

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 24434 of 2015 (D)

PETITIONER : -

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K.SOMAN NAIR, PRESIDENT,  
ARUVIKKARA PRIYADARSINI KSHEEROLPADAKA SAHAKARANA  
SANGAHAM LTD. NO. 355(D) APCOS,  
MARAYAMUTTAM P.O., THIRUVANANTHAPURAM DISTRICT

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

RESPONDENTS : -

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1. THE STATE CO OPERATIVE ELECTION COMMISSION,  
THIRUVANANTHAPURAM - 695 001.
  2. THE ELECTORAL OFFICER,  
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS  
UNION LTD NO. T 177, KSHEERA BHAVAN, PATTOM,  
THIRUVANANTHAPURAM (JOINT DIRECTOR, STATE DAIRY LAB,  
DIRECTORATE OF DAIRY DEVELOPMENT,  
THIRUVANANTHAPURAM - 695 004).
  3. THE RETURNING OFFICER,  
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS  
UNION LTD NO. T 177, KSHEERA BHAVAN, PATTOM,  
THIRUVANANTHAPURAM (DEPUTY DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT,  
THIRUVANANTHAPURAM - 695 004).
  4. THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS  
UNION LTD NO. T 177, KSHEERA BHAVAN, PATTOM,  
THIRUVANANTHAPURAM - 695 004  
REPRESENTED BY ITS MANAGING DIRECTOR.

R4 BY ADV.SRI.P.N.MOHANAN  
BY Sr. GOVERNMENT PLEADER SRI. K.C. VINCENT  
BY SMT.LATHA KRISHNAN, SC FOR MILMA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

PETITIONER'S EXHIBITS : -  
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- EXHIBIT P1 : TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE REGISTRAR OF DAIRY CO-OPERATIVES DATED 15.5.2012.
- EXHIBIT P2 : TRUE COPY OF THE RESOLUTION NO. 167 DATED 01.3.1997 OF THE 4TH RESPONDENT UNION.
- EXHIBIT P3 : TRUE COPY OF THE APPLICATION FOR AFFILIATION FILED BY THE PETITIONER DATED 06.10.2013.
- EXHIBIT P4 : TRUE COPY OF THE ORDER NO.C2/9212/08 DATED 12.3.2010 ISSUED BY THE DIRECTOR OF DAIRY DEVELOPMENT DEPARTMENT.
- EXHIBIT P4(a) : COPY OF THE ENGLISH TRANSLATION OF EXT. P4.
- EXHIBIT P5 : TRUE COPY OF JUDGEMENT DATED 28.11.2013 IN WPC NO. 28476/2013.
- EXHIBIT P6 : TRUE COPY OF THE LETTER DATED 27.10.2014 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P6(a) : COPY OF THE ENGLISH TRNASLATION OF EXT. P6.
- EXHIBIT P7 : TRUE COPY OF THE NOTIFICATION NO. E(1)/3021/2015/S.C.E.C DATED 14.7.2015.
- EXHIBIT P7(a) : COPY OF THE ENGLISH TRANSLATION OF EXT. P7.
- EXHIBIT P8 : TRUE COPY OF THE NOMINATION PAPER SUBMITTED BY THE PETITIONER DATED 04.8.2015.
- EXHIBIT P8(a) : COPY OF THE RELEVANT PORTION OF THE ENGLISH TRANSLATION OF EXT. P8.
- EXHIBIT P9 : TRUE COPY OF THE RELEVANT PORTION OF THE BYELAW OF THE 4TH RESPONDENT UNION.
- EXHIBIT P10 : TRUE COPY OF THE PROCEEDING DATED 06.8.2015 OF THE 3RD RESPONDENT.
- EXHIBIT P10(a) : COPY OF THE ENGLISH TRANSLATION OF EXT. P10.

WP(C).No. 24434 of 2015 (D)  
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RESPONDENTS' EXHIBITS  
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- EXHIBIT R4(a) : COPY OF THE NOTICE DATED 20.02.2014 WITH  
TRANSLATION.
- EXHIBIT R4(b) : COPY OF THE AUDITED BALANCE SHEET DATED 24.7.2014  
WITH TRANSLATION.
- EXHIBIT R4(c) : COPY OF THE NOTE DATED 14.10.2014.
- EXHIBIT R4(d) : COPY OF THE RECEIPT DATED 1.11.2014 OF THE FOURTH  
RESPONDENT.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 24434 of 2015**  
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Dated this the 17<sup>th</sup> day of August, 2015

JUDGMENT

In this writ petition the scope of a deeming provision as regards affiliation of a Primary Co-operative Society to an Apex Society or the Regional Unions, as the case may be, comes into focus.

2. The facts in brief are that the petitioner, a Primary Milk Producers Co-operative Society, came into existence on 15.05.2012 through Exhibit P1 registration. The fourth respondent is a Regional Union under the Kerala State Co-operative Milk Marketing Federation (MILMA), the Apex Society. The fourth respondent, in fact, is governed by Exhibit P9 bye-laws.

3. Clause 5 of Exhibit P9 bye-laws specifies the categories of membership: Ordinary and nominal. In the course of time, the petitioner Society submitted Exhibit P3 application, dated 06.10.2013, to be an ordinary member of the fourth respondent Regional Union. When the fourth

respondent did not act on the petitioner's Exhibit P3 application, it approached this Court and invited Exhibit P5 judgment. This Court, in fact, directed the fourth respondent to place the petitioner's application at the next meeting of the Board, without its insisting on the recommendation of the Board members. The fourth respondent could eventually consider Exhibit P3 only on 27.10.2014 through Ext.P6, despite the time frame fixed in Exhibit P5 judgment. Having been granted the affiliation through Exhibit P6, the petitioner did comply with the conditions imposed therein, such as purchasing the shares.

4. On 14.07.2015 the first respondent issued Exhibit P7 election notification proposing to hold elections for the fourth respondent Union on 22.08.2015. The petitioner, desirous of being in the fray, submitted Exhibit P8 nomination on 04.08.2015. The third respondent, the Returning Officer, however, rejected the petitioner's nomination through Exhibit P10 citing the reason that the petitioner had not completed one year's time from the date of affiliation. Aggrieved, the petitioner has approached this Court.

5. The learned counsel for the petitioner has submitted that Section 8A of the Kerala Co-operative Societies Act incorporates a deeming provision. It is to the effect that if the application for affiliation has not been considered within sixty days, it is deemed that the said primary Society has been affiliated to the Regional Union. The learned counsel has drawn my attention to Clause 20.1.3 of Exhibit P9 bye-laws of the fourth respondent. He has contended that the one-year period shall be reckoned in terms of Section 8A rather than from the date of Exhibit P6 order of affiliation issued by the fourth respondent.

6. The learned counsel has also submitted that in Exhibit P5 judgment of this Court there is a specific direction that the petitioner's application should be considered by the fourth respondent in the next meeting of its Board. According to him, the Board meets on a monthly basis. Summing up his submissions, the learned counsel has submitted that Exhibit P10 is wholly illegal and arbitrary and cannot be sustained in the face of the statutory mandate in Section 8A of the Act. In support of his submissions, the learned counsel for the petitioner has placed reliance on

*K. Sivadasan Nair v. The Registrar of Co-operative Societies & others*<sup>1</sup>.

7. *Per contra*, Sri. P.N. Mohanan, the learned counsel for the fourth respondent, has straight away drawn my attention to Exhibit P2 resolution of the fourth respondent Regional Union. Basing on the said resolution, he has stressed that every society applying for membership of the union shall have to purchase initial shares from the union in proportion to the turnover of the Society. According to the learned counsel, the petitioner Society purchased the shares only on 01.11.2014.

8. It is the singular contention of the learned counsel that the Society got its affiliation with effect from only 01.11.2014. Without fulfilling the norm of completing one year in terms of Clause 20 of the bye-laws of the fourth respondent, the petitioner cannot, contends the learned counsel, insist on having its nomination entertained by the third respondent. The learned counsel has drawn my attention to Rule 35A(6)(d) (i) and (ii) to underline the fact that no member shall be nominated as a candidate for election to fill a seat on the committee, if he is ineligible to

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<sup>1</sup> 2009 (1) KLJ 810

vote in the election, and if he does not possess the necessary qualifications specified in the bye-laws of the Society.

9. Expatiating on his submissions, the learned counsel would further contend that in view of the bar imposed under Clause 20 of Exhibit P9 bye-laws of the fourth respondent, the rejection of petitioner's nomination by the third respondent is fully justified and is, in fact, unexceptionable.

10. The learned counsel for the fourth respondent has eventually drawn my attention to Exhibit R4(a) communication, dated 20.02.2014, through which the fourth respondent directed the petitioner to obtain audit classification. The learned counsel has also submitted that since the petitioner Society was registered only in 2012, there was no question of its getting an audit classification by the time it applied for affiliation. According to him, the first audit took place on 24.07.2014, as could be seen from Exhibit R4(a).

11. Summing up his submissions, the learned counsel has justified the rejection of the petitioner's nomination by the third respondent through Exhibit P10.

12. Heard the learned counsel for the petitioner and the learned counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

13. The facts are not in dispute. The issue that falls for consideration is whether Exhibit P10 order of rejection by the third respondent is justified in the face of deeming provision incorporated in Section 8A of the Act.

14. What evidently has weighed with the third respondent is that from the date of affiliation, as has been reflected in Exhibit P6, the petitioner Society has not completed one year by the date of its application for contesting the election. Apparently, there is no gainsaying the fact that the petitioner has not completed one year in temporal terms when the period is reckoned from Exhibit P6. But the question is under what circumstances the delay in the petitioner's having affiliation has occurred; whether the delay can be attributed to the conduct of the petitioner and whether there is any saving statutory scheme to reckon the period from any other date?

15. The objection on the part of the fourth respondent, as has been espoused by its learned counsel, is that the

petitioner Society firstly has not purchased the shares from the fourth respondent in terms of Clause 5 of Exhibit P2. Though the submission is attractive in the first blush, on deeper scrutiny it is evident that the stipulation of purchasing shares is not a pre-condition. Had it been a pre-condition, the fourth respondent could have as well rejected the petitioner's claim for affiliation instead of allowing it through Exhibit P6. In fact, since the condition is only a condition subsequent, the fourth respondent—in my view, justifiably—imposed a condition in Exhibit P6 that the petitioner shall purchase shares. There is no denying the fact that, within four days from Exhibit P6, the petitioner purchased the shares.

16. It is pertinent to observe that the Government issued Exhibit P4 clarification to the effect that the respondent Union is not permitted to impose conditions over and above what have been stated in Section 8A of the Act. Thus, viewed from either direction, the conditions imposed in Clause 5 of Exhibit P2 cannot come in the way of the petitioner's getting its affiliation from the fourth respondent.

17. It is also the contention of the learned counsel for the fourth respondent that through Exhibit R4(a), dated 20.02.2014, the fourth respondent communicated to the petitioner that it should obtain audit classification. According to the learned counsel, it is one of the pre-conditions incorporated under Clause 20 of Exhibit P9 bye-laws. As a result, in the absence of audit classification, the delay in affiliating the petitioner to the fourth respondent is fully justified. At this juncture, it is quite essential to examine Section 8A of the Act, which reads as follows:

“8A. Affiliation to apex society: - (1) Every Primary Co-operative Society or Central Co-operative Society may within such time and in such manner, as may be prescribed, apply for affiliation to the concerned apex society or Central Society as the case may be,

(2) *Where the apex society or central society does not, within sixty days from the date of receipt of the application for affiliation, determine whether such affiliation should be given or not, such affiliation shall be deemed to have been given to the applicant society from the date on which the said period of sixty days expires.*

(3) When the apex or Central Society, as the case may be, rejects an application for affiliation under sub-section (1), the aggrieved society may file an appeal before the Registrar against such rejection within thirty days from the date of receipt of the order of rejection and the Registrar shall dispose the appeal within sixty days from the date of appeal.”

(emphasis supplied)

18. A perusal of the above provision makes it manifestly clear that the fourth respondent ought to have

considered petitioner's Exhibit P3 application within sixty days from the date of its receipt. In the present instance, the petitioner submitted Exhibit P3 on 06.10.2013; I am prepared to assume that it could have reached the fourth respondent by the end of October 2013. If sixty days is to be reckoned from that point of time, Exhibit P3 ought to have been considered either way, in the least, by 31.12.2013. Exhibit R4(a), however, was issued on 20.02.2014. It is further pertinent to observe that Exhibit R4 (a) is not an order of rejection, but only communication to the petitioner requiring it to fulfill certain norms.

19. The legislature, in my considered view, with a salutary objective, has imposed a strict time frame of sixty days for consideration. Not to be forgotten is another vital aspect that illustrates the insouciant attitude of the fourth respondent in complying with judicial directives as well as statutory obligations. This Court, through Exhibit P5 judgment, has made a specific observation, which is profitable to extract:

“However it is pointed out that neither the Act nor the Government Orders prescribe any such recommendation to be made. In fact, Exhibit P6 is an order of the Government which specifically stipulates that any application filed by any Society should be accepted and considered at the Board of

the Apex Society. The 3<sup>rd</sup> respondent hence, shall accept Exhibit P4 application and place it in the next meeting of the Board, without insisting for the recommendation of the Director Board members and consider the same in accordance with law.”

20. Despite the above categorical direction by this Court on 20.11.2013, and despite the fact that the Board meetings are held on a monthly basis, the fourth respondent took up petitioner's Exhibit P3 application only on 27.10.2014, almost a year later.

21. This Court, as well as the Apex Court, has considered on numerous occasions the impact of deeming provisions. Deeming provision being a legal fiction, it has to be given its full run. In other words, to achieve the statutory objective, the deeming provision enables one to assume the existence of a fact which in reality does not exist.

22. The Hon'ble Supreme Court in *Ali M.K. v. State of Kerala*<sup>2</sup>, has quoted with approval the opinion of James, L.J. in *Levy, Re, ex p Walton*<sup>3</sup>, on the scope of deeming provision to the following effect:

“[w]hen a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the

<sup>2</sup>(2003) 11 SCC 632 (at P.638)

<sup>3</sup> (1881) 17 Ch D 746

statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate.”

23. In the same judgment, their Lordships also have referred to the oft-quoted passage of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*<sup>4</sup>, which is as follows:

“If you are bidden to treat an *imaginary state of affairs as real*, you must surely, unless prohibited from doing so; also *imagine as real the consequences and incidents* which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

24. With specific reference to the legislative device ‘deemed’, in *St. Aubyn (L.M.) v. Attorney-General*<sup>5</sup>, the House of Lords has held that the word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes

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<sup>4</sup>(1951) 2 All ER 587

<sup>5</sup>(1951) 2 All ER 473

what is obvious, what is uncertain and what is, in the ordinary sense, impossible.

25. In *K. Kamaraja Nadar v. Kunju Thevar*<sup>6</sup>, the Supreme Court has held that a deeming provision does create a legal fiction, and that the effect of such a legal fiction, however, is that a position which otherwise would not obtain is deemed to obtain under those circumstances. In *Syedabad Tea Co. Ltd. v. State of Bihar*<sup>7</sup>, it is further held that when the law says that something should be deemed to have been done in a given case, the said legal fiction should be carried to its logical end to achieve the desired result.

26. In the present instance, though affiliation in actual terms has been granted through Exhibit P6 on 27.10.2014, the deeming provision came into operation, at least, by 01.01.2014. If the period of affiliation is to be reckoned from 01.01.2014, by the time Exhibit P7 election notification was issued, i.e. 14.07.2015, the petitioner did complete one year. On that count, I am of the considered opinion that the petitioner's claim that it has completed one year to be eligible to file its nomination is to be accepted and is

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<sup>6</sup>AIR 1958 SC 687

<sup>7</sup>(1983) 1 SCC 30

accordingly accepted.

27. Indeed, Rule 35A(6)(d) (i) and (ii) stipulates that no member shall be nominated as a candidate for election to fill a seat on the Committee, if he is ineligible to vote in the election and does not possess necessary qualifications, if any, specified in the bye-laws of the Society for election. As could be seen from Exhibit P10, apart from the alleged noncompletion of one year no other reason has been specified for rejecting the petitioner's claim to contest the elections in terms of Exhibit P7 notification. Even the learned counsel for the fourth respondent could only point out that the period has to be reckoned from the date Exhibit P6 was issued. In fact, I have already expatiated on the unsustainability of the defence set up by the fourth respondent and also the reasons assigned by the third respondent in rejecting the petitioner's nomination.

28. This Court in *K. Sivadasan Nair* (supra) with specific reference to Section 8A has observed as follows:

"The application for affiliation having been considered within a period of 60 days from the date of receipt of that application, the deeming provision contained in Section 8A(2) does not operate. The said provision is essentially one that provides for affiliation by default to consider. What is provided is that the question whether affiliation should be given or not has to be determined within a period of 60 days

and if the determination of that question is not made within that period of 60 days, the application for affiliation is deemed to have been granted and the affiliation is deemed to have been given. The status of affiliation is automatic on the event of expiry of the period of 60 days fixed under Section 8A(2). It does not depend upon any further act of declaration or any direction that the Registrar may give.”

In the facts and circumstances, having regard to the statutory position, especially the deeming provision under Section 8A of the Act, which in my considered opinion has come into full play, Exhibit P10 cannot be sustained and is accordingly set aside. Consequently, the third respondent is directed to accept petitioner's nomination and permit the petitioner to contest the elections subject to all other statutory parameters. No order as to costs.

**DAMA SESHADRI NAIDU  
JUDGE**

DMR/-