

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 4TH DAY OF OCTOBER 2023 / 12TH ASWINA, 1945

W.A.NO.1729 OF 2023

AGAINST THE JUDGMENT DATED 27.09.2023 IN WP(C)NO.30797 of 2023

OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MALANAD SERVICE CO-OPERATIVE BANK LTD NO.340
VAGAMON, IDUKKI DISTRICT, REPRESENTED BY ITS

BY ADV P.V.BABY

RESPONDENTS/RESPONDENTS:

- 1 STATION HOUSE OFFICER
VAGAMON POLICE STATION,
IDUKKI DISTRICT, PIN - 685503
- 2 STATE CO-OPERATIVE ELECTION COMMISSION (SCEC)
CO-BANK TOWERS, THIRUVANANTHAPURAM- REPRESENTED BY
ITS SECRETARY, PIN - 695033
- 3 RETURNING OFFICER
MALANAD SERVICE CO-OPERATIVE BANK LTD NO. 340, OFFICE
INSPECTOR, OFFICE OF THE ASSISTANT REGISTRAR (G)
OFFICE, PEERUMEDU, IDUKKI DISTRICT, PIN - 685531

OTHER PRESENT:

SRI C.M.NAZAR - SC ,
SMT K.M.RASHMI - SR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.10.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT**Anil K. Narendran, J.**

The appellant, namely, Malanad Service Co-operative Bank Ltd., K. 340, Vagamon, a Co-operative Society registered under the provisions of the Kerala Co-operative Societies Act, 1969, filed W.P.(C)No.30797 of 2023, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Station House Officer, Vagamon Police Station, to afford adequate and sufficient police protection for the smooth conduct of the polling and counting scheduled to be held on 15.10.2023, from 9.00 a.m. to 4.00 p.m., at Government High School, Vagamon, to elect the Managing Committee of the Society; a writ of mandamus commanding the 3rd respondent Returning Officer to verify the identity cards brought by the members with the register of identity cards maintained by the Society in Form 6B, in case any dispute arises regarding the identity of the voters; and permission to the Society to record the proceedings of the polling and counting in video and appoint an Advocate Observer to oversee the entire proceedings of the polling and counting scheduled to be held on 15.10.2023, from 09.00 a.m. to 4.00 p.m., at the Government High School, Vagamon.

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2. Ext.P1 is a copy of the election notification dated 01.09.2023 issued by the 2nd respondent State Co-operative Election Commission and Ext.P2 is a copy of the representation dated 08.09.2023 made by the Secretary of the Society before the 1st respondent Station House Officer, seeking police protection. Ext.P3 is a copy of the circular dated 20.11.2013 issued by the State Police Chief, in the light of the judgment of this Court dated 17.10.2013 in W.P.(C)No.24603 of 2013, whereby it was ordered that the Police would, by themselves, without any direction from any court, ensure that elections in Co-operative Societies are conducted smoothly, without any disturbance to the law and order.

3. By the impugned judgment, the learned Single Judge disposed of W.P.(C)No.30797 of 2023, directing the 1st respondent to provide adequate police protection for the smooth conduct of the election scheduled to be held on 15.10.2023. If the Society makes a request, the 3rd respondent Returning Officer shall arrange videography at the expense of the Society. However, the prayer for the appointment of an Advocate Observer to oversee the entire proceedings of the polling and counting scheduled to be held on 15.10.2023 was declined. The operative portion of the judgment dated 27.09.2023 reads thus;

“The writ petition is disposed of with the following directions;

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(i) The 1st respondent shall provide adequate Police protection for the smooth conduct of the election scheduled to be held on 15.10.2023.

(ii) If the petitioner makes a request before the 3rd respondent for videography, the same shall be arranged at the expense of the petitioner.

(iii) As regards the prayer for the appointment of an observer, I do not think that circumstances warrant such a direction.”

4. Heard Sri. P.V.Baby, the learned Counsel for the appellant Society, Smt. K.M. Rashmi, the learned Senior Government Pleader and Sri. C.M. Nazar, the learned Standing Counsel for the State Co-operative Election Commission.

5. The learned Counsel for the appellant would contend that the learned Single Judge went wrong in not appointing an Advocate Observer to oversee the entire proceedings of the polling and counting scheduled to be held on 15.10.2023, to elect the Managing Committee of the Society. The learned counsel would point out that, in the nearby Kattappana Service Co-operative Bank and Koovappilly Service Co-operative Bank in Kottayam District, a learned Single Judge of this Court appointed Advocate Observers to oversee the election process. The learned counsel has handed over for the perusal of this Court a copy of the interim order dated 22.03.2023 of a learned Single Judge in W.P.(C)No.10049 of 2023, in respect of Anapanthy Service Co-operative Bank Ltd. in Kannur District, whereby an Advocate Commissioner was appointed to oversee the

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election process scheduled to be held on 25.03.2023, and the judgment dated 23.05.2023 of the learned Single Judge in W.P.(C)No.12819 of 2023, in respect of Kattappana Service Co-operative Bank Ltd., whereby that writ petition was closed after the filing of the report of the Advocate Commissioner appointed to oversee the election process held on 16.04.2023, with an observation that, if any person has any grievance regarding the conduct of the election, it will be open to him to raise the dispute in accordance with law.

6. The learned Standing Counsel for the 2nd respondent State Co-operative Election Commission would point out that, despite the Election Commission taking necessary steps to ensure proper conduct of election to the Managing Committee of Co-operative Societies, many writ petitions are being filed before this Court seeking police protection, videography of election process and appointment of an Advocate Observer to oversee the process of election. In the writ petition, the Society failed to make out a case for the appointment of an Advocate Observer to oversee the process of election. Therefore, the learned Single Judge cannot be found fault with, in declining the relief sought for the appointment of an Advocate Observer.

7. In **Bharat Singh v. State of Haryana [(1988) 4 SCC**

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534] the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. Further, there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

8. In **M/s. Larsen and Toubro Ltd. v. State of Gujarat [(1998) 4 SCC 387]** the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land for M/s. Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that in the absence of any allegation that Rule 3 of the Land Acquisition (Companies) Rules, 1963 had not been complied with and there being no particulars in respect of non-compliance of Rule 4, it is difficult to see as to how

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the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached the conclusion that Rules 3 and 4 had not been complied with in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4". The Apex Court held that it is not enough to allege that a particular Rule or any provision has not been complied with. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non-

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compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

9. In **Narmada Bachao Andolan v. State of Madhya Pradesh [(2011) 7 SCC 639]** a Three-Judge Bench of the Apex Court held that it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned about the questions in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision in a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same

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as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.

10. In the instant case, the averments in paragraphs 2 and 3 of the statement of facts, in support of the reliefs sought for in W.P.(C)No.30797 of 2023, read thus;

"2. In the event of any untoward incident happens the election will have to be stopped thereby the society will incur huge loss. In order to conduct smooth polling and counting, requesting for police protection, representation was submitted to the 1st respondent by the petitioner on 08.09.2023. A true photocopy of the said representation dated 08.09.2023 is produced herewith and may be marked as Exhibit P2. The State Police Chief has issued circular No.28/2013 dated 20.11.2013 directing to provide adequate and effective Police protection for the smooth conduct of the election to the subordinate officers in the Police Department. A true photocopy of the said circular is produced herewith and marked as Exhibit P3. Petitioner apprehends that in spite of Exts.P2 and P3 no effective police protection will be afforded for the smooth conduct of the polling and counting scheduled on 15.10.2023 due to political reasons. The 1st respondent has accepted Ext.P2 on 09.09.2023.

3. In order to prevent bogus voting comparison of identity cards with 6B identity card register is absolutely necessary. If videography is permitted the same can prevent the entry of unauthorised persons to the polling station. If an observer is appointed, he can oversee the entire proceedings of the polling and counting and if any untoward incident happens the same

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can be reported to this Hon'ble Court."

11. Ext.P2 is a copy of the representation dated 08.09.2023 made by the Secretary of the Society before the 1st respondent Station House Officer, seeking police protection. The said representation reads thus;

"2023 ഒക്ടോബർ മാസം 15-ന് വാഗമൺ ഗവൺമെന്റ് ഹൈസ്കൂളിൽ വെച്ച് നടക്കുന്ന മലനാട് സർവ്വീസ് സഹകരണ ബാങ്ക് ഭരണസമിതി തിരഞ്ഞെടുപ്പിൽ രാവിലെ 9 AM മുതൽ വൈകുന്നേരം 4 PM വരെയുള്ള പോളിങ്ങും തുടർന്ന് നടക്കുന്ന കൗണ്ടിങ്ങും സുഗമവും സുരക്ഷിതവുമായി നടത്തുന്നതിനു വേണ്ട പോലീസ് സഹായം ചെയ്തു തരണമെന്ന് താല്പര്യപ്പെടുന്നു."

12. For the superintendence, direction and control of the preparation of electoral rolls and for the conduct of elections to the Co-operative Societies, the State Co-operative Election Commission has been constituted under Section 28B of the Kerala Co-operative Societies Act. Ext.P1 is a copy of the election notification dated 01.09.2023 issued by the 2nd respondent Election Commission, whereby the 3rd respondent has been appointed as the Returning Officer for the polling and counting to elect the Managing Committee of the Society scheduled to be held on 15.10.2023, from 9.00 a.m. to 4.00 p.m., at Government High School, Vagamon.

13. In the writ petition, the appellant Society has not made out a case for the appointment of an Advocate Observer to oversee the process of the election scheduled to be held on 15.10.2023. The

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only averment in paragraph 3 of the writ petition is that, if an observer is appointed, he can oversee the entire proceedings of the polling and counting and if any untoward incident happens the same can be reported to this Court.

14. As per sub-section (1) of Section 69 of the Kerala Co-operative Societies Act, read with clause (c) of sub-section (2), any dispute arising in connection with the election of the board of management or any officer of the Society shall be referred to the Co-operative Arbitration Court constituted under Section 70A of the Act, and the Arbitration Court shall decide such dispute and no other court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. As per the Explanation to clause (c) of sub-section (2), a dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election.

15. As per sub-section (4B) of Section 94, whoever, before, during or after the election of members of the committee or of office bearer or of delegates indulges in or adopts any corrupt practices mentioned in clauses (a) to (h) shall be punishable with imprisonment which may extend up to six months or with fine which may extend up to one thousand rupees or with both. Clauses (a) to

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(h) of sub-section (4B) of Section 94 of the Act read thus;

“(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any lists, notice or other document affixed by or under the authority of the Co-operative Election Commission or the Electoral Officer or the Returning Officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark or the ballot box or any identity card for election relating to any society; or

(d) supplies any forged ballot paper or forged identity card; or

(e) fraudulently put any other matter other than ballot paper in the ballot box which he is not authorized by law; or

(f) commits any criminal offence against the Electoral Officer or the Returning Officer or the Polling Personnel or other office bearers and employees of a society; or

(g) offers any gift or promise with the intention to influence members to vote in favour of him or to any other person; or

(h) compel any person to withdraw or not to withdraw from being a candidate at an election to any society.”

16. In view of the provisions under clause (f) of sub-section (4B) of Section 94 of the Act, whoever, before, during or after the election of members of the committee or of office bearer or of delegates of a Co-operative Society commits any criminal offence against the Electoral Officer or the Returning Officer or the Polling Personnel or other office bearers and employees of a society, which is a corrupt practice, shall be punishable with imprisonment which may extend up to six months or with fine which may extend up to

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one thousand rupees or with both. In view of the provisions under sub-section (1) of Section 95, the offences punishable under sub-section (4A), sub-section (4B), sub-section (8), sub-section (8A) and sub-section (8B) of Section 94 shall be cognizable.

17. As already noticed hereinbefore, the only averment in paragraph 3 of the writ petition is that, if an observer is appointed, he can oversee the entire proceedings of the polling and counting and if any untoward incident happens the same can be reported to this Court. In view of the provisions under sub-section (1) of Section 69 of the Act, read with clause (c) of sub-section (2), any dispute arising in connection with the election, i.e., a dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, of the board of management or any officer of the Society shall be referred to the Co-operative Arbitration Court constituted under Section 70A of the Act, and the Arbitration Court shall decide such a dispute and no other court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such a dispute. In view of the provisions under sub-section (4B) of Section 94 of the Act, whoever, before, during or after the election of members of the committee or of office bearer or of delegates indulges in or adopts any corrupt practices mentioned in clauses (a) to (h) is committing a cognizable offence punishable

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under sub-section (1) of Section 95.

18. When the provisions under the Kerala Co-operative Societies Act deal with the procedure for adjudication of any dispute arising in connection with the election of the board of management or any officer of a Co-operative Society, exclusively by the Co-operative Arbitration Court constituted under Section 70A of the Act, and a person who indulges in or adopts any corrupt practices, before, during or after the election, including a person who commits any criminal offence against the Electoral Officer or the Returning Officer or other office bearers and employees of a Society, has to be proceeded against for an offence punishable under Section 94 of the Act with imprisonment which may extend up to six months or with fine which may extend up to one thousand rupees or with both, this Court, in the exercise of writ jurisdiction under Article 226 of the Constitution of India, cannot appoint an Advocate Commissioner to oversee the entire proceedings of the polling and counting in an election of the board of management or any officer of the Society. In that view of the matter, we find absolutely no merits in the argument of the learned counsel for the appellant that the learned Single Judge went wrong in not appointing an Advocate Commissioner to oversee the entire proceedings of the polling and counting scheduled to be held on 15.10.2023.

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19. In the impugned judgment the learned Single Judge has already made it clear that, if the Society makes a request before the 3rd respondent Returning Officer for videography, the same shall be arranged at the expense of the petitioner.

20. In the result, we find no reason to interfere with the judgment of the learned Single Judge to the extent of declining the prayer sought for appointment of an Advocate Observer to oversee the entire proceedings of the polling and counting scheduled to be held on 15.10.2023.

The writ appeal fails and the same is accordingly dismissed.

Sd/-
ANIL K. NARENDRAN,
JUDGE

Sd/-
SOPHY THOMAS,
JUDGE

jma/04/10