IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

WP(C) NO. 12684 OF 2025

PETITIONERS:

1 KK MAMMOOTTY
AGED 75 YEARS
S/O KUNHABDULLA, KOYTHIKANDY, PANTHIPOYIL,
PADINJARETHARA POST, VARAMBATTA, WAYANAD DISTRICT, PIN - 673575

2 VARGHESE PK
AGED 64 YEARS
S/O KURIEN, PUNNAKKUZHIYIL, PADINJARETHARA POST,
WAYANAD DISTRICT, PIN - 673575

BY ADVS.
ARUN CHANDRAN
AMRITA ARUN
HANA KARNOLIA MADONA CYRIL
ASWATHY S MENON
JYOTHIKUMAR R.

RESPONDENTS:

1 THE STATE COOPERATIVE ELECTION COMMISSION
3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY., PIN - 695033

2 THE ELECTORAL OFFICER/ (ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES, [GENERAL]
THE PADINJARATHARA SERVICE CO-OPERATIVE BANK, VYTHIRI,
WAYANAD DISTRICT, PIN - 673575

**3 THE RETURNING OFFICER/ UNIT INSPECTOR [VYTHIRI]
THE PADINJARATHARA SERVICE CO-OPERATIVE BANK, VYTHIRI, WAYANAD DISTRICT, PIN - 673575**

**4 THE PADINJARETHARA SERVICE COOPERATIVE BANK LIMITED
OFFICE OF THE PADINJARATHARA SERVICE CO-OPERATIVE BANK, VYTHIRI, WAYANAD DISTRICT, REPRESENTED BY ITS SECRETARY, PIN - 673575**

**5 RAVEENDRAN K
KALAYANTHANATH, VARAMPATTA, PANTHIPPOYIL, PADINJARETHARA POST, WAYANAD DISTRICT, PIN - 673575**

**BY ADV P C CHACKO
SRI.C.M. NAZAR, SC.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners are members of the 4th respondent Society. The State Co-operative Election Commission, the 1st respondent, has notified the election to the Managing Committee of the Society vide Ext.P5 notification. As per Ext.P5, the date of publication of preliminary voters' list was scheduled on 07.03.2025. The date of poll is 12.04.2025.

2. On 07.03.2025, the 2nd respondent Electoral Officer published the preliminary list of voters. The preliminary voters' list includes 4352 A class members. The 5th respondent, whose name has been included in the preliminary voters' list, submitted Ext.P13 objection to the list. In Ext.P13, the 5th respondent states that over 1,200 persons have been excluded from the preliminary voters' list, while more than 300 deceased individuals have been included. By Ext.P8 letter, the Electoral Officer informed the Secretary of the Society that the Society had submitted the voters' list after excluding 1,507 members. Since these members have not been expelled from

membership, a revised voters' list, including them, shall be made available for publication of the final voters list. The Electoral Officer published Ext.P11 final voters list on 21.03.2025. However, on the same day itself, Ext.P12 'additional final list of eligible voters' was published including 1069 persons at Sl Nos.4353 to 5421. Ext.P12 is challenged in this writ petition. The petitioners have also sought for a direction to the 2nd respondent Electoral Officer to remove the names of those 1069 persons additionally included in Ext.P12.

3. According to the petitioners, the persons included in Ext.P12 additional final list of eligible voters are members who have failed to pay the enhanced share value. As per clause 8(b) of Ext.P2 bye-laws of the Society, only A class members have right to vote. The value of one share of the Society was Rs.10/- till the year 2012. In 2012, the share value of A class share was increased to Rs.100/- and as per clause 7 of the amended bye laws, three years period from 2012 was granted for remitting the balance share value of Rs.90/-. Public notice was issued through newspaper, informing the then A-Class members to

remit the balance share value. It is contended that the 1069 persons included in Ext.P12 list are not entitled to vote in the election to the Managing Committee of the Society, as they have not paid the enhanced share value as required under Rule 28 of the Kerala Co-operative Societies Rules, 1969 ('Rules' for short), and clauses 7 and 8 of the bye-laws. Ext.P11 final voters list was published excluding these members who have not paid the enhanced share value. There was no challenge from any such members against the non inclusion. However, based on the objection filed by the 5th respondent, the Electoral Officer included these persons in Ext.P12 additional final list of eligible voters. It is contended that the action of the Electoral Officer is illegal and on extraneous reasons.

4. A counter affidavit has been filed on behalf of the 4th respondent Society wherein it is stated that the persons included in Ext.P12 additional list of voters have not paid the enhanced share value within the prescribed time even though they were informed of the said requirement for the purpose of casting vote. It is also stated that the members who had not

paid the required share value cannot vote at the election to the Managing Committee.

5. Heard Sri.Arun Chandran, the learned counsel for the petitioners, Sri.C.M Nazar, the learned Standing Counsel for respondents 1 to 3 and Sri.P.C Chacko, the learned counsel for the 4th respondent. Though notice was served on the 5th respondent by special messenger, there is no appearance.

6. Rule 35A(4) of the Rules provides that the Electoral officer shall be responsible for the publication of the list of members qualified to vote at election in accordance with the provisions of the Act, Rules and the Bye-laws. It further provides that the Chief Executive Officer of the society shall prepare, update the list as per the Rules and submit the same duly approved by the Committee to the Electoral Officer who shall publish the preliminary list and call for objections. The explanation to Rule 35A (4A) of the Rules provides that every A class member of a society shall be eligible to vote and contest in the election if he has subscribed to the minimum share value as prescribed in the bye-laws. Rule 28 deals with restriction on the

right of vote at the election and provides that no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless 60 days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member.

7. According to the Society, the persons included in Ext.P12 list have not paid the enhanced share value as prescribed in the bye-laws. It is contended by the petitioners and the Society that 1069 persons who are included in Ext.P12 are ineligible to vote in the election to the Managing Committee of the 4th respondent Society as they have not paid the enhanced share value before the date fixed under Rule 28. Rule 28 provides for restriction on the right to vote by requiring a member to acquire the number of shares specified in the bye-laws at least 60 days prior to the election. If a member does not comply with the condition laid down in Rule 28, he will lose his right to vote. However, he does not cease to be a member and he need not be expelled from the membership of

the Society. The Electoral Officer failed to note this distinction and included the 1,069 members, who are restricted from voting, in the voters' list. Rule 35A(4) provides for the publication of list of members qualified to vote at election in accordance with the provisions of the Act, Rules and the Bye-laws. Ext.P12 contains names of members who are not qualified to vote at the election. Accordingly Ext.P12 is liable to be set aside.

8. Learned counsel for the petitioners relied on the decisions of this Court in **Jose *v*. Registrar of Cooperative Societies** [1992 (2) KLT 673], **Vijayakumar *v*. Joint Registrar** [1996 KHC 61] and **Rajan K.S *v*. Electoral Officer (Asst.Registrar of Coop.Societies (General) Thalikulam)** [2009 (3) KHC 886] to contend that a person who has not paid the enhanced share value has no right to vote at the election to the Managing Committee of the Society.

9. In **Jose's case** (supra) this Court held that when the bye-laws of the Society is amended enhancing the share value, all existing shareholders are bound to pay the excess amount so

as to get the eligibility to vote. Paragraphs 6 and 7 of the decision read as follows:

> "6. As it stands after amendment, a person who wants to become a member in the A Class will have to take a share of Rs.5,000/-. Clause.7 specifically mentions that at least one share should be taken by a member. R.28 states that no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye laws of the society of which he is a member. As amended Clause.4(a) of the bye laws specifically mentions the share amount which one has to necessarily take to become A Class member and as Clause.7 prescribes taking of at least one share, contention of the petitioners that they being already members of the Society are not bound by the amended provisions in the bye laws is not tenable.
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> 7. Bye laws of a Cooperative Society cannot be relegated to secondary importance. So far as the society is concerned, the bye laws are in the nature of Article of Association of a company incorporated under the Companies Act (See – Cooperative Central Bank v. Additional Industrial Tribunal, AIR 1970 SC 245. Though they do not have the force of a statute, it is binding on all the members of the society. As the amendment has been

effected only by the will of the General Body of the Society, the bye laws of the Society bind the petitioners. As clause 7 specifically says that at least one share should be taken by a member and as the bye laws of the Society do not exempt the existing members like the petitioners from the payment of the enhanced amount towards the share their contention that they are not liable to pay the same cannot be accepted. R.28 is also a bar to the petitioners in advancing their contention that they are not liable to pay the enhanced share amount. R.28 makes the position clear that a member of the Society shall be eligible to vote at the meeting fixed for any election to the Committee of that society, unless 30 days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye laws of the society of which he is a member. As the petitioners have not paid the amount to become A class members as provided under the bye laws, they cannot challenge Ext. P2 voters' list'".

10. In **Vijayakumar's case** (supra), while distinguishing the right to vote from the right of admission as a member, this Court held as follows:

"14. We are, however, of the view that all voters no doubt must be members, but all members may not necessarily be voters. Merely by virtue of being a

member, one does not acquire the right to vote automatically. A member, for example, shall not be eligible to be a voter unless 30 days prior to the date of the meeting held for passing the resolution for the election to the committee of the society, he acquires the number of shares for membership as may be provided in the bye laws of the society of which he is a member. If a member has not complied with the condition laid down in R.28, he does not cease to be a member. What is restricted is his right to vote in the election.

15. The right to vote must be distinguished from admission as a member. While R.17 and 20 deal with conditions for admission, R.26 deals with prohibition for admission to membership within a particular period. S.16, 17, 19 and 20 deal with admission, expulsion, suspension of the rights and conferment of right to vote on members of the Society. (Vide Vasavan's Case). R.35 of the Rules on the other hand, lays down the duties and responsibilities of the Returning Officer to publish the final list of eligible voters, after considering the objections if any received, against any of the persons list as voters. If the Returning Officer declares a member to be an ineligible voter, he does not expel him thereby from the membership of the Society. A member who is disqualified as a voter may still continue to be a member of the Society if he is not otherwise disqualified to be a member".

11. In **Rajan's case** (supra), this Court reiterating the dictum laid down in **Jose** (supra), held that members who have not paid the enhanced share value as stipulated under Rule 28 cannot have voting right.

12. In light of the provisions contained in Rule 28 and the explanation to Rule 35A(4A) of the Rules, members who have not paid the enhanced share value as prescribed in the bye-laws are not entitled to vote in the election. The decisions cited supra uphold this position.

Accordingly, Ext.P12, to the extent it includes the names of 1069 members, from Sl. Nos.4353 to 5421, is set aside.

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

smp

APPENDIX OF WP(C) 12684/2025

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION DATED 24.01.2023, CANCELLING THE ELECTION SCHEDULED ON 16.02.2023.**
Exhibit P2	**TRUE COPY OF CLAUSE 7 AND 8 OF THE BYE- LAWS OF THE RESPONDENT SOCIETY.**
Exhibit P3	**TRUE COPY OF THE PAPER PUBLICATION INTIMATING THE THEN A CLASS MEMBERS, TO REMIT THE BALANCE SHARE AMOUNTS, PUBLISHED IN CHANDRIKA DAILY DATED 30.1.2016.**
Exhibit P4	**TRUE COPY OF THE INTERIM ORDER DATED 15.02.2023, IN WPC 3199 OF 2023.**
Exhibit P5	**TRUE COPY OF THE ELECTION TABLE PUBLISHED BY THE RESPONDENT STATE COOPERATIVE ELECTION COMMISSION, BEARING DATE 24.02.2025.**
Exhibit P6	**TRUE COPY OF THE RESOLUTION BEARING DATE 25.06.2016, REMOVING THOSE PERSONS WHO FAILED TO REMIT THE SHARE VALUE AS PER THE BYE- LAWS AND THE NOTIFICATION.**
Exhibit P7	**TRUE COPIES OF THE RELEVANT PAGES OF THE PRELIMINARY LIST PUBLISHED BY THE ELECTORAL OFFICER ON 07.03.2025.**
Exhibit P8	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE ELECTORAL OFFICER TO THE SECRETARY- IN-CHARGE OF THE SOCIETY, AT 7:00 PM, ON 19.03.2025.**
Exhibit P9	**TRUE COPY OF THE RESPONSE SUBMITTED BY THE SECRETARY- IN – CHARGE OF THE SOCIETY, ON 19.03.2025, AT ABOUT 8:00PM.**
Exhibit P10	**TRUE COPY OF THE PROCEEDINGS OF THE ELECTORAL OFFICER BEARING DATE 20.03.2025,**

	REQUESTING THE STATE COOPERATIVE ELECTION COMMISSION, TO STOP THE ELECTION PROCESS IN THE RESPONDENT SOCIETY.
Exhibit P11	**TRUE COPY OF THE RELEVANT PAGES OF THE FINAL LIST OF VOTERS PUBLISHED ON 21.03.2025, AT 3: 00 AM, WITH THE DATE 20.03.2025.**
Exhibit P12	**TRUE COPY OF THE ADDITIONAL 'FINAL LIST OF ELIGIBLE VOTERS' PUBLISHED ON 21.03.2025, AT 3:00 AM, WITH THE DATE 20.03.2025.**
Exhibit P13	**TRUE COPY OF ONE OF SUCH OBJECTIONS WHICH THE PETITIONERS COULD SECURE, BEARING DATE 14.03.2025.**