

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

PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER

Saturday, the 1st day of March 2014

O.P.No.47/2013

Petitioner : Alex,
S/o Joseph, Padamattummel House,
Rail Road, Aluva,
Ernakulam – 683 108.

**(By Advs.Cherunniyoor P.Sasidharan
Nair & Kallambalam S.Sreekumar)**

Respondent : K.V.Sarala,
Councillor, Ward No.8,
Aluva Municipality.

(By Adv. Manoj Ramaswamy)

These petitions having come up for hearing on the 7th day of **February 2014**, in the presence of Advocates **Cherunniyoor P.Sasisdharan Nair & Kallambalam S.Sreekumar** for the petitioner and Advocate **Manoj Ramaswamy** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

Petition filed under Section 92 of the Kerala Municipality Act for declaring that the respondent has incurred disqualification as provided under Section 91 (f) of the Kerala Municipality Act for being a Councillor of Aluva Municipality.

2. The short facts are as follows:- The petitioner is a voter of ward No.8 of Aluva Municipality of which the respondent is the Councillor. The Secretary of the 'Sreekrishna Swamy Temple Advisory Adhoc Committee' Aluva entered into a contract with the Secretary of the Aluva Municipality on 31.01.2012 and subsequently a further agreement was executed on 07.10.2012 between the respondent and the Secretary of the Aluva Municipality whereby charge was created in the property of the respondent which was offered as security for repayment of the amounts advanced for the work by the Municipality. Thus the respondent has secured interest in a contract made with the Aluva Municipality and such interest is created not as a shareholder in a company or the agreement was not entered into as convenor of any beneficiary committee. The Adhoc Committee of Sreekrishna Swamy Temple Advisory Council is not a registered body and by virtue of the agreement executed between the respondent and the Secretary of the Municipality whereby charge has been created in respect of

the property owned by the respondent for repayment of the amounts received from the Municipality, the respondent has incurred disqualification as provided by Section 91(f) of the Kerala Municipality Act for holding office of a Councillor of the Municipality. Hence this petition.

3. The respondent has filed objection contending in short as follows:-
The allegations raised in the petition are absolutely false and incorrect. The petitioner has not correctly understood nor appreciated the role of the respondent in the construction of temporary pedestrian bridge across river Periyar in connection with the Sivarathri Festival in February, 2012. In 2012 there arose a situation where the contractors declined to undertake the work of construction of the temporary pedestrian bridge across river Periyar in connection with the Sivarathri Festival. Considering the moral obligations of Aluva Municipality and for providing basic amenities to two lakhs of pilgrims and due to urgency in the matter the Municipality requested the Adhoc Committee of Sreekrishna Swamy Temple Advisory Committee to take over the construction of the foot over bridge for the Sivarathri season, February 2012. In order to tide over the situation, the Adhoc Committee of Sreekrishna Swamy Temple Advisory Committee, as directed by the Hon,ble High Court of Kerala, in the order dated 10.02.2012 in DBP No.29/2009, took over the construction of the foot over bridge and

successfully completed the same in time and the bridge was used for the effective passage of the devotees throughout the season during the above period. The respondent was the President of the Adhoc Committee of Sreekrishna Swamy Temple Advisory Committee and there was no individual profit motive or other contractual interest on the part of the Adhoc Committee of Sreekrishna Swamy Temple Advisory Committee, or the Aluva Municipality. So Section 91(f) of the Municipality Act does not attract in the case on hand. The immediate concern was to construct the foot over bridge to prevent any inconvenience to a large number of devotees coming to Sivarathri. Moreover the action of the respondent is covered by the exemption under Rule 3(iii) of the Kerala Municipality (Removal of Disqualification of Candidates and Councillors in Certain Matters) Rules. The fact is that the respondent, in the larger interest of the devotees and the Adhoc Committee of Sreekrishna Swamy Temple Advisory Committee, furnished her own immovable property as security for enabling the Aluva Municipality and the Travancore Devaswam Board to advance the amount for construction of the temporary bridge and this was done as ordered by the Hon'ble High Court of Kerala. Therefore the petition is absolutely unsustainable and it is liable to be dismissed.

4. The evidence consists of the oral deposition of PW1 and Exts.P1 to P5 and R1.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the respondent has entered into a contract with the Aluva Municipality so as to attract Section 91 (f) of the Kerala Municipality Act as alleged?
- (ii) Whether the respondent has ceased to function as a Councillor of Aluva Municipality as provided by Section 91(f) of the Kerala Municipality Act?
- (iii) Reliefs and costs?

7. **POINT Nos.(i) to (iii)**: Since common questions of law and facts arise for consideration in all these points, they are being discussed together for brevity and convenience. According to the petitioner, the respondent who is the Councillor of Aluva Municipality representing ward No.8 entered into an agreement with Aluva Municipality on 17.02.2012 whereby her property was offered as security for repayment of the amounts received in terms of the agreement dated 31.01.2012 between the Sreekrishna Swamy Temple Adhoc Committee Secretary and the Municipality and charge was created in the property of the respondent and thereby the respondent has acquired interest in a subsisting contract made with the Municipality and thus incurred disqualification as provided by Section 91(f) of the Kerala

Municipality Act. The petitioner has been examined as PW1. He has deposed that he is a voter of ward No.8 of Aluva Municipality of which the respondent is the Councillor and Ext.P1 voters list is produced to prove the same. He would further depose that the Sreekrishna Swamy Temple Advisory Committee represented by its Secretary entered into a contract with the Aluva Municipality on 31.01.2012 and in consequent thereof a subsequent contract was entered into between the respondent in her capacity as the President of the Sreekrishna Swamy Temple Advisory Committee with the Municipality on 17.02.2012 whereby her property was offered as security for repayment of the amounts received by way of the contract dated 31.01.2012. The above agreements are marked as Exts.P2 and P3 respectively. PW1 has further deposed that since the respondent has entered into a contract with the Municipality and created an interest under such contract, the respondent is not entitled to continue as a Councillor and she has incurred disqualification as provided by Section 91(f) of the Kerala Municipality Act.

8. The respondent on the other hand would contend that the contract entered into between the Secretary of the Sreekrishna Swamy Temple Advisory Committee and that Municipality was in respect of construction of temporary pedestrian bridge across periyar river in connection with the

Sivarathri festival and the respondent has undertaken repayment of the amount as per the order of the Hon'ble High Court in DBP No.29/2009 dated 10.02.2012 and that the above construction of temporary pedestrian bridge is not a work of the Municipality and there is no subsisting contract between the respondent and the Aluva Municipality and the said work was taken up by the Sreekrishna Swamy Temple Advisory Committee for providing basic amenities to two lakhs of pilgrims during Sivarathri season in 2012 and so Section 91(f) of the Kerala Municipality Act is not attracted. It is also contended that the undertaking given by the 1st respondent is covered by the exemption under Rule 3(iii) of the Kerala Municipality (Removal of Disqualification of Candidates and Councillors in certain matters) Rules 1995 and so the petition deserves only dismissal. The copy of the order in DBP No.29/2009 dated 10.02.2012 is marked as Ext.R1.

9. From the facts and materials on record it is found that the petitioner is a voter of Ward No.8 of Aluva Municipality as serial No.225 and as the respondent is the Councillor of that ward, he is competent to file the petition. From Exts.P2 and P3 it is found that the Secretary of the Sreekrishna Swamy Temple Advisory Adhoc Committee has entered in to a contract with the Secretary of the Aluva Municipality on 31.01.2012 whereby the Temple Committee has agreed to build and operate a temporary

pedestrian bridge across Periyar river in connection with the Sivarathri season and this agreement was approved by the Council as per the decision taken on 28.01.2012. It is further found that the Travancore Devaswam Board and the Aluva Municipality were to advance an amount of ₹7.5 lakhs each for the construction of the said pedestrian bridge and the Sreekrishna Swamy Temple Adhoc Committee was allowed to collect fee from the users of the bridge, at the rate of ₹5/- for one way and ₹10/- for two ways and a sum of ₹ 15 lakhs so collected was to be repaid to the Municipality in reimbursement of the advance amount. It is also found from Ext.P3 that for releasing the amount by the Municipality, a condition was prescribed to furnish bank guarantee and the respondent in her capacity as the President of the Sreekrishna Swamy Temple Advisory Adhoc Committee executed an undertaking offering her property as security for advancing the amount and for due repayment of the same to the Municipality and this agreement was executed on 17.02.2012 on the basis of the order of the Hon'ble High Court in DBP No.29/2009 dated 10.02.2012 which is marked as Ext.R1. It is held in the above order as follows,-

“In terms of the submissions made earlier, an affidavit has been filed by Smt.K.V.Sarala, who is the President of the Temple Advisory Committee of Aluva Sree Krishna Swamy

Temple. We record that affidavit and Annexures I to V produced therewith. Accordingly, we order that the work of putting up the temporary pedestrian bridge across the Periyar River at Aluva in connection with the Sivarathri festival shall be completed well in time by the aforesaid Temple Advisory Committee and its President shall be personally responsible for carrying out that work and for repaying to the TDB and the Municipality the amounts that will be advanced by those two institutions for the purpose of the work. It is further ordered that the collection of amounts and expenditure shall be subjected to audit to the satisfaction of the Local Fund Audit and TDB authorities. The dues that may accrue in favour of Aluva Municipality and the TDB in relation to the aforesaid shall be a charge on the property covered by the documents which are produced as Annexures I to V along with the affidavit dated 9th February, 2012 of Smt.K.V.Sarala. The TDB and the Municipality will release the amounts promptly in terms of the need.”

10. In the above set of facts the short question to be considered is, whether the undertaking made by the respondent in her capacity as the President of the Sreekrishna Swamy Temple Advisory Adhoc Committee offering her property as security for repayment of the amounts advanced by the Municipality for construction of the Temporary pedestrian bridge would attract the mischief of **Section 91(f)** of the Act. **Section 91(f)** reads as follows,-

“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.

.....

.....

(f) acquires any interest in any subsisting contract made with, or work being done for the Government or the [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 [or enters into the contract or work [with the Local Self Government Institution] as a Convenor of the beneficiary committee which undertake the project or work [of any Local Government Institution] as per any rules made under this Act]

Explanation,- A person shall not, by reason of his having a share or interest in any newspaper in which any advertisement relating to the affairs of the Government or the [any Local Self Government Institution] may be inserted, or by reason of his holding a debenture of being otherwise concerned, in any loan raised [by or on behalf of the Local Self Government Institution] concerned be disqualified under this clause.'

11. It is significant to note that Ext.P2 agreement was executed between the Aluva Municipality and the Secretary of the Sreekrishna Swamy Temple Advisory Adhoc Committee. No doubt the respondent is the President of the Advisory committee and there is no bar in holding such a post by a Councillor. The respondent has only made an undertaking for and on behalf of the 'Sreekrishna Swamy Temple Advisory Adhoc Committee' whereby she offered her property as security for repayment of the amounts advanced by the Municipality to the 'Sreekrishna Swamy Temple Advisory Adhoc Committee' for the construction of the temporary pedestrian bridge across Periyar river in connection with Sivarathri Festival. The above undertaking cannot be construed as a contract made between the Municipality and the respondent. It is also seen that no interest has been

created in any subsisting contract by the respondent as provided by Section 91(f) of the Act. As a matter of fact, she offered her property as security on a larger public interest and it was to provide basic amenities for the devotees who gather for the Sivarathri Festival. Moreover the construction of the Temporary pedestrian bridge cannot even be considered as a work of the Municipality. No doubt the 'Sreekrishna Swamy Temple Advisory Adhoc Committee' extended its service to construct the temporary pedestrian bridge not for their own gain but for the interest of the general public and to the community. So the 'Sreekrishna Swamy Temple Advisory Adhoc Committee' has in fact agreed to construct the pedestrian bridge for the benefit of a community and only as a representation or sponsor of such community as provided by **Rule 3(iii) of the Kerala Municipality (Removal of Disqualification of Candidates and Councillors in certain Matters) Rules**. The above Rule reads as follows,-

“3. Removal of Disqualification of Candidates and Councillors,- A person shall not be deemed to have any interest, for the purposes of clause (g) of sub-section (1) of section 90 or clause (f) of Section 91, in a subsisting contract made with or a work being done for the

concerned Municipality by reason of only having share or interest in the following cases,-

(iii) undertaking any contribution work in the Municipality for the benefit of the community, not as a contractor, but as a representative of the community of as sponsor.”

In this context it is also relevant to refer to the decision in **Somasekharan Nair Vs. Divakaran Pillai (2010 (2) KLT 1022)** wherein at Para 6 it has been held as follows,-

“When a person enters into a contract with the local authority on behalf of a Beneficiary Committee he has no personal interest in the matter and he suffers no disqualification due to any liability of the Beneficiary Committee. When the liability was only as a Convenor of the Beneficiary Committee, it cannot be termed as the personal liability of the candidate and it will not disqualify him from contesting the election is the spirit behind the above rule. When such a statutory rule carves out an exemption in respect of the liability cast on a person not in his

individual capacity, but as a Convenor of a Beneficiary Committee on any work undertaken in the Panchayat, whatever be the liability emanating from that work, it cannot be canvassed as a ground of disqualification disentitling him to contest the election.”

12. The above decision has been rendered under the Panchayat Raj (Removal of Disqualification of Candidates and Members in Certain Cases) Rules. Rule 3(iii) of this Rules is in pari materia with Rule 3(iii) of the Kerala Municipality (Removal of Disqualification of Candidates and Councillors in certain matters) Rules. In the case on hand also the respondent has not entered into any contract in her personal capacity and she as the President of the Temple Advisory Committee has only given an undertaking offering her property as security for repayment of the amounts due under the contract entered into between the Secretary of the Sreekrishna Swamy Temple Advisory Adhoc Committee and the Aluva Municipality and that too on the basis of the order of the Hon'ble High Court. On a careful analysis of the entire facts and evidence, I hold that the undertaking entered into by the respondent to the Aluva Municipality evidenced by Ext.R1 is not in her personal capacity and no

benefit is accrued to the respondent under such an agreement or undertaking and that she has given that undertaking only in her capacity as a President of the Sreekrishna Swamy Temple Advisory Adhoc Committee for the benefit of the community and the general public who gather in lakhs for the Sivarathri Festival. Therefore, Section 91(f) of the Kerala Municipality Act is not attracted against the respondent in this case. Even otherwise the disqualification if any incurred by way of the said undertaking is removed as provided by Rule 3(iii) of the Kerala Municipality (Removal of Disqualification of Candidates and Councillors in certain matters) Rules. So the petition deserves only dismissal. The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 1st day of March 2014

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.**

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Alex, Padamattummel House,
Civil Station Road, Aluva

Documents produced on the side of the petitioner

- P1 : Copy of the voters list for Ward No.8, Aluva Municipality
- P2 : Copy of the agreement between Sri.N.Anilkumar and the Secretary, Aluva Municipality
- P3 : Copy of the agreement between Kumari K.V.Sarala and the Secretary, Aluva Municipality
- P4 : Copy of the application submitted by Sri.Khalid Mundappaly addressed to the State Public Information Officer, Aluva Municipality
- P5 : Copy of letter No.PTO E1-1027/2013 dated 28.02.2013

Documents produced on the side of the Respondent

- R1 : Copy of the judgment in DBP No.29/2009 before the Hon'ble High Court of Kerala

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER**