

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 30TH DAY OF JULY 2019 / 8TH SRAVANA, 1941

WP(C).No.19507 of 2019

PETITIONER:

THE POLICE HOUSING CO-OPERATIVE SOCIETY LTD.NO.4348
ELAMKULAM, KADAVANTHRA, ERNAKULAM DISTRICT-682020,
REPRESENTED BY ITS SECRETARY.

BY ADVS.

SRI.GEORGE POONTHOTTAM (SR.)

SMT.NISHA GEORGE

SRI.ARUN CHANDRAN

RESPONDENTS:

- 1 THE KERALA STATE COOPERATIVE ELECTION COMMISSION
3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN P.O,
THIRUVANANTHAPURAM-695033,
REPRESENTED BY ITS ADDITIONAL REGISTRAR/SECRETARY.
- 2 THE REGISTRAR OF COOPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM DISTRICT,
PIN CODE-695001.
- 3 THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF COOPERATIVE
SOCIETIES (GENERAL) ,
COLLECTORATE, KAKKANAD,
ERNAKULAM DISTRICT, PIN CODE-682030.
- 4 THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL)
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) , KANAYANNUR,
ERNAKULAM DISTRICT-682308.

BY ADVS.

SRI.R.LAKSHMI NARAYAN

GOVERNMENT PLEADER

SRI.BIMAL K.NATH, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.07.2019, ALONG WITH WP(C).20692/2019, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 30TH DAY OF JULY 2019 / 8TH SRAVANA, 1941

WP(C).No.20692 of 2019

PETITIONER:

THE KERALA POLICE HOUSING CO-OPERATIVE SOCIETY LTD
NO.4348, ELAMKULAM, KADAVANTHRA, ERNAKULAM
DISTRICT-682020, REPRESENTED BY ITS SECRETARY.

BY ADVS.

SRI.GEORGE POONTHOTTAM (SR.)

SMT.NISHA GEORGE

RESPONDENTS:

- 1 THE KERALA STATE CO-OPERATIVE ELECTION COMMISSION
3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN,.P.O,
THIRUVANANTHAPURAM-695033, REPRESENTED BY ITS
ADDITIONAL REGISTRAR/SECRETARY.
- 2 THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO- OPERATIVE SOCIETIES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
DISTRICT, PIN CODE-695001
- 3 THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF CO OPERATIVE
SOCIETIES (GENERAL), COLLECTORATE, KAKKANAD,
ERNAKULAM DISTRICT, PIN CODE-682030
- 4 THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL)
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), KANAYANNUR, ERNAKULAM
DISTRICT-682308

BY ADV. SRI.M.SASINDRAN

SRI.BIMAL K.NATH, SR.GP, SRI.R.LAKSHMI NARAYAN SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.07.2019, ALONG WITH WP(C).19507/2019, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

JUDGMENT

These two writ petitions are being considered together and disposed of through this judgment because the essential factual attributes therein are connected and the reliefs sought for are also consequently dependent on each other.

2. W.P(C)No.19507 of 2019 has been filed by the Police Housing Co-operative Society Ltd. (hereinafter referred to as 'the Society' for short) with a prayer that the Kerala State Co-operative Election Commission (hereinafter referred to as 'the Commission' for short) be directed to issue an election notification, accepting the Resolution passed by the Managing Committee of the Society fixing the poll on 08/09/2019. The petitioner alleges that even though their Resolution to conduct the elections was forwarded to the Election Commission through on-line on 29/06/2019 it

has, until now chosen to disregard the same.

3. While so, the petitioner-Society alleges that with an intent to delay the election processes, the Registrar of Co-operative Societies has issued an order, dated 19/07/2019, directing that all the identity cards issued by the Society in the past be recalled and fresh ones be issued in terms of Rule 16(A) of the Kerala Co-operative Societies Rules (hereinafter referred to as 'the KCS Rules' for short).

4. The petitioner-Society asserts that this order is calculated solely to delay the elections, since the present identity cards have been issued in terms of certain earlier judgments of this Court; and that therefore, they have been constrained to file W.P(C)No.20692 of 2019, impugning the said order of the Registrar, produced as Ext.P7 therein; praying that the same be

set aside.

5. Shri.George Poonthottam, learned Senior Counsel, assisted by Shri.Arun Chandran, learned counsel for the petitioner in both cases, submits that the Managing Committee of the petitioner-Society has conducted several litigations in the past to secure their status as such, since at every stage, action was taken at the behest of vested interests to oust them. He says that the elections conducted to the Managing Committee in the year 2014 were challenged by certain persons before the Arbitration Court in ARC.No.74 of 2014 and that it is allowed on 11/07/2019; but that when the said Award was challenged before this Court in W.P(C)No.18716 of 2019, this Court by judgment dated 12/07/2019 directed that the present Managing Committee will continue in office for a period of fifteen days from the said date, which was then extended until

30/07/2019. The petitioner says that they have now secured an order of stay from the Co-operative Arbitration Tribunal and therefore, that they are fully empowered and competent to file these writ petitions.

6. Shri.George Poonthottam submits that the afore narration has been made only to show the anxiety exhibited by the statutory Authorities to ensure that they are removed from office so as to place an administrative mechanism of their choice in place, invoking Section 33 of the KCS Act. He accuses that the present attempt in having issued Ext.P7 order in W.P(C)No.20692 of 2019 by the Registrar is also one step in this direction. He consequently prays that both these writ petitions be allowed and that the Election Commission be directed to issue a notification to conduct fresh elections to their Managing Committee before the term of the present Committee is to expire on

13/09/2019.

7. In response to the submissions of the learned Senior Counsel as afore, Shri.Bimal K.Nath, learned Senior Government Pleader, emphatically submitted that Ext.P7 order in W.P(C)No.20692 of 2019 cannot be faulted since the identity cards issued by the Society are not even laminated but are, in fact, plastic. He says that going by the judgment of a learned Division Bench of this Court in W.P(C)No.20033 of 2018, such cards cannot be used for elections and that the Secretary of the petitioner-Society has been, therefore, rightly directed to issue fresh cards in terms of Rule 16(A) of the KCS Rules adhering to the format in Form 6A thereof. He says that contrary to the allegations of the petitioner, this has been so ordered by the Registrar not with any confutative intent but only to ensure that effective and fair elections are

conducted to the Managing Committee of the Society in terms of law.

8. Shri.R.Lakshmi Narayan, learned Standing Counsel appearing for the Election Commission, concedes that final decision on the Resolution of the Managing Committee of the petitioner-Society has not yet been taken by its competent Authority and that they propose to do so without any further delay. He then adds that a statement has been filed on record wherein it has been clearly averred that the Commission has been informed by the Statutory Authorities that Form 6B Register as well as the identity cards issued by them, are maintained and have been issued contrary to the provisions of the KCS Act and Rules; and therefore, that it is only after such irregularities are rectified can the elections be notified. He says that the Election Commission is willing to notify the elections as soon as these defects are

cured by the Society.

9. In refutation of the afore submissions of the learned Standing Counsel for the Election Commission, Shri.George Poonthottam, learned Senior Counsel, submits that the allegations of irregularity in Form 6B Register as well as the identity cards are completely without basis and he shows me few of such Registers, that have been brought to this Court, to assert that it has been prepared in full conformity with the KCS Act and Rules. On the question of identity cards, he contends that they are not laminated ones, coming within the rigour of the judgment of a learned Division Bench but are, in fact, plastic cards, which have been issued precisely as stipulated under Rule 16A of the KCS Rules. He says that as is clear from the identity cards, one of which has also been handed over across the Bar by him for my inspection, all the

particulars required under Form 6A of the KCS Rules are available in them. He thus predicates that the conclusions of the Division Bench will not apply in the case of the identity cards now issued by the Society.

10. When I consider the submissions as afore, it is ineluctable that the real and pivotal question is whether the Election Commission has taken a decision on the Resolution of the Society. I do not require to labour much on this because Shri.R.Lakshmi Narayan, learned Standing Counsel for the Election Commission, admits that no such decision has yet been taken. Obviously, therefore, the Election Commission is now obligated in law to take an apposite decision on the Resolution adopted by the Society and if they feel that 6B Registers are not maintained in terms of law or that the identity cards, issued by the Society, have not been in

terms of the directions of the learned Division Bench or the provisions of the KCS Act and Rules, then it is for them to issue necessary orders or directions to the Society to rectify these so as to enable them to take a decision on the Resolution.

11. As matters now stand and as is clear from the statement filed on behalf of the Election Commission before this Court, the views they have taken therein are based on the inputs received from the statutory Authorities. There is nothing in the statement to show that the Election Commission has verified 6B Registers or that the identity cards have been examined by them, so as to find any defect in them. Since this has not been done and the Election Commission has not considered the Resolution as of now, I am of the view that the jurisdiction of this Court, at least at this point of time, is extremely restricted.

12. I am, therefore, of the certain view that the Election Commission must consider these aspects and take a decision on the Resolution of the Society *de hors* and not merely based on the inputs they may have received from the statutory Authorities but after proper verification of the 6B Registers as well as the identity cards; and to then issue directions to the Society, if so required, to rectify the same in terms of law, leading to a notification to be issued preferably to complete the elections before 13/09/2019.

13. I make it clear that I am of the firm opinion view that elections should be attempted to be completed before 13/09/2019, going by the prescriptions of law that such elections must be concluded before the term of the Managing Committee expires and also because even if fresh identity cards are to be now issued, it is only a matter that the Secretary of the

Society can complete within the available days from today.

14. Therefore, merely for the reason that fresh identity cards have to be issued, I do not think it will be sufficient justification for the Election Commission to defer the elections *ad infinitum*, even though I am aware there are more than fifty thousand members in this Society. This is because, all such members can be given the option of approaching the Secretary of the Society with their recent photographs for the purpose of the new identity cards and the issuance of such new identity cards can be completed, within a strict time frame to be fixed by the Election Commission.

In summation, I order these writ petitions and direct the Secretary of the Society to produce all the 6B Registers with respect to the membership of the

Society before the Secretary of the State Co-operative Election Commission, at 11.00 am on 01/08/2019, along with the format of the identity cards issued by them; and the Commission will, thereafter, afford an opportunity of being heard to the Secretary of the petitioner-Society and take a decision as to the issuance of an election notification in terms of the Resolution adopted by the Committee, which has been received by the Commission on 20/07/2019 as per Shri.R.Lakshmi Narayan.

Needless to say, what ever be the decisions to be taken by the Election Commission, the reasons for such must be implicitly recorded in the resultant order and it must be issued not later than 06/08/2019.

In view of the afore directions that I have made, I am not entering into the merits of Ext.P7 in W.P(C)No.20692 of 2019

and I leave open all such contentions to be pursued by the petitioner, if it is so required in future, depending upon the decision to be taken by the Election Commission in terms of my afore directions.

Shri.R.Lakshmi Narayan, learned Standing Counsel for the Election Commission, will intimate his client the details of this judgment today itself, so that even if, for any reason, the certified copy of this judgment is delayed, they can continue with the process as directed above.

sd/-

DEVAN RAMACHANDRAN

JUDGE

APPENDIX OF WP(C) 19507/2019**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1 TRUE COPY OF THE PROFORMA SUBMITTED
BY THE PETITIONER TO THE 1ST
RESPONDENT DATED 29.06.2019 ALONG
WITH OTHER RELEVANT PAGES OF THE
DOCUMENTS, APPENDED ALONG WITH
PROFORMA

RESPONDENT'S/S EXHIBITS:

EXHIBIT R4 (A) TRUE COPY OF THE COMPLAINT SUBMITTED
BY SRI.C.R.BIJU (MEMBER NO.22052)

EXHIBIT R4 (B) TRUE COPY OF THE COMPLAINT SUBMITTED
BY SRI.P.G.ANILKUMAR (MEMBER NO.33691)

EXHIBIT R4 (C) TRUE COPY OF THE RELEVANT PAGES OF 6B
REGISTER

EXHIBIT R4 (D) TRUE COPY OF THE ONLINE APPLICATION

EXHIBIT R4 (E) TRUE COPY OF THE CIRCULAR NO.4/2013

APPENDIX OF WP(C) 20692/2019**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE ORDER NO.HV(1) 18560/14 DATED 29.04.2014 ISSUED FROM THE OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES.
EXHIBIT P2	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DATED 14.05.2014
EXHIBIT P3	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN KERALA KAUMUDI DAILY DATED 14.05.2014
EXHIBIT P4	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN NEW INDIAN EXPRESS DAILY DATED 14.05.2014
EXHIBIT P5	TRUE COPY OF THE JUDGMENT DATED 01.09.2014 IN WP(C)NO.22117/2014 PASSED BY THIS HON'BLE COURT
EXHIBIT P6	TRUE COPY OF THE INTERIM ORDER DATED 19.07.2019 IN WP(C)NO.19507/2019 PASSED BY THIS HON'BLE COURT
EXHIBIT P7	TRUE COPY OF THE ORDER NO.H.V.(1)6534/19 DATED 19.07.2019 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.
EXHIBIT P8	TRUE COPY OF THE RESOLUTION NO.KPHCS/ELE/256/2019 DATED 26.07.2019 ISSUED BY THE SOCIETY
EXHIBIT P9	TRUE COPY OF THE COMMUNICATION NO.KPHCS/ELE/257/2019 DATED 26.07.2019 ISSUED BY THE SOCIETY

RESPONDENT'S/S EXHIBITS:

NIL

MC

(TRUE COPY)

PA TO JUDGE