

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 25295 of 2015 (J)

PETITIONERS : -

1. KUTHUBUDHEEN ,
S/O.SHAIK, THAITHOTTAM,
KILTAN ISLAND, PIN-682 558.
2. SYED MOHAMMED KOYA,
S/O.AHAMMED KOYA, MELAILLAM HOUSE,
KILTAN ISLAND, PIN-682 558.

BY ADV.SRIT.R.MOHANAKUMAR

RESPONDENTS :-

1. UNION TERRITORY OF LAKSHADWEEP,
REPRESENTED BY ITS ADMINISTRATOR, KAVARATHI ISLANDS,
UNION TERRITORY OF LAKSHADWEEP, KAVARATHI-682 555.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES KAVARATHI,
KAVARATHI, KAVARATHI ISLANDS,
UNION TERRITORY OF LAKSHADWEEP-682 555.
3. THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND MARKETING SOCIETY,
LMA NO.8, KILTHAN, KAVARATTI, REPRESENTED BY ITS SECRETARY,
PIN-682 558.
4. SRI.A.SAJU THOMAS, RETURNING OFFICER,
THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND MARKETING SOCIETY
LMA NO.8, KILTHAN, KAVARATTI-682 558,
(PRINCIPAL, GOVERNMENT SENIOR SECONDARY SCHOOL, KILTHAN
KAVARATTI-682 558)
5. M.S.BADARUDEEN, (CO-OPERATIVE INSPECTOR),
ASSISTANT RETURNING OFFICER,
THE KILTAN ISLAND CO-OPERATIVE SUPPLY AND MARKETING SOCIETY
LMA.NO.8, KILTHAN, KAVARATTI-682 558.

6. NALLAKOYA HAJAROMABIYODA,
S/O.MOHAMMED, KENATINAKARA, KILTAN-682 558.
7. ABOOSALA BAITHODA,
S/O.ATTAKIDAVU, PATHUMATHODA, KILTAN-682 558.
8. SAKREENABI KALKULAM,
D/O.ATTAKIDAVE, PUTHIYAPURA, KILTAN-682 558.
9. NAFEESA NAMBICHAM,
D/O.HAMZATH, ALLIKOM, KILTAN-682 558.
10. MOHAMMED SIRAJ KUMPUPURA,
S/O.ATTAKOYA, KUMPUPURA, KILTAN-682 558.
11. ASIFKHAN BALIYAPURA,
S/O.MOHAMMED KHAN, PENTTANVELI, BALIYAPURA,
KILTAN-682 558.

R1, R2, R4,R R5 BY ADV.SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP
ADMN

R6-R11 BY ADV. SRI.A.A.ZIYAD RAHMAN

R6-R11 BY ADV. SRI.LAL K.JOSEPH

R6-R11 BY ADV. SRI.JOSEPH KURIAN VALLAMATTAM

R6-R11 BY ADV. SRI.K.H.ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

EXHIBIT P1 : TRUE COPY ELECTION BY LAWS REGISTERED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES, UT LAKSHADWEEP, KAVARATTI ON 29-6-2010/.

EXHIBIT P2 : TRUE COPY OF ELECTION NOTICE NO.F.NO.2/1/2015-SDO/RO(KLT) DATED 23-7-2015 ISSUED BY THE RETURNING OFFICER, WITH ENGLISH TRANSLATION.

EXHIBIT P3 : TRUE COPY OF NOMINATION PAPERS FILED BY THE PETITIONERS BEFORE THE RETURNING OFFICER.

EXHIBIT P4 : TRUE COPY OF NOTIFICATION IN FORM III(A) OF THE RETURNING OFFICER SHOWING NOMINATIONS RECEIVED.

EXHIBIT P5 : TRUE COPY OF OBJECTION DATED 7-8-2015 OF THE 2ND PETITIONER AGAINST ACCEPTANCE OF NOMINATION.

EXHIBIT P6 : TRUE COPY OF REPRESENTATION DATED 8-8-2015 FILED BEFORE THE 2ND RESPONDENT ENDORSING COPY OF THE 1ST RESPONDENT.

EXHIBIT P7 : TRUE COPY OF NOTIFICATION IN FORM III(C) DATED 10-8-2015 ISSUED BY THE 5TH RESPONDENT.

EXHIBIT P8 : TRUE COPY OF ORDER F.NO.10/12015-COOP/382 DATED 11-8-2015 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : -

EXHIBIT R6(a) : COPY OF THE LIST OF VALID NOMINATION PAPERS PUBLISHED BY THE RETURNING OFFICER IN FORM III (B) ON 07.08.2015.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 25295 of 2015

Dated this the 14th day of October, 2015

JUDGMENT

The petitioners being the members of the third respondent Society offered themselves as the candidates to be elected as members of the managing committee in the ensuing election, which could have taken place on 23.08.2015 had this Court not intervened and issued an interim stay in the present writ petition.

2. As can be seen, when the petitioners and the contesting respondents 6 to 11 offered themselves to be the candidates, the fourth respondent, the Returning Officer, having collected all the nominations notified them through Exhibit P4. However, before the said official could scrutinise them, he took seriously ill, having suffered a cardiac arrest.

3. In the absence of the fourth respondent, the Assistant Returning Officer, the fifth respondent, resumed the work and scrutinized the nomination papers of the petitioners, as well as respondents 6 to 11. Eventually, he published Exhibit P7 final list. In the interregnum, the first petitioner submitted Exhibit

P5 objection to the fifth respondent complaining that he has no power to act in the place of the Returning Officer. Further, he also submitted Exhibit P6 complaint to the second respondent, with a copy to the first respondent. Nevertheless, nothing concrete emerged on the basis of the petitioners' Exhibits P5 and P6 complaints.

4. As the record reveals, in the course of time, the second respondent appointed another Returning Officer in the place of the Officer who had taken ill. When the said Officer was about to proceed further after taking charge, the petitioners have approached this Court assailing the powers exercised by the fifth respondent in the place of the Returning Officer in the interregnum.

5. The learned counsel for the petitioner has submitted that, first, in terms of Exhibit P1 extract of the bye-laws, the Assistant Returning Officer can only supplement the efforts of the Returning Officer, but he cannot supplant the very Returning Officer, assuming his powers. In that regard, the learned counsel has drawn my attention to Clause 1 of the Special Body of the Bye-laws in 17A ('17-A Bye-law') which exclusively deals with the elections to the Managing

Committee.

6. In support of his submissions, the learned counsel has placed reliance on **Thomas v. Thiruvananthapuram Jilla Un-employees' Welfare Co-operative Society Ltd¹**.

7. In the alternative, the learned counsel has also submitted that each of the nominations of the respondents 6 to 11 have not been proposed and seconded by two persons, as has been mandated by Clause 7 of 17-A Bye-law.

8. The learned counsel for respondents 6 to 11, on his part, has submitted that only under compelling circumstances has the fifth respondent acted in the place of the fourth respondent, who took ill and who was unable to discharge his duties. According to him, neither any great harm nor any deep prejudice has been caused to the petitioners.

9. He has further contended that, insofar as the nominations of the contesting respondents are concerned, they have erroneously submitted two sets of nominations, each set containing the endorsement of one proposer and one seconder. According to him, if both nominations are combined, the requirement of Rule 7 is fulfilled. In other words, there are two

¹ 2008(2) KLT 743

proposers and two seconders, but they have endorsed on two separate nominations, instead of one.

10. The learned Standing Counsel for the respondents 1, 2, 4 and 5 has submitted that the fifth respondent acted in the place of the fourth respondent under unavoidable circumstances. His endeavour was to see that the elections were held on time. According to him, no *mala fides* can be attributed to the said official. He has further contended that even in terms of 17-A Bye-law, the fifth respondent is empowered to assist the fourth respondent.

11. When the fourth respondent had been incapacitated from rendering his duty of scrutinizing the nominations, what the fifth respondent did, claims the learned Standing Counsel, was nothing more than assisting the said official. According to the learned counsel, if there were to be any violation, it is a mere trifle and it cannot be used to upset the entire process of election.

12. The learned Standing counsel has further, to his credit, submitted that the nominations submitted by the contesting respondents 6 to 11 cannot be said to be in order. According to him, they ought to have submitted each one

application containing the endorsement of two proposers and two seconders. In that context, the learned Standing Counsel has submitted that it may be appropriate to set aside Exhibit P2 notification and further direct the fourth respondent to issue a fresh notification.

13. In reply, the learned counsel for the petitioners has strenuously contended that the very Exhibit P4 list of candidates has not been challenged by any. According to him, the process has to be resumed only from the stage of Exhibit P4. In other words, the Returning Officer now appointed in the place of the earlier Returning Officer should resume his function beginning with the scrutiny of nominations.

14. The learned counsel has further submitted that since Exhibit P2 notification has not been challenged, there is no need to issue a fresh notification, and at best the elections could be rescheduled. In support of his submissions, the learned counsel has placed reliance on **Babu Andrews v. Thalassery Taluk Rubber & Agri. Marketing Co-op. Society Ltd²**.

² 2008(1) KLT 268

15. Heard the learned counsel for the petitioners and the learned Standing Counsel for respondents 1, 2, 4 5, as well as the learned counsel for respondents 6 to 11, apart from perusing the record.

Issues:

16. The issues to be determined in the writ petition are as follows:

(1) Whether the fifth respondent can act in the absence of the fourth respondent, and whether such substitution can be called assistance?

(2) Whether the nominations of respondents 6 to 11 could be accepted in the face of the fact that they did not contain the endorsement of two proposers and two seconders.

Issue No.1:

17. Indeed, this Court in **Thomas** (supra) has held that there can be no delegation of powers by the Returning Officer. As is evident from the facts of the case, the Returning Officer authorized the President/Secretary of a Society to dispatch the notifications which were issued by the Returning Officer. It is evident that the decision was rendered on the strength of Rule 35(3)(a) of the Co-operative Societies Rules (the 'Rules' for

brevity). The learned counsel has fairly admitted that the Rules have no applications to the case on hand. Further, the very Rule 35 stands omitted from the statute book with effect from 26.11.2014.

18. As can be seen, the definition clause of Exhibit P1, 17-A Bye-law, defines 'Assistant Returning Officer' to mean a person appointed by the Registrar of Co-operative Societies to assist the Returning Officer in conducting the election.

19. In the present instance, it is not in dispute that the Returning Officer suffered a cardiac arrest and was airlifted to a hospital in the mainland. Only with a view to filling the vacuum, the Assistant Returning Officer supplemented the efforts begun by the Returning Officer and took further steps such as scrutinizing the nominations. Expressed differently, an assistant is a deputy, who usually carries out the instructions of the principal and who sometimes, even, substitutes the principal, especially, when the duties to be performed do not involve much discretion.

20. According to *The Concise Oxford English Dictionary*, 'to assist' means to help 'by doing a share of work' or by providing money or information. As per P. Ramanatha Aiyar's

The Major Law Lexicon 'to assist' is to aid, succour, help, lend encouragement to. To give support to in some undertaking or effort.

21. It is well to remember that the scrutinizing of nominations is one thing and the correctness of the process of scrutiny is another. If there were to be any illegality in the process adopted, namely scrutinizing the nominations, it need not be necessarily held that the very exercise of power is illegal.

22. Under these circumstances, I am inclined to hold that the functions discharged by the Assistant Returning Officer only amounted to assisting the Returning Officer, who has been disabled from discharging his function.

Issue No.2:

23. There is no dispute that the contesting respondents 6 to 11 submitted two sets of nominations, each containing the endorsement of one proposer and one seconder, instead of each containing the endorsement of two proposers and two seconders. The learned Standing Counsel has justly contended that those nominations ought not to have been accepted by the Assistant Returning Officer.

24. At this juncture, when I have shown my inclination to set aside the entire process of election and direct the fourth respondent to issue a fresh notification, the learned counsel for the petitioners has contended that, in the first place, Exhibit P4 list of candidates has not been challenged. He has further submitted that the fourth respondent has got ample powers to reschedule the elections instead of initiating the entire process afresh.

25. It is discernible, though I do not intend to sound uncharitable, that the entire effort of the petitioners is to see that on one technicality or another there is not much contest in the elections. Obvious and predictable is the stand of the petitioners that the election process should be resumed only from the stage when the fourth respondent had taken ill. According to the learned counsel, Ext.P4 has not been challenged. In the first place, Ext.P4 is a mere tabulation of all the candidates who submitted their nominations. I do not see how anyone can seek to invalidate it.

26. It behoves us to remember that the respondents 6 to 11 did have a sufficient number of proposers and seconders. But, perhaps, by oversight, they had endorsed on two different

sets of nominations. I am of the opinion that the error on the part of the respondents 6 to 11 is *bona fide* and at best technical. They cannot be made to suffer on that count, much less should they be disentitled from contesting the elections.

27. In the facts and circumstances, this Court sets aside Exhibit P2 election notification, leaving it open for the second respondent to issue a fresh election notification pursuant to which all members interested, including the petitioners and the respondents 6 to 11, could as well submit fresh nominations.

28. It is, at this stage, made clear that the observation of this Court that the third respondent can issue a fresh notification for election does not, at any rate, amount to granting any relief to the respondents 6 to 11 in a writ petition filed by the petitioners. Initially, this Court stayed the process of election at the behest of the petitioners; later, certain developments have taken place: the Assistant Returning Officer has faced an allegation—though only an allegation—that he arrogated to himself the power he had not been vested with; a new Returning Officer has taken charge; and now the entire election process has to be resumed or revived.

29. Thus, to avoid a piece-meal approach to the issue, this Court has felt it desirable to let the authorities start the process afresh from the stage of notification, so that all eligible candidates can contest and the Managing Committee to be elected will assume power in the best of democratic traditions—with the participation and contest of members on a wide spectrum rather than letting a healthy contest perish on the altar of technicality.

Needless to observe that the respondent officials shall ensure the completion of the entire process of election at the earliest. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/—