

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WA.No. 2680 of 2015 IN WP(C).36199/2015

AGAINST THE ORDER IN WP(C) 36199/2015 DATED 01-12-2015
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APPELLANT/PETITIONER :

SANDEEP.E.M., S/O.GOPALAN E.M.,
MEMBERSHIP No.399,
EDAKATTUMKARA MEETHAL HOUSE,
KULAKKAD P.O., ATHOLI, KOZHIKODE DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS/RESPONDENTS :

1. THE KERALA STATE CO OPERATIVE ELECTION COMMISSION,
THIRUVANANTHAPURAM - 695 001.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), WAYANAD - 673 121.
3. THE ELECTORAL OFFICER/ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE ASSISTANT
REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL), VYTHIRI,
KALPETTA P.O., WAYANAD DISTRICT - 673 121.
4. THE RETURNING OFFICER/UNIT INSPECTOR (KALPETTA),
THE WAYANAD DISTRICT POICE CO-OPERATIVE SOCIETY No.W.208,
KALPETTA NORTH, KALPETTA P.O., WAYANAD DISTRICT - 673 121.
5. THE WAYANAD DISTRICT POLICE CO-OPERATIVE SOCIETY No.W.208,
KALPETTA NORTH, KALPETTA P.O., WAYANAD DISTRICT - 673 121.
REPRESENTED BY ITS JHONORARY SECRETARY.

R1 TO R4 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL.
R5 BY ADV. SRI.P.C.SASIDHARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 2680 OF 2015

Dated this the 14th day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard both the sides. This writ appeal has been filed against an interim order dated 01.12.2015 by which the learned Single Judge has entertained the writ petition and passed the following order in paragraph 11:

“11. As a result, this court *prima facie* holds and accordingly directs that the election may go on as has been scheduled. Nevertheless, the outcome shall be subject to the result of the writ petition.”

2. Sri.George Poonthottam learned counsel for the appellant contends that from the list of 1300 members, the Society has finalised the voter's list with only 285 members. The objection by the petitioner and other similarly situated persons was rejected. It is submitted that the names of the petitioner and others have not been included, relying on the provision of Section 16A and Rule 18 of the Kerala Co-operative Societies Act and Rules. It is submitted that the learned Single Judge has entertained the writ petition and

come to a conclusion that the outcome of the election shall be subject to the result of the writ petition.

3. From the facts which has been brought on record it is clear that the election process has been initiated by notification dated 30.10.2015 and all steps regarding process of election have been completed except the polling which is scheduled to take place on 19.12.2015. Learned counsel for the appellant submits that in view of the fact that the writ petition has been entertained by the learned Single Judge by passing an interim order that the outcome of the election will be subject to the result of the writ petition, the learned Single Judge ought to have stayed the election notification itself.

4. We are of the view that since the election process has proceeded except the polling, learned Single Judge did not commit any error in not staying the election. As the writ petition having been entertained, the issues raised by the appellant/writ petitioner in this appeal can be brought before the learned Single Judge.

5. Learned counsel for the appellant also brought to the notice of this Court the two Division Bench judgments in

which a reference has been made for constitution of a Bench for hearing the conflict by order dated 21.08.2015 in W.P.(C) No.17041 of 2015 which has been placed before us. In view of the issues which are pending consideration in the writ petition as well as before us, we are of the view that it is not a fit case for this appellate court to interfere with the order passed by the learned Single Judge.

Leaving open the questions for consideration in the writ petition which has already been entertained by the learned Single Judge, the Writ Appeal is dismissed. We, however, observe that as the writ petition is pending, it shall be open for the appellant/writ petitioner to seek such relief as permissible under law by making necessary amendments in the writ petition, that too after declaration of the election result.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**