

(2015) 04 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 10162, 13098 and 22114 of 2014

P.P. Adbussamad

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 4

Citation : (2015) 04 KL CK 0043

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : K. Ramakumar, Senior Advocate, S.M. Prasanth, M. Manojkumar (Chelakkadan), Asha Babu and Ammu Charles, for the Appellant; Rafeek V.K., Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J.

1. The issues involved in these writ petitions relate to the election of the managing committee of Pulikkal Kawakibunnayyira Sangam, (for short, the society), Regd. No. 6/1962. P.O. Pulikkal, Malappuram district. The society is running AMMLPS and HS, Pulikkal.

2. In W.P.(C) No. 10162 of 2014, the petitioner alleges that the District Education Officer is not issuing the order approving the petitioner as the manager of the school. In W.P.(C) No. 13098 of 2014 filed by one Mohammed Master, it is alleged that he was the duly elected secretary of the society and the District Registrar, who is bound to approve the same, was not issuing any orders. In W.P. (C) No. 22114 of 2014 filed by one V. Mohammedali and the petitioners in other two writ petitions, they are challenging the order of the District Registrar dated 16.8.2014 approving the list of managing committee for the year 2014-2015.

3. By the time when the matters came up before this Court the first two writ

petitions i.e. W.P.(C) Nos. 10162 of 2014 as well as 13098 of 2014 have become practically infructuous as the District Registrar Co-operative Societies, Malappuram, has passed the order which is under challenge in W.P.(C) No. 22114 of 2014.

4. In W.P.(C) No. 22114 of 2014, the petitioners allege that Ext. P9 order passed by the District Registrar is unsustainable in law. It is further alleged that Ext. P9 was made in violation of the principles of law, contrary to the various decision of this Court as well as the civil court and, therefore, Ext. P9 is liable to be interfered with.

5. The society was registered under the Societies Registration Act, 1860 and has been functioning as such, holding elections every three years to the managing committee. One of the members of the managing committee would function as the manager of the school made mention of above.

6. Admittedly, there are various disputes between the petitioners and the rival group. The petitioners allege that they were continuing to be in office continuously. According to them, for the elections held on 1.4.2011 also, the petitioner's group was elected and the list of the office bearers was approved by the first respondent. They would further allege that the elections held after the judgment of this Court were never challenged by the contesting respondents and, therefore, they have a right to represent the society.

7. The petitioners further allege that in April, 2014, an election was held and the earlier committee which was approved as per Ext. P3 was re-elected by the general body which was presided over by the President of the earlier managing committee. The list of the managing committee elected was submitted before the first respondent. They also allege that as usual, the contesting respondents raised objections before the Registrar and brought to bear political influence not to approve the list submitted by them.

8. The grievance of the petitioners is that the list submitted by the second respondent was approved by the first respondent by Ext. P9. According to them, the second respondent cannot legally become the managing committee of the society which runs the school as he is a teacher in the school run by the society itself and the provisions contained in the Kerala Education Rules forbids the same. The petitioners further allege that they have submitted a detailed statement before the first respondent enclosing all the relevant documents. However, the attempt of the contesting respondents to pressurise the first respondent to accept their list, succeeded and accordingly, Ext. P9 order was passed.

9. In the counter affidavit filed by the second respondent, they have justified the stand taken by the first respondent in issuing Ext. P9. The same stand was taken by the State also in the detailed counter affidavit filed by the first respondent.

10. I have heard Mr. Ramakumar, the learned senior counsel ably assisted by

Adv. Sri. S.M. Prasanth, for the petitioners Mr. George Poonthottam, the learned counsel for the second respondent, Mr. Rafeeq, the learned Government Pleader and Mr. Mohanakannan, the learned counsel appearing for the manager of the school elected by the managing committee as approved by Ext. P9.

11. It was argued by the learned senior counsel for the petitioners that all that the District Register in exercise of his powers vested under the Act can do is to conduct an enquiry whether the election has been properly conducted with participation of the members entitled to vote. It was argued that no findings were recorded in that regard in the impugned order though he had been directed in the judgment of this Court in the earlier writ petitions. It was argued that the District Registrar has no powers to declare whether a particular person is a member of the society or not. All that he is entitled to decide is whether he is entitled to decide in relation to the holding of election; so submitted the learned senior counsel.

12. It was also pointed out that no reasons have been stated why the list submitted by the second respondent, who is one of the teachers of the school, can be accepted while the minutes duly approved by the former District Registrar evidencing the attendance in the general body meeting was failed to be examined by the present Registrar. Therefore, according to the learned senior counsel, the order of the District registrar is vitiated by various errors of law.

13. Mr. George Poonthottam, the learned counsel for the second respondent, per contra, would submit that the second respondent was the elected Secretary of the society in the election held on 1.4.2014. In the said meeting of the society, apart from the Secretary, the President, Treasurer and 28 members were elected, and after the said election, the list was forwarded to the Director under Section 4 of the Societies Registration Act. However, another list was given at the instance of the petitioners which necessitated the District Registrar to consider the genuineness of the said list within the limited jurisdiction as enjoyed by the Registrar while exercising the power under Section 4 of the Act. It was submitted that the parties were heard by the District Registrar with notice and after considering the records, Ext. P9 order was passed.

14. It is settled law that a challenge as against the approval of the list by the District Registrar has to be made before a civil court and that the disputed questions cannot be decided in a proceedings under Article 226 of the Constitution of India. The said question was the subject matter of challenge in respect of the same society, as can be seen from Ext. P1 judgment in W.P.(C) No. 22114 of 2014. As advised by this Court by Ext. P1 judgment, the second petitioner claiming to be the Secretary of the Society and one Ashraf, claiming as the Vice President of the Society, filed a suit as O.S No. 443 of 2012 before the Munsiff's Court, Manjeri seeking declaration to the effect that the notice issued on 1.4.2014 for the general body meeting and the list of the executive committee elected on 2.4.2014 have to be nullified and seeking further reliefs. A copy of the plaint is produced and marked as Ext. R2(a).

15. As rightly pointed out by Mr. George Poonthottam, it has to be presumed that the petitioners have conceived the contents of Ext. P1 and, therefore, in view of the filing of Ext. R2(a) suit, there is no justification in any further continuance of the present writ petition as there cannot be a parallel proceedings in relation to a meeting.

16. A Division Bench of this Court in C.M.Z. Musaliar v. Aboobacker [1998 (1) KLT 136] examined the scope of filing of the returns as per Section 4 of the Societies Registration Act. It was observed that in the case of dispute when more than one return is filed, the Registrar has got powers to find out as to which one he should accept. There may not be an elaborate enquiry. It was further observed that, prima facie, the Registrar has to satisfy as to which return has to be accepted. However, such an enquiry made by the Registrar and the decision taken from it does not become final and the party can take up the matter before a competent court for a decision as to who are the members of the governing body. This view was accepted by the Apex Court in A.P. Aobaker Musaliar v. Distt. Registrar (G), Kozhikode and others [(2004) 11 Supreme Court Cases 247].

17. In Ext. P9 also, the first respondent has undertaken the exercise to consider which committee has to be approved. The claim of the petitioners is that an election was held in April, 2014 which approved Ext. P3 and re-elected the earlier committee. Ext. P3 has no relevance since the list submitted in relation to the election for the period 2011 to 2014 is under challenge.

18. The next allegation of the petitioner is that the second respondent cannot become a member of the managing committee of the society which runs the school, as the second respondent is the teacher of the school run by the society. According to the learned senior counsel for the petitioners, it is against the provisions of KER. The question as to whether there is a legal disability for the second respondent to be elected as the Secretary of the society was never raised as an issue by the first respondent. If there is a legal bar under KER, that cannot affect an election of an office bearer. There can only have consequence on the second respondent if there is such a legal prohibition. The argument of the learned counsel for the second respondent is that there is no legal prohibition for a teacher of the school to be the Secretary of the society. There is nothing in law as advanced by the petitioners disabling the second respondent from being elected as the Secretary of the society, Therefore, an illegality cannot be attributed to Ext. P9 on account of same.

19. A perusal of Ext. P9 would go to show that the order was passed after considering the bye-laws of the society, the procedure provided therein in electing office bearers and taking into account all relevant aspects which the District Registrar should have considered while considering the matter of this nature. Ext. P9 order passed by the District Registrar is after due application of mind and consideration of the relevant facts as is demonstrated from Ext. P9. Therefore, there is no justification in making allegations against the first respondent for taking such a decision after taking into account all the relevant

aspects.

20. In the counter affidavit filed by the first respondent, it was specifically stated that in the year 1999 when a dispute arose, the meeting was not presided over by the reigning president. The first respondent further state that Ext. P9 is sustainable in law as it was passed strictly in accordance with the procedure and formalities confirming to the law applicable to the case. This Court is of the definite view that the first respondent has not travelled beyond his jurisdiction. As the petitioners themselves had submitted that the governing body members in the list submitted by the rival group are not the members of the society, the first respondent had to examine the issue of membership of the individuals figuring in the lists submitted.

21. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners are not entitled to succeed.

In the result, the writ petitions fail and accordingly, they are dismissed.