

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

SUNDAY, THE 20TH DAY OF DECEMBER 2015/29TH AGRAHAYANA, 1937

WA.No. 2752 of 2015 () IN WP(C).37605/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 37605/2015 of HIGH COURT
OF KERALA DATED 18-12-2015

APPELLANT(S)/PETITIONER:

SRI SHEEL BHADRA SINHA
148, ANANDPURI, 1ST FLOOR
WEST BORING CANAL ROAD, PATNA-800 001.

BY ADVS. SRI.T.SETHUMADHAVAN (SR.)
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON

RESPONDENT(S)/RESPONDENTS:

-
1. THE INSTITUTION OF ENGINEERS(INDIA),
8, GOKHALE ROAD, KOLKATA-700 020
REPRESENTED BY ITS SECRETARY AND
DIRECTOR GENERAL SRI. BRAHMA REDDY.
 2. SRI HATESH C. SYNE BERRY
SHANTIKUNJ, 406, KORORAM ROAD
NAYA GAON, CHANDIGRAH-160 103.
 3. DR.L.V.MURALIKRISHNA REDDY
PRESIDENT, THE INSTITUTION OF
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GOKHALE ROAD, KOLKATA-700 020
 4. SRI PRADEEP CHATURVEDI
C-4, GULMOHAR PARK, NEW DELHI-110 049.
 5. SRI JAGADISH MOHAN
1/117, VIVEK KHAND, GOMTI NAGAR
LUCKNOW-226 010.
 6. SHRI GHULAM MOHD DAR
FIE, D-1, CO-OPERATIVE COLONY
PEER-BAGH, AIR-PORT ROAD, SRINAGAR-190 014
KASHMIR.
 7. SHRI SUKHDEV RATTAN
KEHLOORKUTIR, BYE PASS ROAD, SAPROOM SOLAN
SOLAN, HIMACHAL PRADESH.

8. DR.U.CHANDRASEKHAR
FIE, DIRECTOR
ENGINEERING STAFF COLLEGE OF INDIA (ESCI)
GACHIBOWLI, OLD BOMBAY ROAD,
HYDERABAD-500 032.
9. SHRI ASHOK KUMAR BASA
FIE, IMME, PRESIDENT
IEI, DIRECTOR (TECHNICAL),
B ENGINEERS & BUILDERS LTD.,
72/A, MANCHESWAR INDUSTRIAL ESTATE,
BHUVANESWAR - 751 010.
10. SHRI S.S.RATHORE
FIE, PAST PRESIDENT, IEI
PLOT NO.54/2, SECTOR 2-A, GANDHINAGAR-382 007.
11. SHRI KIRAN CHANDER SETHI
FIE, HOUSE NO.85, DAYAL SINGH COLONY
KARNAL-132 001.
12. SHRI P.O.AGARWAL
FIE, HIG-10, HOSHANGABAD ROAD
SHIVAJI NAGAR, BHOPAL-462016.
13. SHRI SATISH GANESHRAO BHALEY
FIE, 14, JEEVAN CHHAYA COLONY,
NEAR KALYAN NAGAR, ASHRIAVATI-444 606.
14. SHRI RAMESH CHANDRA BAIRATHI
FIE, B-116, VIDYUT NAGAR-B
QUEENS ROAD, AJMER ROAD, RAJASTHAN
JAIPUR-302021.
15. SHRI ARVINDER SINGH BAKSHI
FIE, HOUSE NO.2137, SECTOR 21C
CHANDIGARH-160 022.
16. PROF.DR. NIL RATAN BANDYOPADHYAY,
FIE, PROFESSOR AND DIRECTOR
SCHOOL OF MATERIALS SCIENCE & ENGINEERING
BENGAL ENGINEERING & SCIENCE UNIVERSITY
SHIBPUR P.O.: B GARDEN, HOWRAH-711 103.
17. SHRI SISIR KUMAR BANERJEE
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18. SHRI VED PRAKASH BANSAL
FIE, A-33, SECTOR-19
NOIDA, PIN - 201 301, UP.
19. SHRI NARENDRA KARBHARI BIRAR
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OPP.DESHDHOT PAPERS, SATPUR
NASHIK-422 007.

20. SHRI VINOD KUMAR BIRTHIRE,
FIE, 577-C-12, SAINIK SOCIETY
SHAKTI NAGAR, JABALPUR-482 001, MP.
21. DR.SUDHIR KUKMAR CALLA
FIE, DIRECTOR (D & W)
SWAMI KESHVANAND INSTITUTE OF TECHNOLOGY
MANAGEMENT AND GRAMOTHAN RAM NAGRIA, JAGATPURA
JAIPUR-302017, RAJASTHAN.
22. SHRI MOHAN BALWANT DAGAONKAR
FIE, D/30/O:2 SAGAR-SANGAM SOCIETY, SECTOR-4
NERUL, NAVI MUMBAI-400 706.
23. DR.GOVIND DANGAVACH SHARAN
FIE, 53, JAWAHAR COLONY
NEAR GLASS FACTORY, TONK ROAD, JAIPUR-302018
RAJASTHAN.
24. SHRI SHAILESH JANARDAN DESAI
FIE, B1 ANUPAM APARTMENT
NEAR HIMALAYA ARCADE, VASTRAPUR, AHMEDABAD
GUJARAT-380 015.
25. SHRI C.M.DHARMALINGAM
FIE, 23, NATRAJ NAGAR LAYOUT
VISVESWARAIYA 3RD STREET, EXTN. K.K.PUDUR
COIMBATORE-641 038, TAMIL NADU.
26. SHRI C.M.DIMRI
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DEHRADUN-248 001.
27. SHRI SHREE BHAGAWAN DUBEY
FIE, ALOK NIKUNJ, URJANAGAR
CANTT-KHAGAUUL ROAD, NEAR CHITWAN, PATNA
DANAPUR-801503.
28. SHRI PRITHVI SINGH GAHLOT
FIE, 624, RANISATINAGAR
LANE-6, GATE NO.6, LADHI MARG
JANPATH, AJMER ROAD, JAIPUR-302019.
29. SHRI DIVAKAR GARG,
FIE, FLAT NO.A-1/2, M.S.FLATS
SECTOR-13, R.K.PURAM, NEW DELHI-110 066
30. SHRI RAJINDER PAL GARG
FIE, HOUSE NO.1832, SECTOR
34-D, CHANDIGRAH 160 022.
31. SHRI K.K.S.GAUTAM
FIE, A-105, SARV DHARM COLONY
KOLAR ROAD, BHOPAL, MP-462 042.

32. DR.JAGADISH KUMAR GEHLAWAT
FIE-34, ANAMIKA APARTMENTS, 99
IP EXTENSION, NEW DELHI-110 092.
33. SHRI VIJAY SADAHIV GHOGARE, FIE
1-17, SILVANUS PANCHVATI, PASHAN (NEAR NCL)
PUNE-413103.
34. DR.K.GOPALAKRISHNAN
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7TH CROSS, K.R.COLONY, DOMLUR LAYOUR
BANGALORE-560 071.
35. SHRI T.M.GUNARAJA
FIE, TMG COLLEGE OF ARTS & SCIENCE, 385
ARCOT ROAD, KODAMBAKKAM, CHENNAI-600 024.
36. SHRI ARVIND KUMAR GUPTA
FIE, 96A, MAHATMA GANDHI MARG
OPPOSITE GOVERNOR'S HOUSE, LUCKNOW-226 001.
37. SHRI DEV KUMAR GUPTA
FIE, HOUSE NO.917, SECTOR-5
HUDA, KURUKSHETRA, HARYANA-136 118.
38. SHRI N.ILAMPARUTHI
FIE, G-15, JAWAHARKAK NEHRU SALAI
BLOCK-16, NEYVELI-607801.
39. DR.(PROF.) MADDU KAMA RAJU
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40. PRF. (DR) T.S.KAMAL
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TRICHY-620 017.
42. SHRI JAHNABI KONAR
FIE, C/O.MR.DILIP KUMAR CHOUDHURY, 1/6
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43. DR.WOODAY P KRISHNA
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13TH MAIN, RAJAMAHAL VILAS EXTENSION,
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44. SHRI KISHORE KUMAR
FIE, FLAT NO.101, BAIDYANATH PALACE
JAGDEO PATH, BAILEY ROAD, PATNA 800 014
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45. DR.G.MADHU
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46. SHRI ARCHAN KUSUM MAJUMDAR
FIE, AE-701, SALT LAKE CITY
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47. SHRI VISHESHWAR LAL MALHOTRA
FIE, C-24, SECTOR 57
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48. DR.ARUP KUMAR MISRA
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49. SHRI HARISH KUMAR MITTAL
MIE, KRISHNAM, 346
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JAIPUR-302019
50. SHRI CHANDRA MOHAN
FIE, H.NO.12-2-709/C/114, PADMA NABHA NAGAR
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51. DR.OMKAR NATH MOHANTY
FIE, PLOT NO.200, KHARAVELA NAGAR
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52. SHRI D.V.NAGABHUSHAN
FIE, 43/1, IV MAIN, 15TH CROSS
MALLESWARAM, BANGALORE-560 003.
53. DR.M.P.SUKUMARAN NAIR
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54. SHRI L.M.PATRA
FIE, 219, BAYABABA MATH ROAD
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55. SRI R.PERIASAMY
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56. SHRI R.PONBADI
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57. SHRI I.SATYANARAYANA RAJU
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CHINMAYI RESIDENCY, RD-10, SURYANAGAR
SOMAJIGUDA, HYDERABAD-500 082, ANDHARA PRADESH
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59. SHRI K.P.RAMANATHAN
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60. PROF.(DR) , MALLELA PURNACHANDRA RAO
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62. DR.DAGGULA NARASIMHA REDDY
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63. DR.K.HEMACHANDRA REDDY
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80 FEET ROAD, RAMNAGAR, ANANTAPUR-515 001.
64. SHRI SHIVANAND ROY
FIE, 2E, SATYAM APARTMENT
OPP. ASHOK NAGAR ROAD NO.3,
CENTRAL ASHOKA EXTENSION
RANCHI-834002, JHARKHAND.
65. SHRI SUBHASH CHANDRA RUDRA
FIE, C-15/9, CLUSTER A
ECTP PHASE IV, E.M.BYPASS, KOLKATA-700107.
66. SHRI A.S.SATISH
FIE, 955/2, DEEWANS ROAD
LAKSHMIPURAM, MYSORE-570 004.
67. SHRI ASHWANI KUMAR SAXENA
FIE, CHAIRMAN, SEAC
170C, ROAD NO.4, ASHOK NAGAR
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68. DR.M.SELOT
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BHILAI-490 020.

69. PROF. RAMESH HARILAL SHAH
FIE, KAPI-HARI, 9 SUSHIL NAGAR
NIZHAMPURA, VADODARA-390 002.
70. PROF. (DR) R.K.SHEVGAONKAR
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71. DR.ARUN KUMAR SHRIVASTAVA
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72. SHRI JAGROOP SINGH
FIE, 214, SECTOR-16A
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73. SHRI NARENDRA SINGH
FIE, C-101, ALAKNANDA APARTMENT
51-B, RAJPUR ROAD, DEHRADUN-248 001.
74. SHRI JAGDISH CHAND SINGHAL
FIE, B-188, EAST OF KAILASH
SECOND FLOOR, NEW DELHI-110 065.
75. SHRI G.SREEKANTHA
FIE, NO.C-55, KPWD QUARTERS
3RD CROSS, VASANTHNAGAR, BANGALORE-560 052.
76. SHRI G.SUDHAKAR
FIE, HOUSE NO.8-3-228/331, RAHAMATHNAGAR
YOUSUFGUDA, HYDERABAD-560 045.
77. DR.RUPINDER P.S. SUKERCHAKIA
FIE, NO.2, SUNIL PARK
OPP. WEST END MALL, P.O.RAJGURU NAGAR
LUDHIANA-141 012.
78. SHRI PRABODH NARAYAN TANDON
FIE, FLAT NO.A-1202, PLOT NO.A, B, E & F,
CONCEPT UNNATHI, SECTOR 21,
KHARGHAR, NAVI MUMBAI-400 210, MAHARASHTRA.
79. SHRI HEMANT OMKARRAO THAKARE
FIE, PLOT NO.272-A, LAXMINAGAR
NAGPUR-440 022.
80. SHRI B.N.THYAGARAJA
FIE, NO.17, SANKEY ROAD
KUMARA PARK (WEST) BANGALORE-560 020.
81. SHRI L.N.TIWARI
FIE, OPP NAVIN MARKET, G.E.ROAD
PHOOL CHOWK, RAIPUR-492 001, CHHATTISGARH.

82. DR.T.H.UDAYASHANKARA
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83. SHRI J.UMASANKAR
MIE, KAUSTUBHAM, TC 30/420-1
ANNYARA P.O., TRIVADNRUM-695 029.
84. PADMA SHRI PROF.R.M.VASAGAM
FIE, NO.297, MADHURA
4TH MAIN, ISRO LAYOUT, BANGALORE-560 078.
85. SHRI SANDEEP B VASAVA, MIE
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86. SHRI NAVINCHANDRA B VASOYA
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87. DR.KAMBAGOWNI VENKATASUBBAIAH
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PETTAH P.O., THIRUVANANTHAPURAM, KERALA
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89. SHRI S.R.VIJAYAMOHANAKUMAR
FIE, NO.B-5, PRS TULIPS
PANAVILA JUNCTION, THYCAUD P.O.,
THIRUVANANTHAPURAM
KERALA, PIN-695 014.
- R2 BY ADV.V.V.ASOKAN (SR)
BY SRI.K.I.MAYANKUTTY MATHER
BY SRI.SUNIL SHANKER
R52 BY SRI.S.SREEKUMAR (SR.)
R34, R58, R75, R80 & R84
BY SRI.P.B.KRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANIL K.NARENDRA, JJ.

.....
W.A.No.2752 of 2015

.....
Dated this the 20th day of December, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.This appeal is against an interim order passed in the course of a writ petition challenging the election to the post of the President of the Institution of Engineers (India) Ltd.

2.The writ petition was filed by one voter, who was also a candidate.

The writ petition was filed on 09.12.2015. The learned single Judge issued an order on 11.12.2015 appointing Advocate Commissioner to take custody of the ballot papers in respect of the election. The ballot papers were brought to the court and the impugned interim order is issued on 18.12.2015. The successful candidate, namely the second respondent in the writ petition, is to assume office as the President, today. Hence, the challenge to the interim order issued by the learned single Judge on Friday, 18.12.2015, was ordered to be placed in Chambers today, in

terms of the directions of the Honourable the Chief Justice.

3. We have heard the learned Senior counsel appearing for the appellant, the learned Senior counsel appearing for the second respondent, the learned Senior counsel and other advocates appearing for those among the respondents, who support the writ petitioner/appellant.

4. The learned single Judge noted that the number of votes claimed to have been polled in favour of the second respondent, the elected candidate, is 44, of them 39 votes are valid. Five ballot papers appear to carry two tick marks; that is to say, tick marks as against the names of two candidates. The learned single Judge noted that those five votes were also treated as valid votes and the second respondent was declared as elected. It was further noted by the learned single Judge that, at this juncture, it would not be possible for the Court to hold that those five votes are invalid as it has to be found out how these five votes were put

with two tick marks in the ballot papers, and that such question requires a probe. The learned single Judge also noted the plea of the writ petitioner that three of the candidates were ineligible.

In considering as to whether the Division Bench has to interfere with the order of the learned single Judge, it needs to be noted that the election was notified on 24.07.2015. Voting was on 26.09.2015. On that day itself, the votes were counted and the result was declared. This means that all the candidates and the persons, who had voted, have necessarily to be taken to have been aware of the fact that the second respondent was declared duly elected on 26.09.2015. As already noted, the writ petition was filed on 09.12.2015. We may here note that the byelaws and regulations provide for a complaint within 15 days by any person who is aggrieved by the result of the election. In such an event, a Tribunal could be constituted as an inhouse measure to resolve the election dispute. No such complaint was made, when the writ petition was filed. The question of five ballot papers carrying two

tick marks each were noted only when those ballot papers reached this Court. Therefore, the learned single Judge cannot be found fault with for noticing that the second respondent has been elected as the President, also taking into account those five votes and that at this juncture, this Court cannot hold these five votes as invalid, since that issue needs a probe. While we say this, we record the submission on behalf of the appellant that the probe, that is required, is not as to whether how the five ballot papers carry two tick marks, but the question would be as to whether those votes are invalid. This being the state of affairs, the fact remains that out of the 84 persons who voted, the second respondent had to get 43 votes to be declared elected. On the whole, he had 44 votes, taking into account the five votes, the ballot papers of which may create doubt owing to the double tick marks. But, that is an issue which can be decided only on adjudication and not through an interlocutory measure, that too in writ jurisdiction. We, therefore, do not find our way to interfere with the impugned order. The appeal, therefore, fails. The same

is, accordingly, dismissed. We reiterate that the learned single Judge has clarified that the assumption of office by the second respondent as the President would be subject to the result of the writ petition.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANIL K.NARENDHAN, JUDGE)