

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 1ST DAY OF FEBRUARY 2017/12TH MAGHA, 1938

WP(C).No. 1510 of 2017 (K)  
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PETITIONER(S):  
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1. S.ARAVINDAKSHAN, PRESIDENT,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20,  
S/O.SHANKARAN NAIR, AGED 42 YEARS,  
RESIDING AT REVATHY, VALLAMKODE, KALLIYOOR P.O.,  
TRIVANDRUM -20
2. KALLIYOOR VENUGOPALAN NAIR, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT KRISHNA VILASOM, KALLIYOOR P.O.,  
TRIVANDRUM -20
3. T. JOSEPH, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT KANJIRAMVILA, VARUVILA VEEDU,  
KAKKAMOOLA, KALLIYOOR P.O.,TRIVANDRUM -20
4. S.SIVAKUMAR, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT PLAVATHAKULATHINKARA PUTHEN VEEDU,  
NILAMA, P.O.OOKODE, TRIVANDRUM.
5. V.A.SURESH KUMAR, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT VAYALIL VEEDU, KAKKAMOOLA,  
KALLIYOOR P.O.,TRIVANDRUM -20
6. S.ANIJA, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE  
SOCIETY LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT J.A.NIVAS, KAKKAMOOLA,  
KALLIYOOR P.O.,TRIVANDRUM -20
7. K.KUMARI, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE SOCIETY  
LTD. NO.4114, PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT MELECHERUVILA VEEDU, VALLAMKODE,  
KALLIYOOR P.O.,TRIVANDRUM -20

WP(C).NO.1510/2017

8. T. SHANTHA KUMARI, DIRECTOR,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE  
SOCIETY LTD. NO.4114,  
PALLICHAL P.O., THIRUVANANTHAPURAM-20  
RESIDING AT VRINDAVANAM, VELAYANI, NEMOM P.O.,  
TRIVANDRUM -20

BY ADV. SRI.P.V.BABY

RESPONDENT(S):

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1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO  
DAIRY DEVELOPMENT DEPARTMENT,  
SECRETARIAT, TRIVANDRUM-695 001
2. DEPUTY DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT,  
TRIVANDRUM-695 001
3. KALLIYOOR KSHEERA VYEVASAYA  
CO-OPERATIVE SOCIETY LTD. NO.4114,  
PALLICHAL P.O., THIRUVANANTHAPURAM-695 001  
REPRESENTED BY ITS SECRETARY.
4. VIJAYA KUMAR K.N.,  
ADMINISTRATIVE COMMITTEE MEMBER,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE  
SOCIETY LTD. NO.4114,  
PALLICHAL P.O., THIRUVANANTHAPURAM,  
RESIDING AT VIJAYA THULASI, KALLIYOOR P.O.,  
TRIVANDRUM-695 042
5. S.KRISHNAN KUTTY,  
ADMINISTRATIVE COMMITTEE MEMBER,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE  
SOCIETY LTD. NO.4114,  
PALLICHAL P.O., THIRUVANANTHAPURAM  
RESIDING AT U.K.HOUSE, MILLENNIUM ROAD,  
OOKODE P.O., TRIVANDRUM-695 001

WP(C).NO.1510/2017

6. PURUSHOTHAMAN NAIR,  
ADMINISTRATIVE COMMITTEE MEMBER,  
KALLIYOOR KSHEERA VYEVASAYA CO-OPERATIVE  
SOCIETY LTD. NO.4114,  
PALLICHAL P.O., THIRUVANANTHAPURAM  
RESIDING AT KAVERY HOUSE, OOKODE P.O.,  
NEMOM, TRIVANDRUM-695 001

R1 & R2 BY SPL. GOVERNMENT PLEADER SRI.K.S.MOHAMED HASHIM  
R4 TO R6 BY ADVS. DR.K.P.PRADEEP  
SMT.T.THASMI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 01-02-2017, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

sts

**WP(C).No. 1510 of 2017 (K)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1    A TRUE PHOTOCOPY OF THE REPRESENTATION BY THE PRESIDENT  
OF THE SOCIETY TO THE 2ND RESPONDENT RECEIVED BY HIM  
ON 22.9.2016**

**EXHIBIT P2    A TRUE PHOTOCOPY OF THE NOTICE DATED 18.11.2016 ISSUED BY  
THE 2ND RESPONDENT**

**EXHIBIT P3    A TRUE PHOTOCOPY OF THE REPLY DATED 7.12.2016 SUBMITTED BY  
THE 1ST PETITIONER TO THE 2ND RESPONDENT**

**EXHIBIT P4    A TRUE PHOTOCOPY OF THE ORDER DATED 10.1.2017 ISSUED  
BY THE 2ND RESPONDENT**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**/TRUE COPY/**

**P.A.TO JUDGE**

**sts**

**P.B.SURESH KUMAR, J.**

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**W.P.(C).No.1510 of 2017**  
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**Dated this the 1<sup>st</sup> day of February, 2017**

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

The petitioners are members of the Managing Committee of the third respondent Society ('the Society'). As per Ext.P4 order, the second respondent superseded the Managing Committee of the Society in exercise of the powers under Section 32(1) of the Kerala Co-operative Societies Act ('the Act'). Ext.P4 is under challenge in this writ petition.

2. Heard the learned counsel for the petitioners as also the learned Government Pleader.

3. The learned counsel for the petitioners, relying on the provision contained in sub-section (2) of

Section 32 of the Act contended that it is obligatory for the second respondent to consult the Financing Bank of the Society as also the Circle Co-operative Union concerned before passing an order in the nature of Ext.P4. In so far as Ext.P4 order has been passed without undertaking the said consultation process, according to the learned counsel, the same is illegal. Per contra, relying on sub-section (3) of Section 32 of the Act, the learned Special Government Pleader contended that Ext.P4 order cannot be said to be illegal merely for the reason that the consultation process provided for under sub-section (2) of Section 32 has not been undertaken. The Special Government Pleader also contended that the Financing Bank of the Society as also the Circle Co-operative Union concerned were consulted after the impugned order.

4. Sub-sections (2) and (3) of Section 32 reads thus:

“(2) The Registrar shall consult the financing bank and Circle Co-operative Union or State Co-operative Union as the case may be before passing an order under sub-sec (1).

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months-

(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.”

It is evident from sub-section (2) of Section 32 of the Act that the consultation process provided therein has to be undertaken before passing the order of supersession. The fact that the Financing Bank of the Society as also the Circle Co-operative Union concerned were not consulted before the order of supersession, is not in dispute. True, it is clarified in sub-section (3) of Section 32 of the Act that the consultation process can be dispensed with in cases where the Registrar is of the opinion that it is not reasonably practicable to undertake the consultation process provided for in sub-

section (2) of Section 32. The impugned order does not say that it was not reasonably practicable to undertake the consultation process directed in sub-section (2) of Section 32 of the Act in the instant case. The second respondent has no case in the counter affidavit also that it was not reasonably practicable to undertake the consultation process in the instant case. It is trite that when a thing is required to be done by law in a particular fashion, it has to be done in that fashion or not at all. In the circumstances, I have no hesitation to hold that Ext.P4 is illegal.

In the result, the writ petition is allowed and the impugned order is quashed. It is, however, made clear that this judgment will not preclude the authorities from passing fresh orders under Section 32 of the Act, if circumstances warrant such orders.

Sd/-

**P.B.SURESH KUMAR**  
**JUDGE**