

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 19TH MARCH 2008 / 29TH PHALGUNA 1929

WP(C).No. 8610 of 2008(Y)

PETITIONERS:

1. ARAVINDAKSHAN, (MEMBER NO.921)
MOOTHEDATH HOUSE, VELIKKAD, MUNDUR,
PALAKKAD DISTRICT.
2. MURALEEDHARAN R.V.,(MEMBER NO.922)
MURALI NIVAS, VELIKKAD, MUNDUR,
PALAKKAD DISTRICT.

BY ADV. SRI.N.RAGHURAJ,
SRI.A.V.RAVI,
SMT.K.AMMINIKUTTY.

RESPONDENTS:

1. THE DEPUTY DIRECTOR OF DAIRY,
O/O.THE DEPUTY DIRECTOR ,
DAIRY DEVELOPMENT DEPARTMENT,
PALAKKAD.
2. THE RETURNING OFFICER/DAIRY FARM
INSPECTOR, O/O.THE DEPUTY DIRECTOR ,
DAIRY DEVELOPMENT DEPARTMENT,
PALAKKAD.
3. PEERU RAWTHER, (MEMBER NO. 1055)
S/O.CHINNAPPU RAWTHER, NAYAMPADAM HOUSE,
P.O.POOTHANNUR, PALAKKAD.
4. M.RAMAKRISHNAN (MEMBER NO.2)
S/O.VELAYUDHAN, MANNINKAD HOUSE,
KANJIKULAM P.O., PALAKKAD .

W.P.(C). NO.8610/2008-Y:

- 5. VELIKKAD KSHEEROLPADAKA SAHAKARANA SANGHAM LTD. NO. P13 (D) APCOS, VELIKKAD P.O., MUNDUR, PALAKKAD DIST.**
- 6. THE MUNDUR SERVICE CO-OPERATIVE BANK LTD. NO.F 1650, MUNDUR P.O., PALAKKAD 678 592, REPRESENTED BY ITS SECRETARY.**
- 7. THE PALAKKAD PRIMARY CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. NO.F.1029, PALAKKAD 14, REPRESENTED BY ITS SECRETARY.**

**R1 & R2 BY SR. GOVT. PLEADER SMT. ANU SIVARAMAN,
R3 & R4 BY ADV. SRI.H.BADARUDDIN,
ADV. SMT.AYSHA RAHMAN,
ADV. SRI.T.K.CHINNAN.**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2008,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.8610 of 2008
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Dated this the 19th day of March, 2008.

JUDGMENT

Petitioners challenge the acceptance of nominations of respondents 3 and 4 for election to the committee of the fifth respondent society. Exts.P3 and P5 written objections were made by the petitioner before the returning officer on 4-3-2008, the date of scrutiny following 3-3-2008, the last date fixed for receiving nominations. Exts.P3 and P5 were supported by Exts.P2 and P4 certificates issued by respondents 6 and 7 regarding the overdues of respondents 3 and 4.

2. In opposition, respondents 3 and 4 have filed counter affidavits placing documents to show that at 10.50 a.m., on 4-3-2008, one of the creditors has certified that the debtor in question had cleared the debt. But the document, Ext.P2, is

drawn up at 10.15 a.m. With all these materials, the issue that arises for decision is as to whether respondents 3 and 4 are in default and also whether they could be treated to be in default without they being served with any notice by the creditor demanding the defaulted amounts.

3. In the counter affidavit, respondents 3 and 4 do not challenge that they had stood sureties for facilities from respondents 6 and 7. A comparison of the document clearly shows that if at all the date was clear, it was only on 4-3-2008. Rule 35(3)(d) provides that no member shall be nominated as a candidate for election to fill a seat on the committee if he, among other things, is disqualified to be a member of the committee under the rules. Rule 44(1)(c)(i) provides that no member of a society shall be eligible for being elected, if he, among other things, is in default to any other society. The disqualification for

membership of the committee in terms of Rule 44 therefore gets crystalized to be applicable at the time of nomination. The words "default" and "defaulter" are understood definitely for the purpose of the rules as is discernible from the fact that different defence are given for those words in Rules 2 (d) and (e). While the defaulter has to have a decree against him for one to be in default in terms of Rule 2(d), all that is required is that he has failed to repay any loan or any other amount. Failure is different from refusal which concept springs only on demand. This interpretation is sufficient enough to throw off the defence in this case because, to constitute failure, it is unnecessary that any notice of the default should be issued. Further support in this regard can also be noticed even from the submissions on behalf of respondents 3 and 4. When reference is made to Rule 44(d), which apply to disqualifying persons who are already members of

the committee of a society, the legislature has made a distinction through the subordinate legislation to the effect that such a person can incur disqualification on account of default only after service of notice on hearing on the question of default thereby constituting a demand. Hence, it is crystal clear that respondents 3 and 4 are disqualified to contest for the election in question. The acceptance of their nominations are accordingly set aside and elections shall be conducted without respondents 3 and 4 in the array of candidates.

Writ petition is allowed as above. No costs.

**Thottathil B.Radhakrishnan,
Judge.**

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