

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 18TH DAY OF AUGUST 2017/27TH SRAVANA, 1939

WA. No.1684 of 2017 ()

(AGAINST THE JUDGMENT DATED 04-07-2017 IN WP(C) NO.2974/2017.)

APPELLANT(S)/PETITIONER:

THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS' UNION
LTD NO. T 177, KSHEERA BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004,
REPRESENTED BY THE MANAGING DIRECTOR.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S)/RESPONDENTS:

1. THE REGISTRAR (DIERCTOR), DAIRY DEVELOPMENT DEPARTMENT,
PATTOM, THIRUVANANTHAPURAM - 695 004.
2. VELIYAM PADINHATTINKARA KSHEEROLPADAKA SAHAKARANA
SANGHAM LTD. NO. Q 201 (D) APCOS, VELIYAM WEST P.O.,
KOLLAM - 691 540,
REPRESENTED BY ITS SECRETARY, LUMUMBA M.S.

R1 BY ADDITIONAL ADVOCATE GENERAL SRI. RANJITH THAMPAN
R2 BY ADV. SRI. M. SASINDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-08-2017, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

NAVANITI PRASAD SINGH, C.J.
&
RAJA VIJAYARAGHAVAN V., J.

W.A.. No. 1684 of 2017

Dated this the 18th day of August, 2017

JUDGMENT

Navaniti Prasad Singh, C.J.

This appeal arises from the judgment dated 04.07.2017 in W.P.(C) No.2974 of 2017 whereby, the writ petition filed by the petitioner was dismissed.

2. The petitioner/appellant is aggrieved by the order of the Registrar/Director in Charge of Diary Co-operative Society as contained in Exhibit P5 being Circular No.20 of 2016. By the said circular, the Registrar has directed, *inter alia*, the appellant to admit all primary societies as members, if they are Anand Model Primary Diary Societies, and if they pay the share amount and membership fee along with the application filed in Form 31. The submission is that this peremptory direction takes away the discretion, which the statute has given to the Central or Regional Co-operative Union, in matters of admitting Primary Co-operative Societies as their members.

3. To us, the answer to the above is simple. Section 16(3) of the Co-operative Societies Act, 1969 gives the appellant a

discretion and, therefore, it recognises the right to reject the membership application. That discretion has not been taken away. The question is when do the appellant exercises such a discretion? In other words, the issue comes out that by virtue of a resolution of the appellant taken as far back as in 1987, as contained in Exhibit P2, they were restricting entry of members. The question then would be, whether this could be done. Learned Additional Advocate General submits that this could be done, because, in law, any restriction that could be put on the right of a Primary Co-operative Society to enter and become member of the Union is governed by Rule 5(1)(e) of the Co-operative Rules, 1969, which reads as under:

“5. Subject matter of bye laws:--(1) The bye-laws of a society shall not be contrary to the provisions of the Act and these Rules and may deal with all or any of the matters specified below and with such other matters incidental to the organisation of the society and the management of its business, as may be deemed necessary;-

xx xxx xxx

- (e) the terms and qualifications for admission to membership, the payment, if any to be made or interest to be acquired as a condition precedent for exercising the right of membership;”

4. Learned Additional Advocate General further submits that once the Rules provide that the terms and qualifications, payment and other things, which could be specified as a condition precedent to enter as a member, have to be prescribed by bye-laws then, prescribing the same by an executive decision would not be possible. It would have been another matter if the same were made a part of the bye-law. But, that situation does not arise here. The bye-laws contain no such restriction. Therefore, the direction of the Registrar that a person, who has paid the fee and filed the application in the due Form, should not be refused admission, cannot be faulted.

5. We have considered the arguments and in our view, the functional autonomy of the Union is not disturbed. It has a right to refuse. But, that refusal has to be with reference to the provisions of the Act, the Rules and the bye-laws. The direction of the Registrar cannot mean that whoever comes and whatever he may be doing, if he applies, he had to be admitted. The appellant is a Co-operative Milk Producers' Union at the regional level. It can thus, enroll only functional Primary Milk Co-operatives. For the said purpose, to verify the *bona fides*, it is not just the form that is to be seen. It can look into, whether the Primary Co-

operative Milk Society is functional, in the sense, it has a regular elected Managing Committee and it is, in fact, in the business of milk production and collection for sale. But, once that enquiry is over then, the *bona fides* being established, there is no discretion left. We have to understand the direction of the Registrar in the aforesaid manner and if understood in the said manner then, it is beyond challenge.

In view of the aforesaid clarification, this appeal stands disposed of.

Sd/-
Navaniti Prasad Singh,
Chief Justice

Sd/-
Raja Vijayaraghavan V.,
Judge