

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

OP(C).No. 184 of 2015 (O)

**I.A.NO.67/2015 & I.A.NO.68/2015 IN O.S.NO.239/2012 OF PRINCIPAL MUNSIF COURT,
KOCHI**

PETITIONER(S) :

- 1. P.N.RADHAKRISHNAN,
S/O.NARAYANAN, PATTUVEETIL, PANCHAYATH RAJ ROAD,
PALLURUTHY, COCHIN-682 006.**
- 2. I.C. GANESH, S/O.CHELLAPPAN,
PUNNAKAPALLI, SDPY ROAD, PALLURUTHY, COCHIN-682 006.**

**BY ADVS.SRI.DINESH R.SHENOY
SMT.K.K.JYOTHILAKSHMY
SRI.SANIL JOSE**

RESPONDENT(S) :

- 1. SREE DHARMA PARIPALANA YOGAM, PALLURUTHY, KOCHI-6,
REPRESENTED BY ITS PRESIDENT,
SREE DHARMA PARIPALANA YOGAM SREE NARAYANA NAGAR,
PALLURUTHY, KOCHI-682 006.**
- 2. C.P. ANILKUMAR,
PRESENT PRESIDENT SREE DHARMA PARIPALANA YOGAM,
S.N. NAGAR, PALLURUTHY, KOCHI-682 006.**
- 3. P.S.SATISAN, S/O.SHANMUGHAN,
POLLAYIL, PERUMPADAPPU, KOCHI-6,
PRESENT DEVASWOM MANAGER, SDPY, S.N.JUNCTION,
PALLURUTHY, KOCHI-682 006.**
- 4. V.K. PRADEEP, S/O.KUTTIKRISHNAN VAIDHYAR,
VELLEZHATHU, NEAR PASHNITHODU BRIDGE, EDAKOCHI, 682 006.**
- 5. SAJAN MANNALY, ADVOCATE,
(RETURNING OFFICER, SDP YOGAM) MANNALY HOUSE,
NEAR ABAD HOTEL, CHULLICKAL, KOCHI-682 005.**

**R1 TO R4 BY ADVS. SRI.T.MADHU
SRI.K.V.BINOD**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015,
ALONG WITH OP(C).No. 297 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE PHOTOCOPY OF JUDGMENT DATED 26.09.2012 IN O.P.(C) NO.3106/2012, HIGH COURT OF KERALA.
- EXHIBIT P2:** TRUE PHOTOCOPY OF JUDGMENT DATED 27.09.2013 IN OP 2573/2013, HIGH COURT OF KERALA.
- EXHIBIT P3:** TRUE PHOTOCOPY OF JUDGMENT DATED 11.08.2014 IN O.P.(C).NO.4320/2011, HIGH COURT OF KERALA.
- EXHIBIT P4:** TRUE PHOTOCOPY OF JUDGMENT DATED 03.12.2013 IN O.P.(C).NO.4160/2013, HIGH COURT OF KERALA.
- EXHIBIT P5:** TRUE PHOTOCOPY OF APPLICATION DATED 27.10.2014 IN I.A. NO.2045/2014 IN OS NO.239/2012, PRINCIPAL MUNSIF COURT, KOCHI.
- EXHIBIT P6:** TRUE PHOTOCOPY OF LIST OF DOCUMENT DATED 27.10.2014 TO BE PRODUCED BY THE RESPONDENTS I.A.NO.2045/2014 IN 239/2012, PRINCIPAL MUNSIF COURT, KOCHI.
- EXHIBIT P7:** TRUE PHOTOCOPY OF I.A.NO.68/2015 IN O.S.NO.239/2012 PRINCIPAL MUNSIF COURT, KOCHI.
- EXHIBIT P8:** TRUE PHOTOCOPY OF I.A.NO.67/2015 IN O.S.NO.239/2012 PRINCIPAL MUNSIF COURT, KOCHI
- EXHIBIT P9:** TRUE PHOTOCOPY OF LIST OF DOCUMENTS DATED 07.01.2015 FILED BY THE 1ST DEFENDANT IN O.S.NO.239/2012 , PRINCIPAL MUNSIF COURT, KOCHI.
- EXHIBIT P10:** TRUE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 08.01.2015 FILED BY THE 1ST DEFENDANT/1ST RESPONDENT IN EXT.P7 APPLICATION.
- EXHIBIT P11:** TRUE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 08.01.2015 FILED BY THE 1ST DEFENDANT/1ST RESPONDENT IN EXT.P8 APPLICATION.
- EXHIBIT P12:** TRUE PHOTOCOPY OF AFFIDAVIT FILED IN EXT. P5 APPLICATION FILED BY THE 1ST DEFENDANT/1ST RESPONDENT.
- EXHIBIT P13:** TRUE PHOTOCOPY OF LIST OF DOCUMENTS DATED 08.01.2015 IN O.S.NO.239/2012 PRINCIPAL MUNSIF COURT, KOCHI.
- EXHIBIT P14:** TRUE PHOTOCOPY OF REPLY AFFIDAVIT DATED 12.01.2015 FILED TO EXHIBIT P11 COUNTER AFFIDAVIT.
- EXHIBIT P15:** TRUE PHOTOCOPY OF REPLY AFFIDAVIT DATED 12.01.2015 FILED IN EXHIBIT P12.
- EXHIBIT P16:** TRUE PHOTOCOPY OF I.A.NO.76/2014 IN O.S NO. 239/2012 PRINCIPAL MUNSIF COURT, KOCHI.

OP(C).No. 184 of 2015 (O)

**EXHIBIT P17: TRUE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 12.01.2015 FILED
IN I.A.NO.76/2014 O.S. NO. 239/2012 PRINCIPAL MUNSIFF COURT,
KOCHI.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P. BHAVADASAN, J.

O.P.(C). Nos. 184 & 297 of 2015

Dated this the 20th day of February, 2015.

JUDGMENT

Sree Dharma Paripalana Yogam, an unfortunate institution, is not possible to get out of court and manage its affairs due to the numerous litigations that are pending before various courts. It is almost evident that the litigating parties are not so much concerned with the affairs of the institution, but are worried about the posts of Yogam.

2. Three suits are already pending, one relates to the enrollment of above 3000 and odd members starting with roll Nos. 5322 onwards who the plaintiff in the said suit says have been illegally given membership and they shall not be allowed to exercise their rights as members. Subsequently, there was an election which was also challenged in another suit. There is a third suit also pending before the court. In the meanwhile, elections were conducted to the Governing Body for 2013-2014 as per the permission granted by this Court.

3. One may remember here that the litigation started in the year 2011. This Court in one of the Original Petitions had also occasion to direct the court below to dispose of the suits as expeditiously as possible and within a time limit also i.e., on or before 31.12.2013. But due to one reason or other, which are not very relevant for the present purpose, the suits could not be disposed of and the suits are still pending and the parties accuse each other for non-disposal of the suits.

4. While so, election for the period 2014-2015 was conducted by the same Electoral Officer who had conducted the election on previous occasions also. It may be noticed here that this Court had approved his appointment as Electoral Officer and reposed confidence in him and that there is nothing to doubt any of his acts. The Electoral Officer has filed an affidavit before the court below to the effect that before conducting election all the

procedures have been duly complied with.

5. The petitioners in O.P.(C) 297 of 2015 have produced Ext.P5 series of documents showing that in the election for 2014-2015 the office bearers have been elected unopposed. There was no contest at all and those persons shown in Ext.P5 series were elected without any objection and unchallenged.

6. In O.P.(C) 297 of 2015 relief sought for in the light of the fact that election of candidates as per Ext.P5 report for the year 2014-2015 is an unopposed election.

7. There is no reason as to why the office bearers now elected unopposed should not be allowed to take charge and manage the administration of the Yogam.

8. The said course is taken strong objection to by the learned counsel for the petitioners in O.P.(C). 184 of 2015. First of all, election could not have been conducted in view of the fact that in O.P. ©. 2573 of 2013 there was a

direction to the then existing Committee, only to carry on day to day administration and unless and until permission was obtained from this Court, election for the year 2014-2015 could not have been conducted. It was also pointed out that the petitioners in O.P.(C) 297 of 2015 are responsible for the delay in disposing of the suits by adopting dilatory tactics in not producing the documents which are relevant. But unfortunately the court below did not apply its mind while considering the various petitions filed by them inviting the attention of the court about the necessity of the documents sought for to resolve the issue involved.

9. After having heard learned counsel on both sides, this Court feels that the real dispute is regarding the membership of 3000 and odd members from roll Nos. 5322 onwards. The petitioners in O.P.(C). 184 of 2014, who are the plaintiffs in the suit, challenged the membership as

illegal and that they have been given membership unauthorisedly and in violation of the provisions of the bye-law.

10. When such a challenge was made, all that the court ought to have done was to direct that those members whose membership were disputed will not be allowed to exercise any right as members till disposal of suit and that would have given a quietus to some of the issues agitated before this Court. That would have facilitated the disposal of the suit also. Instead orders after orders were being passed on various petitions further complicating the issues resulting in the suits being kept pending with no view of result in the near future.

11. Election for the year 2013-2014 is over. The Electoral Officer has in his affidavit before the court below pointed out that he has followed the necessary procedures to be followed for the conduct of elections.

12. Learned counsel appearing for the petitioners in O.P.(C). 184 of 2015 contended that had it been made known to the parties that the disputed members will not be allowed to exercise their rights as members, some other members might have contested and absence of such a communication had made many members to back out.

13. Except for such a contention raised before this Court, there is no such averment in any of the petitions before the court below. At any rate, the only objection could be with regard to the exercise of vote by those objectionable members and also those members exercising their rights as members of the Yogam. Once that is taken care of, there can be no grievance at all regarding the administration being carried on by the duly elected members with respect to the Yogam.

14. This Court is unable to accept the contention that the election now conducted is without authority and

permission ought to have been taken from this Court before conducting election. This Court did not prevent election being conducted in the Yogam in the previous years. It is true that this Court had only permitted the Executive Committee then in office to carry on the day to day affairs of the Yogam, but that does not mean that when the election is due, the election can be conducted by the office bearers without orders from this Court.

15. It is brought to the notice of this Court that the Yogam runs several institutions, the affairs of which have been brought to a standstill and its office affairs are paralysed as a result of the various orders passed by various courts. The dispute is only with regard to the membership of 3000 and odd members. In the light of the report filed by the Returning Officer before the court below and also Ext.P5 series produced before this Court, there is no justification for restricting or curbing the powers of the newly elected

administrative body to administer the affairs of the Yogam. The allegation that a number of persons have been granted illegal membership to take care of by imposing condition that those persons, whose membership are disputed, shall not be allowed to exercise their rights as members unless the suits are disposed of finally. Then there can be no prejudice caused if the current office bearers carry on the administration properly. That will be only in the interests of the institution for which no one can have any objection though the members do not appear to be very keen about it.

16. Shri. Dinesh R. Shenoy pointed out that the court below has not addressed itself to the issues raised in the various petitions namely, with reference to the petition calling upon the other side to produce documents.

17. Learned counsel must be well aware as to what can be done by the court if documents sought for are

not produced or orders are not complied with. This Court need not remind the court below the consequences of the non-production of the documents or violation of its order for production of documents.

18. One has to bear in mind the affairs of the Yogam and the necessity to safeguard the interests of its institutions. Those institutions have to be run properly and efficiently and that shall not be affected by the warring groups tussle for power. In the present state of affairs, it is almost certain that the suits will carry on and on with no end in sight in the near future..

19. The only issue as has been repeatedly agitated before this Court is regarding the legality of membership of some of the members. Members enrolled from Nos. 5322 onwards are slated to have been illegally given membership violating the terms of the bye-law with ulterior motive. According to the petitioners in O.P.(C) 184

of 2015 they cannot be treated as members of the Yogam.

20. Each group accuses the other about adopting methods to see that suits are not disposed of. One cannot omit to note that an election was conducted for the year 2013-2014 but the elected members could not take charge in view of this Court's order that they can do so only after the suits are disposed of. True, this Court fixed a time limit for disposal of suits but it did not materialize.

21. For resolving the present controversy, it is felt that the only way is to hold that those persons whose membership are objected to, and is the subject matter of suits, shall not exercise any right as members of the Yogam till the suits are disposed of.

22. For the above reasons, these Original Petitions are disposed of as follows:

- i. The persons who are elected unopposed as per Ext.P5 series in O.P.(C). 297 of 2015 are allowed to

assume office and carry on the administration of the Yogam in accordance with the bye-law.

ii. The persons whose membership are disputed and is subject matter of the suits are precluded from exercising any rights as members till the suits are finally disposed of.

The court below may make every endeavour to dispose of the suits as expeditiously as possible.

P. BHAVADASAN,
JUDGE

sb.