

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYASHTA, 1937

WA.No. 896 of 2015 (E) IN WP(C).22114/2014

AGAINST THE JUDGMENT IN WP(C) 22114/2014 DATED 10-04-2015

APPELLANT(S)/PETITIONERS :-

1. MOHAMMEDALI.V., EDAKKATTU, PRESIDENT
PULIKKAL KAWAKIBUNNAYYIRA SANGAM REGD NO.6/1962,
P.O. PULIKKAL, MALAPPURAM DISTRICT-673 637
2. P.C MOHAMMED MASTER, AGED 72 YEARS,
S/O KOYAKUTTY MAULAVI, SECRETARY
PULIKKAL KAWAKIBUNNAYYIRA SANGAM REGD NO.6/1962,
P.O.PULIKKAL, MALAPPURAM DISTRICT-673 637
RESIDING AT CHERAKKATHODI HOUSE, P.O PULIKKAL - 673 637.
3. P P ABDUSAMAD, MANAGER, AMM HIGH SCHOOL & LP SCHOOL,
PULIKKAL, MALAPPURAM DISTRICT- 673 637.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.ASHA BABU
SRI.G.RENJITH
SMT.AMMU CHARLES

RESPONDENT(S)/RESPONDENTS :-

1. THE DISTRICT REGISTRAR (GENERAL) &
REGISTRAR OF SOCIETIES, MALAPPURAM - 676 505
 2. MR. MUJEEB RAHMAN,
HIGH SCHOOL ASSISTANT (SOCIAL STUDIES) AMM HIGH SCHOOL
PULICKAL, MALAPPURAM -673 637
 3. MR.M.M VEERANKUTTY MASTER
MALAYIL HOUSE, PULICKAL, MALAPPURAM-673 637.
- ADDL.4.MR.P.D.HANEEFA, MANAGER, A.M.M.H.SCHOOL & A.M.L.P.SCHOOL,
PULICKAL, MALAPPURAM - 673 637.

ADDL.4TH RESPONDENT IS IMPEADED AS PER ORDER DATED 10.6.2015
IN I.A.No.576 OF 2015.

ADDL.R4 BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
R2 BY SRI.GEORGE POONTHOTTAM
R1 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.896 of 2015

Dated this the 10th day of June 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard Sri.K.Ramakumar, the learned Senior Counsel appearing for the appellants and Sri.George Poonthottam, the learned counsel appearing for the contesting respondents.

2. This writ appeal has been filed against the judgment dated 10.4.2015 passed in W.P.(C) No.22114 of 2014. The dispute between the contesting parties in the writ petition was with regard to an election to the managing committee of the Sangham. The petitioners and contesting respondents had claimed rival election to the managing committee and submitted a list of the office bearers to the Registrar of the Society under Section 4 of the Societies Registration Act, 1860. After getting the two lists submitted by both the appellants and the respondents, the Registrar issued notice to the parties and conducted hearing in the matter and subsequently, vide an order dated 16.8.2014, Ext.P9, accepted the list submitted by the respondents on 2.4.2014. Aggrieved by the order of the Registrar, the writ petition was filed by the petitioners/appellants seeking for following reliefs :-

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- “i) To call for the records leading upto Ext.P9 and quash the same by the issuance of a Writ of Certiorari or any other appropriate Writ, order or direction
- ii) To issue a Writ of Mandamus commanding the 1st respondent to approve the list of the Managing Committee submitted by the petitioners and allow them to continue as office bearers of the Pulikkal Kawakibunnayyira Sangam which is running the A.M.M.L.P.S. & H.S., Pulikkal in Malappuram district irrespective of the issuance of Ext.P9 order.”

3. There were two other writ petitions, namely; W.P.(C) Nos.10162 of 2014 and 13098 of 2014. In W.P.(C) No.10162 of 2014, a direction was sought for to the District Education Officer to issue an order approving the petitioner as the Manager of the school. In W.P.(C) No.13098 of 2014, it is alleged that the petitioner was the duly elected Secretary of the society and the District Registrar, who is bound to approve the same, was not issuing any orders, whereas in W.P.(C) No.22114 of 2014, there was a challenge against the order of the Registrar, Ext.P9. W.P. (C) Nos.10162 of 2014 and 13098 of 2014 had become infructuous as has been submitted by the learned Senior Counsel appearing for the appellants. The learned Single Judge observed that it is settled law that a challenge as against the approval of the list by the District Registrar has to be made before a civil court and that the disputed questions cannot be decided in a proceeding under Article 226 of the Constitution of India. Making the above

observation, the writ petition was dismissed. Various other submissions raised by the learned counsel for the petitioners were noted, but, apart from making observation with regard to some submissions, other questions were not gone into.

4. Learned Senior Counsel appearing for the appellants, challenging the judgment of the learned Single Judge, submits that it was the managing committee represented by the petitioners/appellants, who have managed the affairs of the Sangham till the fresh list was submitted. It is submitted that the Registrar, without advertng to any relevant facts, had accepted the list submitted by the other side on a flimsy reason. It is submitted that although by registering a list under Section 4 of the Act the Registrar is not required to adjudicate the dispute pertaining to election as an Election Tribunal, being a statutory authority, he has to summarily examine the list and take a decision accordingly. It is submitted that the order of the Registrar shows complete non-application of mind and deserves to be set aside. It is submitted that various grounds taken in the writ petition and submissions have not been finally adjudicated. It is submitted that the learned Single Judge has upheld the order of the Registrar. It is further

submitted that the list was incorrectly approved by the Registrar and the consequent action taken are also bad.

5. Learned counsel appearing for the contesting respondents, refuting the submissions of the learned counsel for the appellants, contends that the writ petition filed by the petitioners was not liable to be entertained on the ground that after filing of the writ petition, the petitioners themselves had filed a suit as O.S.No.443 of 2012, praying to pass a decree annulling the general body notice of 1.4.2014 issued by the defendant on behalf of the plaintiff Sangham and to declare that the governing body list of 2.4.2014 are illegal and fabricated and further to declare that the notice issued by the defendant and the list of governing body of 2.4.2014 allegedly elected in the said meeting are not binding on the plaintiff Sangham. By filing the said suit, the petitioners had to take appropriate remedy before the competent civil court, to consider the issues pertaining to election and hence, the writ petition was liable to be dismissed at this ground alone. It is submitted that the learned Single Judge has noticed the aforesaid fact of filing the suit, O.S.No.443 of 2012 and has also referred to the copy of the plaint.

6. We have considered the submissions made by the learned counsel for the parties and perused the records.

7. Before proceeding to consider the respective submissions, it is relevant to refer to Section 4 of the Societies Registration Act, 1860, which is to the following effect :-

“4. Annual list of managing body to be filed.- Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.”

Section 4 requires only for filing a list with the Registrar of the names, addresses and occupations of the governors, council, directors, committee or other governing body entrusted with the management of the affairs of the society. The order dated 16.8.2014 has been passed by the Registrar in exercising the power under Section 4 of the Act, where notice was issued to the parties and a decision was taken. The Registrar proceeded with an enquiry as to which list submitted by rival claimants is valid. When the Registrar chose to issue notice and proceeded to

determine the issue and has actually accepted one list of the rival claimant, it was required by statutory authorities to hold summary enquiry and advert to the relevant condition for registering the list. The minimum necessary ingredients for holding an election to be valid are :-

- (1) Whether proper notice for holding an election was issued to the competent person,
- (2) Whether the members who participated in the election are the valid members, and
- (3) Whether election has been conducted in accordance with the bye-laws/rules of the registered society.

8. We would have proceeded to consider the above issues in the context of the order of the Registrar. But, the submission made by the learned counsel for the respondents is that after the order of the Registrar, the petitioners chose to file a suit before the competent court as O.S.No.443 of 2014. Paragraphs 4 and 7 of the plaint refers to the decision of the Registrar. The reliefs claimed in the suit are as follows :-

- “a) Therefore, it is prayed that this Hon'ble Court may be pleased to pass a decree annulling the general body notice of 01.04.2014 issued by the defendant on behalf of the plaintiff Sangham and the governing body list of 02.04.2014 holding that they are illegal and fabricated.
- b) To declare that the notice of 01.04.2014 issued by the defendant and the list of governing body of 02.04.2014 allegedly elected in the said meeting are not binding on the plaintiff Sangham.

- c) To restrain the defendant by an order of permanent injunction from acting as official office bearer of Pulikkal Kavakkibunnayyira Sangham.
- d) To pass an order directing the defendant to pay the cost of this suit to the plaintiffs."

It is true that there was no relief in the suit challenging the order of the Registrar dated 16.8.2014. But, challenge to the list which was approved by the Registrar was very much there.

9. We have noticed that the learned Single Judge in paragraph 14 had noted the fact that suit, O.S.No.443 of 2012, has already been filed by the petitioners. In that event the learned Single Judge ought not to have proceeded to enter into the submissions of the parties and should have relegated the parties to get their rights settled by the competent civil court.

10. It however, need not be said that, when a statutory authority is entrusted to perform a public function, its order has to be rationale and should show complete application of mind. As observed above, we have noticed the fact that a suit has already been filed by the petitioners. Hence the observations made by the learned Single Judge with regard to the merits of the rival list and the validity of the order of the Registrar dated 16.8.2014 shall stand vacated. The competent civil court shall proceed to decide

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the issues in accordance with law without being influenced by any of the observations made by the learned Single Judge. We further observe that it shall be open for the petitioners/appellants to make appropriate application for amendment in the suit or such other reliefs as permissible under law. It will be open for the parties to raise all the contentions as permissible with regard to the validity or invalidity of list, election and the office bearers also.

This writ appeal is disposed of as above.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE