

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 16395 of 2013 (Y)

PETITIONER(S) :

1. THE BOARD OF DIRECTORS OF THE OACHIRA SCB
OACHIRA, KOLLAM, REPRESENTED BY ITS PRESIDENT.

2. MANAKKAL SOMAN
MANAKKAL VEEDU, PAYIKUZHI OACHIRA, (MEMBER
THE BOARD OF DIRECTORS OF THE OACHIRA SERVICE
CO-OP. BANK LTD.
OACHIRA, KOLLAM).

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S) :

1. KERALA STATE CVO-OPERATIVE ELECTION COMMISSION
OFFICE OF THE KERALA STATE CO-OPERATIVE ELECTION COMMISSION
THIRUVANANTHAPURAM 695 001.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
KOLLAM 691 001.

3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL)
KARUNAGAPPALLY, KOLLAM 690 518.

ADDL.R4. T.K.SOMAN, THUNDAYATHU VEEDU
CHANGANKULANGARA, VAVVAKKAU P.O.
OACHIRA, KOLLAM - 690 528

ADDL.R5: AMBAT ASHOKAN, S/O.SIVARAMA PILLAI
AMBAT HOUSE, VALIYAKULANGARA
OACHIRA, KOLLAM - 690 628

(ADDL.R4 & 5 ARE IMPEADED AS PER ORDER DT.11.7.2013 IN
I.A.9279/2013)

RADDL.R 4&5 BY ADV. SRI.V.G.ARUN
RADDL.R4&5 BY ADV. SRI.T.R.HARIKUMAR
R. BY SPL. GOVERNMENT PLEADER SHRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE RESOLUTION DTD.15.5.2013 ALONG WITH COVERING LETTER.

P2 : COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT
DTD.21.6.2013.

P3 : COPY OF THE JUDGMENT IN WPC NO.11695/2008.

RESPONDENT(S) ' EXHIBITS

EXT.R5A: COPY OF THE JUDGMENT DT.21.5.2013 IN WPC 12693/2013

EXT.R5B: -DO- REPRESENTATION FILED BY THE 4TH RESPONDENT AND OTHERS
BEFORE THE 2ND RESPONDENT DT.15.4.2013

EXT.R5C: -DO- NOTICE NO: 560/13 DT.21.6.2013 ISSUED BY THE 3RD
RESPONDENT

EXT.R5D: -DO- REPRESENTATION SUBMITTED BY THE RESPONDENTS 4 AND 5
BEFORE THE CO-OPERATIVE ELECTION COMMISSION DT.22.5.2013

EXT.R5E: -DO- ORDER NO:CRP 4755/2012 DT.26.6.2013 OF THE 2ND
RESPONDENT

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 16395 OF 2013

Dated this the 11th March, 2015.

JUDGMENT

The petitioners, the Board of Directors of the Oachira Service Co-operative Bank Ltd., Oachira and one of the members of the Board of Directors are the petitioners herein. They have filed this writ petition challenging Ext.P2 proceedings of the first respondent by which a resolution adopted by the Board of Directors for conduct of an election on 21.7.2013 has been rejected.

2. The present Board of Directors (the 'Board' for short) had assumed office on 28.7.2013. Their term of office was due to expire on 26.7.2013. Therefore, on 15.5.2013 a resolution was adopted by the Board, resolving to hold the election on 21.7.2013. The said resolution along with its covering letter, produced as Ext.P1 was forwarded to the first

respondent through the third respondent. Since it was obligatory on the part of the first respondent to hold the election as proposed, the petitioners expected the resolution to be accepted. However, by Ext.P2 the resolution has been rejected by the first respondent. The reason stated in Ext.P2 is that by its judgment in WP(C) 12693/2013 this Court had directed the Joint Registrar to consider the complaints made by additional respondents 4 and 5 within a period of two months. Since the complaints alleged that ineligible persons and persons who had not attained 18 years of age had been enrolled as members by the Board, the voters list could be finalised only upon final disposal of the said complaints. The complaints were not finally disposed of at the time of issuing Ext.P2 proceedings for the reason that as per the time limit stipulated, time was available up to 29.7.2013. Therefore, it is stated in Ext.P2 that conduct of an election without finding out whether ineligible members have been admitted to the membership of the society is impermissible. It was for the

said reason that the resolution has been rejected.

3. As per order in I.A.9279/2013, additional respondents 4 and 5 got themselves impleaded. The respondents opposed the contentions of the petitioners. A statement has been filed on behalf of the first respondent. According to the statement, the Election Commission is sufficiently empowered by Section 28B of the Act to issue Ext.P2 proceedings. The power of the first respondent of superintendence, direction and control of the preparation of electoral rolls and conduct of elections has been held to be very wide by the courts. The voters list is a fundamental document for the conduct of the election. The Election Commission is therefore bound to consider whether there is a proper voters list for the society. The said decision can be taken only after the complaints against the voters list are disposed of by the Joint Registrar in compliance with the direction of this Court. Section 28B has been amended to confer power of preparation of voters list on the Election

Commission. Therefore, it is contended that, it is not possible to hold a free and fair election at present.

4. According to Adv.P.C.Sasidharan who appears for the petitioners, the power to decide complaints regarding eligibility of persons who have been enrolled as members in the society is conferred on the Board. No complaint against any person is pending before the Board. The complaints made to the second respondent alleging that some of the members are ineligible to become members of the society are only mischievous and calculated to stall the election process. The consequence would be that, the society would be denied the benefit of an elected Board for an indefinitely long period of time. For the said reason, in a similar writ petition this Court had by Ext.P3 judgment directed the elected committee to consider the complaints. The Board has completed all the statutory formalities necessary for the conduct of an election. The entire attempt is to sabotage the election process and to bring the society under the control of an Administrator or

Administrative Committee. For the above reasons it is contended that, it is necessary to have an election conducted at the earliest, after quashing Ext.P2.

5. Shri.D.Somadundaram, Special Govt. Pleader on the other hand contends that the Registrar has the power under Rule 16(4) to consider the complaints that are before the said authority. Section 28B has been amended by the Kerala Co-operative Societies (amendment) Act 2013 conferring power on the Election Commission to supervise even preparation of electoral rolls. The Election Commission has on a consideration of the facts and circumstances of the case, decided that it is not possible to hold a free and fair election in the present scenario. It is for the said reason that Ext.P2 proceedings have been issued rejecting the resolution of the Board. The said decision does not call for any interference at the hands of this Court. A learned single Judge of this Court has by judgment dated 8.7.2013 in WPC 18455/2012 and connected cases, recognised the sweeping of powers

conferred on the Election Commission. According to the learned Special Govt. Pleader therefore, the challenge against Ext.P2 is liable to be rejected.

6. Adv. V.G.Arun appears for the additional respondents 4 and 5. According to the counsel, the affidavit filed in support of their impleading petition sufficiently answers the contentions in the writ petition and can be treated as their counter affidavit. According to the counsel, the Board whose term was about to expire started enrolling members, indiscriminately. Thus, they have enrolled about 2400 new members. As many as 900 members were enrolled within a span of two months, prior to the institution of the above proceedings. Though respondents 4 and 5 tried to obtain details of the members, they were denied access to the Membership Register. A large number of persons who are less than 18 years old have been granted membership. The attempt was, to manipulate the democratic process and to come back to power through an election. It was in the said

circumstances that, complaints were submitted to the Joint Registrar. Ext.R5(b) is a copy of the complaint made. The Assistant Registrar has made an enquiry on the said complaint as evident from Ext.R5(c). The enquiry has commenced only pursuant to the direction issued by this Court in Ext.R5(a) judgment. When the Board took hasty steps to have an election conducted, respondents 4 and 5 have submitted Ext.R5(d) complaint to the Election Commission also. The Joint Registrar of Co-operative Societies has by Ext.R5(e) directed an enquiry into the affairs of the society. It is pointed out that, Ext.R5(d) complaint had been submitted almost a month prior to the date of Ext.P1 resolution. Therefore, the allegation that the complaint was made with the object of subverting the election process is denied. In view of the above, according to the counsel for respondents 4 and 5 the issue of Ext.P2 is fully justified in the circumstances of the case.

7. Heard. As rightly pointed out by the counsel for

respondents 4 and 5, Ext.R5(b) representation is dated 15.4.2013, much prior to the date of Ext.P1 by which a resolution was adopted by the Board of Directors to hold an election. Therefore, Ext.R5(b) was already pending before the second respondent when Ext.P1 resolution was adopted. Consequently it cannot be said that the complaint was made with the object of subverting the election process. It is true that, Rule 16(3) of the Rules confers power on the Managing Committee to remove a person from the membership of the society if it is found that he was ineligible to become a member. However, Rule 16(4) confers power on the Registrar to remove a person from the membership of the society, where he becomes ineligible to continue as such. The words, “becomes ineligible to continue as such” takes in not only a situation where a person incurs subsequent disqualification but also a situation where a person was ineligible from the very beginning. This is because, the ineligibility of a person to continue as a member of the society

could be due to an ineligibility that was existing at the time of his admission to membership and also due to an ineligibility that may have arisen subsequently. Therefore, the power under Rule 16(4) is wider in content and encompasses a larger set of circumstances than Rule 16(3). For the above reason, it cannot be said that the Joint Registrar is not possessed of any powers to consider the complaints in the present case. The judgment, Ext.P3 relied upon by the counsel for the petitioners has no application to the present situation for the reason that, in the said case the complaint had been made to the Administrative Committee that was then in office. The Administrative Committee had ceased to be in existence and an elected committee had taken charge. It was for the said reason that the complaint therein was directed to be considered by the elected committee. In the present case, the complaint is pending before the Joint Registrar who has sufficient powers to consider the same.

8. This is a case in which, there were complaints

regarding large scale enrolment of members by the Board whose term was expiring. Attempts by respondents 4 and 5 to verify the Membership Register did not fructify for the reason that they were denied access to the said records. Therefore, respondents 4 and 5 had no other alternative except to complain to the Joint Registrar. The said complaints have been directed to be disposed of by Ext.R5(a) judgment of this Court. Therefore, there is nothing wrong in the first respondent's decision to await the culmination of the said proceedings.

9. The other question is whether the first respondent has the power to issue Ext.P2. Sub-section (1) of Section 28B after the amendment of 2013 reads as follows:–

“ Notwithstanding anything contained in this Act or in the rules, the Government shall by notification in the Gazette, constitute a State Co-operative Election Commission for the superintendence, direction and control of the preparation of electoral rolls and for the conduct of all elections to co-operative

societies including election to the President/Vice President and Representative General Body.”

The powers of the first respondent extends to the superintendence, direction and control of the preparation of electoral rolls and to the conduct of elections to co-operative societies, including election to the President/Vice President and Representative General Body. The above provision shows that, the first respondent has all the powers necessary for the superintendence, direction and control of the preparation of electoral rolls and for conduct of election. The provision, having been worded in such wide terms, has conferred sufficient powers on the first respondent for the purpose of ensuring that a proper, free and fair election is conducted to a co-operative society. Preparation of a voters list or electoral roll is a very important process in the conduct of an election. The complaints regarding the eligibility of the persons who are included in the voters list are necessarily to be disposed of before the voters list is finalised. The election commission

has sufficient powers to ensure that the voters list contains only the names of persons who are eligible to be members of the society.

10. A learned Single Judge of this Court has considered the powers of the election commission in the judgment dated 8.7.2013 in WPC 18455/2012 and connected cases. In the said case a contention was raised that the Returning Officer had the power to postpone an election only in certain specified circumstances. However, this Court has found that, the powers of a Returning Officer and the Election Commission are distinct and separate and that, the powers of the Election Commission are far wider in scope and content. The powers of the Election Commission would encompass every aspect of the process of conduct of an election. This Court has concluded the issue in paragraph 13 of the judgment in the following passage:–

“No doubt, the Returning Officer may not have the power to adjourn the election. But the question is whether the Election

Commission has such powers. Going by sub-rule (9) of Rule 35A and the judgment in Rajendran (supra) the power of the Election Commission cannot be disputed. The power to appoint an Electoral Officer can also be withdrawn if it is found that the election proceedings cannot be conducted in a fair manner. Reference is made by the Election Commission regarding the preparation or manner in which form 6B register is maintained and discrepancies in the identity cards and photographs affixed etc. Under normal circumstances these are all matters to be considered by the electoral officer while preparing the final voters list. But if the discrepancy is such that it goes to the extent of effecting a fair election definitely the Election Commission can interfere in the matter.”

In the present case also the Election Commission has formed an opinion that a fair election cannot be conducted without finalising the complaints regarding the voters list. It is for the said reason that the resolution adopted by the

petitioners have been rejected by Ext.P2. Absolutely no material or evidence have been placed before me to justify a conclusion that the opinion formed by the Election Commission suffers from any infirmity or that the same is perverse. Therefore, I do not find any grounds to interfere with Ext.P2 or to grant any of the reliefs sought for in this writ petition. The writ petition therefore fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

