

Krishnankutty.M vs Director, Directorate of Dairy Development Department,

Krishnankutty.M vs Director, Directorate of Dairy Development Department,

SooperKanoon Citation : sooperkanoon.com/1332748

Court : Kerala

Decided On : Apr-10-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/1679/2023

Appellant : Krishnankutty.M

Respondent : Director, Directorate of Dairy Development Department,

Advocate for Pet/Ap. : Sri. N.Anand

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945
WP(C) NO. 1679 OF 2023 PETITIONER: KRISHNANKUTTY.M AGED
55 YEARS KUZHIVILAKATH HOUSE, KOKKOTHAMANGALAM,
MUNDELA.P.O, NEDUMANGAD, THIRUVANANTHAPURAM - 695541.,
PIN - 695541 BY ADVS. P.N.MOHANAN C.P.SABARI AMRUTHA
SURESH GILROY ROZARIO RESPONDENTS:

1 DIRECTOR, DIRECTORATE OF DAIRY DEVELOPMENT
DEPARTMENT, PATTOM, THIRUVANANTHAPURAM, PIN - 695004 2
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK
PRODUCERS UNION LTD NO.T 177 D APCOS, REPRESENTED BY
MANAGING DIRECTOR, KSHEERABHAVAN, PATTOM,
THIRUVANANTHAPURAM, PIN - 3 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, ANIMAL
HUSBANDRY (AH & DAIRY) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001 4 N.BHASURANGAN
CONVENER OF THE ADMINISTRATIVE COMMITTEE,
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK
PRODUCERS UNION LTD NO.T 177 D APCOS, KSHEERA BHAVAN,
PATTOM, THIRUVANANTHAPURAM, PIN - 695004 5
SRI.K.R.MOHANAN PILLAI ADMINISTRATIVE COMMITTEE MEMBER,
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK
PRODUCERS UNION LTD NO.T 177 D APCOS, KSHEERA BHAVAN,
PATTOM, THIRUVANANTHAPURAM, PIN - 6 V.PADMAKUMAR
ADMINISTRATIVE COMMITTEE MEMBER, THIRUVANANTHAPURAM
REGIONAL CO-OPERATIVE, MILK PRODUCERS UNION LTD NO.T
177 D APCOS, KSHEERA BHAVAN, PATTOM,
THIRUVANANTHAPURAM, PIN - BY ADVS.

W.P (C) Nos.1679 & 1673/2023 -2- ADV. SRI. P.P. THAJUDHEEN SPL.
GOVT. PLEADER V.M.KRISHNAKUMAR P.V.BABY RENJITH
THAMPAN (SR.)(K/276/1990) THIS WRIT PETITION (CIVIL) HAVING
COME UP FOR ADMISSION ON 10.04.2023, ALONG WITH
WP(C).1673/2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: W.P (C) Nos.1679 & 1673/2023 -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945
WP(C) NO. 1673 OF 2023 PETITIONER: GOPALAKRISHNA PILLAI

AGED 65 YEARS S/O THANKAPPAN PILLAI, AGED 65 YEARS, KALLATHIL ARINALLOOR SOUTH P.O., KOLLAM, PIN - 690538 BY ADVS. N.ANAND RAJESH O.N. BIJITH S.KHAN RESPONDENTS:

1 STATE OF KERALA DEPARTMENT OF AGRICULTURE SECRETARIAT, THIRUVANANTHAPURAM- REPRESENTED BY ITS SECRETARY, PIN - 695001 2 DIRECTOR OF DAIRY DEVELOPMENT PATTAM PALACE P.O THIRUVANANTHAPURAM, PIN - 695004 3 THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT OFFICE OF THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT, THIRUVANANTHAPURAM PATTAM PALACE P.O THIRUVANANTHAPURAM, PIN - 695004 4 THE THIRUVANANTHAPURAM REGIONAL MILK PRODUCERS UNION LTD. NO. T 177 (D) APCOS KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM- REPRESENTED BY ITS MANAGING DIRECTOR, PIN - 695004 5 THE RETURNING OFFICER THE THIRUVANANTHAPURAM REGIONAL MILK PRODUCERS UNION LTD. NO. T 177 (D) APCOS. KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM, PIN - 695004 6 STATE CO-OPERATIVE ELECTION COMMISSION (SCEC) III FLOOR, CO - BANK TOWERS, PALAYAM, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM- REPRESENTED BY ITS CHIEF ELECTION COMMISSIONER, PIN - 695033.

W.P (C) Nos.1679 & 1673/2023 -4- 7 THE ADMINISTRATIVE COMMITTEE THE THIRUVANANTHAPURAM REGIONAL MILK PRODUCERS UNION LTD. NO. T 177 (D) APCOS. KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM- 695004 REPRESENTED BY ITS CONVENOR, PIN - 695004 BY ADVS. ADV. SRI. P.P. THAJUDHEEN SPL. GOVT. PLEADER V.M.KRISHNAKUMAR P.V.BABY RENJITH THAMPAN (SR.)(K/276/1990) LATHA ANAND THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2023, ALONG WITH WP(C).1679/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P (C) Nos.1679 &

JUDGMENT

These Writ Petitions raise common issues for consideration and are therefore disposed of by common judgment. The parties and exhibits are referred to as they appear in W.P (C) 1679 of 2023 unless otherwise indicated. The petitioners in these writ petitions were elected to the 2 nd respondent union, which is a Central Society registered under the Kerala Co-operative Societies Act and Rules. In view of certain disputes regarding the eligibility of certain delegates to cast their vote in the elections, several writ petitions are pending before this court. Resultantly, the results of the Elections have not been declared. An administrative committee is, therefore, in office and manages the day-to-day affairs of the 2nd respondent society.

2. Sri. P.N Mohanan, learned counsel appearing for the petitioner in W.P

(C) No. 1679 of 2023 and Sri. N.Anand learned counsel appearing for the petitioner

in W.P (C) No. 1673 of 2023, inter alia contend that the maximum term of an administrative committee is one year, as provided in Section 33 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short). It is submitted that the present administrative committee has completed more than one year in office, and therefore, a new administrative committee also consisting of elected members must be constituted. Sri. P.N. Mohanan submits that persons who have been elected have a better claim than outsiders or persons who have not been so elected to continue with the management of the Central society pending the constitution of a managing committee. He contends that a democratically elected member has a better right to be in the administrative committee than others appointed at the choice of the 1 st respondent. It is submitted that the power to

W.P (C) Nos.1679 & 1673/2023 -6- constitute an administrative committee also includes the power to include within it elected members in cases like the present

where the entire results have not been declared owing to disputes regarding the entitlement of certain delegates of primary societies to vote in the elections. The learned counsel appearing for the petitioner in W.P (C) No.1673/2023 would submit that going by Ext.P2 order of the Division Bench in W.A No.413/2022, the results of the election in so far as it relates to the writ petitioner are to be declared as the votes which are objected to (namely the votes cast by delegates of primary societies under the control of an administrator or administrative committee) does not impact the result of the election, in so far as the petitioner is concerned.

3. Sri. Renjith Thampan learned senior counsel appearing for the 4th

respondent, on the instructions of Adv.V.M Krishnakumar refers to the counter affidavit filed on behalf of the 4th respondent and submits that a writ petition, namely W.P (C) No.15591/2022, has been filed in this court by persons similarly situated as the petitioners in this writ petition and prayers in that writ petition are almost identical to the prayers made in this writ petition. It is submitted that W.P

(C) No.15591/2022 was finally heard and is reserved for orders.

4. Sri.P.P.Tajudeen, learned Special Government Pleader and Sri. P.V.

Baby, the learned counsel appearing for respondents 5 and 6 would submit that the Government has issued an order of exemption under Section 101 of the Act granting exemption from the provisions of Section 33 of the Act to the extent it fixes the maximum tenure of an administrative committee in office and that order is not even under challenge in these writ petitions. Sri.P.P.Tajudeen would also submit that in the light of the fact that a writ petition, namely, W.P (C) No.15591/2022 in

W.P (C) Nos.1679 & 1673/2023 -7- respect of the same Central Society with identical prayers has been heard and reserved for judgment, the present writ petition is clearly not maintainable.

5. Sri. C.M Nazar, the learned counsel for the State Co-operative Election

Commission, has made available for my perusal a report of the Returning officer of the Thiruvananthapuram Regional Co-operative Milk Producers Union Ltd., which would indicate that the petitioner in W.P (C) No.1673/2023 who had contested from the Kollam District obtained 129 votes. No votes were cast in his name by members of the societies, which are under the control of an administrator or an administrative committee.

6. Having heard the learned counsel, as above, I am of the opinion that

the relief sought in these present writ petitions cannot be granted, except to the extent of relief No.(i) in W.P (C) No. 1673 of 2023 is concerned. It is admitted that the order of the Government under Section 101 of the Act is not under challenge in these writ petitions. The Act does not contemplate the appointment of different administrative committees at different points in time. If the contention of the learned counsel for the petitioners is to be accepted, the present administrative committee cannot continue in office for a term beyond the period of one year specified in Section 33 (b) of the Act. If that is so, there is no question of appointing a fresh administrative committee consisting of elected members to continue in the management of the Central society pending the declaration of the results. That would be against the statutory mandate. Whether or not an administrative committee consists of outsiders or consists of elected members, the term cannot extend beyond one year at the maximum, unless of course, the Government were to exercise its power under Section 101 of the Act. The Government has already

W.P (C) Nos.1679 & 1673/2023 -8- exercised its power under Section 101 of the Act to extend the term of the present administrative committee. Therefore, the reliefs sought in these writ petitions to the extent they require the constitution of a fresh administrative committee also consisting of persons like the petitioners cannot be granted.

7. Having regard to the directions contained in Ext.P7 order of the

Division Bench of this court and also taking into account the details of the votes cast in favour of the petitioner in W.P (C) No.1673/2023, I am of the view that the

petitioner in W.P (C) No.1673/2023 is entitled to an order directing that the results of his election be declared in terms of the directions contained in Ext.P2 order of the Division Bench. Therefore I grant the relief sought as prayer No. (i) and direct respondent No.5 to declare the petitioner as elected to the managing committee of the 4th respondent union forthwith and without any further delay. All other prayers (in both Writ Petitions) are declined. W.P (C) No.1679/2023 is dismissed and W.P (C) No.1673/2023 is allowed to the extent indicated above.

Sd/- GOPINATH P. JUDGE AMG W.P (C) Nos.1679 & 1673/2023 -9- APPENDIX OF WP(C) 1679/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE INTERIM ORDER DATED 23.03.2022 IN W.P.(C).NO.9447/2022 Exhibit P2 A TRUE COPY OF THE INTERIM ORDER DATED 08.04.2022 IN W.A. NO.413/2022 Exhibit P3 A TRUE COPY OF THE DECLARATION OF THE RESULTS IN THE CASE OF PETITIONER BY THE RETURNING OFFICER Exhibit P4 A TRUE COPY OF THE DECLARATION OF THE RESULT IN PATHANAMTHITTA DISTRICT BY THE RETURNING OFFICER Exhibit P5 A TRUE COPY OF THE DECLARATION OF THE RESULT IN KOLLAM DISTRICT BY THE RETURNING OFFICER Exhibit P6 A TRUE COPY OF THE DECLARATION OF THE RESULT IN ALAPPUZHA DISTRICT BY THE RETURNING OFFICER Exhibit P7 A TRUE COPY OF THE ORDER DATED 14.02.2022 OF THE FIRST RESPONDENT Exhibit P8 A TRUE COPY OF THE PAPER REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DATED 31.07.2022 Exhibit P9 A TRUE COPY OF THE LIST OF CO-OPERATIVE SOCIETIES PLACED BEFORE THE ASSEMBLY WHO ARE UNABLE TO DISBURSE THE DEPOSITS RESPONDENT EXHIBITS Exhibit R4 (a) True copy of case status of WP(c).No.15591/2022 Exhibit R4 (b) True copy of order No.DDDKER/300/2023-C1 dated 14.02.2023 W.P (C) Nos.1679 & 1673/2023 -10- APPENDIX OF WP(C) 1673/2023 PETITIONER EXHIBITS Exhibit-P1 TRUE COPY OF THE KERALA CO-OPERATIVE SOCIETIES

(AMENDMENT) ACT, 2021 AS PUBLISHED IN THE KERALA GAZETTE NOTIFICATION DATED 14.11.2021 IN NO. 3110/LEG.H2/2021/LAW

Exhibit-P2 TRUE COPY OF THE ORDER DATED 31.05.2021 PASSED BY RESPONDENT NO. 2 IN NO.DDDKER/739/2021-C1 Exhibit-P3 TRUE COPY OF THE JUDGMENT DATED 03.11.2021 PASSED BY THIS HON'BLE COURT IN W.P.(C) NO. 19511 OF 2021 & W.P.(C) NO. 21135 OF 2021 Exhibit-P4 TRUE COPY OF THE ORDER DATED 24.01.2022 PASSED BY THIS HON'BLE COURT IN IA.NO.3/2021 IN WP(C) NO. 19511 OF 2021 Exhibit-P5 TRUE COPY OF THE ELECTION NOTIFICATION DATED 04.03.2022 ISSUED BY RESPONDENT NO. 6 COMMISSION IN NO. E(2) 825/2022/SCEC Exhibit-P6 TRUE COPY OF THE ORDER DATED 23.03.2022 PASSED BY THIS HON'BLE COURT IN W.P.(C) NO. 9447 OF 2022 AND 9793 OF 2022 Exhibit-P7 TRUE COPY OF THE ORDER DATED 08.04.2022 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN W.A. NO. 413 OF 2022 Exhibit-P8 TRUE COPY OF THE RESULT SHEET DATED NIL FOR THIRUVANANTHAPURAM DISTRICT OF THE 4TH RESPONDENT UNION Exhibit9 TRUE COPY OF THE RESULTS DATED NIL FOR KOLLAM DISTRICT OF THE 4TH RESPONDENT UNION ALONG WITH ITS TYPED COPY Exhibit-P10 TRUE COPY OF THE ORDER DATED 10.05.2022 PASSED BY THIS HON'BLE COURT IN WP(C) NO. 14710 OF 2022 Exhibit-P11 TRUE COPY OF THE JUDGMENT DATED 02.06.2022 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN W.A. NO. 413 OF 2022

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