

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 16085 of 2015 (I)

PETITIONER:

K.K.NARAYANAN,
S/O.LATE K.N.KESAVAN, KELANGATH HOUSE, PANACHAKAM,
MANNUTHY (PO), THRISSUR -680 651.

BY ADV. SRI.C.E.UNNIKRISHNAN

RESPONDENTS:

1. THE JOINT REGISTRAR(GENERAL) OF CO-OPERATIVE SOCIETIES,
THRISSUR - 680 001.
2. THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, THRISSUR - 680 001.
3. THE THRISSUR REGIONAL TOURIST TAXI DRIVERS
CO-OPERATIVE SOCIETY LTD.NO.R.1400
ELANJIKKAL BUILDING, ST.THOMAS COLLEGE ROAD,
THRISSUR -680 001
REPRESENTED BY IS HONORARY SECRETARY DIVYA VASUDEVAN.

ADDL. R4 & R5 IMPEADED:

4. UDAYAKUMAR H., S/O. HARIHARA SUBHRAHMANYA IYER,
VRINDHAVAN NIVAS, NETTISSERY P.O., MANNUTHY,
THRISSUR DISTRICT - 680 651.
5. K.V. AJITH KUMAR, S/O. ACHUTHA WARRIER,
KIZHAKKEPATTU WARRIAM, SNEHA NAGAR,
VENGINISSRI P.O., THRISSUR DISTRICT - 680 563.

(ADDL.R4 AND R5 IMPEADED AS PER ORDER DATED 14.07.2015 IN
I.A. NO. 9755 OF 2015)

R3 BY ADV. SRI.G.SREEKUMAR (CHELUR)
RADDL.4 & 5 BY ADV. SRI.V.G.ARUN
RADDL.4 & 5 BY ADV. SRI.T.R.HARIKUMAR
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P-1: A TRUE COPY OF THE LETTER DATED 2.5.2015 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P-1(a): A TRUE COPY OF THE TRANSLATION OF EXT.P1.

EXT.P-2: A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT NO.1799/2015 DATED 13.5.2015.

EXT.P-2(a): A TRUE COPY OF THE TRANSLATION OF EXT.P2.

EXT.P3: TRUE COPY OF THE COMPLAINT DATED 27.06.2015 SUBMITTED BEFORE THE SUB INSPECTOR OF POLICE.

EXT.P3(a): TRUE TRANSLATION OF EXT.P3.

RESPONDENTS' EXHIBITS :

EXHIBIT R3(a): TRUE COPY OF THE MINUTES BOOK DATED 06.04.2015.

EXHIBIT R4(a): TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 18.05.2013 ISSUED BY THE JOINT REGISTRAR (GENERAL), THRISSUR.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 16085 of 2015 (I)

Dated this the 14th day of July, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned Government Pleader, the learned counsel for the 3rd respondent Society and the learned counsel for additional respondents 4 and 5, apart from perusing the record.

2. The petitioner, the President of the third respondent Society, filed this writ petition questioning the efforts of the rest of the members of the managing committee to move a no confidence motion against him in violation of Section 28AB(2) of the Kerala Co-Operative Societies Act, 1969 ('the Act' for brevity) and Rule 43A(xii) of the Kerala Co-Operative Societies Rules, 1969 ('the Rules' for brevity). Though the singular contention of the President at the time of filing the writ petition was that the other members of the managing committee, i.e., 9 out of 11 members, made efforts to move no confidence motion against him prematurely, that is, before the mandatory six months' period was over.

3. To the credit of the learned counsel for the petitioner, he

has submitted that by the time the writ petition could be taken up for consideration after serving notice upon the respondents, the period of six months' had come to pass. According to him, the contention of the premature moving of no confidence motion is not available to the petitioner. He has, however, submitted that until the meeting takes place and the members who desire to express no confidence against the petitioner are successful in taking out a resolution to the said effect by majority, the petitioner as the President of the Society shall be permitted to discharge his statutory duties.

4. In response thereto, the learned counsel for the third respondent Society and also the learned counsel for additional respondents 4 and 5, who are the members of the managing committee and signatories to the resolution to move no confidence motion, have contended that nine out of 11 members of the managing committee have lost confidence on the petitioner. According to them, the petitioner has been facing allegations of financial misappropriation. In furtherance thereof, both the learned counsel would submit that it would be entirely unsafe and also not in the interest of the society to entrust the petitioner with any

managerial functions, especially the custody of the accounts, cash etc.

5. Indeed, the learned counsel for the petitioner has vehemently opposed the contentions of the learned counsel for the third respondent as well as the learned counsel for additional respondents 4 and 5. According to him, the petitioner is one of the founding members of the society, and that he has never indulged in any malpractices, much less misappropriation of funds. It is also his contention that the authorities are always at liberty to initiate appropriate enquiry, if at all there is an element of truth in the allegations made by the other members of the managing committee.

6. Be that as it may, this Court does not intend to enter into the arena of disputed questions of fact. Suffice it to say that if the majority of the members desire to carry out any legitimate proceedings concerning the competence of the petitioner or the confidence on the said office bearer, it is expected that the proceedings would be taken through due process. At the same time, until the no confidence has been expressed in actual terms, it may not be proper to prevent the petitioner from discharging his functions as the President, albeit under the general supervision of the managing

committee in terms of Rule 47(d) of the Rules.

7. In the facts and circumstances, without expressing any opinion on the merits of the matter, especially concerning the allegations and counter allegations involving the petitioner as the President of the Society, this Court disposes of the writ petition making it clear that the members of the managing committee are at liberty to initiate necessary statutory steps, if they desire to move a no confidence motion against the petitioner.

It is further made clear that till the process is over, the petitioner shall be permitted to discharge his functions as the President in the manner indicated above. Given the animosity prevailing among the sections of members of the managing committee, if there were to be any administrative logjam, the affairs of the society shall be conducted as per the directions of the Assistant Registrar, the second respondent.

sd/- DAMA SESHADRI NAIDU, JUDGE.

