

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 11TH DAY OF JANUARY 2022 / 21ST POUSHA, 1943

WP(C) NO. 65 OF 2022

PETITIONERS:

- 1 SANTHOSH T T
 AGED 47 YEARS
 THENNAPPALIYIL HOUSE, ENADI P.O, BRAHMAMANGALAM, KOTTAYAM,
 FORMER PRESIDENT, BRAHMAMANGALAM, KSHEEROLPADAKA SAHAKARANA
 SANGAM, LTD NO. K 530, APCOS, BRAHMANGALAM, KOTTAYAM 686 605

- 2 SUGUTHAN T.C
 THADATHIMALAYIL HOUSE, BRAHMAMANGALAM, KOTTAYAM, FORMER
 MANAIGING COMMITTEE MEMBER, BRAHMAMANGALAM, KSHEEROLPADAKA
 SAHAKARANA SANGAM, LTD NO. K 530, APCOS, BRAHMANGALAM,
 KOTTAYAM 686 605

- 3 PRIYA SAJU
 ARUKATTIL HOUSE, ANADI P.O, BRAHMAMANGALAM, KOTTAYAM, FORMER
 MANAGING COMMITTEE MEMBER, BRAHMAMANGALAM, KSHEEROLPADAKA
 SAHAKARANA SANGAM, LTD NO. K 530, APCOS, BRAHMANGALAM,
 KOTTAYAM 686 605

- 4 MINI ASOKAN
 ASWATHI BHAVAN, BRAHMAMANGALAM, KOTTAYAM, FORMER MANAGING
 COMMITTEE MEMBER, BRAHMAMANGALAM, KSHEEROLPADAKA SAHAKARANA
 SANGAM, LTD NO. K 530, APCOS, BRAHMANGALAM, KOTTAYAM 686 605

- 5 SARASWATHI AMMA
 SARASWATHI BHAVAN, ENADI P.O, BRAHMAMANGALAM, KOTTAYAM,
 FORMER MANAGING COMMITTEE MEMBER, BRAHMAMANGALAM,
 KSHEEROLPADAKA SAHAKARANA SANGAM, LTD NO. K 530, APCOS,
 BRAHMANGALAM, KOTTAYAM 686 605

BY ADVS.

P.N.MOHANAN

AMRUTHA SURESH

C.P.SABARI

GILROY ROZARIO

RESPONDENTS:

- 1 DEPUTY DIRECTOR
OFFICE OF THE DEPUTY DIRECTOR, DAIRY DEVELOPMENT DEPARTMENT,
KMC-13/1060, ERAYILKADAVU, KOTTAYAM 686 001

- 2 B.SAJAN
RESIDING AT MOOZHIIYIL, BRAHMAMANGALAM, KOTTAYAM
ADMINISTRATIVE COMMITTEE CONVENER, BRAHMAMANGALAM,
KSHEEROLPADAKA SAHAKARANA SANGAM, LTD NO. K 530, APCOS,
BRAHMANGALAM, KOTTAYAM 686 605

- 3 P.P RAJASEKHARAN
RESIDING AT PADMAVILASAM, ENADI, KOTTAYAM, ADMINISTRATIVE
COMMITTEE MEMBER, BRAHMAMANGALAM, KSHEEROLPADAKA SAHAKARANA
SANGAM, LTD NO. K 530, APCOS, BRAHMANGALAM, KOTTAYAM 686 605

- 4 ANURAG V.P
RESIDING AT VADAKKEKALAYIL, BRAHMAMANGALAM, KOTTAYAM,
ADMINISTRATIVE COMMITTEE MEMBER, BRAHMAMANGALAM,
KSHEEROLPADAKA SAHAKARANA SANGAM, LTD NO. K 530, APCOS,
BRAHMANGALAM, KOTTAYAM 686 605

- 5 BRAHMAMANGALAM KSHEEROLPADAKA SAHAKARANA SANGAM LTD NO K 53D,
APCOS,
REPRESENTED BY ITS SECRETARY, BRAHMAMANGALAM, KOTTAYAM 686
605

BY SRI.BIMAL K. NATH, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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W.P.(C) No.65 of 2022

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Dated this the 11th day of January, 2022

J U D G M E N T

Ext.P4 order of the first respondent, under Section 33 of the Kerala Co-operative Societies Act (hereinafter referred to as “the Act”), holding lack of quorum for the Managing Committee of the 5th respondent Society, and appointing an administrative committee, is under challenge in this writ petition by five members of the Managing Committee.

2. Heard Sri.P.N.Mohanan, learned counsel for the petitioner and Sri.Bimal K. Nath, learned Senior Government Pleader. In spite of service of notice on respondents 2 to 5, there is no appearance.

3. According to the petitioners, the managing committee hold sufficient quorum. The total strength of the Managing Committee of the 5th respondent Society is 9 (nine). The Managing Committee came into office on 04.10.2017. Thereafter, the following events transpired

in relation to the strength of the Committee:-

Sl. No.	Date	Event
a	24.11.2020	One member - Smt.Smitha Suresh - disqualified.
b	17.06.2021	One member - Smt.Saraswathi Amma - nominated to Committee
c	26.08.2021	Two members - Mr.Haridas and Mr.Deepesh - disqualified.
d	19.12.2021	Two members - respondents 2 and 3 - resigned.

4. On the disqualification of two members on 26.08.2021 [Sl. no. (c) above], and the resignation of respondents 2 and 3 on 19.12.2021 [Sl. no. (d) above], the strength of the Managing Committee came down to five. In terms of Section 28(5) of the Act, the quorum for the Committee is just above 50% of the total strength. It being so, five out of nine constitutes sufficient quorum of the Committee; hence Ext.P4 order finding lack of quorum and appointing administrative committee is bad in law, is the contention.

5. According to the first respondent, the nomination of Smt.Saraswathi Amma [Sl.No.(b) in the tabular column above], alleged to have been made on 17.06.2021, is bad, and hence the Managing Committee presently consists of only 4 members. The same being less than 50%, lacks the quorum mandated under Section 28(5) of the Act, is the contention.

6. The reason why the first respondent contends that the nomination made on 17.06.2021 is bad is that, the Managing Committee in its meeting held on 27.03.2021 had relegated the issue regarding nomination of member to the vacancy that arose on 24.11.2020, to the General Body scheduled on 30.03.2021. Though the General Body nominated Smt.Saraswathi Amma towards the vacancy, nomination of Committee member was not in the agenda of the General Body meeting. Nomination not being one of the items in agenda could not have been transacted in the General Body and hence the nomination is bad, is the contention.

7. A perusal of Ext.P1, the minutes of the Managing Committee held on 17.06.2021 indicates that, after referring to the decision of the General Body, the Committee by majority decision resolved to nominate Smt.Saraswathi Amma as a member of the Committee. Section 28(1J) gives authority to the Committee to nominate member in the contingency as mentioned therein. The nomination of Smt.Saraswathi Amma is made by the Committee in accordance with the powers granted under the Act. The nomination having been made by the Committee in terms of the Act, is legal and valid. Therefore, the said contention fails.

8. The contention of the petitioners that the Managing Committee consists of 5 members, and it constitutes sufficient quorum in terms of Section 28(5) of the Act is to be upheld and I do so. Ext.P5 order holding that the Committee of the 5th respondent lacks quorum, and further appointing an Administrative Committee is bad in law.

9. In the result, Ext.P4 order is quashed. The administration of the Society shall forthwith be handed over to the Managing Committee of the Society.

Writ petition is allowed as above.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF WP(C) 65/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE RESOLUTION DATED 17-06-2021 OF THE MANAGING COMMITTEE
- Exhibit P2 A TRUE COPY OF THE RESIGNATION LETTER DATED 19-12-2021 TENDED BY THE SECOND AND THIRD RESPONDENTS
- Exhibit P3 A TRUE COPY OF THE LETTER DATED 22-12-2021 OF THE FIFTH RESPONDENT
- Exhibit P4 A TRUE COPY OF THE ORDER NO. DDKTM/10733/2021-D DATED 22-12-2021 OF THE FIRST RESPONDENT
- Exhibit P5 A TRUE COPY OF THE JUDGMENT DATED 17-12-2020 IN W.P(C0 NO. 25091/2020
- Exhibit P6 A TRUE COPY OF THE JUDGMENT REPORTED IN 1985 KLT 335
- Exhibit P7 A TRUE COPY OF THE JUDGMENT REPORTED IN ILR 2001 (10 KER 62)
- Exhibit P8 A TRUE COPY OF THE NOTICE DATED 20-12-2021 FOR THE COMMITTEE MEETING ON 22-12-2021 AND THE PROCEEDINGS
- Exhibit P9 A TRUE COPY OF THE NOTICE DATED 22-12-2021 FOR SPECIAL GENERAL BODY
