

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945
WP(C) NO. 2752 OF 2024

PETITIONER:

BIJU PRASAD C
AGED 54 YEARS
S/O CHELLAPPAN PILLAI, AROMAL BHAVAN, THONDIYARA,
EROOR P.O, PUNALUR, KOLLAM., PIN - 691312

BY ADVS.
VISHNU BHUVANENDRAN
C.P.SABARI
B.ANUSREE
ABHILASH C.V.
VARUN JACOB
MIRAL K.JOY

RESPONDENTS:

- 1 STATE CO-OPERATIVE ELECTION COMMISSION
REPRESENTED BY STATE CHIEF CO-OPERATIVE ELECTION
COMMISSIONER, 3RD FLOOR, CO-BANK TOWERS, PALAYAM,
VIKAS BHAVAN P.O, THIRUVANANTHAPURAM., PIN - 695033
- 2 RETURNING OFFICER TO EROOR KSHEEROLPADAKA SAHAKARANA
SANGHAM- LTD
NO. Q. 32 (D) APCOS, DAIRY FARM INSPECTOR (A UNIT),
ANCHAL, OFFICE OF THE DAIRY EXTENSION SERVICE UNIT,
BLOCK PANCHAYATH BUILDING, ANCHAL P.O. KOLLAM.,
PIN - 691306
- 3 EROOR KSHEEROLPADAKA SAHAKARANA SANGHAM- LTD
NO. Q. 32 (D) APCOS, ALANCHERY, EROOR P.O.,
REPRESENTED BY ITS SECRETARY, PIN - 691312

SRI. P C SASIDHARAN, SC FOR EROOR KSHEEROLPADAKA
SAHAKARANA SANGHAM,
SRI. C M NAZAR, SC FOR STATE CO-OPERATIVE ELECTION
COMMISSION,
SRI A. S DHEERAJ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a member of the Eroor Ksheerolpadaka Sahakarana Sangham, the 3rd respondent herein. He contends that the election to the Society is scheduled to be held on 3.2.2024. The nomination submitted by him to stand for the election has been rejected on the ground that the petitioner, while serving as a committee member of the society for the previous turn, had earned a sitting fee at a rate beyond the prescribed rate for the same and the petitioner is in default to the society.

2. The petitioner contends that to acquire disqualification under Rule 44(1)(c)(i) of the Co-operative Societies Rules, the member should be in default to the society or to any other society in respect of any loan or loans taken by him or loan in which he had stood surety, for such period, as is prescribed in the bye-laws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society. In order to be a defaulter, as defined under Rule 2(e) of the Rules, a decree has to be passed against him. None of the above conditions are satisfied in so far as the petitioner is concerned, and therefore, the rejection of the nomination is

improper, contends the petitioner. It is further contended that he has not been informed of any such dues to enable him to make repayment. It is on these assertions that this writ petition is filed seeking the following reliefs:

- i). Declare that the rejection of nomination paper submitted by the petitioner as per Ext. P1 notification, by the second respondent is illegal, arbitrary and liable to be interfered with.
- ii) Issue a Writ of Mandamus, any appropriate Writ order or direction to the competent among the first and second respondents to accept the nomination paper submitted by the petitioner to contest in the election to the Committee of the third respondent society and include the petitioner also in the final list of candidates by supplementation and permit him to contest in the elections scheduled as per Ext. P1 on 3.2.2024.

3. A counter affidavit has been filed on behalf of the 3rd respondent. It is stated that the petitioner was an elected member and President of the Managing Committee of the society for the period from 2009-2014 and from 2014-2019. During this period, the petitioner has committed financial irregularity in the society, which includes excess drawal of honorarium. It is stated that in terms of a resolution, Exhibit R3(a) notice was issued to the Petitioner on 2/10/2018, directing him to repay the amount due to society. In the audit report dated 3/11/2018 for the financial year 2017-2018, the statutory auditor has noted an audit objection of excess drawal of a sum of

Rs.8800/-, as is evident from Ext. R3(b). The audit Certificate for the subsequent financial year also notes the excess drawal on the part of the Petitioner. It is further stated that the Deputy Director of Dairy Development has issued Exhibit R3 (d) proceedings observing that the sum of Rs.17026/- is to be recovered from the petitioner, who was the president of the society at the relevant point of time. Finally, he was served with Ext.R3(e) notice on 5/4/2021 to recoup the amount payable by him. It is stated that the petitioner has not remitted the amounts till now.

4. It is further stated that under rule 44(1)(j) of the Co-operative Societies Rules, no member of the society is entitled to be elected or appointed as a member of the committee if he is disqualified under any of the provisions of the bye-laws. It is stated that as per clause 5(2) of the bye-laws of the Society, the member should not be in default of any amounts due to the society. It is also stated that rejection of nomination is an election dispute, and it is for the petitioner to approach the jurisdictional authority under Rule 69 of the Co-operative Societies Rules.

5. I have considered the submissions advanced.

6. The contention of the petitioner is based on Rule 44(1)(c)(i) of the Co-operative Societies Rules. He contends that he is neither a defaulter nor is

in default to the Society or to any other society in respect of any loan or loans taken by him or loan in which he had stood surety, for such period, as is prescribed in the bye-laws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society. For reasons best known to the petitioner, he has not chosen to produce the byelaws of the Society. Clause 5.2 of the bylaws reads as under.

5.2 താഴെ പറയുന്ന യോഗ്യതകളുള്ള അംഗങ്ങൾക്കു മാത്രമേ ഭരണസമിതിയിലെ അംഗങ്ങളായി തിരഞ്ഞെടുക്കപ്പെടാനും തുടരാനും അവകാശം ഉണ്ടായിരിക്കുകയുള്ളൂ.

(i) അയാളിൽ നിന്നും സംഘത്തിനകിട്ടേണ്ടതും അവധികഴിഞ്ഞതുമായ ഏതെങ്കിലും തുകയെ സംബന്ധിച്ചിടത്തോളം അയാൾ വിഴുവരുത്തിയിട്ടില്ലാതിരിക്കുക.

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(xi) കേരള സഹകരണ സംഘം ആക്ടിലും ചട്ടങ്ങളിലും തിരഞ്ഞെടുപ്പ് ചട്ടങ്ങളിലും ഈ നിയമാവലിയിലും ഭരണസമിതിയിലേക്ക് തിരഞ്ഞെടുക്കപ്പെടുന്നതിന് കല്പിച്ചിട്ടുള്ള അയോഗ്യതകളൊന്നും തന്നെ അയാൾക്കില്ലാതിരിക്കുക.

7. The bye-laws clearly state that only persons who have not acquired any default under the said provision are entitled to be elected as a member of the committee and to continue as such.

8. Exts.R3(a) to (d) clearly discloses that in terms of the resolutions issued, communications have been issued to the petitioner calling upon him to make payment of the amounts due to the Society from the petitioner. The petitioner has no case that the said amount has been paid.

9. Furthermore, under Rule 44(1)(j), no member of the society shall be eligible to be elected or appointed as a member of the committee of the society under S.28 if he is disqualified under any other provisions in the bye-laws of the society. In the case on hand, the petitioner has in fact acquired default in terms of the bye-laws. In that view of the matter, the petitioner is not entitled to any of the reliefs sought.

This writ petition is dismissed, reserving the right of the petitioner to exhaust his statutory remedies.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

APPENDIX OF WP (C) 2752/2024

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE ELECTION NOTIFICATION DATED 21.12.2023 PUBLISHED BY THE STATE CO-OPERATIVE ELECTION COMMISSION.
- Exhibit P2 TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 17.01.2024 FOR ACCEPTANCE OF FEES FOR NOMINATION PAPER OF THE PETITIONER.
- Exhibit P3 TRUE COPY OF THE DECISION IN SUKUMARAN NAIR K. N. V. RETURNING OFFICER TO IDUKKI DISTRICT EX-SERVICEMEN EMPLOYEES CO-OPERATIVE SOCIETY LTD. REPORTED IN 2013 KHC 3318.
- Exhibit P4 TRUE COPY OF THE LIST OF CANDIDATES WHO HAVE SUBMITTED VALID NOMINATIONS, AS PUBLISHED BY THE RETURNING OFFICER ON 18.01.2024.
- Exhibit P5 TRUE COPY OF THE INSPECTION REPORT DATED 18.07.2020 ISSUED BY THE SENIOR DAIRY EXTENSION OFFICER, ANCHAL BLOCK, DAIRY DEVELOPMENT TO THE SOCIETY.
- Exhibit P6 TRUE COPY OF THE LETTER DATED 04.04.2023 ISSUED BY THE JOINT DIRECTOR OF DAIRY DEVELOPMENT DEPARTMENT, THIRUVANANTHAPURAM TO THE PETITIONER.
- Exhibit P7 TRUE COPY OF THE BYLAWS OF THE EROOR KSHEEROLPADAKA SAHAKARANA SANGHAM LTD NO. Q.32 (D) APCOS.

RESPONDENTS' EXHIBITS:

EXHIBIT R3(a) The true copy of the notice dated 2/10/2018 with copy of the acknowledgement card evidencing receipt of the registered post

EXHIBIT R3(b) The true copy of the note in the audit objection of the statutory auditor dated 3.11.2018

EXHIBIT R3(c) The true copy of the note in the audit objection of the statutory auditor dated 25.10.2021

Exhibit R3(d) The true copy of the proceedings of the Deputy Director of Dairy Development dated 29/03/2021

EXHIBIT R3(e) The true copy of the notice dated 5/4/2021