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Johnson C Thomas vs State Co-Operative Election Commission

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Court : Kerala Orders

Decided On : Feb-27-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/188/2023

Appellant : Johnson C Thomas

Respondent : State Co-Operative Election Commission

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. MONDAY, THE 27TH DAY OF FEBRUARY 2023 / 8TH PHALGUNA, 1944 WP(C) NO. 188 OF 2023 PETITIONER/S:

1 JOHNSON C THOMAS, PALIYIL CHERUKARA, MANJOOR P.O KOTTAYAM DISTRICT, PIN - 686603 2 BIJUMON JOSEPH, AGED 51 YEARS PALAKKAPARAMBIL KANJIRATHANAM P.O 3 JESSY EMMANUEL ,AGED 59 YEARS, KOMBANAYIL HOUSE KOTHANALLOOR P.O, KOTTAYAM DISTRICT, PIN - 686632 4 LISSY JOSEPH, AGED 53 YEARS, THOPPIL HOUSE KOTHANALLOOR P.O KOTTAYAM DISTRICT, PIN - 686632 5 MARY BIJU, AGED 42 YEARS,

MAKKIL HOUSE NAZARETH HILL P.O KOTTAYAM DISTRICT, PIN - 686633 6 ANILKUMAR, AGED 50 YEARS PUTHUSERRY HOUSE KANJIRATHANAM P.O KOTTAYAM DISTRICT, PIN - 686603 7 SUMATHIKUTTIAMMA, AGED 70 YEARS PUTHUSERRY HOUSE KANJIRATHANAM P.O 8 VIPIN XAVIER , AGED 42 YEARS NEDUNILAM HOUSE KANJIRATHANAM P.O 9 BINU VIPIN, AGED 36 YEARS, NEDUNILAM HOUSE KANJIRATHANAM P.O, KOTTAYAM DISTRICT, PIN - 686603 10 K.C MATHEW, AGED 50 YEARS KULLATHASSERY KALLATHOOR P.O KOTTAYAM DISTRICT, PIN - 686633 11 RAJKUMAR, AGED 56 YEARS PAINAKUNNEL HOUSE MANJOOR P.O 12 TISSY BENNY, AGED 46 YEARS KUZHIYANITHARA KANJIRATHANAM P.O 13 JOSEPH SEBASTIAN, AGED 50 YEARS AKKARAPARAMBIL HOUSE NAZARETH HILL P.O KOTTAYAM DISTRICT, PIN - 686633 14 JOY MATHEW, AGED 56 YEARS THOPPIL HOUSE KOTHANALLOOR P.O KOTTAYAM DISTRICT, PIN - 686632 BY ADVS. SHAJI THOMAS JEN JAISON AISWARYA E J VETTIKOMPIL

WP(C) NO. 188 OF 2023 2 RESPONDENT/S:

1 STATE CO-OPERATIVE ELECTION COMMISSION CO BANK TOWERS, VIKAS BHAVAN P.O THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY, PIN - 695033 2 ELECTORAL OFFICER (QUALITY CONTROL OFFICER, DAIRY DEVELOPMENT DEPARTMENT, KOTTAYAM) MANJOOR KSHEERA VYAVASAY SAHAKARANA SANGHAM LTD, K.29(D), KURUPPANTHARA, MANJOOR P.O KOTTAYAM DISTRICT, PIN - 686603 3 RETURNING OFFICER (DAIRY DEVELOPMENT OFFICER, MANJOOR) MANJOOR KSHEERA VYAVASAY SAHAKARANA SANGHAM LTD, K.29(D), KURUPPANTHARA, MANJOOR P.O KOTTAYAM DISTRICT, PIN - 686603 4 THE ADMINISTRATIVE COMMITTEE OF THE MANJOOR KSHEERA VYAVASAY SAHAKARANA SANGHAM LTD, K29

(D) KURUPPANTHARA, MANJOOR P.O KOTTAYAM DISTRICT

REPRESENTED BY ITS CONVENER, PIN - 686603 5 MANJOOR KSHEERA VYAVASAY SAHAKARANA SANGHAM LTD, K.29 (D) KURUPPANTHARA, MANJOOR P.O KOTTAYAM DISTRICT REPRESENTED BY ITS SECRETARY, PIN - 686603 6 ADDL.R6. MATHEW PAUL KALLADAYIL, MANJOOR P.O, KOTTAYAM DISTRICT-686 603 [ADDITIONAL R6 IS IMPLEADED AS PER ORDER DATED 17.01.2023 IN I.A.02/2023 IN WP(C)188/2023.] 7 ADDL.R7. BENNY VARKEY S/O.VARKEY, NJARUKULAM HOUSE, KANJIRATHANAM.P.O., KOTTAYAM - 686 603. 8 ADDL.R8. BABY PUZHEKKATTIL S/O.MANI, PUZHEKKATTIL HOUSE, MANJOOR P.O., KOTTAYAM - 9 ADDL.R9. VALSAMMA JOSE, W/O.JOSE GEORGE, VENKINICKAL HOUSE, MANJOOR P.O., KOTTAYAM - 686 603. 10 ADDL.R10. SHEELA XAVIER, W/O.XAVIER, PANICKAVEETIL HOUSE, MANJOOR P.O., KOTTAYAM - 686 603. [ADDITIONAL R7 TO R10 ARE IMPLEADED AS PER ORDER DATED 19.01.2023.] BY ADVS. SHRI.JUSTINE JACOB, SC, MANJOOR GRAMA PANCHAYAT C.P.SABARI (FOR R6, R7 AND R10 SIBU M.A. C.M. NAZAR - SC- STATE CO-OPERATIVE ELECTION COMMISSION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 188 OF 2023 3

JUDGMENT

Petitioners have filed the present writ petition, praying inter alia for a direction to respondent Nos.2 and 3 to allow the petitioners, whose names were included in the preliminary voters list for election to the managing committee of the 5 th respondent- Society, but removed from the final voters list, to cast their votes in the election which was scheduled to be held on 12.01.2023.

2. The brief facts of the case are that, the petitioners were

enrolled as Class B members of the 5 th respondent-Society. This membership was given to the petitioners by an elected managing committee. This fact is not in

dispute. On 31.01.2022, an administrative committee was appointed to mange the affairs of the 5th respondent-Society in supersession of the elected managing committee. The administrative committee met on 06.07.2022 and by decision No.(6) taken on that date, the administrative committee decided to convert the shares of the petitioners in the 5th respondent-Society as A class shares. Petitioners paid the amount required to be paid by them for converting the shares from Class B to Class A. On 08.12.2022, a preliminary voters list of A Class members of the 5th respondent WP(C) NO. 188 OF 2023 4 Society was published, including the names of the petitioners. However, the 2nd respondent removed the names of the petitioners from the final voters list published on 19.12.2022, prompting the petitioners to approach this Court, seeking the above relief.

3. Sri. Shaji Thomas, learned counsel appearing for the

petitioners would submit that the removal of the names of the petitioners from the final voters list is absolutely illegal and unsustainable. It is submitted that this is not a case where the administrative committee had enrolled any new members. It is submitted that the administrative committee had only converted the B Class shares of the petitioners to A Class shares and this cannot be considered as enrollment of new members by the administrative committee. Learned counsel relies on the

judgment of a Division Bench of this Court in Keecheri Service

Co-Operative Bank Ltd No.668 and Another V. Ramesh. M.M and Others [2020(1) KHC 167(DB)], to contend that since the shares had been validly converted 60 days prior to the date of election, the petitioners had a right to vote in the election. It is submitted that pursuant to the interim order of this Court dated 05.01.2023, petitioners were allowed to vote subject to the condition that the votes cast by the petitioners would be kept in a WP(C) NO. 188 OF 2023 5 separate ballot box. It is submitted that, this Court, by order dated 02.02.2023, permitted the declaration of results without counting the votes cast by the petitioners only considering the fact that the term of the administrative committee was set to expire.

4. The respondents contend that the fact situation in

Keecheri Service Co-operative Bank (Supra) is considerably different from the fact situation in this case as that was a case where the question was one of enhancement of share value. It is submitted with reference to the bye-laws of the 5 th respondent- Society that the bye-laws contemplate two different classes of members namely, A and B. It is pointed out that while A Class members had the right to vote, B class members had no right to vote. It is submitted that, in Keecheri Service Co-operative Bank (supra), there was no such distinction and the only question was whether the persons concerned had paid the enhanced share value within the time specified. It is therefore submitted that the decision in Keecheri Service Co-operative Bank (supra) is of no aid to the petitioners. Learned counsel also points out that the procedure contemplated by the bye-laws for converting the membership from B Class to A Class had not been followed in this case. WP(C) NO. 188 OF 2023 6

5. Learned counsel appearing for the petitioner also

submitted that the decisions relied on by the learned counsel appearing for additional respondent Nos.6, 7 and 10, namely the judgments of this Court in W.P.(C.) Nos.26225 of 2013, 3678 of 2020 and W.A.No.1824 of 2013, are rendered in completely different facts circumstances where this Court found that members had been enrolled by the administrator or the administrative committee contrary to the settled position that the administrator or administrative committee of a Society had no power to enroll new members.

6. Having heard the learned counsel appearing for the

petitioners, learned Government Pleader appearing for the official respondents, learned counsel appearing for the 5 th respondent- Society and the learned counsel appearing for additional respondent Nos.6, 7 and 10, I am of the view that the petitioners have not made out any case for interference. The reasons which compel me to take the view are the following:-

(i) It is clear from the bye-laws of the Society, which is on record

as Ext.P2, that there were two classes of members. While A Class members had a right to vote B Class members had no right to vote. In the light of the settled position that an administrator or WP(C) NO. 188 OF 2023 7 an administrative committee cannot enroll new members, it is difficult to accept the contention of the learned counsel appearing for the petitioners that the change of class of membership from B class to A class, is not prohibited as in the light of the stipulations contained in the bye-laws of the Society. The change of class of membership from B class to A class results in a situation where the members whose classification is so changed get the right to vote. The law laid down in Keecheri Service Co-operative Bank (supra) therefore does not come to the aid of the petitioners ass it is not disputed that in the facts of that case all the members concerned were already entitled to vote.

(ii) A reading of Ext.P2 bye-laws also suggests that the

procedure contemplated by the bye-laws for conversion of membership has not been followed. The writ petition fails and it is accordingly, dismissed. sd/- GOPINATH P. JUDGE ajt WP(C) NO. 188 OF 2023 8 APPENDIX OF WP(C) 188/2023 PETITIONER EXHIBITS Exhibit P1 TRUE PHOTOCOPY OF THE NOTIFICATION NO. E(2)7367/2022/S.C.E.C DATED 30.11.2022 ALONG WITH ITS ORDER ISSUED BY THE 1ST RESPONDENT Exhibit P2 TRUE PHOTOCOPY OF RELEVANT PORTION OF CLAUSE 6 OF THE BYE-LAW AND THE AMENDED CLAUSE 6 OF THE BYE-LAW OF THE 5TH RESPONDENT SOCIETY Exhibit P3 TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE

MINUTES OF THE MEETING OF THE ADMINISTRATIVE COMMITTEE OF THE 5TH RESPONDENT SOCIETY DATED 06.07.2022 Exhibit P4 TRUE PHOTOCOPY OF THE RELEVANT PAGES WHICH CONTAINS THE NAMES OF THE PETITIONERS IN THE PRELIMINARY VOTERS LIST DATED 08.12.2022 PUBLISHED BY THE 2ND RESPONDENT

Exhibit P5 TRUE PHOTOCOPY OF THE NOTICE DATED 19.12.2022 ISSUED BY THE 2ND RESPONDENT RESPONDENT EXHIBITS Exhibit R5(C) A true copy of the relevant page of the membership register with respect to the 3rd Exhibit R5(D) A true copy of the relevant page of the membership register with

respect to the 4th Exhibit R5(E) A true copy of the relevant page of the membership register with respect to the 5th Exhibit R5(A) A true copy of the relevant page of the membership register with respect to the 1st Exhibit R5(B) A true copy of the relevant page of the membership regiister with respect to the 2nd petitioner. Exhibit R5(F) A true copy of the relevant page of the membership register with respect to the 6th Exhibit R5(G) A true copy of the relevant page of the membership register with respect to the 7th Exhibit R5(H) A true copy of the relevant page of the membership register with respect to the 8th WP(C) NO. 188 OF 2023 9 Exhibit R5(I) A true copy of the relevant page of the membership register with respect to the 9th Exhibit R5(J) A true copy of the relevant page of the membership register with respect to the 10th Exhibit R5(K) A true copy of the relevant page of the membership register with respect to the 11th Exhibit R5(L) A true copy of the relevant page of the membership register with respect to the 12th Exhibit R5(M) A true copy of the relevant page of the membership register with respect to the 13th Exhibit R5(N) A true copy of the relevant page of the membership register with respect to the 14th

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