



W.P.(C) No.34804/2023

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N. NAGARESH, J.

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W.P.(C) No.34804 of 2023

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Dated this the 2nd day of November, 2023

J U D G M E N T

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The petitioners, who are members of the 12th respondent-Primary Co-operative Agricultural and Rural Development Bank, Thiruvalla, have filed this writ petition seeking to call for the records leading to the acceptance of nominations of respondents 1 to 9 as their names were reflected in Exts.P3 and P7 by issuing a writ quashing the acceptance of their nominations.

2. The term of the Managing Committee of the 12th respondent-Bank is to expire on 23.11.2023. Ext.P1



Notification for election to the Managing Committee of the Bank was published and the polling is scheduled to be held on 03.11.2023. The petitioners state that 30 nominations were received. After scrutiny, the Returning Officer published final list, which contained 28 names.

3. The petitioners state that after the publication of Ext.P2 list, the Returning Officer enquired with the Secretary of the Bank regarding the loan outstanding position of the candidates and matters as regards their qualification to contest in election. The Secretary provided Ext.P4 information to the Returning Officer which showed that respondents 1 to 9 are either in default or suffer other disqualifications in terms of the provisions of the Kerala Co-operative Societies Act, the Rules and the Bye-laws of the Bank. The petitioners would urge that going by the information provided by the Secretary, acceptance of the nominations of respondents 1 to 9 by the Returning Officer is illegal and it is an improper exercise of power.



4. The petitioners state that respondents 1 to 6 are candidates contesting from the constituency of persons who have taken loans from the Society. Respondents 1 to 6 have not taken any loan from the Society. Therefore, respondents 1 to 6 are ineligible to file nominations from the loanees' constituency. Respondents 7 and 8 are in default to the Society and arbitration proceedings have been initiated against them. Such candidates are disqualified from contesting or being appointed as Members of the Board of Directors of Co-operative Society under Rule 44(1)(c) of the Kerala Co-operative Societies Rules.

5. The petitioners further submit that one seat in the Managing Committee of each Society shall be reserved for members having a deposit of ₹10,000/- and above, as per Section 28(1)(1C) of the Kerala Co-operative Societies Act. The 9th respondent does not have any deposit in the Bank. Still, his nomination was accepted without regard to the objection raised by the 1st petitioner at the time of scrutiny.



6. It is urged that election is notified to fill the 13 vacancies in the Board of Directors of the Bank. The nominations submitted by nine candidates are liable to be rejected. Any election with such huge number of candidates, who are disqualified for contesting elections, would render the election process a farce.

7. Respondents 1 to 9 resisted the writ petition filing counter affidavit. The respondents submitted that the writ petition itself is not maintainable as the petitioners have an efficacious alternative remedy to approach the Co-operative Arbitration Court under Section 69 of the Kerala Co-operative Societies Act, for redressal of their grievance.

8. On behalf of respondents 1 to 9, it is submitted that they are eligible A Class Members of the Bank holding requisite minimum number of shares of the Bank. They all are eligible to contest in the forthcoming election by virtue of Rule 35A(4) of the Kerala Co-operative Societies Rules. Respondents 1, 7 and 8 have not received any notice from the Bank informing them about the defaulted loan amounts.



No award was passed against them by the competent authority. The notices in the execution petitions are illegal and are without passing any award for the defaulted loan amounts.

9. The respondents further submitted that the 9th respondent approached the Secretary of the Bank on 13.10.2023 to deposit ₹10,000/- in his account for contesting the constituency of depositors. However, the Secretary was not ready to accept the deposit. The 9th respondent has preferred a complaint in this regard to the Returning Officer on 13.10.2023 itself.

10. The Returning Officer directed the Secretary to accept the deposit of the 9th respondent and consequently on 17.10.2023, the Secretary of the Bank accepted ₹10,000/- as deposit from the 9th respondent. Therefore, acceptance of nomination of the 9th respondent against depositors constituency, cannot be termed as illegal. At any rate, as the petitioners have alternate remedy to redress their grievances, this Court should not exercise the discretionary



power under Article 226 of the Constitution of India. The writ petition is therefore liable to be dismissed, contended respondents 1 to 9.

11. Relying on the judgment of a Division Bench of this Court in ***Prodair Air products India Private Limited v. State of Kerala*** [2023 (3) KHC 1], the Senior Counsel assisted by the counsel for the petitioners argued that when gross illegalities are at large, existence of alternate remedy should not be a bar to entertain a writ petition. The need for upholding the rule of law would mandate that the High Court decides the matter in situations where the exercise of statutory power does not conform to the requirements of fairness, non-arbitrariness and reasonableness.

12. The Senior Counsel argued that in the judgment in ***Abraham v. Returning Officer*** [1993 (1) KLT 548], a Division Bench of this Court has held that in case of rejection of nominations by Returning Officer in an election, the High Court can interfere and issue a writ of certiorari, if there is an error apparent on the face of the record and if the rejection



was perverse and wholly arbitrary. The same principle can be followed in the case of any illegal acceptance of an invalid nomination, contended the Senior Counsel.

13. Relying on the judgment of a Division Bench of this Court in W.P.(C) No.31646 of 2023, the learned Senior Counsel pointed out that this Court has held that in case an ineligible person is permitted to contest the elections, the integrity of the elections would stand compromised and that there is no provision for conduct of any by-election if the candidate is elected and later found to be ineligible.

14. The Senior Counsel relied on a Division Bench judgment of the Hon'ble Bombay High Court in ***Suleman Fakhruddin Ansari v. S. B. Kulkarni*** [AIR 1963 Bom 183] wherein the Hon'ble Bombay High Court has held that if a Returning Officer rejects a nomination on wholly inadequate grounds, it would save public time and money, as well as expense, inconvenience and hardship to the parties, if the Returning Officer's action is corrected before the election takes place. Since the election to the respondent-Bank is yet



to take place, this Court can interfere in the matter in exercise of the powers under Article 226 of the Constitution of India, contended the Senior Counsel.

15. The counsel for the respondents, on the other hand, relied on the judgment of the Apex Court in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others*** [(2001) 8 SCC 509] and argued that scrutiny of nominations is a part of the election process. Therefore, a writ petition challenging acceptance of any nomination paper would not be maintainable. Such illegality should be challenged in an election petition.

16. Placing reliance on the judgment of the Apex Court in ***Shaji K. Joseph v. V. Viswanath and others*** [(2016) 4 SCC 429], the counsel for the respondents argued that whenever process of election starts, normally courts should not interfere with the process of election, for the simple reason, that if the process of election is interfered with by courts, possibly no election would be completed without



court's order. All disputes with regard to election should be dealt with only after completion of the election.

17. The counsel for the respondents also relied on the judgments of this Court in ***Subramanian v. Devicolam Taluk Plantation Workers Co-op. Credit Society*** [2004 (3) KLT SN 145], ***Jayavarma K. v. State Co-operative Election Commission and others*** [2017 (1) KLT 921], ***Kuttiyachan Joseph and another v. P.V. Manoharan and others*** [2018 (3) KLT 631] and ***Chala Farmers Welfare Co-operative Society v. Sahadevan*** [2020 (2) KLT 531] to urge that a writ petition is not maintainable when the Kerala Co-operative Societies Act provides a remedy for resolution of dispute in connection with election to the Managing Committee of any Society. A judgment of the Hon'ble High Court of Gujarat in ***Raghubhai Munjibhai Mungra v. Jamnagar District Co-operative Bank Ltd. And others*** [AIR 2020 Guj 185] was also relied on, in this regard.

18. I have heard the learned Senior Counsel appearing at the instance of the petitioners and the learned



Counsel appearing for respondents 1 to 9. I have also heard the learned Standing Counsel appearing for the 10th respondent and the learned Counsel appearing for the 12th respondent.

19. The specific case of the petitioners is that respondents 1 to 6 are candidates contesting from the constituency of persons who have taken loans from the Society and respondents 1 to 6 have not taken any loans from the Society, which in fact render them disqualified for contesting from Loanees' / Borrowers' constituency. Respondents 7 and 8 are in default to the Society and arbitration proceedings are initiated against them. In view of Rule 44(1)(c)(i) of the Kerala Co-operative Societies Rules, respondents 7 and 8 are disqualified.

20. According to the petitioners, the 9th respondent who has filed nomination for contesting from Depositor's constituency, holds no deposit/s in the Society and hence he is also not qualified to contest election. These facts were brought to the notice of the Returning Officer and yet the



Returning Officer illegally accepted their nominations treating them as valid nominations.

21. Clause 23(1) of Ext.P5 Bye-laws of the Bank provides that out of the 13 Member Managing Committee, seven shall represent the borrowing Members and that only Members who have availed long term loan are eligible to contest in the election to the Board representing Loanee/Borrower constituency. In support of the contention, the petitioners rely on Ext.P4 communication stated to be submitted by the Secretary of the Bank to the Returning Officer.

22. Ext.P4 is a communication dated 17.10.2023. Ext.P4 communication of the Secretary would indicate that respondents 1 to 6 have no loan transactions with the Bank. In this regard, it is to be noted that as per Ext.P1 Election Notification, 16.10.2023 is the date prescribed for submission of nominations. 17.10.2023 is the date and 11.00 am is the time, fixed for scrutiny. Ext.P4 communication bears the date of scrutiny, namely 17.10.2023. Though there is an



acknowledgment endorsed in Ext.P4 that the same was received at 10.30 am on 17.10.2023, it will not be safe to conclude that the contents of Ext.P4 were known to the Returning Officer at the time of scrutiny. It would not be safe also for the reason that respondents 1 to 9 would urge that the contents therein are not correct and Ext.P4 has been issued without the approval of the Managing Committee.

23. The statements contained in the affidavit filed by the respondents, with regard to the eligibility of the 9th respondent to contest from Depositors constituency is of relevance in this regard. The counter affidavit of respondents 1 to 9 would state that in order to contest from the Depositors' Constituency, the 9th respondent approached the Secretary on 13.10.2023 requesting to accept his deposit. The Secretary did not accept the deposit offered by the 9th respondent till 4.30 pm. The 9th respondent on the same day addressed Ext.R2(b) complaint to the Returning Officer.

24. The 9th respondent again went to the Secretary to make deposit, on 15.10.2023. Ext.R2(c) letter would indicate



that on 15.10.2023 also, the Secretary did not accept deposit and the 9th respondent complained to the Returning Officer personally on 15.10.2023. Again, the 9th respondent went to the Secretary on 16.10.2023 on which date also the deposit was not accepted. The respondents would submit that it was only on 17.10.2023 and that too on the directions of the Returning Officer that the Secretary accepted the deposit. These statements cast a shadow on the conduct of the Secretary at the time of election process.

25. As regards the allegation that respondents 7 and 8 suffer from default to the Bank, it is not in dispute that they are A Class members of the Bank holding minimum shares of the Bank. To treat respondents 7 and 8 as in default, the Bank has to send notice to them and only after expiry of a period of one month from the date of receipt of notice from the Bank, they can be treated as members in default. There is nothing on record to show that the Society/Bank has issued notices to respondents 7 and 8.



26. Respondents 7 and 8 would urge that no Awards are passed against them. In order to establish that respondents 7 and 8 are “defaulters” as defined under Rule 2(e), there must be a decree against them. The petitioners have not produced any materials to show that there are decrees against the respondents. The notices produced by the petitioners to show that the petitioners are “in default”, are not notices issued by the Bank. Ext.R12(b) to Ext.R12(m) documents produced by the 12th respondent would only indicate that the notices were issued by Special Sale Officer, on the basis of which alone one cannot conclude that respondents 7 and 8 are in default.

27. The allegations made by the petitioners in the writ petition are disputed questions of fact. This Court has held in the judgments in ***Subramanian v. Devicolam Taluk Plantation Workers Coop. Credit Society*** [2004 (3) KLT SN 145], ***Jayavarma K. V. State Co operative Election Commission and others*** [2017 (1) KLT 921], ***Kuttiyachan Joseph and another v. P.V.Manoharan and others*** [2018



(3) *KLT 631*] and in ***Chala Farmers Welfare Co-operative Society v. Sahadevan*** [2020 (2) *KLT 531*] that when Section 69 of the Kerala Co-operative Societies Act, 1969 specifically provides a remedy for resolution of dispute in connection with election to the Managing Committee of any Society, such disputes have to be called in question under Section 69 of the Kerala Co-operative Societies Act, 1969.

28. In the facts of the case, I find that this is not a fit case to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. The petitioners have to resort to the remedy provided under the Kerala Co-operative Societies Act, 1969 for redressal of their grievances.

The writ petition is therefore dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/02.11.2023

APPENDIX OF WP (C) 34804/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE ELECTION NOTIFICATION BEARING NO. E(2)5737/2023/S.C.E.C DATED 19.09.2023 ISSUED BY THE 10TH RESPONDENT ELECTION COMMISSION
- Exhibit P2 TRUE COPY OF THE LIST OF 30 CANDIDATES, WHOSE NOMINATIONS HAVE BEEN ACCEPTED, PUBLISHED BY THE RETURNING OFFICER ON 16.10.2023
- Exhibit P3 TRUE COPY OF THE FINAL LIST PUBLISHED BY THE RETURNING OFFICER ON 17.10.2023.
- Exhibit P4 TRUE COPY OF THE COMMUNICATION DATED 17.10.2023 CONTAINING THE DETAILS OF THE CANDIDATES.
- Exhibit P5 TRUE COPY OF THE BY-LAWS OF THE 12TH RESPONDENT BANK AS REGISTERED DATED 19.09.2012.
- Exhibit P6 TRUE COPY OF THE OBJECTION SUBMITTED BY THE 1ST PETITIONER AND ACKNOWLEDGED BY THE RETURNING OFFICER ON 17.10.2023.
- Exhibit P7 TRUE COPY OF THE LIST PUBLISHED BY THE RETURNING OFFICER ON 18.10.2023.

RESPONDENT'S EXHIBITS

- Exhibit R12 [a] True copy of the resolution adopted on 23.11.2022.
- Exhibit R12 [b] True copy of the notice issued on 24.01.2023 to the 1st respondent by the Sale Officer.
- Exhibit R12 [c] True copy of the acknowledgement evidencing the receipt of Exhibit-R12(b) notice by the 1st respondent .
- Exhibit R12 [d] True copy of the notice dated 04.08.2023 issued by the Special Sale Officer to the 1st respondent and his wife Susan Prasad.



- Exhibit R12 [e] True copy of the acknowledgement card evidencing the receipt of Exhibit-R12(d) notice issued by the Special Sale Officer.
- Exhibit R12 [f] True copy of the notice issued on 25.02.2023 by the Special Sale Officer to R7 in EA No. 291/22-23.
- Exhibit R12 [g] True copy of the resolution adopted by the Board of Directors dated 23.11.2022 by the Bank.
- Exhibit R12 [h] True copy of the acknowledge card received by the 7th respondent .
- Exhibit R12 [i] True copy of the board resolution dated 23.11.2022 pertaining the loan availed by the 8th respondent.
- Exhibit R12 [j] True copy of the notice dated 30.01.2023 issued to the 8th respondent.
- Exhibit R12 [k] True copy of the acknowledgement card evidencing the receipt of Exhibit-R12(j) .
- Exhibit R12 [l] True copy of the notice issued by the Special Sale Officer dated 21.08.2023.
- Exhibit R12 [m] True copy of the acknowledgement card evidencing the receipt of Exhibit-R12(l) .
- Exhibit R2 (a) True copy of the passbook of the 1st respondent
- Exhibit R2 (b) True copy of the complaint preferred by the 9th respondent dated 13/10/2023
- Exhibit R2 (c) True copy of the complaint preferred by the 9th respondent dated 16/10/2023
- Exhibit R2 (d) True copy of the complaint dated 25/10/2023 preferred by the 2nd respondent
- Exhibit R2 (e) True copy of the objection submitted by the 2nd respondent against the 9th petitioner before the returning officer
- Exhibit R12 [n] True copy of the communication issued by the returning officer dated 16.10.2023..



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Exhibit R12 [o] True copy of the call details taken from the call log of the deponent.

Exhibit R12 [P] True copy of the letter dated 17.10.2023, issue by the 9th respondent to this deponent.