

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 5806 of 2014 (A)

PETITIONER:

**PRESIDENT, KURIANAD KSHEERA ULPADAKA CO-OPERATIVE
SOCIETY LTD.NO:K.69(D) APCOS
KURIANAD P.O., PIN 686 636**

**BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN**

RESPONDENT:

**1. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT
KOTTAYAM DISTRICT 686 001.**

*** ADDL. R2 IS IMPEADED**

**2. BIJUMON THOMAS
S/O. THOMAS
VATTAMUKALEL HOUSE, KOZHA P.O.
KURIANAD, KOTTAYAM**

*** ADDL. R2 IS IMPEADED AS PER ORDER DATED 10.02.2015 IN I.A. NO.
15048/2014**

**R1 BY GOVERNMENT PLEADER SRI. A.J. JOSE AEDAIODI
ADDL.R2 BY ADV. SRI.P.N.MOHANAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE COMMUNICATION INFORMING CONDUCT OF AN ENQUIRY UNDER SECTION 66 DATED 18.10.2012

EXT.P-2: TRUE COPY OF THE COMMUNICATION DATED 18.12.2012

EXT.P-3: TRUE COPY OF THE ENQUIRY REPORT DATED 29.11.2012

EXT.P-4: TRUE COPY OF THE COVERING LETTER DATED 28.12.2012

EXT.P-5: TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 28.12.2012

EXT.P-6: TRUE COPY OF THE NOTICE DATED 16.1.2013

EXT.P-7: TRUE COPY OF THE COMPLAINT DATED 21.1.13

EXT.P-8: TRUE COPY OF THE REPLY DATED 23.1.12

EXT.P-8(A): TRUE COPY OF THE DECLARATION BY THE SECRETARY

EXT.P-9: TRUE COPY OF THE ORDER DATED 1.2.2013

EXT.P-10: TRUE COPY OF THE JUDGEMENT IN WPC NO.3497/2013 DATED 29.10.13

EXT.P-11: TRUE COPY OF THE NOTICE DATED 18.2.14

EXT.P-12: TRUE COPY OF THE REQUEST DATED 24.2.14

EXT.P-13: TRUE COPY OF THE CIRCULAR DATED 22.11.13

EXT.P-14: TRUE COPY OF THE RELEVANT EXTRACT OF THE BYELAW OF THE SOCIETY

EXT.P-15: TRUE COPY OF THE AUDIT REPORT OF THE SOCIETY FOR THE YEAR 2011-2012

RESPONDENT(S)' EXHIBITS:-

EXT.R1(a): TRUE COPY OF THE STATEMENT GIVEN BY THE SECRETARY

EXT.R1(b): TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONER

WP(C).No. 5806 of 2014 (A)

EXT.R1(c): TRUE COPY OF THE AUDIT REPORT FOR 2012-2013

EXT.R1(d): TRUE COPY OF THE ORDER DATED 22.02.2011

EXT.R1(e): TRUE COPY OF THE AUDIT REPORT FOR 2012-2013

EXT.R2(a): TRUE COPY OF THE AUDITED BALANCE SHEET OF THE YEAR 2012-2013

EXT. R2(b): COPY OF THE LIST OF THE SUBSIDY DISBURSED TO THE MEMBERS

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 5806 OF 2014

Dated this the 10th day of February, 2015

JUDGMENT

Ext. P11 notice to show cause as to why the Managing Committee of the Society (of which the petitioner is the President) shall not be superseded is impugned. The challenge is mainly on the following two grounds:-

- i) There is no Government shareholding or loan or financial assistance or any guarantee by the Government or any Board or institutions constituted by the Government to the Society. Therefore the Managing Committee cannot be superseded under the third proviso to Section 32(1) of the Kerala Co-operative Societies Act, 1969.
- ii) Exts. P4 and P5 objections to Ext. P3 enquiry report ought have been considered and a satisfaction arrived at in terms of Ext. P10 judgment. No supersession can be had under Section 32(1) of the Kerala Co-operative Societies Act before the Registrar satisfies himself after considering the objections.

2. The additional second respondent has produced Ext. R2(a) audited balance sheet of the year 2012-13 which reflects that a sum of Rs. 1,29,062.49 has been advanced to the Society by the Government towards grant and subsidy. The parties are at variance as regards the applicability of the third

proviso to Section 32(1) of the Kerala Co-operative Societies Act which can be established only on evidence.

3. Similarly Exts. P4 and P5 objections filed to Ext. P3 enquiry report can as well be considered by the first respondent. The first respondent can consider the same along with Ext. R2(b) account statement in order to arrive at a satisfaction as to whether the Managing Committee needs to be superseded or not.

4. I do not think that Ext. P11 notice to show cause can be nipped in the bud in the exercise of jurisdiction under Article 226 of the Constitution of India. Interest of justice would be met by permitting the petitioner to submit his version by way of objection to Ext. P11 notice. The first respondent shall pass final orders on the same after notice to the petitioner as well as the additional second respondent. The final order to be passed by the first respondent shall be enforced only after a week of its receipt by the petitioner and the additional second respondent. This is to facilitate them to invoke the statutory remedy of appeal under Section 83(1)(j) of the Kerala Co-operative Societies Act.

The writ petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS