

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 4590 of 2015 (W)

PETITIONER:

BINU T.S., AGED 36 YEARS, S/O. SREEKANTAN NAIR,
THIRUVATHIRA, PUNNAKULAM, KOTTUKAL P.O.,
THIRUVANANTHAPURAM-695 501.

BY ADVS. SRI. S. V. PREMAKUMARAN NAIR
SRI. R. T. PRADEEP
SRI. P. S. ANJU

RESPONDENTS:

1. THE STATE CO-OPERATIVE ELECTION COMMISSION
REPRESENTED BY ITS STATE CO-OPERATIVE
CHIEF ELECTION COMMISSIONER
THIRUVANANTHAPURAM.
2. REGISTRAR OF CO-OPERATIVE SOCIETIES LTD.
OFFICE OF REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM-695 001.
3. JOINT REGISTRAR (GENERAL)
OFFICE OF JOINT REGISTRAR (GENERAL)
THIRUVANANTHAPURAM-695 001.
4. ELECTORAL OFFICER/ASSISTANT REGISTRAR
OFFICE OF ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL)
NEYYATTINKARA-695 121.
5. RETURNING OFFICER/UNIT INSPECTOR VIZHINJAM
OFFICE OF ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), NEYYATTINKARA-695 121.
6. KOTTUKAL SERVICE CO-OPERATIVE
BANK LTD. NO. T. 196, REPRESENTED BY
ITS SECRETARY, KOTTUKAL P.O. PIN-695 501.

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7. A.SASISEKHARAN NAIR, PRESIDENT,
KOTTUKAL SERVICE CO-OPERATIVE BANK LTD.NO.T.196,
KOTTUKAL P.O., PIN-695 501.

R6&7 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY

R6&7 BY ADV. SMT.N.SANTHA

R6&7 BY ADV. SRI.K.A.BALAN

R6&7 BY ADV. SRI.V.VARGHESE

R6&7 BY ADV. SRI.PETER JOSE CHRISTO

R6&7 BY ADV. SRI.S.A.ANAND

R1,R2,R3,R4 & 5 BY SPECIAL GOVERNMENT PLEADER SRI. D. SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-03-2015,
ALONG WITH WP(C) NO. 7121/2015 THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : COPY OF AMENDMENTS CARRIED OUT IN THE BYLAWS OF THE SOCIETY WHICH WERE REGISTERED ON 14.3.1991.
- EXHIBIT P2 : COPY OF THE ELECTION NOTIFICATION DTD.3.2.2015 SCHEDULING THE ELECTION ON 11.3.2015 BY THE 1ST RESPONDENT.
- EXHIBIT P3 : COPY OF THE PAPER PUBLICATION ENUMERATING MEMBER NUMBER IN CONTEMPLATION OF REMOVAL OF MEMBERSHIP UNDER SECTION 16A(1)(A) PUBLISHED IN MANGALAM DAILY ON 2.9.2014.
- EXHIBIT P4 : COPY OF THE COMPLAINT SUBMITTED ON 4.2.2015 BY PETITIONER BEFORE ELECTION COMMISSION.
- EXHIBIT P5 : COPY OF THE OBJECTION TO DRAFT VOTERS LIST DTD.9.2.2015 BY PETITIONER BEFORE THE ELECTORAL OFFICER WHICH CONTAINED THE ENDORSEMENT OF ELECTORAL OFFICER.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R6(a) : TRUE COPY OF THE G.O.(P) NO. 14/2015/CO-OP. DATED 21.01.2015 AND PUBLISHED IN KERALA GAZETTE EXTRAORDINARY DATED 21.01.2015.
- EXHIBIT R6(b) : TRUE COPY OF THE RELEVANT EXTRACT OF THE AMENDMENT CARRIED OUT TO THE BYELAWS OF THE SOCIETY ALONG WITH THE CERTIFICATE OF REGISTRATION ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.
- EXHIBIT R6(c) : TRUE COPY OF THE ORDER DATED 02.12.2014 IN COMPLAINT NO. 1514/2014-D OF THE KERALA LOK AYUKTA.
- EXHIBIT R6(d) : TRUE COPY OF THE ORDER DATED 02.12.2014 IN IA NO. 1460/2014 IN COMPLAINT NO. 1514/2014-D OF THE KERALA LOK AYUKTA.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

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Dated this the 6th day of March, 2015

JUDGMENT

The area of operation of Kottukal Service Co-operative Bank Ltd. ('the bank' for short) spread over 9 wards specified in clause 4 of the unamended bye-laws. Clause 31(b) of the unamended bye-laws specified that nine candidates were to be elected therefrom out of which one seat was reserved for Scheduled Castes/Scheduled Tribes and another for women. A process of amendment of the bye-laws was taken in the general body meeting of the bank. This was to be in tune with the third proviso to Section 28 and Section 28A(1) of the Kerala Co-operative Societies Act, 1969 ('the Act' for short).

2. Three seats require to be reserved for women members and one seat for a member belonging to Scheduled Caste or Scheduled Tribe as per Section 28A(1) of the Act. The general body mooted an amendment of the bye-laws to increase the number of wards from 9 to 11. Amendment was also mooted to reserve three seats for women members and one seat for a

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member belonging to Scheduled Castes/Scheduled Tribes. One seat was reserved to represent the depositors in the bank existing a value. The motion made for the amendment of the bye-laws was successfully carried through in the general body meeting.

3. But that part of the amendment which dealt with the delineation of wards was refused to be approved by the Joint Registrar. The refusal is now the subject matter of an appeal pending with the government under Section 83(1)(j) of the Act. The resultant position is that nine wards have been elongated to 11 wards without any delineation. 11 seats will however make up for the reservation of three seats for women members, one seat for Scheduled Castes/Scheduled Tribes and one seat for the depositors. The election on ward basis cannot be conducted without delineation of the wards. Which parts of the original main wards will creep into the present 11 wards is unknown. It can safely be concluded that the bye-laws have not been amended to be in accord with the third proviso to Section 28 of the Act.

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4. The bank under these circumstances can certainly take refuge under the order of exemption granted by the government. The government has by order dated 21.01.2015 exempted the banks from the purview of the third proviso to Section 28(1) of the Act till 31.12.2015 or till the date of conducting election after duly registering the bye-laws. The relevant part of the order granting exemption under Section 101 of the Act is extracted hereunder:

“Now, therefore, in exercise of the powers conferred by section 101 of the Kerala Co-operative Societies Act, 1969 (21 of 1969), the Government of Kerala hereby exempt the Primary Agricultural Credit Societies, Service Co-operative Banks, Farmers Service Co-operative Banks, Rural Banks, Regional Banks, Urban Co-operative Banks, Urban Co-operative Societies, Primary Agricultural and Rural Development Banks and Primary Housing Co-operative Societies from the operation of the third proviso to sub-section (1) of Section 28 of Kerala Co-operative Societies Act, 1969, for a further period of one year from 1st January, 2015 to 31st December, 2015 or till the date of conducting election to the committees after duly registering bye-laws in accordance with the provisions of the said Amendment Act, whichever is earlier.”

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5. It cannot be said that the bye-laws have been 'duly' registered in accordance with the provisions of the third proviso to Section 28(1) of the Act. This is because the elongated 11 wards have not been delineated or identified. An election can be conducted on ward basis only if the place is identified and the boundaries deciphered. There is no reason as to why the benefit of the exemption granted by the government under Section 101 of the Act shall not be extended to the bank.

6. The bank has now thought it fit to conduct the election claiming exemption of the third proviso to Section 28(1) of the Act. Nevertheless the reservation for women members, Scheduled Castes/Schedules Tribes and depositors is being scrupulously adhered to. The election notification dated 27.01.2015 has been issued and the election is midway. An election to the Managing Committee of the bank is imminent in order to avoid an administrative lacuna. I am not prepared to halt the election midway in exercise of this writ jurisdiction.

7. It is however clarified that the election can be called in question appropriately under Section 69 of the Act at the

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appropriate time. The observations above shall not prejudice the arbitration court in considering the dispute. WP(C) No. 4590/2015 to halt the election is hereby dismissed. WP(C) No. 7121/2015 to surge ahead with the election is disposed of accordingly.

**V. CHITAMBARESH
JUDGE**

ncd