

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 25026 of 2007 (D)  
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PETITIONER(S) :  
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V.K.MANI CHETTIYAR  
JYOTHI BHAVAN, PAMPURAM, KALLUVATHUKKAL  
KOLLAM DIST.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENT(S) :  
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1. STATE OF KERALA, DAIRY DEPARTMENT & ORS  
THE SECRETARY TO GOVT., DAIRY DEPARTMENT  
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT, KOLLAM.

4. EZHIPURAM MILK PRODUCERS CO-OPERATIVE  
SOCIETY, ESI JUNCTION, PARIPALLY P.O.  
KOLLAM.

5. ELAMKULAM MILK PRODUCERS CO-OPERATIVE  
SOCIETY, KALLUVATHUKKAL, KALLUVATHUKKAL P.O.  
KOLLAM.

6. PLAVINMUDE MILK PRODUCERS CO-OPERATIVE  
SOCIETY, MEENAMPALAM, PUTHENKULAM P.O.  
KOLLAM.

R,R4 TO 6 BY ADV. SRI.R.S.KALKURA

R,R4 TO 6 BY ADV. SRI.HARISH GOPINATH

R, BY ADV. GOVERNMENT PLEADER SRI ABHIJEET LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE REJECTION ORDER OF THE 3RD RESPONDENT DATED 24.06.1997
- EXT.P2: TRUE COPY OF THE MASS REPRESENTATION DATED 5.03.2005 SUBMITTED BY THE PETITIONER ALONG WITH 42 OTHERS
- EXT.P3: TRUE COPY OF THE REPRESENTATION DATED 30.11.2015 SUBMITTED BY THE PETITIONER O THE MINISTER OF AGRICULTURE
- EXT.P4: TRUE COPY OF THE COMMUNICATION NO.A5-840/05 DATED 15.04.2005 BY THE DAIRY DEVELOPMENT OFFICER, CHATHANNOOR
- EXT.P5: TRUE COPY OF THE COMMUNICATION NO.A5-840/05 DATED 15.04.2005 BY TH EDAIRY development OFFICER, CHATHANNOOR
- EXT.P6: TRUE COPY OF THE COMMUNICATION NO.A5-840/5/LDS DATED 15.12.2005 ISSUED BY THE 2ND RESPONDENT
- EXT.P7: TRUE COPY OF THE MAP COPIED DOWN FROM THE PANCHAYAT SHOWING THE CASE
- EXT.P8: TRUE COPY OF THE REPRESENTATION DATED 28.03.2005 BY THE PETITIONER
- EXT.P9: TRUE COPY OF THE MILK PURCHASE RECEIPTS DATED 20-08-2014, 21-08-2014, 28-08-2014, 03-09-2014, 07-09-2014, 09-09-2014 TO 12-09-2014 ISSUED BY THE CHIRAKKARA EDAVATTOM DAIRY CO-OPERATIVES SOCIETY TO THE PETITIONER
- EXT.P10: TRUE COPY OF THE RECEIPTS NOS.0800333 TO 0800335 DATED 11-08-2014 NO.0597236 DATED 20-03-2014
- EXT.P11: TRUE COPY OF THE COMMUNICATION NO.A5-2080/09 DATED 20.08.2009 ISSUED BY THE 3RD RESPONDENT TO THE ADDL.SECRETARY, CHIEF MINISTER'S PUBLIC COMPLAINT REDUCE, SECRETARIAT
- EXT.P12: TRUE COPY OF THE MAP SHOWING THE PRESENT WARDS OF KALLUVATHUKKAL GRAMA PANCHAYAT
- EXT.P13: TRUE COPY OF THE REPORT ISSUED BY THE SECRETARY, KALLUVATHUKKAL GRAMA PANCHAYAT WHICH SHOWS THE AREAS OF OPERATION OF 6TH RESPONDENT SOCIETY
- EXT.P14: TRUE COPY OF THE DOCUMENT ISSUED BY THE SECRETARY, KALLUVATHUKKAL GRAMA PANCHAYT, WHICH SHOWS THE AREAS OF OPERATION OF 6TH RESPONDENT SOCIETY
- EXT.P15: TRUE COPY OF THE COMMUNICATION NO.C5-13325/89/R.DIS DATED 19.12.1989 ISSUED BY THE JOINT REGISTRAR (DAIRY)M DIRECTORATE OF DAIRY DEVELOPMENT, THIRUVANANTHAPURAM ALONG WITH ITS ENCLOSURE THE BYE LAW AMENDMENT REGISTRATION CERTIFICATE DATED 19.12.1989.
- EXT.p16: TRUE COPY OF THE REPRESENTATION DATED 30.11.2005 SUBMITTED BEFORE THE CHIEF MINISTER OF KERALA

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- EXTP.P17: TRUE COPY OF THE ORDER DATED 24.06.1997 ISSUED BY THE 3RD RESPONDENT TO MR.N.SASIDHARAN NAIR
- EXT.P18: TRUE COPY OF THE ORDER NO.C2/10817/06/L.DIS DATED 11.12.2008 ISSUED BY THE 2ND RESPONDENT TO MR.V.RAJU
- EXT.P19: TRUE COPY OF REPRESENTATION DATED 13.11.2006 PREFERRED BEFORE THE SECRETARY OF THE 6TH RESPONDENT
- EXT.P20: TRUE COPY OF THE LIST SHOWING THE MILK PRODUCERS, WHO HAVE ALREADY SOLD THEIR COWS
- EXT.P21: TRUE COPY OF THE REPRESENTATION DATED 10.11.2007 SUBMITTED BEFORE THE SECRETARY OF THE 6TH RESPONDENT SOCIETY
- EXT.P22: TRUE COPY OF THE 05.10.2009 ISSUED BY THE SECRETARY TO THE 6TH RESPONDENT SOCIETY UNDER THE RTI ACT
- EXT.P23: TRUE COPY OF THE NEWSPAPER REPORT IN 'THE HINDU' DAILY DATED 27.09.2009
- EXT.P24: TRUE COPY OF THE NEWSPAPER REPORT IN THE MALAYALA MANOREMA DAILY DATED 26.06.2008
- EXT.P25: TRUE COPY OF THE REPORT OF THE ANNUAL GENERAL BODY MEETING OF THE YEAR 2012-13 OF THE CHIRAKKAL-EDAVATTOM MILK PRODUCERS CO-OPERATIVE SOCIETY LTD.NO.Q237(D) APCOS
- EXT.P26: TRUE COPY OF THE LETTER NO.A5-552/08 DATED 27.12.2011 ISSUED BY THE THIRD RESPONDENT
- EXT.P27: TRUE COPY OF THE REPLY DATED 10.08.2009 ISSUED BY THE DAIRY DEVELOPMENT OFFICER, CHATHANNOOR UNDER RTI ACT.

// TRUE COPY //

PA TO JUDGE

**K.SURENDRA MOHAN, J.**

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**W.P.(C) No.25026 of 2007-**  
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**Dated this the 12<sup>th</sup> day of February, 2015**

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

The petitioner has filed this writ petition seeking the following reliefs:-

- i) To issue a call for the records leading to Ext.P5 and P6 orders and quash the same by issuing a writ of certiorari or any other appropriate writ order as the same is passed without any application of mind and ignoring the relevant facts of the grievance raised by the petitioner.
- ii) To issue a writ of mandamus or such other writ order or direction directing the 2<sup>nd</sup> respondent to conduct a fresh enquiry including the correctness of the area of operation of the respondent Societies after the formation of a new wards in Kalluvathukkal Grama Panchayat and to pass fresh orders regarding the request of the petitioner.
- iii) To declare that the respondent are free to take appropriate decision regarding the formation of a new society by looking into the desirability and the necessity raised by the petitioner.
- iv) Direct the 1<sup>st</sup> respondent Government to pass orders, in Exhibit P8 representation granting exemption under Section 101 of the Kerala Co-operative Societies Act, 1969 from the provisions of Section 7(1)(c) of the Act, to

the proposed new society and grant permission to form new society at Sasthrimukku with Pampuram, Chirakkara, Kulathoorkonam, Kalluvathukkal and Mevanakonam Wards in Kalluvathukkal Grama Panchayt as its areas of operation;

- v. To issue such other writ, direction or order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- vi. To award cost of these proceedings.

2. The petitioner is the Chief Promoter of a society that was attempted to be registered in an area consisting of Kulathoorkonam, Pampuram and Edavattom Wards of Kalluvathukkal Panchayat. According to the petitioner, the area has about 150 families producing milk. Though there are three other milk producers societies in the area, who are respondents 4,5 and 6, according to the petitioner, the said societies are situate 4kms away and therefore, people have to walk the said distance carrying milk everyday. It is for the purpose of mitigating the inconvenience caused to the milk producers that a fresh society was sought to be registered. The request of the petitioner has been rejected

by Exhibits P5 and P6 issued by respondents 2 and 3. The said proceedings are under challenge in this writ petition.

3. According to the counsel for the petitioner, though it is true that the area of operation of the proposed society overlaps the area of operation of the three societies that are already in existence, the Government have the power to exempt the proposed society from the rigour of the provision, considering the welfare of the milk producers. However, in the present case, no such relaxation has been granted, which according to the counsel is unjustified. Exhibits P5 and P6 orders do not even consider the question of grant of exemption to the proposed society. Therefore, it is contended that, the said proceedings are unsustainable and liable to be set aside. He seeks the issue of appropriate directions for consideration of the matter afresh. It is pointed out that, he has submitted Exhibit P8 representation for the consideration of which a direction is necessary to be issued.

4. A counter affidavit has been filed on behalf of the

third respondent. According to the third respondent, the area proposed for the new society overlaps the area of operation of the three existing societies, respondents 4,5 and 6. Though the State has got the power under Section 12(5) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short) to compulsorily reduce the area of operation of an existing society, the provision has already been omitted from the Statute by Act 8 of 2013. At the time of filing the counter affidavit, the same was remaining stayed by this Court. Therefore, it is contended by the learned Government Pleader that, the rejection of the petitioner's request is well founded and that no interference by this Court is called for, with the impugned proceedings.

5. Advocate Harish Gopinath appears for respondents 3 to 6. According to the counsel, the existing societies who are respondents 4 to 6 are already in existence in the area. There is no scope for the formation of a new society reducing the area operation of the existing

societies. Since the Government has not permitted a new society to be registered, it is contended that the question of granting exemption from the provisions of the Act does not arise. In view of the above, according to the counsel, the stand of the respondents do not call for any interference by this Court.

6. Heard. The case of the petitioner is that, there are 150 families in the area that is proposed to be covered by the new society of the petitioner. What is stated is that, they find it extremely difficult to traverse the distance of 4kms to one of the existing societies. The said contention prima facie lacks conviction. 4kms is not a substantial distance by any standards, unless there are special circumstances to show that there is any added difficulty peculiar to the locality. No such aspect has been pleaded or pointed out by the petitioner. Even assuming that there are milk producing families as stated by the petitioner, they are at liberty to take advantage of the three societies that are already functioning in the area, admittedly at a distance of

4kms. Respondents 2 and 3 have considered the application submitted by the petitioner and rejected the same finding that, no permission to register a new society could be granted for the reason that, the area of operation proposed by the petitioner overlaps the area of operation of the existing societies. The objection raised by the counsel for the petitioner is that, the question of grant of exemption from the provisions of the Act has not been considered by the impugned order. I do not consider it a serious infirmity affecting the validity of the impugned orders. It is only in exceptional cases that exemption from the existing provision is granted. The normal rule is that, the rule should prevail. Therefore, for the only reason that the impugned orders have not considered the grant of exemption from the said provision, it cannot be said that the impugned orders are infirm in any manner.

7. The counsel for the petitioner has placed reliance on the decision of this Court in **Cherummood**

**Ksheerolpadaka Sahakarana Sangham Ltd v. Director, Dairy Development Department, Tvm and others [2013 (KHC) 90].** It is pointed out that, in the said case, a society had been granted exemption from the provisions of the Act under Section 101. Though the society was only 5kms away from an existing society, the action of Government in granting exemption was sustained. I am not satisfied that, the decision relied upon is of any help to the petitioner in the present case. I notice on facts that, in the said case, the existing society had been registered in the year 1954 and the area of operation was very large. The said aspect had been considered by the authorities and an exemption had been granted. It was the said exemption that was under challenge in the said writ petition. This Court has found that, exercise of the discretion to grant exemption under Section 101 of the Act was proper. In the present case, there are three existing societies. The proposed society of the petitioner would overlap the area of operation of all the

three societies. The authorities have therefore rejected the proposal of the petitioner. I do not find any infirmity in the said decision.

8. Apart from the above, the impugned proceedings were issued in the year 2005. This writ petition is seen filed only in the year 2007. Though the petitioner had a statutory remedy of appeal, provided by Section 83(1)(a) against the impugned orders, the statutory appellate remedy was not exhausted. Therefore, the orders had become final at the time when this writ petition was filed. For the above reason also, the petitioner is not entitled to any of the reliefs sought for in this writ petition.

9. The counsel for the petitioner submits that, as per Exhibit P11, it has been found that the petitioner's proposal was feasible but that no action is taken only because of pendency of proceedings before this Court. The petitioner is at liberty to pursue the said proceedings, if they are pending.

I do not find any grounds to issue any further

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directions in this matter. This writ petition is therefore dismissed.

Sd/-  
**K.SURENDRA MOHAN,**  
**JUDGE**

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