

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WA.No. 1157 of 2014 () IN WP(C).13710/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 13710/2014 of HIGH COURT OF KERALA
DATED 31-05-2014

APPELLANT/PETITIONER:

H.V. RAVEENDRAN AGED 52 YEARS
S/O. KARUNAKARA WARRIER @ KARUNA WARRIER
ARUNA PRESS, MEZHATHOOR POST
RESIDING AT HARIYOOR WARRIAM, MEZHATHOOR POST
THRITHALA.

BY ADV. SRI.R.SREEHARI

RESPONDENTS/RESPONDENTS:

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1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
CO-OPERATIVE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
 2. THE REGISTRAR
OF CO-OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR OF CO-
OPERATIVE SOCIETIES
KERALA, THIRUVANANTHAPURAM-695014.
 3. THE JOINT REGISTRAR
OF CO-OPERATIVE SOCIETIES (G) OFFICE OF THE JOINT
REGISTRAR OF CO-OP SOCIETIES (G)
OTTAPALAM 679101, PALAKKAD.
 4. ASSISTANT REGISTRAR
OF CO-OP SOCIETIES (G), OTTAPALAM 679101.
 5. TRITHALA SERVICE
CO-OPERATIVE BANK LTD.NO. P 593, THRITHALA
REPRESENTED BY ITS SECRETARY, PIN-679534.
 6. MANAGING COMMITTEE
TRITHALA SERVICE CO-OPERATIVE BANK LTD.NO. P 593
THRITHALA, REPRESENTED BY ITS PRESIDENT, PIN 679534.
 7. V.P. SURESH, S/O. KUNHADI, VATTAPARAMBIL HOUSE,
THACHANAMKUNNU, TRITHALA POST, PIN-679534.

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8. THE PALAKKAD
DISTRICT CO-OPERATIVE BANK, HEAD OFFICE
PALAKKAD 678001,

9. THE BRANCH MANAGER
THE PALAKKAD DISTRICT CO-OPERATIVE BANK
TRITHALA BRANCH, TRITHALA POST-679534.

10. THE CHIEF ELECTION
COMMISSIONER, OFFICE OF THE STATE CO-OP
CHIEF ELECTION COMMISSIONER
KERALA, THIRUVANANTHAPURAM-695014.

R1 TO R4 BY SRI. P.M. SANEER,
R5,R6 BY ADV. SRI.V.G.ARUN
R5,R6 BY ADV. SRI.T.R.HARIKUMAR
R7 BY ADV. SMT.S.R.NEETHU RAJ
R8 & 9 BY ADV. SRI.M.SASINDRAN, SC, PALAKKAD DIST.CO.OP.BANK

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRA, JJ.

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W.A. No. 1157 of 2014

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Dated, this the 8th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Interference declined by the learned single Judge with regard to the grievance projected by the petitioner as to the alleged disqualification of the 7th respondent to have participated in the election in respect of the seat reserved for 'Scheduled Caste', is the subject matter of challenge in this writ appeal.

2. The sequence of events reveals that the election was notified in the respondent Bank, in respect of 11 members to be elected to the Board of Directors; 'six' general and 'five' reserved in different capacities. The petitioner, who is a member of the Bank/society contested for election in the general category, whereas 7th respondent's claim was in respect of the vacancy which was reserved for scheduled caste. The scrutiny of nomination papers was scheduled to be held on 05.11.2013; date of withdrawal was on

the next day and finally, the election took place on 17.11.2013. Admittedly, the petitioner could not come through. But in respect of the 7th respondent, there was no other contestant and in the said circumstances, he was declared as unanimously elected.

3. In the course of further proceedings, it was revealed that the 7th respondent had filed a false declaration as to the eligibility to contest the election. It is stated that he was a defaulter by virtue of the amount payable to the 8th and 9th respondents and as such, it is contended that he ought to have been disqualified in terms of Rule 44 of the Kerala Co-operative Societies Rules from participating in the election. The particulars in this regard were to be obtained by resorting to the remedy under the Right to Information Act. But it is stated that no positive relief could be obtained and the request made in this regard has been turned down, pointing out that they stand exempted by virtue of the relevant provisions under the RTI Act. The petitioner/appellant approached the second respondent herein by filing Ext. P3 representation dated 20.11.2013 referring to the alleged disqualification of the 7th respondent and requesting to conduct an enquiry, praying to disqualify the 7th respondent in accordance with

law. On receipt of Ext. P3, the matter was considered by the second respondent and forwarded the same to the third respondent, as borne by Ext. P4 proceedings dated 10.01.2014. Thereafter, the matter took a different turn and the petitioner, on a fine morning, was intimated by the 4th respondent, as per Ext. P5 dated 07.05.2014, that since no objection was raised at the time of scrutiny of nomination papers and no document was produced in support of the contentions, the request made as per the representation could not be acceded to. Ext. P3 application preferred by the petitioner was turned down by the respondent in the said circumstances, which made the appellant/writ petitioner to approach this Court by filing the writ petition seeking for following relief :

"(a) Issue a writ of mandamus or other appropriate writ, order or direction, directing the 2nd and 3rd respondents to enquire into the allegations raised by the petitioner regarding the default committed by the 7th respondent as on the date of nomination to contest as member to the Managing Committee of the 5th respondent as stipulated in Exhibit P1 and to take follow-up action.

(b) Issue a writ of mandamus or other appropriate writ

order or direction, directing the 8th and 9th respondents to furnish loan account details of the 7th respondent as on 04.11.2013 including the default to the 3rd respondent, without any delay.

(c) Issue a writ of mandamus or other appropriate writ order or direction, directing the respondents 2 and 3 to take a decision on the application of petitioner Ext. P3 immediately after obtaining the loan account details of the 7th respondent from the 8th and 9th respondents.

(d) Grant such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

After hearing the learned counsel for the petitioner and the concerned respondents, the learned single Judge observed that the writ petitioner, if at all aggrieved of the out come of the election, declaring the status of the 7th respondent as the elected candidate in respect of the concerned slot, ought to have filed an election petition in terms of the Statute. Reference is also made to the factual position as revealed from Ext. P5, that the objections have been rejected for want of evidence. The learned Judge also observed that no purpose would be served by conducting an enquiry into the objections against the candidature, as he had

ceased to be a candidate and had become an elected member of the managing committee. Case of the appellant is that the real grievance of the petitioner is omitted to be considered properly by the learned single Judge and hence the challenge. The main contention is that the 4th respondent does not have any power, competence or jurisdiction to have issued Ext. P5 and the right of the petitioner, who being a member of the Bank, to point out the disqualification of the party concerned in terms of the law has not been properly analysed.

4. Heard Sri. R. Sreehari - the learned counsel appearing for the appellant, Sri. P.M. Saneer - the learned Government Pleader appearing for the respondents 1 to 4, Sri.T.R. Harikumar - the learned counsel appearing for the respondents 5 and 6 and Sri. M. Sasindran, the learned standing counsel appearing for the respondents 8 and 9.

5. Despite completion of service of notice, the 7th respondent has not chosen to appear before this Court. Same was the position when the writ petition was considered and no counter affidavit was filed. The crucial question to be considered is, whether any enquiry, as ordered to be conducted by the second

respondent/Registrar and as observed in Ext.P4, has been done by the 3rd respondent who is having similar powers. From Ext. P5, it is seen that the said proceeding was issued by the 4th respondent, pursuant to the letter dated 24.03.2014 of the 3rd respondent/Joint Registrar. By virtue of the course and events, it was obligatory for the second respondent to have enquired into the matter, especially with regard to the alleged disqualification of the 7th respondent, he being a defaulter to the 8th and 9th respondents. No factual particulars are seen collected by the said respondent before arriving at the conclusion. It appears that the 4th respondent was under the impression, that the scope of enquiry had to be confined to the process of election; such as nomination, scrutiny and finalization of the list and the evidence tendered in connection with scrutiny and election held on the particular date. If the 7th respondent was not qualified to participate in the election and if the actual facts were suppressed from the notice of the concerned authority, it is always liable to be proceeded against and corrective measures are to be taken. This exercise was sought to be pursued by filing Ext. P3, which in turn is ordered, pursuant to Ext.P4, for conducting necessary enquiry by the 3rd respondent,

after collecting materials and to take a decision. In the said circumstances, the impugned proceedings do not stand the test of law. This is more so, in view of the crystal clear provision by virtue of Rule 44 (2) (c), which enables that even after the election, an elected member shall be disqualified, if he is found to be disqualified.

In the said circumstances, Ext. P5 stands set aside and the second/third respondent is directed to finalize the proceedings pursuant to Ext. P4 and take appropriate steps in accordance with law, so as to redress the grievance of the appellant, within 'three months' from the date of receipt of a copy of this judgment and intimate outcome to the appellant.

The writ appeal is allowed to the said extent. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**ANIL K. NARENDRA,
(JUDGE)**

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