

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE
&
THE HON'BLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 28TH DAY OF NOVEMBER 2012/7TH AGRAHAYANA 1934

WA.No. 1841 of 2012 () IN WPC/23215/2012

AGAINST THE ORDER/JUDGMENT IN .NO./ IN WPC.23215/2012 DATED

APPELLANTS/RESPONDENTS 3 TO 6:

1. WALAYAR MIL CO-OPERATIVE SOCIETY
LTD.NO.100(D) (APCOS), REPRESENTED BY ITS SECRETARY
WALAYAR, PALAKKAD - 678 624.
2. NATARAJAN, CONVENER, ADMINISTRATIVE COMMITTEE, MEMBER
NO.522, S/O.LATE MANIKKAM PILLA, ATTUPATHY
WALAYAR P.O., PALAKKAD DISTRICT.
3. M.CHARLES, MEMBER OF ADMINISTRATIVE COMMITTEE
MEMBER NO.424, ATTUPATHY, WALAYAR P.O.
PALAKKAD DISTRICT.
4. STANISLAZ, MEMBER OF ADMINISTRATIVE COMMITTEE, MEMBER NO.104.
CHANDRAPURAM, VALAYAR DAM P.O., PALAKKAD.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S)/PETITIONERS/RESPONDENTS:

1. VIJAYAKUMAR
S/O.ARUCHAMI, DAM ROAD, VALAYAR DAM P.O.
PALAKKAD678 624.
2. P.BALASUBRAHMANAIM, KULIYANKADU, WALAYAR, PALAKKAD 678 624
3. R.CHINNADURAI, SANJEEV HOUSE, CHANDRAPURAM WALAYAR,
PALAKKAD - 678 624.
4. DEPUTY DIRECTOR (REGSTRAR), DAIRY DEVELOPMENT DEPARTMENT,
DISTRICT OFFICE, PALAKKAD - 678001
5. THE RETURNING OFFICER, WALAYAR MILK CO-OPERATIVE SOCIETY
LTD.NO.100(D) (APCOS), CHANDRAPURAM, WALAYAR 678624.

R1-R3 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
R1-R3 BY ADV. SRI.T.V.GEORGE
R4 BY SR. GOVERNMENT PLEADER SRI.D.SOMASUNDARAM.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28-11-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

Annexure-A1 A TRUE COPY OF THE JUDGMENT DATED
8.10.2012 IN WRIT PETITION(C) NO.23215/2012.

Annexure-II True copy of Order in WPC No.33373/
2011 dtd.14.2.2012 of this Court.

[True copy]

P.S. to Judge.

u1/-

PIUS C. KURIAKOSE
&
BABU MATHEW P. JOSEPH, JJ.

W.A. No. 1841 OF 2012

Dated this the 28th day of November, 2012

J U D G M E N T

PIUS C. KURIAKOSE, J

Walayar Milk Co-operative Society, the 3rd respondent in the writ petition challenges the judgment of the learned Single Judge under which 81 persons mentioned in Ext.P7 order who are members enrolled by the administrative committee are found to be not entitled to cast their votes. The learned Single Judge placed reliance on the judgment of this Court reported in **Karunakaran Pillai v. Venugopala Pillai(2005 (3) KLT 348)** and judgment of the Supreme Court in **Joint Registrar of Co-operative Societies v. T.A.Kuttappan and others(2006 (6) SCC**

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127) and **Shantharaj and another v. Nagaraj and others(1997 (6) SCC 37)** to take the view that the administrative committee has no power to enroll new members and hence 81 members mentioned in Ext.P7 order who are enrolled by the administrative committee are not entitled to cast their votes in the ensuing election.

2. Sri.P.N. Mohanan, learned counsel for the appellant submitted that the three decisions relied on by the learned Single Judge are all decisions pertaining to ordinary co-operative societies and not relating to milk supply societies like the appellant society. Unlike in the case of other societies, in the case of milk societies membership is not open to all and sundry. In order to make a person eligible for membership in a milk society it is absolutely necessary that he should own cattle and he should have measured milk during 90 days out of 120 days prior to his application for membership. In the instant case

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the administrative committee enrolled these 81 persons whose names are mentioned in Ext.P7 orders on being convinced that they are eligible for membership. Even if the society was being ruled by a regular committee then also these 81 members would have been eligible for membership. Hence the learned counsel submitted that distinction has to be drawn in this case as the fact situation is entirely different from the facts situation in the three decisions relied on by the learned Single Judge.

3. Sri. O.V. Radhakrishnan, *per contra* would support the impugned judgment. According to the learned senior counsel enrollment of new members by the administrative committee cannot be termed as an irregular exercise of power. On the contrary, the same amounts to exercise of power or jurisdiction which the committee did not have. Any action by an authority without power or jurisdiction will be *per se* void. As enrollment of 81 persons

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mentioned in Ext.P7 was done by the administrative committee which had no power at all, the above enrollment has to be treated as void.

4. We have given our anxious consideration to the rival submissions addressed at the Bar. The position is trite by decisions of this Court in *Karunakaran Pillai v. Venugopala Pillai (cited supra)* and of the Supreme Court in *Joint Registrar of Co-operative Societies v. T.A.Kuttappan & ors. (cited supra)* and *Shantharaj and another v. Nagaraj and others (cited supra)* that the administrative committee cannot enroll new members. The argument of Sri.Mohanan based on the criteria for membership in ordinary societies and milk supplies societies does not appeal to us as the fundamental reason which weighed with this Court and the Supreme Court in taking the view that an administrative committee is not competent to enroll new members is that enrollment of new members is a matter which has to be

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considered by the democratically elected committee. The above view acquires more significance in view of the constitutional status given to co-operative societies under the 97th amendment of the Constitution of India. Section 243ZL newly incorporated provides that the maximum period during which a democratically elected committee can be kept under suspension is six months. In short, we do not find any infirmity in the judgment of the learned Single Judge. The Writ Appeal is dismissed and the impugned judgment is confirmed. Parties will suffer their respective costs.

Sd/- (**PIUS C. KURIAKOSE, JUDGE**)

Sd/- (**BABU MATHEW P. JOSEPH, JUDGE**)

ul/-

[True copy]

P.S. to Judge.