

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WA.No. 1761 of 2015 () IN WP(C).18857/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 18857/2015 of HIGH COURT OF KERALA
DATED 24-06-2015

APPELLANT(S)/3RD PARTY:

K.P HASSAN
FORMER PRESIDENT
THE IDUKKI DISTRICT MOTOR EMPLOYEES CO-OPERATIVE
SOCIETY LIMITED NO.I 191
IDUKKI (RESIDING AT KUMBALLIKKAL, VELLAYAMKUDI
IDUKKI).

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S)/PETITIONER AND RESPONDENTS:

1. M.V CHACKO VARGHESE,
MANATHU HOUSE, CHEMMANNUR, IDUKKI DISTRICT - 685554.

2. PART TIME ADMINISTRATOR
THE IDUKKI DISTRICT MOTOR EMPLOYEES CO-OPERATIVE
SOCIETY LIMITED NO.I 191
KATTAPPANA, IDUKKI-685508.

3. THE IDUKKI DISTRICT MOTOR EMPLOYEES CO-OPERATIVE SOCIETY
LIMITED NO.I 191
KATTAPPANA, IDUKKI-685508
REPRESENTED BY ITS SECRETARY.

4. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
IDUKKI-685603.

R1 BY SRI.P.N.MOHANAN

R4 BY SENIOR GOVERNMENT PLEADER SRI. MUHAMMED SHAFI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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W.A. Nos. 1761 and 1790 of 2015

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Dated, this the 12th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

The issues involved in both these appeals are closely interlinked. Hence they are dealt with together. The pleadings and proceedings are referred to as given in W.A. No.1761 of 2015 for convenience of reference.

2. The appellant herein approached this Court, after obtaining the leave of this Court so as to challenge the judgment dated 24.06.2015 in W.P.(C) No. 18857 of 2015, to which he was not a party. The case is that, he was the former President of the respondent Idukki District Motor Employees Co-operative Society Limited No. I 191, Kattappana and was continuing in office. While so, the Departmental Authorities, based on some frivolous complaint, passed an order, whereby the committee was caused to be superseded on 27.04.2012, despite the fact that the committee was having the term till 14.07.2012. The said order was passed without

affording an opportunity of hearing. Met with the situation, the proceedings was sought to be challenged by filing W.P.(C) No.10629 of 2012, which was admitted by a learned Judge of this Court on 08.05.2012 also granting Annexure A1 interim order, directing the respondents therein to permit the elected Managing Committee of the Idukki District Motor Employees Co-operative Society Limited No. I 191 to administer and manage the affairs of the society until further orders, however making it clear that the Managing Committee shall not make appointments or take major policy decisions.

3. While so, the term of the committee expired on 14.07.2012, when steps were taken to appoint an Administrator. Subsequently, the Administrator was sought to be replaced by appointing an Administrative Committee, allegedly because of some political reasons, when it was sought to be intercepted by the appellant herein, by filing another writ petition as W.P.(C) No. 14249 of 2012. So as to meet the need of the hour, I.A. No. 9933 of 2012 was also filed therein and after considering the same, another learned Judge of this Court passed Annexure A2 interim order on 17.07.2012, giving a positive direction to the effect that the respondents therein shall not appoint any Administrative

Committee for the Society until further orders. It is stated that the said order stands good and governs the field even now.

4. It was while so, that the election was proposed to be conducted on 14.07.2014. In the course of further proceedings, the appellant sought to contest the election and accordingly, nomination was submitted in this regard. However, the nomination submitted by the appellant came to be rejected, referring to the disqualification by virtue of supersession of the Board, which was sought to be challenged by filing W.P.(C) No. 16843 of 2014. The appellant contended that the order whereby the Committee was sought to be superseded was stayed by this Court, as per Annexure A1 order dated 08.05.2012, that the supersession had never taken place and in turn there could not have been disqualification in contesting for the post. The said writ petition was admitted and Annexure A3 interim order was passed on 03.07.2014, whereby a learned single Judge of this Court intercepted the election proceedings and granted interim stay until further orders, also making it clear that Administrator shall not enroll members without getting further orders. The said order also stands in tact as on date.

5. While so, the first respondent preferred Ext. P1 representation before the Joint Registrar of the Co-operative Societies, seeking for immediate steps to replace the present Administrator by an Administrative Committee and to conduct election at the earliest. The said representation is dated 25.05.2015. Thereafter, he filed writ petition No. 18857 of 2015, without impleading the appellant herein and without making any reference to the earlier interim orders passed by this Court (copies of which have been produced as Annexures A1 to A3) and sought for a direction to have the representation considered and finalized, so as to redress the grievance projected therein.

6. On going through the pleadings and proceedings in the said writ petition, copies of which is forming part of the file, it is seen that the factum of supersession of the Managing Committee, rejection of the nomination filed by the appellant herein, amendment of the relevant provisions under Statute, particularly by virtue of Sections 16A and 19A of the Kerala Co-operative Societies Act and Rule 18A of the Kerala Co-operative Societies Rules, are also referred to therein. Apart from the prayer to direct the 3rd respondent in the said writ petition to consider Ext.P1 representation, direction was sought for to take a decision to

conduct election within 60 days or within such other time to be framed by this Court. It was accordingly, that the judgment dated 24.06.2015 came to be passed at the admission stage itself, directing the Joint Registrar to consider and pass appropriate orders on Ext. P1 with notice to the writ petitioner and also to the respondent Society, within one month. In the next paragraph, it was directed that it shall be ensured to see that an elected Managing Committee assumed office to man the affairs of the society and every endeavour shall be made to complete the process of election on or before 30.09.2015. This in turn is sought to be challenged by the appellant, for the reasons mentioned above, after getting the leave of this Court, which was granted on 06.08.2015 as per the order in I.A. No. 1035 of 2015.

7. Sri. P.N. Mohanan, who entered appearance on behalf of the first respondent submits that, pursuant to the judgment dated 24.06.2015 in W.P.(C) No. 18857 of 2015, the matter was considered by the Joint Registrar, who passed Annexure A5 order dated 22.07.2015 (produced as Ext. P5 in W.A. No.1790 of 2015). The said order is sought to be challenged by the appellant in W.A. No. 1761 of 2015, which according to the respondent, is for no reason at all and is only to stall the proceedings with regard to the

conduct of election. The above order is sought to be challenged in W.P.(C) No. 23093 of 2015 and a learned Judge of this Court has granted an interim order of stay of election and further proceedings ordered as per Ext. P5 proceedings dated 22.07.2015 of the Joint Registrar. This is stated as not correct or sustainable and hence the same has been subjected to challenge by filing W.A. No. 1790 of 2015, by the members of the Administrative Committee who came to be appointed pursuant to Annexure A5 order produced in other case. The learned counsel further submits that the interest of the first respondent in W.A No. 1761 of 2015 is only to see that the election is conducted at the earliest and nothing else.

8. The learned counsel appearing for the appellant in W.A. No. 1761 of 2015 submits that the version of the first respondent in the said appeal and that of the appellant in W.A. No. 1790 of 2015 do not appear to be so transparent and according to the former, the latter is acting hand-in-glove with each other and there is an instance of collusion as well. This Court does not find it necessary to go into the rival contentions with regard to the claim mooted by both the sides, but for observing that, existence of the interim orders passed by this Court by way of Annexures A1 to A3 is not disputed by either side. In so far as there is clear interdiction by a

learned Judge of this Court as to the conduct of election, whether the joint Registrar could have proceeded with further steps is the only point to be considered.

9. In response to the insinuation made by the learned counsel for the appellant in W.A. 1761 of the 2015, the learned Government Pleader has brought to the notice of this Court that the matter [WP(C) No. 18857 of 2015], was caused to be disposed of at the admission stage and as such, no opportunity was there to get instructions as to whether any matter was pending or disposed of in connection with the issue involved. There was no instance of suppression or misrepresentation from the part of the Government in any manner, submits the learned Government Pleader.

10. It is true that the said order was passed by the Joint Registrar pursuant to the direction given by the learned single Judge in W.P(C) No.18857 of 2015. Whether the factual position as to the existence of the interim orders restraining the authorities, from conducting election, as ordered vide Annexure A, was brought to the notice of the learned single Judge is also a point to be looked into for moulding the relief. It is brought to the notice of this Court, during the course of hearing, that W.P.(C) 10629 of 2012 (wherein Annexure A1 order was passed) filed, with regard

to the supersession, was finally heard and judgment stands reserved. But the other two orders wherein Annexures A2 and A3 orders were passed and similarly W.P.(C) No. 23093 of 2015 (wherein Annexure A1 order produced in W.A. 1790 of 2015) are pending. The issue can be resolved once and for all if these matters are considered together.

11. If the existence of Annexure A3 order was brought to the notice of the learned single Judge, while passing the judgment in W.P.(C) No. 18857 of 2015, this Court is of the firm view that, such a positive direction to have process of election completed on 30.09.2015 would not have been resulted. The direction given by the learned Judge had virtually led to Annexure A5 and subsequent proceedings for conducting the election. As such, the relief sought for in the said writ petition also requires to be reconsidered by the learned single Judge. In so far as writ petitioner is present before this Court and departmental authorities are represented by the learned Government Pleader, we do not find it necessary to issue notice to the respondents 2 and 3. The judgment dated 24.06.2015 in W.P(C) No. 18855 of 2015 stands set aside and the matter is remanded to the learned single Judge for being considered along with other two writ petitions.

12. In the said circumstances, the parties are relegated to move the learned single Judge to cause all the said matters to be considered and finalized at the earliest. Interim orders already passed will continue. With the above observations, these Writ Appeals are disposed of, making it clear that we have not expressed anything with regard to the merits of the case.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd