

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 35864 of 2015 (G)

PETITIONER:

SUBASH P., S/O SIVADASAN NAIR,
PULLOOR HOUSE, NALLOR,
FEROKE P.O., KOZHIKODE.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.A.K.RAJESH
SMT.T.RESHMA

RESPONDENTS:

1. THE STATE CO-OPERATIVE ELECTION COMMISSION,
CO-BANK TOWERS, PALAYAM,
THIRUVANANTHAPURAM - 695 033.
2. THE ELECTORAL OFFICER/THE ASSISTANT REGISTRAR
OF CO-OPERATIVE SOCIETIES (GENERAL),
KOZHIKODE - ELECTION TO THE MANAGING COMMITTEE,
THE KARUVANTHIRUTHY (FEROKE PANCHAYATH)
SERVICE CO-OPERATIVE BANK LTD. NO.D.2638 ,
KARUVANTHIRUTHY, FEROKE, KOZHIKODE - 673 631.
3. THE RETURNING OFFICER/UNIT INSPECTOR, FEROKE,
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (G), KOZHIKODE - ELECTION TO THE MANAGING
COMMITTEE THE KARUVANTHIRUTHY (FEROKE PANCHAYATH)
SERVICE CO-OPERATIVE BANK LTD.NO.D.2638,
KARUVANTHIRUTHY, FEROKE, KOZHIKODE - 673 631.
4. THE KARUVANTHIRUTHY (FEROKE PANCHAYATH)
SERVICE CO-OPERATIVE BANK LTD. NO.D.2638,
KARUVANTHIRUTHY, FEROKE,
KOZHIKODE - 673 631 REPRESENTED BY ITS SECRETARY.

R4 BY ADV. SRI.P.P.JACOB
R1 TO R3 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-12-2015 ALONG WITH WPC. 36979/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 35864 of 2015 (G)

PETITIONER'S' EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTIFICATION E(1)/4191/2015/SCEC DATED 12/11/15 AND ENGLISH TRANSLATION

EXT.P2: TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 24/11/2015 AND ENGLISH TRANSLATION

EXT.P3: TRUE COPY OF THE G.O(P) NO. 14/15 CO-OP DATED 21/1/2015

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.35864 & 36979 of 2015

Dated this the 9th day of December, 2015

COMMON JUDGMENT

Both the writ petitions, one filed by a member of the respondent Bank and the other filed by the very Bank, raise a common issue concerning the election proposed to be held to the managing committee of the respondent Bank. As such this Court has proposed to dispose of the writ petitions together through a common judgment. However, the exhibits filed in both the writ petitions have been referred to, though the facts have been culled out from W.P.(C)No. 35864/2015.

2. The petitioner in W.P.(C)No.35864/2015 contends that Exhibit P1 notification proposing to hold elections on non-ward basis on 03.01.2016 is illegal and violative of Section 28(1)(iii) of the Kerala Co-operative Societies Act.

In elaboration, he has submitted that the Government through Exhibit P3 order dated 21.01.2015 exempted certain types of societies, including the respondent Bank, from the need of conducting elections on ward basis. According to him, the extended period in terms of Exhibit P3 order comes to an end by 31.12.2015, whereas the elections as per Exhibit P1 is slated to be held on 03.01.2016.

3. In sum and substance, the singular contention of the learned counsel for the petitioner is that the elections to be held as per Exhibit P1 would be vitiated in the light of the statutory mandate under Section 28(1)(iii) of the Act, inasmuch as by then the exemption would not be available.

4. In W.P.(C)No.36979/2015, the petitioner, who is the respondent in the other writ petition, seeks a direction to the Election Commission to dispose of Exhibit P4 representation for advancement of the election.

5. The learned counsel for the Bank has submitted that perhaps inadvertently the Election Commission has fixed 03.01.2016, which is beyond the permissible time under Exhibit P3 Government Order to have the election held. According to him, having noticed the anomaly, the respondent Bank passed Exhibit P5 resolution and submitted Exhibit P4 representation before the Election Commission seeking advancement of the election inside of 31.12.2015.

6. The learned Special Government Pleader has submitted that Exhibit P3 Government Order dated 21.01.2015 is generic in nature and applies to all societies mentioned therein. He has fairly submitted that unless the elections are held inside of 31.12.2015, if the stipulation of ward basis had not been adhered to, any election to be held beyond the said date would be vitiated.

7. In the facts and circumstances, given the admitted fact that the election to be held as originally planned in terms of Exhibit P1 could not be sustained on non-ward basis in the light of the statutory mandate under Section 28 (1)(iii), it is made clear that the Election Commission shall consider Exhibit P4 and P5 in accordance with law and pass appropriate orders thereon, as expeditiously as possible, at any rate within ten days from the date of receipt of a copy of this judgment, lest this whole exercise should end in futility.

With the above observation, the writ petitions stand disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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