

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Co.Appeal.No. 5 of 2015

ORDER DATED 09-09-2015 IN CP 57/2015 OF COMPANY LAW BOARD, CHENNAI
.....

APPELLANT(S)/PETITIONER IN THE CP :

1. O.PACHUTHAN KUTTY,
S/O. GOVINDA MENON, "SANTHI", XV/163,
PARATH LANE, MAMMIYUR, GURUVAYOOR POST,
TRICHUR.
2. SHANTHI ACHUTHAN KUTTY,
"SANTHI", XV/163, PARATH LANE,
MAMMIYUR, GURUVAYOOR POST, TRICHUR.

**BY ADVS.SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.C.UNNIKRISHNAN (KOLLAM)**

RESPONDENT(S)/RESPONDENTS IN THE CP :

1. ASWINI HOSPITAL LTD.,
KARUNAKARAN NAMBIAR ROAD, TRICHUR, KERALA-680 569.
2. ALUNGAL CHOZHICKUTTY VELAYUDHAN,
ALUNGAL HOUSE, POONKUNNAM P.O., PALLATH LANE,
TRICHUR, KERALA-680 569.
3. VADAKKOOT GOPALAN SURESH,
VADAKKOOT HOUSE, EZHUTHACHAN ROAD, ARIMPUR P.O.,
TRICHUR-680 620.
4. ITHIKKAT APPUKUTTAN MOHANAN,
ITHIKKAT HOUSE, P.O.VATANAPPALLY, TRICHUR-680 620.
5. PRADEEP KARUTHARAN BHARATHAN,
KARUTHARAN HOUSE, P.O.THAMBANKADAVU, THALIKUMALAM,
TRICHUR-680 569.

msv/

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6. PAYYAVALLAPPIL KUNJUVAPPU SALIM ,
PAYYAVALLAPPIL HOUSE, KATTAKAMBAL P.O.,
TRICHUR-680 544.
7. ITHIKKAT SANKARANKUTTY VIJAYARAJAN,
ITHIKKAT HOUSE, KUNDALIYUR, ENGADIYUR,
TRICHUR-680 616.
8. ITTILAVALLAPPIL NARAYANAN RAJESH,
ITTILAVALLAPPIL HOUSE, CHOORAKKATTUKARA, AMALA NAGAR,
TRICHUR-680 555.
9. SAINUDDIN MALIYEKAL PUTHENVEETIL,
MALIYEKKAL HOUSE, KANDAN ASSERRY, TRICHUR-680 102.
10. VADAKKOOT GOPALAN GOPINATHAN,
112, VADAKKOOT 9, ARIMPUR GRAMA PANCHAYATH,
TRICHUR-680 506.
11. LATHA PREMANANDAN,
ALUNGAL HOUSE, MANATHALA, CHAVAKKAD,
TRICHUR-680 506.
12. SUGADHAN KUMARAN,
KOLLEM PARAMBIL, KOLLEM PARAMBIL HOUSE,
KOTTANALLORE P.O., THRISSUR, KERALA-680 672.
13. ARUKETTY SANKARANARAYANAN DHARMAN,
ARUKETTY P.O., ENGANDIYOOR, THRISSUR,
KERALA-680 022.
14. MELEPPURA UNNIRI UNNIKRISHNAN,
NO.31, MELEPPURA, GREEN PARK,
THIRUVAMPADY P.O., THRISSUR-680 022.
15. OZHUKIL PADINJAPPAT GOVINDHA MENON BABU,
198 B, NARAYANEYUM, NO.1,
KIZHAKKUMPATTUKARA, THRISSUR, KERALA-680 005.
16. ALUNGAL KUNHAN VENUGOPALAN,
ALUNGAL HOUSE, BABY ROAD, MANATHALA,
CHAVAKKAD.P.O., THRISSUR, KERALA-680 506.
17. ARUKETTY RAMAKKUTTY SIVARAJAN,
ARUKETTY, ENGANDIYOOR, KUNDALIYUR,
THRISSUR, KERALA-680 616.

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18. KAMALAKSHYAMMA HARIDASAN PILLAI,
SREE HARI 37 PRIYADARSINI NAGAR, PARAVATTANI,
THRISSUR, KERALA-680 005.
19. VILAMBATH SANKARANARAYANAN,
VILAMBATH HOUSE, VAZHANI P.O., ENKAKAD,
THRISSUR, KERALA-680 589.
20. PRASANNNAN CHANASSERRY RAMAN
CHANASSERRY HOUSE, P.O.TALIKULAM, THRISSUR
KERALA-680 703.
21. KANJIRAPARAMBIL RAGHAVAN BABU RAJENDRAN,
KANJIRAPARAMBIL HOUSE, NATTIKA BEACH POST, THRISSUR,
KERALA-680 566.
22. SURENDRAN VADAKKUMPATTU KRISHNANKUTTY,
VADAKKUMPATTU HOUSE, P.O.CHITILAPPILLY,
VIA PURANATTUKARA, THRISSUR, KERALA-680 566.

BY ADV. SRI..SANTHEEP ANKARATH (CAVEATOR)

THIS COMPANY APPEAL HAVING COME UP FOR ADMISSION ON
25-09-2015, ALONG WITH COA. 6/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: TRUE COPY OF THE STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1.8.2012 TO 31.8.2012 ISSUED BY THE SOUTH INDIAN BANK LTD., THRISSUR IN RESPECT OF THE HOLDING COMPANY PUNARJANI SECURITIES LIMITED, TRICHUR.

ANNEXURE B: TRUE COPY OF THE REPORT DTD.20.6.2015 OF THE INDEPENDENT CHAIRMAN SUBMITTED TO THE CLB.

ANNEXURE C: TRUE COPY FO THE ORDER DTD.7.7.2015 OF THE CLB CHENNAI IN CP.NO.34/2015.

ANNEXURE D: TRUE COPY OF THE CRIME NO.1892/2015 REGISTERED AGAINST DR.A.C.VELAYUDHAN & OTHERS u/S.323, 392, 506(ii), 34, 452 & 427 OF IPC.

ANNEXURE E: TRUE COPY OF THE FIR IN CRIME NO.1840/2015 OF TRICHUR EAST POLICE STATION REGISTERED ON 25.7.2015 AGAINST DR.A.C.VELAYUDHAN & OTHERS.

ANNEXURE F: TRUE COPIES OF THE EMAILS DTD.13.6.2015 SENT BY COMPANY SECRETARY MR.P.K.KRISHNAMURTHY TO DEPUTY CONSUL GENERAL, CONSULATE GENERAL OF INDIA, DUBAI AND THE REPLY EMAIL DTD.14.6.2015.

ANNEXURE G: TRUE COPIES OF LIST OF DISPUTED PROXY FORMS AND SOME OF THE DISPUTED PROXY FORMS ALONG WITH THE LETTERS SIGNED BY THE RESPONDENTS 2 & 3.

ANNEXURE H: TRUE COPY OF THE FIR IN CRIME NO.1443/2015 OF KUNNAMKULAM POLICE STATION REGISTERED ON 1.8.2015 AGAINST DR.A.C.VELAYUDHAN & OTHERS.

ANNEXURE I: TRUE COPY OF THE ORDER DTD.30.7.2015 OF THE ADM IN CHARGE OF DISTRICT MAGISTRATE, TRICHUR.

ANNEXURE J: TRUE COPY OF THE LETTER DTD.12.8.2015 OF THE ROC ADDRESSED TO THE DISTRICT COLLECTOR.

ANNEXURE K: TRUE COPY OF THE INTERIM ORDER OF STATUS QUO DTD.27.8.2015 PASSED BY THE CLB, CHENNAI IN CP.57/2015.

ANNEXURE L: TRUE COPY OF THE INTERIM ORDER DTD.21.8.2015 IN W.P. NO. 26110/2015 OF THIS HONOURABLE COURT.

Msv/

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ANNEXURE M: TRUE COPIES OF THE INTERIM ORDER DTD.24.8.2015 & MODIFIED ORDER DTD.25.8.2015 IIN W.P. NO.26110/2015 OF THIS HON'BLE COURT.

ANNEXURE N: TRUE COPY OF THE ORDER DTD.9.9.2015 IN CP.NO.5/2015 OF THE HON'BLE COMPANY LAW BOARD, CHENNAI BENCH.

ANNEXURE O: TRUE COPIES OF THE APPOINTMENT ORDERS OF DOCTORS.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

.....
COMPANY APPEAL Nos. 5 & 6 OF 2015
.....

Dated this the 25th September, 2015

J U D G M E N T

P.R.Ramachandra Menon, J:

The cause of action projected in these appeals is the same. Challenge is against the order dated dated 09.09.2015 passed by the Company Law Board (shortly 'CLB') in the concerned C.A. preferred in the relevant C.P. pending before the Company Law Borad, *Chennai*, whereby the earlier order passed by the CLB on 27.08.2015 (*ordering status quo to be maintained restoring the position as it existed on 16.06.2015 and 19.06.2015 respectively , with all powers vested upon them; however, with a rider that no Board or General Body meeting shall be held in both the companies*) was not extended, thus resulting in a vacuum. The challenge is also raised whereby it was unilaterally

decided to appoint an 'administrator', in place of the duly elected Board (forming the subject matter of C.P. No.34/.2015, approving the election conducted in the presence of the independent Chairman appointed by the Company Law Board).

2. The parties and proceedings are referred to, as given in Co.Appeal No.5 of 2015, except where reference is made otherwise. It is seen that similar orders have been passed in the two Company Petitions preferred by the appellants by way of C.P. 56 and 57 of 2015 and as such, the proceedings have been sought to be challenged separately, by filing these two appeals. Apprehending the course and proceedings, which might be pursued by the appellants, the second respondent has filed separate caveats in both the cases.

3. Mr. M.R. Rajendran Nair, the learned Sr. Counsel appearing for the appellants in Co. Appeal No.5 of 2015 and Mr. Jacob Mathew Manalil, the learned Counsel appearing for the appellants in Co.Appeal No.6 of 2015 addressed the Court on behalf of the appellants. Submissions were made on behalf of

the second respondent(caveator) by the learned Senior Counsel, Mr. P.K. Sureshkumar.

4. There was same dispute with regard to the administration and management of the first respondent Companies. In the said circumstance, C.P. 34 of 2015 was filed by the first respondent and others concerned before the Company Law Board, Chennai contending that the duly elected CMD and other Directors were sought to be ousted by parties having vested interest, on the strength of false and fabricated documents; which was sought to be intercepted by the CLB. During the pendency of the proceedings, the CLB found it fit and proper to cause an election to be conducted to the Board of the Companies under the Chairmanship of an independent person and it was accordingly, that Mr. S.M. Ameerul Millath, [former Regional Director, Western Region, ICLS Retd., Ministry of Corporate Affairs, New Delhi], was appointed in this regard. Under his Chairmanship, the election was conducted on 15.06.2015 in respect of the first respondent Company in

Co.Appeal 6 of 2015 and it was on 18.06.2015 in respect of the Company in Co.Appeal No.5 of 2015. In the election conducted as above, 'ten', out of the total twelve Directors belonging to the faction represented by the appellants in Co. Appeal 5 of 2015 were declared as elected; whereas in the other case , i.e. Co. Appeal No.6 of 2015, all the persons belonging to the faction represented by the appellants, (12 out of 12) were got elected. The proceedings were reported to the CLB and on the basis of the fate of election, the Company Petition (CP 34 of 2015) was dismissed as infructuous as per Annexure C order dated 09.07.2015, recording the facts and events. It is stated that, despite finalisation of the proceedings as above, the persons belonging to the opposite faction allegedly took the law into their hands and committed various offences including fabrication of records/evidence, involving serious offences. This led to registration of several crimes by the police and the matter is under investigation. While so, the persons belonging to the other group unauthorisedly and clandestinely created records

and allegedly held an extra ordinary general body meeting on 01.07.2015 and removed the appellants and other duly elected Directors from the Board of the Company and attempted to grab the management of the institution. On coming across the course and events, C.P. Nos. 56 and 57 of 2015 were filed by the appellants, seeking for immediate intervention and praying for appropriate reliefs, including to declare the extra ordinary meeting conducted on 01.07.2015 as unauthorised and to permit the appellants and other elected Directors (pursuant to finalisation of C.P. 34 of 2105 as per Annexure C order), to continue.

5. The appellants had filed C.A. 1 of 2015 in the concerned C.P., requesting to grant an interim order of 'status quo' in relation to the Board of Directors of the Company as it existed earlier and as confirmed by the CLB as per Annexure C order dated 09.07.2015 in C.P. 34 of 2015. Despite the time granted to file counter affidavit, it was not done by the respondents . It was accordingly, that 'Annexure K' interim order was passed by

the CLB on 27.08.2015, granting an order of 'status quo' to be in force till 10.09.2015, subject to some riders. However, on 09.09.2015, the said order came to be varied as per 'Annexure N order' dated 09.09.2015, referring to termination of service of some of Doctors and it was decided to appoint an 'Administrator' to oversee the affairs of the Company, even without any application from any corner in this regard. The CLB also observed that the interim order, which was to be operative till 10.09.2015, was not liable to be extended and the parties were required to suggest names of the Administrator on the next date of hearing, scheduled to be held on 16.09.2015 thus leaving the present state of affairs in a vacuum, in turn leading to the challenge.

6. The learned Counsel appearing for the appellants submits that there is absolutely no power or authority for the Company Law Board to appoint an 'Administrator', that too, when no such prayer or petition was raised/ filed before the Board as on the date of passing 'Annexure N' order. It is also

stated that, if at all appointment of an Administrator was to be justified under any circumstances, it could only be in a situation where there was a deadlock in the management. No such instance was ever pointed out and further when, election was held as ordered by the CLB under the Chairmanship of an independent Chairman, on 15.06.2015 and 18.06.2015, placing the elected members in office. It was on satisfying the merit involved, that an order of 'status quo' was passed by the CLB as per 'Annexure K' and there was no reason to have it varied under any circumstance, submits the learned Counsel. It is also stated that, termination of appointment of some Doctors was for valid reasons and that the same was not to be a subject matter of consideration for the CLB to appoint an Administrator. Even if the termination is bad, the remedy of the Doctors is to seek for reinstatement or damages, which is outside the scope of the proceedings before the Company Law Board .

7. The learned Sr. Counsel appearing for the Caveator/second respondent submits that the appeals are not

maintainable either on facts or in law. It is stated that the appeals have been preferred under Section 10F of the Companies Act 1956 and to maintain an appeal under the said provision, existence of a 'question of law' is necessary, which is not there, but for the disputed questions of fact. It is further stated that Annexure K interim order was passed by the CLB with a specific rider, that no Board or general meeting shall be conducted by both the Companies. The said condition was violated and that the Board was convened, as discernible from the orders issued by the concerned authority terminating the service of the doctors as aforesaid, (which were produced for perusal before the CLB and were returned, as observed in the subsequent order/Annexure N). The orders of termination proclaimed that they were issued 'as decided by the Board'; whereas convening of the meeting of the Board was virtually prevented by the CLB as per 'Annexure K' order. Issuance of such orders, terminating the service of the Doctors adversely affected the rights and interests of the Company and the share holders, apart from

having much adverse consequences with regard to the fate of the patients who are availing treatment from the hospital. With regard to the subsequent meeting held on 27.07.2015, the learned Counsel submits that notice dated 01.07.2015 was issued to all concerned and that the same was under the digital signature of the first appellant in Co. Appeal 5 of 2015 and hence the plea of non receipt of notice is not correct or sustainable. Interim order of 'status quo' was ordered by the CLB as per Annexure K order, for not filing counter affidavit and also for want of necessary material to show the service of notice dated 01.07.2015 as to the EOGM held on 27.07.2015. It is stated that a detailed counter affidavit has already been filed and copies of the relevant documents have been produced and hence that there is nothing wrong in having passed 'Annexure N' order, in view of the change in circumstances . The learned Counsel submits that the version of the appellants, that the digital signature has been forged and that a criminal case has been registered against the caveator and others concerned is

devoid of any merit, as the first appellant alone was having the custody of digital signature and that the 'password' was with him, which was not available or accessible to anybody. The learned Counsel further submits that the power to appoint an Administrator is flowing from Section 397 of the Companies Act and that Annexure -N order has been passed by the CLB in the best interest of the Company.

8. After hearing both the sides, this Court finds that the course and proceedings before the CLB have to be confined to the pleadings, evidence and reliefs sought for and if there is any transgression, question of law will be involved. There is no case that any of the parties had sought for appointment of an Administrator by filing any application. The so called documents produced by the Doctors were across the Bar and they were never forming part of the materials on record. 'Annexure N' order says that the CLB had already decided to appoint an Administrator. There is no pleading or evidence on record to the

effect that the administration/management of the Company had come to be in doldrums and that immediate alternative arrangement had to be made. This has to be viewed in the background where the CLB had already finalised the matter preferred by the appellant earlier by way of CP.34 of 2015, by passing Annexure C order, with reference to the election conducted under the Chairmanship of an independent Chairman appointed by the CLB. It is also relevant to note that a finding was already rendered by the CLB, as evident from Annexure K order, that the CLB was of the view that the petitioners therein having been elected in an EGM held on 15.06.2015 and 18.06.2015 under the Chairmanship appointed by the Bench, cannot be thrown out without due process of law. This position still stands good and no reason is stated to have a deviation, while passing Annexure N order. Since the interim order passed on 27.08.2015 vide Annexure K was not extended beyond 10.09.2015 and since an Administrator has been decided to be appointed (requiring the parties concerned to submit the names

of their choice, listing the matter to be considered further on 16.09.2015), it has resulted in a 'vacuum' as on date. Who is to deal with the affairs of the Company, is left in a fluid state, which may lead to utter chaos and law and order situation. In so far as the election of the appellants and other Directors, (pursuant to the orders passed by the CLB under the Chairmanship of an independent Chairman) stands conceded, the subsequent events with reference to the alleged meeting conducted on 27.07.2015 and the circumstances which necessitated such a change have to be established by the concerned respondents with reference to the actual facts and figures. Till such an exercise is done, arriving at an appropriate finding, the position as it existed earlier should continue, to safeguard the interest of all concerned. This is more so since, when the caveator contends that notice for the 'EOGM' scheduled on 27.07.2015 was issued on 01.07.2015, no such case was put forth from their side before the CLB, when the earlier CP.34 of 2015 was finalised by passing Annexure C order on 09.07.2015. It is for

the CLB to consider all these aspects.

9. Similarly, whether a situation has arisen causing a stalemate to the administration and management of the affairs, even after the election conducted as per the orders of the CLB quite recently; whether appointment of Administrator will be in the best interest of the company/share holders and patients and whether was it not necessary to have the parties let known as to the 'proposal' to appoint an Administrator and to address the CLB, in favour and against, are matters to be considered. Since a decision has been taken by the CLB as per 'Annexure N' order to appoint an Administrator, without any application preferred by anybody, this Court is of the view that proper and effective opportunity of hearing has not been afforded to the parties in this regard and hence the order requires to be intercepted.

10. It is brought to the notice of this Court by the appellants that the Caveator, in the attempt to grab the management and affairs of the Company had approached this Court by filing W.P(C).26110 of 2015 seeking to direct the

concerned bankers to release amounts from the accounts, for payment of salary and bonus to the workers, that too without impleading the appellants in the party array and obtained an interim order as borne vide 'Annexure L' dated 21.08.2015 i.e. on the date when the Court was closed for Onam vacation. On coming across the said order, the appellants moved this Court and as per the orders obtained from the Hon'ble Chief Justice, a Special Bench was constituted. As per Annexure.M (2) order dated 24.08.2015, the interim order passed on 21.08.2015 was kept in abeyance till the next date. The matter was considered by the vacation Bench and as per Annexure M(3)order dated 25.08.2015, the earlier orders dated 21.08.2015 and 24.08.2014 were varied/modified causing disbursement of the due amount towards salary and bonus by safeguarding the rights and interests of the employees concerned, causing the names of the employees and amounts payable to be incorporated by way of appropriate proceedings. It is pointed out that the said writ petition was subsequently dismissed as infructuous.

11. After hearing both the sides, this Court finds that there is no dispute as to the fate of the election conducted pursuant to the orders passed by the CLB under the Chairmanship of an independent Chairman appointed by the CLB and that the appellants and other Directors elected on 15.06.2015 and 18.06.2015 respectively were at the helm of the affairs. Whether a subsequent change has been resulted, whether it has been done in accordance with law and what should be further course and proceedings is a matter to be considered and decided by the CLB, after hearing both the sides. To say the least, 'Annexure N' order passed by the CLB on 09.09.2015, unilaterally deciding to appoint an Administrator without any pleading, prayer or petition, from any corner, that too resulting in a 'vacuum' by not extending the interim order of 'status quo' ordered as per 'Annexure K' is not correct or sustainable.

12. In the above facts and circumstance, Annexure N order dated 09.09.2015 stands set aside. It goes without saying that

consequential orders, if any, pursuant to Annexure N order also would stand set aside. The CLB is directed to consider and finalise the matters in CP.Nos. 56 and 57 of 2015, passing appropriate orders in accordance with law, after hearing both the sides. It is also open for the CLB to evaluate the factual position, as to the necessity to appoint an Administrator, if any such petition is filed by any of the parties concerned, whereupon a speaking order shall be passed with reference to the specific facts and figures, of course after affording an opportunity of hearing to both the sides. Annexure K order dated 27.08.2015 shall continue to govern the field till such time.

The appeals stand allowed. No cost.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

COMPANY APPEAL Nos. 5 & 6 OF 2015