

Thomas V.M. vs the Part-Time Administrator

Thomas V.M. vs the Part-Time Administrator

SooperKanoon Citation : sooperkanoon.com/1605652

Court : Kerala

Decided On : Apr-09-2021

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : WP(C)/3935/2021

Appellant : Thomas V.M.

Respondent : The Part-Time Administrator

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943
WP(C).No.3935 OF 2021(N) PETITIONER/S: 1 THOMAS V.M.
VARAKUKULACHIL, KALLARA P.O., VAIKOM, KOTTAYAM. 2
SATHEESH CHANDRAN, CHANDRATHIL, KALLARA P.O., VAIKOM,
KOTTAYAM. BY ADVS. SRI.P.N.MOHANAN SRI.C.P.SABARI
SMT.AMRUTHA SURESH RESPONDENT/S:

1 THE PART-TIME ADMINISTRATOR THE VAIKOM TALUK CO-
OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK
LTD. NO.951, VAIKOM, KOTTAYAM DISTRICT-696141. 2 THE

VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.951, REPRESENTED BY SECRETARY, VAIKOM, KOTTAYAM DISTRICT-696141. 3 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR OF CO- OPERATIVE SOCIETIES, COLLECTORATE POST, KOTTAYAM-686001. R1-2 BY ADV. SRI.T.SHIHABUDHEEN R3 SR.GP.SRI.K.P.HARISH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 26.03.2021 ALONG WITH WP(C).5491/2021(J), THE COURT ON 09.04.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943
WP(C).No.5491 OF 2021(J) PETITIONER/S: 1 GEORGE SEBASTIAN
AGED 45 YEARS S/O.SEBASTIAN, NELLIPARAMBIL HOUSE,
VAIKOM, KOTTAYAM. 2 K.V. GEORGE KARIYIL HOUSE,
CHEMMANATHUMKARA P.O, VAIKOM, KOTTAYAM. BY ADVS.
SRI.P.N.MOHANAN SRI.C.P.SABARI SMT.AMRUTHA SURESH
RESPONDENT/S:

1 THE ADMINISTRATOR THE VAIKOM TALUK CO-OPERATIVE
AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD NO. 951,
VAIKOM, KOTTAYAM DISTRICT - 686141. 2 SHEEBA W/O. SURESH,
RESIDING AT VELIYIL HOUSE, VARIKKUNNU, VADAKARA,
KOTTAYAM, THE ADMINISTRATOR, THE VAIKOM TALUK CO-
OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK
LTD, NO. 951, VAIKOM, KOTTAYAM DISTRICT - 696141. 3 VAIKOM
TALUK CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD, NO. 951, REPRESENTED BY ITS
SECRETARY IN CHARGE, VAIKOM, KOTTAYAM DISTRICT - 696141.
4 THE JOINT REGISTRAR OF CO-OPEARATIVE

SOCIETIES(GENERAL) OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, COLLECTORATE POST, KOTTAYAM - 686001. 5 THE STATE CO-OPERATIVE ELECTION COMMISSION REPRESENTED BY ELECTION COMMISSIONER, 3RD FLOOR, CO-BANK, CO-BANK TOWERS, PALAYAM, VIKAS BHAVAN P.O, THIRUVANANTHAPURAM - 695033. BY ADV. SRI.T.SHIHABUDHEEN SC, SRI.R.LAKSHMI NARAYAN, SR.GP SRI.K.P HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.03.2021 ALONG WITH WP(C).3935/2021(N), THE COURT ON 09.04.2021 DELIVERED THE FOLLOWING:

JUDGMENT

These writ petitions arise in relation to the elections to the Vaikom Taluk Co-operative Agricultural and Rural Development Bank Ltd., (hereinafter referred to as the bank). The Writ Petitioners in W.P.(C)No.5491 of 2021 are two of its members. The last managing committee came into office on 17.1.2016, for a period of five years. Its period expired on 16.01.2021. Before the expiry of the term, committee resolved to conduct election on 10.01.2021. Accordingly, election commission issued notification and election was proposed to be conducted on 10.01.2021. Preliminary voters list was published and followed by the publication of final voters list on 15.12.2020. Nominations were submitted and after scrutiny, final list of contesting candidates was published. Ballot papers were printed and election process was about to start. While so, by Ext.P4 order, the election commission on 8.1.2021, postponed the election proposed to be held on 10.01.2021. It was purportedly on the basis of a complaint that memberships were given to persons illegally, who have no landed property within the area, some of the applications for memberships submitted by the applicants were not supported by proof of age and Form 6B register was not maintained properly. Thereafter, the administrative committee was superseded and an administrator was appointed.

2. The contention of the petitioners was that in Ext.P4 order, no specific instance of ineligible

membership was revealed, nor valid grounds for postponing the elections were made out. It was also not stated as what were the defects in Form 6B. It was alleged that the election commission acted politically and adjourned the election at the last moment. It was contended that if any person was aggrieved their remedy was to approach Arbitration Court under section 69 of the KCS Act and it is a dispute under section 2(1) of the Act. In the meanwhile, the administrator had directed the society to find out Rs.1,92,525/- (Rupees one lakh ninety two thousand five hundred and twenty five only) for sending registered notices to 7701 members who were admitted by the then managing committee in office. This is challenged by two members in writ Petition No.3935 of 2021 on a ground that the administrator has no authority to conduct a detailed enquiry regarding the membership issue and to incur such huge expenses.

3. Heard the learned counsel for the petitioners, learned counsel for the administrator and perused the documents in detail.

4. It is evident that election was adjourned on the eve of election purportedly on the basis of a complaint of the former president of the society. He had alleged that several members were introduced who were in competent. Such persons were residing outside the jurisdiction of the bank. It was further alleged that Form 6B registers were taken outside the house and were got signed by the new members. ID cards were also prepared.

5. Administrator in his counter affidavit had

specifically dealt with all the other allegations and contended that the administrator is only intended to ensure free and fair election and also to ensure that the administration is properly carried on .

6. It seems that on a previous occasion the election process was challenged by several members, which was considered by a Single Bench of this court in W.P.(C)No.38391 of 2015. One of the contentions included that there were several

members admitted in a bank which was contrary to the statutory provisions. The above W.P.(C) was heard along with W.P. (C)No.38705 of 2015 and by Ext.P6 judgment it was

held that the bulk membership of members done by the

society were as justifiable grounds and the court approved it. It was also held that election process shall go on in accordance with law. It seems that there were series of litigations in between, and ultimately the election was conducted and new committee took charge in the year 2016. It is seen from Ext.R1(a) that the former president of the society had initiated ARC

proceedings No.15 of 2016 regarding the alleged membership and the enrolment of several persons who were allegedly incompetent to the members. It is stated that the above ARC is still pending. It is alleged that the same allegations continue in the case of present list prepared for the purpose of election that was originally proposed to be held on 10.01.2021. It was contended that since the same issue continues now no purpose will be served by proceeding with the election as per the present schedule. It was alleged that thousands of persons have also been enrolled. Election commission was not at all justified in postponing the election at the last minute, in the light of the settled legal position in the above case.

7. In the light of the fact that ARC No.15 of 2016 is still pending which has not been brought in its logical

conclusion by the petitioners therein. Definitely the lis

could have been finally got adjudicated, if the petitioners in ARC been vigilant. Pendency of that litigation and very same contentions cannot now be urged in relation to the present election. If that be so, elections would remain postponed unendingly awaiting the litigation in ARC No.15 of 2016. Further, in relation to the disputes arising from the new memberships since disputes questions of

facts arise and a detailed enquiry is called for this court

will not be justified at this stage in going into that question. It should have been left to appropriate authority to decide it and aggrieved persons, should have invoked the jurisdiction of dispute as held by the

Supreme Court in Shri Sant Sadguru Janardan Swami [

Maharashtra and Others (AIR 2001 SC 3982)

8. Though the learned counsel for the petitioners

vehemently contended that Ext.P4 is liable to be set aside and election is liable to be conducted from the stage where the election process had arranged, I am not inclined to accept that contention at this length of time. Considering the lapse of time and the fact that what remain was the conduct of polling alone, I do not feel that it may not be justifiable to order continuation of the election. I feel that it will be appropriate to direct the administrator to take steps for conducting the election and to address the election commission, as expeditiously as possible, at any rate, within a period of one month from today. Accordingly, all the grievances regarding membership can be raised at the appropriate stage before the appropriate authority. In the light of this finding, I am satisfied that the letter of the administrator directing to spend a sum of Rs.1,92,525/- (Rupees one lakh ninety two thousand five hundred and twenty five only) for verifying the membership. In the light of the relief granted in W.P.(C)No.5491 of 2021, I feel that Ext.P4 is liable to be set aside.

In the result W.P.(C)No.3935 of 2021 is allowed. Impugned letter of the administrator Ext.P4 is set aside. W.P.(C)No.5491 of 2021 is partly allowed. The administrator shall address the election commission, as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this

judgment to initiate steps for conducting the election.

All other issues regarding memberships can be left open to be considered at the appropriate stage before the competent authority. Sd/- SUNIL THOMAS, JUDGE
R.AV

APPENDIX OF WP(C) 3935/2021 PETITIONER'S/S EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE ELECTION NOTIFICATION DATED 27.11.2020 OF THE ELECTION COMMISSION. EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 8.1.2021 OF THE ELECTION COMMISSION. EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 13.1.2021 OF THE THIRD RESPONDENT. EXHIBIT P4 A TRUE COPY OF THE DTP LETTER NIL DATED ISSUED BY THE PART-TIME ADMINISTRATOR ALONG WITH ORIGINAL DOCUMENT. EXHIBIT P5 A TRUE COPY OF THE JUDGMENT DATED 23.12.2015 IN WP(C) NO.38391/2015. EXHIBIT P6 A TRUE COPY OF THE JUDGMENT AS REPORTED IN 2017 (4) KLT 628.

RESPONDENT'S/S NIL EXHIBITS APPENDIX OF WP(C) 5491/2021 PETITIONER'S/S EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE ELECTION NOTIFICATION DATED 27.11.2020 OF THE ELECTION COMMISSION. EXHIBIT P2 A TRUE COPY OF THE FINAL LIST OF CANDIDATES PUBLISHED BY THE RETURNING OFFICER. EXHIBIT P3 A TRUE COPY OF THE MODEL BALLOT PAPERS SUPPLIED BY THE RETURNING OFFICER. EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 08.01.2021 OF THE ELECTION COMMISSION. EXHIBIT P5 A TRUE COPY OF THE JUDGMENT REPORTED IN AIR 2001 SC 3982. EXHIBIT P6 A TRUE COPY OF THE JUDGMENT DATED 23.12.2015 IN WP(C) NO. 38391/2015. EXHIBIT P7 A TRUE COPY OF THE ORDER DATED 13.01.2021 OF THE JOINT REGISTRAR. EXHIBIT P8 A TRUE COPY OF THE ORDER DATED 11.02.2021

OF THE JOINT REGISTRAR WITHDRAWING THE SUPERSESSION ORDER ISSUED UNDER SECTION 32 AS EVIDENCED BY EXT.P7. EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 11.02.2021 OF THE JOINT REGISTRAR APPOINTING FIRST RESPONDENT AS ADMINISTRATOR. EXHIBIT P10 A TRUE COPY OF THE NOTICE NIL DATED ISSUED BY THE FIRST RESPONDENT TO THE SECRETARY OF THE BANK. RESPONDENT'S/S NIL EXHIBITS