

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 14721 of 2014 (M)

PETITIONER:

KUNNIYODE KSHEERA VYAVASAYA SAHAKARANA SANGHAM LTD.
T-61(D), PAZHAYA UCHAKKADA, KAKKAVILA P.O.,
THIRUVANANTHAPURAM-695506, REPRESENTED BY THE PRESIDENT.

BY ADV. SRI. GEORGE POONTHOTTAM

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
THE SECRETARY TO GOVERNMENT
DEPARTMENT OF ANIMAL HUSBANDRY AND
DAIRY DEVELOPMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. THE DIRECTOR, DIRECTORATE OF DAIRY DEVELOPMENT,
PATTOM, THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT,
THIRUVANANTHAPURAM-695 001.
4. H. RAJAN, THENKARATHALAVILA HOUSE,
KAROOD P.O., THIRUVANANTHAPURAM.

R1, R2, R3 BY SPECIAL GOVERNMENT PLEADER SRI. D. SOMASUNDARAM
R4 BY ADV. SRI. P. N. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE RELEVANT PAGE OF THE BYELAWS OF THE SOCIETY.
- EXHIBIT P2 : TRUE COPY OF THE REPRESENTATION CONTAINING THE DIRECTION OF THE MINISTER WITH THE FORWARDING LETTER OF THE DIRECTOR TO THE DEPUTY DIRECTOR DATED 23.7.12.
- EXHIBIT P3 : TRUE COPY OF THE COMMUNICATION DATED 3.2.2014.
- EXHIBIT P4 : TRUE COPY OF THE REPORT NO.372/2012 DATED 1.6.2013.
- EXHIBIT P5 : TRUE COPY OF THE LETTER NO.C2/11192/2012 DATED 13.3.2014.
- EXHIBIT P6 : TRUE COPY OF THE COMMUNICATION NO.C/4334/12 DATED 3.4.2014 ALONG WITH DRAFT GOVERNMENT ORDER.
- EXHIBIT P7 : TRUE COPY OF THE COMMUNICATION NO. C2/11192/2012 DATED 19.10.2012.
- EXHIBIT P8 : TRUE COPY OF THE COMMUNICATION NO. C2/11192/12 DATED 08.05.2013.
- EXHIBIT P9 : TRUE COPY OF THE COMMUNICATION NO. C2/11192/12 DATED 05.06.2013.
- EXHIBIT P10 : TRUE COPY OF THE GAZETTE NOTIFICATION NO. 2864 DATED 25.11.2014.
- EXHIBIT P11 : TRUE COPY OF THE REPRESENTATION DATED 29.12.2014 GIVEN TO THE DEPUTY DIRECTOR.
- EXHIBIT P12 : TRUE COPY OF THE COMMUNICATION DATED 30.12.2014.
- EXHIBIT P13 : TRUE COPY OF THE ORDER NO. C.3548/08 DATED 19.11.2008.
- EXHIBIT P14 : TRUE COPY OF THE REPRESENTATION DATED 21.09.2014 GIVEN TO THE MINISTER.
- EXHIBIT P15 : TRUE COPY OF THE COMMUNICATION NO. 15817/D3/14/AD DATED 05.09.2014.
- EXHIBIT P16 : TRUE COPY OF THE DETAILED REPLY GIVEN TO THE GOVERNMENT SECRETARY.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(a) : A TRUE COPY OF THE SRO NO. 732/2014.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

WP(C) NO. 14721 OF 2014

Dated this the 4th day of February, 2015

JUDGMENT

The peculiar characteristic of a Milk Society cannot be lost sight of while granting exemption under Section 101 of the Kerala Co-operative Societies Act, 1969('the Act' for short). The milk collected by every member has to be measured in the Society at least two times a day without delay lest it gets spoiled. The government in the instant case has taken note of the following aspects while granting exemption from Section 7(1)(c) of the Act to a new Society as per Ext.P10 order.

(i) Ward No. XI of Karode Grama Panchayat is more than 2 kms. away from the Kunniyode Ksheera Vyvasaya Sahakarana Sangham Ltd. necessitating women and children to travel long in order to measure milk.

(ii) Eight other wards namely Ward Nos. XII, XIII, XIV, XV, XVI, XVII, XVIII and

XIX of Karode Grama Panchayat falls within the area of operation of Kunniyode Ksheera Vyvasaya Sahakarana Sangham Ltd. which is sufficient to sustain its business.

(iii) Kunniyode Ksheera Vyvasaya Sahakarana Sangham was not inclined to delimit its area excluding Ward No. XI of Karode Grama Panchayat from its area of operation in order to facilitate another Society being formed to cater to the members of Ward No. XI.

(iv) The Diary Extension Officer, Diary Extension Services Unit, Parassala has recommended favourably for the formation of another Society in Ward No. XI of Karode Grama Panchayat in order to cater to the needs of milk producers residing there at.

2. All the necessary inputs have been considered by the

government in granting exemption to Kuzhinjanvila Ksheerolpadaka Sahakarana Sangham in order to form another Milk Society operating from Ward No. XI of Karode Grama Panchayat. The power under Section 101 of the Kerala Co-operative Societies Act to exempt any Society from the provisions of the Act is abundant and the following decisions are apposite.

**(i) Feroke Service Co-operative
Bank Ltd. Vs. State of Kerala [1995 (2)
KLT 404]**

**(ii) Nachimuthu Vs. State of
Kerala [2011 (1) KLT 651]**

**(iii) Pampady Rural Co-operative
Housing Society Vs. Joint Registrar
[1986 KLT 921]**

3. There is no necessity to put Kunniyode Ksheera Vyvasaya Sahakarana Sangham Ltd. on notice while granting exemption from the provisions of the Act to another Society {see **Kunju Kunju Vs. State of Kerala and others [1971 KLT 350]}**. Much was argued on the basis of Ext.P3 letter of the Deputy Director, Dairy Development to contend that the opening

of a new Society will not be conducive to the interest of the petitioner Society. But I find that Ext.P4 report of the Dairy Extension Officer who is a personnel of the Dairy Department of the area has very much recommended for the registration of a new Milk Society. The government cannot be faulted with in relying on Ext.P4 report of the Dairy Extension Officer in granting exemption from the provisions of the Act in order to start a new Society in Ward No. XI of Karode Grama Panchayat. After all eight other wards of Karode Grama Panchayat still continue within the area of operation of the petitioner Society. I am not prepared to hold that the power under Section 101 of the Act has been exercised in a perverse or whimsical manner by the government as to warrant interference under Article 226 of the Constitution of India.

The Writ Petition is dismissed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd