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Samuel P Vs. Kappikkad Milk Producers Co-op.Society Ltd

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Court : Kerala

Decided On : Oct-09-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Samuel P

Respondent : Kappikkad Milk Producers Co-op.Society Ltd

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY, THE9H DAY OF OCTOBER201417TH ASWINA, 1936 WP(C).No. 15745 of 2014 (P) ---------- PETITIONER(S): ---------- SAMUEL P, AGED62YEARS, S/O.PONNU NADAR, AMBUJA BHAVAN, PARAVILA, POOVACHAL-695 575, TRIVANDRUM DISTRICT. BY ADVS.SRI.JOHNSON MANAYANI SRI.JEEVAN MATHEW MANAYANI RESPONDENT(S): ---------- 1. KAPPIKKAD MILK PRODUCERS' CO-OPERATIVE SOCIETY LTD, REP. BY ITS SECRETARY, NO.T.123, APCOS KAPPIKAD, POOVACHAL.P.O., TRIVANDRUM-695 575.

2. DEPUTY DIRECTOR, DAIRY DEVELOPMENT DEPARTMENT, TRIVANDRUM-695 004.

3. THE RETURNING OFFICER, (VELLANADU DAIRY DEVELOPMENT INSPECTOR) KAPPIKKAD MILK PRODUCERS CO-OPERATIVE SOCIETY

LTD.NO.T.123D APCOS, KAPPIKKAD, POOVACHAL.P.O. TRIVANDRUM-695 575.

4. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DAIRY DEVELOPMENT DEPARTMENT, SECRETARIAT, TRIVANDRUM-695 001.

5. STATE CO-OPERATIVE ELECTION COMMISSION, CO-BANK TOWERS, VIKAS BHAVAN.P.O., TRIVANDRUM-695 033 REPRESENTED BY ITS ADDITIONAL REGISTRAR/SECRETARY.

6. A.JAYANADU RAJ, PALLITHARA VEEDU, KAPPIKKADU, POOVACHAL.P.O. TRIVANDRUM-695 575.

7. L.J.CHITHRA, PUNARTHAM HOUSE, KAPPIKKADU.P.O., TRIVANDRUM-695 575. PJ ...2/- ..2.. WP(C).No. 15745 of 2014 (P) ---------- 8. P.B.PADMAKUMAR PADMANAYALLAM, VAZHUTHANAMUGHAL, POOVACHAL.P.O. TRIVANDRUM-695 575.

9. LIJU SAMUEL, IRAYAMKODU PUTHEN VEEDU, POOVACHAL P.O., TRIVANDRUM-695575.

10. K.GEETHA, THADATHARIKATHU VEEDU, PANTHADIKALAM, POOVACHAL P.O., TRIVANDRUM-695575.

11. R.RAGHAVA LAL, PALLIVETTA MEKKUM KARA PUTHEN VEEDU, KONNIYOOR, POOVACHAL P.O.,TRIVANDRUM-695575. * ADDL.R12 IMPLEADED12 THE ADMINISTRATOR, KAPPIKKAD MILK PRODUCERS' CO-OPERATIVE SOCIETY LTD, NO.T.123, APCOS, KAPPIKAD, POOVACHAL.P.O., THIRUVANANTHAPURAM-695 575. SUO MOTU IMPLEADED AS PER

JUDGMENT

DT.9/10/14. R1 BY ADV. SRI.P.N.MOHANAN R2,3,4,5,12 BY GOVERNMENT PLEADER SRI.R.RANJITH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0910-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ WP(C).No. 15745 of 2014 (P) ---------- APPENDIX PETITIONER(S)' EXHIBITS

---------- P1- THE TRUE COPY OF THE PETITIONER'S PETITION DATED1211.2013 BEFORE THE2D RESPONDENT. P2- THE TRUE COPY OF THE PETITIONER'S PETITION DATED1211.2013 BEFORE THE2D RESPONDENT. P3- THE TRUE COPY OF THE PETITION DATED1211.2013 FILED BY THE PETITIONER BEFORE THE2D RESPONDENT. P4- THE TRUE COPY OF THE PETITION DATED1811.2013 FILED BY THE PETITIONER BEFORE THE2D RESPONDENT. P5- THE TRUE COPY OF THE ELECTION NOTIFICATION PUBLISHED BY THE3D RESPONDENT DATED315.2014. P6- THE TRUE COPY OF THE PRELIMINARY VOTERS LIST PUBLISHED BY THE THIRD RESPONDENT. P7- THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT. P8- THE TRUE COPY OF THE FINAL LIST PUBLISHED BY THE THIRD RESPONDENT. RESPONDENT(S)' EXHIBITS ---------- NIL. / TRUE COPY / P.S. TO JUDGE PJ K.Vinod Chandran, J.

---------- W.P.(C).No.15745 of 2014-P ---------- Dated this the 09th day of October, 2014

JUDGMENT

The petitioner is a member of the 1st respondent-Society, who challenges the election notified by the 2nd respondent under Rule 35 of the Kerala Co-operative Societies Rules, 1969 [for brevity "KCS Rules"]. Such notification, issued at Exhibit P5, was in the capacity of a "Returning Officer", which capacity was conferred on the 2nd respondent with regard to Dairy Farm Societies.

2. The petitioner's contention is that, Section 28-B of the Kerala Co-operative Societies Act, 1969 [for brevity "KCS Act"] has a non obstante clause, by which the State Government was authorised to constitute a State Co-operative Election Commission, by a notification in the Gazette, for the superintendence, directions, preparation of electoral rolls and also for election to Co-operative Societies. With the advent of Section 28-B and the notification appointing the State WP(C).No.15745 of 2014 - 2 - Co-operative Election Commission, the 2nd respondent could not have issued the notification at Exhibit P5, is the short contention.

3. The learned counsel, appearing for the 1st respondent would in fact contend that the petitioner is disabled from making such submission, especially since he had acted as per the notification and had also filed a nomination on 17.06.2014, later to which the writ petition was filed on 20.06.2014. The Circular of the Election Commission issued under Section 28-B of the Act, also was later to Exhibit P5 notification, is the contention raised to question the maintainability of the writ petition.

4. True, elections were conducted as per the notification issued at Exhibit P5 and the same was stayed by this Court. The contention of the learned counsel appearing for the petitioner is that, while invoking Article 226 of the Constitution, this Court has held that, even when it is found that an authority has acted without jurisdiction, the Court need not interfere with the same if justice has been done, in Madhavikutty v. State of Kerala [2008 (1) KLT692, WP(C).No.15745 of 2014 - 3 - following a decision of the Hon'ble Supreme Court in Mohammed Swalleh v. IIIrd Additional District Judge [(1988) 1 SCC400.

5. In the present case, the above contention is urged only because of the elections having been already held and the results not declared only by reason of the interim orders of this Court. On a specific query, as to the number of members of the society, it is stated by the learned counsel that it is less than 100. The financial liability, in such circumstance, according to this Court, would not be so large as to sustain a fundamentally improper convening of an election as provided under the statute. In such circumstance, this Court is of the opinion that Exhibit P5 notification issued, is clearly against the dictate of the statute under Section 28-B of the Act. Exhibit P5 is, hence, set aside.

6. The Administrator, appointed on the expiry of the term of the Managing Committee, is said to be an officer of the Department. Therefore, "the Administrator, Kappikkad Milk Producers' Co-operative Society Ltd No.T.123 (D), APCOS, Kappikkad, Poovachal P.O., Thiruvananthapuram, WP(C).No.15745 of 2014 - 4 - PIN - 695 575" is suo motu impleaded as the additional 12th respondent and the said respondent is directed to immediately take a resolution with respect to the election to be convened and conduct the election within a period of three

months from the date of receipt of a copy of this judgment. The Assistant Registrar concerned as also the Election Commission shall expedite the process to ensure conduct of elections as directed herein. Writ petition is allowed. Parties are directed to suffer their respective costs. Sd/- K.Vinod Chandran, Judge vku. (true copy)

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