

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 06TH DAY OF MARCH 2019 / 15TH PHALGUNA, 1940

WP(C).No. 19184 of 2018

PETITIONER:

KANNUKETTUSSERY MILK PRODUCERS CO-OPRATIVE SOCIETY
LTD .NO. K 87
REPRESENTED BY PRESIDENT, T.V.PURAM P.O.,
VAIKOM, KOTTAYAM - 686 606.

BY ADVS.
SRI.P.N.MOHANAN
SRI.C.P.SABARI

RESPONDENTS:

1 THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT, VAIKOM,
KOTTAYAM DISTRICT - 696 141.

2 ASADEVI DAS
VENMMELIL, T.V.PURAM,
KOTTAYAM - 686 606.

BY ADVS.
SRI.S.ABHILASH VISHNU
SRI.ATHUL SHAJI
SRI.T.A.SHAJI (SR.)

SMT.C.S.SHEEJA-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.03.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, which is a Milk Producers Co-operative Society, impugns Ext.P6 order of the 1st respondent, Deputy Director of Dairy Development Department, primarily on the ground that it has been issued without hearing them.

2. Shri.P.N.Mohanan, the learned counsel appearing for the petitioner, submits that through Ext.P6 order, the 1st respondent has directed the 2nd respondent to be appointed as the Secretary of the Society, but without considering whether the Society has the financial resources to make such an appointment and disregarding the fact that the Rank list, against which the 2nd respondent is claiming appointment, had expired much before the vacancy arose. Shri.P.N.Mohanan says that, had the Deputy Director given an opportunity to the petitioner-Society to explain their stand, Ext.P6 order would not have been issued.

3. Smt.C.S.Sheeja, the learned Senior Government Pleader, submits that Ext.P6 is an appealable order and that the petitioner has approached this Court without exhausting the available alternative statutory remedies. She says that since the petitioner has chosen not to invoke the alternative statutory remedy, this writ petition is deserving to be dismissed on that short ground alone. After saying so, the learned Government Pleader adds that, as it clear from Ext.P6, the validity of the Rank list was until 20/10/2017, whereas the vacancy arose on 31/07/2017 and that it is, therefore, the 1st respondent has issued Ext.P6 directing the petitioner Society to appoint the 2nd respondent from the said Rank list. She says, relying on Ext.R1(a) that the validity of the Rank list in such cases is normally for two years.

4. Shri.Athul Shaji, the learned counsel appearing for the 2nd respondent, affirms the

submissions made by the learned Senior Government Pleader and further reiteratingly submits that this writ petition is not maintainable on account of the availability of alternative statutory remedies for the petitioner.

5. In refutation of the above submissions, Shri.P.N.Mohanan, the learned counsel for the petitioner, asserts that Ext.R1(a) Circular is not applicable to the case of the petitioner-Society and he says that this issue could also have been agitated before the 2nd respondent, had the said Authority afforded them an opportunity of being heard. He, then says that his client is willing to approach the Director of the Dairy Development Department, which is the Competent Statutory Appellate Authority, with an appeal against Ext.P6 and he prays that the said Authority be directed to consider all the germane issues, untrammelled by Ext.P6 and in its proper legal perspective, taking note of all the submissions and contentions made and raised in this writ petition.

6. In the afore circumstances, since I notice that the petitioner has an efficacious alternative remedy, I order this writ petition and grant permission to the petitioner to file a Statutory Appeal against Ext.P6 before the Competent Appellate Authority, which is stated to be the Director of Dairy Development Department, within a period of two weeks from the date of receipt of a copy of this judgment. If the petitioner prefers such an Appeal, the Appellate Authority will consider the same, after affording an opportunity of being heard to the petitioner as well as to the 2nd respondent, adverting to every contention of Shri.P.N.Mohanan recorded above, including that the Society has no financial capacity to appoint and that the Rank list expired within a period of one year after it was published; and will thereafter issue an appropriate order/proceeding and communicate the same to the parties within a further period of two months there from.

I make it clear that I have not considered any of the contentions of the rival parties on its

merits and that I leave all of it open, to be raised by them before the Appellate Authority in terms of law.

This writ petition is thus ordered.

sd/-

DEVAN RAMACHANDRAN

JUDGE

MC/6.3.19

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1. A TRUE COPY OF THE NOTIFICATION
PUBLISHED IN MATHRUBHUMI DAILY DATED
24.09.2015.
- EXHIBIT P2. A TRUE COPY OF THE CIRCULAR NO.3/1995
DATED 17.02.1995.
- EXHIBIT P3. A TRUE COPY OF THE RESOLUTION DATED
21.10.2015 OF THE MANAGING COMMITTEE.
- EXHIBIT P4. A TRUE COPY OF THE RELEVANT PORTION OF
THE AUDIT REPORT OF THE YEAR 2015-2016
DATED 30.04.2018.
- EXHIBIT P5. A TRUE COPY OF THE RESOLUTION DATED
10.03.2018 OF THE MANAGING COMMITTEE.
- EXHIBIT P6. A TRUE COPY OF THE ORDER DATED
15.05.2018 OF THE FIRST RESPONDENT.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 (a) TRUE COPY OF THE CIRCULAR
NO.H2/16530/1994 DATED 24.04.1998.
- EXHIBIT R2 (a) TRUE COPY OF THE CLASSIFIED RECEIPT AND
DISBURSEMENT STATEMENT OF THE
PETITIONER SOCIETY FOR THE YEAR 2015-16

MC

(TRUE COPY)

PA TO JUDGE