

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 21091 of 2014 (J)

PETITIONER(S):

K.M.SATHYAN, AGED 47 YEARS,
(MEMBERSHIP NO.950) S/O.VELUKUTTY, THIYAKKANDI
NADUVANNOOR, KOZHIKODE.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT(S):

1. RETURNING OFFICER
ORAVIL BLACKSMITH CARPENTARY WORKERS INDUSTRIAL CO-OPERATIVE
SOCIETY LIMITED NO.KVIND (D) 19
NADUVANNOOR
KOZHIKODE - 673 024, (CO-OPERATIVE INSPECTOR
KERALA KHADHI GRAMA VYAVASAYA BOARD, KOZHIKODE)
2. ORAVIL BLACKSMITH CARPENTARY WORKERS INDUSTRIAL CO-OPERATIVE
SOCIETY LIMITED NO.KVIND (D) 19
NADUVANNOOR
KOZHIKODE - 673 024,
REPRESENTED BY ITS SECRETARY .
3. STATE CO-OPERATIVE ELECTION COMMISSION
THIRUVANANTHAPURAM 695 001.

R2 BY ADV. SRI.K.MOHANAKANNAN
R2 BY ADV. SMT.A.R.PRAVITHA
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21091 of 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE NOTIFICATION DATED 16.7.14 PUBLISHED IN
MADHYAMAM DAILY.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE.

'C.R.'

V.CHITAMBARESH, J.

W.P (C) No.21091 of 2014

Dated this the 4th day of March, 2015

J U D G M E N T

Ext.P1 notification for election to the Managing Committee of the second respondent Society issued by its Returning Officer is impugned by the petitioner who is a member. The challenge is rested on the only ground that the Returning Officer is denuded of such power which is vested solely with the State Co-operative Election Commission only.

2. I heard Mr.B.H.Mansoor, Advocate on behalf of the petitioner, Mr.D.Somasundaram, Special Government Pleader on behalf of the State and Mr.K.Mohanakannan, Advocate on behalf of the other respondents.

3. The power of superintendence, direction and control for the conduct of all elections to Co-operative Societies is now with the State Co-operative Election Commission. This is so by virtue of Section 28B of the Kerala Co-operative Societies Act, 1969 ['the Act' for short] and the amendment made to Section 28B(2) thereof by Act 8 of 2013. The same applies not only to Credit, Apex, Central and Federal Societies but

also to all Societies in the State irrespective of its classification under the Act. Rule 35(3) of the Kerala Co-operative Societies Rules, 1969 ['the Rules' for short] as it earlier stood empowered the Returning Officer to issue a notification for election. But Rule 35 in its entirety has been omitted by SRO.733/2014 published in the Kerala Gazette Ex.No.2867 dated 26.11.2014 with effect from 26.11.2014.

4. Rule 35A of the Rules inserted by SRO.125/2001 details the procedure regarding conduct of election to the committee of Societies by the State Co-operative Election Commission. Rule 35A (3) of the Rules is specific that the State Co-operative Election Commission shall notify the details of election to the committee of the Society. The same shall be published in two vernacular Dailies having wide circulation in the area and a copy affixed on the notice board of the head office and the branches if any of the Society. The notification shall contain the following particulars:-

- (i) The number of vacancies to be filled up by election;

- (ii) Any area or constituency that is specified in the bye-laws from which members are to be elected;
- iii) The date on which and the place at which the preliminary notification of the list of members qualified to vote as the voter shall be published.
- iv) The dates between which objections shall be filed and the date on which, the hours between which, and the place at which, the objections, if any, shall be scrutinized;
- v) the date on which, and the place at which, the final voters list shall be published.
- vi) The date on which, the place at which, and hours between which nomination paper shall be filed by the contesting candidate or by his proposer or seconder;
- vii) The date and hour when the nomination paper will be scrutinized;
- viii) The date on which, the place at which and the hours between which, polling if necessary will take place.

5. The Returning Officer is thus denuded of the power to issue a notification for election and Ext.P1 notification issued by the first respondent Returning Officer is non est in law. The power vested in the State Co-operative Election Commission as per Section 28B of the Act and Rule 35A(3) of the Rules has been usurped by the first respondent. Ext.P1 notification is hence quashed giving liberty to the State Co-operative Election Commission to issue a fresh notification based on a valid resolution.

The writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj.