

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

OP(C).No. 1127 of 2015 (O)

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(AGAINST THE ORDER IN IA.NO.858/2015 IN OS.NO. 435/1990 OF IV ADDL.
DISTRICT COURT, KOLLAM)
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PETITIONER/RESPONDENT:

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KARBALA TRUST,
REPRESENTED BY ITS PRESIDENT,
KARBALA TRUST COMPOUND,
KOLLAM.**

**BY ADVS.SRI.R.KRISHNA RAJ
SRI.BIJITH S.KHAN**

RESPONDENT/PETITIONER :

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KAIKKARA SHAMSUDHEEN,
KAIKKARA HOUSE, JOURNALIST COLONY,
KADAPPAKADA,KOLLAM-691 001.**

**BY DR.K.P.SATHEESAN,SENIOR ADVOCATE
ADV.SRI.ANOOP.V.NAIR**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-06-2015,ALONG WITH OP(C).NO.1176/2015 AND OP(C).NO.1181/2015 ,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1- COPY OF THE SCHEME OF THE TRUST DATED 27-03-2014.
- EXHIBIT P2- COPY OF THE ELECTION SCHEDULE DATED 05-01-2015.
- EXHIBIT P3- COPY OF THE ELECTION NOTIFICATION DATED 04-04-2015.
- EXHIBIT P4- COPY OF THE ORDER OF THE SUB COURT DATED 23-03-2015.
- EXHIBIT P5- COPY OF THE JUDGMENT IN O.P.NO. 980/2015 DATED 10-04-2015.
- EXHIBIT P6- COPY OF I.A.672/2015 DATED 13-04-2015.
- EXHIBIT P7- COPY OF THE OBJECTION OF THE RESPONDENT DATED 20-04-2015.
- EXHIBIT P8- COPY OF THE ORDER IN I.A. 672/2015 DATED 24-04-2015.
- EXHIBIT P9- COPY OF THE JUDGMENT IN OP. 1110/2015 DATED 24-04-2015.
- EXHIBIT P10- COPY OF THE I.A.NO. 868/2015 DATED 27-04-2015.
- EXHIBIT P11- COPY OF THE OBJECTION OF THE PETITIONER DATED 27-04-2015.
- EXHIBIT P12- COPY OF THE ORDER IN I.A. 858/2015 DATED 28-04-2015.
- EXHIBIT P13- COPY OF THE MINUTES OF THE BOARD MEETING 28-04-2015.
- EXHIBIT P14- COPY OF THE REPORT & MAHAZAR OF THE RETURNING OFFICER
28-04-2015.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(A)- COPY OF THE I.A.NO.689/2015 FILED BY THE RESPONDENT BEFORE
THE VACATION COURT, KOLLAM DATED 16/04/2015
- EXHIBIT R1(B)- COPY OF THE I.A.NO.672/2015 IN O.S.NO.435/1990 FILED BY THE
PETITIONER
- EXHIBIT R1(C)- COPY OF THE OBJECTION FILED BY THE RETURNING OFFICER
AYOOBKHAN DATED 4/5/2015

/TRUE COPY/

P.A.TO JUDGE

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B.KEMAL PASHA, J.

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O.P.(C). Nos.1127, 1176 & 1181 of 2015

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Dated this the 1st day of June, 2015

J U D G M E N T

A Scheme was formulated and settled by the Principal Sub Court, Kollam for the administration of Karbala Trust on 07.04.2004 in O.S.No.435 of 1990. The procedure for Election to the Trust Board had to be commenced within three months prior to the expiry of the three year term of the Board. Unfortunately, such Election procedure could not be commenced within the time stipulated as per Clause 12 of the Scheme. Thereafter speedy processes were initiated for the conduct of an Election.

2. As per Clause 21(2) of Exhibit P1 Scheme, for conducting the first Election, after the formulation of the Scheme, the voters list has to be approved by the court. It has not been specified in the said provision as to which court has to deal with the matter. It seems that the then office bearers had applied before the Subordinate Judge's

Court, Kollam for the approval of the voters list. The same has been denied through Exhibit P8 order. This Court had vide Exhibit P5 judgment dated 10.04.2015 directed that the Election be conducted strictly in terms of Clause 21(2) of Exhibit P1.

3. Vide Exhibit P4 order, an Advocate Commissioner was appointed by the court below as an Observer in the General Body meeting. A General Body was convened. It seems that in the General Body convened not specifically for fixing the agenda of an Election to the Trust Board. Even in the absence of such specific agenda, a decision was taken in the said General Body meeting to appoint the very same Commissioner as the Returning Officer and also to conduct the Election. Thereafter, on 05.01.2015, Exhibit P2 Schedule was published by the President of the Trust Board.

4. It seems that without seeking any further approval of the voters list, an Election was conducted by electing the present Trust Board. That Election was challenged before

the learned Additional District Judge, Kollam during the last summer vacation. The learned Additional District Judge has passed Exhibit P12 order, thereby granting an order of temporary injunction restraining the newly elected Trust Board from taking charge and acting in their capacity as Trust Board members. It is by challenging Exhibit P12 order, O.P.No.1128 of 2015 has been preferred. The other three Original Petitions have been filed by challenging some other related orders passed by the court below

5. Heard learned counsel for the petitioner and the learned Senior Counsel for the respondents.

6. The learned Senior Counsel has argued that all the Election processes in the matter were deadly against the provisions in Exhibit P1 scheme. Per contra, the learned counsel for the petitioner has argued that there is no such violation and the Election was held in a proper manner.

7. For appreciating the rival contentions, the provisions relating to the Election contained in Exhibit P1

has to be perused. As per Clause 12 of Exhibit P1 Scheme, the election General Body has to fix a date for the Election to the Trust Board within a period of three months prior to the expiry of the three year term. Here admittedly, such a date could not be fixed within the three year term. At the same time, whatever be the date, it seems that an Election General Body Meeting has to be convened within the meaning of Clause 12 of Exhibit P1. Here in this particular case, a Commissioner was deputed by the Court below to remain as an Observer in a General Body Meeting already convened. It is an admitted case of all that there was no agenda for fixing the Election date in the notice for convening the said General Body. In that General Body, all of a sudden a decision was taken and a resolution was passed by fixing a date for Election. It seems that the Returning Officer was also appointed in the very same Meeting. Strangely enough, the very same Advocate Commissioner, who was deputed for another purpose, was

appointed as the Returning Officer also.

8. As per Clause 12 of Exhibit P1 Scheme, majority of the Trust Board has to choose, a Returning Officer, who should be a Lawyer from the Muslim community having 20 years or more practise as a Lawyer. The Scheme says that such a first Returning Officer has to be elected and the selection of such a Returning Officer has to be reported before court. Evidently, in this case, the same was not done. Even for appointing a Returning Officer, the Trust Board had to convene a Meeting after the Election General Body.

9. As per Clause 21(2), the voters list has to be approved by court. Strangely enough, the then Trust Bord had decided to conduct the Election without such an approved voters list in the meeting. Over and above it, the schedule of the Election had to be published by the Secretary as per the Scheme. Here in this case, it was the President, who had notified the Schedule. All the aforesaid

facts clearly reveal that the Election was held in a manner which is in gross violation of Exhibit P1 Scheme.

10. Normally courts are reluctant to intervene in such matters and to conduct the Election. At the same time, when Exhibit P1 scheme has been formulated by the Subordinate Judge's Court, Kollam and some vague provisions are there for the conduct of the Election, this Court deems it proper to intervene in the matter for resolving the controversy. This Court is happy that both the sides had come to terms before this Court in getting the matter resolved finally by appointing an Advocate Commissioner for the smooth conduct of an election as per the provisions contained in Exhibit P1 Scheme.

11. An experienced Advocate of this Court, Sri. Ramkumar Nambiar is appointed as the Commissioner to convene a proper General Body Meeting, as a General Body for Election and to prepare the voters list. The Commissioner shall get the voters list approved from this

Court and then to convene a General Body Meeting for electing a Returning Officer as per scheme. A Returning Officer, who is qualified as per the Scheme has to be appointed for conducting Election. The learned Commissioner shall supervise the whole Election process and to report the matter finally before this Court. Even though O.P.Nos.1127 of 2015, 1176 of 2015 and 1181 of 2015 are being disposed of in accordance with this judgment, this Court is retaining O.P.No.1128 of 2015 for giving further directions, if any, required to the Commissioner. The Commissioner is free to move this Court at any time for getting timely directions, if any required, in the matter. For preparation of the voters list, the learned Commissioner shall address all the Secretaries of Jama-aths coming under the Karbala Trust. The Commissioner shall fix a date for convening the Election General Body and shall notify the same at the office of the Trust Board.

12. The existing Trust Board members shall give all assistance to the Commissioner in discharging his duties without any hardship. Sufficient office premises shall be given to the Commissioner to function at the Trust Board office. As initial Bata by way of expenses and all, the Trust shall pay a sum of ₹50,000/- (Rupees Fifty Thousand only) to the Commissioner, as expeditiously as possible, at any rate, within a week from today, so that the Commissioner can start functioning. The Commissioner shall see the Election processes conducted as expeditiously as possible, based on the Scheme. For the day to day functions of the Karbala Trust, the Trust Board which is present, can function; at the same time, they shall not take any policy decisions. Further, their decisions shall be subject to the approval of the Commissioner at present.

In the result, O.P.Nos.1127 of 2015, 1176 of 2015 and 1181 of 2015 are disposed of. O.P.No.1128 of 2015 is treated as part heard and is retained till the completion of the

election and the final report of the Commissioner. The learned Commissioner shall file interim reports, further directions, if any, required.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/1/6/15