

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 19127 of 2015 (M)

PETITIONERS:

1. K.K.NARAYANAN, AGED 61 YEARS,
S/O.P PONNAPPAN, NILESHWAR GAS AGENCIES, RAJA ROAD,
NILESHWARAM, KASARAGOD DISTRICT.
2. P SREEDHARAN, AGED 73 YEARS,
S/O.LATE K V , RAMAN VAIDHYAR, 'RAJEEV',
RAJA ROAD, NILESWARAM, KASARAGOD DISTRICT.
3. DR.V GANGADHARAN, AGED 61 YEARS,
S/O.LATE M V RAMAN, 'JYOTSNAM', PUDUKAI P O,
NILESHWARAM (VIA), KASARAGOD DISTRICT.
4. K RAJAGOPALAN NAIR, AGED 56 YEARS,
S/O.KUNHIRAMAN NAIR, PADIJATTAOM KOVIL, NILESHWARAM,
KASARAGOD DISTRICT.
5. P NARAYANAN, AGED 74 YEARS,
S/O.P KUNHIRAMAN, 'MURALIKA', PATTENA,
PUTHARIYADUKKAM P O, NILESHWARAM, KASARAGOD DISTRICT.
6. K P SASI, AGED 52 YEARS,
S/O.M KRISHNAN NAIR, PAINI HOUSE, PADIJATTOM KOVIL,
NILESWARAM, KASARAGOD DISTRICT.
7. EYYAKKAT KRISHNAN, AGED 55 YEARS,
S/O.M.V.KUNHAMBADY, MATTUMMAL HOUSE, THAIKADAPURAM,
NILESHWARAM, KASARAGOD DISTRICT.
8. A VINOD KUMAR, AGED 43 YEARS,
S/O.RAGHAVAN NAIR, ANIKKAL HOUSE, PATTENA, NILESHWARAM,
KASARAGOD DISTRICT.
9. N PARAMESHWARAN MOOSATH, AGED 60 YEARS,
S/O.P PRAMESHWARAN MOOSATH, NAGERI ILLOM, PUDUKAI P O,
NILESHWARAM VIA, KASARAGOD DISTRICT.

BY ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS
SRI.ARUN AJAY SHANKAR

WP(C).No. 19127 of 2015 (M)

RESPONDENTS:

1. THE DISTRICT REGISTRAR
(UNDER THE SOCIETIES REGISTRATION ACT), CIVIL STATION COMPLEX,
VIDYANAGAR P O, KASARAGOD, PIN 671123.
2. RAMAKRISHNAN NAIR P U, AGED 64 YEARS,
'SOORYA', KOZHUNDIL ROAD, NILESHWARAM,
KASARAGOD DISTRICT, PIN 671314.
3. CHANDRAN M, AGED 62 YEARS,
S/O.KORAN, 'SANGAM', THERVAYAL,
NILESHWARAM, KASARAGOD DISTRICT, PIN 671314.
4. DR. C. H. MUHAMMED KAMMADATH,
S/O.ABDUL RAHIMAN, KAMMADAM HOUSE, NILESWARAM,
KASARAGOD DISTRICT, PIN 671314.
5. THAMBAN NAIR, AGED 60 YEARS,
S/O.KUNHIKANNAN NAIR 'THEJAS', PADIJATTOM KOVIL,
NILESHWARAM, KASARAGOD DISTRICT, PIN 671314.
6. P SUKUMARAN NAIR, AGED 59 YEARS,
S/O.P KUNHAMBUR NAIR, 'VAIJAYANTHI', PEROLE,
NILESHWARAM P O, KASARAGOD DISTRICT, PIN 671314.
7. N K BALAKRISHNAN MEMORIAL TRUST,
OFFICE AT N K BALAKRISHNAN MEMORIAL HOSPITAL COMPLEX,
NEAR FOOD CORPORATION OF INDIA, PEROLE VILLAGE,
NILESHWARAM P O, KASARAGOD DISTRICT, PIN 671314.
8. THE NILESWAR SERVICE CO-OPERATIVE BANK LIMITED.
RAJA ROAD, NILESHWARAM, KASARAGOD DISTRICT, PIN 671314.

R1 BY ADV. GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

R2 & 4 BY ADVS. SRI.P.SREEKUMAR
SRI.K.NANDAKUMAR
SMT.P.M.MAZNA MANSOOR
SMT.V.A.HARITHA
SRI.P.VIVEK.

R3 BY ADV. SRI.V.R.KESAVA KAIMAL

R5 BY ADV. SRI.I.V.PRAMOD

R6 BY ADVS. SRI.G.HARIHARAN
SRI.PRAVEEN.H.

R7 BY ADVS. SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)

R8 BY ADV. SRI.T.K.VIPINDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 6/10/2015,
THE COURT ON 09-11-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE BYE-LAW OF THE 7TH RESPONDENT SOCEITY**
- P2:- TRUE COPY OF THE PROCEEDINGS RECORDED BY THE RETURNING OFFICER,DECLARING THE PETITIONER AS ELECTED IN THE MINUTES OF THE SOCEITY**
- P3:- TRUE COPY OF THE JUDGMENT IN PWC NO 33812/2014 OF THIS HON'BLE COURT**
- P4:- TRUE COPY OF THE JUDGMENT IN PWC NO 425/2015 OF THIS HON'BLE COURT**
- P5:- TRUE COPY OF THE JUDGMENT IN PWC NO 4446/2015 OF THIS HON'BLE COURT**
- P6:- TRUE COPY OF THE JUDGMENT IN PWC NO 4634/2015 OF THIS HON'BLE COURT**
- P7:- TRUE COPY OF THE NOTICE DTD 20/4/2015 ISSUED BY THE IST RESPONDENT TO THE 2ND PETITIONER**
- P8:- TRUE COPY OF THE OBJECTIONS DTD 7/4/2015 SUBMITTED BY THE 2ND PETITIONER TO EXT P7 NOTICE**
- P9:_ TRUE COPY OF THE ORDER DTD 23/5/2015 ISSUED BY THE IST RESPONDENT**
- P10:- TRUE COPY OF THE PLAINT IN OS NO 109/2015 ON THE FILES OF THE MUNSIFFS COURT, HOSDURG**
- P11:- TRUE COPY OF THE PLAINT IN OS NO 112/2015 ON THE FILES OF THE MUNSIFFS COURT, HOSDURG**
- P12:- TRUE COPY OF THE COMMUNICATION DTD 19/6/2015 ISSUED BY THE 8TH RESPONDENT SOCIETY**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

“C.R.”

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.19127/2015**  
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Dated this the 9th Day of November, 2015

J U D G M E N T

This writ petition is filed challenging the decision of the District Registrar produced as Exhibit P9 refusing to accept the Executive Committee list furnished, pursuant to the election held on 15/02/2015.

2. The petitioners are elected as the Executive Committee members of the 7th respondent-N.K.Balakrishnan Memorial Trust. The election to the Executive Committee was held consequent upon expiry of the tenure of the earlier Executive Committee on 31/10/2014.

3. Pursuant to the election of the members to the Executive Committee, the list of office bearers was submitted before the District Registrar in terms of Section 4 of the Societies Registration Act, 1860. There were serious objections regarding selection of the candidates. The District Registrar was directed to consider the objections of the Objectors as per various judgments of this Court in Exhibits P3 to P6 judgments. The objections were considered by the District Registrar by the impugned order. The District Registrar found that selection of certain candidates to the

Executive Committee was illegal and accordingly, refused to act upon the list furnished by the newly elected Executive Committee.

4. The Societies Registration Act, 1860 provides for registration of Literary, Scientific and Charitable Societies. It provides provisions for registration. It contains various provisions such as, how Societies should be formed and how the property of the Societies should be vested with them. The scope of registration under the Societies Registration Act is to confer a juridical entity or identity to the Association of individuals.

5. Section 4 of the Societies Registration Act provides as follows:

“4. Annual list of managing body to be filed.-- Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Inspector-General of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.”

6. The above provisions mandate that a list shall be filed with competent Authority showing the names, addresses and occupations of the Governors, Council, Directors etc. This is essentially to find out, who are the responsible persons governing the Society. It is also to be noted that

on account of non-filing of the returns with regard to the office bearers, action can be initiated against the office bearers.

7. The registration and related matters, as noted above, are with an intention to confer the status of juridical entity. The affairs of the Society continue to be in private domain unless it is called upon to discharge any public duty. The regulatory regime relating to a Society for registration, does not confer any power on the Registrar to interfere with the affairs of the Society. In this context, the election and selection of the candidates have been called in question before the Registrar, to the limited extent of challenging the list furnished by the newly elected Executive Committee. Therefore, the question is, what is the extent of the power that can be exercised by the District Registrar?

8. The term 'election' in electoral parlance refers to formal and organised process, through which selection of the candidates is made. Selection means choosing a candidate by electorate in election, in accordance with the eligibility prescribed in the election.

9. The dispute in question clearly indicates that the challenge is regarding the selection of the Executive Committee members. The Society consists of three different types of class members vis-a-vis 'A' Class, 'B' Class and 'C' Class members. The District Registrar in Exhibit P9 found that the selection of the candidates was illegal and in violation of the bye-

laws. The District Registrar has no power to interfere with the selection in the election process. The scope of exercising power under Section 4 of the Societies Registration Act is only to the limited extent of examining whether the list furnished is false or bogus. The enquiry is not directed against election or selection but to find out the genuineness of the list. Once a list is furnished in accordance with the election, the scope of enquiry would come to an end, even if the selection is bad. The scope of enquiry is only to find out whether the list being furnished is not by way of any bogus claim or by fraudulent claim. The Division Bench of this Court in **C.M.Z.Musliar v. Aboobacker [1998 (1) KLT 136]** held in para.10 as follows:

“10. In the aforesaid background, we have to find out the scope of S. 4 of the Societies Registration Act. The filing of the returns with regard to the office bearers is for a purpose. The mere fact that the section does not clearly state that the Registrar has got power with regard to the acceptance of the returns does not mean that he can accept any number of returns with regard to the same society. That will not serve the purpose of filing of the returns as contemplated. Thus, in the case of a dispute when more than one return is filed, the Registrar has got the power to find out as to which one he should accept. There may not be an elaborate enquiry. Prima facie he has to satisfy as to which return is to be accepted. In this case, we find that the list given by the appellant was accepted, because it had the support of court orders and also it was being followed for a large number of years. No doubt, such an enquiry made by the Registrar and the decision taken from it

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does not become final. The party can take up the matter before a competent court as to who are the members of the governing body.”

10. The above referred limited purpose is fulfilled the moment the list is furnished pursuant to an election. If the parties have any grievance against selection, they are free to approach the civil court. The District Registrar has no case that election was a fraud or farce to furnish a list. In that view of the matter, this Court is of the view that the District Registrar has exceeded in exercise of his power. The writ petition is allowed. The impugned order is set aside. The parties are free to approach the civil court. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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