

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 29TH DAY OF AUGUST 2019 / 7TH BHADRA, 1941

WP(C).No.23270 OF 2019(G)

PETITIONER:

PRABALAJITH,  
AGED 50 YEARS  
(MEMBER NO.258), S/O.BAHULEYAN, GEETHABHAVANAM,  
NEENDAKARA P.O., KOLLAM - 691 582.

BY ADVS.  
SRI.V.V.NANDAGOPAL NAMBIAR  
SMT.SMITHA (EZHUPUNNA)  
SRI.DHEERAJ KRISHNAN PEROT  
SMT.CHITRA JOHNSON

RESPONDENTS:

- 1 THE ELECTORAL OFFICER TO PARIMANAM KSHEERODHPADAKA  
CO-OPERATIVE SOCIETY LTD.NO.Q133(D) APCOS,  
ASSISTANT REGISTRAR (GENERAL), OFFICE OF THE  
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,  
NEDUMANGAD, THIRUVANANTHAPURAM-695006.
- 2 THE RETURNING OFFICER TO PARIMANAM KSHEERODHPADAKA  
CO-OPERATIVE SOCIETY LTD.NO.Q133 (D) APCOS,  
UNIT INSPECTOR, VENJARAMOOD, OFFICE OF THE ASSISTANT  
REGISTRAR OF CO-OPERATIVE SOCIETIES, NEDUMANGAD,  
THIRUVANANTHAPURAM-695006.
- 3 THE ADMINISTRATOR,  
PARIMANAM KSHEERODHPADAKA CO-OPERATIVE SOCIETY  
LTD.NO.Q133(D) APCOS, NEENDAKARA P.O.,  
KOLLAM - 691 582.
- 4 PARIMANAM KSHEERODHPADAKA CO-OPERATIVE SOCIETY  
LTD.NO.Q 133(D) APCOS,  
NEENDAKARA P.O., KOLLAM - 691 582,  
REPRESENTED BY ITS SECRETARY.
- 5 THE STATE CO-OPERATIVE ELECTION COMMISSION,  
THIRUVANANTHAPURAM, 3RD FLOOR, CO-BANK TOWERS,  
PALAYAM, VIKAS BHAVAN P.O.,  
THIRUVANANTHAPURAM - 695 033.

6 THE SECRETARY, PARIMANAM KSHEERODHPADAKA  
CO-OPERATIVE SOCIETY LTD.NO.Q133 (D) APCOS,  
NEENDAKARA P.O., KOLLAM - 691 582.

SMT.C.S. SHEEJA-SGP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner is stated to be the member of the 4<sup>th</sup> respondent-Perimanam Ksheerodhpadaka Co-operative Society Ltd. (hereinafter referred to as 'the Society' for short) and he impugns Ext.P3 Election Notification issued by the Kerala State Co-operative Election Commission (hereinafter referred to as 'the Commission' for short), as also the proceedings being taken pursuant thereto, on the specific ground that the said notification was published much after the Draft Voters List had been prepared and that the members of the Society, who are merely 87 in number, received the postal intimation of the notification only on 05/08/2019, while the dead line for filing objections against the Draft Voters List, as per Ext.P3, was 05/08/2019 at 5.00 pm.

2. The petitioner thus alleges that he and other members were unable to make objections to the Draft Voters List and therefore, that the entire processes now being followed by the Election Commission stands vitiated.

3. The petitioner then adds that he had thereafter preferred Ext.P6 objections before the Electoral Officer, wherein he has referred to 25 persons who have been included in the Final Voters List illegally and that, as is clear from Ext.P5 information obtained by another member of the Society under the Right to Information Act, at least 8 members in the said List have not obtained registration from the Dairy Development Department. He says, therefore, that his allegations against Ext.P3 are fully substantiated and prays that the elections, which are scheduled to be held on 30/08/2019, be directed to be deferred.

4. In response to the above, the learned Senior Government Pleader-Smt.C.S.Sheeja, submitted that as per the instructions she has received from the Electoral Officer, a copy of Ext.P3 notification had been published by the said Officer on the notice board of the Society on 29/07/2019 and that thus all members had at least another seven days before which they could have made their objections to the Draft Voters

List. She says that going by Rule 35A(3A) of the Kerala Co-operative Societies Rules, in the case of Societies with less than 500 members, the Election Commission is obligated to intimate each of the members in the Final Voters List the particulars of the notification; and that this clearly indicates that such intimation has to be given only after the Final Voters List is published. She thus asserts that the allegations of the petitioner, founded on the assertion that the notification was received by them by post only on 05/08/2019, is of no consequence, since the Final Voters List was published only on 07/08/2019 and the petitioner could have raised objections soon thereafter, rather than have waited for so long to approach this Court. She says that the intention of the petitioner cannot be found to be *banafide* because the polling is scheduled tomorrow (30/08/2019).

5. I have considered the afore submissions and I have examined the pleadings on record. I find some force in the submissions of the Senior Government Pleader because, admittedly, the

petitioner received notice through post from the Election Commission, as regards Ext.P3 notification, at least on 05/08/2019. If he had serious objections against the Voters List, he could have certainly approached this Court immediately thereafter. That apart, even going by Ext.P6 objections that preferred by him before the Electoral Officer, he has not named any particular person but has only stated vaguely that about 22 persons are ineligible to be included in the List. This clearly indicates that the petitioner's allegations are not specific and that he merely harbours a suspicion regarding some of the members included in the Voters List.

6. Of course, when I say this, I am also aware of the submissions of Shri.V.V.Nandagopal Nambiar-learned counsel for the petitioner, that as per Ext.P1, every member requires certain qualifications to attain voting rights in the Society. However, when I go through Ext.P1, which is the relevant portion of the Bye-laws of the Society, what is stipulated therein are only the conditions with respect to the membership in the

Society and not to the voting rights. At least, those portions of the Bye-laws, if any, are not available before this Court. I cannot, therefore, affirmatively take a view on the submissions of Shri.V.V.Nandagopal Nambiar, particularly because there are absolutely no pleadings on record against specific members nor have such members been named or made parties in this case added to this is the fact that the polling is scheduled on 30/08/2019.

I am, therefore, constrained not to issue orders, as has been prayed for, especially being guided by the judgment of the Hon'ble Supreme Court in **Shri.Sant Sadguru v. State of Maharashtra and Others** [2001(8) SCC 509]; and I, therefore, deem it appropriate to close this writ petition, however, ordering that the persons shown in Ext.P5 be allowed to cast their votes only in a separate ballot box, but that the results of the election can be declared reckoning these votes also, so that the petitioner can invoke his statutory remedies appropriately after the election process is over.

With the afore observations and directions  
this writ petition is closed.

Sd/-

**DEVAN RAMACHANDRAN**

**JUDGE**

MC/29.8.19

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PORTION OF BYE-LAW OF PARIMANAM KSHEERODHPADAKA CO-OPERATIVE SOCIETY LTD.
- EXHIBIT P2 TRUE COPY OF THE FINAL VOTERS LIST PUBLISHED ON 07/08/2019.
- EXHIBIT P3 TRUE COPY OF THE NOTIFICATION ALONG WITH ORDER DATED 27/07/2019.
- EXHIBIT P4 TRUE COPY OF THE ENVELOPE WITH POSTAL SEAL.
- EXHIBIT P5 TRUE COPY OF LIST PREPARED BY THE VETENARY SURGEON, NEENDAKARA.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION TO THE 2ND RESPONDENT DATED 24/08/2019.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION TO THE 1ST RESPONDENT DATED 24/08/2019.

**RESPONDENT'S/S EXHIBITS:**

NIL

MC

(TRUE COPY)

PA TO JUDGE