

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 1ST JANUARY 2009 / 11TH POUSHA 1930

WP(C).No. 17717 of 2008(H)  
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PETITIONER(S):  
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M.B.SATHYAN, MAVUNIKUNNATHIL, ELANTHOOR  
EAST PO., PATHANAMTHITTA

BY ADV. MR.P.B.SURESH KUMAR  
MR.LEO GEORGE

RESPONDENT(S):  
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1. STATE OF KERALA, REP. BY THE CHIEF  
SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM
2. THE DIRECTOR, DIARY DEVELOPMENT  
DEPARTMENT, GOVERNMENT OF KERALA, PATTOM,  
TRIVANDRUM
3. THIRUVANANTHAPURAM REGIONAL CO.OP.  
MILK PRODUCERS UNION LTD., KSHEERA BHAVAN, PATTOM  
THIRUVANANTHAPURAM, REP. BY ITS MANAGING DIRECTOR.
4. L.RAJENDRAN, PRESIDENT, KAPPIKKADU KSHEE  
ROLPADAKA SAHAKARAN SANGHAM, KAPPIKKADU, POOVACHAL  
PO., TRIVANDRUM

MR.B.S.KRISHNAN, SENIOR ADVOCATE FOR R3  
MR.K.ANAND FOR R3  
MS.LATHA KRISHNAN FOR R3  
GOVERNMENT PLEADER MR.BIJOY CHANDRAN FOR R1,2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 01/01/2009, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF BYE-LAWS OF THE UNION.
- P2 COPY OF NOTICE DT 12.6.06.
- P3 COPY OF REPLY DT 19.7.06.
- P4 COPY OF ORDER DT 29.11.06.
- P5 COPY OF JUDGMENT DT 11.12.06.
- P6 COPY OF ORDER DT 1.3.07.
- P7 COPY OF JUDGMENT DT 5.10.07.
- P8 COPY OF APPEAL DT 10.10.07.
- P9 COPY OF GOVERNMENT ORDER DT 29.4.08.

RESPONDENTS' EXHIBITS:

- R2(A) COPY OF LETTER DT 27.5.06.

**// TRUE COPY //**

**P.A. TO JUDGE**

**K.M. JOSEPH, J.**

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W.P.(C) No. 17717 OF 2008 H  
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Dated this the 1<sup>st</sup> day of January, 2009

**J U D G M E N T**

Petitioner is a member of the Board of Directors of the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent is a central society under the Kerala Co-operative Societies Act. The members of the 3<sup>rd</sup> respondent Society are Primary Dairy Co-operative Societies. The petitioner was the Chairman of one of the member Societies of the 3<sup>rd</sup> respondent and in the said capacity he was elected to the Board of Directors of the 3<sup>rd</sup> respondent. Ext.P1 are the bye-laws of the 3<sup>rd</sup> respondent. The 2<sup>nd</sup> respondent, acting under Rule 44(3) of the Kerala Co-operative Societies Rules, disqualified the petitioner on the ground that the Society which the petitioner represented did not supply the requisite quantity of milk during the year subsequent to the election. The petitioner was elected on 31.8.2005. Thus, acting on the complaint of the 4<sup>th</sup> respondent, it was found by the 2<sup>nd</sup> respondent that for the year 2005-06 the primary society, of which the petitioner is the Chairman, did not

supply the requisite quantity of milk. It is at once necessary to notice the two bye-laws in Ext.P1 which are at the centre of the controversy. They are Clause 19.5 and Clause 20 which read as follows:

**“ 19.5** *The elected members of the Board shall hold office for a period of five years. However during the tenure of his office, an elected member on the Board of Directors, if he or the Society he represents, has acted in a manner that causes a breach of the provisions under Bye-law No.20, shall cease to be a member on the Board. Vacancies arising thus shall be filled up by election.*

**20.2.9** *Chairman of a member Society shall not be eligible for election if the Society has failed to supply minimum quantity of milk as fixed by the Board during the preceding year.”*

2. The petitioner preferred Ext.P8 appeal before the government. The appeal was unsuccessful as by Ext.P9 order the government took the following view.

**“ 5.** *On verification of the original milk supply register of M/s.Vayapuram Ksheerolpadaka Sahakarana Sangham Ltd., the society which the appellant represents, it was*

*found that they supplied only a total quantity of 71217 litres of milk for 363 days during 1.4.2005 to 31.3.2006 ie., 196.2 litres/day which is below the average quantity fixed by the Board ie., 200 litres/day. Thus the society had failed to supply the minimum quantity of milk as fixed by the Board and hence as per clause 19.5 of the bye-law of the Union, the appellant ceases to be a member of the Board. In the circumstances, there is no reason for Government to interfere with the order of the Director of Dairy Development Department. Appeal fails and hence it is dismissed.”*

A counter affidavit is filed on behalf of the State.

3. I heard learned counsel for the petitioner, learned Government Pleader and learned counsel appearing on behalf of the 3<sup>rd</sup> respondent. Learned counsel for the petitioner raised before me essentially three points. He would submit that the breach of Clause 20.2.9 cannot be made the basis for disqualifying the person who has been elected to the Board of Directors of the 3<sup>rd</sup> respondent. He amplifies this by pointing out that having regard to the wording of Clause 20.2.9, it is apposite and relevant only to decide the question of disqualification of a

member from standing for an election. In this case, admittedly, the petitioner stood for election and was elected in the election held on 31.8.2005 and, therefore, having regard to the use of the words '*preceding year*' in Clause 20.2.9, it is clearly impermissible for the 2<sup>nd</sup> respondent as also the government in appeal to take the view that it can still be drawn upon for the purpose of holding that the petitioner was disqualified to continue as a member. Secondly, learned counsel for the petitioner would contend that having regard to the language of Clause 19.5, it speaks of act on the part of the elected member of the Society or the Society who acted in a manner causing any breach of the bye-law. According to him, even assuming that Clause 20.2.9 can be roped in employing Clause 19.5, it is the indispensable requirement of Clause 19.5 and there must be an act attributed to the petitioner or the Society which he represented which in turn results in the breach of the provisions of Clause 20 of Ext.P1. No act or omission is attributed against the petitioner, it is contended and, therefore, even assuming that there is a breach but without there being an act the requirement of Clause 19.5 is not fulfilled, runs

the contention. Thirdly, it is contended that the 3<sup>rd</sup> respondent does not have volume measurement of the milk and it has the weight measurement of the milk supplied and as the density of milk is not the same and it varies from animal to animal, the weight measurement cannot be converted to volume measurement. Therefore, there is no basis for finding that the petitioner is liable to be treated as disqualified under Clause 19.5 read with Clause 20.2.9, he submits. The learned counsel for the petitioner would further contend that as there is a clear ambiguity in the provision, the ambiguity should be resolved in favour of the person as the petitioner is being deprived of to continue as a member. He seeks support from *Maxwell on the Interpretation of Statutes*. Therein, the author states as follows:

*“ The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning*

*criminal procedure and jurisdiction.*

*If there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged.”*

4. Clause 19.5, Government Pleader submits, enables the disqualification of an elected member and throw shadow upon his title to continue as a member if the ingredients in Clause 20 are fulfilled. He would submit that the petitioner is the Chairman of a primary society which is a milk supplier and the 3<sup>rd</sup> respondent is a federation of milk suppliers of Co-operative Societies which are engaged in procuring of milk. In this context, if the bye-law provides supply of milk in a certain quantity during the preceding year, the purpose of the bye-law would be defeated if the disqualification is limited to the preceding year in which the person is elected. In other words, Clause 19.5 would continue to hold sway right through the tenure of the elected member. It is clear that the society of which the petitioner was a member has failed to supply the requisite quantity of milk. This failure has attracted

Clause 20.2.9. Learned counsel for the 3<sup>rd</sup> respondent would also support the order.

5. The first question to be considered is whether there is any merit in the contention of the petitioner that Clause 20.2.9 cannot be made use of in conjunction with Clause 19.5 in the facts of the case. Clause 19.5 is applicable only in respect of a person who has already been elected as a member. Therefore, it is clear that Clause 19.5 enables the authority to import in the disqualifications which are laid down in Clause 20 in respect of a person who has already been elected. By virtue of Clause 19.5, it has been deemed necessary and expedient to permit disqualification of the person who is elected and continuing as member of the Board of Directors also and with reference to the elements contained in Clause 20. The words '*preceding year*' used in Clause 20.2.9 is to be interpreted as meaning in the context of an action under Clause 19.5 as the year preceding the year in which apparently the action is taken or the year in respect of which the breach has been committed. It cannot be limited to the year preceding the year in which the election took place as

such an interpretation would render Clause 19.5 virtually futile. Of course, learned counsel for the petitioner would submit that there may be other Clauses in Clause 20 which can be referred to in conjunction with Clause 19.5. However, on a perusal of various Clauses, I see no reason as to why this court should cut down the width of Clause 19.5 and limit it in such a way that it excludes Clause 20.2.9. From the words '*preceding year*' it is understood as the year previous to the year in which breach is committed after the person is elected and the interpretation would both be in harmony with the words employed in Clause 19.5 as also fulfilling the purpose of the provision. I really do not see the ambiguity which the learned counsel for the petitioner would point out. Further, I see no merit in the contention of the learned counsel for the petitioner that being a penal provision, the ambiguity should be resolved in favour of the petitioner. I fail to see how the disqualification wrought by the operation of Clause 19.5 read with Clause 20 can be said to be penal in nature. The adverse civil consequences it brings about cannot be equated with penal liability. When the petitioner is disqualified under Clause 19.5

read with Clause 20, by no stretch of imagination, it can be said that he is being legally punished. The petitioner is not accused of any offence. There is no penalty imposed as the word is understood in law when an order is passed under Rule 44 read with Clause 19.5 and bye-law 20. All that it does is that it deprives the petitioner of a civil right or a legal right to continue for a full term. Therefore, the reference to the passages from *Maxwell on the Interpretation of Statutes* is totally misplaced.

6. The further contention which is raised by the learned counsel for the petitioner is that it is indispensable to apply to Clause 19.5 that there may be an act and there must be breach and de hors an allegation of an act no breach can be committed. I do not see any merit in this contention. If it is taken as a fact that the Society has not supplied the requisite quantity of milk during the previous year, it is the fact which has apparently invited the wrath of Clause 20.2.9. Apparently, it is an omission on the part of the Society which did not supply the requisite quantity of milk. The bye-laws do not authorise the authorities to pause and ponder as to the reason for the non supply nor is it necessary for the

authority to consider the question as to whether the omission is wilful or inadvertent. If that be so, if 200 litres, the requisite quantity, has not been supplied, it is clear that the Society has acted in a manner which culminated in the breach being committed. Therefore, there is no merit in the said contention. It is a contention which, if accepted, would result in the thwarting of the purport of the bye-law.

7. The further contention raised by the learned counsel for the petitioner that the Union does not have volume measurement and weight measurement is also not possible as the density of milk is not the same and it varies from animal to animal, is not a contention that is seen taken in the writ petition. Essentially the authority has found that the quantity of milk supplied is 196.2 litres/day for 363 days during 1.4.2005 to 31.3.2006 which is below the average quantity fixed by the Board, namely 200 litres/day. I do not think that Article 226 can be used for launching an enquiry into the question which is not even raised in the writ petition as a ground. The finding is not seen challenged and the contention, though advanced by the learned counsel for

the petitioner, is not reflected in the pleadings in the writ petition. Eventhough a ground is seen taken in the appeal, it is not clear that whether the ground is pressed before the authority. In such circumstances, I see no merit in the contentions raised by the petitioner. The writ petition fails and it is dismissed.

Sd/-  
**(K.M.JOSEPH, JUDGE)**

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**P.A. TO JUDGE**