

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 11959 of 2015 (T)

PETITIONER:

BABY JOHN, AADUKUZHIL VEDU,
KULAPPURAM KARA, PAINGOTTOOR.P.O.,
KAVOOR VILLAGE, KOTHAMANGALAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.PRASAD CHANDRAN

RESPONDENTS:

1. THE PERAMANGALAM SERVICE CO-OPERATIVE
BANK LTD. no.3103, REP. BY ITS SECRETARY,
KALOOR P.O., MUVATTUPUZHA,
ERNAKULAM DISTRICT-686 668.
2. THE PART-TIME ADMINISTRATOR,
PERAMANGALAM SERVICE CO-OPERATIVE
BANK LTD.NO.3103, KALOOR P.O., MUVATTUPUZHA,
ERNAKULAM DISTRICT-686 668.(SALE OFFICER,
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), MUVATTUPUZHA).
3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), ERNAKULAM,
CIVIL STATION, KAKKANAD
ERNAKULAM DISTRICT-682 030.
4. THE STATE CO-OPERATIVE ELECTION COMMISSION,
THIRUVANANTHAPURAM, REP. BY ITS SECRETARY
PIN-695 039.

ADDL. R5 IMPLEADED

BABY JOHN, S/O JOHN, AGED 59 YEARS,
EX-PRESIDENT OF THE PERAMANGALAM
SERVICE CO-OPERATIVE BANK LTD.NO.3103,
THAYYIL HOUSE, KULAPPURAM,
PAINGOTTOOR P.O. PIN 686 671.

Impleaded as pr order dated 27.5.15 in IA 6405/15

R1 & R2 BY ADV. SRI.P.P.JACOB
R3 & R4 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM
ADDL.R5 BY ADVS. SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 11959 of 2015 (T)

PETITIONER'S EXHIBITS:

EXT. P1: TRUE COPY OF THE ELECTION NOTIFICATION DATED 11.11.2014.

EXT. P2: TRUE COPY OF THE JUDGMENT IN WPC.NO.26042/2014 DATED 4.12.2014.

EXT. P3: TRUE COPY OF THE REPRESENTATION DATED 23.03.2015.

EXT. P4: TRUE COPY OF THE NOTIFICATION ISSUED BY THE 4TH RESPONDENT BANK PROPOSING TO CONDUCT THE ELECTION DATED 10.4.15

RESPONDENT'S EXHIBITS:

EXT. R5(a): TRUE COPY OF THE ELECTION NOTIFICATION DATED 10.4.2015

EXT. R5(b): TRUE ENGLISH TRANSLATION OF EXT.R5(a)

EXT. R5(c): TRUE COPY OF THE ORDER DATED 22.5.2015 ISSUED BY THE 4TH RESPONDENT ELECTION COMMISSION

EXT. R5(d): TRUE ENGLISH TRANSLATION OF EXT.R5(c)

EXT. R5(e) TRUE COPY OF THE APPELLATE ORDER DATED 19.12.2008 OF THE GOVT. OF KERALA

EXT. R5(f): TRUE ENGLISH TRANSLATION OF EXT.R5(e)

EXT. R5(g): TRUE COPY OF THE INTERIM ORDER DATED 4.3.2015 IN WPC 2740/15

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.11959 of 2015 T

Dated this the 28th day of May, 2015

JUDGMENT

The petitioner, who is said to be a member of the first respondent Bank, seeks to postpone the elections which are to be held on 30.05.2015 until what is said to be the territorial dispute between the first respondent Bank and the neighbouring Co-operative Bank, namely Kadavoor Service Co-operative Bank, which, in fact, has not been made a party, is resolved.

2. The facts in brief are that, when the term of the previous manging committee was to expire by 06.12.2014, the fourth respondent Election Commission issued a notification on 16.10.2014 proposing to hold elections on 29.11.2014. In course of time, the Commission, however, postponed the elections owing to widespread allegations of

mass enrolment of members just prior to the expiry of the term of the previous managing committee. When the additional fifth respondent filed W.P.(C)No.30191/2014 impugning the postponement of the elections, this Court disposed of the said writ petition along with W.P.(C)No. 26042/2014 filed by the petitioner, through Exhibit P2 common judgment.

3. Later, when the issue raised in the writ petitions referred to above concerning the alleged bogus membership was enquired into and resolved, the petitioner submitted Exhibit P3 representation to the fourth respondent Election Commission concerning an alleged territorial dispute with Kadavoor Service Co-operative Bank Ltd. In the meanwhile, on 10.04.2015 the Election Commission issued Exhibit R5(a) election notification proposing to hold elections on 30.05.2015. Questioning the inaction of the respondent Election Commission in considering expeditiously the

petitioner's Exhibit P3 objection, the petitioner filed the present writ petition.

4. In the above factual background, the learned counsel for the petitioner has strenuously contended that the additional fifth respondent has continued to be the President of the first respondent Bank for the past fifteen years by employing one stratagem or another. According to him, when an enquiry was conducted into the issue of mass enrolment of bogus membership, the very Election Commission has found substance in the allegations and took remedial steps. The learned counsel has further contended that there is a real and persistent territorial dispute between the first respondent Bank and Kadavoor Service Co-operative Bank Ltd., which is required to be resolved before any election could be conducted. He has further contended that on the issue of territorial dispute between the two Banks, two writ petitions, namely W.P.(C)Nos.

2740/2015 and 4255/2015, the former one having been filed by the additional fifth respondent, are pending before this Court.

5. In sum and substance, it is the singular contention of the learned counsel for the petitioner that as the issue of territorial dispute between the two Banks has been sub judice before this Court, it may not be proper for the Election Commission to proceed with the elections. The learned counsel has also contended that, as could be seen from Exhibit R5(d), the very Election Commission has recorded the recommendation of the Joint Registrar (General) that it is desirable to conduct the elections to the first respondent Bank after resolving the jurisdictional dispute between the first respondent Bank and Kadavoor Service Co-operative Bank Ltd.

6. Per contra, the learned counsel for the additional fifth respondent has strenuously opposed the claims and

contentions of the petitioner. To begin with, the learned counsel has taken an objection concerning the very maintainability of the writ petition. Drawing my attention to Section 69 of the Kerala Co-operative Societies Act, the learned counsel would contend that if there were to be any territorial dispute between the two Banks, any of the members of the respective Banks could raise an objection before the primary authority, i.e. the Arbitration Court. He has further contended that the petitioner, having pleaded about the alleged territorial dispute, has not chosen to array the neighbouring Bank as a party. According to him, non-impleadment of the necessary parties is fatal to the writ proceedings.

7. The learned counsel has brought to my notice Exhibit R5(d), which is the order passed on 22.05.2015 by the respondent Election Commission on the objections raised by the petitioner in Exhibit P3. Apart from adverting

to Exhibit R5(d) order at length on merits, the learned counsel has also contended that in the light of the said order of the Election Commission, the writ petition itself has become infructuous. Now the petitioner has been left with, according to the learned counsel, no other option than laying a proper challenge against the said order, if he choses to. Eventually, the learned counsel would contend that the territorial dispute stood already concluded way back in 2008 through Exhibit R5(f) proceedings. Since no further challenge, according to the learned counsel, has been laid against those proceedings declaring that the disputed territory should remain with the first respondent Bank, the petitioner cannot be permitted to re-agitate the issue.

8. The learned counsel for the additional fifth respondent has further contended that when the Election Commission issued a notification to conduct elections for

Kadavoor Service Co-operative Bank Ltd. showing the disputed territory as belonging to it, the additional fifth respondent filed W.P.(C)No.2740/2015 and invited Exhibit R5(g) interim order. In elaboration of his submissions, the learned counsel would contend that this Court, through the said interim order, excluded the disputed area from the purview of Kadavoor Service Co-operative Bank Ltd., and directed the Election Commission to proceed with the elections. Eventually, the learned counsel has urged this Court to dismiss the writ petition.

9. The learned Government Pleader, on his part, has submitted that it is improper for either of the parties to the writ proceedings to impute any motive to the fourth respondent which is a quasi-judicial authority. According to him, the Election Commission has all along discharged its functions strictly in accordance with law.

10. The learned Government Pleader, drawing my attention to Exhibit R5(d) order passed by the Election Commission, would contend that all objections raised by the petitioner in Exhibit P3 were taken care of and eventually a speaking order was passed. Under those circumstances, if the petitioner is aggrieved, contends the learned Government Pleader, it is entirely open for him to seek proper remedial measures impugning the said order of the Election Commission. Eventually the learned Government Pleader has urged this Court not to interdict the elections which are stated to be held day after tomorrow, i.e. on 30.05.2015.

11. Heard the learned counsel for the petitioner and the learned counsel for the additional fifth respondent, as well as the learned Government Pleader for respondents 3 and 4, apart from perusing the record.

12. Indeed, the issue lines in a narrow compass. Initially, the petitioner raised an objection concerning the mass enrolment of bogus membership which later came to be resolved. In fact, when he filed a writ petition on the issue, this Court in Exhibit P2 judgment mandated that the election should be held within six months after resolving the dispute concerning the alleged bogus membership. The said judicial directive cannot be trifled with. At this juncture, it is pertinent to observe, as has been contended by the learned counsel for the additional fifth respondent, apart from raising the issue of bogus membership, the petitioner in that writ petition raised the issue of territorial dispute also. At any rate, this Court, in Exhibit P2, has disregarded the said plea.

13. There is force in the contention of the learned counsel for the additional fifth respondent that once a plea has been urged but still not met with any judicial approval,

it is incumbent on the person aggrieved thereby to lay proper challenge against the same. In the absence of any such steps having been taken, the petitioner cannot re-agitate the issue in the light of the principle of constructive res judicata.

14. In Exhibit R5(d), the Election Commission having taken into account the objections raised by the petitioner as well as all other incidental aspects, the Election Commission has eventually held thus:

“Election to the Bank notified to be held on 29.11.2014 as per Notification of even number dated 16.10.2014 of this office was postponed on 11.11.2014 based on the Election Report stating that time may be given for rectification of errors in the Voters List. In the Writ Petitions No.26042/14 and 30191/14 filed against the said proceedings, direction was issued on 4.12.2014 directing to prepare the Voters List within one month and to conduct the election within six months from the date of the judgment. In compliance to the judgment, Notification was issued vide No.E(1)/4002/2005/SCEC dated 10.4.2015 to conduct the election on 30.5.2015. As per existing orders the area known as Kulapuram kara is under the operational jurisdiction of

Peramangalam Cooperative Bank only. According to existing bye-laws also Kulapuram kara is under the operational area of Peramangalam Cooperative Bank itself and, therefore there appears to be no necessity for holding the election proceedings in abeyance. The argument regarding lack of jurisdiction of the Asst. Registrar since the operational area of the Society is spread over two Taluks also does not have any merit.”

15. As could be seen from the above, Exhibit R5(d) is, in my considered view, a speaking order containing sufficient reasons. Nevertheless, if the petitioner has any grievance concerning Exhibit R5(d) order passed by the Election Commission, it is entirely open for him to lay further challenge against the same.

16. Eventually, if we are to examine the issue of the alleged territorial dispute, it is evident from Exhibit R5(f) that the issue stood concluded way back on 19.12.2008, when the Government issued an order deciding to keep the disputed territory within the fold of the first respondent

Bank. In fact, it has found that there is nothing wrong in the report in CRP (2) 7504/2000 dated 18.02.2005, submitted by the Joint Registrar, Ernakulam, which, inter alia, reads thus:

“It is ordered that the Peramangalam Service Cooperative Bank is allowed to retain the Kulapuram kara as its area of operation as per its Bye-law provision and to give membership from the said kara. The portion Kavakkad kara (western side of thodu) which is included in the area of operation of Enanellur Service Cooperative Bank as per Rule 2(O)(a) of the Cooperative Societies Rules is allowed to be retained as the area of operation of Enanellur Bank and the Order of the Kerala High Court under reference 3 is thus complied. The appeal filed by the Kadavoor Service Cooperative Bank against this Order.”

17. Based on the report, a part of which has been extracted above, the Government passed orders on 19.12.2008 to the following effect:

“After examining in detail the evidence available on file, the report submitted by the Joint Registrar, Ernakulam and the arguments, it is found that there is nothing wrong in the order No.CRP (2) 7504/2000

dated 18.2.2005 of the Joint Registrar, Ernakulam. Hence the appeal petition submitted by Kadavoor Service Co-operative Bank is hereby dismissed upholding the said order of the Joint Registrar.”

18. Indeed, as has been contended by the learned counsel for the additional fifth respondent, Exhibit R5(f) does not seem to have been further challenged; it has thus attained finality. As could be seen from Exhibit R5(g), the additional fifth respondent filed W.P.(C)No.2740/2015 questioning the election notification issued by the respondent Commission concerning Kadavoor Service Co-operative Bank Ltd. Taking up for consideration the said writ petition as well as W.P.(C)No.4552/2015 filed by some other person, this Court, through an order dated 04.03.2015, permitted the Election Commission to conduct elections to Kadavoor Co-operative Bank Ltd., excluding the said disputed territory, incidentally notified as Ward No.13 in the election notification and permitted the respondent

Commission to proceed with the election for the rest of the wards, albeit making it clear that counting of votes in Ward Nos.1 to 12 shall take place after obtaining orders from this Court. In fact, the election notification issued showing the disputed territory as part of Kadavoor Service Co-operative Bank Ltd. despite being in the public realm, the petitioner has never chosen to question it. Now, it is evident that only as a matter of an excuse to have the elections postponed, the petitioner seems to have pressed the plea of disputed territory into service. At any rate, since the petitioner has not chosen to file any material before this Court concerning the pending writ petitions, namely W.P.(C)Nos.2740/2015 and 4552/2015, I cannot telescope the controversy raised therein into the present writ petition.

19. In the totality of circumstances, since the objection raised by the petitioner in Exhibit P3 stood answered, I do not see any justification in interdicting the

election process initiated by the fourth respondent Election Commission, more pertinently when they are to be held within two days, i.e. on 30.05.2015.

In the facts and circumstances, the writ petition stands dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

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