

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 31853 of 2014 (F)

PETITIONERS:

1. BINDU, WIFE OF RADHAKRISHNAN, AGED 34 YEARS,
VADAKKEPURAICKAL, VAKAPURAM P.O, PALAKKAD.
2. C.S. SASIKUMAR, SON OF GOPALAN KUTTY,
SRAMBIKAL HOUSE, P.O.POMBRA, PALAKKAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

1. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
OTTAPALAM, PALAKKAD- 679 101.
2. THE KARIMPUZHA CO-OPERATIVE URBAN SOCIETY LTD.
NUMBER P.1171, ELAMBULASSERY, PALAKKAD 678 595
REPRESENTED BY ITS SECRETARY.
3. THE MANAGING COMMITTEE OF THE
KARIMPUZHA CO-OPERATIVE URBAN SOCIETY LTD.
NUMBER P.1171, ELAMBULASSERY, PALAKKAD 678 595
REPRESENTED BY ITS PRESIDENT.
4. RADHIKA M.R., WIFE OF PRASANT
KIZHUPADATHIL HOUSE, VELLINEZHI P.O,
PALAKKAD-679 504.

R2&R3 BY ADV. SRI.V.M.KURIAN

R4 BY ADV. SRI.SARUN RAJAN

BY GOVERNMENT PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - A TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE SOCIETY ON 5 JUNE 2014 IN THE MALAYALA MANORAMA HAVING CIRCULATION IN PALAKKAD TOWN
- EXT.P2 - THE TRUE COPY OF THE RELEVANT PAGES OF THE MALAYALA MANORAMA PUBLISHED ON JUNE 5, 2014 HAVING CIRCULATION AT MANNARKAD
- EXT.P3 - A TRUE COPY OF THE RANKED LIST WAS PREPARED BY THE SOCIETY ON JULY 25, 2014
- EXT.P4 - A TRUE COPY OF THE ORDER DATED JULY 26, 2014 APPOINTING THE FOURTH RESPONDENT
- EXT.P5 - A TRUE COPY OF THE CIRCULAR NUMBER 79/2011 DATED NOVEMBER 9, 2011 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.
- EXT.P6 - A TRUE COPY OF THE CIRCULAR DATED MARCH 23, 1999 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(a) - TRUE COPY OF THE MALAYALA MANORAMA DAILY DATED 05.06.2014.
- EXHIBIT R2(b) - TRUE COPY OF THE MADHYAMAM DAILY DATED 06.06.2014.
- EXHIBIT R2(c) - TRUE COPY OF THE RANK LIST PREPARED AND FURNISHED TO THE SOCIETY BY MR. N. RAINATH.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

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Dated this the 5th day of February, 2015

JUDGMENT

The petitioners are admittedly not applicants to the post of Peon in the second respondent Society. This essentially appears to be a public interest litigation in the guise of a writ petition. A public interest litigation in respect of service matters is not maintainable as held by the Apex Court. Moreover the fourth respondent was appointed as a Peon by Ext.P4 order issued as early as on 26.07.2014. But the writ petition was filed only on 27.11.2014 after a lapse of about four months.

2. The main ground alleged is that the notification was not published in two leading dailies having wide circulation in the area. The petitioners rely on Ext.P1 publication published in the Malayala Manorama Daily at Palakkad. The second respondent relies on Ext.R2(a) and R2(b) publications in Malayala Manorama and Madhyamam dailies. Whether the dailies are leading and have circulation in the area is a disputed

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question of fact. These are alien for consideration in a proceeding under Article 226 of the Constitution of India.

3. I fail to understand as to why the petitioners cannot raise a dispute under Section 69(2)(d) of the Kerala Co-operative Societies Act. This is especially so in the light of the dictum laid down in **The Pallichal Farmers Service Co-operative Bank Ltd. Vs. State of Kerala [2015 (1) KLT 347 (FB)]**. The decision in **Akalakunnam Village Service Co-operative Bank Ltd. and another Vs. Binu N. and others [2014 KHC 4521]** is distinguishable. That was a case where this court had categorically found that the selection process was conducted in violation of the statutory circulars.

4. There is also a plea that the fourth respondent appointee is distantly related to the President of the second respondent Society. There is no taboo for a relative to be appointed if she is otherwise qualified. The irregularities if any in the appointment have to be established by evidence. I do not think that the High Court is the arena for adjudication of such disputes under Article 226 of the Constitution of India.

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I decline jurisdiction without prejudice to the right of the petitioners to move other forum. The Writ Petition is dismissed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd