

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 05TH DAY OF AUGUST 2019 / 14TH SRAVANA, 1941

WP(C).No.21013 of 2019

PETITIONER/S:

- 1 RAMESH.S  
AGED 51 YEARS  
S/O.SUBBAYYAN, ENGINEER THOTTAM, WALAYAR DAM P.O., PUTHUSSERRY,  
PALAKKAD-678624.
  - 2 M.PALANISWAMY,  
AGED 48 YEARS  
S/O.MARAPPA GOUNDER, SARAVANA GOUNDER THOTTAM, WALAYAR DAM P.O.,  
WALAYAR, PALAKKAD-678624.
  - 3 A.SELVARAJ,  
AGED 63 YEARS  
S/O.ASHIRWADOM, SILUVISTHREE HOUSE, CHANDRAPURAM KALAM, WALAYAR,  
PALAKKAD-678624.
  - 4 N.ARUMUGHOM,  
AGED 53 YEARS  
S/O.NATARAJA GOUNDER, PAMPUPARAKALAM,WALAYAR, PALAKKAD-678624.
- BY ADVS.  
SRI.MATHEW B. KURIAN  
SRI.K.T.THOMAS

RESPONDENT/S:

- 1 STATE OF KERALA  
REP. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF DAIRY  
DEVELOPMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR,  
DEPARTMENT OF DAIRY DEVELOPMENT, PATTOM, THIRUVANANTHAPURAM-  
695004.
- 3 THE DEPUTY DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT, CIVIL STATION, PALAKKAD-678501.
- 4 THE ELECTORAL OFFICER,  
(WALAYAR MIL PRODUCERS CO-OP. SOCIETY LTD. NO.P.100 D APCOS),  
QUALITY CONTROL OFFICER, OFFICE OF DEPUTY DIRECTOR, DAIRY  
DEVELOPMENT DEPARTMENT, CIVIL STATION, PALAKKAD-678501.
- 5 THE RETURNING OFFICER,  
(WALAYAR MIL PRODUCERS CO-OP. SOCIETY LTD. NO.P.100 D APCOS),  
DAIRY EXTENSION OFFICER, OFFICE OF DEPUTY DIRECTOR, DAIRY  
DEVELOPMENT DEPARTMENT, CIVIL STATION, PALAKKAD-678501.

- 6 WALAYAR MILK PRODUCERS CO-OP. SOCIETY LTD. NO.P 100 D,  
APCOS, CHANDRAPURAM, WALAYAR DAM P.O., PALAKKAD-678 624, REP.  
BY ITS SECRETARY.
- 7 THE SUPERINTENDENT OF POLICE,  
PALAKKAD-678501.
- 8 KERALA STATE CO-OPERATIVE ELECTION COMMISSION,  
3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN P.O.,  
THIRUVANANTHAPURAM-695033, REP. BY ITS SECRETARY.
- BY ADVS.  
SRI.N.RAGHURAJ  
SRI.A.V.RAVI

OTHER PRESENT:

SMT.C.S.SHEEJA, SR.GP, SRI.R.LAKSHMI NARAYAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.08.2019, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

The petitioners, who claim to be the members of the 6<sup>th</sup> respondent-Society, impugn Ext.P6 proceedings of the 4<sup>th</sup> respondent - Electoral Officer, appointed by the 8<sup>th</sup> respondent - Kerala State Co-operative Election Commission, to conduct elections to the Managing Committee of the said Society, as being illegal and unlawful.

2. According to the petitioners, four among the persons now included in the Voters' List are ineligible to be the members of the Society, since they are its employees and therefore, hit by Rule 16(2)(e) of the Kerala Co-operative Societies Rules ('KCS Rules' for short); while 42 others, whose names have been mentioned in Ext.P7 List, are not eligible to vote in the elections on account of the fact that they do not obtain the necessary qualification to cast their votes in terms of the stipulations in the Bye-laws, namely, Ext.P5. The petitioners say that the Electoral Officer, however, without considering their objections, namely Ext.P4, in its proper perspective, has issued Ext.P6 in a mechanical fashion.

3. In answer to the afore assertions, Sri.M.Raghuraj, learned counsel for the 6<sup>th</sup> respondent - Society, submits that the

allegation of the petitioners in this writ petition, that they were not aware of the election notification or the preparation and publication of the Draft Voters' List, cannot be accepted even for a moment because the 1<sup>st</sup> petitioner was the President of the erstwhile Managing Committee while petitioners 2, 3 and 4 are very active in the affairs of the Society. He adds that all of them are contesting in the ensuing elections, thus making it indubitable that they are aware of its schedule fully, contrary to the allegations. He further submits that, as is clear from Ext.P4, baseless and reckless allegations have been made therein, without any substantiating documents being produced; and therefore, that the Electoral Officer, could have only rejected them. He therefore, prays that this writ petition be dismissed, holding Ext.P6 to be without fault.

4. Sri.R.Lakshmi Narayan, learned standing counsel for the 8<sup>th</sup> respondent - Kerala State Co-operative Election Commission, submits that, as is limpid from Ext.P6, the Electoral Officer has considered each of the objections of the petitioners in great detail and has found that even if the four members mentioned in Ext.P4 are employees of the Society, as long as they continue to be such members, without any legal inhibition to their

voting rights, they will have to be included in the Final Voters' List. With respect to the 42 other members he asserts that, there is absolutely no evidence to show that they have, in any manner, violated the conditions in the Bye-laws to cast their votes and that this Court may not be in a position to consider these matters conclusively on account of the fact that it requires evaluation and assessment of factual factors and materials. He also, therefore, prays that the elections be allowed to be conducted in terms of Ext.P7 Final Voters' List.

5. I have considered the afore submissions, as also materials available, with great care and I am of the view that the allegations of the petitioners cannot find support of this Court.

6. This is because, as regards the four persons mentioned in Ext.P4, who are allegedly employees of the Society, their membership is not under challenge with the petitioners only saying that they cannot be allowed to cast their votes because they ought not to have been members of the Society in the first place. The allegations of the petitioners are hinged on Rule 16(2) (e) of the KCS Rules, which contains a prohibition in the employees becoming members of a Society, but they concede that these persons have not yet been expelled from the membership

of the Society. Therefore, as rightly stated in Ext.P6, the Electoral Officer would obtain no jurisdiction to remove these persons from the primary membership of the Society and as long as their membership continues, their right to vote could not have been impeded, especially when the petitioners do not have a case that there is any disqualification against these members, as regards their voting rights.

7. Coming to the 42 other persons mentioned in Ext.P4, even though petitioners allege that they have violated the necessary qualifications required under the Bye-laws to cast their votes, with respect to production of milk and sale of the same to the Society, the Electoral Officer has, in Ext.P6, recorded that there is no evidence to show this. Obviously, as rightly pointed out by Sri.R.Lakshmi Narayan, it would be impossible for this Court, while it acts under Article 226 of the Constitution of India, to enter into these areas since it would certainly involve assessment of factual circumstances and factors; and consequently, it is not possible for this Court to make any conclusion contrary to what is stated in Ext.P6 without cogent and reliable evidence being made available by the petitioners.

-In the afore circumstances, I deem it appropriate not to

grant reliefs afore prayed by the petitioners; however, ordering the Returning Officer to allow the 42 persons, mentioned in the final Voters' List, to cast their votes in a separate ballot box and to count the same separately, but reckoning it for the purpose of declaration of results. I am persuaded to this course only to ensure that the petitioners are not divested of their statutory remedies after the elections are over; clarifying that the directions herein, will not in any manner, interfere with the declaration of the results in terms of law.

**Sd/-**

**DEVAN RAMACHANDRAN**

**JUDGE**

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APPENDIX

PETITIONER'S/S EXHIBITS:

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|----------------|---|
| EXHIBIT P1     | TRUE COPY OF THE ORDER DATED 18.03.2019 PASSED BY THE 3RD RESPONDENT.                   |
| EXHIBIT P2     | TRUE COPY OF THE JUDGMENT DATED 01.04.2019 IN W.P.(C) NO.8983/2019.                     |
| EXHIBIT P3     | TRUE COPY OF THE NOTIFICATION DATED 20.06.2019 ISSUED BY THE 8TH RESPONDENT.            |
| EXHIBIT P4     | TRUE COPY OF THE PETITION DATED 15.07.2019 SUBMITTED BY THE PETITIONERS.                |
| EXHIBIT P5     | TRUE COPY OF THE RELEVANT EXTRACT OF THE BYE LAWS OF THE SOCIETY.                       |
| EXHIBIT P5 (A) | TRUE COPY OF THE TYPED LEGIBLE COPY OF RELEVANT EXTRACT OF THE BYE LAWS OF THE SOCIETY. |
| EXHIBIT P6     | TRUE COPY OF THE ORDER DATED 16.07.2019 ISSUED BY THE 4TH RESPONDENT.                   |
| EXHIBIT P7     | TRUE COPY OF THE FINAL VOTERS LIST PUBLISHED BY THE 4TH RESPONDENT.                     |