

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

THURSDAY, THE 1ST SEPTEMBER 2011 / 10TH BHADRA 1933

WP(C).No. 13468 of 2011(G)

PETITIONER:

KERALA CO-OPERATIVE MILK MARKETING
FEDERATION LTD, MILMA BHAVAN,
PATTOM PALACE, THIRUVANANTHAPURAM - 695 004,
REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI.K.ANAND.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY SECRETARY
TO GOVERNMENT, AGRICULTURE (DIARY) DEPARTMENT,
THIRUVANANTHAPURAM-695 001.
2. REGISTRAR OF DIARY CO-OPERATIVES,
DIRECTORATE OF DAIRY DEVELOPMENT,
PATTOM, THIRUVANANTHAPURAM - 695 004.

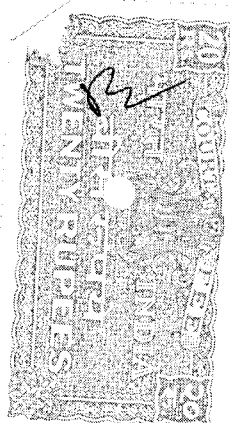
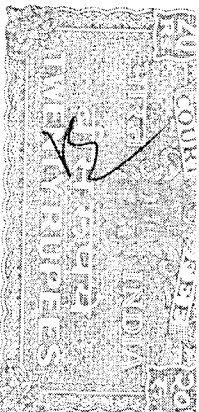
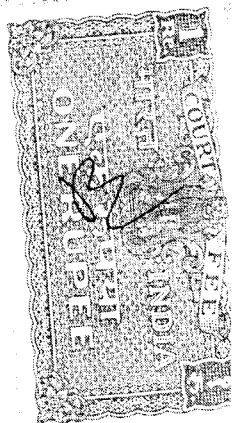
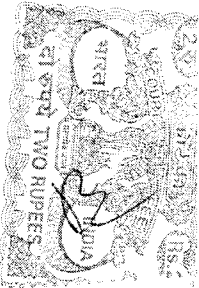
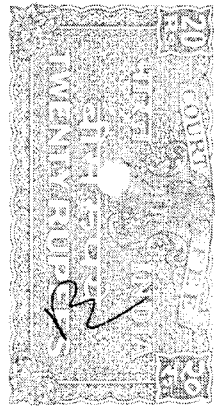
*ADDITIONAL R.3. IMPLEADED:

3. MARTIN PAIVA, AGED 60 YEARS,
RESIDING AT PALLIPARAMBIL HOUSE,
HOUSE NO.48/358 B, VARAMMEL LANE,
KALoor, ELAMAKKARA.P.O.,
ERNAKULAM DISTRICT, COCHIN, PIN-682 026.

*ADDITIONAL R.3. IS IMPLEADED AS PER ORDER DATED 01/09/2011
IN I.A. NO. 8563/2011.

R1 & R2 BY ADVOCATE GENERAL SRI. K.P. DANDAPANI,
SR. GOVT. PLEADER SRI. MANILAL.
ADDL. R3 BY ADV. SRI. BASIL.A.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/07/2011, ALONG WITH W.P.(C).NO.13483/2011 & 16764/2011,
THE COURT ON 01/09/2011, DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

THURSDAY, THE 1ST SEPTEMBER 2011 / 10TH BHADRA 1933

WP(C)No. 13-433 of 2011(D)

PETITIONER(S):

1. PRIYADARSHINI NAGAR KSHEEROLPADAKA
SAHAKARANA SANGHAM, P.T. 141(D) APCOS, PUTHENAMBALAM P.O.,
KADAMBANADU, PATHANAMTHITTA DISTRICT, PIN-691582,
A SOCIETY REGISTERED UNDER THE KERALA CO-OPERATIVE
SOCIETIES ACT, 1969, REPRESENTED BY ITS SECRETARY
IVERKALA DILEEP, AGE 34, S/O.K.AMEER KHAN, AKSHAY NIVAS,
IVERKALA NADUVIL, PUTHENAMBALAM P.O.
2. AIKKARANADU MILK PRODUCER'S CO-OPERATIVE
SOCIETY, E.195 (D) APCOS, PERINJOLE, KOLENCHERY,
PIN-682311, A SOCIETY REGISTERED UNDER THE KERALA
CO-OPERATIVE SOCIETIES ACT, 1969, REPRESENTED BY ITS PRESIDENT
V.M.GEORGE, AGED 45, S/O.MATHAL, VEDANKULANGARA,
MANGATTOOR, KOLENCHERY.P.O., PIN-682 311.
3. M.C.TOMY, AGED 46, S/O.P.CHANDRANATHAN,
MAZHUVANCHERIL, VARANAM.P.O., PUTHENAGADY,
ALAPPUZHA DISTRICT, PIN-688 555, MEMBER, VARANAM
PUTHENANGADY KSHEEROLPADAKA SAHAKARANA SANGHAM LTD,
NO.A 139(D) APCOS, VARANAM.P.O., ALAPPUZHA DISTRICT,
PIN-688 555.
4. K.P.MANI, AGED 37, S/O.PARUKKAN,
KOTTAMPARAMBU HOUSE, CHENNANGADU.P.O., PIN-678573,
MEMBER, PARUTHIPULLY KSHEEROLPADAKA SAHAKARANA
SANGHAM LTD., NO.P 142 (D) APCOS, PARUTHIPULLY.P.O.,
PALAKKAD, PIN-678 573.
5. SANIL KUMAR, AGED 44, S/O.N.UNNIKRISHNAN
KALYANI NIVAS, MANALLOOR, KANNADL.P.O., PALAKKAD,
PIN-678 701, MEMBER, KAZHCHAPARAMBU KSHEEROLPADAKA
SAHAKARANA SANGHAM LTD., P 143 (D) APCOS,
KANNADL.P.O., PALAKKAD, PIN-678 701.

BY ADV. SRLP.VISWANATHAN

WP(C).No. 13483 of 2011(I)

RESPONDENT(S):

1. KERALA CO-OPERATIVE MILK MARKETING
FEDERATION LTD., MILMA BHAVAN, PATTOM PALACE,
THIRUVANANTHAPURAM-695 004, REPRESENTED BY IT'S
CHAIRMAN.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
AGRICULTURE (DAIRY) DEPARTMENT,
THIRUVANANTHAPURAM-695 001.

3. REGISTRAR OF DAIRY CO-OPERATIVES,
DIRECTORATE OF DAIRY DEVELOPMENT,
PATTOM, THIRUVANANTHAPURAM-695 004.

R1 BY ADV. SRI B.S. KRISHNAN, SENIOR
R2 & R3 BY ADVOCATE GENERAL SRI K.P. DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/07/2011, ALONG WITH WPC NO. 13468 OF 2011 & WPC NO. 16764 OF 2011,
THE COURT ON 01/09/2011 DELIVERED THE FOLLOWING:

Mn

...2/-

13

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

THURSDAY, THE 1ST SEPTEMBER 2011 / 10TH BHADRA 1933

WP(C) No. 18764 of 2011(U)

PETITIONER(S):

**THOMAS K.F., S/O.FRANCIS K.U.,
KUNNATHUKUZHAYIL HOUSE
KAMMANA P.O., MANANTHAVADY, WYANAD DISTRICT.**

**BY ADV. SRIM.SASINDRAN,
SRIARUN CHANDRAN.**

RESPONDENT(S):

- 1. KERALA CO-OPERATIVE MILK MARKETING
FEDERATION LTD, MILMA BHAVAN PATTOM PALACE
THIRUVANANTHAPURAM- 695 004.**
- 2. DIRECTOR OF DAIRY DEVELOPMENT DEPARTMENT,
DIRECTORATE OF DAIRY DEVELOPMENT
PATTOM, THIRUVANANTHAPURAM- 695 004.**
- 3. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
AGRICULTURE (DAIRY) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

**R2 & R3 BY ADVOCATE GENERAL SRI.K.P. DANDAPANI.
SR. GOVT. PLEADER MR.MANILAL.
R1 BY SRI.B.S. KRISHNAN, SENIOR ADVOCATE,
ADV. SRI.K. ANAND.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/07/2011, ALONG WITH WP(C) NO.13468 OF 2011 AND
WP (C) NO. 13483 OF 2011, THE COURT ON 01/09/2011
DELIVERED THE FOLLOWING:**

P.N.RAVINDRAN, J.

**W.P.(C).Nos.13468, 13483
and 16764 of 2011**

Dated this the 1st day of September, 2011

JUDGMENT

The competence of the State Government and the Registrar of Dairy Co-operatives to interfere with the decision taken by the Kerala Co-operative Milk Marketing Federation Limited, to increase the selling price of milk by Rs.5/- per litre, with effect from 11.5.2011, is the issue raised in these writ petitions. They were therefore heard together and are being disposed of by this common judgment. W.P.(C)No.13468 of 2011 is treated as the main case and unless otherwise mentioned, the documents referred to are those produced therein.

2. The "Kerala Co-operative Milk Marketing Federation Limited", otherwise known as "Milma", is the petitioner in W.P(C) No.13468 of 2011. It was registered as a co-operative society under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act for short) on 21.2.1980. It is the apex society of the three Regional Co-operative Milk Producers' Unions in the State of Kerala, which in turn have as their members,

**W.P.(C).No.13468 of 2011
and connected cases**

-2-

Primary Dairy Co-operative Societies. The three Regional Co-operative Milk Producers' Unions in the State of Kerala are (1) The Thiruvananthapuram Regional Co-operative Milk Producers' Union Ltd., (2) The Ernakulam Regional Co-operative Milk Producers' Union Ltd., and (3) The Malabar Regional Co-operative Milk Producers' Union Ltd. About 2800 Primary Dairy Co-operative Societies, which have approximately 8,00,000 dairy farmers as their members are affiliated to the three Regional Co-operative Milk Producers' Unions. Petitioners 1 and 2 in W.P.(C) No.13483 of 2011 are two of such Primary Dairy Co-operative Societies registered under the Act and the other petitioners therein are dairy farmers who are members of the said societies. The petitioner in W.P.(C) No.16764 of 2011 is a dairy farmer and a member of yet another Primary Dairy Co-operative Society.

3. The administration, management and control of the Kerala Co-operative Milk Marketing Federation Limited (hereinafter referred to as the Federation for short) is vested in its Board of Directors constituted as per its bye-laws. The fundamental objects of the Federation are to carry out activities for promoting the production, procurement, processing and marketing of milk

**W.P(C).No.13468 of 2011
and connected cases**

-3-

and milk products for the economic development of the farming community; development and expansion of such other allied activities as may be conducive for the promotion of the dairy industry; improvement and protection of milch animals and the economic betterment of those engaged in milk production. The Federation was formed pursuant to a tripartite agreement entered into between the Government of Kerala, the National Dairy Development Board and the Indian Dairy Corporation on 27.4.1979, in implementation of a programme for dairy development known as Operation Flood II and it was registered on 21.2.1980. The Board of Directors of the Federation consists of the following members:-

1. Chairman of the affiliated Unions enrolled as ordinary members;
2. Registrar of Dairy Co-operatives.
3. The Secretary to Government, Animal Husbandry and Dairy, Government of Kerala.
4. Representative from the Finance Department, Government of Kerala.
5. Two elected Directors to be nominated by each affiliated Union. However there shall be no Director nominated by from the District which is represented by the Chairman of the

**W.P(C).No.13468 of 2011
and connected cases**

-4:-

Union where the Union has only a Nominated Board the nominee of the Regional Milk Unions shall be Presidents of the Anand Pattern Societies on the Board of the Unions.

6. One Nominee of National Dairy Development Board.
7. The Managing Director of the Federation.

4. In the year 2009, the Federation noticed that there was a drastic reduction in the procurement of milk by the affiliated Regional Co-operative Milk Producer's Unions in the State due to dairy farmers giving up dairy farming mainly for the reason that it is uneconomic. The Board of Directors of the Federation that met on 16.11.2009 therefore decided to have a detailed study conducted on the cost of production of milk in the State of Kerala and constituted a committee headed by Dr.N.R.Unnithan, former Managing Director of the Kerala Live Stock Development Board for the purpose. The objectives of the study were:-

- "1. *To study the current cost of production of milk across various production systems (large herd vs. small herd) in the state and compare with the cost of production in October 2008. In doing so, the study should consider and take into account all cost factors and the possible regional and seasonal variations.*

**W.P(C).No.13468 of 2011
and connected cases**

-5:-



2. *The study should assess the current price of feed ingredients used for the manufacture of compounded cattle feed by Milma and other public undertakings in the state and compare with the price situation prior to the last revision of price of cattle feed and milk (Oct.2008).*
3. *To study the revised (recent revision) price spread (procurement vs. selling price) of milk having 3.5% fat & 8.5% SNF (cow milk) in various states in the country and compare with the pre-revised rate.*
4. *To suggest the minimum procurement price for cow's milk (3.5% Fat 8.5% SNF) to be paid to farmers.*
5. *To estimate the variation on cost of production of milk during the lean and flush seasons in Kerala;*
6. *To estimate the price realization and cost of production of milk against food price/general cost escalation during the period of Oct. 2008 and till the completion of the study.*
7. *To suggest a system to fix minimum procurement price of milk to be paid to the farmers in future."*

The said committee submitted its report to the Managing Director of the Federation along with Ext.P15 letter dated 12.2.2011. A

**W.P(C).No.13468 of 2011
and connected cases**

-6:-

copy thereof is produced as Ext.P3 in W.P.(C)No.13468 of 2011. The Board of Directors of the Federation that met on 14.2.2011 approved the said report and forwarded it to the Government along with letter No.14/MMG dated 16.2.2011 with a request to take an appropriate decision on the findings in the report. The Government sent a letter dated 12.4.2011 in reply, stating that the Government have not appointed any committee other the committee headed by Sri.P.K.Mohanti, Additional Chief Secretary, Animal Husbandry and Dairy Development Department, of which Sri.R.Heli was a member and therefore, the study report submitted by the Federation cannot be considered as an official one. The Programming Committee of the Federation that met on 25.4.2011 considered the report submitted by the committee headed by Dr.N.R.Unnithan in detail and recommended increase in the procurement and selling price of milk. The said recommendation, along with the report of the committee headed by Dr.N.R.Unnithan, was placed before the Board of Directors of the Federation that met on 26.4.2011. The Board of Directors, after considering the various aspects at length, resolved to increase the selling price of milk by Rs.5/- per litre with effect

**W.P(C).No.13468 of 2011
and connected cases**

-7:-

from 11.5.2011 and to apportion and appropriate the increased price in the manner stated therein. The Director of Dairy Development who is the Registrar of Dairy Co-operatives dissented to it on the ground that the selling price of milk cannot be increased without the approval of the Government. The resolution adopted by the Board of Directors of the Federation on 26.4.2011 with the dissent of the Registrar of Dairy Co-operatives is extracted below:-

"Resl.No.1990.

"Resolved to increase the selling price of milk by Rs.5.00 per litre w.e.f. 11.05.2011 and to divide the increased price as below.

<i>Increase to farmers</i>	<i>: Rs.4.20 per litre</i>
<i>Increase in margin to society</i>	<i>: Rs.0.20 per litre</i>
<i>Increase in commission to Agents</i>	<i>: Rs.0.20 per litre</i>
<i>Increase in margin to Union</i>	<i>: Rs.0.20 per litre</i>
<i>Fund for escalation in Petroleum Products and other cost</i>	<i>: Rs.0.20 per litre</i>
<i>Total</i>	<i>: Rs.5.00 per litre"</i>

"Also resolved that the revision in both procurement and selling price will be implemented w.e.f. 11.5.2011 AM onwards."

"Also resolved to seek the concurrence of the Election Commission for implementing the resolution".

5. The Managing Director of the Federation forwarded a

**W.P(C).No.13468 of 2011
and connected cases**

-8:-

copy of the said resolution along with letter No.14/MMG/1872 dated 2.5.2011 to the Government. The said letter reads as follows:-

"No.14/MMG/1872

Dated 2nd May, 2011

Principal Secretary,
Agriculture (Dairy) Dept.,
Govt. of Kerala,
Trivandrum.

Sir,

Sub: *Decision of the 242nd Meeting of Board of Directors held on 26.04.2011 on revision in the price of milk.*

Ref: 1.KCMMF Letter No.14/MMG dated 16.02.2011
2.Govt. letter No.5801/D2/2011/AD dtd. 12.04.2011, Agriculture (Dairy) Dept.

Kind attention is invited to the letter cited (1) above wherein a copy of the Report on Cost of Production of Milk, which was approved by the Board of Directors of KCMMF Ltd. along with an abstract of the Minutes of the 240th meeting of the Board of Directors held on 14.02.2011 at Trivandrum was forwarded to the Govt. of Kerala requesting the Government to take appropriate decision on the findings of the study report. In response to the letter Govt. vide letter cited (2) above informed that the Govt. did not appoint any other committee than Heli committee and Mohanti committee for the purpose and so the study report cannot be considered as an official one.

**W.P(C).No.13468 of 2011
and connected cases**

-3)-

A meeting of the Board of Directors of KCMMF Ltd. was held on 26.04.2011. After detailed deliberations, the Board passed the following resolution.

Resl.No.:1990:

"Resolved to increase the selling price of milk by Rs.5.00 per litre w.e.f. 11.05.2011 and to divide the increased price as below.

Increase to farmers	: Rs.4.20 per litre
Increase in margin to society	: Rs.0.20 per litre
Increase in commission to Agents	: Rs.0.20 per litre
Increase in margin to Union	: Rs.0.20 per litre
Increase for escalation in petroleum Products and other cost	: Rs.0.20 per litre
Total	: Rs.5.00 per litre"

"Also resolved that the revision in both procurement and selling price will be implemented w.e.f. 11.5.2011 AM onwards."

"Also resolved to seek the concurrence of the Election Commission for implementing the resolution".

A copy of the Resl.No.1990 passed by the 242nd meeting of the Board of Directors of KCMMF Ltd. in its meeting held on 26.04.11 is enclosed.

In view of the Model Code of Conduct, a communication has been sent to the Election Commission to seek its concurrence.

This is submitted to the Govt. for the kind information.

Yours faithfully,

Sd/-

Managing Director"

**W.P(C).No.13468 of 2011
and connected cases**

-:10:-

6. Upon receipt of the said letter, the Government sent a letter dated 9.5.2011 to the Managing Director of the Federation with copy to the Director of Dairy Development, stating that the Government regrets its inability to consider the proposal for increasing the selling price of milk and another letter dated 9.5.2011 stating that the proposal to hike the selling price of milk by Rs.5/- per litre as per resolution No.1990 adopted in the 242nd meeting of the Board of Directors of the Federation is declined in exercise of power conferred in the Government under section 101 of the Kerala Co-operative Societies Act. The said letters are produced as Ext.P6 in W.P.(C)No.13468 of 2011. The Director of Dairy Development in turn sent Ext.P5 notice dated 9.5.2011 to the Managing Director of the Federation directing him to cancel the decision taken by the Federation to increase the selling price of milk. Exts.P5 and P6 are under challenge in these writ petitions. It is contended that the Director of Dairy Development or the Government do not have the jurisdiction or authority to interfere with the decision taken by the Federation to increase the selling price of milk, that the decision to increase the selling price of milk by Rs.5/- per litre was arrived at after considering various

**W.P(C).No.13468 of 2011
and connected cases**

-11-

aspects including the report submitted by the committee headed by Dr.N.R.Unnithan, that the Government themselves had conducted a study which led to Ext.P7 report being submitted by the committee headed by Sri.P.K.Mohanti, Additional Chief Secretary, Animal Husbandry and Dairy Development Department, that even going by the said report, the cost of production of milk in June 2010 was Rs.20.06 per litre, that presently dairy farmers are being paid only Rs.18.40 per litre, which is much lower than the cost of production, as the procurement price, that the cost of production has gone up after Ext.P7 report was submitted in June 2010 and that the Government did not take note of the fact that dairy farmers do not even get back the actual cost of production of milk. It is also contended that the Federation is empowered to determine the procurement and selling price of milk, that the approval of the Government or the Registrar of Dairy Co-operatives is not required to fix the procurement price or the selling price of milk, that the High Range Dairy Co-operative Society, Chengulam, a Primary Dairy Co-operative Society registered under the Act, is selling milk at Rs.30/- per litre, that other similar societies are also selling milk at higher prices and

that the Registrar of Dairy Co-operatives or the Government have not interfered with the decision taken by the said societies to increase the selling price of milk. The petitioners in the connected writ petitions have raised identical contentions.

7. The State of Kerala has filed a counter affidavit resisting the writ petitions. It is contended that the fixation or increase in the selling price of milk is a matter of great public importance and requires a decision of the Government, that the power to fix the selling price of the milk is not covered by Ext.P1 agreement between the State of Kerala, the National Dairy Development Board and the Indian Dairy Corporation and therefore, without the permission of the Government, the selling price of milk cannot be increased. It is also contended that even on the terms of the bye-laws of the Federation, the Board of Directors can only recommend an increase in the selling price of milk, that the price of milk can be increased only with the concurrence/approval of the Government and that the Registrar of Dairy Co-operatives is empowered under the provisions of the Act and the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the Rules for short) to interfere with the decision taken by the

**W.P(C).No.13468 of 2011
and connected cases**

-13-

Federation to increase the selling price of milk.

8. I heard Sri.K.Anand, learned counsel appearing for the Federation, Sri.P.Viswanathan and Sri.M.Sasindran, learned counsel appearing for the petitioners in the connected writ petitions, Sri.C.S.Manilal, learned Senior Government Pleader appearing for the State of Kerala and Sri.Basil A.G., learned counsel appearing for the additional third respondent in W.P..(C) No.13468 of 2011. The learned counsel appearing for the petitioners contended that under the provisions of Ext.P1 agreement and the bye-laws of the Federation, the power to fix the procurement price/selling price of milk is vested in the Federation and that the prior approval or concurrence of the Government is not required for increasing the procurement price/selling price of milk. The learned counsel for the petitioners contended that the Federation has the full freedom to act in accordance with sound economic and financial practices to fix the price for its products and the price to be paid for the milk collected from the members of Primary Dalry Co-operative Societies, that the Government had agreed not to take any action to restrict such power of the co-operative institutions, that the bye-laws of

**W.P(C).No.13468 of 2011
and connected cases**

-14-

the Federation empower the Board of Directors to fix the procurement price/selling price of milk and that the provisions of the Act or the Rules cannot, therefore, be invoked to interfere with the decision taken by the Federation to increase the procurement price/selling price of milk. Per contra, Sri.C.S.Manilal, learned Senior Government Pleader appearing for the State of Kerala and Sri.Basil.A.G, learned counsel appearing for the intervenor, contended that in exercise of the power conferred under sections 9, 66(5) and 66-A of the Act and rule 176 of the Rules, the Government and the Registrar of Dairy Co-operatives can control the working of the Federation which is a co-operative society, for the economic and social betterment of its members and the public and therefore the directions issued by the Government and the Registrar of Dairy Co-operatives are perfectly in order. Alternatively, the learned Government Pleader contended that even if such power cannot be traced to the Act and the Rules, as the Government have the legislative competence to enact a law relating to Price Control under Entry 34 of List III of the VII Schedule to the Constitution of India, it can issue executive instructions under Article 162 of the Constitution of

**W.P(C).No.13468 of 2011
and connected cases**

-:15:-

India regulating the selling price of milk. Lastly the learned Government Pleader contended that the validity of Ext.P1 agreement has expired and in any event, the power to fix the selling price of milk is not covered by the said agreement and that the State, which has furnished a guarantee to the Indian Dairy Corporation for the sum of Rs.18 Crores advanced by it to the Federation pursuant to the agreement dated 12.8.1981, is entitled to step in and interfere with the functioning of the Federation.

9. I have considered the submissions made at the Bar by the learned counsel appearing on either side. The short question that arises for consideration in these writ petitions is whether the Federation requires the prior approval of the Government to increase the procurement price/selling price of milk. As stated earlier, the Federation was formed in implementation of a programme for dairy development, known as Operation Flood II pursuant to Ext.P1 Government order by which the terms of the agreement that was later entered into between the State Government, the National Dairy Development Board and the Indian Dairy Corporation were approved. In that agreement it is inter alia stipulated that the State undertakes "**not to take any**

13

W.P(C).No.13468 of 2011
and connected cases

-16-

action to restrict the power of the co-operative institutions to act in accordance with sound economic and financial practices, to fix the price for their products, the price paid for milk collected from their members and the charges to be paid by their members for services rendered to them by the co-operative institutions in respect of their selling price policies". The State Government had thus agreed that it will not take any action to restrict the power of the co-operative institutions to act in accordance with sound economic and financial practices to fix the price for their products and the price paid for milk collected from their members.

10. Paragraph 27 of Ext.P2, the bye-laws of the Federation, empowers the Board of Directors to take all such proceedings and do all such acts and things, as may be necessary or proper, for the due management of the Federation and for carrying out the objects for which the Federation is established and for securing and furthering its interest, subject to the provisions of the Act, or such Act as shall take its place and to any rules which can be passed by the State Government in pursuance of the said Act. The Board is also empowered to decide the pricing structure for

the dairy and allied products supplied by the members and the rate of commission to be paid to the Primary Dairy Co-operative Societies/Regional Co-operative Milk Producers' Unions on procurement of milk and other commodities. As per bye-law 33, the Programming Committee of the Federation has the authority to recommend the price of raw materials and/or finished products and to recommend the terms and conditions for procurement, chilling, processing, and marketing of dairy and allied products. The Federation had, taking note of the drastic reduction in the procurement of milk by the Regional Co-operative Milk Producers' Unions due to dairy farmers giving up dairy farming, caused a study to be conducted by a committee headed by Dr.N.R.Unnithan. The said committee has in Ext.P3 report stated as follows:-

*"1. The Kerala Co-operative Milk Marketing Federation (Milma) commissioned a study on "**Cost of Production of Milk in Kerala**" with specified objectives. The study was carried out by a multidisciplinary team of professionals from the domains of Livestock Production, Economics and Cost Accounting. The primary data on cost of production of milk*

has been gathered from 1536 households in nine districts of the state through a well designed and executed household survey (HHS) in two stages covering the rainy (Flush) and the summer (Lean) periods of milk production in the state. The study team traveled extensively throughout the study area, i.e., districts of Kannur, Palakkad, Wayanad, Ernakulam, Idukki, Kottayam, Alappuzha, Kollam and Trivandrum - meeting farmers, development functionaries, milk co-operative officials and a host of other people from Dairy Development and allied fields and gathered information through personalized interviews, in depth discussions, meetings, direct observations and pre-designed questionnaire. This report is based on the findings and outcome of the study - results of household survey and the information gathered directly by the study team. The costs factored in are feeding, labour, breeding and health care, cost of dry animal maintenance, interest on investment (cost of cows) and the depreciation of cows.

2. The average gross cost of production of milk across the two seasons, rainy (flush) and summer (lean), in the state is Rs.26.75. The corresponding net cost of production is Rs.26.27. Among the

three Milk Unions, MRCMPU recorded the highest gross (Rs.28.49) and net (Rs.27.75) costs of production per litre of milk, ERCMPU recorded the lowest gross and net costs of production, Rs.25.01 and Rs.24.48 respectively. The TRCMPU falls in between the highest and the lowest, the gross cost of production being Rs.26.88 and the net Rs.26.64 per litre of milk. **The actual cost of production is far in excess of the procurement price (Rs.18.63) fixed for cow milk (Fat 3.5% and SNF 8.5%) in the state now."**

The committee has in paragraph 3.7 of Ext.P3 report stated that while in the year 2008, the net cost of production of milk was Rs.21.95 per litre, it had gone up to Rs.26.27 during the year 2009-10. The committee had also compared the selling price of milk in various other States and milk unions and had stated as follows regarding the existing procurement price and revision of the procurement price:-

"6.3. Procurement Price - Future Revision.

*In the past, Kerala had the highest procurement and consumer price in the country (Impetus Management Services 1999). Today the situation has changed. **The analysis of milk prices prevailing in other states (Chapter 4) has shown that the consumer price of***

milk in Kerala is one of the lowest despite the fact the cost of production of milk is one of the highest in the country. Frequent price revision of milk in Kerala is a corollary to the rapid increase in cost of production. It is paradoxical that although price revisions were effected as a response to the producer demands, no one attempted to assess the factual cost of production. The current initiative to study the cost of production of milk and link with the procurement price is the correct decision in right direction, but belated is our opinion. Had such a decision been taken and truthfully implemented a decade ago, the State might not have experienced the down fall in milk production being witnessed now. It is the legitimate right of a producer that he or she gets a remunerative price for his/her produces. At least he has all the right in the world to try to market his produce in an open market situation at a bargain price so that he could at least recover the costs and the value of his labour input. In the instant case, the Dairy farmers in Kerala unfortunately were denied both - their legitimate right to fix the price and adopt appropriate marketing strategies - to realize the price. **The net result is that the milk producer, who belongs to the poorest of the poor in the community, is forced to sell his/her produce suffering a loss of around eight rupees per liter of milk compared to the actual cost he/she incurs.** This has happened and continues to happen because Milma, the apex body of producers failed to do

this for them under the compulsions from the Government. The interval between the successive revisions and the magnitude is often decided by the Government, an anomaly to the very concept of co-operative movement in the country. Our considered opinion is that unless this situation is reversed as fast as one can, we will reach a point of no return in dairy production, which will be catastrophic to the economy of the state, thousands of milk producers, lakhs of consumers, the most successful co-operative movement in the state, human nutrition and above all to the very food security of the state. It is very easy to encourage the downfall as is witnessed now, but later, it might need a quarter to a half century, if the state has to reverse the downfall. It is high time that Milma and the Government join their hands together to develop a pricing policy for milk in the state so that the producer gets a remunerative price and the consumer gets it at an affordable price which in turn will arrest the downward trend and ultimately save this sector. In view of this our considered opinion is as follows.

- "1. The Milma, a co-operative body of resource poor milk producers in the state with democratically elected representatives, should have full autonomy in deciding the procurement and consumer price as originally agreed with the NDDB while the co-operative structure was formed in the*

**W.P(C).No.13468 of 2011
and connected cases**

-22-

state.

2. *The Milma should introduce a system to evaluate the cost of production of milk on a triennial basis. The evaluation should be fair and free and done by an independent body or institution devoid of any political or bureaucratic intervention. The cost should strictly be assessed through a scientifically designed and executed study taking into consideration all cost factors and ground realities that exist at household level. The current study underlines the importance of repeated measurements to ensure the accuracy of milk produced over a period of lactation and the inputs used and to understand the prices.*
3. *The procurement price shall be revised every year. The farmers demand increase in procurement price mainly due to four reasons - the increase in feed costs, wages, general cost of living and the interest rates. These four factor can be linked through a weighted index which could be used as a basis for future price revisions. The values for index should be derived from a basket of selected components - the movements in the prices of concentrates (supplied by the Govt. feed*

plant), the declared agricultural wages, the CPI published by the Bureau of Economics and Statistics and the lending rates by the nationalized banks (the Index can be constructed and submitted in due course if the recommendation is accepted by Milma)."

In paragraph 8 of Ext.P3 report it is stated that the high cost of production and the non-remunerative price have had a telling influence on milk production in the State, that the number of cattle holdings and milk production have declined sharply and that concurrent with the decline in milk production, the internal procurement of milk by the Federation has also declined while the demand for milk has steadily increased thereby resulting in an unprecedented demand-supply imbalance.

11. It is not in dispute that the Government themselves had constituted a committee as per G.O(MS)No.118/2010/Agri. dated 5.5.2010 to conduct a study regarding the cost of production of milk in the State of Kerala. Ext.P7 is the report submitted by the said committee. The said committee had, after a detailed study, come to the conclusion that the cost of production of milk per litre is Rs.20.06 and that to reimburse the

**W.P(C).No.13468 of 2011
and connected cases**

-24-

actual cost of production, the dairy farmer should be given an increase of Rs.4.34 per litre. The committee had also recommended that the dairy farmer should get a margin of profit as well. In that report the committee recommended that the sale price of milk can be increased to Rs.25/- per litre. It is not in dispute that pursuant to the said report, the selling price of milk was raised in the year 2010 to the present level, namely Rs.22/- per litre for Double Toned Milk and Rs.23/- per litre for Pasteurized Toned Milk. It is common case for the parties that even after such increase, the dairy farmer now gets only Rs.18.40 per litre of milk. When compared with the cost of production mentioned in Ext.P7 report, which in the year 2010 was Rs.20.06, the dairy farmer is admittedly getting a price which is far below the cost of production. Even after the proposed increase, the dairy farmer will get only $\text{Rs.18.40} + \text{Rs.4.20} = \text{Rs.22.60}$ per litre as the procurement price. It is in the background of these admitted facts that the question whether the impugned action of the State is sustainable, has to be considered.

12. Rule 180 of the Kerala Co-operative Societies Rules stipulates that no society shall do any act which is not expressly

**W.P(C).No.13468 of 2011
and connected cases**

-25-

provided for by the bye-laws of such society without the previous express sanction of the Registrar. As held by this Court in **Janardhanan v. Joint Registrar**, 1990 (1) KLT 530, rule 180 applies only in cases where a society may have to act in a particular matter and the bye-laws are silent on that aspect. It was also held that as rule 180 traverses regions not covered by the bye-laws, it cannot be relied on to legitimise illegalities committed in violation of the bye-laws. The bye-laws of the Federation empower the Board of Directors to decide on the procurement price to be paid for dairy and allied products supplied by the members of Dairy Co-operative Societies. The bye-law empowering the Board of Directors of the Federation to decide on the procurement price to be paid for dairy products supplied by the member societies does not stipulate that the previous sanction of the Registrar of Dairy Co-operatives is required before the procurement price is fixed. The prior sanction of the Registrar of Dairy Co-operatives was therefore not required to be obtained before increasing the procurement price/selling price of milk. The respondents have no case that the bye-laws empowering the Board of Directors of the Federation to decide on the price

**W.P(C).No.13468 of 2011
and connected cases**

-26-

structure violate any provision of the Act or the Rules. In other words, the bye-law empowering the Board of Directors to fix the procurement price/selling price of milk and other dairy products does not offend any provision of the Act or the Rules. It is in exercise of the power conferred by the bye-laws that the Board of Directors of the Federation that met on 26.4.2011 resolved having regard to the cost of production of milk, to increase the selling price of milk by Rs.5/- per litre with effect from 11.5.2011. The decision taken was not that the price revision be implemented after obtaining the approval of the Government. But, having regard to the fact that elections to the Kerala Legislative Assembly had already been notified and held, the Board of Directors of the Federation decided to seek the concurrence of the Election Commission. In the letter dated 2.5.2011 sent by the Federation to the Government, the approval of the Government for increasing the selling price of the milk was not sought. In other words, the decision taken by the Board of Directors of the Federation to increase the selling price of milk with effect from 11.5.2011 was not subject to the Government giving concurrence. The Government however, took the stand that the approval of the

Government is required and was sought and declined the approval. Consequently, the Registrar of Dairy Co-operatives issued an order directing the Federation to cancel the resolution increasing the selling price of the milk. These directions are sought to be sustained relying on the proviso to section 9, and sections 66(5) and 66A of the Act and rule 176 of the Rules.

13. I shall first refer to rule 176 of the Rules. Rule 176 stipulates that notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Rule 176 thus empowers the Registrar of Dairy Co-operatives to rescind a resolution of the Federation, if it appears to him that such resolution is ultra vires the objects of the Federation or is against the provisions of the Act, Rules or Bye-laws or any direction or instructions issued by the Department or

**W.P(C).No.13468 of 2011
and connected cases**

-28-

calculated to disturb the peaceful and orderly working of the Federation or is contrary to the better interest of the Federation. As stated earlier, the bye-laws of the Federation empower the Board of Directors to fix the procurement price and the selling price of milk. There is no provision in the Act or Rules which stipulates that a co-operative society, whether it be a co-operative society of dairy farmers or of artisans, cannot fix the selling price of the goods produced and marketed by it, without the prior approval of the Government or the Registrar. The respondents have no case that the Co-operation Department has issued any direction or instruction regarding the procurement price or the selling price of milk. The respondents have also no case that the decision taken by the Board of Directors is ultra vires the objects of the Federation or that the increase in the selling price of milk will disturb the peaceful and orderly working of the Federation or is contrary to the better interest of the Federation. On the other hand, the contents of Ext.P7 report which was submitted pursuant to a study ordered by the Government themselves, make it evident that with the existing procurement price regime, the members of the Federation (dairy farmers) are not even able to

realise the cost of production of milk. That apart, the Government had agreed, when it issued Ext.P1 order, that it will give full freedom to the Federation to fix the price for its products and the price paid for milk collected from its members. Such being the situation, it cannot be said that any circumstance warranting invocation of the power under rule 176 of the Rules exists in the case on hand. I therefore, find no merit or substance in the contention that the power of the Registrar of Dairy Co-operatives to issue the direction contained in Ext.P5 can be traced to rule 176 of the Rules.

14. I shall now consider whether the proviso to section 9 of the Act or section 66(5) or section 66A of the Act can be relied on to justify the stand taken by the State. Section 9 of the Act stipulates that the registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. The proviso to section 9 stipulates that the Government and the Registrar shall have power to

regulate and control the working of a society for the economic and social betterment of its members and the general public. The Government and the Registrar can therefore, regulate and control the working of the Federation only for the economic and social betterment of the members and the general public. The materials on record disclose that under the existing price regime, about 8,00,000 dairy farmers, who are members of the various Primary Dairy Co-operative Societies, are not able to realise even the actual cost of production of milk. The Government or the Registrar of Dairy Co-operatives have no case that the impugned decisions were taken for the social and economic betterment of the members of the Primary Dairy Co-operative societies. The impugned decisions/directions of the Government or the Registrar of Dairy Co-operatives will not result in the social and/or economic betterment of the dairy farmers. On the other hand, if the stand taken by the Government and the Registrar of Dairy Co-operatives is accepted, dairy farmers who supply milk to Primary Dairy Co-operative Societies of which they are members will be driven to penury. In my opinion, the Government or the Registrar of Dairy Co-operatives cannot regulate and control the working of a society

in exercise of the power conferred on them under the proviso to section 9 of the Act without taking into account the adverse economic impact that any regulatory measure adopted by the Government or the Registrar of Dairy Co-operatives will have on the members of the society which in the instant case is the Federation and consequently on the members of the Primary Dairy Co-operative Societies, approximately 8,00,000 in number. I therefore, find no merit in the contention of the learned Government Pleader that the power under the proviso to section 9 can be invoked to interfere with the decision taken by the Federation to increase the selling price of milk.

15. That takes me to the question whether such power can be traced to section 66(5) or section 66A of the Act. Sub-section (1) of section 66 of the Act empowers the Registrar to supervise or cause to be supervised by a person authorised by him by a general or special order in writing, the working of every society as frequently as he may consider necessary. Sub-section (2) of section 66 of the Act empowers the Registrar on his own motion or on the application of a creditor of a society to inspect or direct any person authorised by him by order in writing to inspect the

**W.P(C).No.13468 of 2011
and connected cases**

-32-

books of the society. sub-section (5) of section 66 of the Act stipulates that the Registrar or the person authorised by him under sub-section (1) or sub-section (2) may, by order in writing, direct the society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order. From the context and setting in which sub-section (5) of section 66 of the Act occurs, it is evident that a direction in terms of sub-section (5) of section 66 of the Act can be issued only when the Registrar has taken action under section 66 of the Act either for the supervision of the working of a society or the inspection of its books. I, therefore, find no merit in the contention that sub-section (5) of section 66 of the Act empowers the Registrar of Dairy Co-operatives to interfere with the decision taken by the Federation to increase the selling price of milk.

16. That takes me to the question whether section 66A of the Act would empower the Registrar of Dairy Co-operatives to issue a direction to the Federation to cancel the decision taken by it to increase the selling price of milk. Section 66A of the Act stipulates that subject to the provisions of the Act and the rules made thereunder, the Registrar may issue general directions and

guidelines to any or all of the co-operative societies in furtherance of the purposes of the Act or for implementing government policies for the benefit of the members and the general public. From a plain reading of the said provision it is evident that a direction under section 66A can be issued only in furtherance of the purposes of the Act or for implementing government policies for the benefit of members and the general public. The reasons which I have given to hold that the Government or the Registrar of Dairy Co-operatives cannot invoke the proviso to section 9 of the Act apply equally to section 66A of the Act also. That apart, there is no material on record to indicate that the Registrar of Dairy Co-operatives has acted in furtherance of the purposes of the Act or for implementing Government policies for the benefit of the members of the Federation and the general public. Therefore, the Registrar of Dairy Co-operatives cannot invoke section 66A of the Act to sustain Ext.P5.

17. The only question that now remains to be considered is whether, as contended by the learned Government Pleader, the action of the Government can be sustained on the ground that the State has the legislative competence to enact a law relating to

Price Control under Entry 34 of List III to the VII Schedule to the Constitution. The State has no case that such a price control law has been enacted and brought into force or that an executive order in that regard has been issued and published. As held by the Apex Court in Harla v. The State of Rajasthan, AIR 1951 SC 467 and in Charles K. Skaria v. C. Mathew, AIR 1980 SC 1230 an un-announced law cannot govern the rights of parties. Therefore, the mere fact that the State can regulate the price of milk by enacting a law or by issuing an executive order under Article 162 of the Constitution of India is not a reason to hold that even in the absence of an announced law, the impugned action can be sustained. That apart, it is not in dispute that the High Range Dairy Co-operative Society, No.K 10D, Chengulam, is selling pasteurized toned milk in 450 ml sachets, at a price of Rs.13/-, which works out to Rs.28.90 per litre. The Registrar of Dairy Co-operatives has however, not interdicted the High Range Dairy Co-operative Society, from selling milk at that price. Other agencies are also selling milk at prices ranging between Rs.26/- to Rs.30/- per litre, while the Federation is selling pasteurized toned milk at Rs.23/- per litre and double toned milk at Rs.22/- per litre.

**W.P(C).No.13468 of 2011
and connected cases**

-35-

Sixteen Primary Dairy Co-operative Societies, which are not members of any of the three Regional Co-operative Milk Producers' Unions, are selling milk at the rate of Rs.28/- per litre with effect from 1.5.2011, as can be seen from Ext.P9. The Registrar of Dairy Co-operatives has not taken any action in respect of the said societies also. The contention of the learned Government Pleader that as the State has the legislative competence to enact a law relating to Price Control or to issue an executive order in that regard the impugned decisions can be traced to that power, cannot therefore, be sustained.

For the reasons stated above, I allow the writ petitions, quash the Impugned orders/decisions and declare that the State Government and the Registrar of Dairy Co-operatives have no right or authority to interfere with the decision taken by the Federation to increase the procurement and selling price of milk.

WP(C).No. 16764 of 2011(U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE CERTIFICATE EVIDENCING THE PETITIONER WAS HONoured WITH THE AWARD OF BEST DAIRY FARMER OF WAYANAD DISTRICT BY THE MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION (MILMA) FOR THE YEAR 2006-2007.

EXT.P2: COPY OF THE CERTIFICATE EVIDENCING THE PETITIONER IS THE RECIPIENT OF THE BEST DAIRY FARMER AWARD IN WAYANAD DISTRICT OF THE ANIMAL HUSBANDRY DEPARTMENT OF THE KERALA GOVERNMENT IN 2007-2008.

EXT.P3: COPY OF THE CERTIFICATE EVIDENCING THE PETITIONER IS THE RECIPIENT OF THE BEST SAMMISHRA KARSHAKA AWARD 2009 OF WAYANAD DISTRICT ISSUED BY THE ANIMAL HUSBANDRY DEPARTMENT OF THE KERALA GOVERNMENT.

EXT.P4: COPY OF THE MONTHLY MILK BILL OF THE PETITIONER ISSUED FROM THE MANANTHAVADY KSHEEROLPADAKA SAHAKARANA SANGHAM.

EXT.P5: COPY OF THE REPORT OF THE COMMITTEE HEADED BY DR.N.R. UNNITHAN.

EXT.P6: COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 09/05/2001.

EXT.P7: COPY OF THE GOVERNMENT LETTER DATED 09/05/2011.

EXT.P8: COPY OF THE REPORT HEADED BY SRI.P.K. MOHANTHY IAS.

EXT.P9: COPY OF THE NOTICE ISSUED BY 16 MILK SOCIETIES.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

W.F.C.L. No. 13482 of 2011 (1)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : PHOTOSTAT COPY OF THE BYE-LAWS OF PETITIONERS 1 AND 2.

EXT.P2 : PHOTOSTAT COPY OF THE ORDER OF THE 3RD RESPONDENT.

EXT.P3 : PHOTOSTAT COPY OF THE ORDER DATED 9.8.2011 BY THE 2ND
RESPONDENT.

RESPONDENT'S EXHIBITS - NIL

⑈TRUE COPY⑈

P.S. TO JUDGE

Mn

Mn

W.P.(C) NO.13468/2011-G:

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P.1: COPY OF THE GOVERNMENT ORDER DTD. 27/04/1973.
- EXT.P.2: COPY OF THE BYE-LAW OF THE PETITIONER.
- EXT.P.3: COPY OF THE REPORT SUBMITTED BY THE HEADED DR. N.R. UNNITHAN.
- EXT.P.4: COPY OF THE EXTRACT OF THE BOARD MEETING HELD ON 26/04/2011.
- EXT.P.5: COPY OF THE ORDER DTD. 09/05/2011 ISSUED BY THE R.2.
- EXT.P.6: COPY OF THE GOVERNMENT LETTERS DTD. 09/05/2011.
- EXT.P.7: COPY OF THE REPORT SUBMITTED BY MOHANTHY COMMITTEE.
- EXT.P.8: COPY OF THE PAPER REPORT DTD. 17/04/2011 PUBLISHED IN TIMES OF INDIA.
- EXT.P.9: COPY OF THE NOTICE ISSUED BY VARIOUS CO-OPERATIVE SOCIETIES.
- EXT.P.10: COPY OF THE STATEMENT SHOWING SELLING PRICE OF MILK OF VARIOUS PRIVATE DAIRIES IN ERNAKULAM DISTRICT.
- EXT.P.11: COPY OF THE PAYMENT DETAILS OF PAYMENT MADE TO THE FARMERS.
- EXT.P.12: COPY OF THE PAPER REPORT PUBLISHED IN MALAYALA MANORAMA DAILY.
- EXT.P.13: COPY OF THE PAPER REPORT PUBLISHED IN MATHRUBHOOMI DAILY.
- EXT.P.14: COPY OF THE TABLE CONTAINING PRICE OF MILK IN VARIOUS STATES OF INDIA.
- EXT.P.15: COPY OF THE COVERING LETTER DTD. 12/02/2011.
- EXT.P.16: COPY OF THE LETTER DTD. 26/05/2011.
- EXT.P.17: COPY OF THE LETTER DTD. 15/07/2011.
- EXT.P.18: COPY OF THE GOVERNMENT LETTER DTD. 31/12/2007.

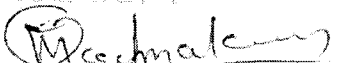
RESPONDENTS' EXHIBITS: NIL.

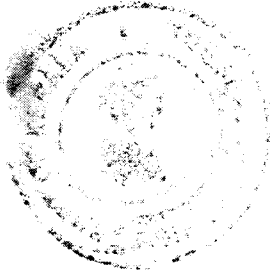
//TRUE COPY//

Prv.

P.S. TO JUDGE.

TRUE COPY





**HIGH COURT OF KERALA
AT ERNAKULAM**

Year and Number Of Suit or other proceedings : WPC/13468/2011

**Name Of Applicant / :
Advocate B.S. KRISHNAN (SR.)**

Application Number : 46040/2011

Date Of Application : 01-SEP-11

Date Of Calling for Stamp : 05-SEP-11

Date Of Production of Stamp : 05-SEP-11

Date When Copy was Ready : 05-SEP-11

Date Notified for appearance to receive the copy : 23-SEP-11

Date When copy was delivered : 7-9-11



Examiner