

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 2ND JULY 2009 / 11TH ASHADHA 1931

WP(C).No. 36510 of 2008(U)

PETITIONERS:

- 1. T.M.JOHN
PRESIDENT, KALAMPOOR MILK PRODUCERS
CO-OPERATIVE SOCIETY LTD E-90 (D) (APCOS),
ENANALLOOR P.O.,KALAMPOOR, MUVATTUPUZHA.**
- 2. T.V.SIMON,
THAZHATHEKUDIYIL HOUSE, COMMITTEE MEMBER,
KALAMPOOR MILK PRODUCERS
CO-OPERATIVE SOCIETY LTD E-90 (D),
ENANALLOOR P.O.,KALAMPOOR, MUVATTUPUZHA.**

**BY ADVS. MR.M.C.CHERIAN,
MR.M.A.THOMAS KUTTY,
SMT.SARAMMA CHERIAN,
SMT.ASHA CHERIAN,
MR.P.M.SANEER.**

RESPONDENTS:

- 1. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT, CIVIL STATION,
KAKKANAD, ERNAKULAM.**
- 2. DAIRY EXTENSION OFFICER
DAIRY DEVELOPMENT DEPARTMENT,MUVATTUPUZHA.**

W.P.(C). NO.36510/2008-U:

***ADDL. R3 IMPEADED:**

**DEVADAS K .KADAKKOT ,
KALAMPOOR,
ENANALLOOR.P.O.**

***ADDL.R3 IS IMPEADED AS PER ORDER DATED 05/03/2009 IN
IN I.A. NO. 3132/2009.**

**R1 & R2 BY GOVERNMENT PLEADER MR. MOHAMMED HASHIM,
ADDL.R3 BY SMT.R.BINDU (SASTHAMANGALAM).**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/07/2009,THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

W.P.(C). NO.36510/2008-U:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT PORTION OF THE BYE-LAW OF KALAMPOOR MILK PRODUCERS' CO-OPERATIVE SOCIETY.

EXT.P.2: COPY OF THE PROCEEDINGS/ORDER DTD. 26/10/2004 OF R.1.

EXT.P.3: COPY OF THE MINUTES DTD. 06/01/2005 OF THE SOCIETY.

EXT.P.4: COPY OF THE MINUTES DTD. 09/01/2005 OF THE SOCIETY.

EXT.P.5: COPY OF THE LETTER DTD. 04/12/2008 OF BENNY THOMAS TO P.1.

EXT.P.6: COPY OF THE LETTER DTD. 04/12/2008 OF DEVADAS K. KADACKOT TO P.1.

EXT.P.7: COPY OF THE NOTICE DTD. 12/11/2008 OF R1.. TO P.2.

EXT.P.8: COPY OF THE POSTAL RECEIPT FOR SENDING LETTER TO R.1.

EXT.P.9: COPY OF THE LETTER DTD. 05/12/2008 OF SECRETARY, KALAMPOOR MILK PRODUCER'S CO-OPERATIVE SOCIETY TO R.1.

EXT.P.9.A: COPY OF THE MINUTES DTD.05/12/2008 OF THE SOCIETY.

EXT.P.10: COPY OF THE DETAILS OF QUANTITY OF MILK MEASURED IN THE SOCIETY, DURING THE PERIOD 05/12/2007 TO 04/12/2008.

EXT.P.11: COPY OF THE RESOLUTION NO.2. DTD. 18/12/2008 OF THE SOCIETY.

EXT.P.12: COPY OF THE ORDER DTD. 10/12/2008 OF THE R.1.

EXT.P.13: COPY OF THE ORDER DTD. 09/12/2008 OF R.1.

EXT.P.14: COPY OF THE MILK PURCHASE REPORT OF R3, WITH THE KALAMPOOR MILK PRODUCER'S CO-OPERATIVE SOCIETY.

EXT.P.15: COPY OF THE COMPLAINT DTD. 24/11/2008 OF THE BOARD MEMBERS OF THE SOCIETY AGAINST R.3.

EXT.P.16: COPY OF THE MINUTES DTD. 15/11/2008 OF THE SOCIETY.

EXT.P.17: COPY OF THE MINUTES DTD. 22/11/2008 OF THE SOCIETY.

W.P.(C). NO.36510/2008-U:

RESPONDENTS' EXHIBITS:

EXT.R1.A: COPY OF THE REPLY DTD. 24/11/2008.

EXT.R1.B: COPY OF THE ORDER NO. C/3838/08 DTD. 09/12/2008.

EXT.R3.A: COPY OF THE LETTER OF RESIGNATION DTD. 04/12/2008.

EXT.R3.B: COPY OF THE LETTER OF THE DEPONENT DTD. 04/12/2008.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

ANTONY DOMINIC, J.

W.P.(C.) No.36510 of 2008

Dated, this the 2nd day of July, 2009

J U D G M E N T

In the election held on 06/01/2005 to the Milk Producers Co-operative Society, Kalampoor, its Managing Committee was elected and the 1st petitioner is its President and the 2nd petitioner is one of the members. Going by the bye-laws the strength of the Committee is '9', which includes one seat each reserved for a Scheduled Caste and a Woman member. Since there was no candidate for the Scheduled Caste reserved member, the remaining 8 seats were filled up.

2. Subsequently, at different stages, three members resigned and the Committee was left with a total strength of '5'. On 05/12/2008, the Committee passed Ext.P9 resolution requesting the 1st respondent to conduct bye-election to the three vacant seats in the Committee, and the 1st respondent was of the view that bye-election should be conducted to the all four vacancies. Accordingly, the Committee amended the resolution and requested the 1st

respondent to conduct bye-election for filling up all the four vacancies.

3. At that stage, Ext.P7 show cause notice was issued by the 1st respondent proposing to disqualify the 2nd petitioner in view of Clause 3.3(b)(iii) of Ext.P1 bye-laws of the Society. Ext.R1(a) is the reply dated 24/11/2008 given by the 2nd petitioner. In the reply he admitted that he did not supply the quantity of milk prescribed in the bye-laws, and promised to supply the remaining quantity within two weeks thereafter. It is stated that subsequently, the petitioner supplied the requisite quantity of milk and Ext.P10 dated 04/12/2008 is referred to in this behalf. It was at that stage, this writ petition was filed by the petitioners seeking to quash Ext.P7 and also for a direction to the 1st respondent to appoint a Returning Officer to conduct election as per Ext.P11 resolution.

4. It is stated that the petitioners came to know that an attempt to supersede the Committee in office was being planned and on 11/12/2008, when the writ petition came up for admission, considering the aforesaid apprehension, this Court passed an interim order directing that the Committee be retained in Office. Immediately thereafter, Ext.P13 order dated 09/12/2008

disqualifying the 2nd petitioner and Ext.P12 order superseding the Committee and putting the Administrator in charge were served on the petitioners. Thereupon, the petitioners got the writ petition amended incorporating a challenge against Exts.P12 & P13 as well.

5. The contentions raised by the learned counsel for the petitioners are that Clause 3.3(b)(iii) of the bye-laws do not provide for losing membership in the Committee. It is also stated that disqualification can be attracted only if a member does not supply milk for 180 days or does not supply 500 litres of milk in the previous one year counting the same from the date of notice of the meeting of the General Body or the Election. According to the learned counsel, in both Ext.P7 and Ext.P13 order of disqualification, the date of notice of General Body or Election is not specified. It is therefore contended that in the absence of proper allegation in Exts.P7 & P13 that there was failure in the previous year as provided in the bye-laws, the 2nd petitioner could not have been disqualified.

6. Referring to Ext.P12, the learned counsel submits that the supersession has been ordered on the ground that the Committee lost quorum, because five seats in the Committee were

vacant. As rightly pointed out, the validity of Ext.P12 will depend upon the validity of Exts.P7 and P13, and if Exts.P7 & P13 are set aside, there will be five members and if so, the Committee will have quorum.

7. The learned counsel for the petitioners contend that in this case, notice under Section 33(1) has been dispensed with, and that, no reason, why it was not reasonably practical to give notice, has been mentioned in the order. For that reason, it is stated that the order is illegal. In this connection reliance is placed on the judgments of this Court in Antony Jerome v. Joint Registrar (1990(2) KLT 895) and also Thomas v. Jaihind Powerloom Industry Co-operative Societies Ltd. (2001(1) KLT SN page 10).

8. The learned Government Pleader invited my attention to the averments made in the counter affidavit. According to the learned Government Pleader, in view of the admissions made by the 2nd petitioner in Ext.R1(a) reply to the show cause and the admitted fact that the General Body was held on 12/10/2008, the 2nd petitioner suffered disqualification under Rule 44(1)(j) of the Kerala Co-operative Societies Rules. It is on this basis, the learned Government Pleader attempted to sustain Exts.P7, P13 & Ext.P12 as

well.

9. In Exts.P7 & P13, reliance has been placed on Clause 3.3 (b)(iii) of Ext.P1 bye-laws. This provision in the bye-law provides that if in the previous year, milk is not supplied for 180 days, or in case, the milk supplied was less than for 180 days, and the quantity supplied is less than 500 litres, a person is liable to be disqualified. However, the previous year has to be counted from the date of notice for election or General Body. In so far as the allegation that the 2nd petitioner had not supplied the quantity of milk as provided in the bye-laws, Ext.R1(a) reply dated 24/11/2008 given by him to Ext.P7 shows that the allegations in Ext.P7 stands admitted. Ext.R1 (a) also shows that an undertaking that he will supply the balance quantity of milk within two weeks has been given. According to the learned counsel, shortage in the quantity has been made up and he referred to Ext.P10 dated 04/12/2008 in this context. In the counter affidavit, it is stated that the General Body was held on 12/10/2008, and this fact is not in dispute. If that be so, even if the previous year is counted from the date of General Body, as on that date, the 2nd petitioner did not supply the bench mark quantity specified in Clause 3.3(b)(iii) of Ext.P1 bye-laws, and therefore, he

was liable to be disqualified as provided under the bye-laws and consequently under Rule 44(1)(j) of the Kerala Co-operative Societies Rules. The resultant position will be that the Committee of 9 members was left only with 4 members, and thus lost quorum. If so, supersession as per Ext.P12 also cannot be faulted. Hence the prayer made made for quashing Ext.P7, P12 & P13 need only to be rejected.

10. The learned counsel for the petitioners pray that a direction be issued to the 1st respondent to expedite the election process. Now that the Committee has been superseded, necessary steps for election has to be initiated in terms of the provisions contained under the bye-laws and the Act and the Rules, which the 1st respondent shall do and the election process shall be completed within three months of production of a copy of this judgment.

The writ petition is disposed of as above.

(ANTONY DOMINIC, JUDGE)