

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 22885 of 2015 (I)

PETITIONER:

1. P P JOSE, S/OP R POULOSE, AGED 52 YEARS,
PULLANS VILLA, 2ND MILE STONE, KOLLAM-4.
2. K PRATHAPAN, S/O.KARTHIKEYAN, AGED 44 YEARS,
SRIMANDIRAM, VELLIMON P O, KOLLAM.
3. BABU MATHEW, S/O.MATHEW, AGED 63 YEARS,
CHEPPALLIMELATHIL, CHUVAVILAPUTH,
KUNDARA P O, KOLLAM.
4. LAKSHMI NAIR, W/O.RAMACHANDRAN PILLA,
AGED 40 YEARS, PUTHENPURAYIL HOUSE,
KAVANAD P O, KOLLAM.
5. KAVITHA SANJEEV V., W/O.SANJEEV, 'CHOTHI',
MUKUNDAPURAM P O, KOLLAM.
6. MADONA INNOCENT, W/O.INNOCENT VALERIA,
AGED 52 YEARS, SUDEVAN APARTMENT,
MUNDAKAL WEST, KOLLAM.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENTS:

1. SENIOR CO-OPERATIVE INSPECTOR (INDUSTRIES),
THE RETURNING OFFICER, THE QUILON DISTRICT
MINI INDUSTRIAL ESTATE CO-OPERATIVE SOCEITY
LTD, KOLLAM, OFFICE OF THE SENIOR CO-OPERATIVE
INSPECTOR, ASRAMAM, KOLLAM 691 001.
2. THE DEPUTY REGISTRAR (ELECTORAL OFFICER,
THE QUILON DISTRICT MINI INDUSTRIAL ESTATE
CO-OPERATIVE SOCEITY LTD, KOLLAM,
OFFICE OF THE SENIOR CO-OPERATIVE INSPECTOR,
ASRAMAM, KOLLAM 691 001.
3. THE GENERAL MANAGER, DISTRICT INDUSTRIAL CENTRE,
ASRAMAM, KOLLAM 691 572.

4. THE STATE CO-OPERATIVE ELECTION COMMISSION,
CO-OPERATIVE BANK TOWERS, VIKAS BHAVAN P O,
THIRUVANANTHAPURAM 695033
REPRESENTED BY ITS SECRETARY.
5. THE STATE OF KERALA REP BY ITS SECRETARY
INDUSTRIES & COMMERCE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695033.
6. THE QUILON DISTRICT MINI INDUSTRIAL ESTATE,
CO-OPERATIVE SOCEITY LTD.
SIND(Q327), SOUPARNIKA BUILDING, KOLLAM
REP BY ITS SECRETARY-691001.

R1 TO R5 BY SR.GOVERNMENT PLEADER SRI.K.C.VINCENT

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

APPENDIX IN WP(C).No. 22885 of 2015 (I)

PETITIONER'S EXHIBITS:

EXT. P1:-A TRUE COPY OF THE ORDER DATED 23/6/2015 UNDER SECTION 28B OF THE CO-OPERATIVE SOCIETIES ACT READ WITH RULE 35A OF THE CO-OPERATIVE SOCIETIES RULES ISSUED BY THE 4TH RESPONDENT

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

EXT. P2:-A TRUE COPY OF THE ELECTION NOTIFICATION PUBLISHED BY THE 4TH RESPONDENT ELECTION COMMISSION DATED 23/6/2015

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

EXT. P3:-A TRUE COPY OF THE FORM NO.36 OF THE CO-OPERATIVE SOCIETIES RULES

EXT. P4:-A TRUE COPY OF THE PROCEEDINGS DATED 21/7/2015 ISSUED BY THE 1ST RESPONDENT

EXT. P4(a):-A TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P4

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.22885 of 2015 I

Dated this the 9th day of October, 2015

JUDGMENT

The issue in this writ petition is as regards providing the necessary information in the nomination form.

2. The petitioners are the members of the sixth respondent Co-operative Society, which is said to be an instrumentality of the State. As the election for its Board of Directors/Representative General Body was slated to be held on 06.08.2015, the petitioners submitted their nomination papers in Form No.36 as prescribed by Rule 35A(6)(a) of the Co-operative Societies Rules, 1969 ('the Rules' for brevity). The composition of the seven vacancies is as follows: General-3, Women-3, and SC/ST-1: Total-7. Petitioners 1 to 3 are men and petitioners 4 to 7 are women. The sixth respondent has no member from SC/ST category.

3. All the six nomination papers of the petitioners were, however, rejected by the Scrutiny Officer on the ground that they did not specify the reservation details, i.e., whether they are contesting under the general category or women category by filling up column 'f' of Form No.36. Aggrieved, the petitioners have filed the present writ petition. The petitioners' entire claim is that they alone have applied and that, by default, their nominations ought to have been treated in the manner of General-3 and Women-3.

4. It is, however, the singular contention of the learned Government Pleader that unless the composition of reservation is clear, and unless, in the nomination form, the candidates provide the details whether they are contesting under the general category or reserved category, it is difficult for the Scrutiny Officer to accept the nominations. He has also contended that in the absence of any specific

information concerning the reservations, all the nominations are required to be treated as general, in which event there will not be sufficient quorum.

5. The learned counsel for the petitioners has, however, contended that column 'f' of Form No.36 is regarding Ward/Region/Constituency, and in the present instance, the question of specifying either Ward/Region/Constituency does not arise. According to him, the rejection of the nominations for not providing the information for which there is no specific column in Form No.36 is unsustainable.

6. Heard the learned counsel for the petitioners and the learned Government Pleader, apart from perusing the records.

7. Indeed, there may have been a semblance of justification, if at all there was any rejection of the nomination papers of petitioners 4 to 6 on the ground that

they did not specify whether they intend to contest under the 'women' category or 'general' category. I do not see any specific reason how the nomination forms of petitioners 1 to 3 could be rejected, for, even as per the learned Government Pleader, in the absence of any information concerning the reservation, the candidates will be treated as contesting under the general category.

8. Be that as it may, on a perusal of Rule 35A, especially sub-Rule (6) thereof and also Form No.36, I am of the opinion that there is considerable force in the contention of the learned counsel for the petitioners. Indeed, the petitioners could not be found fault with for not supplying the information, regarding which no column is found in the nomination papers. It is not to be lost sight of that the petitioners are said to have supplied the information concerning their choice of reservation at the time of scrutiny.

9. The first respondent has filed a counter affidavit contending that the candidates have not mentioned either in column 1(f) of Form No.36 or anywhere in the nominations the category they belong to. In tune with the contentions raised in the counter affidavit, the learned Government Pleader has submitted that it is statutorily mandatory for the candidates to point out clearly whether they belong to general/women/SC-ST category. According to him, the Returning Officer is not the person to decide on his own which category the candidates belong to.

10. As can be seen from the record, this Court on 03.08.2015 directed the authorities to accept the petitioners' nomination papers and process the same in accordance with law. The respondents, however, place on record that the interim order of this Court was received by the authorities after the last date for completing the election process in terms of the election notification. Under

those circumstances, as the authorities were not in a position to conduct the election after implementing the interim direction of this Court, they requested the Election Commission to re-schedule the elections.

11. The learned counsel for the petitioners and the learned Government Pleader have both submitted that the request of the Returning Officer to have the elections re-scheduled is still pending with the Election Commission, the fourth respondent.

12. It is not in dispute that the Managing Committee comprises seven members, out of which three belong to general category, three to women, and one to SC-ST. In the present instance, only six persons have filed their nominations. There is no candidate available in the vacancy earmarked for SC-ST.

13. Though the Returning Officer has made every effort to justify his stand on the issue of the petitioners not

specifying which category they belong to, I am of the opinion that it is not desirable to defeat the claim of substantial justice with hair-splitting technicalities, more particularly when the petitioners filed their nominations to fill the six vacancies, without any contest in the offing. Thus, given the fact that only six persons have filed their nominations, no polling is required.

Under these circumstances, this Court, to meet the ends of justice, disposes of the writ petition with a direction to the fourth respondent to permit the first respondent to proceed with the election process after accepting the petitioners' nominations in the categories indicated above and thereafter declare the results as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

It is made clear that the present arrangement is made under the peculiar circumstances of the case,

especially given the fact that no poling is required; as such, it cannot be treated as a precedent.

Dama Seshadri Naidu, Judge

tkv