

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WA.No. 75 of 2015 () IN WP(C).17125/2014

**AGAINST THE ORDER/JUDGMENT IN WP(C) 17125/2014 of HIGH COURT OF KERALA
DATED 09-12-2014**

APPELLANT(S)/PETITIONERS:

- 1. N.SURENDRAN,
SURENDRABHAVANAM (CHRUVILAVADAKETHIL)
POOVATTUR EAST, MAVADY P.O., KOTTARAKKARA
KOLLAM.**
- 2. K.V.ANIL,
CHERUKOTTUMADOM, PERUMKULAM P.O., KOTTARAKKARA
KOLLAM.**

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S)/RESPONDENTS:

- 1. POOVATTUR EAST SERVICE CO-OPERATIVE BANK LTD NO 3503,
REPRESENTED BY SECRETARY, KALAYAPURAM P.O.
KOTTARAKKARA, KOLLAM-691 506.**
- 2. ELECTORAL OFFICER TO POOVATTUR EAST SERVICE CO-OPERATIVE BANK,
LTD.NO.3503, KALAYAPURAM P.O., KOTTARAKKARA
KOLLAM-691 506.**
- 3. RETURNING OFFICER TO POOVATTUR EAST SERVICE CO-OPERATIVE BANK,
LTD.NO.3503, KALAYAPURAM P.O., KOTTARAKKARA
KOLLAM-691 506.**
- 4. STATE CO-OPERATIVE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM
THIRUVANANTHAPURAM-695 033.**
- 5. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
KOLLAM-691 001.**

**BY SPL.GOVERNMENT PLEADER SRI.D.SOMASUNDARAM
BY SRI.P.C.SASIDHARAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-01-2015,
ALONG WITH WA. 80/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WA NO.75/15

APPENDIX

APPELLANTS' EXHIBITS

ANNEXURE A1: TRUE COPY OF THE JUDGMENT DATED 9.12.14 IN
WPC NO.17125/2014.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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Writ Appeal Nos. 75 & 80 of 2015

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Dated this the 21st day of January, 2015

J U D G M E N T

Antony Dominic, J.

The writ appeals are filed against the common judgment of the learned single Judge in WP(C) Nos.17125 and 18753/2014.

2. We shall briefly state the facts which led to the filing of the writ petitions. Poovattoor East Service Co-operative Bank Ltd (hereinafter referred to as 'Bank' for short) is registered under the Kerala Co-operative Societies Act. On 6.6.14, notification was published by the Election Commission, to elect eleven members of the Board of Directors of the Bank. In terms of the schedule fixed in the notification, preliminary voters' list was published on 26/3/14 and final voters' list was published on 2.7.14. Nominations were accepted on 10/7/14 and election was scheduled to be held on 27.7.14.

3. In the meantime, on 14/7/14, the Election Commission issued an order (Ext.P10 in WP(C) No.18753/14) temporarily, but indefinitely, postponing the election declared by notification dated 6.6.14. In this order, reference was made to a complaint made by

Sri.N.Surendran, the 1st appellant in WA No.75/15 and the appellant in WA No.80/15, on 1/7/14 complaining to the Election Commission against the preliminary voters' list, which in essence was, that the list contained names of many persons who were ineligible to vote. It is also stated that, on its receipt, the complaint was sent to the Electoral Officer and that the Electoral officer by his report dated 8.7.14, reported that due to paucity of time, he was unable to make a detailed enquiry and submit his report. On this basis, it is stated that in view of the report of the Electoral Officer dated 8.7.14 and that since a perfect electoral roll was essential, it was necessary to temporarily postpone the election.

4. On 14.7.14 itself, the Election Commission issued another order (also produced as Ext.P10 in WP(C) No.18753/14), withdrawing the notification dated 6.6.2014. Here itself, we record that learned special Government Pleader has clarified in Court that this order dated 14.7.2014 of the Election Commission was intended only to cancel the appointment of the Electoral Officer and the Returning Officer and was not meant for the cancellation of the notification dated 6.6.2014, in its entirety.

5. On 3.7.14, the appellants in WA No.75/15 filed WP(C) No.17125/2014. In this writ petition, their prayers were to direct the Returning Officer to permit the voters to exercise their voting right after identifying the voters with Form-6B Register and to direct that the election process till counting of votes be videographed. There was also a prayer to direct the Joint Registrar to consider Ext.P1 petition therein made by the 1st appellant on 19.5.14 in terms of Rule 16(4) of the Kerala Co-operative Societies Rules. Consequential reliefs were also sought for.

6. In so far as WP(C) No.18753/14 is concerned, that was filed by the Board of Directors of the Bank, on 18/7/14, seeking to quash the order dated 14.7.14 issued by the Registrar which was produced as Ext.P10. They also sought a direction to the respondents therein to complete the process of election as notified in the notification dated 6.6.2014, by conducting the polling on 27.7.14 itself. Here also, consequential reliefs were sought for.

7. The writ petitions were heard together and the learned single Judge by a common judgment rendered on 9.12.2014

disposed of the cases. In so far as WP(C) No.17125/2014 is concerned, the learned single Judge held that the complaint made by the petitioner therein against draft voters' list, did not contain any specific ground rendering each person mentioned therein disqualified to vote and that the general allegations made therein cannot be looked into by the Electoral Officer. In so far as WP(C) No.18753/2014 is concerned, the learned single Judge directed that election to the Board of Directors of the Bank be held with all expediency on the basis of the draft voters' list handed over by the managing committee and the final voters' list published by the Electoral Officer. It was also clarified that the election would have to be resumed from the stage where it was stopped. In other words, while the learned single Judge declined the relief sought for in WP(C) No.17125/2014, directions for resumption of election from the stage where it was stopped were issued considering WP(C) No.18753/2014.

8. It is informed that pursuant to the directions in the judgment, the managing committee of the Bank adopted resolution dated 7.1.2015 scheduling the election on 1.2.2015. It is in this background WA No.75/15 has been filed by the

petitioners in WP(C) No.17125/2014 and WA No.80/15 has been filed by the additional 5th respondent in WP(C) No.18753/2014.

9. We heard the learned counsel for the appellants, learned Special Government Pleader and the respective counsel appearing for the respondents in the writ appeals.

10. The learned counsel for the appellants submitted that long prior to the notification dated 6.6.2014 for conducting election to the Board of Directors on 27.7.2014, by Act 8 of 2013, Kerala Co-operative Societies Act was amended with effect from 14.2.2013, incorporating, among other sections, Sec. 16A, 19A and the third proviso to Sec. 28. It is also submitted that Rule 18 and Rule 35A(4) were amended and Explanation to Rule 35A(6)(n) (ix) was added w.e.f. 26.11.2014. Pointing out these facts and relying on the judgments of this Court in **Narayanan v. Maloth Service Co-op. Bank** (1986 KLT 957), **Gopinathan Nair v. Senior Inspector of Co-op. Societies** (1986 KLT 1269), **Rajendran v. State Co-operative Election Commission** [2004 (1) KLT 1026], **Azeeskutty v. Returning Officer** [2008 (4) KLT 165] and **Gopalakrishnan v. State of Kerala** [2011 (3) KLT SN 51 (Case.No.48)], the learned counsel contended that the

postponed election can be conducted only in accordance with the Act and the Rules as amended. Therefore, according to the counsel, the direction of the learned Single Judge to resume the process of election from where it was stopped is untenable and illegal.

11. However, this contention of the learned counsel for the appellants, though finds support from the learned Special Government Pleader, is contradicted by the learned counsel for the party respondents. According to the counsel, it is evident that the provisions of Sections 16A, 19A and 20(a), that are relied on by the counsel for the appellants, have no relevance in so far as the election in question is concerned.

12. This contention of the appellants will have to be dealt with in the light of the statutory provisions and the Rules that are relied on by both sides. Sec. 16A, was inserted by Act 8 of 2013 w.e.f. 14.2.2013. As per Section 16A (1)(a), no member shall be eligible to continue to be a member of the society, if he is not using the services of the society for any consecutive two years or using the services below the minimum level as may be prescribed in the Rules or Bye-laws. As per Section 16A (1)(b), ineligibility is

also attracted if the absence of a member in 3 consecutive general meetings has not been condoned by the members in the general meeting. Section 16A (2) provides that where any person becomes ineligible for continuing as a member as per sub-section (1), the committee of the society may remove the person from membership after giving him an opportunity for making his representation, if any, and the person concerned shall thereupon cease to be a member of the society. The proviso to this sub-section states that no member of the society removed as per sub-section (2) shall be eligible for re-admission as a member of that society for a period of one year from the date of such removal. Section 19A provides that no member of a society shall exercise the right of a member unless he has attended the minimum required general body meeting and availed minimum level of services as may be prescribed.

13. By G.O(P).No.142/2014/Co-op dated 25.11.2014 published on 26.11.2014, the Kerala Co-operative Societies (2nd Amendment) Rules, 2014 were brought into force. As per these Rules, Rule 18A was inserted to the Rules and it was by this Rule, the minimum level of services was prescribed as required under

Section 16A of the Act. As per this Rule, no member shall be eligible to continue to be a member of a Co-operative society if he is not using the services of the society for two consecutive years in the manner as provided in clauses (a), (b) and (c). Sub-rule (2) of Rule 18A provides that the Chief Executive shall be responsible for the maintenance of a Register in Form No.32, in which, as per clause (b), details with regard to each and every member of the society shall be made up-to-date and the Register shall be placed before the committee of the society within 60 days on completion of every year. Clause (c) provides that the committee shall examine and certify the Register as to the details recorded by the Chief Executive, within thirty days from the date of which the Register is placed before the committee. As per clause (d), the Chief Executive of the society shall forward a certificate to the Registrar as to the up-to-date maintenance of the Register within three months of the close of the year. Clause (e) further provides that the Chief Executive of the society shall submit the Register in Form No.32 before the Electoral Officer for verifying the eligibility of the members who are qualified to vote at the election.

14. As per the Amendment Rules, an explanation was also

added to Rule 35A(4) which provides that only the active members shall be included in the voters' list and that the members who have utilised the minimum services provided by the society during the two consecutive years shall be considered as active members. Further proviso to Rule 35A(6) providing that in the case of election on ward basis, the candidate, proposer and seconder shall be from the same ward, was also added. Further, an explanation to Rule 35A(6)(n)(ix) also has been inserted. The argument of the appellants is that the amended provisions of the Act were in force w.e.f. 14.2.2013 and the amendment of Rules were brought into force w.e.f. 26.11.2014. Therefore, according to the counsel, when the election that was notified to be held on 6.6.2014 is held in pursuance of the directions of the learned Single Judge, it should be in compliance with the amended provisions of the Act and Rules. If that be so, according to them, the election cannot be held by resumption from the stage where it was stopped following the order dated 14.7.2014, but will have to start afresh.

15. Having considered the submissions made at the Bar, we notice from Section 16A of the Act that though it provides that the

eligibility of members to continue their membership in the society can only be on satisfaction of the conditions mentioned in clauses (a) and (b) thereof, however, the ineligibility for noncompliance of clauses (a) and (b) to Section 16A(1) will not ipso facto result in automatic cessation of membership. On the other hand, Section 16A (2) makes it abundantly clear that despite such ineligibility, until the society removes the person concerned from its membership and that too after giving him an opportunity of making his representation, he will continue to be a member of the Society. Further Section 20, which provides for vote of members, mandates that notwithstanding anything contained in any other provisions of the Act or any other law, every member of a society shall have one vote in the affairs of the society. The only restriction to this right is contained in clauses (a) to (e) to this section.

16. We also find from the words of Section 20 that before its amendment by Act 3 of 2002 w.e.f. 4/5/2002, the voting right was recognised only in favour of every active member of the society. This therefore means that the statute as it now stands does not make any distinction between active members and

inactive members in so far as the voting right as provided under Section 20 is concerned.

17. Therefore, notwithstanding the other provisions of the Act as amended by Act 8 of 2013, Section 20 confers a right on every member of a society to have one vote in the affairs of the society. Though Section 16A and the corresponding provisions have been introduced in the Rules, Section 20 has not been amended so far by inserting the word 'active' again the section. Appellants have no case that the persons, whose names have been mentioned in the list attached to the objections filed or complaint made, have ceased to be members of the society by virtue of any action taken by the Society as per Section 16A(2) of the Act. If that be so, those persons mentioned in the list submitted by them continue as members of the society even as on date and such members, who are not affected by any of the provisions of Clause (a) to (e) of Section 20 of the Act are entitled to exercise their right to vote. Consequently, Sections 16A, 19A or the other provisions relied on by the appellants cannot affect the entitlement of the persons mentioned in the objection filed by them to cast their votes in the election to be held.

18. In this context, we also consider it relevant to refer to the provisions of Rule 16(3) and (4) of the Kerala Co-operative Societies Act. These rules read as under;

“16(3) Where a person already admitted to membership is seen to have been ineligible for membership at the time he was so admitted as a member or if subsequently becomes ineligible for membership the Committee of the Society may remove the person from membership after giving him an opportunity for making his representation if any, and the person concerned shall thereupon cease to be member of the society.

(4) Where a member of a society becomes ineligible to continue as such the Registrar may of his own motion or on a representation made to him by member of the society or by the financing Bank, by an order in writing declare that he has ceased to be a member of the society from the date of his order. The Registrar shall give such person an opportunity to state his objection, if any, to proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard before passing an order as aforesaid.”

19. Reading of the rule makes it explicitly clear that once a person is granted membership in a society, even if it is illegal for some reason, unless he is removed following the procedure laid

down in the rules, the membership will continue. This principle has been laid down by this Court in the judgment in **Porinchu v. Joint Registrar of Co-operative Societies** (2009 (4) KLT 105). This, therefore, means that in the voters' list, all these 954 persons who are included in the list submitted by the appellant are included and those persons were not removed in accordance with law. If that be so, until they are removed from the membership of the society, in view of the provisions contained in Section 20 of the Kerala Co-operative Societies Act, they do have a right to exercise their vote. If this be the legal position, necessarily, we will have to conclude that the order dated 14/7/14 was illegally issued.

20. We also find merit in another contention raised by the learned counsel for the party respondents. Rule 18A inserted by the Kerala Co-operative Societies (Second Amendment) Rules 2014 w.e.f. 26/11/14 contains sub rule (2), which reads thus;

“2(a) A register in Form 32, shall be maintained by every society. The Chief Executive of the society shall be responsible for the proper maintenance of the register.
(b) The details with regard to each and every member of a society shall be made up-

to-date and place before the Committee within sixty days on completion of every year.

(c) The Committee shall examine and certify the register as to the details so recorded by the Chief Executive, within thirty days from the date of placing it before the committee.

(d) The Chief Executive of the society shall forward a certificate to the Registrar, as to the up-to-date maintenance of the register within three months of the close of the year.

(e) The Chief Executive of the society shall submit this register before the Electoral Officer for verifying the eligibility of members who are qualified to vote at the election.”

21. Reading of the aforesaid provisions of the Rule show that the Chief Executive of the society shall be responsible for the proper maintenance of register in Form No.32. In that register, the details with regard to each and every member of a society shall be made up-to-date and the register shall be placed before the committee of the society within sixty days on completion of every year. Once the register is placed before the Committee as provided in sub rule 2(b), under clause (c), the committee is bound to examine the Register and certify the the details recorded by the Chief Executive and the Committee is to

discharge this duty within thirty days from the date of placing the register before the Committee. If the total period provided in clauses (b) and (c) are taken together, it can be seen that the Committee should complete this exercise within a period of ninety days from the close of the year. However, as per clause (d), the Chief Executive of the Society is also required to forward the certificate to the Registrar as to the up-to-date maintenance of the Register within three months of the close of the year. Therefore, for completing the entire process as contemplated under sub rule (2), the Committee has a total period of ninety days from the completion of every year. "Year" is defined in section 2(u) as the period commencing on the first day of April of any year and ending with 31st of March of the succeeding year. This, therefore, means that though the provisions of Rule 18A have come into force w.e.f. 26/11/14, since the obligation of the society to complete the process as required under Rule 18A(2) commences only on close of the year, the time limit for the society to discharge the obligations under the rule would run only after the 1st of April. If that be so, that obligatory period, in so far as these cases are concerned, would start to run from 1st of April,

2015. This, therefore, means that the question of ineligibility of a member to continue to be a member for the reasons stated in Section 16A for not attending annual general body meeting and not availing of the services of the society and the consequent removal can be ascertained or determined only after the close of year as contemplated under Rule 18A. If that be so, at this stage, it is premature to rely on Sections 16A or 19A.

22. Our conclusions on the above two issues would therefore show that in so far as election to the Board of Directors of the Society is concerned, neither of the statutory provisions, viz., Section 16A, Section 19A or the provisions of Rule 18A referred to above have any relevance. If that be so, the argument raised by the learned counsel for the appellant that if the election is now to be held, it should be in compliance with the provisions of the Act as amended and the Rules as amended, does not merit acceptance.

23. True, under the 3rd proviso to Section 28, in the case of societies such as those included in Clause (a) to (e) therein, the election shall be conducted on ward basis. However, it is the admitted case that by a notification issued under Section 101 of

the Kerala Co-operative Societies Act, Societies were exempted from complying with this requirement and the said exemption continued in force till the end of December, 2014. As we have already indicated, going by the schedule fixed in notification dated 6/6/14, the election was scheduled on 27/7/14 and it was even after the nominations were accepted that the election was postponed by order dated 14/7/14. This means that, but for the order issued on 14/7/14, the election would have taken place on 27/7/14. Therefore, if we are to hold that the order dated 14/7/14 was illegally issued and also accept the contention that the election should now be held on ward basis, the result would be that the respondents are getting a premium for an illegality committed by them, by preventing the Bank from conducting the election as scheduled by it, which was within the period when exemption from the requirement of the proviso to Section 28 was in force.

24. Leaving this issue aside for the time being, we shall now proceed to examine whether Ext.P10 was validly issued. The reason stated in the order dated 14/7/14 is the complaint dated 1/7/14 submitted by the first appellant in these appeals. It also

refers to the report dated 8/7/14 submitted by the Electoral Officer stating that due to paucity of time, he could not enquire into the allegations made in the complaint made by the appellant. Pointing out these facts, Registrar has stated that as it is essential to have a foolproof voters' list for conducting a proper election, it was necessary to postpone the election for the time being. It was with this justification, the election was indefinitely postponed.

25. In so far as the complaint made by the appellant is concerned, we notice from the complaint that vague and general allegations have been made and a list of 954 members of the society is also attached. It is trite that when a person files complaint against voters' list, it should be specific. However, in the complaint made by the appellant, not only that there is no specific allegation, but the allegations are vague, general and unspecific and are incapable of enquiry in the manner as provided. Therefore, the complaint made by the appellant was one which was not worth taking cognizance of. If that be so, the fundamental reason of dearth of time to make report on such a complaint made itself is untenable. Apart from that, the complaint that is relied on is made on 1/7/14. On 2/7/14, the draft voters'

list was finalised. Nowhere in the record do we find any complaint made by the appellants objecting to the voters' list after 2/7/14.

26. Resultantly, the judgment of the learned single Judge requires to be upheld and we should conclude that there is no substance in the contention raised by the appellants relying on the proviso to Section 28 that the election should be held on ward basis.

27. The upshot of the discussion is that there is no merit in the contentions raised in these appeals.

Appeals deserve only to be dismissed and we do so.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge