

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 31ST DAY OF JULY 2017/9TH SRAVANA, 1939

WP(C).No. 8622 of 2011 (C)  
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PETITIONER:  
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CHERTHALA MILK SUPPLIES AND MARKETING  
CO-OPERATIVE SOCIETY LTD. NO.A 157,  
REPRESENTED BY ITS SECRETARY,  
CHERTHALA, ALAPPUZHA DISTRICT - 688524.

BY ADVS.SRI.V.G.ARUN  
SRI.T.R.HARIKUMAR

RESPONDENTS:  
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1. THE DEPUTY DIRECTOR,  
DEPARTMENT OF DIARY DEVELOPMENT,  
ALAPPUZHA - 688001.
2. THE DIRECTOR, DAIRY DEVELOPMENT  
DEPARTMENT, THIRUVANANTHAPURAM - 695001.
3. THE STATE OF KERALA, REPRESENTED  
BY THE SECRETARY,  
AGRICULTURE (DAIRY) DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
4. H.REJI, KANNITTAYIL, CMC - 21,  
CHERTHALA P.O., ALAPPUZHA - 688524,  
(PROMOTER, KARUVA KSHEEROLPADAKA  
SAHAKARANA SANGHAM)
5. R.OMANAKUTTAN, ULLADAPPALLY, CMC-21,  
CHERTHALA P.O.,ALAPPUZHA - 688524,  
(PROMOTER, KARUVA KSHEEROLPADAKA  
SAHAKARANA SANGHAM)

R1 TO R3 BY GOVERNMENT PLEADER SMT.MABLE C.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31-07-2017, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE RELEVANT PAGES OF THE BYE-LAWS OF THE PETITIONER SOCIETY.
- EXT. P2 : A TRUE COPY OF THE ORDER DATED 19.5.2006 OF THE 1ST RESPONDENT.
- EXT. P3 : A TRUE COPY OF THE LETTER DATED 16.4.2010.
- EXT. P4 : A TRUE COPY OF THE RESOLUTION DATED 26.4.2010.
- EXT. P5 : A TRUE COPY OF THE LETTER DATED 28.4.2010 SUBMITTED TO THE 1ST RESPONDENT.
- EXT. P6 : A TRUE COPY OF THE ORDER DATED 1.2.2011.
- EXT. P7 : A TRUE COPY OF THE APPLICATION DATED 14.3.2011 SUBMITTED UNDER THE RIGHT TO INFORMATION ACT.
- EXT. P8 : A TRUE COPY OF THE RELEVANT PAGES OF THE AUDIT REPORT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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**SHAJI P. CHALY, J.**

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**WP(C) No.8622 of 2011**  
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**Dated this the 31<sup>st</sup> day of July, 2017**

**JUDGMENT**

The petitioner is a Dairy Co-operative Society and the area of operation of the petitioner spreads over the entire Cherthala Municipal area. The Society has at that point of time 1620 members and has got 6 permanent and 7 temporary employees. Everyday the petitioner Society is collecting an average of 800 to 900 litres of milk from dairy farmers. At the request of the petitioner Society, the 1<sup>st</sup> respondent had allotted a sub-centre for collection of milk from members residing in and around Ward Nos.22,23 & 24 of Cherthala Municipality. Based on the order, the new sub-centre was started at Karuva Bhagam in 2006 itself and thereafter members and dairy farmers in Ward Nos.20,21, 22,23 & 24 are measuring their milk at the new sub-centre. Over and above this, vendors attached to the Society are collecting

milk on a door to door basis.

2. During April, 2010, the Dairy Extension Officer [DEO], Cherthala issued a letter to the petitioner requiring its opinion on the proposal to form a new milk Society with Ward Nos.21 to 24 of Cherthala Municipality as its area of operation. On receipt of the said letter, Managing Committee of the Society passed a resolution requesting the 1<sup>st</sup> respondent not to grant registration to a new Society within the are of operation of the petitioner Society, since it is catering to the needs of dairy farmers within the Cherthala Municipal area and the formation of a new Society would only help in ruining the petitioner Society. However, after submission of the resolution along with the request for giving up the proposal to register a new Society, no further action was taken by the 1<sup>st</sup> respondent and the petitioner was under the bonafide belief that the proposal has been withdrawn. But information has been received by the petitioner from the Office of the 1<sup>st</sup> respondent that the 3<sup>rd</sup> respondent has passed an order under Section 101 of the Kerala Co-operative Societies Act ['KCS Act' for short] exempting the proposed Karuva Ksheerolpadaka

Sahakarana Sangham in Alappuzha District from the provisions of Section 7(1)(c) of the KCS Act, in order to facilitate registration of the new Society with Ward Nos.20 and 21 of Cherthala Municipality. It is thus challenging the exemption order namely Ext.P6 passed by the State Government on 01.02.2011, this writ petition is filed.

3. The State Government has filed a Counter Affidavit refuting the allegations and norms and demands raised by the petitioner. Among other contentions, it is stated that the 2<sup>nd</sup> respondent had issued Circulars regarding the procedure to be taken before registering a new Dairy Co-operative Society. As per Circular No.C3/4698/2002 dated 26.07.2002 the area of operation of a new Dairy Society shall not exceed two Wards. According to the 1<sup>st</sup> respondent, the petitioner has not cared to prefer any appeal or objection regarding the registration of the Society at that time. It is also stated that on 18.06.2010, the Dairy farmers residing in Ward Nos.20 & 21 submitted an application requesting to register Anand Pattern Milk Co-operative Society in their area and the DEO, Cherthala submitted

a report supporting registration of a new Society for Dairy farmers of that area. After examining the request of Dairy farmers along with the report submitted by the DEO, the respondents have reached a conclusion that it was necessary in public interest to recommend for registering a new Society in Ward Nos.20 & 21 of Cherthala Municipality as requested by the Dairy farmers and the report was sent to the 2<sup>nd</sup> respondent. It is also submitted that the petitioner Society then submitted a detailed objection against the registration of a new Co-operative Society. That apart, it is contended that the statement of the petitioner Society that they are serving the needs of the milk producers in Ward Nos.20 to 24 is absolutely false. The Dairy farmers residing in the above Wards are complaining that they are not getting adequate service from the petitioner Society. That apart, it is contended that the respondent had power to proceed under sub-Section 5 & 6 of Section 12 of the KCS Act and also as per the judgment of this Court dated 13.08.2002 in O.P.No.36712 of 2001 stating that the Registrar lacks power to direct the Society to curtail the area of operation and also the

Government has the power to exempt any Society or class of Societies from any of the provisions of the Act, if they are specified that it is necessary to do so in the public interest. These are the background facts to consider the reliefs sought for in the writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. In my considered opinion, the question to be decided in this writ petition revolves around Ext.P6 order passed by the Government. On a reading of Ext.P6 what I could gather is that the Government was satisfied that it is necessary in the public interest to permit the Director of Dairy Development Department to register the Dairy Co-operative Society exclusively for the Dairy farmers residing in Ward Nos.20 & 21 of Cherthala Municipality in Alappuzha District. Therefore, in exercise of the powers conferred under Section 101 of the KCS Act, the Government exempted the 'proposed' Karuva Ksheerolpadaka Sahakarana Sangham in Alappuzha District from the provisions of Section 7(1)(c) of the KCS Act. The said power was exercised by

the Government purportedly under Section 101 of the KCS Act, which reads as follows:

**"101. Power to exempt societies:-** *The Government may, if they are satisfied that it is necessary to do so in the public interest, by general or special order for reasons to be recorded, exempt any society or any class of societies from any of the provisions of this Act or direct that such provisions shall apply to such society or class of societies subject to such modifications as may be specified in the order."*

6. On a reading of the said provisions, what is discernible is that the Government is vested with powers to exempt a Society from the provisions of the KCS Act, which thus means there should be an existing Society in order to provide with an exemption. Admittedly, even going by the Government Order, it is clear that the Government has granted such an exemption to a proposed Society, which in my considered opinion, cannot be sustained under law.

I, therefore, quash Ext.P6 order and direct the State Government to reconsider the issue after providing notice of hearing to the petitioner and other interested persons and attain finality within two months from the date of receipt of a certified

copy of this judgment.

During this point of time, the learned counsel for the petitioner contended that after 2013 the power of the Registrar to direct amendment of the bye-laws in order to alter the area of operation of the Society is taken away and there is no power now vested with the Registrar to do so. Any how, in view of the directions contained above, these are all matters to be considered and finally concluded by the State Government as directed above. All contentions raised by the respective parties shall be taken note of by the State Government and a reasoned order shall be passed accordingly.

Sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

//True Copy//

P.A. to Judge

sp/01/08/17