

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID

MONDAY, THE 8TH DAY OF OCTOBER 2012/16TH ASWINA 1934

WP(C).No. 23215 of 2012 (B)

PETITIONER(S):

1. VIJAYAKUMAR,, AGED 32 YEARS
S/O.ARUCHAMY,DAM ROAD,WALAYAR DAM POST
PALAKKAD DISTRICT.
2. P.BALASUBRAMANIYAM, S/O.PODARSAMY
GOWNDER,KULIANKADU,WALAYAR, PALAKKAD.
3. R.CHINNADURAI, S/O.C.R.RAJU,SANJEEV HOUSE,CHANDRAPURAM
WALAYAR,PALAKKAD.

BY ADV. SRI.T.V.GEORGE

RESPONDENT(S):

1. DEPUTY DIRECTOR (REGISTRAR),
DAIRY DEVELOPMENT DEPARTMENT,DISTRICT OFFICE
PALAKKAD-678001.
2. THE RETURNING OFFICER, WALAYAR MILK CO-OPERATIVE
SOCIETY,APCOS,100(D) CHANDRAPURAM,WALAYAR 678 624.
3. WALAYAR MILK CO-OPERATIVE SOCIETY LTD.NO.100(D) (APCOS),
WALAYAR,PALAKKAD-678624, REPRESENTED BY ITS SECRETARY.
4. SRI.NATARAJAN,
CONVENOR,MEMBER NO.522,S/O.LATE MANIKAM PILLA
ATTUPATHI,WALAYAR.P.O.678 624.
5. M.CHARLS, S/O.MAHIMARAJ,MEMBER NO.424,ATTUPATHI
WALAYAR,PALAKKAD-678624.
6. STANISLAZ, S/O.ASHIRVADAM,MEMBER NO.104,CHANDRAPURAM
WALAYAR DAM.P.O,PALAKKAD-678624.

BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-10-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE SAID SUPERSESSION ORDER DTD. 10.10.2011 .

P2:- COPY OF ORDER NO.C/4124/09 DTD. 4.11.2011.

P3:- COPY OF REPRESENTATION BEFORE THE 1ST RESPONDENT DTD. 25.7.2012.

P4:- COPY OF ORDER DTD. 26.8.2011 PASSED BY THE 1ST RESPONDENT

P5:- COPY OF ORDER DTD. 6.8.2012 PASSED BY THE 1ST RESPONDENT DIRECTED THE CONVENER OF THE ADMINISTRATIVE COMMITTEE 4TH RESPONDENT.

P6:- COPY OF REPRESENTATION DTD 3.10.2012 PRESENTED BEFORE THE 2ND RESPONDENT ALONG WITH THE LIST OF UNQUALIFIED PERSONS.

P7:- COPY OF ORDER DT. 5.10.2012 ISSUED BY THE 2ND RESPONDENT TO THE 2ND AND 3RD PETITIONER.

RESPONDENT'S EXHIBITS:-

NIL

//TRUE COPY//

P.A. TO JUDGE

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HARUN-UL-RASHID, J.

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Dated this the 8th day of October, 2012.

J U D G M E N T

The writ petition is filed seeking the following reliefs:

(i) *To call for the entire records relating to the above case.*

(ii) *To issue a writ of mandamus or any other appropriate writ, direction or order, commanding the 1st and 2nd respondents to delete 109 unqualified persons illegally referred in Ext.P6 representation, enrolled by the Administrative Committee (respondents 4 to 6) and included in the preliminary voter's list along with the 10 unqualified members included in the preliminary voters' list, immediately before publishing the final voters' list immediately before publishing the final voters' list.*

(iii) *To issue a writ of mandamus or any other appropriate writ, direction or order commanding the 2nd respondent to delete the unqualified 109 persons from the preliminary voters' list immediately and publish the final voters' list without having the name of said unqualified 109 persons, referred to in Ext.P6 representation and declare that the enrollment of 109 unqualified persons as members of 3rd respondent Society and inclusion of their names in the voters' list as null and void.*

(iv) *To issue a writ of mandamus or any other appropriate writ, direction or order, commanding the 2nd*

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respondent to delete the names of 10 unqualified members, wrongly included in the preliminary voter's list who are unqualified to be included in the voters' list in view of the provisions of the bye-law of the 3rd respondent - Society.

2. The 3rd respondent Society is presently administered by an administrative committee consisting of respondents 4 to 6. The elected committee was superseded by the Deputy Registrar invoking the provisions of Section 32 of the Kerala Co-operative Societies Act. Immediately after supersession of the elected committee, the Dairy Development Extension Officer was nominated as the administrative officer. Subsequently, administrator was replaced by respondents 4 to 6.

3. The present grievance of the petitioners is that the administrative committee in power illegally enrolled 109 persons as new members and they have been illegally included in the preliminary voters' list. It is also submitted that 10 other unqualified persons who have no voting right also have been included in the preliminary voters' list. Petitioners submitted Ext.P3 representation challenging the action of the administrative committee in enrolling the aforesaid persons as members. It is said that the 2nd respondent has not taken any steps to remove

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illegally enrolled 109 persons along with 10 other unqualified persons and steps are taken to publish the final voters' list including the persons who have no right to cast vote in the ensuing election.

4. The petitioner produced Ext.P7 order (I.A.No.13537/2012) dated 5.10.2012 issued by the 2nd respondent. Ext.P7 order was passed considering Ext.P6 representation. The returning officer in Ext.P7 stated that 81 members (serial Nos. 39 to 120) are enrolled by the administrative committee on the respective dates stated in column No.'E'.

5. The question as to whether the administrator or administrative committee can enroll members was considered by this Court in the decision reported in **Karunakaran Pillai v. Venugopala Pillai** (2005 (3) KLT 348) in which it was held that the administrative committee cannot enroll members. It was also held that such enrollment is illegal as per the decisions of the Apex Court in **Joint Registrar of Co-operative Societies v. T.A.Kuttappan and others** (2006 (6) SCC 127) and **Shantharaj and another v. Nagaraj and others** (1997(6)SCC

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37). In the light of the settled legal position, it is clear that the enrollment of 81 members is illegal and the newly enrolled members have no legal right to cast their vote in the ensuing election. Going by the dates of enrollment, it is also clear that the new members were enrolled in violation of the settled legal position.

6. In view of the legal principles stated above, 81 members mentioned in Ext.P7 order are not entitled to cast their votes in the ensuing election.

Therefore, the writ petition is disposed of directing the 2nd respondent not to include the 81 persons (serial Nos.39 to 120 and membership Nos.282 to 363) enrolled as members by the administrative committee which is mentioned in Ext.P7 list in the final voters' list.

**HARUN-UL-RASHID,
Judge.**

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