

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

RP.No. 796 of 2014 () IN WP(C).17263/2014

AGAINST THE JUDGMENT IN WP(C) 17263/2014 of HIGH COURT OF KERALA
DATED 14-08-2014

PETITIONERS:

1. THE BOARD OF DIRECTORS OF THE KALLOOR SERVICE
CO-OPERATIVE BANK LTD,
O.R.227, P.O.KALLOR, THRISSUR DISTRICT, REPRESENTED BY
ITS PRESIDENT
2. P.R. SANKARA NARAYANAN
MEMBER NO.45
MEMBER OF THE KALLOOR SERVICE CO-OPERATIVE BANK
LIMITED NO. R 227
P.O. KALLOOR, THRISSUR DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN, SC, CALICUT UT.

RESPONDENT(S) /RESPONDENTS:

1. THE KERALA STATE CO-OPERATIVE ELECTION COMMISSION
THIRUVANANTHAPURAM -695 001.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
THRISSUR 688 001.
3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), MUKUNDAPURAM, THRISSUR - 680 001.
4. THE ELECTORAL OFFICER
APPOINTED FOR CONDUCT OF ELECTION TO THE BOARD OF
DIRECTORS OF THE KALLOOR SERVICE CO-OPERATIVE BANK
LIMITED NO. R 227 P.O. KALLOOR
THRISSUR DISTRICT (ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES MUKUNDAPURAM) 680 317
5. SHENY ANTO PANOKKARAN
MEMBER NO. 4232
KALLUR SERVICE CO-OPERATIVE BANK LIMITED NO. R 227
KALLUR P.O., THRISSUR - 680 317.

R1 BY ADV. SRI.SHEEJO CHACKO

R2 BY ADV. SRI.K.V.SURESH

R BY SRI.GEORGE POONTHOTTAM

R BY SPECIAL GOVERNMENT PLEADER SRI D SOMASUNDARAM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

APPENDIX

RP.No. 796 of 2014 ()
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PETITIONERS' ANNEXURES

ANNEXURE A1: TRUE COPY OF ONE OF SUCH NOTICE ISSUED BY THE
ADMINISTRATOR

RESPONDENTS' ANNEXURES

NIL

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

Review Petition No.796 of 2014-G
in
W.P.(C) No.17263 of 2014

Dated this the 9th day of January, 2015

O R D E R

This review petition has been filed by the petitioners in W.P.(C) No.17263 of 2014. The said writ petition was disposed of by judgment dated 14.08.2014. The writ petition was filed challenging an order dated 01.07.2014 issued by the State Co-operative Election Commission cancelling an election notification, which was Exhibit P3 in the writ petition. As per Exhibit P2 in the writ petition, the election was postponed. Exhibit P3 appears to have been issued thereafter, though both the orders are dated 01.07.2014. The reason for postponement of the election and withdrawal of the notification is that, there were a number of anomalies in the voters' list that were detected only subsequently. The writ petition was considered along with another writ petition, W.P.(C) No.17258 of 2014.

2. As per Exhibit P1 Election Notification, the first respondent had notified the conduct of an election to the Board of Directors of the Kalloor Service Co-operative Bank, Kalloor. Pursuant to a complaint made by the 5th respondent, a report appears to have been called for by the first respondent from the Assistant Registrar, Mukundapuram. On the basis of the said report, which discloses a number of anomalies in the voters list, Exhibit P2 and P3 notifications were issued.

3. According to Advocate P.C.Sasidharan who appears for the petitioners, as per Exhibit P1 Election notification which was published on 10.06.2014, the draft voters' list was to be published only on 23.06.2014. The time for preferring objections to the draft voters' list was from 23.06.2014 to 30.06.2014. The complaint of the 5th respondent on the basis of which, Exhibits P2 and P3 were issued is according to the counsel seen dated 19.06.2014. The 5th respondent had not submitted any objections to

draft voters' list, within the time stipulated by Exhibit P1 for preferring such objections. Therefore, it cannot be said that, the 5th respondent had any genuine grievance in respect of the voters list. As per Exhibit P1, the objections to the draft voters' list was scheduled to be considered on 01.07.2014. It was on the said date that Exhibits P2 and P3 proceedings have been issued. Inasmuch as, the voters' list had not been finalised as on the date of issue of Exhibits P2 and P3, it is submitted that, there is no justification for the issue of the said orders. It is further pointed out that, the 5th respondent had at the time of the previous election also, preferred similar objections. He had also approached this Court by filing W.P.(C) No.21925 of 2009. As per Exhibit P5 judgment, this Court had directed the votes of the disputed members to be collected in a separate ballot box for the purpose of enabling the 5th respondent to pursue further proceedings in the matter. However, the 5th respondent did not pursue the matter further. The term of the Managing

Committee so elected has come to an end. He has preferred the same complaint this time also. Therefore, it is contended that his conduct betrays an absolute lack of bonafides.

4. The counsel for the 5th respondent Shri. George Poonthottam disputes the submission of the counsel for the petitioners by pointing out that, the 5th respondent had submitted Exhibit R5(e) objections to the preliminary voters' list on 26.06.2014, within the time stipulated for preferring the objections.

5. The counsel for the petitioners has a further contention that, the first respondent has no power to issue Exhibit P3 proceedings cancelling the election notification. The power of the Election Commission is to conduct an election. The power could extent to postponing of an election, but not to cancelling the election itself, it is contended. Since the above aspects have not been taken note of in the judgment, dated 14.08.2014, it is contended

that the same requires to be reviewed and set aside.

6. The Special Government Pleader Sri. D.Somasundaram appears for respondent 1 to 4. According to the learned Special Government Pleader on receipt of the complaint of the 5th respondent, the first respondent had called for a report from the Assistant Registrar, Mukundapuram. The report of the Assistant Registrar shows that the complaint of the 5th respondent was justified and that the anomalies pointed out could not be rectified within the time frame stipulated by the Election Notification, Exhibit P1. Since more time was necessary to rectify the defects, Exhibits P2 and P3 orders have been issued. According to the learned Special Government Pleader, in view of Section 28-B of Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short), the first respondent is clothed with sufficient powers to even cancel an election notification. The duty of the Election Commission is to conduct an election properly

after ensuring that the voter's list was free of any defect. It is to enable a proper election to be conducted that, Exhibits P2 and P3 have been issued. According to the counsel, the Administrator had issued notice to the members to produce proof of their eligibility to be included in the voters' list, which was the subject matter of another writ petition, W.P. (C) No.32532 of 2014. The said writ petition was disposed of with a direction to finalise the voters' list within a period of six weeks and to ensure that the election was conducted before the end of April. It is also contended by the learned Special Government Pleader that, the Co-operative Societies Rules 1969, has been amended by the Kerala Co-operative Societies (Second amendment) Rules, 2014 inserting Rule 18A which confers eligibility on a member to be included in the voters' list only if he is an active member of the society. In view of the above amendment also, it is contended that it is necessary to remove the anomalies in the voters' list before the election could be conducted.

7. Heard. The judgment that is sought to be reviewed was passed on the basis of the submissions made by the respective counsel in Court, without going into the merits of the contentions of the rival parties. Their anxiety was confined to the delay involved in finalising the voters' list and conducting the election. They had no serious objection to the anomalies being rectified. It was for the said reason that, the writ petitions were disposed of directing the elections to be scheduled and conducted within an outer limit of three months of the date of the said judgment, after rectifying the anomalies. Since the judgment was passed on the agreement of the respective counsel, the legal issues that are raised in the review petition did not arise for consideration at the time of passing the judgment. Therefore, I have not considered any of the said aspects. I notice that, subsequently, extension of the time limit stipulated by the judgment was sought for by the Administrator by filing I.A. No.15192of 2014 which was

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also granted on 20.11.2014. It is evident from the submissions made before me that the process of rectification of the anomalies are in progress and this Court has already directed an election to be conducted before the end of April 2015. The above being the factual state of affairs, it is neither expedient nor necessary to interfere with the said process by setting at naught Exhibits P2 and P3 and directing that an election be conducted on the basis of the voters' list that formed the foundation for the issue of Exhibit P1. In the above view of the matter, I do not consider it necessary to go into the legal issues that have been raised and argued before me. In the background of the constitutional mandate also, it is only appropriate that the election is conducted at the earliest, for the purpose of which, apart from the direction issued in this case, it is stated that, a further direction has been issued in W.P.(C) No.32532 of 2014 of this Court. Since it was agreed by all that, it is only appropriate that anomalies are rectified and

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the election conducted at the earliest, I am not satisfied that there is any error of law or other sufficient reason justifying a review of the judgment dated 14.08.2014 as sought for in the review petition.

For the above reasons, this review petition is dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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