

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY ,THE 19TH DAY OF MARCH 2019 / 28TH PHALGUNA, 1940

WP(C).No. 33660 of 2018

PETITIONER:

AYYAPPANKUTTY.V
AGED 64 YEARS
KEEZHILLATHU VELUTHEDATH, KILLIMANGALAM.P.O., THRISSUR.

BY ADVS.
SRI.P.RAMAKRISHNAN
SMT.ASHA K.SHENOY
SMT.PREETHI RAMAKRISHNAN (P-212)
SRI.C.ANIL KUMAR
SRI.PRATAP ABRAHAM VARGHESE
SRI.T.C.KRISHNA

RESPONDENTS:

- 1 THE DEPUTY DIRECTOR
DAIRY DEVELOPMENT DEPARTMENT, OFFICE OF THE DEPUTY DIRECTOR OF
DAIRY DEVELOPMENT DEPARTMENT, THRISSUR-680 001.
 - 2 DHARMAN M.V.
DIARY EXTENSION OFFICER, OFFICE OF THE DIARY EXTENSION OFFICER,
NALLAPPILLY P.O., CHITTOOR, PALAKKAD - 678 586.
 - 3 DIAR FARM INSPECTOR
DAIRY DEVELOPMENT UNIT, PAZHAYANNUR, THRISSUR - 680 587.
- *ADDL R4 KILLIMANGALAM KSHEERAVYAVASAAYA SAHAKARANA SANGHAM
PO KILLIMANGALAM, THRISSUR-680591, REPRESENTED BY ITS HONORARI
SECRETARY.

*(ADDL.R4 IS IMPEADED AS PER ORDER DATED 26/10/2018 IN
IA.01/2018)

- *ADDL R5 REMESH KUMAR P.M.,
S/O.MADHAVAN, AGED 48 YEARS, RESIDING AT PULAKKIL HOUSE,
KILLIMANGALAM P.O., CHELAKKARA, THRISSUR DISTRICT, PIN - 680
591.
*(ADDL R5 IS IMPEADED AS PER ORDER DATED 07.01.2019 IN
I.A.NO.1/2019)

BY ADVS.
SRI.K.P.SREEKUMAR

OTHER PRESENT:

SMT.C.S.SHEEJA-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.03.2019, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

This writ petition has been filed by the President of the Killimangalam Ksheera Vyvasaaya Sahakarana Sangham, which is a Society registered under the provisions of the Kerala Co-operative Societies Act (hereinafter referred to as 'the Act' for short).

2. The petitioner impugns Ext.P1 order on various grounds but primarily for the reason that the said order has been issued in violation of Section 32(2) of the Act, which makes it obligatory on the Registrar of Co-operative Societies to consult the Financing Bank and the Circle Co-operative or State Co-operative Union, as the case may be, before issuing an order under Section 32(1) of the Act. The petitioner says that the Registrar of Co-operative Societies did not do so and therefore, that Ext.P19 is null and void in law.

3. Smt.C.S.Sheeja, the learned Senior Government Pleader, submits that a detailed counter affidavit has been filed on behalf of the official respondents, wherein they have detailed the reasons that has led to the Registrar of Co-

operative Societies to issue Ext.P19 order. She says that the reasons stated in the said order would also justify the action now proposed; but concedes that the pleadings are silent as to whether the mandate under Section 32(2) of the Act has been complied with. She however, tries to explain by saying that, in fact, the Registrar of Co-operative Societies had sent a copy of Ext.P1 notice to the Financing Bank and the Circle Co-operative Union on 11.09.2018 but that the said Union did not furnish any objections or comments in the matter to the Registrar.

4. Even when I hear Smt.C.S.Sheeja as above, the fact remains that the conceded position on record is that Ext.P19 has been issued without complying with Section 32(2) of the Act because, the official respondents have not even pleaded that the Financing Bank or the Circle Co-operative Union had been properly consulted before the said order had been issued. Ineluctably, the pleadings are silent even regarding the submissions made by Smt.C.S.Sheeja, that a copy of Ext.P1 had been forwarded to the Apex Bank or the Circle Co-

operative Union; and even if I am to accept it on its face value, it being not available from the records, I am certain that it was not sufficient for the Registrar to have then issued Ext.P19, when the consultatory process has not been completed in terms of law.

5. In the afore circumstances and since the implicit adherence to the provisions of Section 32(2) has been declared by this Court and by the Hon'ble Supreme Court, in a catena of decisions, to be mandatory before an order under Section 32 (1) can be issued, I set aside Ext.P19; however, leaving liberty to the first respondent – Deputy Director, Diary Development Department to issue a fresh order in terms of law, subject to the prescriptions and laws of limitation, and after affording an opportunity to the parties, as is required under the applicable Rules and Regulations.

This writ petition is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF NOTICE ISSUED BY THE PETITIONER TO T.P. SUNIL KUMAR.
- EXHIBIT P2 TRUE COPY OF NOTICE DATED 22/08/2017 ISSUED BY THE PETITIONER TO THE SECRETARY.
- EXHIBIT P3 TRUE COPY OF LETTER DATED 26/08/2017 RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE LETTER DATED 22/09/2017 ISSUED BY THE RESPONDENT.
- EXHIBIT P5 TRUE COPY OF LETTER DATED 10/10/2017 OF THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 11/10/2017 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF LETTER DATED 11/10/2017 OF THE 2ND RESPONDENT.
- EXHIBIT P8 TRUE COPY OF REPLY DATED 19/10/2017 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P9 TRUE COPY OF LETTER DATED 23/4/2018 FROM THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P10 TRUE COPY OF LETTER DATED 7/5/2018 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P11 TRUE COPY OF JUDGMENT DATED 29/5/2018 IN WP(C)NO.11675/2018.
- EXHIBIT P12 TRUE COPY OF NOTICE DATED 13/06/2018 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P13 TRUE COPY OF MINUTES OF THE MEETING HELD ON 22/06/2018.
- EXHIBIT P14 TRUE COPY OF REPORT DATED 09/08/2018 SUBMITTED BY THE 1ST RESPONDENT.
- EXHIBIT P15 TRUE COPY OF JUDGMENT DATED 10/08/2018 IN WP(C) NO. 33618/2018.
- EXHIBIT P16 TRUE COPY OF LETTER DATED 13/08/2018 ISSUED BY THE PETITIONER TO THE JOINT DIRECTOR OF CO-OPERATIVE AUDIT, THRISSUR.

EXHIBIT P17 TRUE COPY OF NOTICE DATED 29/08/2018 ISSUED BY THE IST RESPONDENT.

EXHIBIT P18 TRUE COPY OF REPLY DATED 21/10/2018 SUBMITTED BY THE PETITIONER.

EXHIBIT P19 TRUE COPY OF ORDER DATED 5/10/2018 ISSUED BY THE IST RESPONDENT.

EXHIBIT P20 TRUE COPY OF MINUTES OF THE MEETING HELD ON 15.10.2018.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1 A TRUE COPY OF THE LETTER NO.3527/17 DATED 22.9.2017.

EXHIBIT R1 B TRUE COPY OF THE PETITION SIGNED BY 34 POURING FARMERS DATED 5.10.2017.

EXHIBIT R1 C TRUE COPY OF THE COMPLAINT DATED 12.10.2017 BY A TEAM OF 4 SOCIETY MEMBERS.

EXHIBIT R1 D TRUE COPY OF THE SHOW CAUSE NOTICE DATED 11.10.2017.

EXHIBIT R1 E TRUE COPY OF THE JUDGMENT DATED 10.8.2018 IN WPC.NO.33618/2017.

EXHIBIT R1 F TRUE COPY OF THE JUDGMENT DATED 29.5.2018 IN WPC.NO.11765/2018.

EXHIBIT R1 G TRUE COPY OF THE REPORT DATED 30.1.2018.

EXHIBIT R1 H TRUE COPY OF THE STATEMENT SUBMITTED BY THE PRESIDENT OF KILLIMANGALAM KVCS.

EXHIBIT R1 I TRUE COPY OF THE SHOW CAUSE NOTICE DATED 29.8.2018.

EXHIBIT R1 J TRUE COPY OF THE MINUTES RECORDED BY THE DEPUTY DIRECTOR AT THE TIME OF HEARING ON 19.9.2018.

EXHIBIT R1 K TRUE COPY OF THE WRITTEN REPLY FURNISHED BY THE BOARD OF DIRECTORS ON 3.10.2018.

EXHIBIT R1 L TRUE COPY OF THE NEW MINUTES BOOK OPENED ON 10.10.2018.

EXHIBIT R1 M TRUE COPY OF THE BANK STATEMENT.

EXHIBIT R1 N

TRUE COPY OF THE WRITTEN COMMUNICATION TO THE
FINANCING BANK OF THE SOCIETY.

EXHIBIT R5 A

TRUE COPY OF THE COMMUNICATION DATED 5.1.2019
RECEIVED BY THE PETITIONER FROM THE PART TIME
ADMINISTRATOR.