

**Babu E vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1337756](https://sooperkanoon.com/1337756)

**Court :** Kerala

**Decided On :** Jun-20-2023

**Judge :** Honourable Mr. Justice Devan Ramachandran

**Appeal No. :** WP(C)/4521/2023

**Appellant :** BABU E

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 20TH DAY OF JUNE 2023 / 30TH JYAISHTA, 1945 WP(C) NO. 4521 OF 2023 PETITIONER: BABU E, AGED 43 YEARS, S/O ESHAQUE, KALLUTHARAICKAL VEEDU, PAZHAYA ROAD, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 BY ADVS. N.ANAND RAJESH O.N. 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 DAIRY EXTENSION OFFICER, DAIRY EXTENSION SERVICE UNIT, MINI CIVIL STATION , HALL NO. 3, PARASSALA P.O THIRUVANANTHAPURAM, PIN - 695502 5 IDICHAKKA PLAMOODU PRIMARY MILK CO-OPERATIVE SOCIETY LTD NO. T 58(D) APCOS, IDICHAKKA PLAMOODU P.O., PARASSALA, THIRUVANANTHAPURAM- REPRESENTED BY ITS SECRETARY, PIN - 695502 \*6 SUNDARESAN NAIR, AGED 62 YEARS, S/O. PARAMESWARAN PILLAI, MADAVILAKATHU VEEDU, PARASUVAIKKAL.P.O., PARASALA, THIRUVANANTHAPURAM - 695508 (ADDL R6 IS IMPEADED AS PER ORDER DATED 23.02.2023 IN I.A. 2/2023 IN WPC 4521/2023)

BY ADVS. SUMAN CHAKRAVARTHY SMT MABLE C KURIAN-SR GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.06.2023, ALONG WITH WP(C).4891/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 20TH DAY OF JUNE 2023 / 30TH JYAISHTA, 1945 WP(C) NO. 4891 OF 2023 PETITIONERS: 1 LEELA T, AGED 52 YEARS, W/O P.KRISHNAN, KANNIYATHOTTAM, MELEPUTHENVEETIL, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 2 LAIJU, S/O GLASTON, L.S.BHAVAN, CHERUVATTOORPOTTA, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 3 VALSALA C., AGED 52 YEARS, W/O VIJAYAN G, VIJI BHAVAN, KADAIVILLA, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 4 VIJAYAM K, AGED 47

YEARS, W/O CHANDRAN C, CHANDRA BHAVAN, ADUMANCADU, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 5 BABU E, AGED 43 YEARS, S/O ESHAQUE, KALLUTHARAICKAL VEEDU, PAZHAYA ROAD, PARASUVAIKKAL P.O., PARASUVAIKKAL THIRUVANANTHAPURAM, PIN - 695508 BY ADVS. N.ANAND RAJESH O.N. 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 DAIRY EXTENSION OFFICER, DAIRY EXTENSION SERVICE UNIT, MINI CIVIL STATION , HALL NO. 3, PARASSALA P.O THIRUVANANTHAPURAM, PIN - 695502 5 THE DAIRY FARM INSTRUCTOR, DAIRY EXTENSION SERVICE UNIT, MINI CIVIL STATION , HALL NO. 3, PARASSALA P.O, THIRUVANANTHAPURAM, PIN - 695502 6 IDICHAKKA PLAMOODU PRIMARY MILK CO-OPERATIVE SOCIETY LTD NO. T 58(D) APCOS, IDICHAKKA PLAMOODU P.O., PARASSALA, THIRUVANANTHAPURAM- REPRESENTED BY ITS SECRETARY, PIN - 695502

7 THE ADMINISTRATIVE COMMITTEE, IDICHAKKA PLAMOODU PRIMARY MILK CO-OPERATIVE SOCIETY LTD NO. T 58(D) APCOS, IDICHAKKA PLAMOODU P.O., PARASSALA, THIRUVANANTHAPURAM- REPRESENTED BY ITS CONVENER, PIN - 695502 BY ADVS. SMT.MABLE C KURIAN - SR. G.P. KISHORE D MEERA GOPINATH R.MURALEEKRISHNAN (MALAKKARA) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.06.2023, ALONG WITH WP(C).4521/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

[WP(C) Nos.4521/2023, 4891/2023] The afore two writ petitions are being disposed of together, since the reliefs sought for therein are interdependent and in fact, overlapping.

2. Out of the two writ petitions, W.P.(C)No.4521/2023 has

been filed by Sri.Babu E, who claims to have been an Active Member of Idichakka Plamoodu Primary Milk Co-operative Society Ltd. (Society for short); and alleges that, he has been removed from such membership by the Deputy Director of Dairy Development through Ext.P4, in an illegal manner and based on incorrect factual findings.

3. It transpires that, when Sri.Babu E. was removed from

office as above, four members of the Managing Committee of the Society resigned; thus its remaining strength losing quorum, causing the Deputy Director to appoint a statutory Administrative Committee to take over its affairs. This has been challenged by the petitioners in W.P.(C)No.4891/2023.

4. Sri.N.Anand - learned counsel appearing for Sri.Babu E. -

petitioner in W.P.(C)No.4521/2023, argued that Ext.P4 therein is bad for various reasons, including that it has proceeded in an automaton fashion, without any enquiry as to if his client had complied with the imperative statutory requirements regarding pouring of milk. He affirmed that, as per Section 16 B of the Kerala Co-operative Societies Act (KCS Act for short) - which has been recently introduced - a member shall be eligible to continue to be an Active Member of an Anand Pattern Society, only if he/she pours not less than 500 litres of milk for 180 days during the preceding twelve months. He submitted that the word preceding, referring to the twelve months period, is important because, it should run for that period from the date of the order, or at the worst, from the date of the complaint. He argued that the complaint in this case was preferred by the complainant only on 30.11.2022; and since, Ext.P4 does not even mention which is the twelve month period that was reckoned, to find his client to have been disqualified to continue as an Active Member. He contented that the impugned orders has been,

therefore, rendered without any legal effect and hence, illegal and unlawful.

5. After arguing as afore, Sri.N.Anand, referring to W.P.

(C)No.4891/2023, submitted that, if this Court is in favour of Sri.Babu E. - petitioner in W.P.(C)No.4521/2023, then his membership would stand restored; and the existing members would obtain the quorum to conduct the Managing Committee meetings. He submitted that, therefore, in such event, this Court may set aside Ext.P8, therein, whereby an Administrative Committee had been constituted; and thus allow the existing elected Managing Committee members to take over charge of the Society in question.

6. Sri.D.Kishore - learned counsel appearing for the 6th

respondent, submitted that the afore contentions of the petitioners in both the writ petitions are without any tenable tenor because, as far as Sri.Babu E. - petitioner in W.P.(C)No.4521/2023 is concerned, he himself has admitted, in Ext.R3(c) therein, that he had not poured milk into the Society for a continuous period of 180 days. He submitted that the requirements under Section 16 B of the KCS Act is imperative and therefore, that both the conditions, therein - that an active member should have poured 500 litres of milk for a continuous period of 180 days within the twelve months period - is vital and inflexible. He submitted that, therefore, in such event, W.P(C)No.4891/2023 becomes incapable of being granted any relief.

7. Smt.Mable C. Kurian - learned Senior Government

Pleader, adopted the afore submissions of Sri.D.Kishore, adding that the Deputy Director had considered every relevant aspect before issuing Ext.P4, impugned in WP(C)No.4521/2023. She also argued that since the dual conditions in Section 16B of the KCS Act, are without flexibility, the Deputy Director could have done nothing more than to have disqualified the active membership of Sri.Babu E. - the petitioner therein; and to have consequently appointed an Administrative Committee to take over the affairs of the Society, because four other members resigned thereafter, thus rendering the elected Managing Committee without the requisite quorum.

8. An assessment of the afore rival submissions takes me to

a vital question as to whether the disqualification of the active membership of Sri.Babu E. has been made properly by the Deputy Director. This is because, even when this Court finds favour with the submissions of Sri.D.Kishore and Smt.Mable C. Kurian, that the dual conditions in Section 16B of the KCS Act would, prima facie, have to be satisfied by any person to be in active membership of Anand Pattern Society; the question is: which is the period to be reckoned for considering such disqualification. This is crucial because the complaint of a person which led to the proceedings to be initiated against Sri.Babu E. had been made only on 30.11.2022 and if that is the date to be reckoned, then the Deputy Director ought to have considered whether he had poured milk for 180 days between the period 01.12.2021 and 30.11.2022. If, on the contrary, the relevant date is the date on which Ext.P4 was issued, namely 06.02.2023, then the Deputy Director ought to have considered whether Sri.Babu had poured milk for 180 days within the period between 07.02.2022 and 06.02.2023. These aspects have not been considered by the Deputy Director at all; and in any event, it is impossible for this Court to enter into an assessment of the same in the absence of sufficient materials and also because it has proscribed this Court from entering into the factual enquiries, while acting under Article 226 of the Constitution of India.

9. I, therefore, have no doubt that the decision of the Deputy Director, as reflected in Ext.P4 in WP(C)No.4521/2023, will require to be reconsidered after hearing both sides.

10. Axiomatically, this Court is now unable to take any

decision with respect to the prayers of the petitioners in WP(C)No.4891/2023 because, here again, the Deputy Director will have to consider whether the Managing Committee will find sufficient quorum - depending upon whether Sri.Babu E. is successful or otherwise - so as to be given the charge of affairs of the Society, after removing the present Administrative Committee. In the afore circumstances, these Writ Petitions are ordered with the following directions: a) The Deputy Director will hear the parties in these cases and take a decision on the disqualification of Sri.Babu E., simultaneous with the question whether the elected

Managing Committee must be restored to office, provided they obtain the quorum; or, in the alternative, whether a different Administrative Committee should be constituted in terms of the prayers in WP(C)No.4891/2023. b) The afore exercise shall be completed by the Deputy Director within a period of one month from the date of receipt of a copy of this judgment; for which purpose, I direct the parties to mark appearance before him/her at 11 a.m. on 27.06.2023 without fail. c) The Deputy Director will thereupon cause necessary enquiries as are necessary; thus culminating in appropriate order/orders with respect to the directions within the afore time frame and communicate the same to the parties without any avoidable delay. Sd/- ACR/RR DEVAN RAMACHANDRAN JUDGE APPENDIX OF WP(C) 4891/2023 PETITIONER EXHIBITS Exhibit-P1 TRUE COPY OF THE RELEVANT PORTION GAZETTE NOTIFICATION DATED 14.11.2021 IN NO 3110/LEG.H2/2021/LAW Exhibit-P2 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.01.2023 ISSUED BY RESPONDENT NO. 3 IN NO. DDTVM/943/2022/DFI-D Exhibit-P3 TRUE COPY OF THE ORDER DATED 06.02.2023 IN NO. DDTV/943/2022-DFI D Exhibit-P4 CASE DETAILS OF W.P.(C) NO. 4521 OF 2023

ON THE FILES OF THIS HON'BLE COURT AS ACCESSED FROM [HTTPS://HCKINFO.KERALA.GOV.IN/DIGICOURT/CA SEDETAILSSEARCH/STATUSCASENO](https://hckinfo.kerala.gov.in/digicourt/ca/seDETAILSSEARCH/STATUSCASENO)

Exhibit-P5 TRUE COPY OF THE COMMUNICATION DATED 09.02.2023 ISSUED BY PETITIONER NO. 5 TO RESPONDENT NO. 3 Exhibit-P6 TRUE COPY OF THE RECEIPT DATED 09.02.2023 ISSUED BY M/S PROFESSIONAL COURIER Exhibit-P7 TRUE COPY OF THE POSTAL RECEIPT DATED 10.02.2023 ISSUED BY THE POSTAL DEPARTMENT Exhibit-P8 TRUE COPY OF THE ORDER DATED 09.02.2023 ISSUED BY RESPONDENT NO. 3 IN NO. DDTVM/123/2021-DFI D Exhibit-P9 TRUE COPY OF THE JUDGMENT DATED 06.07.2017 PASSED BY THE HON'BLE DIVISION BENCH IN W.A. NO. 1410 OF 2017 APPENDIX OF WP(C) 4521/2023 PETITIONER EXHIBITS Exhibit-P1 TRUE COPY OF THE RELEVANT PORTION GAZETTE NOTIFICATION DATED 14.11.2021 IN NO 3110/LEG.H2/2021/LAW Exhibit-P2 TRUE COPY OF THE BONUS STATEMENT FROM 01.04.2021 TO 31.03.2021 ISSUED BY

RESPONDENT NO. 5 Exhibit-P3 TRUE COPY OF THE NOTICE DATED 20.01.2023 ISSUED BY RESPONDENT NO. 3 IN NO DDTVM/943/2022/DFI-D Exhibit-P4 TRUE COPY OF THE ORDER DATED 06.02.2023 ISSUED BY RESPONDENT NO. 3 IN NO. DDDTVM/943/2022-DFI-D Exhibit-P5 TRUE COPY OF THE JUDGMENT DATED 24.01.2023 PASSED BY THIS HON'BLE COURT IN W.P.(C) NO. 2450 OF 2023 Exhibit P6 TRUE COPY OF THE ORDER DATED 09.02.2023 ISSUED BY RESPONDENT NO. 3 IN NO. DDTVM/123/2021-DFI D RESPONDENT EXHIBITS EXHIBIT R3(A): TRUE COPY OF THE COMPLAINT DATED 30.11.2022 EXHIBIT R3(B): TRUE COPY OF THE REPORT DATED 04.01.2023 OF THE 4TH RESPONDENT EXHIBIT R3(C): TRUE COPY OF THE EXPLANATION OF THE PETITIONER DATED 27.01.2023 EXHIBIT R3(D): TRUE COPY OF THE HEARING NOTE DATED 27.01.2023 SIGNED BY THE PETITIONER EXHIBIT R3(E): TRUE COPY OF THE ORDER NO. DDTVM/943/2022- DF1D DATED 06.02.2023 SIGNED BY THE PETITIONER EXHIBIT R3(F): TRUE COPY OF THE REPORT DATED 08.02.2023 OF THE 4TH RESPONDENT Exhibit R3(g) TRUE COPY OF THE REQUEST FOR THE ADMINISTRATIVE COMMITTEE DATED 08.02.2023 ALONG WITH THE CONSENT OF THE THREE PERSONS EXHIBIT R3(H): TRUE COPY OF THE SCREEN SHOT OF E-FILE EXHIBIT R3(I): TRUE COPY OF THE PRINT OUT OF THE E-FILE NOTE EXHIBIT R3(J): TRUE COPY OF THE ORDER DATED 09.02.2023 APPOINTING THE ADMINISTRATIVE COMMITTEE EXHIBIT R3(K): TRUE COPY OF THE LETTER NO.DDEKER/3669/2022-D1 DATED 20.02.2022

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