

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

OP(C).No. 283 of 2015 (O)

**AGAINST THE DECREE AND JUDGMENT IN OS 51/2011 of SUB COURT, CHENGANNUR
DATED 25-09-2012.**

PETITIONER/DEFENDANTS NOS.1 TO 3:

- 1. M/S. CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LIMITED,
MULAKUZHA, CHENGANNUR, A PUBLIC LIMITED COMPANY
INCORPORATED UNDER THE COMPANIES ACT 1956
WITH ITS REGISTERED OFFICE AT MP-1/186,
(PREMISES OF THE CENTURY HOSPITAL)
MULAKUZHA, CHENGANNUR TALUK REPRESENTED
BY THE COMPANY SECRETARY SUBRAMONIAN.**
- 2. KURIAN PAULOSE,
CHAIRMAN & MANAGING DIRECTOR,
CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LIMITED, MULAKUZHA,
CHENGANNUR TALUK (KURIAN PAULOSE, AGED 70 YEARS,
POLACHIRACKAL KUMBHATHITTAYIL HOUSE, THAZHAKARA POST,
MAVELIKARA PO, ALAPPUZHA DISTRICT) REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER MR.PAUL P. KURIEN,
AGED 28 YEARS, S/O.KURIEN PAULOSE, POLACHIRACKAL,
KUMBHATHITTAYIL HOUSE,
THAZHAKARA MIRO THAZHAKARA VILLAGE, MAVELIKARA TALUK,
NOW WORKING AS THE EXECUTIVE DIRECTOR OF THE SAID COMPANY.**
- 3. PAUL KURIAN POLACHIRACKAL,
EXECUTIVE DIRECTOR,
CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LIMITED, MULAKUZHA,
CHENGANNUR TALUK (PAUL KURIAN POLACHIRACKAL,
AGED 32 YEARS, POLACHIRACKAL KUMBHATHITTAYIL HOUSE,
THAZHAKARA POST, MAVELIKARA PO, ALAPPUZHA DISTRICT.)**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR.
SRI.P.GOPINATH.
SRI.P.BENNY THOMAS.
SRI.K.JOHN MATHAI.
SRI.JOSON MANAVALAN.
SRI.KURYAN THOMAS.**

**RESPONDENTS/PLAINTIFF AND DEFENDANTS 4 TO 9
& ADDL. DEFENDANTS 10 TO 19:**

1. BABU VARGHESE, AGED 64 YEARS,
S/O.GEEVARGHESE, SUBI NIVAS, KANNAMKODU,
EZHAMKULAM VILLAGE, ADOOR TALUK, PIN-691 554.
2. DR.ZACHARIA PAUL POLACHIRACKAL,DIRECTOR,
CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LTD, MULAKUZHA,
CHENGANNUR TALUK, AGED 28 YEARS,
POLACHIRACKAL KUMBHATHITTAYIL HOUSE,
THAZHAKARA POST, MAVELIKARA PO, ALAPPUZHA - 690 102.
3. DR.ALEXANDER KOSHY,
CHIEF EXECUTIVE OFFICER AND MEDICAL SUPERINTENDENT,
CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LTD,
MULAKUZHA, CHENGANNUR TALUK,
RESIDING AT KALLUPALATHINKAL, CENTURY GARDENS,
MULAKUZHA, CHENGANNUR - 689 505.
4. THOMAS ALEXANDER K., AGED 60 YEARS,
KIZHAKKEVEETIL, PANDIT COLONY,
KAWADIYAR THIRUVANANTHAPURAM DISTRICT, PIN-695 003.
5. BABU JOHN, S/O.JOHN, AGED 61 YEARS,
PALATHUMPATTU HOUSE, BETHEL JUNCTION,
CHENGANNUR 689 121.
6. K.JOHN JACOB, DIRECTOR,
CENTRAL TRAVANCORE SPECIALISTS HOSPITAL LTD,
MULAKUZHA, CHENGANNUR TALUK - 689 505.
7. P.S. VIJAY KUMAR,
NOMINEE DIRECTOR,
KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
KESTON ROAD, KAWADIYAR, THIRUVANANTHAPURAM,
PIN-695 003.
8. K. GEORGE, AGED 69 YEARS,
S/O.LATE VARKEY THOMAS, PEACE VILLA,
KAIPATTOORMURI KAIPATTORMURI PO,
VALLICODE VILLAGE-689 648.
9. ALEYAMMA GEORGE, W/O.K.GEORGE, AGED 65 YEARS,
PEACE VILLA, KAIPATTOORMURI, KAIPATTORMURI P.O,
VALLICODE VILLAGE-689 648.
10. K. JANARDHANA PILLAI, AGED 70 YEARS,
S/O.LATE KUNJAN PILLAI, NELLIKOMMATHU HOUSE,
VETTIYAR PO, VETTIYAR VILLAGE,
MAVELIKARA TALUK- 690 558.

11. JANARDHANA KURUP, AGED 73 YEARS,
S/O.NARAYANA PILLAI, NANARDHANA VILLA,
PANNIVIZHA VILLAGE, ANADAPALLY PO, ADOOR TALUK,
PATHANAMTHITTA 691 525.
12. JOHNEY VARGHESE, AGED 82 YEARS,
S/O.LATE VARKEY VARGHESE,
PULIPRETHU JOHNEY VILLA, THITTAMEL,
CHENGANNUR VILLAGE, ALAPPUZHA DISTRICT - 689121.
13. D.K. KOSHY, AGED 80 YEARS,
S/O.KOSHY DANIEL, KOTTAMUKALIL HOUSE,
KANNAMKODU PO, ADOOR VILLAGE - 691 523.
14. BINU K. KOSHY, AGED 48 YEARS,
S/O.B.K.KOSHY, KOTTAMUKALIL HOUSE.
KANNAMKODU PO. ADOOR VILLAGE - 691 523.
15. ALEYAMMA BABY KOSHY, AGED 59 YEARS
W/O.LATE BABY KOSHY, THEKKEKADAVINAL, JOY BHAVAN.
PERINGANADU VILLAGE, ADOOR TALUK - 691 551.
16. VARGHESE ABRAHAM, AGED 71 YEARS,
S/O.LATE K.A.VARGHESE, KUZHIMURIYIL HOUSE,
KUMBAZHA MURI, PATHANAMTHITTA VILLAGE-689 653.
17. T.J. GEORGE, AGED 70 YEARS,
S/O.LATE GEEVARGHESE YOHANNAN, ABY SADAN,
VENMONEY PO., CHENGANNUR TALUK,
ALAPPUZHA DISTRICT - 689 509.

R1 BY ADVS. SRI.PHILIP T.VARGHESE.
SRI.THOMAS T.VARGHESE.
SMT.ACHU SUBHA ABRAHAM.
SMT.SUNANDA SUKUMARAN.
SMT.V.B.VRINDA.
SMT.K.R.MONISHA.
SMT.VIDHYA KISHAN.
SRI.BOBY C. BABY.
SRI.ANOOP BHASKAR.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 - TRUE COPY OF THE PLAINT IN O.S.NO.51/2011 DATED 20-09-2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, CHENGANNUR.
- EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT DATED 16-6-2012 IN OS NO.51/2011.
- EXT.P3 - TRUE COPY OF THE ORDER DATED 25-09-2012 IN OS NO.51/2011.
- EXT.P4 - TRUE COPY OF THE B-DIARY IN OS NO.51/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, CHENGANNUR.
- EXT.P5 - TRUE COPY OF THE ORDER DATED 15-11-2013 (JUDGMENT ON PRELIMINARY ISSUES 1 AND 2) IN O.S.NO.51/2011.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

amk

A.HARIPRASAD, J.

O.P (C) No.283 of 2015

Dated this the 8th day of April, 2015.

J U D G M E N T

Petition under Article 227 of the Constitution of India. Petitioners are defendants 1 to 3 in O.S No.51/2011 before the Subordinate Court, Chengannur. The suit is one for declaration and consequential injunctive reliefs. First petitioner is the company incorporated under the Companies Act, 1956. Petitioners 2 and 3 are the Chairman & Managing Director and the Executive Director of the first petitioner company. It is the contention of the petitioners that they along with Dr.Zacharia Paul Polachirackal and Mrs.Lucy Paulose have subscribed to 47% of the paid up capital of the company. The first respondent is an equity shareholder of the company and holds 0.027% shares out of the total equity capital of 27 crores. Ext.P1 is the copy of the plaint. Along with the plaint an application for temporary injunction was also filed. Ext.P2 is the copy of the written statement. The case set up in the plaint is that the

defendants are mismanaging the company causing great loss to the company. All these contentions have been denied by the defendants in their written statement. According to them, there is no instance of mismanagement or oppression as claimed in the plaint. Further, they are taking all steps in the administration strictly in accordance with the provisions in the Companies Act, 1956.

2. Heard the learned counsel for the petitioners and the learned counsel for the contesting respondents.

3. The petitioners are challenging Exts.P3 and P5 orders passed by the trial court. ExtP3 is the order dated 25-09-2012 whereby the court below directed the following :

“There is already an order from this court in I.A No.69/2011, restraining the 1st respondent from convening Annual General Body Meeting without complying the formalities u/s 219 of the Companies Act until disposal of this suit. I hereby bringing

the same to the notice of the 1st respondent again.

Considering the request of the 1st defendant's counsel the case is reopened for further hearing and in the meantime the 1st respondent is directed to maintain status quo. For further Hearing to 5.10.12.”

4. According to the learned counsel for the petitioners the order passed by the court below causes serious difficulties in the administration of the company, especially that they are not able to convene the statutory meetings to be held under the provisions of the Companies Act, 1956. That apart, the petitioners apprehend serious consequences under the new Companies Act (namely Companies Act, 2013) as there are strict penalty for not holding meetings. Therefore, the learned counsel for the petitioners submitted that Ext.P3 order has to be suitably modified. In respect of Ext.P5, learned counsel for the petitioners submitted that the question of maintainability is not

seriously challenged at present in these proceedings as it can be raked up in a regular appeal, if required.

5. Learned counsel for the contesting respondents submitted that the petitioners are not properly managing affairs of the company and they are attempting to hold meetings in defiance of the provisions of Companies Act, 1956. It is also submitted that the court below rightly passed Ext.P3 order considering the fact that the petitioners were attempting to prolong the proceedings and thereby causing obstacles in the disposal of the interlocutory applications.

6. After hearing the learned counsel on both sides and on perusal of the records, I am of the view that Ext.P3 order can be clarified so that the entire issue can be resolved. It cannot be disputed that the persons in administration of a company is bound to hold not only Annual General Meetings, but also to take steps in the administration as provided under the Act. Apart from Section 219 of the Act, there are other provisions which

will have to be observed meticulously by the persons in management of the company. Nobody shall be allowed to take a contention that they failed to discharge their statutory duties on account of orders passed by the Court. Therefore, I hereby clarify Ext.P3 order in the following manner:

Petitioners shall take all steps to hold meetings strictly complying with Section 219 and other provisions of the statute. Ext.P3 order will not be treated as a bar in holding meetings in accordance with the provisions in the Companies Act, 1956. The request of the learned counsel for the respondent for appointing an observer at the time when the meetings are to be held shall be considered by the court below, if it arises for consideration. To alleviate the apprehension of the respondents, it is hereby directed that the meeting shall be held on any day after 20th May, 2015. Petitioners are permitted to take all steps to convene a

meeting on a day after 20th May, 2015. It is further directed that the court below shall dispose of the suit within six months from 20th May, 2015.

All pending interlocutory applications will stand dismissed.

amk

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge