

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 13404 of 2015 (A)  
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PETITIONER:

E.SASEENDRAN, KEERTHI NIWAS,  
PAYYOLI ROAD, PERAMBRA.P.O.,  
KOZHIKODE-673 525.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. PERAMBRA MERCHANTS WELFARE CO-OPERATIVE SOCIETY,  
PERAMBRA LTD.NO.D 3095, PERAMBRA, KOZHIKODE  
PIN-673 525 REPRESENTED BY ITS ADMINISTRATIVE  
COMMITTEE CONVENER.
2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES(G),  
QUILANDI, KOZHIKODE-673 305.
3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(G),  
KOZHIKODE OFFICE OF THE JOINT REGISTRAR OF  
CO-OPERATIVE SOCIETIES(G), PUTHIYARA, KOZHIKODE-673 004.
4. THE STATE CO-OPERATIVE ELECTION COMMISSION,  
THIRUVANANTHAPURAM, 3RD FLOOR, CO-BANK TOWERS,  
PALAYAM, VIKAS BHAVAN.P.O, THIRUVANANTHAPURAM-695 033  
REPRESENTED BY ITS SECRETARY.

R1 BY ADVS. SRI.B.S.SWATHY KUMAR  
SRI.REMYA MURALI  
SRI.VENKATESH GOPI  
SMT.T.RESHMA

R2 TO R4 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX IN WP(C).No. 13404 of 2015 (A)**

PETITIONER'S' EXHIBITS:

EXT.P1 TRUE PHOTOCOPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE THIRD RESPONDENT DATED 7.7.2014

EXT.P2 TRUE PHOTOCOPY OF THE FIRST PAGE OF THE FOURTH PAGE OF THE BYELAW OF THE FIRST RESPONDENT

EXT.P3 TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE FOURTH RESPONDENT DATED 17.11.2014

EXT.P4 TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE THIRD RESPONDENT ALONG WITH THE VOTEST LIST

EXT.P5 TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE THIRD RESPONDENT DATED 7.3.2015

EXT.P6 TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE RESPONDENTS 2 & 3

EXT.P7 TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE RESPONDENTS 3 & 4.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

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W.P.(C)No.13404 of 2015 A  
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Dated this the 20<sup>th</sup> day of November, 2015

### **JUDGMENT**

The first respondent is a newly formed Society having been registered on 07.07.2014, and the petitioner its erstwhile President. His grievance in the writ petition is that the respondents are not taking steps to conduct the elections expeditiously.

2. The facts in brief are that after the establishment of the Society, its promoting members, 32 in number, constituted a committee to manage the affairs of the Society before it could go for the elections. Accordingly, on 01.10.2014, the Promoting Committee passed a resolution to take certain administrative steps concerning the Society. Indisputably, on that day eleven out of thirteen members participated and signed the resolution.

3. On 11.10.2014, the Managing Committee once again met and resolved to enroll twenty eight new members; thereafter, the committee once again met on 22.10.2014 and resolved to request the Election Commission, the fourth respondent, to hold elections to the Managing Committee. In fact, the resolutions passed on 11.10.2014 and 22.10.2014 are in dispute as regards the participation of all other members of the Promoting Committee.

4. In the course of time, acting on the resolution passed by the Society, as has been forwarded by the Assistant Registrar, the second respondent, the Election Commission, notified the date of election. Indeed, the election was held and the petitioner along with twelve other persons emerged victorious. They formed the first elected Managing Committee of the Society.

5. At a later point of time, the third respondent invoked Rule 44 of the Kerala Co-operative Societies Rules,

1969 ('the Rules' for brevity) and disqualified the petitioner through its order dated 23.02.2015 on the grounds that before he contested the election, he had certain dues to another society. On the disqualification of the petitioner, however, the rest of the members continued to administer the affairs of the Society. At any rate, soon thereafter, six out of thirteen resigned as the members of the Managing Committee.

6. With the resignation of those persons and the disqualification of the petitioner earlier, the strength of the Managing Committee came to be six; thus, it lost its quorum. Left with no other alternative, the third respondent appointed an Administrative Committee comprising three persons, drawn from the erstwhile Managing Committee.

7. As a matter of subsequent development, the petitioner is said to have cleared his dues pointed out by the third respondent and got rid of his disqualification. In that context, as the Society has been administered by the

Administrative Committee, he submitted Exhibit P6 representation before the second and third respondents and also Exhibit P7 representation before the fourth respondent urging the said authorities to take steps to conduct elections without further delay. The respondent authorities not responding favourably, the petitioner has approached this Court.

8. The learned counsel for the petitioner has submitted that initially the petitioner approached the authorities questioning the reason for the delay in conducting the elections. He was, however, informed that there was a discrepancy in the voters' list and that twenty eight persons had been unauthorisedly admitted by the petitioner on 11.10.2014 without the participation of the majority members, including those presently comprising the Administrative Committee. He has further submitted that based on a complaint lodged by the Administrative Committee, the third respondent allegedly conducted an

enquiry as regards the eligibility of those twenty eight persons to be the members of the Society.

9. The learned counsel has submitted that, first, the third respondent has no jurisdiction under Rule 16(4) of the Rules to conduct an enquiry.

10. In the alternative, the learned counsel has contended that prior to the election to the Managing Committee in terms of Rule 35A, the authorities as well as the Election Commission went through an elaborate process of verifying the voters' list and finalising it. Once it has been finalised, contends the learned counsel, the question of re-opening the issue that has already been approved by the authorities does not arise.

11. The learned counsel has further contended that one of the members out of those twenty eight also contested the election and successfully became a member of the Managing Committee. It is the further contention of the learned counsel that the members of the present

Administrative Committee, on whose complaint the third respondent is said to have been acting presently, had, in fact, participated in the administration of the Society all through till the supersession of the Managing Committee.

12. In other words, the authorities are estopped from re-opening the issue of eligibility of those twenty eight members or the revision of the voters' list, thereby disqualifying those twenty eight members. According to him, it is only an excuse to postpone the elections ad infinitum.

13. Per contra, the learned counsel for the first respondent, i.e., the Administrative Committee, has strenuously contested the claims and contentions of the petitioner. To begin with, he has submitted that admittedly the members of the Administrative Committee had participated in the meeting held on 01.10.2014 and signed the minutes of the meeting. According to him, on the two subsequent dates, i.e., 11.10.2014 and 22.10.2014, when the Managing Committee allegedly took decisions to admit

twenty eight members and call for the elections respectively, most of the members of the Promoting Committee did not take part.

14. With specific reference to the alleged committee meetings on 11.10.2014 and 22.10.2014, the learned counsel has submitted that a perusal of the signatures in the minutes of the meeting on these dates, when compared with the admitted signatures, would reveal even to the naked eye that the petitioner committed the illegality of forging the signatures of other members of the committee on 11.10.2014 and 22.10.2014.

15. It is the specific contention of the learned counsel for the first respondent that all along the members of the Administrative Committee believed that those twenty eight persons had been properly admitted and on both occasions resolutions had been passed following the due procedure.

16. In elaboration, he has submitted that only when persons from the Managing Committee were enrolled as members of the Administrative Committee, they had access to the records and they came to know for the first time that the petitioner forged the signatures of other members of the committee and illegally admitted twenty eight members.

17. Drawing my attention to Exhibit R1(a), the learned counsel would contend that from the date of a person becoming a member to the date of the election there should have been sixty days' clear gap, lest the said member should not be qualified to vote. In this context, the learned counsel has submitted that as can be seen from Exhibit R1(a), all members beginning from Serial No.33 got their names approved on 27.10.2014 or subsequent dates, i.e. well within sixty days and not beyond that.

18. The learned counsel would contend that those twenty eight members were not qualified to be in the voters' list and, ipso facto, they ought not to have taken part in the

first election.

19. The learned counsel lays specific emphasis on the signature of the Convenor of the present Managing Committee, namely Mr. Basheer Pariyarath Meethal. According to him, it is so distinct and different from his signatures found in the resolutions passed on the other admitted dates. Even to the naked eye, contends the learned counsel, it is visible that the signatures found on the resolutions allegedly passed on 11.10.2014 and 22.10.2014 have been forged, ostensibly, by the petitioner.

20. The learned counsel has further tried to refute the contention of the learned counsel for the petitioner that the third respondent has no jurisdiction under Rule 16(4) of the Rules to enquire into the issue of eligibility of those twenty eight persons to be the members of the Society. In elaboration, he has submitted that Rule 16(4) of the Rules amply empowers the third respondent to act either suo motu or on the complaint of any person interested as

regards the eligibility of any member of the Society.

21. Summing up his submissions, the learned counsel has contended that the members of the Administrative Committee having come to know for the first time, on their assuming charge as members of the Administrative Committee, that certain members have been illegally admitted, they have got every right to question the illegality and thereby invite a decision from a competent authority, in this instance the third respondent, regarding the very validity of the voters' list. In sum and substance, it is the contention of the learned counsel that until and unless the issue concerning the validity of the voters' list is resolved, the elections cannot be held.

**Reply:**

22. The learned counsel for the petitioner in reply has submitted that the members of the Administrative Committee did participate both in the meetings held on 11.10.2014 and 22.10.14. As regards the alleged discrepancy

in the signatures on these occasions, the learned counsel has drawn my attention to the two signatures appended in the resolutions dated 01.10.2014 by the same person, i.e., the Convenor of the present Administrative Committee.

23. According to the learned counsel, when there is such a sea-change or wide difference in his very admitted signatures, the said Convenor cannot be heard saying that there is a discrepancy in the signatures on the other two dates and that it should be presumed that those signatures were forged.

24. As regards the clear gap of sixty days between the date of a person becoming a member and his participating the election, the learned counsel has submitted that the Society having been newly established, the administration has not been fine-tuned and there could have been certain minor omissions and commissions, which do not go to the root of the matter.

25. In elaboration, the learned counsel has submitted that ostensibly Exhibit R1(a) would reflect that the persons from Serial No.33 were admitted on 29.12.2014; it is thus within sixty days from the date of the election. The fact nevertheless remains, according to the learned counsel, that they paid the membership fee and share money prior to 11.10.2014, that was beyond sixty days and that they were duly admitted as members on 11.10.2014. In this regard, if this Court could summon either the cash register or the vouchers, he contends, the issue would be clear. The learned counsel has also reiterated that in terms of Rule 35A(4), the authorities have followed the due procedure and finalised the voters' list, on the strength of which alone the first election was held.

26. Heard the learned counsel for the petitioner and the learned counsel for the first respondent, as well as the learned Government Pleader, apart from perusing the record.

**Issues:**

**I.** Whether the Administrative Committee or any other person interested can question the ineligibility of the twenty eight persons to the members of the Society, given the fact that earlier the voters' list was finalised and those persons took part in—one even contested—the first elections held on 22.12.2014?

**II.** Whether the members of the Administrative Committee are estopped from questioning the eligibility of the twenty eight persons to be the members of the Society?

**III.** Whether the third respondent is entitled to act on the complaint of the Administrative Committee in terms of Rule 16(4) of the Rules and adjudicate the issue, albeit, after putting the affected parties on notice?

**Issue Nos.I & II:**

27. To begin with, indisputably eleven out of thirteen members participated in the meeting held on 01.10.2014, when certain innocuous decisions concerning the day-to-day administration of the Society were taken. On that day, the Convenor of the Administrative Committee signed at two

places: at one place, he appended his full signature, and at another, he appended his signature in part, cryptically.

28. The bone of contention is that twenty eight persons have been admitted without the approval of the majority members of the Promoting Committee. In this regard, the further contention of the first respondent is that they were made members beyond sixty days from the date of the election.

29. In my considered view, if there were to be any disqualification on the ground that they were not made members beyond sixty days from the date of election, it would have been, at best, an element of disqualification for the first election, but not in subsequent elections to be held, though. It is trite to observe that by today it is well beyond sixty days since the date of admission of those twenty eight members.

30. Of course, the contention of the learned counsel for the petitioner is that they were duly admitted on

11.10.2014 itself and that the cash register and the vouchers would amply demonstrate the said fact. Nevertheless, this Court has to resolve the issue whether those twenty eight members had been admitted, if at all, on 11.10.2014 with the approval of the majority members or as a result somebody committing an offence of forging the signatures of some of the members of the committee.

31. To my specific query, the learned counsel for the first respondent has submitted that none of the members whose signatures are said to have been allegedly forged by the petitioner has lodged any police complaint. However, the learned counsel has submitted that the members of the Administrative Committee lodged a complaint with the third respondent, who having enquired into the issue, prima facie, found that there is merit in the complaint.

32. The learned counsel for the first respondent has further submitted that now notices have been issued to all the twenty eight members seeking their objections

concerning their disqualification. According to him, eventually if any person is aggrieved by the order to be passed by the third respondent, the said person can as well lay challenge against it.

33. I am afraid, it is not brought to my notice by either of the parties that these twenty eight members have suffered any inherent, incurable limitation or disqualification to be the members at all. The issue that has been urged by the first respondent is that certain members of the committee did not take part on 11.10.2014 in the decision allegedly taken to admit those persons as members.

34. I do not think that the third respondent could resolve the issue such as the forging of signatures. For he may not have the necessary technical expertise in that regard. It would have made sense had the members of the Administrative Committee or any other affected person lodged a criminal complaint and the issue was subjected to

any forensic analysis. That was not to be.

35. As has rightly been contended by the learned counsel for the petitioner, the Minutes Book produced in original by the learned counsel for the first respondent before this Court clearly demonstrates that the signatures of the Convenor of the Administrative Committee appended in the register on 11.10.2014 at two places widely varies. That apart, it cannot be denied that one of those 28 members contested the election, later emerged victorious and became part of the Managing committee, which administered the Society for a while.

36. At no point of time have they raised any objection concerning these members. Secondly, in terms of Rule 35A, when the authorities inspected the registers to certify to the Election Commission that everything was in order so that it could hold election, they did not raise any objections. When the preliminary voters' list was displayed calling for the objections, again no objections were raised. The answer

that emanated from the members of the Administrative Committee of the Society is that they bona fide believed that they were admitted after following the due process.

37. The fact remains that the Society comprised just sixty members. It is not a herculean task for anybody to verify all the records at any point of time, until the petitioner had been disqualified, to see whether there was anything amiss in the affairs of the Society.

38. It is very pertinent to observe that the members of the Administrative Committee are said to have not taken part in the meeting held on 22.10.2014, when a resolution was passed to conduct the elections. Subsequently they participated in the election, however. It is elementary to observe that they ought to have entertained a doubt when the Society passed the resolution without their knowledge, much less their participation, to hold the election. Again that was not to be.

39. The now-dissenting, disbelieving members blissfully participated in the elections and enjoyed the power. And later, the President, ostensibly enjoying the majority, having been disqualified, perhaps prevailed upon the majority members to tender their resignation, which they did. Then the break-away group comprising the Administrative Committee members came to doubt the legality of the election they participated in and emerged victorious; the legitimacy of the voters they solicited votes from; and the competence of the committee they were part of. An unbelievable pang of conscience.

40. It is, indeed, no overstatement to observe that the respondent authorities, especially second and third respondents, had ample powers and opportunity to inspect the records of the Society periodically; they seem to have done it through unit inspection. They did recommend to the Election Commission to hold elections. Till then they did not find anything amiss. Once the petitioner got off his

disqualification and insisted that the elections be held, things, then, took a new turn.

41. The third respondent—though I do not want to sound uncharitable—has filed a statement expressing an attitude of 'more loyal than the king'. To the credit of the members of the Administrative Committee, they were fair in admitting that they participated in certain meetings but not all. On the other hand, the third respondent in his statement has stated that on all the dates that had been mentioned there were no meetings at all. It speaks volumes about the insouciant, if not irresponsible, attitude of the third respondent towards the Court—in assisting it to render justice. His attitude is deprecated.

42. In the facts and circumstances, the issue of estoppel, as has been rightly contended by the learned counsel for the first respondent, is also required to be considered—incidentally, though. It is well established that there could be no estoppel against a statute provided the

statute permits such exercise of power. In the present instance, the members of the Administrative Committee went through the whole process of election. They say they did not participate in the meeting in which the committee took a decision to conduct election; yet, they participated in the election without a demur.

43. When they found new twenty eight members admitted, they did not bother how they became members when they did not approve their entry. They shared power with the petitioner and other members in the committee until its abolition. They had access to the records, but never bothered to check them.

44. Of course, pat comes the answer from the members of the Administrative Committee that until they became part of the Administrative Committee they had no knowledge. It is, at any rate, not their case that when the petitioner was at the helm of the affairs of the Society, he denied their access to the records. Mere alleged bona fide

belief in the conduct of the petitioner as the President of the committee would not absolve them of their laches or condoning attitude.

45. Having allowed things to come to pass, when the elections are required to be held in statutory terms, the first respondent as well as the respondent authorities have been competing with one another to invent reasons to postpone the elections, thwarting the chances of the aspiring members to be at the helm of the affairs Society through the democratic process of election. I am of the considered opinion that the objection as regards twenty eight members cannot be sustained.

**Issue No.III:**

46. Rule 16(4) of the Rules reads as follows:

“Where a member of a society becomes ineligible to continue as such, the Registrar may of his own motion or on a representation made to him by any member of the society or by the financing Bank, by an order in writing declare that he has ceased to be a member of the society from the date of his order. The Registrar shall give such person an opportunity to state his objection, if any, to the

proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard before passing an order as aforesaid."

47. Evidently, it is a pre-condition that a person ought to have been duly admitted as a member to confer any jurisdiction on the third respondent to rule on the member's subsequent disqualification. In fact, Rule 16(3) is quite emphatic that once a person has not been qualified in the first place to be a member and subsequently it came to light that he suffered a disqualification since inception, it is the committee at the helm of the affairs that has got the jurisdiction to adjudicate the issue.

48. Once there is an adjudication, of course, after following the due procedure, any aggrieved person could as well lay a proper challenge against it. In that contest, I am of the opinion that the exercise of power by the third respondent is premature, inasmuch as Rule 16(4) has no application.

49. It is not disputed that seven members of the erstwhile Managing Committee filed their representation before the third respondent on 11.10.2014 and 22.10.2014 when the committee meetings were held and that the members signed the minutes. Whatever be the truth of the statement, it cannot be disputed that they did file their statements before the third respondent. Now, in the light of the present adjudication, the enquiry said to be pending before the third respondent has become inconsequential.

In the facts and circumstances, the writ petition is allowed. The respondent authorities are directed to take steps to ensure that elections are held expeditiously.

Dama Seshadri Naidu, Judge

tkv

**'C.R.'**