

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 17701 of 2014 (K)

PETITIONERS:

1. MATHEW KUTTY MATHEW (MEMBER NO.927),
KUZHINJALIL, KURUMANNU P.O., KOTTAYAM.
2. A.K.SEBASTIAN (MEMBER NO.1227),
AZHAKATHEL, TEEKOY P.O., KOTTAYAM.
3. ROY THOMAS (MEMBER NO.119), MUTHUPLACKAL,
KULATHOOKADAVU P.O., KOTTAYAM.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), KOTTAYAM-686 001.
2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), MEENACHIL, PALA-686 589.
3. TEEKOY CO-OPERATIVE TEA FACTORY LTD.NO.K.143,
REP. BY ADMINISTRATOR, TEEKOY P.O.,
KOTTAYAM-686 580.

ADDL. R4 & R5 IMPLEADED

4. V.V.HARI, S/O VASU, AGED 54 YEARS,
RESIDING AT MANNUMADOM HOUSE,
TEEKOY, KOTTAYAM DISTRICT.
5. MATHEW SEBASTIAN, PANACHIKKAVAYALIL HOUSE,
P.O. NADACKAL, TEEKOY, KOTTAYAM DISTRICT.

Impleaded as per order dated 08.10.2015 in IA 14462/2014

R3 BY ADV. SRI.GEORGEKUTTY MATHEW
R1 & R2 BY SR.GOVERNMENT PLEADER SRI.K.C.VINCENT
ADDL. R4 & R5 BY ADV. SRI.P.V.BABY

THIS WRIT PETITION (CIVIL) HAVING FINALLY HEARD ON 08-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 17701 of 2014 (K)

PETITIONER'S EXHIBITS:

EXHIBIT-P1:A TRUE COPY OF THE NOTICE OF THE GENERAL BODY MEETING OF THE THIRD RESPONDENT SOCIETY ALONG WITH RELEVANT PORTION.

EXHIBIT-P2: A TRUE COPY OF THE RELEVANT PAGE OF THE AMENDMENT PROPOSED IN CLAUSE 33 OF THE BYE-LAW.

RESPONDENT'S EXHIBITS:

EXT. R3(a) TRUE COPY OF THE MINUTES OF THE GENERAL BODY MEETING HELD ON 12.07.2014

EXT. R3(b) TRUE COPY OF THE COVERING LETTER DATED 22.07.2014 FORWARDED TO THE FIRST RESPONDENT

EXT. R3(c) TRUE COPY OF THE ORDER DATED 16.03.2013 ISSUED BY THE FIRST RESPONDENT

EXT. R3(d) TRUE COPY OF JUDGMENT DATED 10.01.2013 IN WPC 1032/2013

EXT. R3(e) TRUE COPY OF THE ORDER DATED 20.12.2013 ISSUED BY THE SECRETARY TO GOVERNMENT

EXT. R4(a) TRUE PHOTostat COPY OF THE ORDER DATED 20.12.2013 ISSUED BY THE GOVERNMENT

EXT. R4(b) TRUE PHOTostat COPY OF THE TRUE PHOTOCOPY OF THE ORDER DATED 17.10.2013 ISSUED BY THE STATE CO-OPERATIVE ELECTION COMMISSION

EXT. R4(c) TRUE PHOTostat COPY OF THE STATEMENT OF ACCOUNT DATED 15.01.2014 ISSUED BY THE UNION BANK OF INDIA, KOCHI

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.17701 of 2014 K

Dated this the 8th day of October, 2015

JUDGMENT

The petitioners, being the members of the third respondent Co-operative Society, have filed this writ petition questioning Exhibit P1 notice issued by the Administrator of the third respondent Society proposing to have a general body meeting on 12.07.2014. In the writ petition, this Court on 11.07.2014 issued an interim direction that any amendments proposed to be adopted by the general body in its meeting to be held on 12.07.2014 shall not be registered without prior orders of the Court.

2. It appears that the general body meeting was held as planned. Among other things, it is said to have voted with overwhelming majority adopting the proposed amendment.

3. In the above factual background, the learned counsel for the petitioners has submitted that Exhibit P1

notice calling for the general body meeting issued by the Administrator contained a condition that admission to the general body meeting is restricted to the persons producing a copy of Exhibit P1 notice. According to him, the proper course of action ought to have been to insist on the production of identity cards rather than a copy of Exhibit P1 notice.

4. The learned counsel has also submitted that the Administrator has inducted 85 new members. It is in the face of a catena of judgments of the Hon'ble supreme Court as well as this Court that the Administrator is incompetent to take any policy decisions, which include the decisions regarding admission of new members.

5. Finally, the learned counsel has also contended that through the amendment accepted by the general body, the Administrator has intended to change the very character of the managing committee.

6. In elaboration of his submissions, the learned counsel would contend that the unamended bye-laws are to the effect that a person to be eligible to contest the elections shall supply 500 kilograms of tender tea leaves in a year, whereas the proposed amendment provides that instead of supplying 500 kilograms of tender tea leaves, a member can as well have shares worth at least ₹ 2,000/-. The learned counsel has assailed this amendment on the ground that it not only changes the character of the managing committee, but also amounts to a policy decision, which can be taken only by a duly elected managing committee.

7. The learned counsel for the third respondent, on the other hand, has submitted that concerning the first objection of the petitioners, it is indisputable that no unauthorised person has gained entry nor has any eligible member of the Society been denied admission to the general body meeting. In that respect, the learned counsel

has drawn my attention to the interim direction passed by this Court on 11.07.2014 and also the assurance of the learned Special Government Pleader concerning admission of the members.

8. As regards the objection that the Administrator has admitted new members, the learned counsel would contend that no new members have been admitted. According to him, in the light of the enhancement of the share value from 50 to 100, especially based on Exhibits R3 (c) and R3(e) orders of the Joint Registrar and the Government respectively, the Administrator, in compliance thereof, has allowed certain members to pay the balance amount of the share value.

9. Finally, concerning the substantial objection as to the impact of the proposed amendment, the learned counsel would contend that initially the criterion was to supply a specific quantity of tender tea leaves. According to him, it is an admitted fact that the factory run by the third

respondent Society was involved in a major fire accident, as a result of which since 2003 the factory has not been functioning.

10. In elaboration of his submissions, the learned counsel would contend that if the condition of supplying a specific quantity of tender tea leaves is still to be insisted upon, in the light of the fact that the factory has already been closed, no member of the Society would be eligible to contest; accordingly, the situation has become unworkable. Under those circumstances, the Administrator has only proposed an amendment, but eventually placed it before the general body. He has also submitted that the general body has approved it with an overwhelming majority.

11. Heard the learned counsel for the petitioner, the learned counsel for the third respondent and the learned counsel for additional respondents 4 and 5, as well as the learned Special Government Pleader, apart from perusing the record.

12. Firstly, the objection concerning the entry of members in the general body meeting based on production of a copy of Exhibit P1 notice may not survive for consideration. As could be seen from the interim order dated 11.07.2014, the learned Special Government Pleader did assure the Court that all the members who want to attend the general body meeting would be given entry provided they produced their 6A identity cards, even in the absence of a copy of the notice of the general body meeting. It is not the case of the petitioners that any eligible member has been denied admission. Nor can it be said that any unauthorised person has gained entry to the general body meeting.

13. Secondly, in the light of the submissions made by the learned counsel for the third respondent that no new members have been admitted, it is made clear that if any new member has been admitted by the Administrator, such members shall not have any voting right.

14. Thirdly, as has been rightly contended by the learned counsel for the third respondent, in the light of the fact that the factory has ceased functioning since 2003, insistence on supplying 500 kilograms of tender tea leaves as a pre-condition is, indeed, unworkable. In that context, the proposed amendment seems to be the only way out to have some solution to the stalemate.

15. This Court, nevertheless, is conscious of the fact and on more than one occasion the Hon'ble Supreme Court as well as this Court has held that an Administrator, who functions in the interregnum on an ad hoc basis or only as a stop-gap arrangement, is not permitted to take any policy decision, notwithstanding the statutory scheme under Section 33 of the Kerala Co-operative Societies Act.

16. At any rate, it has to be accepted that a rigid insistence on the proposition that the Administrator is not permitted to take any policy decision, at least in the present instance, would lead to an incongruous situation; in fact, it

amounts to a self-defeating restriction. The Administrator, as can be seen, has only proposed an amendment as a way out of the stalemate. And it is the General Body that has accepted the amendment with overwhelming majority—out of eighty members participated, seventy four supported the amendment.

17. In the facts and circumstances, especially given the subsequent developments in the matter, I am of the opinion that it is in the interest of the Society to have it revived at the earliest point of time. In W.P.(C) Nos. 19154/2012 and 12855/2015 this Court has already directed the Government to consider the issue of appointing an Arbitrator at the earliest point of time, since the term of the present Arbitrator came to an end.

As such, having found that the objection raised by the petitioners did not pass the judicial muster, this Court dismisses the writ petitions making it clear that the respondent authorities shall take every step to conduct the

elections at the earliest.

In the light of the dismissal of the writ petitions, this Court makes it further clear that there is no impediment for the Registrar of the Co-operative Societies to register the amendment approved by the general body of the third respondent Society and take further consequential steps.

Dama Seshadri Naidu, Judge

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