

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 18TH NOVEMBER 2010 / 27TH KARTHIKA 1932

WP(C).No. 34158 of 2010(T)

PETITIONER(S):

S.SURESH BABU,AGED 46 YEARS,
S/O.SADASIVAN NAIR(LATE)
GOVINDAPURATHU VEEDU, PERAYAM P.O.,PACHA
PALODE,THIRUVANANTHAPURAM.

BY ADV. SRI.LATHEESH SEBASTIAN
SRI.M.FATHAHUDEEN

RESPONDENT(S):

1. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT
THIRUVANANTHAPURAM - 695 001.
2. DAIRY DEVELOPMENT OFFICER,
NEDUMANGADU P.O,THIRUVANANTHAPURAM- 695 541.
3. PERAYAM DAIRY CO-OPERATIVE SOCIETY
NO.T.193(D)APCOS,PERAYAM P.O.,PACHA, PALODE,
REP.BY ITS SECRETARY - 695 562.
4. SECRETARY TO GOVERNMENT
CO-OPERATION,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY G.P.SRI.K.C.SANTHOSH FOR R1, R2 & R4.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/11/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.T. RAVIKUMAR, J.

W.P.(C). NO.34158 OF 2010

Dated this the 18th day of November, 2010

JUDGMENT

The petitioner is the President of the Managing committee of Perayam Dairy Co-operative Society which is registered under the provisions of the Kerala Co-operative Societies Act, 1969. Earlier, the petitioner was issued with Ext.P2 show cause notice requiring him to show cause why he should not be disqualified from continuing in the Managing Committee of the society based on the allegation that his wife Smt. Thara K.R has been conducting a business in cattle feeds within 100 metres of the society. In this context, it is to be noted that the society in which the petitioner is a member and its President, is a Dairy Co-operative society. As per the show cause notice, the said action is violative of article 5.2(vi) of Ext.P1 bye-law of the society. The petitioner has submitted his reply as per Ext.P3. It is dated 30.10.2010. According to the petitioner, Ext.P3 has been received by the society on 2.11.2010. To substantiate the contention, the petitioner has brought to my attention the initial along with the date 2.11.2010 that seems to have been put in token of receipt of Ext.P3. Relying on such circumstances, it is contended that the impugned order viz., Ext.P5 was passed even without looking into the objections raised by

the petitioner in and vide Ext.P3. Therefore, according to the petitioner, Ext.P5 is unsustainable in terms of the provisions under Rule 44(3) of the Kerala Co-operative Societies Rules.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader. The learned Government Pleader, on instructions, submitted that the contention made on behalf of the petitioner that Ext.P3 had been received in the office of the first respondent on 2.11.2010 is incorrect. It is contended that Ext.P3 was received by the first respondent prior to the passing of the said order. At the same time, no material has been produced to substantiate the said contention regarding the date of receipt of Ext.P3. In the context of the contentions, Rule 44(3) of the Kerala Co-operative Societies Rules (for short 'the Rules') assumes relevance. Rule 44(3) reads thus:

“If any person is or becomes disqualified to be a member of the committee, the Registrar may on his own motion or on a representation made to him by any member of the society or by its Financing Bank by an order in writing declare that he shall cease to be a member of the committee of the society concerned from the date of such disqualification. Before passing

an order, the Registrar shall give such person an opportunity to state his objections, if any, against the proposed action and if the person wishes to be heard he shall be given an opportunity to be heard.

Obviously, Rule 44(3) contemplates affording of an opportunity to the concerned person to state his objections before passing any order in the matter of disqualification by the Registrar. It also contemplates affording an opportunity of personal hearing in case the concerned person expressed his desire for that behalf. In short, what is contemplated under Rule 44(3) of the Rules is a meaningful opportunity to the concerned person to advance his objections in an effective manner. However, obviously the petitioner had not sought for such a personal hearing. Therefore, the petitioner cannot attribute violation of the provisions under Rule 44(3) of the Kerala Co-operative Societies Rules on account of not affording an opportunity of being heard.

3. Necessarily, when a person is called upon to submit an objection especially in a matter pertaining to the disqualification of a member of a Co-operative society, the Registrar has to bestow utmost care and attention before passing orders thereon. However, a bare perusal of Ext.P5 would reveal that it is an order passed with a closed mind. What

exactly was the objection raised by the petitioner in Ext.P3 and how the said objections were considered by the Registrar while passing orders as per Ext.P5 are not at all discernible from Ext.P5. Application of mind can be reflected only through the reasons for the decision. Ext.P5 order cannot be treated as an order passed strictly in terms of Rule 44(3) of the Kerala Co-operative Societies Rules. Obviously, the first respondent had failed to advert to the objections raised by the concerned person. The power to disqualify a member of a Co-operative society has to be exercised strictly adhering to the relevant provisions as also imbibing the spirit of the said provision. For all these reasons, I have no hesitation to hold that Ext.P5 is an order passed without any application of mind and therefore, absolutely unsustainable in the eye of law. Accordingly, Ext.P5 is set aside. Consequently, there will be a direction to the first respondent to consider the objections raised by the petitioner in Ext.P3 and to pass fresh orders in accordance with the provisions under Rule 44(3) of the Kerala Co-operative Societies Rules.

(C.T. RAVIKUMAR, JUDGE)

spc

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010