

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 24695 of 2015 (J)

PETITIONER:

K CHANDRASEKHARAN NAIR,
PRESIDENT,
VALATHUNGAL KSHEEROLPADAKA CO-OPERATIVE SOCIETY
LTD.NO.Q46(D) APCOS,
VALATHUNGAL P.O., KOLLAM-691 011.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

1. THE DAIRY EXTENSION OFFICER, MUGHATHALA,
KOLLAM-691 011.
2. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT, KOLLAM -691 001.

ADDL.R3 &R4 IMPEADED:

3. THE VALATHUNGAL KSHEEROLPADAKA CO-OPERATIVE
SOCIETY LTD. NO.Q 46(D) APCOS,
REPRESENTED BY ITS SECRETARY, VALATHUNGAL P.O.,
KOLLAM - 691 011.

(ADDL.R3 IMPEADED AS PER ORDER DATED 10.09.2015 IN
IA 12749/15.)

4. RAJAN NAIR.R.,
S/O.RAMACHANDRAN PILLAI, AGED 66 YEARS,
THEKKUMBHAGATHU VEEDU,
AAKKOLIL, VALATHUNGAL, KOLLAM.

(ADDL.R4 IS IMPEADED AS PER ORDER DATED 01.10.2015
IN IA 13430/15.)

R4 BY ADV. SRI.S.ABHILASH
R2 BY ADV. SRI. D. SOMASUNDARAM, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 30.07.2015.
- EXT.P1(a) : ENGLISH TRANSLATION OF EXT.P1.
- EXT.P2 : TRUE COPY OF THE RELEVANT PORTION OF THE BYE-LAW OF THE SOCIETY ALONG WITH ENGLISH TRANSLATION.
- EXT.P3 : TRUE COPY OF THE APPOINTMENT LETTER ISSUED BY THE KSFE LTD. DATED 24.09.2007.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 24695 of 2015 (J)

Dated this the 3rd day of November, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Special Government Pleader, apart from perusing the record.

2. The petitioner, the President of the additional third respondent, a Co-operative Dairy Society, assails Ext.P1 notice on the ground that it is in violation of Rule 44(3) of the Kerala Co-operative Societies Rules ('the Rules' for brevity).

3. The facts in brief are that the bye-laws of the additional third respondent Society mandate, inter alia, that its members shall not carry on any business similar to that of the society. Alleging that the petitioner has been dealing in cattle feed, the business carried on by the Society, the second respondent issued Ext.P1 notice calling upon the petitioner to submit his objections, if any, against the decision taken by the second respondent to disqualify the petitioner under Rule 44(2) of the Rules.

4. The learned counsel for the petitioner has strenuously contended that Ext.P1 is fait accompli and that it is a futile exercise

for the petitioner to file any objections, since the second respondent has already closed his mind on the issue, as is evident from Ext.P1.

5. The learned counsel, taking me though the entire Rule 44, would contend that a pre-decisional hearing is sine qua non, and in its absence any decision taken by the authority concerned is non est.

6. In elaboration of his submissions, the learned counsel, placing reliance on Abdulla Haji v. Joint Registrar¹, has urged this Court to interdict Ext.P1. According to him, both the Rules 16(4) and 44(3) of the Rules are in para materia and that this Court, while interpreting both the provisions, has emphatically held that pre-decisional hearing, rather than a post decisional one, is essential, lest the entire proceedings should be vitiated.

7. In response, the learned Special Government Pleader has submitted that it is fallacious on the petitioner's part to contend that the second respondent has already closed his mind. According to him, Ext.P1 is explicit in its providing a sufficient opportunity to

¹ 2009(4) KLT SN 16(C. No. 16)

the petitioner to raise all his objections and contest the charge on merits.

8. He has, nevertheless, submitted to his credit that the respondents have no objection, if this Court disposes of the writ petition with a direction to the second respondent to hear the petitioner, especially based on the objections to be filed by him, with an open mind and adjudicate the issue objectively taking into account all parameters.

9. Indeed, this Court in Abdulla Haji has felicitously observed as follows:

“When the statute under which an authority functions, itself lays down a procedure for the authority to follow, then that procedure has, necessarily, to be followed. Rr.16 and 44 contain the statutory mandate that no order declaring disqualification or cessation of membership is to be issued without, a prior opportunity to state objections and, if sought for, an opportunity of hearing. Those pieces of subordinate legislation would not give way for any rule of wisdom not amounting to any superior statute law, which may be primary legislation under which those rules are framed, or may be, an overriding legislation and, of course, a constitutional provision. The dictate of the subordinate legislation in hand is that even a person under the cover of a surcharge order has to be heard before an order declaring his disqualification is issued on the ground of being one who is surcharged. The legislative wisdom in the rules under construction may be that, by the time an action for disqualification is taken with reference to a surcharge, the person proceeded against would have purged himself of the consequence of surcharge or would have got an order from a superior authority in his favour. Whatever be the reason, the rules under consideration do not

permit any exclusion of the opportunity to show cause and of hearing, if sought for. If the contrary has to be assumed; as a corollary, this court would be rendering those rules otiose in cases where declaration as to disqualification and cessation is proposed on the ground of surcharge. This is just impermissible."

10. As has rightly been contended by the learned counsel for the petitioner, Rules 16(4) and 44(3) of the Rules are similar, if not in para materia.

11. In the face of the above definitive judicial pronouncement of this Court, the learned Special Government Pleader has submitted that the second respondent will approach the issue with an open mind and his prima facie opinion reflected in Ext.P1 cannot be taken as a fait accompli.

12. In the facts and circumstances, having regard to the submissions of the learned counsel for the petitioner and the learned Special Government Pleader, this Court, without adverting to the merits of the matter, disposes of the writ petition on the following lines:

1. The petitioner is at liberty to file his objections as early as possible, at any rate, within three weeks from today.

2. Once the objections are received, the second respondent shall consider them objectively, keeping in view the statutory scheme and pass appropriate orders thereon.

It is, thus, made clear that, if the second respondent passed any order adverse to the petitioner, the order shall not be given effect to for two weeks from the date of the order, so as to enable the petitioner, if advised, to take appropriate remedial steps in that regard.

The writ petition is disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

