

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 20TH DAY OF APRIL, 2020 / 31ST CHAITHRA, 1942

WP(C) TMP. NO. 70 OF 2020

Petitioner:-

The Melarcode Service Co-operative Bank Limited No. P1403,
Chittilanchery P.O., Palakkad District - 678 703,
Represented by the Secretary.

**By Adv. George Poonthottam (Snr.)
Smt. Nisha George**

Respondents:-

1. State of Kerala,
Represented by the Secretary to Government,
Department of Co-operation,
Government Secretariat,
Thiruvananthapuram-695 001.
2. The Registrar of Co-operative Societies,
Rajaji Nagar Market Road, Statue, Thycaud,
Thiruvananthapuram, Kerala 695 001.
3. The Joint Registrar of Co-operative Societies,
Kenathuparambu, Kunathurmedu,
Palakkad, Kerala – 678 013.
4. The Alathur Service Co-operative Bank,
Bank Road, Alathur, Palakkad District, Kerala- 678 541,
Represented by the Secretary.

**R1 to R3 By Government Pleader Sri. Harish
R4 By Adv.P.N.Mohanan**

This writ petition having come up for admission on 20.04.2020, the court on the same day passed the following:

O R D E R

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Dated this the 20th day of April, 2020

The petitioner-Society was granted registration as per Ext.P1 to function in an area already served by the 4th respondent-Society. Consequently, as per Ext.P4, the 4th respondent was directed to amend their bye-laws. In the appeal filed by the 4th respondent against Ext.P4, the 1st respondent, as per the impugned Ext.P13 order, held that registration granted to the petitioner and the direction given in Ext.P4 are bad in law. The petitioner states that none had challenged their registration. And on the basis of Ext.P13, a Special Officer has been appointed for the Society with the aid of the police.

2. The learned Government Pleader submits that registration of the petitioner-Society has not been cancelled as per Ext.P13 and the Special Officer has been appointed

invoking the powers under Section 28 of the Kerala Co-operative Societies Act. The said order is not under challenge, contends the learned Government Pleader. The learned Senior Counsel appearing for the petitioner submits that the order appointing the Special Officer has been produced by him as Ext.P14 and since it is only a consequential order, it need not be specifically challenged.

3. The writ petition calls for adjudication on an important factor. Whether the first proviso to Section 2(oaa) in the context of Section 7(1)(c) of the Kerala Co-operative Societies Act, only enables the 4th respondent to serve in more than one Grama Panchayat or whether the provisions confer monopoly right on the 4th respondent over its areas of operation. This aspect assumes significance in view of the 97th Amendment to the Constitution of India. The petitioner-Society has been functioning since 27.06.2014 with a registration certificate and its registration has not been cancelled. In view of the above facts, I am inclined to admit this writ petition and pass interim orders.

5. Admit. Learned Government Pleader takes notice for respondents 1 to 3. Advocate Sri.P.N.Mohanan takes notice for the 4th respondent.

6. Operation of Ext.P13 will stand stayed for a period of one month. The petitioner-Society will be permitted to function in the meanwhile. Respondents 1 to 3 will ensure that the Special Officer, if has taken over charge of the petitioner-Society, shall entrust the administration of the Society to the incumbent committee.

Post the writ petition on 20.05.2020.

N. NAGARESH, JUDGE

aks/20.04.2020

Appendix

Petitioner's Exhibits:

- Exhibit-P1.** True copy of the Registration Certificate of the petitioner society dated 27.06.2014.
- Exhibit-P2.** True copy of the relevant portion of the byelaws of the society as approved by the 2nd respondent.
- Exhibit-P3.** True copy of the notice No.C.P.(4)10651/13 dated 29.05.2013 issued by the Registrar of Co-op Societies.
- Exhibit-P4.** True copy of the communication dated 28.06.2014 issued by the Joint Registrar of Co-op Societies.
- Exhibit-P5.** True copy of the judgment in W.P.(C).No. 17271/2014 dated 24.10.2016 passed by this Hon'ble court.
- Exhibit-P6.** True copy of the notice No. Co-op -C3/65/2017-Co-op dated 21.12.2017 issued by the Government.
- Exhibit-P7.** True copy of the letter addressed to the Under Secretary dated 30.12.2017 by the petitioner Society.
- Exhibit-P8.** True copy of the order No.5099/2017/A.E.L. dated 12.07.2018 issued from the office of the 3rd respondent.
- Exhibit-P9.** True copy of the request/communication dated 17.07.2018 issued by the petitioner society.
- Exhibit-P10.** True copy of the G.O.(Rt)No.272/2018/Co-op dated 06.05.2018 passed by the Government.
- Exhibit-P11.** True copy of the judgment in W.P.(C).No. 24114/2018 dated 08.02.2019 passed by this Hon'ble court.
- Exhibit-P12.** True copy of the appeal memorandum (without annexures) submitted by the 4th respondent before the Government dated 06.02.2017
- Exhibit-P13.** True copy of the Government Order GO(Rt)No.176/2020/Co-op dated 18.03.2020.