

P.Krishnan Vs. the State of Kerala

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Court : Kerala

Decided On : Nov-26-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : P.Krishnan

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR WEDNESDAY, THE 26TH DAY OF NOVEMBER 2014 5TH AGRAHAYANA, 1936 WP(C).NO. 2783 OF 2012(W) ----- PETITIONER(S): ----- 1. P.KRISHNAN, PALANGDAN HOUSE, BHAGAT SINGH ROAD, BHAGAT SINGH ROAD RESIDENTS ASSOCIATION (BSRA) G4, PETTAH P.O., THIRUVANANTHAPURAM-695 024.

2. C. SATHYAPALAN, S/O.RAGHAVAN NAIR, CHENICHERI HOUSE, PERUL, MATHA MANGALAM BAZAR P.O., KANNUR DISTRICT-670 306.

3. P.R. VARGHESE, S/O.RAPPAI, PELLISSERY HOUSE, P.O. AMMADAM, THRISSUR DISTRICT-680 563.

4. P.S. BHARATHI, PUTHAN MADAM, KINALOOR P.O., BALUSSERRY, KOZHIKODE-673 612.

5. P.V.K. KADAMBERI, PUTHENVEEDU, KADAMBERI, KANUL P.O., KANNUR-670 562.

6. T. NARAYANAN, T.C.28/890, JYOTHIS, KAITHAMUKKU, THIRUVANANTHAPURAM-695 024. BY ADVS.SRI.N.RAGHURAJ, SMT.K.AMMINIKUTTY. RESPONDENT(S): ----- 1. THE STATE OF KERALA, (REPRESENTED BY ITS SECRETARY TO GOVERNMENT), SOCIAL WELFARE DEPARTMENT, THE SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE SECRETARY TO GOVERNMENT, SOCIAL WELFARE DEPARTMENT, THE SECRETARIAT, THIRUVANANTHAPURAM-695 001. WP(C).NO. 2783 OF 2012(W) 3. THE KERALA STATE COUNCIL FOR CHILD WELFARE, (REPRESENTED BY ITS PRESIDENT), THYCAUD, THIRUVANANTHAPURAM-695 014.

4. THE INDIAN COUNCIL FOR CHILD WELFARE, (REPRESENTED BY ITS PRESIDENT), 4, DEEN DAYAL UPADHYAYA MARG, NEW DELHI-110 002.

5. CHEMPAZHANTHI ANIL, INDEEVARAM, UDAYANNUR TEMPLE ROAD, MARUTHANKUZHI, KANHIRAMPARA P.O., THIRUVANANTHAPURAM-695 030.

6. SUNIL C.KURIAN, HARITHA NAGAR RESIDENTS ASSOCIATION (HNRA) 379, ERATH LANE, VANCHIYOOR P.O., THIRUVANANTHAPURAM-695 035.

7. THE DIRECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM.

8. THE COMMISSIONER OF POLICE, THIRUVANANTHAPURAM CITY, OFFICE OF THE COMMISSIONER OF POLICE, THYCAUD, THIRUVANANTHAPURAM - 695 014.

9. T.MOHANAN NAIR, CIRCLE INSPECTOR OF POLICE, MUSEUM CIRCLE, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM- 695 033.

10. J.

PRADEEP, SUB INSPECTOR OF POLICE, MUSEUM POLICE STATION, VIKAS
BHAVAN P.O., THIRUVANANTHAPURAM -695 033.
(RESPONDENTS7TO10IMPLEADED VIDE

ORDER

DATED1702/2012 IN I.A. NO.2451/2012). * ADDL. R11 IMPEADED11
P.SUBAIR KUNJU, ADVOCATE, NIKUNJAM, SWATHY NAGAR,
KAZHAKOOTTAM, THIRUVANANTHAPURAM - 695 582. * ADDL. R11 IS
IMPEADED AS PER

ORDER

DATED0106/2012 IN IA. NO.6850/2012. WP(C).NO. 2783 OF2012(W) ** ADDL.
R12 IMPEADED12 P.PRABHAVATHI, 'SOUPARNIKA', KOODALI STREET,
KOODALI P.O., KANNUR DISTRICT-670 592. ** ADDL. R12 IS IMPEADED AS
PER

ORDER

DATED1106/2012 IN IA. NO.7536/2012. R1, R2, R7 & R8 BY GOVT. PLEADER
SMT.SUNITHA VINOD. R3 BY ADV. SRI.BLAZE K. JOSE, SC, KSCCW. R4 BY
ADVS. SRI.M.RAMESH CHANDER, SRI.ANEESH JOSEPH. R5 & R6 BY ADVS.
SRI.B.S.SWATHY KUMAR, SMT.M.G.AISHWARYA. ADDL. R11 BY ADV.
SRI.GEORGE POONTHOTTAM ADDL.R12 BY ADV. SRI.K.K.RAVINDRANATH.
THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2611-2014,
ALONG WITH WP(C).NO.10737 OF2012 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: rs. WP(C).NO. 2783 OF2012(W) APPENDIX
PETITIONER'S EXHIBITS :- EXT. P1: A TRUE COPY OF THE BYELAWS OF
THE THIRD RESPONDENT SOCIETY. EXT. P2: A TRUE COPY OF THE G.O.
(RT)40/OA/FWD DATED2301/2008. EXT. P3: A TRUE COPY OF THE
COVERING LETTER SUBMITTED TO THE SECRETARY,
THIRUVANANTHAPURAM CORPORATION DATED1903/2008. EXT. P4: A
TRUE COPY OF THE RECEIPT ISSUED BY THE THIRUVANANTHAPURAM
CORPORATION DATED2203/2008. EXT. P5: A TRUE COPY OF THE
STABILITY CERTIFICATE DATED1209/2008. EXT. P6: A TRUE COPY OF THE

ORDER

OF THE HON. ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM IN CRL.MP.353/10 DATED0907/2010. EXT. P7: A TRUE COPY OF D.O. LETTER NO.15-5/2010-CW-11/6711/C SENT BY THE HON. MINISTER FOR WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA TO THE LEADER OF THE OPPOSITION DATED2809/2010. EXT. P8: A TRUE COPY OF THE LETTER SENT BY CENTRAL ADOPTION RESEARCH AUTHORITY (CARA) TO THE PRESIDENT OF THE3D RESPONDENT DATED1509/2010. EXT. P9: A TRUE COPY OF THE LETTER F.NO.15-5/2010/CW-11 DATED1310/2011. EXT. P10: A TRUE COPY OF THE

JUDGMENT

OF THIS HON. COURT IN WP(C).NO.2260/11 DATED2208/2011. EXT. P11: A TRUE COPY OF THE REPRESENTATION SENT BY THE FIRST PETITIONER TO THE SECOND RESPONDENT DATED0112/2011. EXT. P12: A TRUE COPY FO THE REPRESENTATION SENT BY THE FIRST PETITIONER TO THE SECRETARY THIRUVANANTHAPURAM CORPORATION DATED0112/2011. EXT. P13: A TRUE COPY OF THE LETTER NO.9607/C2/2011/D401/12. EXT. P14: A TRUE COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT TO THE FIRST PETITIONER DATED0901/2012.2/- WP(C).NO. 2783 OF2012(W) EXT. P15: A TRUE COPY OF THE REPLY SUBMITTED BY THE FIRST RESPONDENT DATED1201/2012. EXT. P16: A TRUE COPY OF THE GO.(MS) 4/2012/SWD DATED2801/2012. EXT. P17: A TRUE COPY OF THE RELEVANT RULES AND REGULATIONS OF THE FOURTH RESPONDENT. EXT. P18: A TRUE COPY OF THE EXTRACT FROM THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING OF THE FOURTH RESPONDENT HELD ON2104/2011. EXT.P19 COPY OF THE COMPLAINT FILED BEFORE THE ADDITIONAL EIGHTH RESPONDENT DATED0402/2012. EXT.P20 COPY OF THE REPRESENTATIONSSENT BY THE PETITIONER TO THE HON'BLE CHIEF MINISTER OF KERALA DATED0402/2012. EXT.P21 COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER TO THE ADDITIONAL RESPONDENTS9AND10DATED0502/2012. EXT.P22 COPY OF THE

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IN W.A. NO.186/2012 DATED0602/2012. EXT.P23 COPY OF THE COMPLAINT ADDRESSED BY THE1T PETITIONER TO THE ADDITIONAL SEVENTH RESPONDENT WITH A COPY TO THE ADDITIONAL EIGHTH RESPONDENT DATED0702/2012. EXT.P24 COPY OF THE REPORT THAT APPEARED IN THE DESABHIMANI DAILY ON0802/2012. EXT.P25 COPY OF THE REPRESENTATION\SENT BY THE1T PETITIONER BEFORE THE ADDITIONAL EIGHTH RESPONDENT DATED0802/2012. EXT.P26 COPY OF THE REPRESENTATIONS\SENT BY THE1T PETITIONER TO THE SECRETARY TO THE SECOND RESPONDENT DATED0802/2012. EXT.P27 COPY OF THE REPRESENTATIONS\SENT BY THE1T PETITIONER TO RESPONDENTS2AND7AMONG OTHERS INCLUDING THE HON'BLE CHIEF MINISTER DATED1302/2012. EXT.P28 COPY OF THE COMPLAINT ADDRESSED TO THE ADDL. EIGHTH RESPONDENT WITH COPIES TO THE ADDL. NINTH AND TENTH RESPONDENTS DATED1302/2012. EXT.P29 COPY OF THE STATEMENT OF THE FIFTH RESPONDENT RECORDED BY THE SUB INSPECTOR OF POLICE, MUSEUM POLICE STATION DATED1802/2012.3/- WP(C).NO. 2783 OF2012(W) EXT.P30 COPY OF THE FIR IN CRIME NO.195/2012 OF MUSEUM POLICE STATION. EXT.P31 COPY OF THE COMPLAINT FILED BY THE FIRST PETITIONER BEFORE THE EIGHTH RESPONDENT DATED2202/2012. EXT.P32 COPY OF THE LETTER OF THE CHIEF MANAGER OF THE INDIAN BANK DATED2502/2012. EXT.P33 COPY OF THE INTERIM

ORDER

IN WP(C).NO.2873/2012 DATED0202/2012. EXT.P34 COPY OF THE REPORT SUBMITTED BY THE VACB BEFORE THE HON'BLE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM IN CRL.MP. NO.353/2010 DATED0808/2011. EXT.P35 COPY OF THE REPORT SUBMITTED BY THE VACB BEFORE THE HON'BLE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM IN CRL.MP.NO.338/2011 DATED1611/2011. EXT.P36 COPY OF THE G.O.(RT) NO.179/2012/SWD DATED2903/2012. EXT.P37 COPY OF THE REPORT APPEARED IN THE INDIAN EXPRESS DAILY DATED0904/2012. EXT.P38 COPY OF THE VOTERS LIST OF THE THIRD RESPONDENT COUNCIL FOR ELECTIONS OF THE OFFICE BARERS

AND EXECUTIVE COMMITTEE MEMBERS FOR 2009-2012. EXT.P39 COPY OF THE LETTER SENT BY THE DIRECTOR, SOCIAL WELFARE ADDRESSED TO THE FIRST PETITIONER DATED 18/04/2012. EXT.P40 COPY OF THE LETTER ADDRESSED BY FIRST PETITIONER TO THE DIRECTOR, SOCIAL WELFARE DATED 21/04/2012. EXT.P41 COPY OF THE LETTER OF THE SPIO OF THE THIRD RESPONDENT DATED 28/04/2012. EXT.P42 COPY OF THE QUERY UNDER THE RTI ACT MADE BY THE FIRST PETITIONER TO THE DIRECTORATE OF SOCIAL WELFARE DATED 05/04/2012. EXT.P43 COPY OF THE REPLY RECEIVED UNDER THE RTI ACT DATED 04/05/2012. EXT.P44 COPY OF THE LIST OF MEMBERS OF THE COUNCIL FURNISHED BY THE SPIO OF THE THIRD RESPONDENT.4/- WP(C).NO. 2783 OF 2012(W) EXT.P45 COPY OF THE MINUTES OF THE STANDING COMMITTEE OF THE THIRD RESPONDENT COUNCIL DATED 04/08/2011. EXT.P46 COPY OF THE NOTICE NO.PO/105/2012/KSCWC ISSUED BY DIRECTOR OF SOCIAL WELFARE DATED 28/04/2012. EXT.P47 COPY OF THE SIGNATURES OF 364 MEMBERS TO A RESOLUTION REJECTING THE GOVERNMENT

ORDER

G.O.(MS) NO.4/2012/SWD DATED 28/01/2012. RESPONDENT'S EXHIBITS & ANNEXURES:- ANNEXURE I COPY OF THE NEWSPAPER REPORT. EXT.R2A (IA.2709/2012): COPY OF THE INTERIM

ORDER

DATED 02/02/2012. EXT.R2B (IA.2709/2012): COPY OF THE

JUDGMENT

OF THE DIVISION BENCH IN W.A. NO. 186/2012 DATED 06/02/2012. EXT.R2A COPY OF THE NOTICE DATED 07/05/2011. EXT.R2B COPY OF THE NOTICE DATED 23/08/2011. EXT.R2C COPY OF THE LETTER DATED 26/12/2011. EXT.R2D COPY OF THE LETTER DATED 10/01/2012. EXT.R2E COPY OF THE INTERIM

ORDER

DATED 02/02/2012. EXT.R2F COPY OF THE PROCEEDINGS DATED 28/01/2012 BY THE 5TH RESPONDENT. EXT.R2G COPY OF THE PROCEEDINGS

DATED 28/01/2012 BY THE 6^H RESPONDENT. ANNEXURE.R3A COPY OF THE BANK ACCOUNT STATEMENTS OF THE INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM A/C. NO.439050306 OF THE KERALA STATE COUNCIL FOR CHILD WELFARE FOR THE PERIOD FROM 01/12/2011 TO 04/2012. ANNEXURE.R3B COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 02/12/2011 AND THE DETAILS OF DD. ANNEXURE.R3C COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 03/12/2011 AND THE DETAILS OF DD.5/- WP(C).NO. 2783 OF 2012(W) ANNEXURE.R3D COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 05/12/2011 AND THE DETAILS OF DD. ANNEXURE.R3E COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 06/12/2011 AND THE DETAILS OF DD. ANNEXURE.R3F COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 15/12/2011 AND THE DETAILS OF DD. ANNEXURE.R3G COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 16/12/2011 AND THE DETAILS OF DD. ANNEXURE.R3H COPY OF THE DETAILS OF DEMAND DRAFT DEPOSITED IN A/C. NO.439050306 OF THE KERALA STATE COUNCIL FOR CHILD WELFARE DATED 17/12/2011. ANNEXURE.R3I COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 05/01/2012 AND THE DETAILS OF DD. ANNEXURE.R3J COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 07/01/2012 AND THE DETAILS OF DD. ANNEXURE.R3K COPY OF THE REMITTANCE SLIP IN A/C. NO.439050306, INDIAN BANK, THYCAUD BRANCH, THIRUVANANTHAPURAM DATED 11/01/2012 AND THE DETAILS OF DD. EXT.R5A COPY OF THE COMPLAINT FILED BY THE INDIRA GANDHI NATIONAL FOUNDATION DATED 08/08/2011 BEFORE THE CHIEF MINISTER OF KERALA. EXT.R5B TO R5I: NIL. EXT.R5J COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI

DAILY DATED1505/2012. EXT.R5K COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DATED1505/2012. EXT.R6A COPY OF THE PROCEEDINGS DATED2801/2012 EVIDENCING THE ASSUMPTION OF CHARGE OF THE6H RESPONDENT. EXT.R6B COPY OF THE PROCEEDINGS DATED2801/2012 EVIDENCING THE ASSUMPTION OF CHARGE OF THE5H RESPONDENT.6/- WP(C).NO. 2783 OF2012(W) EXT.R6C COPY OF THE APPEAL DATED0811/2011 TO THE CHIEF MINISTER OF KERALA. EXT.R6D COPY OF THE

ORDER

NO.G.O.(RT) NO.526/2010/SWD DATED1012/2010. EXT.R6E COPY OF THE COMMUNICATION NO.E6/117897/10 DATED2907/2010 OF THE THIRUVANANTHAPURAM CORPORATION. EXT.R6F COPY OF THE

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NO.46429/R.A2/11/LSDV DATED2911/2011. EXT.R6G COPY OF THE COMMUNICATION NO.GA7/102583/11 DATED2308/2011 OF THE THIRUVANANTHAPURAM CORPORATION. EXT.R6H COPY OF THE COMMUNICATION NO.G1/14432/2011 DATED2612/2011. EXT.R6I COPY OF THE

ORDER

NO.CRL.MP. NO.338/2011 DATED1803/2011 OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM. //TRUE COPY// P.A. TO JUDGE rs. A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 Dated this the 26th day of November, 2014

JUDGMENT

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment.

2. The petitioners in W.P.(C).No.2783 of 2012 were members of the Standing Committee of the 3rd respondent Council during the year 2007. Petitioners 1 to 5 continued as Standing Committee members of the 3rd respondent Council even thereafter, pursuant to the election that was conducted in 2010. In the writ petition, they are aggrieved by Ext.P16 order dated 28.01.2012, by which they were ousted from the membership of the 3rd respondent Council. The brief facts leading up to Ext.P16 order are as follows:

3. The petitioners, as members of the Standing Committee of the 3rd respondent Council had resolved to build an additional floor, to an existing building of the Council at Tiruvananthapuram, so as to create space for accommodating abandoned children. Although, the initial estimate for the work of expansion was fixed at Rs.25,20,000/-, and the State Government had sanctioned an amount of Rs.10 lakhs towards the cost of the said expansion, the Standing Committee of the respondent Council by a resolution decided to augment the floor area in respect of the additional construction. This decision of the Standing Committee is stated to have been ratified by the Executive Committee. The revised estimate was thereafter worked out at Rs.59 lakhs. Thereafter, by Ext.P3 communication dated 19.03.2008, the President of the 3rd respondent Council requested the Thiruvananthapuram Corporation to accord sanction to the revised plan, that was submitted in connection with the expansion activities. It is understood that, pursuant to a request of the Corporation to produce the stability certificate in respect of the construction proposed, Ext.P5 certificate was also forwarded to the Corporation. Thereafter, when nothing was heard from the Thiruvananthapuram Corporation, the petitioners proceeded with the construction of the additional floor based on their understanding that, as per the provisions of the Kerala Municipal Building Rules, the permission sought for would be deemed as granted. Accordingly, the construction was completed by 17.02.2010. Immediately thereafter, based on a complaint preferred by the 5th respondent, alleging corruption in the construction activities carried out by the petitioners, the Enquiry Commissioner and Special Judge W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 3 forwarded the complaint received by him to the Director of the Vigilance and Anti-Corruption Bureau. It is also understood that the 5th respondent filed

another complaint before the then leader of opposition citing the same allegations against the petitioners. On 18.05.2011, pursuant to the General Elections conducted in the State, the erstwhile Leader of opposition became the Chief Minister, and in that capacity also became the President of the 3rd respondent Council. It is stated that thereafter, the 5th respondent, who was the member of the 3rd respondent Council was nominated as the representative of the Council to represent the Council before the Central Adoption Research Authority (CARA) at New Delhi. It would appear that the Central Government informed the 3rd respondent Council that the representation of the 3rd respondent Council before CARA could only be through an elected office bearer of the 3rd respondent Council as was required by the bye-laws. On account of the said communication received from the Central Government, there was no representation of the 3rd respondent Council before the CARA. While matters stood thus, in a writ petition filed by another member of the 3rd respondent Council - Sri.Riju K.Thomas, seeking a disposal of a representation with regard to certain allegations against the petitioners, this Court by Ext.P10 judgment directed the 2nd respondent to consider and pass W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 4 orders on the representation preferred by the said Mr.Riju K.Thomas. Pursuant to the directions of this Court in Ext.P10 judgment, the 2nd respondent conducted a hearing on 02.12.2011. During the course of the hearing, the 2nd respondent felt the need to go through certain documents with regard to the technical aspects of the construction that was undertaken by the petitioners on behalf of the 3rd respondent Council. He therefore, requested the General Secretary of the 3rd respondent Council to make available the said technical documents regarding the construction, by Ext.P13 communication dated 04.01.2012. Thereafter, by Ext.P14 show cause notice dated 09.01.2012, the petitioners were asked to show cause as to why action should not be taken against them pursuant to Clause 26(a) of the bye-laws of the 3rd respondent Council which are produced as Ext.P1 in the writ petition. Although, the petitioners preferred Ext.P15 reply dated 12.01.2012 to the said show cause notice, the 2nd respondent by Ext.P16 order dated 28.01.2012 held the petitioners as ousted from the membership of the Council in terms of Clause 20(b) and simultaneously nominated the 5th and 6th respondent to the Executive Committee in terms of Clause 25 (16) of the bye-law of the 3rd

respondent Council. As already noted Ext.P16 is impugned in W.P.(C).No.2783 of 2012. W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 5 4. W.P.(C).No.10737 of 2012 was filed at a stage when, after Ext.P16 order in W.P.(C).No.2783 of 2012 was passed and the petitioners in that writ petition had been found disqualified from membership of the 3rd respondent Council, an interim order was passed by this Court on 27.03.2012, on consent of all parties, directing that a General Body Meeting of the 3rd respondent Council be convened for considering the question of disqualification of the petitioners in W.P.(C).No.2783 of 2012 since it was felt that the General Body is the ultimate authority to take a final decision in the matter. This Court then proceeded to confer the authority to issue notices for convening the General Body Meeting on the Director of Social Welfare Department. It was made clear that if the General Body adopted a resolution holding the petitioners as liable to be disqualified then the disqualification would stand, if on the other hand General Body adopted a resolution that the petitioners are not liable to be disqualified, they would continue as members of the 3rd respondent Council untrammelled by Ext.P15 order. The District Collector was also put in charge of the day to day affairs of the establishment, pending the taking of a final decision in the matter by the General Body, as directed in the interim order. It would appear that when steps were taken to W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 6 convene the General Body Meeting, as directed by this Court in the interim order referred to above, it was noticed that in connection with the General Body Meeting, notice was issued to 1742 persons as against the 890 life members who, according to the petitioner were the only life members of the 3rd respondent Council at the time they were ousted from membership by Ext.P16 order. The petitioners in W.P.(C).No.10737 of 2012 therefore approached this Court challenging the order dated 28.01.2012, that was impugned as Ext.P16 in other writ petition, as also seeking a direction to the respondents to limit the participation in the General Body Meeting, scheduled pursuant to the directions from this Court, to only those 890 members in respect of whom there was no dispute with regard to their life membership in the 3rd respondent Council. In the said writ petition, there are definite allegations regarding the manipulation and falsification of the membership registers and in that connection, a declaration is sought to the effect that those persons who were

admitted subsequent to 04.08.2011 by fabrication, manipulation and falsification of records and who were assigned membership numbers from 891 onwards are not entitled to participate in the General Body Meeting scheduled. Thus in essence the grievance of the petitioners in W.P.(C).No.10737 of 2012 is with regard to the admission of 868 persons as life W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 7 members of the 3rd respondent Council and the consequent exercise by the said person of their rights as members of the 3rd respondent Council.

5. It needs to be noted at this stage that during the pendency of the writ petition, the District Collector who had been put in charge of the day to day administration of the 3rd respondent Council by this Court, approached this Court through an interlocutory application pointing out that the term of the Standing Committee and the Executive Committee had since expired and therefore, there was a need to conduct a fresh election for the purposes of electing a new Standing Committee and Executive Committee. While attempts were made through directions of this Court to hold an election, the said attempt did not fructify on account of the interim orders being carried in appeal, and directions having been issued by the Division Bench in those appeals. The fall out of the various orders passed by this Court was that, the status quo with regard to the District Collector continuing with the day to day administration of the 3rd respondent Council continued and it was felt that there would be no point in conducting an election until the dispute, with regard to the eligibility of the 868 persons aforementioned to exercise their rights as life W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 8 members of the 3rd respondent Council, was first determined. It is also apparent from a reading of the order dated 16.07.2014 of the Division Bench in the writ appeals that there is a civil suit pending (O.S.No.78 of 2013) before the Munsiff's Court, Trivandrum challenging the induction of the 868 persons as life members of the 3rd respondent Council. It is in this factual back drop that I have to now decide the writ petitions before me.

6. I have heard Sri.N.Raghuraj, the learned counsel for the petitioners in W.P.(C).No.2783 of 2012, Sri.P.K.Vijayamohanan, the learned counsel for the petitioners in W.P.(C).No.10737 of 2012 and Sri.Blaze K.Jose the learned Standing counsel and Sri.M.Ramesh Chander, Sri.O.V.Maniprasad,

Sri.B.S.Swathy Kumar, Sri.George Poonthottam, Sri.K.K.Raveendranath, the learned Counsel appearing for the respondents in both the writ petitions.

7. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the principle issue to be decided in these writ petitions is the legality of Ext.P16 order that was passed by the 2nd respondent disqualifying the petitioners in W.P.(C).No.2783 of 2012 from the membership of W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 9 the 3rd respondent Council, in purported exercise of the power under Clause 20(b) of Ext.P1 bye-law. It is seen that Ext.P16 order was passed pursuant to Ext.P14 show cause notice that was issued to the 1st petitioner asking him to submit an explanation in connection with the construction that was undertaken by the Standing Committee and which, according to the 2nd respondent, was in excess of the estimate that was prepared in connection with the work and without the approval of the Social Welfare Department. Although, the petitioners had submitted Ext.P15 reply dated 12.01.2012, Ext.P16 order was passed disqualifying them from the membership of the 3rd respondent Council. In my view, Ext.P16 order of the 2nd respondent suffers from various illegalities. Firstly, Ext.P14 Show cause notice was issued only to the 1st petitioner and the action in Ext.P16 order is taken against all the 7 petitioners. Secondly, the show cause notice issued to the first petitioner refers to Clause 26(a) of the bye laws which states that the President shall have General control over the affairs of the Council. A perusal of Ext.P16 order would indicate that the action taken against the petitioners was in terms of Clause 20 (b) of the bye-laws which provides as follows: "Any member who violates the discipline of the Council shall either be suspended for a W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 10 specified period not less than one year or removed from the membership of the Council." Clause 20(c) of the said bye-laws read as follows: "The standing Committee may either on its own conclusion or based on the specific allegation raised by any member, the punishments specified in Rule 20(b) shall be imposed on the delinquent member after giving him an opportunity to submit his defence."

8. On a reading of clause 20(b) and (c) together, it would appear that the Standing Committee is vested with the power to consider the issue of whether a punishment should be imposed on a member, after giving him an opportunity to submit his

defence. It would follow, therefore, that the power to disqualify a member from membership of the Council, which had to be exercised by the Standing Committee at first instance, and in respect of which an appeal lay before the Executive Committee in accordance with Clause 20(b) of the bye-laws, could not have been exercised by the W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 11 President in terms of Section 26(a) of the bye-laws. In the instant case, the power under Section 26(a) itself is seen exercised by the 2nd respondent and not by the President. Thirdly, the allegations in Ext.P15 show cause notice issued to the 1st petitioner stem from an action that was taken by members of the Standing Committee of the 3rd respondent Council. The explanation that was sought was essentially in respect of the said action of the members of the Standing Committee. Even assuming that there was an action that could be taken against the said members, pursuant to the powers in the bye law, it is apparent that the said action could only result in disqualifying the said persons from continuing as members of the Standing Committee. This must be the sense in which Clause 26(a) of the bye-laws, empowering the President to function as the authority having general control over the affairs of the Council, has to be read. Ext.P16, to the extent it orders the disqualification of the petitioner from even the primary membership of the 3rd respondent Council, is therefore clearly illegal and contrary to the provisions of the bye-laws of the 3rd respondent Council. Thus Ext.P16 order of the 2nd respondent cannot be legally sustained. Accordingly, I quash Ext.P16 and declare that the petitioners will be restored their membership in the 3rd respondent Council, as also the benefit of membership in the Standing Committee till the date W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 12 of the expiry of the term of the said Standing Committee (18.02.2013).

9. I must now turn to the prayers in W.P.(C)No.10737 of 2012. As already noted above, the prayers in the said writ petition are primarily directed to the induction of 868 persons as life members of the 3rd respondent Council. Although, there are allegations in the writ petition regarding the falsification and fabrication of the Minutes Book, Membership Register and other records of the 3rd respondent Council, I am of the view that these matters cannot be gone into by a writ court exercising powers under Article 226 of the Constitution of India. The allegations raised by the petitioners in W.P.(C).NO.10737 of 2012 would require the taking of

evidence, both oral and documentary, in order to have an effective adjudication of the same. The writ court is not suited for such an exercise. That apart, I note that there is already a civil suit pending before the Munsiffs Court, Trivandrum, where the very same issue has been raised. Further, the 868 persons, against whose induction as life members of the 3rd respondent Council, the petitioners in W.P.(C).No.10737 of 2012 are aggrieved, are not parties before this Court in the present writ petition, notwithstanding the submission of counsel for the W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 13 petitioners that the 4th respondent in W.P.C.No.10737 of 2012 has been impleaded therein in a representative capacity. Thus, leaving open the right of the petitioners to pursue their civil remedy, if they so desire, I decline interference in the said writ petition save to the limited extent of holding that the petitioners in W.P.(C) No. 10737 of 2012, would also obtain the benefits flowing from a quashing of Ext.P16 order in W.P.(C).No.2783 of 2012. Resultantly, both the writ petitions are disposed in terms of the findings above. A.K.JAYASANKARAN NAMBIAR JUDGE mns/ W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 14 W.P.(C).No.2783 of 2012 & W.P.(C).No.10737 of 2012 15

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