Section 92 of the Kerala Municipality Act.

13. It may also be noted that all the three demand notices dated 01.03.2014 and mentioned in the petition and marked as Exts.A1 to A3 were issued in the name of U.A.Varghese, the father of respondent. Exts.A1 to A3 notices were not issued in the name of the respondent. PW1 also admitted the said fact. Section 91(1)(j) reads as below,-

91. Disqualification of Councillors,- (1) Subject to the provisions of Section 92 or Section 178 a Councillor shall cease to hold office as such if he

(j) is in arrears of any kind due by him (otherwise than in a fiduciary capacity) [to the Government or to the Local Self Government Institutions up to and inclusive of the previous year] in respect of which a bill or notice has been duly served upon him and the time if any, specified therein, has expired

14. To attract Section 91(1)(j) of the Act there must be arrears due from the respondent, demand notice should have been served upon him and there must be failure on his part to clear the amount of arrears. There was no such demand notice to the respondent in this case. Exts.A1 to A3 demand notices

were admittedly in the name of the respondent's father. At the time of evidence PW1 has a case that a demand notice dated 22.08.2014 was issued to the respondent demanding building tax in respect of a building bearing No.XX1/UA 8A. Ext.A18 is the copy of the said notice. Ext.X7 is also a copy of the said notice. But there is no evidence to show that the said building belongs to the respondent. Further, the evidence of PW2 the Secretary of Chalakkudy Municipality examined on the side of the petitioner would show that the respondent is not the owner of the said building. PW2 has produced Ext.X10 copy of the building tax Assessment register and Ext.X10 would show that the owner of the above building bearing number XX1/UA8A is U.A.Varghese and not the respondent. So Ext.A18/X7 also will not help the petitioner in this case in the light of the evidence of PW2 Secretary and Ext.X10 document. It is further to be stated that Ext.A18 demand notice was also issued much prior to the respondent's election as a Councillor of Chalakkudy Municipality in November 2015.

15. Another contention put forward by the petitioner is that the respondent has not shown all of his properties in the declaration submitted along with his nomination paper and the declaration submitted was false. Even assuming that there was falsity in the declaration or omission on the part of the respondent as alleged at the time of filing the nomination paper that also is a matter to be agitated in an election petition filed before the competent court within the prescribed time as it is a pre-election disqualification. The State

Election Commission has no jurisdiction to deal the same under Section 92 of the Act.

16. It is found above that no demand notice relating to the building of the respondent was issued to the respondent and the alleged demand notice issued was prior to the filing of the nomination paper and the election of the respondent as Councillor in November 2015. Even assuming that the respondent incurred disqualification as alleged the same was prior to the election and it was a pre-election disqualification. The State Election Commission has no jurisdiction to consider the pre-election disqualification and the jurisdiction of the State Election Commission u/s 92 of the Act is confined to disqualification incurred after having been elected as a Councillor. Therefore in the light of the above it is not possible to say that the respondent has ceased to be a councilor of Chalakkudy Municipality as alleged. The respondent is hence allowed to continue as a Councillor of Chalakkudy Municipality.

In the result the original petition is dismissed.

Considering the facts and circumstances of the case parties are directed to bear their respective costs.

Pronounced before the Commission on this the 5th day of July 2019

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the petitioner

- PW1 : Shri.Aravindakshan K.R
 PW2 : Shri.Tobi Thomas

Documents produced on the side of the petitioner

- A1 : Copy of the Demand notice No.R1-2170/2014 dated 01.03.2014 issued by the Secretary, Chalakkudi Municipality to Shri.U.A.Varghese
- A2 : Copy of the Demand notice No.R1-2171/2014 dated 01.03.2014 issued by the Secretary, Chalakkudi Municipality to Shri.U.A.Varghese
- A3 : Copy of the Demand notice No.R1-2172/2014 dated 01.03.2014 issued by the Secretary, Chalakkudi Municipality to Shri.U.A.Varghese
- A4 : Copy of the land tax receipt No.5685470 dated 19.03.2014
- A5 : Copy of the Title Deed No.1781/94 dated 30.03.1994
- A6 : Copy of the Title Deed No.1777/94 dated 27.04.1994
- A7 : Copy of the land tax receipt No.5685471 dated 19.03.2014
- A8 : Copy of the Title Deed No.2585/88 dated 28.06.1988
- A9 : Copy of the application dated 22.03.2014 submitted by Shri.U.A.Varghese to the Secretary, Chalakkudy Municipality
- A10 : Copy of the application dated 19.05.2014 submitted by Shri.U.A.Varghese to the Secretary, Chalakkudy Municipality

- A11 : Copy of the quick verification report No.Q.V.02/17/TSR dated 17.02.2017 issued from the office of the Deputy Superintendent of Police, Vigilance & Anticorruption Bureau, Thrissur
- A12 : Copy of the statement of U.V.Martin dated 31.01.2017 before Shri.Shaji Jose.C, Inspector of Police, VACB, Thrissur
- A13 : Copy of the minutes of the Council meeting in Chalakudy Municipality held on 29.11.2016
- A14 : Copy of the nomination in form No.2 submitted by Shri.U.V.Martin
- A15 : Copy of the quick verification report No.Q.V.08/2009/TSR dated 06.01.2010 issued from the office of the Deputy Superintendent of Police, Vigilance & Anticorruption Bureau, Thrissur
- A16 : Copy of the statement of Shri.Saji.S.S, Municipal Secretary dated 28.01.2017 before Shri.T.J.Sajeevan, Inspector of Police, VACB, Thrissur
- A17 : File No.R1-15485/17 of Chalakudy Municipality (Right to Information application and reply)
- A18 : Copy of the notice No.R1-2172/14 dated 22.08.2014 issued by the Secretary, Chalakkudy Municipality to Shri.U.V.Martin
- A19 : Copy of the notice No.R1-2172/14 issued by the Secretary, Chalakkudy Municipality to Shri.U.V.Martin
- A20 : Copy of the application dated 05.12.2015 submitted by Shri.U.V.Martin for regularization of building to the Secretary, Chalakkudy Municipality
- A21 : Copy of the office note of Chalakkudy Municipality
- A22 : Copy of the Demand notice No.R1-2172/2014 dated

22.08.2014 issued by the Secretary, Chalakkudi
Municipality to Shri.U.V.Benny

A23 : Copy of the Tax receipts

Documents produced on the side of the witnesses

X1 : Copy of the receipt for the payment of property tax on
building No.14/585/UA

X2 : Copy of the receipt for the payment of property tax on
building No.14/585/UA

X3 : Copy of the receipt for the payment of property tax on
building No.14/585/UA

X4 : Copy of the receipt for the payment of property tax on
building No.31/97/UA

X5 : Copy of the receipt for the payment of property tax on
building No.21/8/UA

X6 : Copy of the meeting minutes of Chalakudy Municipal
Councillors held on 29.11.2016

X7 : Copy of the Demand notice No.R1-2172/14 issued by
the Secretary of Chalakudy Municipality to
Shri.U.V.Martin

X8 : Copy of the Demand notice issued by the Secretary,
Chalakudy Municipality

X9 : Copy of the Demand notice issued by the Secretary,
Chalakudy Municipality to Shri.U.V.Martin

X10 : Copy of the Building Tax Assessment Register of
Chalakudy Municipality

Sd/

V.BHASKARAN

STATE ELECTION COMMISSIONER

//True Copy//