

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WA.No. 2413 of 2015 () IN WP(C).25295/2015

AGAINST THE JUDGMENT IN WP(C) 25295/2015 DATED 14-10-2015

APPELLANT(S) :-

1. KUTHUBUDHEEN, S/O.SHAIK, THAITHOTTAM,
KILTAN ISLAN, PIN - 682 558.
2. SYED MOHAMMED KOYA, S/O.AHAMMED KOYA,
MELAILLAM HOUSE, KILTAN ISLAND,
PIN - 682 558.

BY ADVS.SRI.R.RAMADAS
SRI.T.SIVADASAN

RESPONDENT(S) :-

1. UNION TERRITORY OF LAKSHADWEEP,
REPRESENTED BY ITS ADMINISTRATOR,
KAVARATHI ISLANDS, UNION TERRITORY OF LAKSHADWEEP,
KAVARATHI - 682 555.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES KAVARATHI,
KAVARATHI, KAVARATHI ISLANDS,
UNION TERRITORY OF LAKSHADWEEP, KAVARATHI - 682 555.
3. THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND
MARKETING SOCIETY, LMA No.8, KILTAN KAVARATHI,
REPRESENTED BY ITS SECRETARY, PIN - 682 558.
4. SRI.A.SAJU THOMAS, RETURNING OFFICER,
THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND
MARKETING SOCIETY, LMA No.8, KILTAN,
KAVARATTI - 682 558,
(PRINCIPAL, GOVERNMENT SENIOR SECONDARY SCHOOL
KILTAN, KAVARATHI - 682 558).
5. M.S.BADARUDEEN, (CO-OPERATIVE INSPECTOR) ,
ASSISTANT RETURNING OFFICER,
THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND
MARKETING SOCIETY, LMA No.8, KILTAN, KAVARATHI-682 558.

6. NALLAKOYA HAJAROMABIYODA,
S/O.MOHAMMED, KENATINAKARA, KILTAN - 682 558.
7. ABOOSALA BAITHODA,
S/O.ATTAKIDAVU, PATHUMATHODA, KILTAN - 682 558.
8. SAKEENABI KALKULAM,
D/O.ATTAKIDAVU, PUTHIYAPURA, KILTAN - 682 558.
9. NAFEEESA NAMBICHAM,
D/O.HAMZATH, ALLIKOM, KILTAN - 682 558.
10. MOHAMMED SIRAJ KUMPUPURA,
S/O.ATTAKOYA, KUMPUPURA, KILTAN - 682 558.
11. ASIFKHAN BALIYAPURA, S/O.MOHAMMED KHAN,
PENTTANVELI, BALIYAPURA, KILTAN - 682 558.

BY SRI.S.RADHAKRISHNAN, SC, LAKSHADWEEP ADMN
BY SRI.A.A.ZIYAD RAHMAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-
11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.2413 of 2015

Dated this the 6th day of November 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard.

2. This writ appeal has been filed against the judgment dated 14.10.2015 in W.P.(C) No.25295 of 2015. The writ petition was filed by the petitioners/appellants praying for the following reliefs :-

- “a) Declare that the private respondents 6 to 11 are ineligible to contest in the election to the Board of Directors of the 3rd respondent Society for the period 2015-20.
- b) Issue a writ of certiorari or other appropriate writ, order or direction calling for the records of the case and quash the entire Ext.P2 - Election process from the stage of scrutiny of Ext.P4- nominations leading to the issue of Ext.P7 - final list of contesting candidates.
- c) Direct the 4th respondent - Returning Officer to conduct the election to the Board of Directors of the 3rd respondent Society for 2015-20 from the stage of scrutiny of Ext.P4 - nominations afresh strictly in accordance with, LM&A Islands Co-operative Societies Regulations 1960, Rules 1961 and Ext.P1 - Bylaws by issue of a writ of mandamus.
- d) Award costs of and incidental to this writ petition.”

The grievance of the writ petitioners was that on the day of scrutiny of nominations, the Returning Officer fell ill due to cardiac problem and the Assistant Returning Officer, who was not

competent to accept the nominations of private respondents, accepted the same. Aggrieved by the said process undertaken by the Assistant Returning Officer, the writ petition was filed.

3. The learned Single Judge, after hearing both the parties, had disposed of the writ petition with the following directions in paragraph 29:-

“Thus, to avoid a piece-meal approach to the issue, this Court has felt it desirable to let the authorities start the process afresh from the stage of notification, so that all eligible candidates can contest and the Managing Committee to be elected will assume power in the best of democratic traditions - with the participation and contest of members on a wide spectrum rather than letting a healthy contest perish on the altar of technicality.

Needless to observe that the respondent officials shall ensure the completion of the entire process of election at the earliest. No order as to costs.”

The petitioners, aggrieved by the said directions issued by the learned Single Judge, have come up in the writ appeal.

4. The submission raised by the counsel for the appellants is that the nominations have been accepted by the authority, who was not competent to do so, which fact was not even contested by the Administration. The learned Single Judge ought to have declared that acceptance of nominations was invalid and thereafter, ought not to have directed that election to be

proceeded from that stage. But, the said decision of the learned Single Judge directing holding of the entire election afresh was not uncalled for.

5. Learned counsel for the petitioners submits that in the writ petition, there was an order of stay of further process of election.

6. Learned counsel appearing for the respondent Administrator submits that the learned Single Judge has taken a decision in the ends of justice to get a fresh election in the interest of best of democratic traditions and the learned Single Judge held that technicality should not be accepted to defeat the justice and for that reason had passed the said judgment, which need no interference in the appellate exercise of jurisdiction of this Court.

7. We have considered the submissions made by the parties and perused the records.

8. It is well settled that in election matters, be that of a Co-operative Society or any other local authority, the writ court normally does not interfere, when once the election has been started, leaving all issues to be adjudicated after the election is over. We, thus, are of the view that the learned Single Judge ought not to have entertained the writ petition challenging an intermediate process of election, where nominations were

accepted leaving the petitioners to get the illegality of said right after the election is over. However, the learned Single Judge entertained the writ petition and granted an interim order staying the further process of election, he had every jurisdiction to mould the relief and direct for holding the election. Instead of staying the election, a direction to hold the election is necessary to have been passed.

9. The learned counsel for the petitioners emphasises that there was no prayer in the writ petition to set aside the entire election. Since the prayer being limited to direct for holding election from the stage, which was vitiated by the learned Single Judge by granting stay of further process of election, the learned Single Judge ought not to have issued such a direction.

10. In fact the learned Single Judge was conscious of the above submission and had given reasons in paragraphs 24, 25 and 28. Taking into consideration of the entire facts and circumstances and the jurisdiction exercised by the learned Single Judge by moulding the relief, we are of the view that this is not a case where the appellate court should interfere in the jurisdiction exercised by the learned Single Judge. Admittedly, since the election has to be held, which has been stayed by the learned Single Judge by an interim order, we, thus, decline to exercise the

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appellate jurisdiction in the facts of the present case, leaving all questions of law open to be adjudicated in appropriate proceedings, in accordance with law.

Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt/6.11.2015.