

**(2014) 06 KL CK 0018**

**In the High Court Of Kerala**

**Case No : WA. No. 450 of 2014 in WP(C).15038/2012**

The Sulthan Bathery Co-Operative Agricultural and Rural  
Development Bank Ltd.

**APPELLANT**

**Vs**

Jayaprakash P.R.

**RESPONDENT**

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**Date of Decision : 12-06-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala Co-operative Societies Act, 1969 — Section 69, 69(3)

**Citation :** AIR 2014 Ker 150 : (2014) 3 ILR 556 : (2014) 3 KHC 51 : (2014) 3  
KLT 123

**Hon'ble Judges :** Antony Dominic, J; Alexander Thomas, J

**Bench :** Division Bench

**Advocate :** George Poonthottam, Advocate for the Appellant; P.C. Sasidharan,  
Advocate for R1 and Sri P.M. Saneer, Sr. Govt. Pleader for R2 To R4, Advocate for  
the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Antony Dominic, J.—These writ appeals are filed by the 4th respondent in W.P(C). Nos. 15038/12 and 15676/12, which were disposed of by a common judgment.

2. The writ petitions were filed by the first respondent herein challenging an election notification issued by the Returning Officer for election to the Board of Directors of the appellant society on various grounds. It is stated that proceedings pursuant to the election notification were stayed by an interim passed by this Court in W.P(C). 15676/12. Subsequently, the stay order was vacated by order dated 9.7.2012. Accordingly, election was held, results were declared on 22.7.2012 and the committee assumed office also.

3. In the mean time, the first respondent in W.A.451/14 filed W.A.1459/12 against the order dated 9.7.2012 vacating the stay. That appeal was disposed of by judgment dated 13.8.2012, directing disposal of the writ petition and also

clarifying that by virtue of the order passed by the learned single Judge in I.A.9582/12, the result of the election would be subject to the result of the writ petition and that in such circumstances, the managing committee shall not take policy decisions.

4. The writ petitions were finally heard on 6.1.2013 and considering the nature of the controversy involved, learned Judge found it appropriate to relegate the petitioners therein to pursue their remedies in an election petition u/s 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter, the "Act", for short). Accordingly, the learned Judge passed the following order:

3. In the circumstances of the submissions made by both the counsel, the writ petitions are disposed of without any finding on merits and relegating the petitioners to the appropriate remedies under the Kerala Co-operative Societies Act (for short "the KCS Act") to challenge the election so conducted. The results of the election held on 22.07.2012 and published provisionally is directed to be declared. Such declaration shall not be taken as this Court having held the process of election to be valid since the same is to be decided in an election petition, if any filed. It is made clear that the limitation as per the KCS Act for filing the Election Petition, shall commence only from today on which date the election conducted on 22.07.2012, has reached finality.

Appellants in these appeals are aggrieved by the direction of the learned single Judge that the limitation for the purpose of the petition u/s 69 shall commence only from the date of the judgment.

5. Learned counsel for the appellants contended that as per section 69(3) of the Act, no dispute arising in connection with the election to the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election. Counsel argued that when the statute prohibited a Co-operative Arbitration Court from entertaining a dispute in relation to an election to the Board of Directors of a society unless it is referred to it within one month of the date of the election and as the provisions of the Limitation Act are inapplicable to such proceedings, learned single Judge acted without jurisdiction in ordering that in respect of the election that was held on 22.7.2012, the limitation would start only from the date of the judgment. In support of this contention, learned counsel also made reference to the judgment of the Apex Court in Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, rendered in the context of the Central Excise and Salt Act, where, it has been held that since on an examination of the relevant provisions of the Central Excise Act, it was clear that the provisions of the Limitation Act are necessarily excluded, the benefits conferred under the Limitation Act cannot be called in aid to supplement the provisions of the Central Excise Act.

6. Learned counsel appearing for the first respondent, the writ petitioners, however contended that the learned Judge was fully within his power in passing

the impugned judgment.

7. We have considered the rival submissions made. It is true that section 69(3) of the Act prohibits the Co-operative Arbitration Court from entertaining disputes concerning election to the Board of Directors of a society unless the same is referred to it within one month from the date of the election. In so far as this case is concerned, the writ petitions were filed soon after the election notification was published in June, 2012 and the proceedings pursuant to the notification were stayed by this Court. Though the stay was vacated by order dated 9.7.2012, in the order in I.A.9582/12 in W.P (C).15676/12, this Court clarified that results of the election would be subject to the result of the writ petition. That was re-iterated by the Division Bench while disposing of W.A.1459/12.

8. Going by the pleadings, the election was conducted on 22.7.2012. Though the results were declared on that day itself and the Board of Directors assumed office immediately thereafter, the uncertainty created on account of the order passed by this Court in IA.9582/12 in W.P(C).15676/12 continued until the writ petitions were disposed of by the impugned judgment rendered on 6.1.2014. In that judgment, instead of resolving the issue on merits, considering the nature of the dispute involved, learned Judge found it appropriate to relegate the petitioners therein to pursue the statutory remedy available u/s 69 of the Act.

9. By this time, in view of section 69(3) of the Act, the remedy u/s 69 had become time barred and could not have been availed. In such a situation, unless the learned Judge had also passed further directions enabling the writ petitioners to seek such remedies, the writ issued would have been a futile one. It was therefore that the learned single Judge directed that the period of limitation provided u/s 69(3) of the Act would start to run from the date of judgment.

10. In so far as the contention of the learned counsel for the appellants that such a direction is beyond the powers of this Court is concerned, we should state that it will always be the endeavour of this Court to ensure that the writ issued is not a futile one. Therefore, it is well within the powers of this Court exercising jurisdiction under Article 226 of the constitution of India to pass such orders, but for which, the order passed by the learned single Judge relegating the writ petitioners to pursue statutory remedy would have been a futile one. For these reasons, we cannot accept the contention of the learned counsel for the appellants that the learned Judge has acted in excess of jurisdiction in passing the judgment. We also note that the competence of this Court to pass such orders has been upheld by the Apex Court itself in its judgment in *Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others*, which has been followed by a learned single Judge of this Court in *V. V. Prakasini Vs. K. P. S. C. and others.*, .

11. In the judgment in *Commissioner of Customs and Central Excise (supra)* relied on by the learned counsel for the appellants, the question whether the High Court was entitled to pass orders as done in this case, did not arise for

consideration. Instead, what has been laid down is that when Limitation Act is excluded, the beneficial provisions of the Act as such cannot be called in aid to grant relief provided under the Limitation Act. In our view, that principle has no relevance in so far as the facts of this case are concerned.

In the aforesaid circumstances, do not find any illegality in the directions issued by the learned single Judge. The appeals are devoid of merits and are accordingly dismissed. No costs.