

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 30TH DAY OF AUGUST 2019 / 8TH BHADRA, 1941

WP(C).No.20378 OF 2019(V)

PETITIONER:

K.V.PUNYAKUMARI  
AGED 56 YEARS  
W/O.LATE SURENDRAN, VASU NIVAS, NEITHALA,  
ERATTAKULAM(P.O) ELAPPULLY-678622

BY ADV. SRI.P.I.DAVIS

RESPONDENTS:

- 1 THE DIRECTOR, DAIRY DEVELOPMENT DEPARTMENT  
DIRECTORATE OF DAIRY DEVELOPMENT PATTOM,  
THIRUVANANTHAPURAM-695004
- 2 THE ASSISTANT DIRECTOR OF CO-OPERATIVE AUDIT/  
CONCURRENT AUDITOR, MRCMPU LTD. (MILMA) ,  
KOZHIKODE-673571
- 3 MALABAR REGIONAL CO-OPERATIVE MILK PRODUCE'S UNION  
LTD.  
PERINGOLAM, KUNNAMANGALAM, KOZHIKODE (CALICUT-673571)  
REPRESENTED BY ITS MANAGING DIRECTOR
- 4 KOOLIYODE KSHEEROLPADAKA SAHAKARANA SANGHAM  
(LTD NO.P296(D) , APCOS, ELAPPULLY.P.O, PALAKKAD  
DISTRICT REPRESENTED BY ITS SECRETARY 678004

R4 BY ADV. SRI.KOSHY GEORGE

SMT.C.S.SHEEJA-SR.GP, SMT. LATHA ANAND-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
30.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner is stated to be the President of the 4<sup>th</sup> respondent-Society and says that she was nominated by the 3<sup>rd</sup> respondent-Malabar Regional Co-operative Milk Producer's Union Ltd. Society (hereinafter referred to MILMA for short) to their Managing Committee, under the provisions of their Bye-laws, on 30.08.2017. The petitioner submits that this nomination was approved by the 1<sup>st</sup> respondent-Director of Dairy Development Department, who is the functional Registrar of Co-operative Societies as far as MILMA is concerned, on 08.11.2017, through Ext.P3; and that she, thereafter, began to officiate as a member of its of Managing Committee.

2. The petitioner says that, however, subsequently the 1<sup>st</sup> respondent issued Ext.P12 on 24.06.2019, finding that her nomination was improper and that she thus stood disqualified to be a member of the Managing Committee of MILMA under Rule 44 (1) (j) of the Kerala Co-operative Societies Rules (hereinafter referred to 'the KCS Rules' for short). The petitioner impugns Ext.P12 on various grounds but primarily that the 1<sup>st</sup> respondent does not have any jurisdiction to review his own earlier order, namely Ext.P3, and that is too nearly after two years.

3. The learned Standing Counsel appearing for MILMA-Smt.Latha Anand, submits that the petitioner's nomination was made on 30.08.2017 at a time when the classification of the 4<sup>th</sup> respondent-Society, of which she is the President, was "Class-C". She admits that with effect from 23.01.2017, as per the Audit Certificate applicable to the 4<sup>th</sup> respondent-Society for the year 2016-17, they were categorized as "Class-C" and that, going by the Bye-laws of the MILMA, the petitioner's nomination could not have been made. She says that the Managing Committee of the MILMA had, however, taking note of the fact that the audit of the 4<sup>th</sup> respondent-Society for the subsequent year was underway and they had attained all the qualifications applicable to a "Class-B" Society, which is evident from the Audit Certificate, dated 30.12.2017, in fact, classified them as a "Class-B" Society with effect from that date. She, then submits that her client has nothing more to comment on this issue, except that the nomination of the petitioner was made bonafide by them, without harbouring any suspicion that such nomination was incompetent in law.

4. The learned Senior Government Pleader-Smt.C.S.Sheeja, appearing on behalf of the official respondents,

submits that, as is clear from the contents of Ext.P12, at the time when the petitioner's nomination was made by MILMA on 30.08.2017, the 4<sup>th</sup> respondent-Society was classified as a "Class-C" Society. She says that, unfortunately, this crucial aspect had not been brought to the notice of the 1<sup>st</sup> respondent at the time when Ext.P3 approval of the nomination was approved by him and therefore, that Ext.P3 must be construed to have been issued in error. She, then contends that the Director, on being aware of this subsequently, was obligated to act in his capacity as the Registrar under Rule 44 (1) of the KCS Rules thus being fully justified in issuing Ext.P12 order disqualifying the petitioner; and consequently that the said order cannot be seen to be a review of Ext.P3 but an independent order in exercise of the statutory powers to disqualify a member under Rule 44 of the said Rules.

5. I have considered the afore submissions and have examined the materials available on record .

6. The factual circumstances afore narrated would make it luculent and virtually admitted that, with effect from 23.01.2017, the 4<sup>th</sup> respondent-Society had been classified as a "Class-C" Society. However, it is also conceded that their Audit for the next year had already begun, and being under the impression

that they have attained the qualifications to be a "Class-B" Society, the MILMA appears to have nominated the petitioner to their Board on 30.08.2017. This was approved by the 1<sup>st</sup> respondent, as rightly pointed by Sri.P.I.Davis-learned counsel for the petitioner, by the director through Ext.P3 order on 08.11.2017, on which date also the Audit Certificate for the year 2017-18 had not been finalised. I cannot, therefore, find the petitioner to be, in any manner, in culpable error in joining the Board of MILMA, particularly because she was fully supported by Ext.P3 approval order.

7. The only other question, therefore, is whether Ext.P12 order subsequently issued by the 1<sup>st</sup> respondent can then found to be an exercise of review of Ext.P3 order or whether the said Authority was enjoined in law to consider the disqualification of the petitioner independently under Rule 44 of the KCS Rules.

8. On a reading of Ext.P12, it is indubitable that the 1<sup>st</sup> respondent has treated the proceedings there-under to be one under Rule 44 and has found the petitioner to be disqualified under Rule 44 (1) (j) of the KCS Rules. The reason for this, as is available there-from, is that the petitioner was nominated at a time when her Society was "Class-C", while the Bye-laws of

MILMA provided that only the members of "Class-A and B" Societies can be inducted into their Board as members. Therefore, this certainly is a valid reason for the Director to act in his capacity as the functional Registrar of MILMA since I cannot see how the petitioner could have been nominated by them on 30.08.2017, when the available Audit Certificate showed that the 4<sup>th</sup> respondent-Society was classified as "Class-C" with effect from 23.01.2017. This classification was altered only with effect from 13.12.2017, when the Audit Certificate for the next year had been completed, wherein, the 4<sup>th</sup> respondent was classified as "Class-B" Society.

9. Looking from the afore perspective, I am certain that the 1<sup>st</sup> respondent-Director was fully empowered to exercise his powers under Rule 44 of the KCS Rules independently to disqualify the petitioner and this cannot be, by any stretch, be confirmed as an exercise of jurisdiction to review his own order, namely Ext.P3. To that extent, I cannot find favour with the petitioner's submissions.

That said, however, the corollary question is whether the petitioner can be subjected to detriment on account of the afore factual sequence, on which she appears to have had no control

and for which she does not, *prima facie*, seem guilty on account of wilful misrepresentation or fraud. I say this because the nomination of the petitioner to the Board of MILMA was not made by her or by her parent Society but by the MILMA themselves. They had a duty to verify all the records, including the available Audit Certificates of the 4<sup>th</sup> respondent to verify whether the petitioner was qualified to be so nominated which duty was also cast upon the first respondent before he had approved such nomination through Ext.P3. This having been not done and there being nothing on record to show that the petitioner was responsible for the nomination or for the decision of the first respondent in Ext.P3 order, I cannot find her responsible for any of the allegations in Ext.P12 and I, resultantly, cannot approve the intent of the Director to take recovery action against her, even though she necessarily will have to be found disqualified to be a member of the 3<sup>rd</sup> respondent-Society on the date of her nomination, namely 30.08.2017.

Hence, the findings in Ext.P12 that the petitioner is disqualified, under Rule 44 (1) (j), of the KCS Rules to be a member of the Managing Committee of the 3<sup>rd</sup> respondent-Society is without error; but I am of the view, taking note of the

rather peculiar circumstances involved herein, that the pecuniary benefits that were paid to her as a member for the period that she worked as such, cannot be now recovered from her because, as I have already said above, she cannot be found responsible for her nomination or its approval by the 1<sup>st</sup> respondent.

In the afore circumstances and since I am told that the term of the Managing Committee of the MILMA has expired, with and an Administrative Committee now being in charge, I approve Ext.P12 order finding the petitioner to have been disqualified under Rule 44 (1) (j) of the KCS Rules: however, ordering that no further action to recover any amounts from her will be pursued by any of the Authorities, including the 3<sup>rd</sup> respondent, based on such order.

**Sd/-**

**DEVAN RAMACHANDRAN**

**JUDGE**

nak

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1                   A TRUE COPY OF THE RESOLUTION DATED  
30.08.2017 OF THE 3RD RESPONDENT
- EXHIBIT P2                   A TRUE COPY OF THE LETTER DATED  
15.09.2017 OF THE 3RD RESPONDENT
- EXHIBIT P3                   A TRUE COPY OF THE ORDER NO.C1/16814/17  
DATED 08.11.2017 ISSUED BY THE 1ST  
RESPONDENT
- EXHIBIT P4                   A TRUE COPY OF THE LETTER  
NO.C1/3496/2018(3) DATED 06.04.2018,  
ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P5                   A TRUE COPY OF THE LETTER  
NO.MRU.BOD.GEN.2018/57 DATED 23.04.2018
- EXHIBIT P6                   A TRUE COPY OF THE PROCEEDINGS OF THE  
1ST RESPONDENT NO.C1/3496/2018 DATED  
14.11.2018
- EXHIBIT P7                   A TRUE COPY OF THE BYE LAWS OF THE 3RD  
RESPONDENT
- EXHIBIT P8                   A TRUE COPY OF THE LETTER DATED  
30.11.2018 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P9                   A TRUE COPY OF THE OBJECTION DATED  
12.12.2018 BEFORE THE 1ST RESPONDENT
- EXHIBIT P10                  A TRUE COPY OF THE JUDGMENT DATED  
20.12.2018 BEFORE THE 1ST RESPONDENT
- EXHIBIT P11                  A TRUE COPY OF THE OBJECTION DATED  
27.02.2019 BEFORE THE 1ST RESPONDENT
- EXHIBIT P12                  A TRUE COPY OF THE ORDER NO.C1 3496/2018  
DATED 24.06.2019 OF THE 1ST RESPONDENT

//TRUE COPY//  
P.A. TO JUDGE