

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.112 of 2017**

1. Mr. Aselmo Furtado
Son of Mr. Exaltacao Furtado
Age 48 years, residing at H.No.64,
Choquiwado, Carmona Salcete
Goa Chairman and duly Authorised
member of Orlim Dudh Utpadak
Sahakari Saustha Maryadit
2. Mr. Vinayak Poko Pilarnkar
Son of Mr. Poko Venkatesh Pilankar
Age 55 years, residing at Mercedes
Wadi E-26 P.O. St. Cruz, Tiswadi Goa
Chairman and duly Authorised member
of Mercedes Co-op Milk Producers
Society Ltd
3. Mr. Nitin v. PrabhuGaonkar
Son of Mr. Vishvanath Shamba
PrabhuGaonkar Age 41 years,
residing at H.No.183, Goankar
Wada, Veling Mardol Goa.
Chairman and duly authorised
member of Tribhuvan Sahakari Dudh
Vyavsayik Saustha Maryadit
4. Mr. Pramod Vasudev Sidhaye
Son of Mr. Vasudev Sidhaye,
Age 34 years, Residing at H.No.62,
Kanolkar wado, Nanoda Bicholim Goa,
Chairman and duly authorised member
of Nanoda Dudh Udyapak Sahakari
Saustha Maryadit
5. Mr. Vishwas Sukhatankar
Son of Mr. Sitaram Narayan Sukhtankar,
Age 60 years, residing at H.No.386,
Ganpatiwada Khandol, Mercel Ponda
Goa. Chairman and duly authorised member
of Shri Shantadurga Sahakari Dugdh
Utpadak Vyavsayik Saustha Maryadit
6. Mr. Dattaram Sawant
Son of Mr. Atmaram Dattaram Sawant

Age 44 years residing at H.No.773
Sawant wada Mandrem Pednem Goa
Chairman and duly authorised member of
Shri Bhagwati Sapteshwar Sahakari
Dudh Utpadak Vyavsayik Saustha Ltd.

7. Mr. Vijaykant V. Gaonkar
Son of Mr. Vithoba Arjun Gaonkar,
Age 43 years, residing at H.No.136,
Jakem Netravali Sanguem Goa
Chairman and duly authorised member of
Shri Mahamaya Dudh Utpadak Sahakari
Saustha Maryadit Jackem
8. Mr. Vaibhav M. Parab
Son of Mr. Manohar Shankar Parab
Age 39 years, residing at Varcha wada
Menkurem, Bicholim Goa
Chairman and duly authorised member of
Amthane Sahakari Dudh Utpadak
Saustha Maryadit.
9. Mr. Mhalgo Kusdo Gaonkar
Son of Mr. Kusdo Malgo Gaonkar
Age 50 years, residing at H.No.Valgoni
Netravali Sanguem, Goa
Chairman and duly authorised member of
Netravali Sahakari Dudh Vyavsayik Saustha
Ltd.
10. Mr. Durgesh M. Shirodkar
Son of Mr. Madhukar D. Shirodkar
Age 46 years, residing at H.No.308,
Nr Sai Baba Gogol Margao Goa
Chairman and duly authorised member of
of Shri Santari Sahakari Dudh Vya, Saustha
Ltd
11. Mr. Lala Anant Satarkar
Son of Mr. Anant P Satarkar
Age 55 years, residing at H.No.
1551, Konem Prio Post Mardol
Ponda Goa
Chairman and duly authorised member of
Priol Gosavardhan Sahakari Dudh Vyavasaik
Saustha Maryadit

12. Fondu Gaonkar,
Son of Kushali Gaonkar,
Aged about 43 years, residing
at 602, Gaonkar Wada Ambavulim
Quepem Goa.
Chairman and duly authorised member of
Amala Dudh Utpadak Sahakari
Dudh Saustha Maryadit.
13. Orlim Dudh Utpadak Sahakari
Saustha Maryadit
a society registered under thereafter
Goa Cooperative Societies Act 2001
having its registered office at Orlim
Salcete Goa through its Chairman
Mr. Aselmo Furtado
14. Merces Co-op Milk Producers Society Ltd
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Merces-
Wadi through its Chairman Mr. Vinayak
Poko Pilarnkar
15. Tribhuvan Sahakari Dudh
Vyavsayik Saustha Maryadit,
A society registered under the
Goa Cooperative Societies Act 2001
having its registered office at Mardol
Goa through its Chairman Nitin V.
Prabhugaonkar
16. Nanoda Dudh Udyapak
Sahakari Saustha Maryadit,
A society registered under the
Goa Cooperative Societies Act 2001
having its registered office at Nanoda
Bicholim Goa through its Chairman
Pramod Vasudev Sidhaye
17. Shri Shantadurga Sahakari
Dugdh Utpadak Vyavsayik Saustha
Maryadit, A society registered under
the Goa Coopertive Societies Act 2001
having its registered office at Mercel
Ponda Goa through its Chairman
Vishwas Sukhatankar

18. Shri Bhagwati Sapteshwar Sahakari
Dudh Utpadak Vyavsayik Saustha Ltd.
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Mandrem
Pednem, Goa through its Chairman
Dattaram Sawant
19. Shri Mahamaya Dudh Utpadak Sahakari
Saustha Maryadit Jackem
A society registered under the Goa
Co-operative Societies Act 2001
having its registered office at Jackem,
Netravali, Sanguem Goa
through its Chairman Vijaykant
V. Gaonkar
20. Amthane Sahakari Dudh
Utpadak Saustha Maryadit
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Amthane,
Bicholim Goa, through its Chairman
Vaibhav M. Parab
21. Netravali Sahakari Dudh
Vyavsayik Saustha Ltd
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Netravali,
Sanguem Goa, through its Chairman
Mhalgo Kusdo Gaonkar
22. Shri Santari Sahakari
Dudh Vya, Saustha Ltd
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Santemol
Raia, through its Chairman Durgesh
M. Shirodkar
23. Priol Gosavardhan Sahakari Dudh Vyavsayik
Saustha Maryadit,
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Priol, Goa

through its Chairman Mr. Lala Satarkar

24. Amala Dudh Utpadak Sahakari
Dudh Saustha Maryadit
A society registered under the Goa
Cooperative Societies Act 2001
having its registered office at Ambauli,
Quepem Goa, through its Chairman
Mr. Fondu Gaonkar .. Petitioners

Vs.

1. State of Goa
Through the Chief Secretary,
Secretariat, Porvorim-Goa
2. The Registrar of Cooperative Societies
Department of Cooperation,
Sahakar Sakul, Patto, Panaji, Goa
3. Mr. Satish D. Sawant
Cooperative Officer/ Spl. Auditor
(Coop Societies) and Returning
Officer for Election to the Goa State
Cooperative Milk Producers Union Ltd
Office of the Registrar of Cooperative
Societies, Department of Cooperation,
Sahakar Sakul, Patto, Panaji, Goa
4. Goa State Cooperative Milk Producers
Union Ltd Having its office at Curti,
Ponda through its Managing Director
5. Vithoba Datta Dessai
Major in age,
Having office at Goa State Cooperative
Union Ltd Curti, Ponda
6. Vijaykumar Shankarrao Patil
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
7. Ulhas Pandurang Sinari
Major in age,

Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda

8. Rajesh K. Phaldessai
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
9. Rajendra Yeshwant Sawal
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
10. Naresh Dharma Malik
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
11. Gurudas Keshav Parab
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
12. Dhananjay Nandaba Dessai
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
13. Madhav Attmaram Sahakari
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
14. Babu Narhari Komarpant
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
15. Ajay Laxmikant Dessai

Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda

16. Baburao Shrikant Fotto Dessai
Major in age,
Having office at
Goa State Cooperative Milk Producers
Union Ltd, Curti, Ponda
17. Dinesh Sahakari
Major in age,
residing at H.No.47/1,
Mestawada, Curti, Ponda, Goa
18. Vikas Prabhu,
Major in age,
Having office at Gananath Sahakari
Dugdh Vyavsaik Saunstha
Maryadit, Nirankal, Goa. .. Respondents.

Mr. D. J. Pangam and Mr. Amey Kakodkar, Advocates for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. D. Shirodkar, Additional Government Advocate for respondent nos.1 and 2.

Mr. Vivek Rodrigues, Advocate for respondent no.4.

Mr. Ryan Menezes, Ms. G. Almeida and Ms. C. Rebeiro, Advocates for respondent nos.5 to 12, 14 to 15, 17 to 18.

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for respondent no.13.

Mr. I. Agha, Advocate for respondent no.16.

Coram :- ANOOP V. MOHTA &

C. V. BHADANG, JJ.

DATE : - 2nd March, 2017

ORAL JUDGMENT : (Per Anoop V. Mohta, J.)

Heard the learned Counsel for the parties finally.

2. The case of the petitioners is that -

On 18/08/2016, the petitioners' society received letters from the Managing Director of Goa State Cooperative Milk Producers Union ("Milk Union") calling for names and other details of their Chairman/ Representative for preparing the provisional voters list, as well as, the resolutions duly authorizing them to vote and contest the forthcoming elections of the Milk Union. In the letters, it was not mentioned about submitting of any declaration. The letters stated that any documents after 31/08/2016 would not be accepted. On 04/01/2017, an election programme was declared and the date of elections was set for 29/01/2016. Last date for submitting nominations was 12/01/2017. The petitioners filed their nominations before the Returning Officer well in advance. On 13/01/2017, the Returning Officer scrutinised the nomination papers and the objections raised against the petitioners' nomination papers. The petitioners filed reply to the same. By the impugned order, the Returning Officer rejected the nomination papers filed by the petitioners on the ground that declaration as per bye-law non.20.1.2 was not filed. Thus, the petitioners are challenging the impugned order

and further seeking a declaration that the said Bye Law No.20.1.2 of the Milk Union as illegal ultra vires and unconstitutional.

3. On hearing the learned Counsel appearing for the parties, we are inclined to accept the preliminary objection raised by the respondents that under Section 83 of the Goa Co-operative Societies Act (the Act, for short), a statutory remedy is available to the petitioners to challenge the election and all related aspects. Section 83 of the Act reads thus :

“83. Dispute.— (1) *Notwithstanding anything contained in any other law for the time being in force, any dispute touching the election to the Board of Directors or office bearers of society shall be referred by any of the parties to the dispute, to the Co-operative Tribunal within a period of 30 days from the date of declaration of the result of the election:*

Provided that, the Co-operative Tribunal may entertain such dispute after expiry of such period if the party aggrieved satisfies the Co-operative Tribunal that he had sufficient cause for not referring the dispute within aforesaid period.

(2) *Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, as the case may be, to the Registrar, if both the parties thereto are one or other*

of the following:-

(a) a society, it's Board, any past Board, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions and any person claiming through such a person;

(d) a surety of a member, past member, or a deceased member, or a person other than a member who has been granted a loan by the society whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

(3) When any question arises whether for the purposes of the foregoing sub-section a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(4) Save as otherwise provided under sub-section (3) of section 86, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.— *A dispute between the Liquidator of a society and the members of the same society*

shall not be referred to the Registrar under the provisions of sub-section (1).

Explanation 2.— *For the purpose of this section, a dispute shall include,—*

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member or servant or employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan of a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its board of directors, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of deceased member to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment.”

4. The Apex Court in **Gujrat University Vs. N. U. Rajguru**; [1987(Supp.1) SCC 512], has observed as under :

“This Court set aside the High Court’s order. Krishna Iyer, J. speaking for the court observed:

“It is well-settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well-settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument.”

5. The challenge even if raised to portion of clause 20.1.2 of the Bye-laws of Union in a limited extent, needs to be considered on its own merits by the Tribunal, in accordance with law. There is force in the submission raised by the learned Counsel appearing for the respondents that the petitioners' society is not a State, as contemplated under Article 12 of the Constitution of India. The society is governed by the respective Bye-laws framed by the members of the society and all are bound by the same. The Election Officer and/ or Officer concerned are

also bound by the same for holding the election within the framework of Rules and Regulations and/ or Bye-laws. As provided in Section 12 of the Act, the Tribunal, in a given case, may consider the objection to the respective Bye-laws. Therefore, at this stage, in view of the above, we are granting liberty to the petitioners to make a representation and/ or appropriate application even for correcting the same, if so instructed.

6. This Court on 24/01/2017, has by keeping all objections open and by noting the fact that the challenge is to the whole election process and considering the rejection of nomination of the petitioners for want of declaration in terms of rule 74 of the Goa Co-operative Society Act and Rules, 2003 (20.1.2), as referred above, and taking note even of the preliminary objection, granted interim relief, which is reproduced as under :

"5. Keeping all the objections of the respondents open, as it is pointed out by Shri D. Pangam, the learned Counsel for the petitioners that the challenge in the above petition is to the whole election process and manner in which it was conducted by the respondent no.3, until returnable date, no further action on the basis of the subject notification under Rule 74 shall be taken by the respondents."

7. The interim relief has been in force/ continuing till this

date by granting extensions on 31/01/2017, 15/02/2017, 23/02/2017 and 28/02/2017. The matter is listed today for final disposal at the admission stage, as already ordered.

8. We have heard accordingly. Therefore, taking overall view of the matter, without expressing anything on merits of the issue so raised, we are not entertaining the present writ petition as the petitioners have an alternate remedy available under the concerned Statute.

9. By keeping all points open, liberty is granted to the petitioners to invoke appropriate remedy by filing petition/ appeal within one week before the appropriate Tribunal/ Authority. The concerned Tribunal/ Authority to decide the same by giving an opportunity to all the concerned, in accordance with law at the earliest and preferably within four weeks.

10. Interim order so granted by this Court, as recorded above, has been in force till this date. Therefore, to avoid complications, we are inclined to continue the same for a period of four weeks, within which time, it is expected that, subject to parties co-operation, the Tribunal/ Authority shall decide the issue in accordance with law.

11. The petition is accordingly disposed of, with liberty so expressed. No costs.

SMA C. V. BHADANG, J.

ANOOP V. MOHTA, J.