

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 29TH DAY OF OCTOBER 2013/7TH KARTHIKA, 1935

**W.P.(C).No.3497 of 2013 (J)**

PETITIONER:-

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JOJO JOSEPH A, GED 36 YEARS, S/O.JOSEPH,  
VILANG PARAYIL, KURIANADU P.O.,  
KOTTAYAM DISTRICT.

BY ADVS.SRI.P.RAVINDRAN (SENIOR ADVOCATE)  
SRI.SREEDHAR RAVINDRAN.

RESPONDENTS:-

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1. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT,  
KOTTAYAM DISTRICT - 686 001.
  2. THE ADMINISTRATOR,  
KURIANAD KSHEERA ULPADAKA CO-OPERATIVE SOCIETY LTD.,  
NO.K, 69(D) APCOS - 686 636.
  3. KURIANAD KSHEERA ULPADAKA CO-OPERATIVE SOCIETY LTD.,  
NO.K, 69(D) APCOS. - 686 636,  
REPRESENTED BY ITS SECRETARY.
  4. KOTTAYAM DISTRICT QUALITY CONTROL OFFICER (ENQUIRY OFFICER),  
KOTTAYAM - 686 001.

\* ADDL.RESPONDENT NO.5 IMPLEADED:

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ADDL.R5. BIJUMON THOMAS, AGED 39 YEARS, S/O.U.O.THOMAS,  
RESIDING AT VATTAMUKALAL HOUSE, KOZHA.P.O.  
KURAVILANGADU, KOTTAYAM DISTRICT,

\* (ADDITIONAL RESPONDENT NO.5 IS IMPLEADED AS PER ORDER  
DATED 21/02/2013 IN IA 2890/2013)

R1 & R4 BY SPECIAL GOVERNMENT PLEADER SRI.D.SOMASUNDARAM.  
R5 BY ADVS. SRI.JOICE GEORGE  
SMT.MABLE.C.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
24-10-2013, ALONG WITH W.P.(C).NO.12629 OF 2013-C, THE COURT ON  
29.10.2013 DELIVERED THE FOLLOWING:-

**APPENDIX**

PETITIONER'S EXHIBITS:-  
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EXHIBIT P1: TRUE COPY OF THE COMMUNICATION INFORMING CONDUCT OF AN ENQUIRY UNDER SECTION 66 DATED 18.10.2012.

EXHIBIT P2: TRUE COPY OF THE COMMUNICATION DATED 18.12.2012

EXHIBIT P3: TRUE COPY OF THE ENQUIRY REPORT DATED 29.11.2012

EXHIBIT P4: TRUE COPY OF THE COVERING LETTER DATED 28.12.2012

EXHIBIT P5: TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 28.12.2012

EXHIBIT P6: TRUE COPY OF THE NOTICE DATED 16.1.2013

EXHIBIT P7: TRUE COPY OF THE COMPLAINT DATED 21.1.2013

EXHIBIT P8: TRUE COPY OF THE REPLY DATED 23.1.12.

EXHIBIT P8(a): TRUE COPY OF THE DECLARATION BY THE SECRETARY.

EXHIBIT P9: TRUE COPY OF THE ORDER DATED 1.2.2013.

EXHIBIT P10: TRUE COPY OF THE COMPUTER PRINT OUT PERTAINING TO THE GENERAL LEDGER REPORT FOR THE YEAR 2011-12.

EXHIBIT P11: TRUE COPY OF THE DECISION OF THE MEETING HELD ON 18.04.2012.

EXHIBIT P12: TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 27.10.2012.

EXHIBIT P13: TRUE COPY OF THE RESOLUTION DATED 22.04.2013.

RESPONDENTS' EXHIBITS:-  
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EXHIBIT R1(a) TRUE COPY OF THE STATEMENT GIVEN BY THE SECRETARY OF THE 3RD RESPONDENT SOCIETY.

EXHIBIT R1(b) TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONER.

EXHIBIT R1(c) TRUE COPY OF THE FIR.

( true copy )

vku/-



K. Vinod Chandran, J

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W.P.(C).Nos.3497 of 2013-J & 12629 of 2013-C  
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Dated this the 29<sup>th</sup> day of October, 2013

**JUDGMENT**

The President of a duly elected Managing Committee challenges the supersession of the Committee by the Department under Section 32 of the Co-operative Societies Act, 1969 (Kerala) (hereinafter referred to as “the Act”) in W.P.(C).No.3497 of 2013. The challenge in W.P.(C).No.12629 of 2013 is to the election notification issued by the Deputy Director of Dairy Development on the basis of a decision taken by the Administrator appointed after the supersession. Since the supersession is at the earlier point of time, that has to be decided before looking at the writ petition, challenging the election.

2. The 3<sup>rd</sup> respondent-Society is a Co-operative Society of Milk Producers and the duly elected Managing Committee had assumed office on 08.08.2010 and is entitled to continue till the expiry of the term, i.e., 07.08.2015. The action under Section 32, taken by the 1<sup>st</sup> respondent has its genesis in a complaint filed by the additional 5<sup>th</sup> respondent against whom certain allegations are made in the writ petition, which are not

relevant in deciding the writ petition. Suffice it to say, on the complaint of the said additional 5<sup>th</sup> respondent, the 1<sup>st</sup> respondent issued Exhibit P1, wherein an enquiry as contemplated under Section 66 of the Act was initiated.

3. The general administration, utilization of funds, the business done and the utilization of subsidy with respect to cattle feed were the matters in which the enquiry was initiated. The Enquiry Officer submitted Exhibit P3 report and the same was communicated to the Managing Committee by Exhibit P2, issued by the 1<sup>st</sup> respondent calling for explanations to Exhibit P3 report. On a reading of Exhibit P3, it is quite evident that the complaint and the irregularity found was with respect to the utilization of the subsidy received for cattle feed by the Managing Committee of the Society in the year 2011-12. Admittedly the Dairy Development Department had implemented a subsidy scheme, wherein financial assistance was provided to milk producers for procurement of cattle feed. The details of the scheme is not available before this Court. The scheme had been in operation for some years, as is seen from the records of the case.

4. In the conclusions in Exhibit P3 Report as item No.7, it has been stated that the subsidy of Rs.49,033/- received

in the years 2009-10 and 2010-11 also has been misappropriated. However, on a reading of the Report as a whole, there is no discussion with respect to the allegation of misappropriation for the said years and the detailed examination is confined to the subsidy of Rs.36,780/- received for the year 2011-12. It has been found that the amounts so received has been appropriated by the Managing Committee for the general purposes of the Society, without making payments to the milk producers, i.e., the members of the Society. The list of milk producers, attested by the President of the Society, supplied to the Uzhavoor Milk Development Office was relied on to find that the payments as indicated in the list were never made and the President having forged the signatures of the members; misappropriated such amounts. Later when a complaint was filed, on 12.10.2012 the said amounts were credited in the ledger of the Society and was shown as having been disbursed to the various members, is the allegation.

5. The Society then submitted Exhibit P4 reply, with the necessary evidences, being the receipts issued by 87 milk producers as also documents to substantiate their explanation. The documents and receipts were also acknowledged by the 1<sup>st</sup>

respondent, which acknowledgment is produced as Exhibit P5. However, it is the contention of the petitioner that despite the evidence produced and the explanation offered, Exhibit P6 show cause notice was issued, calling for an explanation and threatening supersession under Section 32 of the Act. The Society reiterated their explanation by Exhibit P8. Again, a mechanical order was passed by Exhibit P9, ordering supersession.

6. The first contention of the learned Senior Counsel Sri.P.Ravindran appearing for the petitioner is that Exhibit P9 is simply a reproduction of Exhibit P6. The learned Senior Counsel also would invite this Court to sub-section (2) of Section 32, which mandates consultation with the financing bank and the Circle Co-operative Union, by the Joint Registrar, before an order is passed under Section 32. The learned counsel would also rely on ***State of Kerala v. Urukunnu S.C.B.Ltd.* [2013 (2) KLT 74]** and ***State of M.P. v. Sanjay Nagayach* [2013(2) KLT 733]**, respectively judgments of a Division Bench of this Court and the Hon'ble Supreme Court, to contend that what has been done in the instant case, as is revealed from the specific averments in the counter affidavit, is just an issuance of a copy of the order passed

under Section 32 to the concerned financing bank and the Circle Co-operative Union, which falls short of the mandatory requirement under sub-section (2) of Section 32.

7. The learned Special Government Pleader (Co-operation) would, however, seek to sustain the order of the 1<sup>st</sup> respondent. The learned Special Government Pleader would point out that very serious allegations have been made in the Enquiry Report and the procedure contemplated in the Act has been followed in its letter and spirit by the 1<sup>st</sup> respondent before an order was passed under Section 32. Admittedly the subsidies were not paid to the members of the Society until a complaint was raised by the 1<sup>st</sup> respondent. The entries made, later to the complaint, in the accounts of the society, would clearly demonstrate the attempt to misappropriate the funds and that would be a sufficient reason to proceed under Section 32 of the Act, is the contention. The order of the 1<sup>st</sup> respondent under Section 32 is not liable to be interfered with by this Court in judicial review for reason of the same having been made on facts. An appreciation of facts and material, to come to a different conclusion would remain outside the contours of the jurisdiction conferred on this Court under Article 226 of the Constitution and

the same would ideally be available to an appellate authority constituted under Section 83 of the Act, which remedy the petitioner has chosen not to avail of. The learned Special Government Pleader would rely on an unreported judgment of this Court in W.P.(C).No.14604 of 2008 dated 21.08.2008.

8. As was noticed above, the issue boils down to the alleged misappropriation of the subsidy received in the year 2011-12. As is revealed from the various explanations placed on record, the contention of the Managing Committee of the Society is that the same was not an attempt to misappropriate funds and was only an irregularity which was actuated by the anxiety of the Managing Committee to ensure that the amounts due as subsidy to the milk producers does not lapse. The list relied on by the Enquiry Officer, according to the Managing Committee, is one prepared showing the members of the Co-operative Society who are eligible to get the subsidy, which was attested by the President and submitted before the Uzhavoor Milk Development Office for the purpose of getting release of the subsidy amounts. The amount received from the Government was duly credited to the Daily Cash Book Register and the same was not disbursed to the members, since none had purchased cattle feed from the

Society. The disbursement of subsidy is only to members who purchase cattle feed from the Society; the purchase price of which is deducted from the price of milk payable to the members. The amounts having been entered in the Cash Book Register and the cash being available, the same was utilized for the purchase of mementos to be given to the members; which expenditure was to be made from the general fund and there were amounts available in the general fund, which account was maintained by the Society in a Bank. Hence, it is the contention that the cash having been entered in the Daily Register, the receipt of subsidy from the Government was disclosed in the accounts. The said amounts were not deposited in the account maintained by the Society, since cash was needed and the same was utilized for the purpose of an expenditure from the general fund. This, according to the Society, was only to avoid the deposit of the cash in the Bank account and an immediate withdrawal for an expenditure. This is the reason why on being informed of a complaint with respect to misappropriation of subsidy amounts, such amounts were withdrawn from the general fund account and credited to the Daily Register, is the argument. The said amounts were also disbursed to the members on due receipts; but, however, on being forced to

do so by the Police on a First Information Report being registered at the instance of the additional 5<sup>th</sup> respondent.

9. None of these contentions were appreciated by the 1<sup>st</sup> respondent; nor were the documents or receipts produced verified, to come to a finding that the subsidy amounts were misappropriated. As has been stated by the learned Senior Counsel, a plain reading of Exhibit P6 and P9 would indicate that though the same is not a verbatim re-production, the allegations and the findings are reiterated. It is not disputed that on the enquiry report being given to the Society, it had submitted its explanation along with a number of documents and receipts for the consideration of the 1<sup>st</sup> respondent. Exhibit P6 show cause notice was issued without a whisper about the explanation offered by the Committee or with reference to any of the documents produced. Of course, Exhibit P6 was a show cause notice and a *prima facie* satisfaction is what is required when the procedure contemplates showing cause to the allegations levelled. The Society had again submitted detailed explanations, none of which have been adverted to in the final order, Exhibit P9.

10. The decision of a learned Single Judge relied on by the learned Special Government Pleader may not be fully

applicable in the present case, since that was a case in which the learned Single Judge specifically noticed that the impugned order carried the reasons of the Joint Registrar for adopting such a course of action. Judicial review necessarily would not include looking into the facts and circumstances and appreciating the same to arrive at a different conclusion. However, if none of the facts have been adverted to and none of the explanations offered were considered, then the said order cannot be said to be one which reflects the reasoning of the authority. The learned Single Judge had in the cited decision held that the question which falls for consideration ultimately is whether there is any jurisdictional error or legal infirmity warranting interference under Article 226 of the Constitution. The total lack of reasoning and an obvious non-application of mind, according to this Court, is a legal infirmity warranting interference. Definitely in such circumstance this Court is entitled to exercise the visitorial jurisdiction to set aside an order which is shown to be patently lacking in reasoning. The mere reiteration of the allegations made in the enquiry report does not become the reasoning of the authority who has to apply his mind to the allegations levelled and the explanation offered and come to an independent finding regarding the allegations and

then go ahead with the action he is empowered to take on the strength of the reasoning. Such an exercise is blatantly and patently absent in the instant proceedings.

11. Further, the counter affidavit filed on behalf of the respondent speaking of the compliance of sub-section (2) of Section 32 specifically states “Exhibits P6 and P9 are served to the concerned financing Bank and Circle Co-operative Union and copies are marked in those orders too” (*sic*). That is not sufficient compliance of sub-section (2) of Section 32 and in finding so, this Court draws support from **Urukunnu Service Co-op.Bank** and **Sanjay Nagayach** (both *supra*). In the context of the above findings, it is imperative that this Court interferes with the supersession order, Exhibit P9, passed under Section 32 of the Act. Exhibit P9 order in W.P.(C).No.3497 of 2013 is set aside and necessarily the Administrator would have to be relieved and the Managing Committee validly elected to be reinstated in office. The same shall be done expeditiously. However, the 1<sup>st</sup> respondent is at liberty to initiate proceedings, if he thinks fit and if the same is permissible under the Act and the Rules, with respect to the very same allegations; but, however, needless to say, such proceedings, if initiated, it should be continued and concluded in

accordance with law and keeping in mind the observations made in this judgment.

12. In the context of this Court having found the supersession to be bad, necessarily the election notified, assailed in W.P.(C).No.12629 of 2013, has to be set aside. I do so.

Both the writ petitions are allowed. The parties are directed to suffer their respective costs.

Sd/-  
K.Vinod Chandran  
Judge.

vku/-

( true copy )