

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 16873 of 2012 (H)

PETITIONER(S) :

1. G.AJU
PUTHENVILA THEKKETHIL, EZHAMKULAM, PUTHUMALA P.O.
ADOOR, PATHANAMTHITTA.

2. RADHAKRISHNA KURUP
VAZHUVELIL HOUSE, THOTTUVA, ANAYADI P.O.
PATHANAMTHITTA.

3. ANIL K.S.
KOMALAZHIKATHU HOUSE, MANNADI P.O., ADOOR
PATHANAMTHITTA.

4. P.APPUKUTTAN PILLAI
MURALI BHAVANAM, THOTTUVA, ANAYADI P.O.
PATHANAMTHITTA.

5. JAYAPRASAD M.R.
LEKSHMI NIVAS, KADAMPANADU NORTH P.O., ADOOR
PATHANAMTHITTA.

6. SUBHASH KUMAR K.
THUNDITHARA THEKKETHIL (VRINDAVAN), MUNDAPALLY
PARAKOTTAM P.O., ADOOR, PATHANAMTHITTA.

7. VALSAMMA P.
GURUBHAVANAM, MELOODU P.O., ADOOR
PATHANAMTHITTA.

8. SUDHA KURUP
HARIMANGALAM, THENGAMAM P.O., PALLICKAL
ADOOR, PATHANAMTHITTA.

BY ADVS.SRI.B.S.SWATHY KUMAR
SMT.P.V.SOBHANA
SMT.V.BEENA

RESPONDENT(S) :

1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
PATHANAMTHITTA-689645.

2. CHOORAKODE VIJAYAN (VIJAYAKUMAR)
MYNAPALLY VADAKKETHIL, (M.V.HOUSE), CHOORKODE P.O.
MANAKALA, ADOOR, PATHANAMTHITTA-691551.

3. LEELAMMA SAJIMON
MURIKKAVAL PUTHEN VEEDU, AMMAKANDAKARA, ADOOR
PATHANAMTHITTA-691523.

4. P.SURESH
AMBADI, PERINGANAD P.O., ADOOR
PATHANAMTHITTA-691551.

5. BHANUDEVAN.D.
NARIYATH KIZHAKKETHIL, ELAMANOOR P.O., ADOOR
PATHANAMTHITTA-691524.

6. MOHANDAS
PANAVILA PUTHEN VEEDU, THUVAYOOR NORTH, MANAKALA P.O.
ADOOR, PATHANAMTHITTA-691551.

7. THE ADOOR PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD.NO. PT-235
REVENUE TOWER, IIND FLOOR, ADOOR
PATHANAMTHITTA-691523
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

8. THE SPECIAL TAHSILDAR
(THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (G) ADOOR)
THE ADOOR PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD. NO.PT-235
ADOOR, PATHANAMTHITTA-691 523.

R2-R6 BY ADV. SRI.P.N.MOHANAN
RR-R7 BY ADV. SRI.V.G.ARUN
RR-R7 BY ADV. SRI.T.R.HARIKUMAR
R BY SPL.GOVERNMENT PLEADER SHRI D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON 19-03-2015, DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE DT.14.7.2012 ISSUED BY R7.

EXT.P2: TRUE COPY OF THE REPORT DT.14.7.12 SHOWING REFUSAL OF EXT.P1.

EXT.P3: TRUE COPY OF THE RECEIPT OF SPEED AND SAFE COURIER SERVICE, ADOOR DT.14.7.12 SENT TO R2.

EXT.P4: TRUE COPY OF RECEIPT OF SPEED AND SAFE COURIER SERVICE, ADOOR DT.14.7.12 SENT TO R3.

EXT.P5: TRUE COPY OF RECEIPT OF SPEED AND SAFE COURIER SERVICE, ADOOR DT.14.7.12 SENT TO R4.

EXT.P6: TRUE COPY OF NOTICE RETURNED REFUSED BY R2 DT.14.7.12.

EXT.P7: TRUE COPY OF NOTICE RETURNED REFUSED BY R3 DT.14.7.12.

EXT.P8: TRUE COPY OF NOTICE RETURNED REFUSED BY R4 DT.14.7.12.

EXT.P9: TRUE COPY OF THE MINUTES OF THE MEETING DT.14.7.2012.

EXT.P9(a): TRUE COPY OF THE NOTICE DT.16.7.12 ISSUED BY R7.

EXT.P10: TRUE COPY OF THE ORDER DT.16.7.12 OF R1.

EXT.P11: TRUE COPY OF THE REPORT OF THE 7TH RESPONDENT DT.16.7.12.

EXT.P12: TRUE COPY OF THE REPORT OF THE 8TH RESPONDENT.

EXT.P13: TRUE COPY OF THE NOTICE DT.17.7.12 ISSUED BY R7.

EXT.P14: TRUE COPY OF NOTICE NO.G2/MEETINGS/2012-13 DT.24.7.12.

RESPONDENTS' EXHIBITS

EXT.R2(a): A TRUE COPY OF THE ELECTION NOTIFICATION DT.29.5.12.

/TRUE COPY/

P.S TO JUDGE

K.SURENDRA MOHAN, J.

W.P(c) No.16873 of 2012-H

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioners, 8 in number, are persons who were elected to the Managing Committee of the 7th respondent Society at an election held on 14.07.2012. The results were declared on the same day and on the same day itself a notice was issued by the Chief Executive Officer as directed by the Returning Officer convening a meeting on 16.07.2012. Ext.P1 is the said notice. Though respondents 2 to 6 were present in the bank, they left the place refusing to accept the notice. Thereupon, the Chief Executive Officer deputed one Sri Gopalakrishnan and Sri V.Muralidharan Pillai, 2 employees of the bank to serve Ext.P1 notice on respondents 2 to 6. The 6th respondent accepted the notice and acknowledged receipt thereof. The notice of the 5th respondent was received by his mother Lekshmikutty Amma since he was not available. Respondents 2, 3 and 4, after reading the notice, refused to accept the same. The employees who had been deputed to serve the notice, submitted Ext.P2 report stating that the same was refused to be accepted. On the same day itself the notice was sent to respondents 2, 3 and 4

through courier. But the notice was refused. Exts.P3 to P5 are the receipts evidencing despatch of the notice through courier service. Exts.P6, P7 and P8 are the receipts showing that the addressees have refused to have accepted the notice that was sent by courier service.

2. In the above circumstances, the meeting of the Managing Committee was held as notified. The 1st petitioner was unanimously elected as the President. The 2nd petitioner was elected as the Vice President of the bank and the 5th petitioner as the nominee of the bank to the apex society, the Kerala State Co-operative Agricultural and Rural Development Bank. Ext.P9 is the minutes of the said meeting. While so, by an order dated 16.07.2012, the 1st respondent rescinded the decisionb taken at the meeting held on 16.07.12. A copy of the said proceedings is Ext.P10. Pursuant to Ext.P10, the Assistant Registrar (General), Adoor, who is the Special Officer of the bank has taken over the administration of the bank. He has also issued Ext.P13 convening a meeting of the Managing Committee afresh on 20.07.12. The petitioners are aggrieved by the said proceedings.

3. According to Sri B.S.Swathi Kumar, who appears for the petitioners, after the declaration of the results of the election

on 14.07.12, a notice was issued on the same day convening a meeting of the newly elected Managing Committee on 16.07.12. The said notice was issued immediately, considering the mandate of Rule 38 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'the Rules' for short) that , such a meeting has to be convened within a period of one week. However, respondents 2 to 6 did not accept the notice. Though an attempt was made to serve notice by deputing the employees of the bank, it did not succeed. Thereupon, the notice was sent by courier service. However, the same was also refused. It is therefore contended that, every effort had been made to serve notice on respondents 2 to 6. In view of the refusal of respondents 2 to 6 to receive the notice, the petitioners were left with no other option but to proceed with the meeting. The meeting held was proper and legal. The office bearers of the 7th respondent were duly elected at the meeting as evident from Ext.P9 minutes. Since the election was validly conducted, the same can be set aside only by invoking the remedy under Section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short). Ext.P11 report of the Special Officer and Ext.P12 report of the Assistant Registrar of the 1st

respondent are relied upon to contend that, respondents 2 to 6 had been actually served with notice of the meeting. Reliance is also placed on decisions of this Court to contend that the election conducted at the meeting could not be set aside.

4. The learned Special Government Pleader Sri D.Somasundaram opposes the contentions of the learned counsel for the petitioners. According to the learned Special Government Pleader, the meeting convened on 16.7.12 was of no consequence for the reason that the same was not with notice to all the elected members of the committee. The 2nd respondent and others have submitted a complaint to the 1st respondent that, no notice of the meeting was served on them. It was found that the said contention was correct. It was for the said reason that Ext.P10 was issued. Since what has been directed is only to convene a proper meeting of the Managing Committee, it is contended that no prejudice has been caused to the petitioners.

5. Advocate P.N.Mohanan appears for respondents 2 to 6. A counter affidavit has been filed. According to respondents 2 to 6, Ext.P1 notice was not served on them. The endorsement obtained from the 5th respondent is disputed. It is stated that the 5th respondent was out of station on the said day in connection

with the death of his father-in-law. The despatch of notice through courier service is also disputed. The allegation is that the said records have all been manipulated. Since the election was declared only on 14.07.12, there was no sufficient time to convene the meeting on 16.07.12 after serving notice properly on all the elected members. The counsel takes serious exception to the fact that, Ext.P2 as well as Exts.P3 to P8 are all seen signed on 14.07.2012. Therefore, one has to believe that, an attempt to deliver the notice personally on respondents 2 to 6 was made on the said day, and when the said attempt did not succeed, the notice was despatched through courier service. Exts.P3 to P5 show that the articles to be delivered had been given to the courier service on 14.07.12. The same is also seen to have been refused as per Ext.P7 on the very same day. The above fact shows that the said documents were all created subsequently with the object of giving an impression that attempts had been made to serve notice on respondents 2 to 6. It is contended that no courier service would deliver any article, on the same day itself. In view of the above circumstances, it is contended that the impugned action of the 1st respondent was perfectly justified in the circumstances and that there are no

grounds to interfere with the same.

6. Heard. The election to the Managing Committee of the 7th respondent was conducted on 14.07.12. It is stated that the committee was elected unanimously. According to respondents 2 to 6, 14.07.12 was a second Saturday and the first meeting of the newly elected committee was scheduled to be conducted on 16.07.12, leaving only the intervening Sunday in between. According to the counter affidavit, the declaration of the results came only at 4.30 p.m on 14.07.12. The 1st petitioner has filed a reply affidavit disputing the above fact, contending that the results were declared at 11 a.m on 14.07.12. Be that as it may, the fact remains that an attempt to notify the first meeting of the Managing Committee was made immediately upon declaration of the results. Rule 38(1) as submitted by SRO No.232 or 239 reads as follows:

“38. Constitution of committee, resignation and removal from membership:-- [(1) When a committee is constituted under S.28, the Secretary or the Chief Executive or any other officer discharging the functions of the Secretary or the Chief Executive shall, within [three months] from the date of the constitution of the committee convene the committee

to elect its President and other office bearers. The Committee so convened shall elect its President and other office bearers and also by resolution authorise the officers concerned to take charge from the outgoing office bearers].”

As per the above provision, a meeting to elect the President and other officer bearers was to be held within a period of three months. The period has been substituted in the year 2009, for the words “one week”. Therefore, there was no imminent necessity of having the meeting conducted with the haste shown in the present case.

7. It is not in dispute that, a valid meeting of the Managing Committee can be convened only with notice to all the elected members. According to the petitioners, in the present case, though persistent attempts were made to serve notice on respondents 2 to 6, only the mother of the 5th respondent accepted the notice, while the others refused. The employees of the bank had been initially deputed to serve the notice directly on respondents 2 to 6. When the said attempt did not succeed, the notice was issued through courier service. However, the notice was refused again as evident from Exts.P6 to P8. However, the fact remains that all the above attempts had taken

place on 14.07.2012 itself. The results of the election were admittedly declared on the said day. It was thereafter that, Ext.P1 notice was prepared. On the same day, the notice was attempted to be served by-hand through the employees of the bank. Since that attempt did not succeed, the notice was despatched through courier service, that too on the same day. Exts.P6 to P8 show that the notice was attempted to be served by courier service also on the very same day and that the same was refused to be accepted. In the face of the allegation of respondents 2 to 6 that, all the above documents have been manipulated and created to cover up the lapse in not serving proper notice, the above facts assume importance. One fails to understand the reason for the haste with which the petitioners have tried to serve notice. This Court has in **Umesan v. Ezhupunna South Co-op. Bank Ltd.** [2009(2) KLT 843] considered a similar question. It has been held by Thottathil B.Radhakrishnan J., as follows:

“7.

 A reasonable notice, having regard to the
 purpose and context of that Rule, is a notice providing

a reasonable time to enable the members of the committee to come prepared to attend the first meeting of an elected committee. They are also to elect the President and other office bearers of the society and draw up resolutions authorizing the officers concerned to take charge from the out-going office bearers. "

8. In the present case, the convening of the meeting on 16.07.2012 immediately after the election on 14.07.2012 cannot be said to be proper, in the first place. Since the statutory provision mandates granting of sufficient time to convene a meeting properly, the attempts made by the petitioners, assuming them to be true, cannot be accepted as sufficient. It was absolutely necessary that, a proper notice giving sufficient time to the members to prepare for the same was provided while convening the first meeting of the Managing Committee. In the above view of the matter, Ext.P1 cannot be said to be a proper notice.

9. Section 104 lays down the manner in which a notice is to be served. This Court has considered the said issue in **Karunakaran v. Special Sale Officer** [1986 KLT 701]. In the

above decision, M.P.Menon J. has held as follows:

“All that the Section says is that:

(i) notices may be served by registered post;

(ii) when it is shown that such notice is posted in a properly addressed cover, there will be a presumption that it is duly served;

(iii) the time of effecting service can be taken as the time at which such a registered cover would have been delivered to the addressee in the ordinary course;

and iv) the above presumption can be rebutted by adequate evidence.

In other words, the Section permits service of notice by registered post and prescribes that in such a case, actual service or delivery need not be separately proved. This is different from saying that service by registered post is the only permissible statutory method. The Section does not exclude other well-known methods of effecting service such as service through a bearer or process-server.”

10. In the present case, though Exts.P3 to P8 are produced, I am not satisfied that they can be relied upon to reach a conclusion that there has been proper service of notice. As already noticed above, all the documents Exts.P3 to P8 had

come into existence on 14.07.12. Therefore, the conclusion of the 1st respondent that the entire proceedings were being pushed through with undue haste is justified. Consequently, the impugned proceedings Ext.P10 which is intended only to set right matters is also justified. There is no reliable material on which it can be concluded that there was proper notice of the meeting on all the elected members, in this case. Consequently, all the decisions taken at the meeting that was conducted without prior notice are of no consequence. The elections if any conducted are also not proper. By the issue of Ext.P10, what has been done by the 1st respondent is only to set right matters by having a proper meeting conducted after issuing notice to all concerned.

For the above reasons, I find no grounds to interfere with Ext.P10 or to grant any of the reliefs sought for. The Writ Petition fails and is accordingly dismissed. No costs.

Sd/-
(K.SURENDRA MOHAN, JUDGE)

rtr/

/true copy/

P.S to Judge