

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP(C) .No. 2932 of 2013 (O)

PRELIMINARY ISSUE IN EOP 8/2010 of MUNSIFF COURT, KOYILANDY
DATED 22-07-2013

PETITIONER/1ST RESPONDENT:

K.P.UNNIKRISHNAN, AGED 51 YEARS,
S/O.MADHAVAN NAIR, KARUNYAM HOUSE,
THIRUVANGOOR AMSOM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/PETITIONER & 2ND RESOPONDENT:

1. VIJAYAN KANNANCHERY, AGED 51 YEARS,
S/O.KANARAN NAIR, KANANCHERY HOUSE,
THIRUVANGOOR AMSOM DESOM, KOYILANDY TALUK,
KOHIKODE DISTRICT-673 305.

2. K.T KUNHIRAMAN,
S/O.KANARAN, SREEPADAM, THIRUVANGOOR AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT 673 305.

R1 BY ADVS. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DS/24/8/15

OP(C) .No. 2932 of 2013 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 COPY OF THE ELECTION PETITION FILED BY THE 1ST
RESPONDENT WHICH IS NUMBERED AS ELECTION O.P NO 8 OF 2010 ON
THE FILE OF THE MUNSIFF COURT, KOYILANDY DATED 26-11-2010.

EXHIBIT P2 COPY OF THE ORDER DATED 22-07-2013 IN PRELIMINARY
ISSUED IN E.O P NO 8 OF 2010 IN THE COURT OF THE MUNSIFF,
KOYILANDY.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

=====

O.P.(C). No.2932 of 2013

=====

Dated this the 12th day of August, 2015

J U D G M E N T

A preliminary issue with regard to the maintainability of the election petition before the court below was raised by the 1st respondent, who was the returned candidate. The main challenge put forwarded by the petitioner in the election petition is that the 1st respondent is guilty of double voting of 8 persons, thereby, he was unduly benefited. In order to show his *bona fides*, the petitioner has produced the copies of the voters' lists of two constituencies to show that in both the voters' lists the names of the said 8 persons find a place. Of course, it will not show that they have exercised double voting. At the same time, it would go to show that those persons are named as voters in both the voters' lists. Of course, those matters are subject to proof.

2. The preliminary point raised against the maintainability of the election petition by the petitioner

herein is that within the meaning of Section 91(2) of the Kerala Panchayath Raj Act, 1994, the petitioner ought to have verified the annexures to the petition also in the same manner as the petition. The court below has rejected the said contention against maintainability and found that the election petition is maintainable. It is the said order, which is under challenge.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. According to the learned counsel for the petitioner, it is the mandate of the legislature as per Section 91(2) that the petitioner shall verify the annexures to the petition also in the same manner as the petition and therefore, in the absence of such a verification, the petition itself is defective.

5. The said annexures are copies of voters' lists. It is only common knowledge that the petitioner who produces the copies of such voters' lists cannot vouch the correctness or otherwise of the contents of the voters' lists as it was not

he who had prepared the voters' lists. It is true that the petitioner has attested the said annexures as true copy. The argument put forwarded by the learned counsel for the petitioner is that the petitioner ought to have verified the contents of such annexures also. The petitioner cannot say that the contents of the voters' lists are true and correct; he cannot say that it is true to his knowledge; and he cannot say that it is true to his belief. At any stretch of imagination, it cannot be said that the copy of a voters' list produced as an annexure along with the election petition merely to show the *bona fides* of the election petitioner should be verified as the petition itself.

6. Over and above it, it seems that Section 93(1) of the Kerala Panchayath Raj Act, 1994 does not take in Section 91(2). Even otherwise it seems that it is a curable defect, even if it is found that there is no such verification of the annexure, an opportunity to get it cured has to be given to the petitioner in the election petition and in case of any

repeated failure only, the election petition can be thrown out. Even though two other points have been raised, those points are not at all material and therefore, any intervention is not required. On going through the impugned order, this Court does not find any illegality, irregularity or jurisdictional error in the order passed by the court below. Matters being so, this Original Petition (Civil) is devoid of merits, and it is only to be dismissed, and I do so.

In the result, this Original Petition (Civil) is dismissed. Being an old matter, the court below shall make earnest endeavour to have an expeditious disposal of the matter.

Sd/-

B.KEMAL PASHA
JUDGE