

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

OP(C).No. 1847 of 2015 (O)

O.S.NO.243/2012 OF MUNSIFF COURT, KOCHI

PETITIONER(S)/PLAINTIFFS :

- 1. K.K.KESAVAN, AGED 81 YEARS,
SON OF KRISHNAN, KUNNAMVEETIL, CHERIYA PULLARA DESAM,
PALLURUTHY P.O., PIN-682 006, KOCHI.**
- 2. A.A.PUSHPAKARAN, AGED 83 YEARS,
SON OF AYYANKUNJU, ANIMALIPARAMBU,
VALIYA PULLARA DESAM, PALLURUTHY P.O.,
PIN-682 006, KOCHI.**

**BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.LITTO VARGHESE PALATHINKAL**

RESPONDENT(S)/DEFENDANT :

**SREE DHARMA PARIPALANA YOGAM (SDPY),
SREE NARAYANA NAGAR, PALLURUTHY P.O., KOCHI,
PINCODE-682 006, REPRESENTED BY ITS PRESIDENT.**

**BY ADVS. SRI.T.MADHU
SRI.K.V.BINOD**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE BYE-LAWS OF THE YOGAM.**
- P2: TRUE COPY OF THE PLAINT IN O.S NO.243/2012 OF MUNSIFF COURT, KOCHI.**
- P3: TRUE COPY OF THE WRITTEN STATEMENT IN O.S NO.243/2012 OF MUNSIFF COURT, KOCHI.**
- P4: TRUE COPY OF THE JUDGMENT DATED 26/9/2012 IN O.P(C) NO.3106/2012.**
- P5: TRUE COPY OF THE JUDGMENT DATED 27/09/2013 IN O.P(C) NO.2573/2013.**
- P6: TRUE COPY OF THE JUDGMENT DATED 03/12/2013 IN O.P(C) NO.4160/2013.**
- P7: TRUE COPY OF THE JUDGMENT DATED 20/02/2015 IN W.P.(C).NO.297/2015.**
- P8: TRUE COPY OF I.A NO.1533/2015 IN O.S NO.243/2012.**
- P9: TRUE COPY OF COUNTER AFFIDAVIT FILED BY RESPONDENT.**
- P10: TRUE COPY OF THE ORDER DATED 30/06/2015 IN I.A NO.1533/2015 IN O.S NO.243/2012.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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O.P.(C).No.1847 of 2015

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Dated this the 6th day of August, 2015

J U D G M E N T

The voters list of the persons, who are entitled to vote for the election of the office bearers of the respondent Yogam has to be published on or before 27.08.2015. The proceedings are ongoing for publishing the voters list.

2. The complaint of the petitioners is that around 1,700 members of the respondent Yogam, who are entitled to vote for election of the office bearers are about to be denied their right to exercise franchise, by categorising them as defaulters. As per Clause 10 of the Bye-laws, the

persons who are failing to pay yearly subscription, other contributions etc., which are noted in the said Clause, shall not have the right to cast vote in the General Body, till they clear the dues and arrears. The General Body has to be convened on the Sunday just prior to 16th Kanni of Malayalam Era, which falls on 02.10.2015 this year. The election of the office bearers has to be conducted on the next Sunday. The same is provided in Clause 48 of Exhibit P1 Bye-laws. Clause 71 says that the right to vote is limited to persons, who are not defaulters. Persons, who are defaulters or have committed arrears of any of the payments, shall clear the dues 7 days prior to the General Body.

3. According to the learned counsel for the petitioners, several members who had approached the office bearer of the respondent Yogam for clearing their dues are not being permitted to clear their dues, in order to categorise them as defaulters, thereby attempting to restricting the opportunity to exercise franchise to a group of voters, who are favourists

of the present office bearers of the respondent Yogam. By specifically alleging the aforesaid aspects, Exhibit P8 application was filed before the court below, seeking the appointment of a Commissioner for receiving the amounts allegedly due from such members so that they can exercise franchise. It seems that the court below has dismissed the said I.A. through Exhibit P10 order.

4. On hearing either sides, this Court is of the view that it will result in a sever heartburn to those members, who are entitled to vote on denial of their right to franchise, by styling them as defaulters. In such a context, the court below ought to have interfered in the matter by appointing a Commissioner.

5. Exhibit P10 stands set aside to the above extent and the court below is directed to appoint an Advocate Commissioner on the following terms and conditions:

An Advocate Commissioner shall be appointed and the Commissioner shall be present at the office of the respondent Yogam from 2 p.m. to 5 p.m. on three

consecutive days. The present office bearers of the respondent Yogam shall make proper facilities for the sitting of the Commissioner at the office, and shall assist the Commissioner to note down the dues payable from members who are approaching the Commissioner for clearing their dues. Members can approach the Commissioner on the said three days during the said time and pay the arrears, for which receipt has to be issued by the respondent Yogam in the presence of the Commissioner. The Commissioner shall ascertain that such persons are members, and the Commissioner shall certify in the receipt that such persons have cleared all the dues and he/she is not a defaulter. The office bearers and the staff of the respondent Yogam shall co-operate with the Commissioner and shall report timely the dues of such members, who are coming for clearing their dues. On other occasions, members are free to offer their dues to the office staff of the respondent Yogam also. The court below shall fix the Batta payable to the Commissioner. The petitioners shall pay the

Commissioner's Batta as may be ordered by the court below. The court below shall appoint one of the senior members of the of the Bar capable of performing the aforesaid duty as the Commissioner. In case any further directions are required, the Commissioner is free to approach the court below. The court below shall fix the three days on which the Commissioner shall be present as aforesaid, and direct the Commissioner to adhere to the directions.

This Original Petition (Civil) is disposed of accordingly.

Sd/- **B.KEMAL PASHA**
JUDGE

DSV/6/8/15

[True copy]

P.A. to Judge