

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 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WA.No. 2246 of 2015 () IN WP(C).29988/2015

AGAINST THE ORDER IN WP(C) 29988/2015 DATED 07-10-2015

APPELLANT(S)/PETITIONERS :-

1. JOJO JOSEPH
VILANGUPARAYIL, KURIANAD P.O., KOTTAYAM
2. BABY K.V.,
KULATHOLIL HOUSE, KURIANAD P.O., KOTTAYAM
3. JOHN M. SEBASTIAN
MANIKYAMKUZHIL, KURIANAD P.O., KOTTAYAM
4. SOMATHAN K.P.,
KOTTARAMTHARAPPIL, KURIANAD P.O., KOTTAYAM
5. SEBASTIAN K.C.,
KALANAL, KURIANAD P.O., KOTTAYAM
6. K.N.CHANDRASEKHARAN NAIR
KURUMUTTATHU, KURIANAD P.O., KOTTAYAM

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.M.R.SABU

RESPONDENT(S)/RESPONDENTS :-

1. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT
KOTTAYAM DISTRICT - 686001
2. STATE OF KERALA REPRESENTED BY ITS SECRETARY
AGRICULTURAL & DAIRY DEVELOPMENT DEPARTMENT
THIRUVANANTHAPURAM - 695001
3. KURIANAD KSHEROLPADAKA SAHAKARANA SANGAM
NO.K-69 (D) APCOS, KURIANAD P.O, PIN - 686636
REPRESENTED BY ITS SECRETARY

4. THE RETURNING OFFICER

(DIARY DEVELOPMENT OFFICER, KADUTHURUTHY)

SAHAKARANA SANGAM NO.K-69 (D), APCOS, KURIANAD P.O

PIN - 686636

5. KERALA STATE CO OPERATIVE ELECTION COMMISSION

THIRUVANATHAPURAM - 695 001.

BY SPL.GOVERNMENT PLEADER SRI.D.SOMASUNDARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.2246 of 2015

Dated this the 14th day of October 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard.

2. This writ appeal has been filed against the order dated 7.10.2015 passed by the learned Single Judge in W.P.(C) No.29988 of 2015, by which, the petitioners' prayer for interim relief to stay the operation of Ext.P15 was rejected. Ext.P15 is the order passed by the Returning Officer rejecting the nomination of the petitioners.

3. The petitioners/appellants were members of the Co-operative Society, which was presided by the State in exercise of power under Sec.32 of the Kerala Co-operative Societies Act, 1969. There has been several allegations with regard to supersession and against the last supersession directed by the Government, an appeal was filed by the petitioners, which was pending. In the mean time, Election Commission issued a notification for holding election on 15.10.2015. The last date for submission of nomination was fixed on 28.9.2015 and 29.9.2015 is

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the date fixed for scrutiny of the nomination papers. The petitioners' appeal was rejected and an order rejecting the appeal was sent to the petitioners by ordinary post. Before the order could reach the petitioners, their nomination was rejected on 29.9.2015 by the Returning Officer, who was made aware of the order rejecting the appeal.

4. The petitioners in the writ petition prayed for stay of Ext.P15. The learned Single Judge, after hearing the submissions of the learned counsel for the petitioners elaborately, by a detailed order, has refused to interfere with the order of the Returning Officer. The learned Single Judge also did not grant any order staying Ext.P15.

5. Sri.P.Ravindran, the learned Senior Counsel appearing for the appellants submits that the order rejecting the appeal filed by the appellants has not been communicated, which fact was found by the learned Single Judge. It is submitted that the rejection of the nomination was erroneous. It is submitted that in so far as the communication of the order, the learned Single Judge had accepted the case of the petitioners that the same was communicated only on 1.10.2015. It is further submitted that the petitioners had a very strong case against Ext.P15 order.

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6. After having heard the learned Senior Counsel for the petitioners, we are of the view that no error was committed by the learned Single Judge in exercising his discretion in not staying Ext.P15. Even though the order rejecting the appeal was not communicated to the petitioners, the Returning Officer being aware of passing of the said order did not commit any error in rejecting the nomination. It is also not disputed that the order rejecting the appeal was communicated by post to the petitioners on the date when the nomination was rejected. The learned Single Judge has also given reason to refuse the interim prayer to stay Ext.P15. We do not find any error in the order passed by the learned Single Judge refusing to grant interim relief, which warrants interference by the appellate jurisdiction.

Accordingly, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE