

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

W.P(C)No.22541 of 2015(P)

PETITIONERS:

T.M.E.SAHAD, S/O.MOIDEEN, AGED 76 YEARS
VATTAKKUDIYIL, KARTTUPALLI, MAHAL NO.118,
ONNAM MILE, PERUMBAVOOR P.O, ERNAKULAM DISTRICT.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENTS:

1. KERALA STATE WAKF BOARD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, VIP ROAD
KALOOR, COCHIN -682 017.
2. CHIEF EXECUTIVE OFFICER
KERALA STATE WAKF BOARD, VIP ROAD, KALOOR
COCHIN -682 017.
3. KARTTUPALLI MUSLIM JAMATH COMMITTEE
ONNAM MILE PO, PERUMBAVOOR
ERNAKULAM DISTRICT-683 542.
4. ADV. MUHAMMED SHAMEEM
RETURNING OFFICER, KARTTUPALLI MUSLIM JUMA MASJID
ONNAM MILE PO, PERUMBAVOOR, CHOOLAKKAL BUILDING
CONVENT JN, ERNAKULAM - 682 011.

R3 BY ADV. SRI.P.K.MOHAMMED PUZHAKKARA

R4 BY ADV. SRI.T.P.ABDUL HAMEED

R BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)No.22541/15(P)

APPENDIX

PETITIONER'S EXHIBITS

- P1 - PHOTOCOPY OF THE ORDER DATED 21.11.12 OF THE 1ST RESPONDENT.
- P2 - PHOTOCOPY OF THE REPRESENTATION BEFORE THE 4TH RESPONDENT.
- P3 - PHOTOCOPY OF THE COMMON ORDER DATED 24.4.15 OF THE WAKF TRIBUNAL ERNAKULAM
- P4 - PHOTOCOPY OF THE ORDER DATED 16.6.15 IN IA NO.231/15 IN W.O.S. NO.45/15 OF THE WAKF TRIBUNAL, ERNAKULAM.
- P5 - PHOTOCOPY OF THE FINAL VOTERS LIST.
- P6 - PHOTOCOPY OF THE NOTIFICATION DATED 14.7.15 OF THE 4TH RESPONDENT.
- P7 - PHOTOCOPY OF THE APPLICATION DATED 13.7.15 FILED BEFORE THE INFORMATION OFFICER, PERUMBAVOOR MUNICIPALITY.
- P8 - PHOTOCOPY OF THE INFORMATION DATED 16.7.15 FURNISHED BY THE INFORMATION OFFICER, PERUMBAVOOR MUNICIPALITY.
- P9 - PHOTOCOPY OF THE COMPLAINT DATED 20.7.15 FILED BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: Nil

//TRUE COPY//

PA TO JUDGE

PtK/

K. VINOD CHANDRAN, J.

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W.P.(C) No.22541 of 2015 - P

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Dated this the 30th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that Ext.P9 representation filed before the Chief Executive Officer, the 2nd respondent herein, was not considered. The petitioner in fact relies on Ext.P4 order of the Wakf Tribunal, Ernakulam.

2. I have heard the learned Counsel appearing for the petitioner, learned Standing Counsel for the Wakf Board and the learned Counsel appearing for the 3rd respondent as also the Returning Officer, the 4th respondent.

3. Ext.P4 is an order passed by the Wakf Tribunal, with respect to an election conducted to the 3rd respondent Committee. It was not the petitioner, who was before the Tribunal. However the Tribunal while considering the prayer of the petitioner therein that, his name was not included in the

voters list, directed that the Advocate Commissioner, who was appointed as the Electoral Officer, to consider the representation of the petitioner therein as also that of like minded individuals and include their name in the final voters list, if they are found eligible.

4. In fact, the Commissioner would state that even before the order was passed, he had first issued a draft voters list, then a final draft voters list and only then, it was finalised. However, in compliance of Ext.P4 order, the applications filed again was considered and then a final voters list published. It is specifically contended by the Commissioner that the representation now projected at Ext.P9, was never filed before him.

5. It is to be noticed that Ext.P9 was filed by the petitioner to the Chief Executive Officer of the Kerala State Wakf Board. The petitioner's Counsel has a contention that, in fact earlier he had filed Ext.P2 before the Commissioner. If the

petitioner had a case that Ext.P2 was not considered, then the petitioner could have himself gone before the Tribunal or filed a writ petition for such consideration at that point of time. It is to be noticed that the present writ petition is filed, just prior to the elections which are scheduled on 02.08.2015.

6. The binding precedent of this Court reported in **Abdul Latheef v. Haneefa [2015 (3) KLT 299]**, also would be applicable insofar as, no election could be stalled for reasons of either exclusion of valid members or inclusion of invalid members, since that would be a matter to be considered before the Tribunal.

The writ petition would stand dismissed, leaving open the remedy of the petitioner to institute a proper Election Petition as provided under the Act and Rules.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.