

John V.C. vs the State of Kerala

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/2913/2024

Appellant : John V.C.

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 PETITIONERS: 1 JOHN V.C. AGED 71 YEARS S/O. JOHN V.J., VALAVATH HOUSE, THEKKENADA P.O., VAIKOM, KOTTAYAM, PIN - 686141 2 K.S. BIJUMON AGED 50 YEARS S/O. SANKARA PILLAI, NANDANAM, MARAVANTHURUTH P.O., VAIKOM, KOTTAYAM, PIN - 686608 BY ADV K.C.VINCENT RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY, DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,

THIRUVANANTHAPURAM, PIN - 695001 2 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, COLLECTORATE, KOTTAYAM, PIN - 686002 3 THE STATE CO-OPERATIVE ELECTION COMMISSION 3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN, PIN - 695033 4 THE RETURNING OFFICER VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.K 951 MIDUKKI ENTERPRISES BUILDING, KACHERIKAVALA,

VAIKOM P.O., KOTTAYAM, PIN - 686141 5 THE ELECTORAL OFFICER VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.K 951 MIDUKKI ENTERPRISES BUILDING, KACHERIKAVALA, VAIKOM P.O., KOTTAYAM, PIN - 686141 6 VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.K 951 MIDUKKI ENTERPRISES BUILDING, KACHERIKAVALA, VAIKOM, REPRESENTED BY ITS SECRETARY, PIN - 686141 7 THE ADMINISTRATIVE COMMITTEE VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.K 951, MIDUKKI ENTERPRISES BUILDING, KACHERIKAVALA, VAIKOM, REPRESENTED BY ITS CONVENER., PIN - 686141 8 T.C. VINOD AGED 58 YEARS S/O CHELLAPPAN, THOPIIL PUTHENPURA, KADUTHURUTHY P.O., KOTTAYAM, THE CONVENER, THE ADMINISTRATIVE COMMITTEE, VAIKOMTALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.K 951, PIN - 686604 9 JOSE THOMAS AGED 62 YEARS S/O THOMAS, NILAPPANAKOLLIYIL, VELLASSSERY, KADUTHURUTHY P.O., KOTTAYAM, MEMBER, THE ADMINISTARTIVE COMMITTEE, VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, PIN - 686604 10 K.G. RAJU AGED 57 YEARS S/O GOPALAN, CHENNATTIL HOUSE,

PADINJAREKKARA P.O., VAIKOM, KOTTAYAM, MEMBER, THE ADMINISTRATIVE COMMITTEE, VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, PIN - 686146 11 *ADDL.R11 IMPEADED

SURENDRANATHA KAIMAL, MEMBER NO. A- 8178, S/O. PADMANABHAN NAIR, PUTHUMITTATH, KARIPADOM P.O., KOTTAYAM DISTRICT, PIN - 686605 *ADDL. R11 IS IMPEADED AS PER ORDER DATED 05-01-2024 IN I.A. NO. 1/24 BY ADVS. T.V.GEORGE ASIF M. A. JIMMY GEORGE (THADATHIL)(K/000531/2006) SMT. C. S. SHEEJA, SR. GP. SRI. C. M. NAZAR, SC FOR STATE CO-OPERATIVE ELECTION COMMISSION. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WING:

JUDGMENT

The petitioners herein are members of the Vaikom Taluk Co-operative Agricultural and Rural Development Bank Ltd. No. 941, a Primary Credit Co-operative Society governed by the provisions of the Kerala Co-operative Societies Act, 1969 (Act for the sake of brevity) and the Rules framed thereunder. They have approached this Court seeking to quash Ext.P2 proceedings issued by the 2nd respondent appointing an Administrative Committee and for a further direction to the 7th respondent to initiate steps to conduct the polling in tune with the directions issued by this Court in Ext.P1 judgment.

2. The facts leading to the filing of the writ petition are as under:-

It is contended that the term of the earlier Managing Committee of the 6th respondent had expired on 16.01.2021, and a resolution was taken to

hold election on 10.1.2021. However, on a complaint by certain members, the Commission postponed the election, and the administration finally ended up being entrusted with an Administrative Committee. Being aggrieved by the postponement of the election and challenging certain actions taken by the Administrative Committee, a writ petition was filed. The direction issued by a learned Single Judge was challenged in appeal, and by judgment dated

25.10.2021, directions were issued to the Commission to initiate necessary steps to resume the election process. However, due to the imposition of the lockdown on account of the Covid pandemic, the election could not be held. Later, the Election Commission notified the election to be held on 09.07.2022. It is stated that after the elections were held, raising various contentions, W.P.(C) No. 22503/2022 was filed before this court seeking to set aside the election.

3. A learned Single Judge of this Court, by Ext.P1 judgment

dated 08.01.2024, allowed the writ petition and issued certain directions, the operative portions of which are extracted below for convenience.

25. The writ petition is hence allowed. The elections held on 09.07.2022 to the 6th respondent Society is declared as void and it is held to be not an election in the eye of law. There will be a direction to respondents 3 and 4 to continue the election from the stage of polling by fixing a fresh polling date and completing the election strictly in accordance with the provisions contained in Rule 35A(6)(n)(ix) of the KCS Rules, as explained above. The legal consequences of setting aside the election will follow, and the 2nd respondent is directed to take necessary steps in accordance with the Kerala Co-operative Societies Act and the Rules, for the management of the Society in the interregnum.

4. Though the above judgment was challenged, the same was repelled by the Lordships of the Division Bench.

5. The petitioners contend that this Court while disposing of the

matter, had directed respondents 3 and 4 to continue with the election from the stage of polling by fixing a fresh polling date and to complete the election in strict adherence to the rules. Their grievance is that no steps have been taken in spite of the specific direction issued by this Court. It is on these assertions that this writ petition was filed seeking the following relief:-

i. Issue a writ of certiorari or any other writ direction or order calling for the records leading to Exhibit P2 and squash the same.

ii. Issue a writ of mandamus or any other writ, direction or order

directing the 3rd respondent to constitute an Administrative Committee comprising of the members of the managing committee who were in office till 16.01.2021 or an Officer of the department as the Administrator instead of the Administrative Committee. iii. Issue a direction to the 7th respondent, Administrative Committee to communicate a nearest possible date and venue for conducting the polling, forthwith, to the 3rd respondent for compliance of the direction in Exhibit P1 judgment. iv. Issue a direction to the respondents 3 and 4 to take immediate steps to continue the election from the stage of polling by fixing a fresh polling date and complete the election process as directed in Exhibit P1 judgment.

6. A counter affidavit has been filed controverting the contentions raised in the writ petition. It is stated that the Administrative

Committee was appointed in the bank by order dated 12.1.2024, and they assumed office on 15.1.2024. The term of the office is three months from the date of assumption. It is further contended that the main source of funds is the refinance support received from the National Bank for

Agriculture and Rural Development (NABARD) and from the Apex Bank. It is further stated that the lending, as well as recovery of loans in the last quarter of the financial year, is crucial, and the remaining periods during the month of February and March 2024 have to be utilized to meet the target fixed by the NABARD and Apex Bank. It is stated that if the election of the Managing Committee is undertaken at the close of the financial year, the existence of the bank will be in peril. It is further stated that no specific time frame was fixed by this Court while issuing directions in Ext.P1 judgment.

7. A reply affidavit has been filed by the petitioner, controverting the contentions in the counter affidavit.

8. I have heard Sri. George Poonthottam, the learned Senior

Counsel appearing for the petitioner as instructed by Sri. K.C. Vincent, Sri. Asif, the learned counsel appearing for the 7th respondent, Administrative Committee, Sri C.M. Nazar, the learned Standing Counsel appearing for the Election Commission, and the learned Senior Government Pleader.

9. I have carefully considered the submissions advanced and have gone through the records.

10. I find that this Court, by Ext.P1 judgment, had set aside the

election, which was held on 9.7.2022, and had disposed of the matter, directing the Commission to continue the election from the stage of polling by fixing a fresh polling date and to complete the election strictly in accordance with the provisions contained in the Rules. In paragraph 19 of the judgment, it has been observed that the voters list had already been prepared and the same has become final. The Administrative Committee was appointed by order dated 12.1.2024, and the term of office is due to expire on 14.4.2024.

11. A Co-operative Society is registered on Co-operative Principles

of Democracy, Equity, Equality, and Solidarity. Democratic accountability, breach of trust, fairness, and impartiality are essential attributes. Such institutions must run on democratic principles and based on values like voluntary and open membership, democratic member control, member economic participation, autonomy and independence, and concern for the community among others. In other words, holding of election to the society to uphold the above values is a legal and constitutional imperative, particularly in view of Article 43B of the Constitution. The Co-operative Societies need to run on well-established democratic principles and elections

are to be held on time and in a free and fair manner.

12. One of the contentions advanced by Sri. Asif is that while

allowing the writ petition, this Court had not fixed a time for the conduct of the election. The other contention is that it would not be feasible to conduct the election during the last quarter of the financial year. Both the contentions do not merit any acceptance. This Court, while allowing the earlier writ petitions had directed the Election Commission to continue the election from the stage of polling.

In view of the discussion above, the petitioners are entitled to succeed. This writ petition will stand allowed. There will be a direction to the 7th respondent to communicate to the 3rd respondent a date on or before 23.3.2024 and also the venue for conducting the polling to the Committee of the Vaikom Taluk Co-operative Agricultural and Rural Development Bank Ltd. No. K941. On receipt of the communication, respondents 3 and 4 shall initiate steps to continue the election from the stage of polling by fixing a date as ordered above and complete the election process in tune with Ext.P1 judgment.

sd/- RAJA VIJAYARAGHAVAN V, JUDGE DCS APPENDIX OF WP(C) 2913/2024
PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED
08.01.2024 IN W.P.(C) NO. 22503 OF 2022 Exhibit P2 A TRUE COPY OF THE
PROCEEDINGS OF THE 2ND RESPONDENT DATED 12.01.2024 BEARING
NO. JRGKTM/83/2024/CRB Exhibit P3 A TRUE COPY OF THE JUDGMENT IN
W.P.(C) NO. 25091 OF 2020 DATED 17.12.2020 Exhibit P4 A TRUE COPY OF
THE JUDGMENT IN W.A. NO. 1314 OF 2021 DATED 25.10.2021 Exhibit P5 A
TRUE COPY OF THE NOTIFICATION DATED 17.05.2022 ISSUED BY THE 3RD
RESPONDENT

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