

Abdul Samad vs the Chairperson

Abdul Samad vs the Chairperson

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Basant Balaji

Appeal No. : WP(C)/3170/2022

Appellant : Abdul Samad

Respondent : The Chairperson

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 WP(C) NO. 1956 OF 2022 PETITIONER/S: SAKEER P S,AGED 50 YEARS S/O LATE SALIM P H, PADAYIL HOUSE, PERUNNA P O, CHANGANASSERY VILLAGE, CHANGANASSERY TALUK, PIN- 686102. BY ADVS.ESM.KABEER ANILKUMAR P. RESPONDENT/S:

1 PUTHUR PALLY MUSLIM JAMA-ATH REPRESENTED BY ITS TREASURE ABDUL SLAM, S/O BAVA RAWTHER, PARAKKAVETTY HOUSE, PERUNNA P O, CHANGANASSERY-686102. 2 ELECTION

COMMITTEE OF PUTHUR PALLY MUSLIM JAMA-ATH CHANGANASSERY, REPRESENTED BY ITS CHAIRMAN U.NOUSHAD, MOOPARUVEEDU, PERUNNA P O, CHANGANNASSERY, KOTTAYAM DISTRICT-686102. 3 ABDUL SHUKOOR K A. S/O ABDUL HAMEED, MEMBER, ELECTION COMMISSION, PUTHUR PALLY MUSLIM JAMA ATH, KOCHANNANPARAMBIL, PERUNNA, CHANGANASSERY-1 4 MOHAMMED SHAJI A S. S/O SHAHUL HAMEED, MEMBER, ELECTION COMMISSION, PUTHUR PALLY MUSLIM JAMA-ATH, ALAYIL HOUSE, PERUNNA P O, CHANGANASSERY-1. HOUSE, PERUNNA P O, CHANGANASSERY-1. 5 THE KERALA STATE WAQF BOARD REPRESENTED BY THE CHIEF EXECUTIVE OFFICER, VIP ROAD, KALOOR, KOCHI-17.

-2- BY ADVS. M.P.MADHAVANKUTTY P.A.ABDUL JABBAR SHRI.JAMSHEED HAFIZ, SC, WAQF BOARD R.O.MUHAMED SHEMEEM MATHEW DEVASSI ANANTHAKRISHNAN A. KARTHA MUHAMMED SHAFFI(K/1201/2012) NASEEHA BEEGUM P.S. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2022, ALONG WITH WP(C).3009/2022 & FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 WP(C) NO. 3009 OF 2022 PETITIONER/S: PUTHURPALLY MUSLIM JAMA-ATH, CHANGANACHERRY, REPRESENTED BY ITS TREASURER, P.B. ABDUL SALAM, S/O. BAVA RAWTHAR, AGED 58 YEAS, PARAKKAVETTY HOUSE, PERUNNA P.O., 686 102, CHANGANACHERY, KOTTAYAM DISTRICT. BY ADVS. M.P.MADHAVANKUTTY MATHEW DEVASSI ANANTHAKRISHNAN A. KARTHA RESPONDENT/S:

1 DISTRICT COLLECTOR, AND CHAIRPERSON OF DISTRICT DISASTER, MANAGEMENT AUTHORITY, COLLECTORATE, KOTTAYAM 686 002. 2 ELECTION COMMITTEE OF PUTHURPALLY MUSLIM JAMA - ATH, CHANGANACHERRY, REPRESENTED BY ITS CHAIRMAN, U NOUSHAD, MOOPPARUVEEDU, PERUNNA P.O., CHANGANACHEERY , KOTTAYAM DISTRICT 686 102. 3 KEALA STATE WAKAF BOARD, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, V.I.P. ROAD, KALOOR, KOCHI 682 017. BY ADV SHRI.JAMSHEED HAFIZ, SC, WAQF BOARD

-4- THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2022, ALONG WITH WP(C).1956/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -5-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 WP(C) NO. 3170 OF 2022 PETITIONER/S: ABDUL SAMAD AGED 56 YEARS S/O.ABDUL KHADER, RESIDING AT MANIYAMKULAM HOUSE, KUNNAKKAD, FATHIMAPURAM, PERUNNA (PO), CHANGANASSERRY, KOTTAYAM, PIN - 686 102. BY ADVS. R.O.MUHAMED SHEMEEM NASEEHA BEEGUM P.S. SHIFAS ALI K.A RESPONDENT/S:

1 THE CHAIRPERSON (THE DISTRICT COLLECTOR) THE DISTRICT DISASTER MANAGEMENT AUTHORITY COLLECTORATE, KOTTAYAM- KUMILY ROAD, KOTTAYAM, PIN - 686 002. 2 THE KERALA STATE WAQF BOARD OPP. INTERNATIONAL STADIUM, VIP ROAD, KALOOR, ERNAKULAM - 652 017, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER. 3 PUTHURPALLY MUSLIM JAMA'ATH CHANGANASSERY KOTTAYAM, PIN - 686 102, REPRESENTED BY

ITS TREASURER MR.ABDUL SALAM, S/O.BAVA RAWTHER,
PARAKKAVETTY HOUSE, PERUNNA (PO),
CHANGANASSERY,KOTTAYAM, PIN - 686 102.

-6- 4 ELECTION COMMITTEE OF PUTHURPALLY MUSLIM JAMA'ATH
PUTHUPALLY JAMA'ATH OFFICE, CHANGANASSERY KOTTAYAM,
PIN - 686 102, REPRESENTED BY ITS CHAIRMAN ,MR.U.NOUSHAD,
MOOPPARUVEED HOUSE, PERUNNA P.O., CHANGANASERY,
KOTTAYAM, PIN - 686 102. BY ADV SHRI.JAMSHEED HAFIZ, SC,
WAQF BOARD THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.02.2022, ALONG WITH WP(C).1956/2022 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: -7-

JUDGMENT

[WP(C) Nos.1956/2022, 3009/2022 and 3170/2022] (Dated this the 28th day of February 2022) Basant Balaji J., W.P.(C.) No.1956 of 2022 is filed for calling the records leading to Exts.P1 to P7 and to quash Ext.P2 and to direct respondent Nos.2 to 4 to permit the petitioners to contest the election of Puthur Pally Muslim Jama-ath.

2. W.P.(C.) No.3170 of 2022 is filed by a member of

the Mahal for quashing Ext.P3 order of the first respondent to postpone the election of third respondent Jama-ath until the Government declares the spread of Covid-19 virus is under control.

3. W.P.(C) No.3009 of 2022 is filed by the Treasurer

of Puthurpally Jama-ath for a direction to the first respondent to permit the petitioner to conduct the election of the counsel members of Puthurpally Jama-ath.

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4. The common facts in the Writ Petitions is as follows:-

To conduct the election Puthurpally Jama-ath, an election committee was constituted as the present period of the governing body of the Jama-ath has come to an end during October 2020. An election committee was constituted for conduct of election of office bearers of the Jama-ath. The preliminary steps for conduct of the election was started on 27.12.2020. But due to Covid-19 pandemic, the election could not be conducted and the same was postponed. In the meanwhile, one of the members of the Jama-ath approached this Court by filing W.P.

(C) No.17305 of 2021 for a direction to conduct the

election of the Jama-ath without delay. This court, by judgment dated 10.12.2021 in W.P.(C) No.17305 of 2021, disposed of the Writ petition directing the officers concerned to go on with the process of election and complete the same on or before -9-

31.1.2022. The election committee, thereafter approached the District Collector, Kottayam who is the Chairperson of the District Disaster Management Authority seeking permission to conduct the election of the council. The District Collector issued a letter dated 2.12.2021 wherein it was stated that since the Government has given relaxation to Covid-19 Protocol, there is no need to have any permission from the Chairperson. Pursuance to the said letter, preliminary steps were taken for conduct of the election and final voters list was published on

7.1.2022. On 12.1.2022, the election committee published a notice stating that in three constituencies, the council members are elected un- opposed and for the other constituencies, election committee has already prepared necessary ballot papers and election is to be conducted for the same.

5. At this juncture, the petitioner in W.P.(C) -10- No.1956 of 2022 filed a Writ Petition challenging the rejection of his nomination. At the time of

admission of W.P.(C) No.1956 of 2022 on 19.1.2022, an order was passed on finding that there is a prima facie case for the petitioner and considering the materials on record, this Court passed an order directing the respondents to

forthwith receive the nomination filed by the petitioner in W.P.(C) No.1956 of 2022 without reference to the reasons recorded in the impugned order. It was also directed to include the name of the said petitioner in the ballot of Eruppa mandalam/ Ward. Further ordered that in so far as the case of Eruppa Mandalam/ward, the declaration of the result alone to be stayed and the same would be subject to the further orders to be passed at the time of next hearing.

6. Heard the learned counsel Adv.E S M Kabeer, -11-

Adv.M P Madhavankutty and Adv,Naseeha Beegum P S for the petitioners and Adv.Jamsheed Hafiz the learned standing counsel for the Waqf Board for the respondents.

7. Today the learned counsel for the petitioner in W.P.

(C) No.3009 of 2022, submitted that the election was

conducted on 16.2.2022 and what remains is only the declaration of the result. The results could not be declared because of the stay order passed by this court in W.P.(C) No.1956 of 2022.

8. The petitioner in W.P.(C) No.1956 of 2022 was

allowed to contest in the election after receiving his nomination on finding that there is a prima facie case in his favour. Since the election is over and only the declaration of results is what remains, we are of the opinion that this Writ Petition can be disposed of by a common judgment. Accordingly, Writ Petition No.1956 of 2022 is disposed of directing the 2nd respondent to declare the results of the election conducted on 16.2.2022 in respect of Eruppa Mandalam/ward. The question of rejection of the -12- petitioners' nomination, which was the subject-matter in W.P.(C) No.1956 of 2022 is left open to be agitated in appropriate Forum, if anybody is aggrieved by the same.

Writ Petition Nos.3009 and 3100 of 2022 are dismissed as the reliefs sought by the petitioners in these Writ Petitions have become infructuous. SD S.V.BHATTI, JUDGE SD BASANT BALAJI, JUDGE dl/ -13- APPENDIX OF WP(C) 3009/2022

PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE JUDGMENT IN WPC NO. Exhibit P2 TRUE COPY OF THE INTERIM ORDER IN WPC NO. 1956/2022 DATED 19.01.2022 PASSED BY THIS HONBLE COURT. -14- APPENDIX OF WP(C) 3170/2022 PETITIONER EXHIBITS

Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED Exhibit P2

RESPONDENT. -15- APPENDIX OF WP(C) 1956/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE STAY ORDER IN OP (WAKF) NO.14/2020 DATED 07.12.2020. Exhibit P2 TRUE COPY OF THE ORDER REJECTING THE NOMINATION DATED 10.01.2022 BY THE RESPONDENTS 2 TO 4 WITH TRANSLATION. Exhibit P3 TRUE COPY OF THE ORDER IN CCC NO.2119/2020 DATED 25.01.2021. Exhibit P4 TRUE COPY OF THE ELECTION NOTIFICATION DATED 17.12.2021 WITH TRANSLATION. Exhibit P5 TRUE COPY OF THE ELECTION NOTIFICATION DATED 18.12.2021 WITH TRANSLATION. Exhibit P6 TRUE COPY OF THE I A NO.29/2022 IN WOS NO.6/2022 OF THE HON'BLE WAKF TRIBUNAL DATED 12.01.2022. Exhibit P7 TRUE COPY OF THE JUDGMENT IN WPC

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