

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 10727 of 2012 (M)

PETITIONER(S) :

V.K.RAVEENDRAN, AGED 65 YEARS,
PRESIDENT, RURAL AGRICULTURAL CO-OPERATIVE SOCIETY,
KALIKADAVU, P.O.PILICODE, KASARAGOD-671 310.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO-OPERATION, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.

3. THE JOINT REGISTRAR (GENERAL) ,
CO-OPERATIVE SOCIETIES, KASARAGOD-671 001.

4. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL) ,
HOSDURG, KASARAGOD-671 001.

R3 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 10727 of 2012 (M)

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1 : TRUE COPY OF THE MEMO DTD.19.4.2012 ISSUED BY THE 3RD
RESPONDENT.

EXT.P2 : TRUE COPY OF THE EXPLANATION DTD.2.5.2012.

EXT.P3 : TRUE COPY OF THE CERTIFICATE OF REGISTRATION.

RESPONDENTS' EXHIBITS

EXT.R3(A) :- TRUE COPY OF THE DEPOSITIONS OF THE PETITIONER
RECORDED BY THE 3RD RESPONDENT

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.10727 of 2012

Dated this the 13th day of November, 2015.

JUDGMENT

The petitioner is the President of Pilicode Rural Agricultural Co-operative Society, Kalikadavu. This writ petition is filed, inter alia, praying for issuing a writ of certiorari quashing Ext.P1 as illegal and unsustainable. According to the petitioner, he is served with Ext.P1 notice stating that he is holding the presidentship of Pilicode Rural Agricultural Co-operative Society Ltd.No.S.354, Kalikadavu and Thrikaripur Urban Co-operative Society Ltd. No.S.320 at a time. Since both the societies are of similar type he is liable to be disqualified under Section 28 of the Kerala Co-operative Societies Act (for short, 'the Act'). The petitioner filed Ext.P2 objection to the above notice stating that he is not holding the presidentship of two societies of the same type as contemplated under Section 28 of the Act. According

to him, the Rural Agricultural Co-operative Society, Kalikadavu and Thrikkaripur Urban Co-operative Society are not of same type; the former society comes under the category of 'other society' and the latter comes under the category of 'urban society'. Therefore, those societies are not of similar type. But, without considering the same, the respondents are proceeding against the petitioner to disqualify him discarding the contentions raised in Ext.P2 objection.

2. The 3rd respondent filed a counter affidavit stating that the Rural Agricultural Co-operative Society at Kalikadavu and Thrikkaripur Urban Co-operative Society are the societies of similar type. But, however, the respondents admitted that the petitioner has resigned from the presidentship of Thrikkaripur Urban Co-operative Society with effect from 12.8.2011. It is also contended that even if he has resigned from the presidentship of the Urban Society on 12.8.2011, he is liable to be proceeded against to disqualify him under Section 28(2) of the Act.

3. Heard the learned counsel for the petitioner

and the learned Government Pleader.

4. The learned counsel for the petitioner advanced arguments challenging the proceedings under Section 28 of the Act initiated under Ext.Pl against him.

5. Per contra, the learned Government Pleader advanced arguments in support of the grounds under which the proceedings have been initiated under Section 28(2)(a) of the Act against him.

6. In view of the rival submissions made at the Bar, in support of the averments in the petition as well as the contentions raised in the counter affidavit, the short question that arises for consideration is, whether the petitioner is liable to be proceeded against for disqualifying him under Section 28(2)(a) of the Act.

7. Going by the averments in the petition as well as the contentions raised in the counter affidavit filed by the 3rd respondent, it is seen that the category under which the aforesaid societies would fall under the provisions of the Act is disputed. But, in the

counter affidavit itself, the respondents have admitted that the petitioner has resigned from the presidentship of the Thrikkaripur Urban Co-operative Society on 12.8.2011. But, Ext.P1 shows that notice was issued on 19.4.2012. So, the point to be considered is, whether the president of a society can be disqualified under Section 28(2) of the Act for the reason that he was holding the presidentship of two societies of similar type. On an analysis of the statutory requirements to attract disqualification, I find that in clause (a) of Section 28(2) of the Act, present tense is used to describe the statutory requirement to attract the above provision. Grammatically, a verb that refers to present time is said to be in the present tense and a verb that refers to past time is said to be in the past tense. Obviously, in clause (a) of Section 28(2) of the Act, present tense is used to make the requisite condition for attracting disqualification.

8. In the instant case, in the counter affidavit itself the respondents admitted that the petitioner has resigned from the presidentship of the

Thrikkaripur Urban Co-operative Society with effect from 12.8.2011. But, Ext.Pl notice was issued on 19.4.2012. If that be so, needless to say, at the time when Ext.Pl notice was issued, he was not holding the presidency of the Thrikkaripur Urban Co-operative Society.

9. Therefore, in this analysis, I find that Ext.Pl notice is illegal and unsustainable under Section 28(2) (a) of the Act. Consequently, Ext.Pl notice and all further proceedings, if any, initiated against the petitioner under Ext.Pl notice will stand set aside.

The writ petition is allowed as prayed for.

Sd/-
K. HARILAL, JUDGE

okb.