

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

RP.No. 136 of 2015 (O) IN OP(C).2493/2014

OP(C)No. 2493/2014 OF THE HONOURABLE HIGH COURT OF KERALA

REVIEW PETITIONERS/PETITIONERS :-

1. M.PABDUL MAJEED, S/O. MAMMU,
AGED 49 YEARS,
MANDENKANDI PUTHIYAPURAYIL,
P.O. KANHIRODE, KANNUR DISTRICT.
2. M.P.C. HAMSA, S/O. MUHAMMEDALI,
AGED 60 YEARS, M.P.C. HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT.
3. M. KUMARAN, AGED 62 YEARS,
S/O KANNAN, KALAPURAYIL HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT.
4. M.A UTHAMAN, AGED 54 YEARS,
S/O BAPPU, EDAPPARA HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT.
5. K. LALITHA, AGED 62 YEARS,
D/O RAVUNNI, LEENALAYAM,
P.O. KANHIRODE, KANNUR DISTRICT.
6. C.P RAMANI, AGED 55 YEARS,
W/O. PURUSHOTHAMAN, JISHA NIVAS,
P.O. KANHIRODE, KANNUR DISTRICT.
7. T.K. SHAHARBAN, AGED 42 YEARS,
W/O. ABDULLA, IDUKKILAKATH,
P.O. KANHIRODE, KANNUR DISTRICT.
8. A.P FALGUNAN, AGED 55 YEARS,
S/O RAMAN, SARAVANA,
P.O. KANHIRODE, KANNUR DISTRICT .

9. KANHIRODE KSHEEROLPADAKA SAHAKARANA
SANGHAM LTD. NO. C 113 (D).
P.O. KANHIRODE, KANNUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS/RESPONDENTS :-

1. K.MANOCHARAN, AGED 53 YEARS,
S/O KUNHIRAMAN, KAVUNKAL HOUSE,
THALAMUNDA, P.O. KANHIRODE,
KANNUR DISTRICT - 670 592.
2. O. ASOKAN,, AGED 51 YEARS,
S/O ANANTHAN, SHAIMALAYAM,
P.O. KANHIRODE, KANNUR DISTRICT - 670 592.
3. B.P KRISHNAN, AGED 75 YEARS,
S/O RAMAN, KANDATHIL HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT - 670 592.
4. PALLIKKAL MAMMU, AGED 60 YEARS,
S/O MAMMALI, PALLIKKAL HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT - 670 592.
5. P.P.NALINI, AGED 65 YEARS,
W/O KUNJIRAMAN, PUTHENPURAYIL HOUSE,
P.O. KANHIRODE, KANNUR DISTRICT - 670 592.
6. CO-OPERATIVE ARBITRATION COURT (NORTHERN)
KOZHIKODE, HOUSEFED COMPLEX, 5TH FLOOR,
SASTHRI NAGAR ROAD, ERATHIPALAM P.O.,
KOZHIKODE - 673 001.

R BY SRI.K.P.SREEKUMAR

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RPNo. 136 of 2015 (O) IN OP(C).2493/2014

APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE- I :- TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE
6TH RESPONDENT IN O.P.(C) NO.2493/2014 DATED 08.01.2015.**

**ANNEXURE- II :- TRUE COPY OF THE ORDER IN I.A.NO.123/2014 IN ARC.44/2012
PASSED BY THE 6TH RESPONDENT.**

RESPONDENT(S)' ANNEXURES :- NIL

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//TRUE COPY//

P.A. TO JUDGE

P.BHAVADASAN, J.

Review Petition No. 136 of 2015

IN

O.P.(C) No.2493 of 2014

Dated this the 9th day of February, 2015

ORDER

The judgment dated 09.12.2014 in O.P.(C)No.2493 of 2014 is sought to be reviewed under Order 47 Rule 1 of Civil Procedure Code on three grounds.

i) Reliance is placed on Annexure-I document which is a counter affidavit filed by the sixth respondent in Original Petition i.e. O.P.(C)No.2493 of 2014.

ii) Inspiration is drawn from Annexure-II which is an order in I.A.No.123 of 2014 in ARC 44 of 2012.

iii) This Court has not properly considered the dictum laid down in **Manak Lal v. Dr.Prem Chand Singhvi** [AIR 1957 SC 425]

2. It is unnecessary to go in to the facts in detail since that exercise has already been undertaken while

disposing of the O.P.(C)No.2493 of 2014. Based on the first ground, it is contended that in the counter affidavit filed by the 6th respondent, he has expressed his opinion that he has no objection in transferring the case to any other Court. This is taken as the first ground in this review petition.

3. One ought to notice that the person concerned has denied all the allegations in the petition and the sentence relied on by the learned counsel for the review petitioners can be only treated as his impartiality in the sense that he is not very keen that he himself should decide the matter and that he has no objection in any other Officer dealing with the matter. That does not mean that the matter needs to be transferred.

4. As regards the second ground is concerned, the main contention is that at that time when Annexure-II order was passed there was recital that the commissioner shall not give prior notice to the petitioners herein. That fact is conspicuously absent in the order that was subsequently issued by the authority.

5. Except for the oral averment, there is no evidence to prove the above fact. If as a matter of fact there was such a direction, the best course would be to produce the Commission Report. Surely and certainly the Commission Report would have mentioned that fact. For the reasons best known to the petitioners they have not produced the Commission Report. It is difficult to believe that the order produced as Annexure-II contained a specific direction that notice need not be given to the petitioners for want of convincing evidence.

6. As far as the decision reported in **Manak Lal v. Dr.Prem Chand Singhvi** (Supra) is concerned, that was a decision referred to by the High Court of Kerala in the decision cited in **Rev.Fr.Punnen Thomas and Another vs. Moran Mar Basselios and others** (1963 KHC 360) which has in detail been dealt in the order under review. Of course, this Court felt that the principles laid down in the said decision i.e. **Manak Lal v. Dr.Prem Chand Singhvi** (Supra) has no application to the facts of this case.

7. The learned counsel for the petitioners relied on the following passage in **Manak Lal v. Dr.Prem Chand Singhvi** [1957 KHC 607];

“It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave. L.C. has observed in *From United Breweries Co.v.Bath Justices*, 1926 App Cas 586 at p 590 (A):

“This rule has been asserted, not only in the case of Courts of Justice and other Judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others.’

8. In the said case, on a perusal of the facts, it can be seen that there was a strong likelihood of bias. That principle cannot be applied to the facts of this case. Except for the isolated incident of so called issuance of

commission after the counsel for the petitioners before the Tribunal had left the Court, cannot be taken as a ground to conclude bias on the part of the authority concerned. One has to appreciate the conduct of the authority in the light of the other items of evidence available on record. They need not be repeated. There is nothing which could have given rise to the feeling of bias which is pronounced and apparent. There is no such situation in the case on hand.

For the above reasons, this Court finds no reasons to review the judgment in O.P.(C)No.2493 of 2014 dated 09.12.2014. This Review Petition is dismissed as it is without any merits.

Sd/-

P.BHAVADASAN
JUDGE

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//TRUE COPY//

P.A. TO JUDGE