

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 17566 of 2015 (U)

PETITIONER:

T.K.PRAKASAN,
MEMBER NO.2226,
MUKKOM MILK PRODUCERS CO-OPERATIVE SOCIETY LTD.
NO.F.1814, (APCOS), MUKKOM P.O.,
KOZHIKODE 673 602.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETRY,
DIARY DEVELOPMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
2. THE DEPUTY DIRECTOR OF DIARTY DEVELOPMENT,
OFFICE OF THE DEPTUY DIRECTOR OF DIARY DEVELOPMENT,
CIVIL STATION, KOZHIKODE 673 620.
3. P.P.GOPINATHAPILLAI, KAYAPLAKKAL HOUSE,
MAISOORMALA P.O., MUKKOM,
KOCHIKODE 673 602.
4. THE MUKKOM MILK PRODUCERS CO-OPERATIVE SOCIETY LTD.
NO.F.1814 (APCOS)
MUKKOM P.O., KOZHIKODE 673 602
REPRESENTED BY ITS SECRETARY.

R3 BY ADV. SRI.P.P.JACOB
R,R BY ADV. SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

P1- TRUE COPY OF THE PETITION DATED 19.9.14.

P2- TRUE COPY OF THE NOTICE OF THE GENERAL BODY MEETING DATED
10.9.14.

P3- TRUE COPY OF THE NOTICE.

P4- TRUE COPY OF THE ORDER ON 11.11.2014 REJECTING THE CONTENTIONS OF
THE 3RD RESPONDENT.

P5- TRUE COPY OF THE JUDGMENT IN WP(C) NO.31478/2014 DATED 2.2.2015.

P6- TRUE COPY OF THE ORDER DATED 26.5.2015.

P7- TRUE COPY OF THE RELEVANT PORTION OF BYE -LAW OF THE SOCIETY.

P8- TRUE COPY OF THE CERTIFICATE ISSUED BY THE SOCIETY.

RESPONDENTS' EXHIBITS:

EXHIBIT R2(a): TRUE COPY OF THE DISQUALIFICATION ORDER DATED
09.06.2015.

EXHIBIT R1(a): COPY OF THE PETITIONER'S EXPLANATION TO EXT.P3 SHOW
CAUSE NOTICE.

/True Copy/

P.A to Judge.

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 17566 of 2015 (U)

Dated this the 20th day of November, 2015.

JUDGMENT

The issue truly lies in a narrow compass, but two seasoned advocates on either side have ensured a see-saw battle, defending their respective versions to the tilt.

2. Briefly stated, the petitioner is a member of the Managing Committee of the 4th respondent Milk Producers Co-operative Society. The Society's bye-laws contain a provision regarding the qualification of a member to exercise his franchise and also contest the election. The condition is to the effect that the member should have supplied a specified quantity of milk in one year. The reckoning of that period is the bone of contention.

3. Initially, acting on the third respondent's Ext.P1 complaint dated 19.09.2014, the second respondent issued Ext.P3 show cause notice to the petitioner seeking his explanation why he should not be disqualified from being an active member of the Society because he

did not supply sufficient milk in one year. Having received the show cause notice, the petitioner submitted his explanation on 27.10.2014. Eventually, the second respondent concluded that the petitioner suffered a disqualification; nevertheless, taking a lenient view, he allowed the petitioner to continue as an active member. The decision could as well pave the way for the petitioner to contest the election, too.

4. The reason weighed with the authority is that the lapse, if any, on the petitioner's part in supplying marginally insufficient quantity of milk is only technical. And the explanation is satisfactory. Essentially, Ext.P4 is a compassionate order.

5. Aggrieved, the third respondent, the complainant, filed a writ petition and invited Ext.P5 judgment. This Court, in fact, has observed that the aggrieved person has an efficacious alternative remedy, and he can take recourse to it. In the judgment, it is, however, made clear that the petitioner could continue to be the member until the disposal of the appeal.

6. When the third respondent filed the statutory appeal, the first respondent passed Ext.P6 order holding that the petitioner has

suffered a disqualification. Ventilating his grievance that Ext.P6 order suffers from legal infirmity, the petitioner has filed the present writ petition.

7. Sri. P.C. Sasidharan, the learned counsel for the petitioner, has strenuously contended that the relevant bye-law is quite explicit that one year has to be reckoned taking the date of issuance of notice as the terminal point, but not the date of the Managing Committee's meeting.

8. When queried about the petitioner's explanation—Ext.R1(a)—in which he seems to have admitted that he did not supply sufficient quantity of milk, the learned counsel would contend that the very show-cause notice was issued on a wrong premise taking into account the date of the Managing Committee's meeting as the reckoning point. According to him, only in reference to date mentioned in Ext.P3 notice, the petitioner submitted his explanation.

9. In the alternative, the learned counsel has also contended that once the statute or the bye-law having the statutory flavour is clear, there can be no estoppel against its enforcement—even if there were to be any so-called admission against the statutory mandate.

10. Per contra, Sri P. P. Jacob, the learned counsel for the 3rd respondent has, with equal vehemence, contended that initially the petitioner himself agreed that he had not supplied the required quantity of milk. Now, he should not be allowed, contends the learned counsel, to wriggle himself out of his admission.

11. The learned counsel has further contended that in Ext.P4 order the second respondent did agree that the petitioner had suffered a disqualification; the said authority, nevertheless, allowed the petitioner to continue to be the member and thus enabled him to contest the election only on a compassionate consideration.

12. Eventually, the learned counsel has submitted that not only the 4th respondent society but also every other Milk Producers Society in the State of Kerala has similar stipulations and that all along the date of the Managing Committee's meeting is taken as the terminal point for reckoning one year.

13. In elaboration, the learned counsel has submitted that if the date of notice issued for convening the General Body is to be reckoned, it leads to a lot of impracticability. He has also contended that it will provide an escape route to a very indolent or inactive

member: He can make good the deficit and supply the required quantity of milk within the days between the date of the Managing Committee's meeting and the date of issuance of the notice.

14. Thus contends the learned counsel for the 4th respondent that only to avoid this impracticability have all the societies and also the respondent officials been consistently following the practice of reckoning the period of one year keeping the date of the Managing Committee's meeting as the terminal point.

15. Heard the learned counsel for the petitioner, the learned Government Pleader, and the learned counsel for the respondent society, apart from perusing the record.

16. Notwithstanding the very elaborate submissions made by the learned counsel on either side, the issue, as has been observed at the outset, lies in a very narrow compass. This Court is called upon to interpret the scope of the bye-law No. 3.3(b)(iii) of Ext.P7 bye-laws. To the credit of both the learned counsel, they have supplied their own copies of translation of the said bye-law for it is in the vernacular. Save minor variations, which are inevitable in translation, both the versions truly reflect what has been stated in the vernacular

version. At any rate, initially each learned counsel has doubted the accuracy of the other's translation. In that context, this Court required the registry to translate the bye-law as well as Ext.P6 order of the appellate authority and place it before the Court, which it did. Indeed, under these circumstances, I confine my reference to Exts.P6 and P7 translated versions of exhibits as have been supplied by the registry.

17. It is profitable, rather essential, to examine clause 3.3(b)(iii) of the bye-laws as it is the fulcrum for our discussion. It reads as follows:

"3.3(b)(iii) Unless, any member supplied milk to the society on days not less than 180 days in the previous year or the total quantity of milk supplied to the society during the previous year is not less than 500 litres in case the number of days on which milk was supplied is less than 180, he shall be eligible to get only bonus, dividend and obtain such other monetary incentives like seeds of various kinds of fodder-grass etc. at subsidized rates but he shall not have right to attend the general body meeting, exercise franchise in the election and to contest in the election to the executive committee. Previous year mentioned herein denotes one year prior to the date on which notice of general body meeting or election was issued."

(emphasis supplied)

18. To restate what is obvious, I further observe that the bye-law reckons the previous one year taking the date of issuance of notice to convene the General Body meeting as the terminal point. In the

present instance, the Managing Committee met on 28.08.2014. On that day, it is said to have identified the active members who did not, according to the 4th respondent, include the petitioner. Later, on 10.09.2014, the Managing Committee issued notices to the members with a view to convening the General Body, which actually met on 29.09.2014.

19. Now, the question is, which is the date of reckoning: whether 28.08.2014, the date when the managing committee met; or 10.09.2014, the date when the notice was issued?

20. Let us apply the golden rule of statutory construction — the literal interpretation. Once the expressions employed in a provision are clear and unambiguous, the Court is bound to apply the literal rule of interpretation: Imparting to the words their natural lexical meaning. That said, I must examine what the literal meaning of the expression 'one year prior to the date on which notice of general body meeting or election was issued' is—unmindful of the consequences.

21. Indeed, a bye-law may have neither statutory status nor even, statutory flavour; nevertheless, the conduct of a society is regulated by the bye-laws so long as they do not come in conflict with the

statute holding the field. Thus, they stand on a higher footing than, at least, a mere administrative instruction or circular. Without much cogitation, I am prepared to hold that the bye-laws stand in for the statute. By the same token, I am to hold that the date of notice being 10.09.2014, the period of one year, in plain terms, should be reckoned taking that date as the terminal point.

22. In this context, we may as well examine certain pertinent points raised by the learned counsel for the 4th respondent. He has contended that unless the date of meeting of the Managing Committee is taken as the reckoning point, in the interim—the lead time from the date of meeting to the date of issuance of notice—every person who is found to be inactive and who has not supplied sufficient quantity of milk would cure the defect by supplying excess quantity within those couple of days, thereby getting rid of the disqualification.

23. As can be seen from Ext.P6, the second respondent, too, argued before the appellate authority on the similar lines. Having accepted that the date of notice should be taken as the reckoning point, the second respondent has further contended before the

appellate authority that if such an interpretation were to be given, the ineligible persons would be likely to get the eligibility.

24. The learned counsel for the 4th respondent has also contended that the Managing Committee on the date when it met would usually draw the list of active members and, then, send the notices to those persons. If eligibility had to be reckoned taking the date of notice into account, there was nothing for the Managing Committee to decide when it met.

25. Appealing as the submission of the learned counsel for the 4th respondent may be, I have observed that clause 3.3(b)(iii) of the bye-law is unambiguous. Inconvenience or hardship is not a cannon of construction—not even a contributory cause therefor. In fact, even the second respondent has understood, in my view correctly, the provision to mean that the reckoning point should be the date of notice. At this juncture, I need to observe two things: the society may have been thoughtful in drafting the clause in question. In other words, it could have genuinely desired that the members who might have for various reasons suffered a marginal shortfall in supply of milk be given an opportunity to make good the shortfall before the

notice was issued.

26. The apprehension voiced by the second respondent in his argument, as has been reflected in Ext.P6, and also that of the learned counsel for the 4th respondent before this Court, in my view, are ill-founded. The bye-laws, at any rate, have not been designed to disqualify, at any cost, a person on one technicality or another; to trip people up, so to say. The society thrives with the active participation of maximum number of its members. And any marginal shortfall in supply as well, it seems to me, be allowed to be rectified or corrected, so that the administration of the society is with the fullest participation of its members.

27. The alternative submission of the learned counsel for the 4th respondent is that in Ext.P4 explanation the petitioner himself has agreed that his supply of milk in the last one year was short of what was mandated in the bye-laws. According to him, even the officials have found that there was a short-fall. With a specific reference to Ext.P4, the learned counsel has submitted that it is an order on compassionate grounds.

28. Be that as it may, once we examine the findings of the first

respondent in Ext.P6, to my mind, there does not seem to be an express finding as regards the manner of disqualification.

Exhibit P6 Order:

29. To encapsulate, I may adumbrate the charge faced by the petitioner: He has measured only 464.9 liters of milk instead of 500 liters preceding the date of Managing Committee's meeting (mentioned erroneously as the General Body's meeting) for the year 2014. As a consequence, the petitioner is not eligible to participate in the General Body meeting; he has, thereby, acquired disqualification to continue as member of the Managing Committee.

30. The Deputy Director, who is also the District Registrar, is of the opinion that the petitioner has not supplied 500 liters of milk within the prescribed period (180 days); he is, therefore, not eligible to participate in the General Body meeting. But he has however felt that the reasons stated by the petitioner for non-supply of milk are genuine and reasonable. During all the previous years, the petitioner did supply more than 500 liters of milk. Therefore, a lenient view has to be taken.

31. The President of the Society has contended that the notice of

general body meeting was issued on 10/9/2014 and that between 10/9/2013 and 9/9/2014 the petitioner supplied more than 500 liters of milk. As a result, he is not disqualified. The President has, however, replied to a query that the list of active members was not prepared.

32. The Deputy Director, Kozhikkode, has reasoned that though the bye-law of the Society says that the supply of milk should be with reference to one year preceding the date of issuance of the notice of the general body meeting, it should be interpreted to mean the date on which the Managing Committee takes a decision to convene the general body meeting. Otherwise, the ineligible persons are likely to get the eligibility.

33. The petitioner has tried to refute the allegations, but he took the date of the Managing Committee's meeting as the reckoning point, presumably, based on the show cause notice. He has said that the shortfall is marginal, and the lapse may be condoned.

34. To appreciate the issue further, it is essential to extract the appellate authority's finding, which is as follows: _

"In terms of the bye law of the Society, active membership should be decided with reference to the supply of milk [in the] preceding one year

from the date of issuance of the notice of the general body meeting. But the Society has not prepared a list of active members. Hence, I find that the members who are eligible to vote should be reckoned with reference to the decision of the Managing Committee to convene the general body meeting and that if such a date is taken, it can be seen that Sri Prakasan has supplied less than 500 liters of milk.”

35. Indeed, the appellate authority has concluded that since the petitioner’s name is not included (nevertheless, list has not been prepared is the contention of the President) in the list of active members having voting right in the year 2014, as per 5.2, 5.3(iii), he is not eligible to continue in the management committee membership of the society. The authority has also felt that there is no provision in the Co-operative law to give any exemption in case of disqualification of any member, even if the reason for disqualifications is a justifiable one.

36. As can be seen from the above extract, the first respondent has held that active members should be decided with reference to supply of milk preceding one year from the date of issuance of notice of General Body meeting. To that extent, the appellate authority, too, has accepted the true purport of the bye-law in question. He has, however, observed that the society has not prepared a list of active members and as a result he has to find that the eligibility should be

reckoned with reference to the decision of the Managing Committee to convene the General Body meeting. I do not see, despite my best efforts, any logical link between non-preparation of the list of active members and the compulsion to reckon the period of one year taking the date of meeting of the Managing Committee as the terminal point.

37. In a conspectus, I may further observe that once the bye-law is clear and unambiguous, any alleged admission on the part of the petitioner that he had short supplied milk would not operate as an estoppel, for the proposition of law that there is no estoppel against the statute has attained an aphoristic status.

38. Further, despite the apprehension of the learned counsel for the 4th respondent, the alleged incongruity or inconvenience or the window of escape for the errant would not be a factor while arriving at the true intent of any provision having a bearing on the affairs of the society. The fact, thus, remains that the petitioner has made good the short-fall of the milk before the notice was issued for convening the meeting of the General Body, i.e., by 10.09.2014.

39. For the reasons stated above, this Court finds that Ext.P6 cannot be sustained and as a consequence sets it aside. The Court

further directs that the petitioner in terms of clause 3.3 (b)(iii) of the bye-law has been qualified to be a member and to have all other consequential benefits being a member.

This writ petition is allowed as above. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

