

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 15TH DAY OF OCTOBER 2018 / 23RD ASWINA, 1940

WP(C).No. 2674 of 2018

PETITIONERS

- 1 K.M. RAJU
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 2 C.M. GEORGE
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 3 MATHEW PAUL
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 4 RUBY ROBERT
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 5 PV. JOSEPH
PRESIDENT, MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 6 K.J. KURIAKOSE
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 7 SALYMOL JOSEPH
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM
- 8 POWLIN GARVAZIZ
MANAGING COMMITTEE MEMBER,
MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY,
MANJOOR PO, KOTTAYAM

BY ADVS.SRI.P.N.MOHANAN
SRI.C.P.SABARI

RESPONDENTS :

1. DEPUTY DIRECTOR
DAIRY DEVELOPMENT DEPARTMENT,
KOTTAYAM 686001
2. JOINT DIRECTOR
DAIRY DEVELOPMENT DEPARTMENT,
KSHEERA BHAVAN, PATTOM,
THIRUVANANTHAPURAM 695004
3. THE DIRECTOR
DAIRY DEVELOPMENT DEPARTMENT,
KSHEERA BHAVAN, PATTOM,
THIRUVANANTHAPURAM 695004
4. BRIGHT THOMAS
PAPPANAMTHOTTATHIL, MAJOR SOUTH PO,
KOTTAYAM, PIN 686603
5. DAIRY EXTENSION OFFICER
DAIRY EXTENSION OFFICE,
MANJOOR, KURUPPANTHARA, KOTTAYAM,
PIN 686603

R4 BY ADV. SRI.P.C.HARIDAS

R1 -R3 & R5 BY GOVERNMENT PLEADER SR.GOV.T.PLEADER SMT.C.S.SHEEJA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-07-2018, THE COURT ON 15-10-2018, DELIVERED THE FOLLOWING:

JUDGMENT

Petitioners 1 to 8, who are members in the Managing Committee of Manjoor Industrial Milk Co-operative Society (for brevity, 'Manjoor Society'), which is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (for brevity, 'the Act') have filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P5 show-cause notice dated 17.01.2018 issued by the 1st respondent Deputy Director of Diary Development, Kottayam and for a declaration that petitioners 1 to 4 cannot be disqualified or removed from membership on the basis of the said show-cause notice issued by the 1st respondent, in the light of Ext.P7 amendment brought to the Kerala Co-operative Societies Rules, 1969 (for brevity, 'the Rules') by the Kerala Co-operative Societies (Third Amendment) Rules, 2017. The further relief sought for is a declaration that the conditions contained in the Note to Clause (6) of Ext.P4 bye-laws of Manjoor Society is to be read

down, in the light of the amendment brought in the Explanation to sub-rule (4) of Rule 35A of the Rules and, if the Managing Committee is removed illegally by the 1st respondent Deputy Director, direct the said respondent to appoint three members among petitioners 5 to 8 as members of the Administrative Committee, under Section 33 of the Act.

2. On 25.01.2018, when this writ petition came for admission, the learned Senior Government Pleader took notice on admission for respondents 1 to 3 and 5. Notice on admission by special messenger was ordered to the 4th respondent. This Court ordered that, further proceedings pursuant to Ext.P5 show-cause notice shall be deferred for a period of 2 weeks. The said interim order was extended from time to time.

3. A counter affidavit has been filed by the 1st respondent Deputy Director and also by the 4th respondent, who is the complainant in Ext.R4(a) compliant dated 16.08.2017 made before the 1st respondent. The petitioners have filed a reply affidavit.

4. The main challenge made in this writ petition is against Ext.P5 show-cause notice dated 17.01.2018 issued by the 1st respondent Deputy Director to petitioners 1 to 4 and also to another member of Manjoor Society, namely, one Mr. P.F. Jose. The 5th petitioner, who is the President of the Society and petitioners 6 to 8, who are the members in the Managing Committee have no *locus standi* either to challenge Ext.P5 show-cause notice or the proceedings initiated by the 1st respondent Deputy Director to disqualify petitioners 1 to 4 and to remove them from the Managing Committee of Manjoor Society.

5. Heard the learned counsel for the petitioners, the learned Senior Government Pleader for respondents 1 to 3 and 5, and also the learned counsel for the 4th respondent.

6. Going by the averments in the writ petition petitioners 1 to 8 are members in the Managing Committee of Manjoor Society and the 5th petitioner is the President of the Society. The present Managing Committee, which came into office in the election held

on 30.03.2015, have 11 elected members. The quorum of the committee is 6, as provided in sub-section (5) of Section 28 of the Act. At present there are 8 members in the Managing Committee. The Society have a 4 storied building with plinth area of 2700 Sq.Ft. in each floor and the office of the 5th respondent Diary Extension Officer, Manjoor is housed in that building; occupying an area of 1000 Sq.Ft., without paying rent, electricity charges or water charges. Now steps are being taken to evict the 5th respondent. There are two types of members in Manjoor Society, namely, A class and B class members. A class members, who have paid Rs.100/- as share value, alone have voting right and they can attend the general body meetings. The document marked as Ext.P3 is a communication dated 31.10.2013 of the 1st respondent Deputy Director, whereby the said respondent forwarded a copy of the amended bye-laws approved by the said respondent, to the Secretary/President of Manjoor Society. According to the petitioners, all of them have paid the share value of Rs.100/-.

7. As per the amendment made to the bye-laws of Manjoor Society, B class members can supply milk to the Society and have other transactions with the Society. However, they cannot attend the general body meetings and they are also not entitled to get bonus or dividend. The document marked as Ext.P4 is a relevant extract of the bye-laws of Manjoor Society. As per the Note to Clause (6) of Ext.P4 bye-laws, in order to become an A class member, one should own a milch cow and pour milk to the Society. If a member does not own a milch cow and fail to pour milk to the Society for a period of three months, he is not eligible to be treated as producer member and he will cease to be a member for that reason. The said fact shall be intimated in writing to the member concerned. He can be enrolled as a producer member by the Committee, in case he continues to pour milk with effect from the date of such continuous supply.

8. The 4th respondent submitted a complaint dated 16.08.2017 (Ext.R4(a)) before the 1st respondent Deputy Director, based on which the 5th respondent Dairy

Extension Officer conducted an inspection in Manjoor Society. The 5th respondent has also conducted inspection in the house of petitioners 1 to 4 and one Mr.P.F.Jose, on 04.01.2018, in order to see whether they own milch cows. According to the petitioners, at the time of inspection by the 5th respondent, their cows were in the nearby property. After inspection, the 5th respondent submitted a report before the 1st respondent. Based on the said report, the 1st respondent issued Ext.P5 show-cause notice to petitioners 1 to 4 and also to Shri P.F. Jose, under clause (j) of sub-rule (1) of Rule 44 of the Rules, whereby they were asked to show-cause why they shall not be disqualified from membership of the Manjoor Society and also from its Managing Committee, under clause (j) of sub-rule (1) of Rule 44, removal from membership under sub-rule (4) of Rule 16 and a declaration under sub-rule (3) of Rule 44 that they ceased to be the members of the Managing Committee of the Society. By Ext.P5 show-cause notice, petitioners 1 to 4 and Sri. P.F. Jose were asked to offer their explanation by personally appearing before

the 1st respondent on 29.01.2018 at 11.00 a.m.

9. On receipt of Ext.P5 notice, petitioners 1 to 4 submitted Ext.P6 explanation dated 22.01.2018 contending, *inter alia*, that in the light of the amendment brought to sub-rule (4) of Rule 35A of the Rules, Note to Clause (6) of Ext.P4 bye-laws of Manjoor Society has become redundant. In the said explanation, the petitioners have also stated that they are pouring milk and they have milch cows and as such, the proceedings initiated to disqualify them under sub-rule (4) of Rule 16 and clause (j) of sub-rule (1) of Rule 44 of the Rules is legally unsustainable. Relying on the amendment made brought in the Explanation to sub-rule (4) of Rule 35A, by the Kerala Co-operative Societies (Third amendment) Rules, 2017, the petitioners would contend that every A class member of a society shall be eligible to vote and contest in the election if he has subscribed to the minimum share value as prescribed in the bye-laws. Any other restrictions, if imposed in this regard, is liable to be declared as null and void. The petitioners would

contend that, since Manjoor Society is a non-credit society, in view of the amendment brought in the Explanation to sub-rule (4) of Rule 35A, the grounds stated in Ext.P5 show-cause notice to remove petitioners 1 to 4 from the membership of Manjoor Society will not survive. The petitioners would also contend that, in the light of the amendment brought in the Explanation to sub-rule (4) of Rule 35A, the provisions to the contra contained in Ext.P4 bye-laws of Manjoor Society have become redundant.

10. According to the petitioners, the action initiated against petitioners 1 to 4 is politically motivated and therefore, the Managing Committee in its meeting held on 19.12.2017 decided to make a complaint against the 1st respondent Deputy Director before the 2nd respondent Joint Director and the 3rd respondent Director of Dairy Development and thereafter, Ext.P8 complaint dated 29.12.2017 was made before the said respondents. In the meantime, the Veterinary Doctor of Memuri Veterinary Hospital examined the cows owned by petitioners 1 to 4, on 30.12.2017, and put tag in their

right ear. Petitioners 1 to 4 have also insured their cows with the United India Insurance Company Ltd. The photographs of the cows and the certificate of insurance are produced as Ext.P9 in this writ petition .

11. The petitioners would contend that, Ext.P5 show-cause notice has been issued with a pre-determination to remove petitioners 1 to 4 from membership and thus to reduce the quorum of the Managing Committee of Manjoor Society to 4 and to appoint an Administrative Committee under Section 33 of the Act. Relying on the judgment of the Apex Court in **Siemen's Ltd. v. State of Maharashtra [2007 (1) KLT 88 (SC)]**, the petitioners would contend further that, when the 1st respondent has applied its mind and formed an opinion as regards the disqualification of petitioners 1 to 4 and issued Ext.P5 show-cause notice with premeditation, writ petition is maintainable under Article 226 of the Constitution of India, challenging the said notice. Relying on Ext.P11 judgment dated 06.07.2017 of the Division Bench in W.A.No.1410/2017,

the petitioners would contend that, even if petitioners 1 to 4 are removed from the membership, on account of loss of quorum, an Administrative Committee has to be appointed from the existing members of the Managing Committee, instead of appointing a departmental Administrator.

12. A counter affidavit has been filed by the 1st respondent Deputy Director, opposing the reliefs sought for in this writ petition. In the counter affidavit, it is contended that, as per the bye-laws of the Manjoor Society, the members who have been issued with Ext.P5 show-cause notice, under clause (j) of sub-rule (1) of Rule 44, are not satisfying the eligibility criteria prescribed in Note to Clause (6) of Ext.P4 bye-laws of the said Society. According to the 1st respondent, the amendment made to sub-rule (4) of Rule 35A, vide Ext.P7 notification dated 30.12.2017 has no application in the case of present members of the Board of Directors of Manjoor Society, since they were elected on 30.05.2017 as per the existing bye-laws. The 1st respondent would point out that, milk societies are not credit societies

and Ext.P7 notification refers only to credit societies. There are two types of milk societies in the State, namely, Anand Pattern Co-operative Societies and other is Traditional Milk Co-operative Societies. Both are engaged in collection of milk and sale. The bye-laws of Manjoor Society specify that a member of the Society must have milch animals and should be pouring milk at the Society in a fixed measurement. Clause (6) of Ext.P4 bye-laws of Manjoor Society prescribes that any producer or sympathizer can be a member, subject to Clause (6) and its Note.

13. In the counter affidavit, it has also been pointed out that, the 1st respondent took charge as Deputy Director of Diary Development, Kottayam on 05.07.2016 and he has no personal connection with the Secretary, the President and the members in the Board of Directors of Manjoor Society. In the inspection conducted by the 5th respondent Dairy Extension Officer on 13.07.2016 and 18.07.2016, many defects were found in the Society and hence, the District Inspection Team (B) Unit was appointed to conduct a detailed

inspection. The said team, after inspection, reported that the Society is selling substandard milk. The report of the Quality Control Officer dated 05.01.2018 is placed on record as Ext.R1(a). According to the 1st respondent, the daily collection of milk in the Society is only an average of 2700 liters as per the report of the 5th respondent. In Ext.R1(b) certificate dated 23.01.2018, the Secretary of Society has certified that the Society has no ISO 2002 certificate. As per the Audit Report for 2015-2016, the loss sustained by the Society is Rs.2,80,268.10/-. The 1st respondent would contend that Ext.P5 show-cause notice dated 17.01.2018, under clause (j) of sub-rule (1) of Rule 44, was issued to five Board Members of the Society based on an enquiry report submitted by the 5th respondent Dairy Extension Officer, following a complaint lodged by the 4th respondent, who is a member of that Society, regarding the disqualification of the Board Members. The enquiry report of the 5th respondent confirmed that the above five members have no milch animals and not pouring milk to the Society as per its bye-laws and

they are liable to be disqualified and expelled from the Board. In Ext.R1(d) report dated 04.01.2018 of the 5th respondent Dairy Extension Officer, it is reported that, petitioners 1 to 3 were not having cattle sheds. The 1st respondent would point out that, no milk yield is recorded in Ext.P9 insurance certificate of the 3rd and 4th petitioners. The 1st respondent would also point out that, on 01.12.2017, she received Ext.R1(e) complaint from Smt.Resmi Soman, a former Lab Assistant in the Society, alleging that she had been sexually tortured by the Secretary of the Society, Mr. Chacko. Based on that complaint, the 1st respondent, along with three women subordinates visited the Society and discussed the matter with the 5th petitioner, who is the President of the Society. But the 5th petitioner justified such misdeeds of the Secretary and evaded from taking any action against him. According to the 1st respondent, protesting against the said attitude of the 5th petitioner in protecting the Secretary, two Board members resigned from the Director Board on 21.12.2017 by submitting Ext.R1(f) and Ext.R1(g) resignations. The

1st respondent sent Ext.R1(h) letter to the 5th petitioner with a copy of the FIR and the order of the concerned Court, to take departmental action against the Secretary, but there was no response from the 5th petitioner till date.

14. The 1st respondent would contend that as per letter No. C2/22369/2017 dated 03.01.2018 of the 3rd respondent Director of Dairy Development, the members of a dairy society must be dairy farmers and they must be eligible under Section 16 of the Act and Rule 16 of the Rules. The said letter also indicates that after taking membership in a dairy society, if a member does not continue to be a dairy farmer, such member should be removed from both the membership and from the Director Board of the Society. Petitioners 1 to 4 have no milch animals when the spot verification was made by the 1st respondent on 11.12.2017. On the basis of a complaint, the 5th respondent visited the cattle shed of petitioners 1 to 4 and another on 03.01.2018 and 04.01.2018 and submitted a report. In the said report it has been stated that petitioners 1 to 4 have not

poured milk to the Society in accordance with its bye-laws. The 1st respondent would also point out that Ext.P9 certificate is dated 08.01.2018 i.e., after the inspection conducted by the 1st and 5th respondents. In the counter affidavit, it has also been stated that the Board of Directors of the Society have committed negligence and dereliction of duty in various counts and two Director Board members, Sri. V.V. Chandran and Sri. P.F. Jose have no interest in continuing as Board members of the Society.

15. A counter affidavit has been filed by the 4th respondent, opposing the reliefs sought for in this writ petition. In the counter affidavit, it is contended that the petitioners have other alternative and efficacious remedies provided under the Act and the Rules, for redressal of their grievances, if any, and as such, the writ petition under Article 226 of the Constitution of India is not maintainable. Moreover, the writ petition is premature in nature, as Ext.P5, which is impugned in this writ petition, is only a show-cause notice and there is no decision against

petitioners 1 to 4. The 4th respondent would contend that the amendment brought by Ext.P7 notification dated 30.12.2017 has no application to the question whether petitioners 1 to 4 are disqualified for their non-compliance of the conditions in the bye-laws. A plain reading of Note to Clause (6) of Ext.P4 bye-laws would show that a person should satisfy both the conditions of owning a milch cow and pouring milk to the Society for three months in order to become an A class member. On account of the failure of either to own a milch cow or to pour milk for three months in an year, an A class member will incur disqualification, which is automatic. A person who obtained an A class membership is liable to be disqualified subsequently, when the aforesaid conditions are not fulfilled in any year. Therefore, even if petitioners 1 to 4 were validly enrolled as A class members, merely because of such enrollment they cannot claim their continuance as A class members without satisfying the aforesaid twin conditions continuously and regularly.

16. According to the 4th respondent, petitioners 1 to

4 neither owned cows nor supplied any milk to the Society for the last few years. Therefore, they are disqualified to be A class members long before. The 4th respondent made Ext.R4A complaint dated 16.08.2017 before the 1st respondent when the management of the Society by the petitioners was illegal, against the bye-laws, and the very interest of the Society and its members, in various counts. Admittedly, petitioners 1 to 4 have not supplied milk to the Society during those periods. The allegation that at the time when the 5th respondent conducted inspection at the house of petitioners 1 to 4, they had sent their cows for grazing is absolutely wrong. The 4th respondent would also point out that the mere physical absence of the cow in their house, at the time of inspection, allegedly for the purpose of its grazing, will not, in any way, make the person who inspected their house clueless to ascertain the true facts. A copy of the report dated 04.01.2018 of the 5th respondent, obtained under the Right to Information Act, 2005 is placed on record as Ext.R4B. In Ext.R4B, it has been stated that the named members of the Managing Committee have not supplied milk during the period from 01.01.2017 to 30.11.2017, for a period of 11 months continuously. Since,

the failure to supply milk at least for a period of 3 months is a disqualification, the question whether they were owning cows for the period is immaterial. In the said circumstances, there is nothing wrong in the issuance of Ext.P5 show-cause notice. If petitioners 1 to 4 have any objections against the statements made or actions proposed in Ext.P5 show-cause notice, they can raise the same before the 1st respondent.

17. The 4th respondent would also point out that Ext.P6 reply made by petitioners 1 to 4 to Ext.P5 show-cause notice itself would disclose that they were disqualified to be A class member, long before. The 4th respondent would contend that Ext.P7 amendment made to sub-rule (4) of Rule 35A with effect from 30.12.2017 will not in any way help petitioners 1 to 4 as he made Ext.R4A complaint before the 1st respondent Deputy Director on 16.08.2017 alleging their disqualification. Therefore, the disqualification of petitioners 1 to 4 have to be considered, at least, as on the date of Ext.R4A complaint. The 4th respondent would also point out that Ext.P9 is nothing but for creating evidence

for the purpose of defending the actions initiated against petitioners 1 to 4 as per Ext.P5 show-cause notice. By the subsequent acquisition of cow, the disqualification already incurred will not be ceased. When a person ceased to be a member of the Society, he is not entitled to involve in any way in the management of that society.

18. A reply affidavit has been filed by the petitioners to the counter affidavit filed by the 1st respondent, wherein it has been stated that the allegations made in the counter affidavit are nowhere stated in Ext.P5 statutory notice. Therefore, the validity of Ext.P5 show-cause notice cannot be supplemented by fresh reasons in the shape of affidavit, as held by the Apex Court in **Mohinder Singh Gill v. the Chief Election Commissioner, New Delhi and others [(1978) 1 SCC 405]**. Relying on Ext.P9 series of documents issued by the United Insurance Company and Exts.P12 to P15 milk purchase reports, the petitioners would contend that petitioners 1 to 4 are having milch animals and supplying the milk to the Society continuously. The Petitioners would also contend that United India Insurance Company issued the policy after verification of

milch animals of petitioners 1 to 4 by the Veterinary Doctor of Memmury Government Veterinary Dispensary. Relying on Ext.P16 license issued by the Food Safety Standard Authority and Ext.P17 license issued by the Kerala State Pollution Control Board, the petitioners would contend that the statement made in Ext.R1A report of the Quality Control Officer is without properly assessing the standard of the milk and that, entire milk from the Society is being supplied in and around Kottayam and Ernakulam districts and nobody made a complaint other than the 1st respondent. In the enquiry ordered under Section 66 of the Act by the 1st respondent, the Enquiry Officer has submitted Ext.P18 report dated 19.02.2018, which is self speaking that the Society is functioning properly and everything is in order. In the reply affidavit it is also contended that the allegation regarding sexual harassment by the Secretary is without any basis. Though, on the basis of the complaint filed by Smt.Lekshmi Soman, the Police registered an FIR, the Secretary of the Society obtained bail. On the basis of the complaint made by Smt.Lakshmi Soman, the Committee asked explanation from the Secretary. He has submitted a reply dated 04.12.2017 and the Society has ordered further

enquiry.

19. The declaratory relief sought for in this writ petition, i.e., a declaration that, the conditions contained in Note to Clause (6) of Ext.P4 bye-laws of Manjoor Society is to be read down in the light of the amendment brought in the Explanation to sub-rule (4) of Rule 35A cannot be entertained in this writ petition, since Manjoor Society is not made a party to this proceedings. The said Society, which is a Co-operative Society registered under the Act represented by its Secretary should have been made a respondent in this writ petition. Moreover, the bye-laws of Manjoor Society is not having any statutory force. In such circumstance, the declaratory relief sought for as above cannot be entertained in a writ petition filed under Article 226 of the Constitution of India.

20. Another relief sought for is to the effect that, if in any event the Managing Committee of Manjoor Society is removed by the 1st respondent Deputy Director, the said respondent may be directed to appoint any three petitioners among petitioners 5 to 8

as the members of the Administrative Committee, under Section 33 of the Act.

21. Section 33 of the Act deals with appointment of a new committee or administrator on failure to constitute committee, etc. As per sub-section (1) of Section 33 of the Act, where the term of office of a committee has expired and a new committee has not been constituted, or where a no-confidence motion is passed by the general body against the existing committee or where the existing committee resigns enbloc or where vacancies occur in the committee either by resignation or otherwise and the number of remaining members cannot constitute the quorum for the meeting of the committee, or where the committee fails to hold its regular meeting consecutively for six months or where the Registrar is satisfied that a new committee cannot be constituted before the expiry of the term of office of the existing committee; or there is stalemate in the constitution or functions of the committee; that a new committee is prevented from entering upon office or a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either suo motu or on the application of any

member of the society, after intimating the Circle Co-operative Union, appoint one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be member of the society to manage the affairs of the society, for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended, from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier.

22. The first proviso to sub-section (1) of Section 33 of the Act provides that, before making such order, the Registrar shall publish a notice on the notice board of the head office of the society, inviting objections to the making of the order within a period specified in the notice and consider such objections. The second proviso provides further that, it shall not be necessary to publish such notice in cases where the Registrar is satisfied that it is not reasonably practicable to do so. The third proviso

provides also that, where a committee, administrator or administrators, as the case may be, is in office at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1992, the Registrar may extend the term of such committee, administrator or administrators, as the case may be, for a further period not exceeding one year from the date of such commencement.

23. Therefore, the provisions under sub-section (1) of Section 33 of the Act envisage appointment of an administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be a member of the society, to manage the affairs of the society, for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended, from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier, where the term of office of a committee of the

society has expired and a new committee has not been constituted. Under sub-section (1) of Section 33 of the Act discretion has been conferred on the Registrar to appoint an administrator or an administrative committee.

24. Relying on Ext.P11 judgment of a Division Bench of this Court dated 06.07.2018 in W.A.No. 1410/2017, the learned counsel for the petitioners would contend that 1st respondent Deputy Director has to appoint an Administrative Committee consisting of three members among petitioners 5 to 8, if in any event the Managing Committee of Manjoor Society is removed by the said respondent under sub-section(1) of section 33 of the Act.

25. A reading of Ext.P11 judgment in W.A.No.1410 of 2017 relied on by the learned counsel for the petitioners would show that, in that case the Division Bench was dealing with a case in which election to the managing committee of the society could not be conducted on account of the fact that the amendment made to the bye-laws of that society, in order to bring it in consonance with the

amended provisions under Section 13A of the Act, was pending registration before the Registrar of Co-operative Societies. In para.6 of the said judgment, the Division Bench noticed that the appointment of *ad hoc* committee was not on account of any maladministration or misfeasance on the part of the present managing committee of that society, but only on account of the amendment of its bye-laws. Para.6 of the said decision reads thus;

"6. The term of the Committee has completed. The election ought to have been conducted, but because of the pendency of the amendment of the bye laws , it could not be so done. The result is that in such a situation the Registrar, in terms of Section 33(1)(b), is required to constitute an *ad hoc* committee to manage the affairs of the Co-operative Society till proper elections are conducted and a new Managing Committee is put in place. Thus, the appointment of *ad hoc* committee was not on account of any maladministration or misfeasance on the part of the Committee, but only on account of the correction of the bye-laws. Otherwise, there is no default on the part of the Co-operative Society. Thus even though the Registrar has a discretion to appoint an *ad hoc* committee of maximum three persons, one among them as a convener, who need not be member of the society to manage the affairs of the society, it

does not bar the members of the Co-operative Society itself. Considering that the Co-operative Society is a democratic institution by and for the benefit of the members themselves, it would ordinarily be desirable that members of the Co-operative Society be considered, if not otherwise disqualified. Why should a foreigner to the Co-operative Society be considered, if there are competent persons in the Co-operative Society itself. Discretion conferred by Section 33(1)(b) is not an arbitrary or a fanciful discretion. It has to be exercised on some principles, one of which would be to avoid administration of a Society by nonmembers, even on an *ad hoc* basis, unless there are good reasons to avoid the members." (underline supplied)

26. In W.A.No.177 of 2018, another decision by the Division Bench, this court was dealing with a case in which the managing committee of the society was removed from office invoking the power under Section 33(1)(aa) of the Act on the ground that there is a stalemate in the functioning of the society. In the said case, the Joint Registrar was directed to constitute a three member administrative committee consisting of the Vice President of the society and two other members, who are not disqualified to be the members of the managing

committee, since in the normal course, the term of the committee which was removed from office, would have come to an end on the next day, i.e., 08.02.2018.

Para.5 of the said judgment reads thus;

"5. A reading of the impugned order discloses that it is for the reason that the General Body of the Society did not approve many among the items in the Agenda that the order of removal was passed. It is also not in dispute that a criminal case has been registered against three persons, including the President of the Society, who incidentally is the first appellant/first petitioner. Having regard to the fact that the order of removal was not on any other ground, we deem it appropriate to dispose of the writ appeal with a direction to the Joint Registrar of Co-operative Societies (General), Thiruvananthapuram to constitute a three member Administrative Committee consisting of the Vice President of the Society (the second petitioner in the writ petition) and two other members who are not disqualified to be members of the managing committee of the Society. The second petitioner in the writ petition shall be the Convener of the committee thus constituted. The said committee shall take an appropriate decision regarding the conduct of the elections and do the needful in the matter to ensure that the elections are held

at the earliest. The State Election Commission shall also do the needful in the matter to ensure that the elections are held at the earliest. We also deem it appropriate to clarify that until the elections are held and a new managing committee is constituted, the Administrative Committee constituted pursuant to this judgment shall not take major policy decisions or enroll members or make appointments and shall only attend to the day-to-day affairs of the Society."

(underline supplied)

27. Therefore, sub-section (1) of Section 33 of the Act confers wide discretion on the 1st respondent in exercise of the powers of the Registrar to appoint an administrator or an administrative committee consisting of not more than three individuals to manage the affairs of the Society. The 1st respondent has to exercise such discretion considering the fact situation in the case on hand. In such circumstances, in the event of the Managing Committee of Manjoor Society being removed, it is for the 1st respondent Deputy Director, in exercise of her powers under sub-section (1) of Section 33 of the Act, to decide as to whether

an Administrator or an Administrative Committee not more than three members be constituted to manage the affairs of the Society. At this point of time, when Ext.P6 explanation offered by petitioners 1 to 4 to Ext.P5 show-cause notice is pending consideration before the 1st respondent Deputy Director, the petitioners cannot approach this Court seeking an order regarding appointment of an Administrative Committee. At any rate, the 5th writ petitioner, who is the President of the Society and petitioners 6 to 8, who are the members of the Managing Committee have no legal right to insist that the 1st respondent Deputy Director has to exercise her powers under sub-section (1) of Section 33 of the Act, in a particular manner, as suggested by them. Similarly, petitioners 1 to 4, who have been issued with Ext.P5 show-cause notice, have no legal right to seek any relief in such matters.

28. Now, coming to the challenge made in this writ petition against Ext.P5 show-cause notice dated 17.01.2018 and also the declaratory relief that, petitioners 1 to 4 cannot be disqualified or removed

from the membership of Manjoor Society on the basis of Ext.P5 show-cause notice, in the light of Ext.P7 notification, whereby amendment was made to the Explanation to sub-rule (4) of Rule 35A of the Act is concerned, it has to be noticed that, as borne out from Ext.P5 show-cause notice, the proceedings initiated against petitioners 1 to 4 are based on Ext.R4(a) complaint dated 16.08.2017 made by the 4th respondent, who is also a member of Manjoor Society. The proceedings initiated against petitioners 1 to 4, based on Ext.R4(a) complaint dated 16.08.2017 of the 4th respondent, the report of the 5th respondent Dairy Extension Officer dated 04.01.2018 and the directions issued by the 3rd respondent Director of Dairy Development dated 03.01.2018 has to be proceeded with in terms of the statutory provisions under the Act, the Rules and also the provisions in Ext.P4 bye-laws of the Society, as it stood during the relevant time.

29. The pleadings and materials on record would show that, based on Ext.R4(a) complaint made by the 4th respondent dated 16.08.2017, proceedings were initiated

against petitioners 1 to 4 and they are issued with Ext.P5 show-cause notice under clause (j) of sub-rule (1) of Rule 44, whereby they are asked to show-cause why they shall not be disqualified from the membership of Manjoor Society and also from the Managing Committee, under clause (j) of sub-rule (1) of Rule 44, removal from membership under sub-rule (4) of Rule 16 and a declaration under sub-rule (3) of Rule 44 that, they ceased to be the members of the Managing Committee. As per Note to Clause (6) of Ext.P4 bye-laws of Manjoor Society, a member of the Society should have milch cow and should be pouring milk to the Society in a fixed measurement. Based on the complaint, the 1st respondent Deputy Director conducted a spot verification on 11.12.2017 and she could not find any milch animals owned by petitioners 1 to 4. Thereafter, the 5th respondent Dairy Extension Officer visited the cattle sheds of petitioners 1 to 4 and one Shri P.F.Jose on 03.01.2018 and 04.01.2018. The 5th respondent has submitted a report dated 04.01.2018, wherein it has been stated that, petitioners 1 to 4

have not poured milk to the Society in accordance with its bye-laws.

30. The fact that, at the time of inspection, no milch animals were found in the house of petitioners 1 to 4 is not in dispute, going by the averments in the writ petition and also the explanation offered in Ext.P6. According to the petitioners, at the time of inspection, their cows were in the nearby property. As pointed out by the learned counsel for the 4th respondent, if petitioners 1 to 4 had sent their cows for grazing, at the time of inspection, the 5th respondent Dairy Extension Officer could have noticed other indications in their house regarding rearing of cows.

31. In order to show that petitioners 1 to 4 owned milch cows and poured milk to the Society, the learned counsel for the petitioners placed reliance on the documents marked as Ext.P9, namely, the photographs of petitioners 1 to 4 standing along with their cows and the cattle insurance policy issued by United India Insurance Company Ltd., Kottayam. In paragraph 10 of

the writ petition it is averred that the Veterinary Doctor of Memmury Veterinary Hospital examined the cows of petitioners 1 to 4 on 30.12.2017 and put tag in their right ear and thereafter, they insured their cows with the United India Insurance Company Ltd. The description of the document marked as Ext.P9 reads thus:-

"The true copies of the details of the insurance with the photographs of the cows are produced and marked as Ext.P9"

32. As already noticed, the 1st respondent Deputy Director conducted spot verification on 11.12.2017, on which date she could not find any milch animals with petitioners 1 to 4. Thereafter, the 5th respondent visited the cattle sheds of petitioners 1 to 4 on 03.01.2018 and 04.01.2018 and he could not find any milch animals in their house. Moreover, the Cattle Insurance Policy produced as Ext.P9 are issued based on cattle insurance proposals made on 30.12.2017 and the receipts which form part of Ext.P9 would show that the premium was collected by United India Insurance Company Ltd., on 08.01.2018 and the Insurance Company issued

policy for the period from 08.01.2018 to 07.01.2019. The Cattle Insurance Proposal Form, premium receipt and the copy of the insurance policy produced as Ext.P9 are much after the spot verification conducted by the 1st respondent Deputy Director and those materials are not at all relevant in the proceedings for disqualification initiated against petitioners 1 to 4 based on Ext.R4(a) complaint dated 16.08.2017 made by the 4th respondent, which has resulted in Ext.P5 show-cause notice issued by the 1st respondent Deputy Director.

33. The 1st petitioner has sworn to a reply affidavit dated 14.07.2018 to the counter affidavit filed by the 1st respondent Deputy Director. In paragraph 3 of the said reply affidavit, it is averred as follows:-

"On going through the Ext.P9 series documents issued by the United India Insurance Company, it is categorically the petitioners 1 to 4 are having milch animals and supplying the milk continuously. True copies of the milk measured by the petitioners 1 to 4 are produced and marked as **Exhibits P12, P13, P14 and P15**. The United India Insurance Company issued the policy after verification of the milch animals of the petitioners 1 to 4 by Veterinary Doctor of Memmury Government Veterinary Dispensary of Kottayam District. The same can be seen in running page 38, 43, 48 and 53. In spite of all these the respondent filed a false affidavit that petitioners 1 to 4 are not having milch animals.

34. As already noticed, the bunch of documents produced as Ext.P9 would not show that petitioners 1 to 4 were having milch animals as on the date of Ext.R4(a) complaint made by the 4th respondent or even on 11.12.2017, when the 1st respondent Deputy Director conducted spot verification in their house. As far as Exts.P12 to P15 milk purchase reports are concerned, those reports are for the period from 15.12.2017 in the case of the 1st petitioner (Ext.P12), from 16.12.2017 in the case of the 2nd petitioner (Ext.P13), from 15.12.2017 in the case of the 3rd petitioner (Ext.P14) and from 01.01.2018 in the case of the 4th petitioner (Ext.P15). It is not discernible from Exts.P12 to P15 as to the person, who has issued such certificates. Those reports are not issued by the Secretary, Manjoor Society or other competent person, as authorised by the said Society. Such documents cannot be acted upon. Moreover, the documents marked as Exts.P13 to P15 have no relevance in deciding the question as to the disqualification of petitioners 1 to 4 is based on Ext.R4(a) complaint made by the 4th respondent dated

16.08.2017, since the said documents would not show that petitioners 1 to 4 were having milch animals and were pouring milk to the Society, as on 11.12.2017, the date on which the 1st respondent Deputy Director conducted inspection.

35. As already noticed, Ext.P5 is only a show-cause notice issued by the 1st respondent Deputy Director to petitioners 1 to 4 and also to one Mr. P.F. Jose. On receipt of Ext.P5 show-cause notice, petitioners 1 to 4 have submitted Ext.P6 explanation, which is now pending consideration before the 1st respondent Deputy Director.

36. In **State of U.P v. Brahm Datt Sharma [(1987) 2 SCC 179]** the Apex Court held that, when the show cause notice was issued under a statutory provision calling upon to show cause, the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford an opportunity of hearing and once cause is shown it is open to the authority to consider

the matter in the light of the facts and submission placed before it and only thereafter a final decision in the matter could be taken. Therefore, interference by the Court before that would be premature.

37. In **Seimens Ltd v. State of Maharashtra [(2006) 12 SCC 33]** the Apex Court held that ordinarily, a writ court may not exercise its discretionary jurisdiction to entertain a writ petition questioning a notice to show cause unless the notice appears to have been without jurisdiction.

38. In **Union of India v. Vicco Laboratories [(2007) 13 SCC 270]** the Apex Court held that, normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinance from interference at the stage of issuance

of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly, in that case, the writ court would not hesitate to interfere even at the stage of issuance of the show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. The mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

39. In view of the law laid down in the decisions referred to supra, no interference under Article 226 of the Constitution of India is warranted on a show cause notice issued under a statutory provision unless the notice is shown to have been issued palpably without any authority of law or that it is an abuse of process

of law. The mere assertion in the writ petition that the show cause notice has been issued without any authority of law or that it is an abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, no interference of this Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution is warranted.

40. Viewed in the light of the law laid down in the decisions referred to supra, conclusion is irresistible that the challenge made in this writ petition against Ext.P5 show-cause notice issued by the 1st respondent Deputy Director and the consequential proceedings can only be repelled as the petitioners failed to make out a case warranting interference on Ext.P5 show-cause notice, in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

41. It is for the 1st respondent to consider Ext.P6 explanation offered by petitioners 1 to 4 and pass appropriate orders thereon, strictly in accordance with

law, with notice to petitioners 1 to 4 and also to the 4th respondent herein, and after affording them an opportunity of being heard, as expeditiously as possible, at any rate within a period of one month from the date of receipt of certified copy of this judgment. The decision so taken shall be communicated to petitioners 1 to 4 without any delay.

The writ petition is disposed of as above. No order as to costs.

Sd/-
ANIL K. NARENDRAN
JUDGE

dsn/yd

APPENDIX**PETITIONERS' EXHIBITS**

- EXHIBIT P1 A TRUE COPY OF THE REGISTRATION CERTIFICATE
DATED 16.10.1975
- EXHIBIT P2 A TRUE COPY OF THE AUDIT CERTIFICATE OF THE YEAR
2016-17
- EXHIBIT P3 A TRUE COPY OF THE BYE LAW AMENDMENT
- EXHIBIT P4 A TRUE COPY OF THE RELEVANT PORTION OF THE BYE
LAW
- EXHIBIT P5 A TRUE COPY OF THE SHOW CAUSE NOTICE DATED
17.01.2018 ISSUED BY THE FIRST RESPONDENT
- EXHIBIT P6 A TRUE COPY OF THE OBJECTION DATED 22.01.2018
FILED BY THE PETITIONERS 1 TO 4
- EXHIBIT P7 A TRUE COPY OF THE RULE AMENDMENT BY SRO NO.
863/2017
- EXHIBIT P8 A TRUE COPY OF THE COMPLAINT DATED 29.12.2017
FILED BY THE PETITIONERS BEFORE THE SECOND AND
THIRD RESPONDENTS
- EXHIBIT P9 TRUE COPIES OF THE DETAILS OF THE INSURANCE
WITH THE PHOTOGRAPHS OF THE COW
- EXHIBIT P10 A TRUE COPY OF THE JUDGMENT REPORTED IN 2007 (1)
KLT 88
- EXHIBIT P11 A TRUE COPY OF THE JUDGMENT DATED 06.07.2017 IN
WA.NO. 1410/2017
- EXHIBIT P12 A TRUE COPY OF THE MILK PURCHASE REPORT OF THE
FIRST PETITIONER
- EXHIBIT P13 A TRUE COPY OF THE MILK PURCHASE REPORT OF THE
SECOND PETITIONER
- EXHIBIT P14 A TRUE COPY OF THE MILK PURCHASE REPORT OF THE
THIRD PETITIONER
- EXHIBIT P15 A TRUE COPY OF THE MILK PURCHASE REPORT OF THE
FOURTH PETITIONER
- EXHIBIT P16 A TRUE COPY OF THE LICENSE OF THE MANJOOR
INDUSTRIAL MILK CO-OPERATIVE SOCIETY ISSUED
UNDER FOOD SAFETY STANDARDS AUTHORITY OF
INDIA

- EXHIBIT P17 A TRUE COPY OF THE LICENSE OF THE MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD
- EXHIBIT P18 A TRUE COPY OF THE REPORT DATED 19.02.2018 OF THE DIARY FARM INSPECTOR
- EXHIBIT P19 A TRUE COPY OF THE AUDIT CERTIFICATE OF THE YEAR 2014-2015 OF THE MANJOOR INDUSTRIAL MILK CO-OPERATIVE SOCIETY

RESPONDENTS' EXHIBITS

- EXT.R4A : TRUE COPY OF THE COMPLAINT DATED 16.08.2017 SUBMITTED BY THE 4TH RESPONDENT.
- EXT.R4B : TRUE COPY OF THE REPORT DATED 04.01.2018 OF THE 5TH RESPONDENT.
- EXT.R1 (A) : TRUE COPY OF REPORT OF THE QUALITY CONTROL OFFICER DT.5.1.2018.
- EXT.R1 (B) : TRUE COPY OF CERTIFICATE FROM THE SECRETARY DT.23.1.2018.
- EXT.R1 (C) : TRUE COPY OF CIRCULAR NO.TC/5934/2017 DT.12.4.2017.
- EXT.R1 (D) : TRUE COPY OF ENQUIRY REPORT DT.4.1.2018 SUBMITTED BY THE DAIRY EXTENSION OFFICER, MANJOOR.
- EXT.R1 (E) : TRUE COPY OF COMPLAINT RECEIVED FROM SMT.RESMI SOMAN DT.1.12.2017.
- EXT.R1 (F) : TRUE COPY OF RESIGNATION OF SMT.LALY XAVIER FROM THE DIRECTOR BOARD ON 21.12.2017.
- EXT.R1 (G) : TRUE COPY OF RESIGNATION OF SRI GEORGE MATHEW FROM THE DIRECTOR BOARD ON 21.12.2017.
- EXT.R1 (H) : TRUE COPY OF LETTER OF THE 1ST RESPONDENT SENT TO THE PRESIDENT ON 03.01.2018.

TRUE COPY

P.S. TO JUDGE