

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 31ST JULY 2008 / 9TH SRAVANA 1930

WP(C).No. 19795 of 2008(F)

AGAINST THE ORDER IN IA.593/2008 IN
OS.1/2006 of II ADDL. DISTRICT COURT, KOLLAM

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PETITIONER:

OACHIRA PARABRAHMA TEMPLE ADMINISTRATION
BOARD REPRESENTED BY ITS SECRETARY K.BHARGAVAN
OACHIRA.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR
SRI.T.Y.LALIZA

RESPONDENTS:

1. KARTHIKEYAN, SREEMANDIRAM, PERINADU,
CLAPPANA P.O, VIA.OACHIRA.
2. N.SADANANDAN, RTD.DISTRICT JUDGE,
RETURNING OFFICER, OACHIRA PARABRAHMA TEMPLE,
ADMINISTRATION BOARD, OACHIRA, KOLLAM.
3. K. CHAKRAPANI, RESIDING AT KADAYIL VEEDU,
PERINADU, CLAPPANI VILLAGE,
KARUNAGAPPALLY.
(ADDL. R3 IMPEADED AS PER ORDER DT.17/7/2008 IN I.A.8995/08)

BY ADV. SRI.K.SUBASH CHANDRA BOSE FOR R1
SRI.T.C.MOHANDAS FOR ADDL.R3
SRI.T.M.SUNIL FOR ADDL.R3
SMT.S.CHITHRA FOR ADDL.R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/07/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:-

- EXT.P1:- COPY OF THE ORDER DATED 6.2.2007
- EXT.P2:- COPY OF THE EXISTING BYELAW
- EXT.P3:- COPY OF THE MINUTES OF THE POTHUBHARANA SAMITHI
- EXT.P4:- COPY OF THE MINUTES OF THE WORKING COMMITTEE
- EXT.P5:- COPY OF THE INTERIM ORDER IN I.A. 1160/07 IN O.S. 295/07 DT.4.9.07 PASSED BY THE MUNSIFF COURT.
- EXT.P6:- COPY OF THE PLAINT IN O.S. 295/07 DT. 3.8.2007
- EXT.P7:- COPY OF I.A. 593/2008 DATED 23.4.2007 FILED BY THE RETURNING OFFICER
- EXT.P8:- COPY OF THE OBJECTION DATED 21.4.2008 FILED BY CHAKRAPANI
- EXT.P9:- COPY OF THE ORDER DATED 26.4.2008 PASSED BY THE FIRST ADDITIONAL DISTRICT COURT, KOLLAM
- EXT.P10:- COPY OF THE ORDER DATED 17.6.2008 IN I.A.593 OF 2008 IN O.S. 1/2006
- EXT.P11:- COPY OF THE OBJECTION DT. 24.5.2008 FILED BY THE FIRST RESPONDENT
- EXT.P12:- COPY OF THE ORDER DT. 17.6.2008 I.A. 593/2008 IN O.S.1/2006

RESPONDENT'S EXHIBITS:-

- Ext.R1(a):- TRUE COPY OF PLAINT IN O.S. 1/2006 BEFORE THE DISTRICT COURT, KOLLAM.
- Ext.R1(b):- TRUE COPY OF THE REPORT OF THE TRAVANCORE DEVASWOM BOARD DATED 25.5.1993
- EXT.R1(c):- TRUE COPY OF THE ORDER I.A.1734/07 IN O.S.NO.1/06 DATED 12.12.2007 OF THE 1ST ADDL. DISTRICT COURT, KOLLAM.

OKB/-

//TRUE COPY//

P.A. TO JUDGE

M. SASIDHARAN NAMBIAR, J.

W.P.(C) NO. 19795 OF 2008

Dated this the 31st day of July, 2008

JUDGMENT

This petition is filed under Article 227 of Constitution of India challenging Ext.P12 order passed by Additional District Judge, Kollam in O.S. 1 of 2006 directing the returning officer, appointed to conduct the election to the general body of Pothu Bharanasamithi, to receive the nomination paper of the first respondent, which was earlier objected to by the third respondent. Learned District Judge originally rejected the nomination paper under Ext.P9 order. That order was challenged before this Court in WP(C)14561 of 2008. Under Ext.P10 judgment, this Court set aside the order and directed District Court to pass fresh orders after hearing the parties concerned. It is thereafter Ext.P12 order was passed. Learned District Judge considered the objections raised against accepting the nomination paper of first respondent. Three grounds were taken against accepting the nomination paper. Firstly, it was contended that in the light of clause 34 of the byelaw, first

respondent, who was disqualified from contesting election by the managing committee is not entitled to stand for election. Secondly, it was contended that first respondent filed O.S. 295 of 2007 before Munsiff Court, Karunagappally challenging the action taken against him and it was dismissed and as that decision has become final, first respondent is not entitled to challenge the decision of the managing committee or stand for election. Thirdly, it was contended that petitioner filed an application to get himself declared as an insolvent person.

2. Learned District Judge found that clause 34 of Ext.P2 byelaw operates as a bar from standing election if a no confidence motion is passed against any member and the no confidence motion as against the first respondent was passed in 1997 and though subsequently, under Ext.P4 decision, he was debarred from contesting the election, there are no sufficient materials to disqualify him from contesting the election and invoking clause 34 of the byelaw, his nomination paper cannot be rejected. Learned District Judge also found the other two grounds insufficient to reject the nomination paper and directed the returning officer to accept the nomination paper. That order is challenged in this petition.

3. Learned counsel appearing for petitioner and learned counsel appearing for first respondent, who got himself impleaded as third respondent, were heard.

4. Learned counsel appearing for petitioner relying on Ext.P1 order dated 6.2.2007 argued that District Court decided to conduct election as per the existing scheme and though a scheme suit was pending, the existing scheme was not modified and therefore election could be conducted only as provided under Ext.P2 byelaw. It was argued that when an election is to be conducted as provided under Ext.P2, nomination paper can be accepted only subject to clause 34 therein and when a no confidence motion was passed against first respondent for his actions against the interest of the Pothu Bharanasamithi, then as provided under clause 34 he is automatically debarred from contesting the next election. It was also argued that under Ext.P4, subsequent decision, it was decided that first respondent is not entitled to contest the election and clause 34 mandates that first respondent is not entitled to standing election and learned District Judge was not justified in directing acceptance of the nomination paper (while conducting the election provided under existing scheme), which is against clause 34 of Ext.P2.

Learned counsel read out Ext.P13 and Ext.P4 minutes and argued that there was a decision by the managing committee and as provided under clause 34 first respondent is not entitled to contest the election and therefore Ext.P12 order is to be quashed.

5. Learned counsel appearing for first respondent argued that Ext.P4 decision was taken on 30.5.2007 and under Ext.P1 order District Court has directed to conduct an election on 6.2.2007 and existing members of the managing committee are not authorized to take action debarring any member from contesting an election which would thwart the direction of the Court to conduct a fair election. It was argued that if such a right is given to the managing committee, any person can be barred from contesting the election, who will stand against the members of the existing committee and therefore District Court was justified in ignoring Ext.P4 decision and directing acceptance of the nomination paper. Learned counsel also argued that the Parabrahma Temple Administration Board is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, and clause 34 of Ext.P4 is against the provisions of the said Act and

under Section 22 of the Act any amendment has to be registered as provided under the Act and the amendment to clause 34 was not so registered and therefore it has no value. Learned counsel relied on Ext.R1(b) communication of the Travancore Devaswam Board, where reference is made to a certificate obtained for registration of the Bharanaamithi under the Travancore–Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, and argued that clause 34 is void and based on clause 34 nomination paper cannot be rejected.

6. Learned counsel for the third respondent supported the arguments of learned counsel appearing for petitioner and argued that as the suit filed by first respondent was dismissed and it has become final and in the scheme suit validity of clause 34 or decision of the managing committee are not being challenged, first respondent is not entitled to get the nomination paper accepted on the basis that clause 34 is void.

7. On hearing the learned counsel on both sides, I do not find any reason to interfere with Ext.P12 order in exercise of the powers of this Court under Article 227 of Constitution of India. Clause 34 of Ext.P2 provides that if a no confidence motion is passed against a member, by the managing committee, his

membership would be lost and he is not entitled to contest for the next election. If that be so, first respondent is not entitled to contest for the next election, after Ext.P3 decision in 1997. Admittedly one election after that decision was over. If that be so, first respondent is entitled to contest the subsequent election. The argument of the learned counsel is that under clause 34 of Ext.P2 if the managing committee decides that such member shall not contest in future election, that will be valid and as per Ext.P4 decision managing committee decided that first respondent is not entitled to contest in the next election and therefore his nomination paper cannot be accepted. Ext.P4 decision was taken on 30.5.2007. Under Ext.P1 order, the Court directed to conduct election on 6.2.2007. In such circumstances the existing managing committee is not entitled to pass a resolution debarring any member from contesting election so as to thwart the election process initiated by the District Court. In such circumstances Ext.P12 order permitting first respondent to contest election cannot be interfered.

8. Though serious allegations were raised against first respondent, and learned counsel appearing for petitioner argued that it is in the best interest of Samithi Ext.P4 decision was

taken, it is not necessary to go on the allegations in this writ petition. If the case of the petitioner and third respondent that first respondent is acting against the interest of Samithi is correct, it is for the general body members not to vote for him and see that such persons are not elected.

Writ petition is dismissed.

**M. SASIDHARAN NAMBIAR,
JUDGE**

Okb/-