

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WA.No. 788 of 2015
IN WP(C).16994/2014

AGAINST THE JUDGMENT IN WP(C) 16994/2014 of HIGH COURT OF KERALA
DATED 28-11-2014

AGAINST THE ORDER IN RP 56/2015 of HIGH COURT OF KERALA
DATED 27-01-2015

APPELLANT/RESPONDENTS 1 TO 3:

1. THE MANAGING DIRECTOR, THE KOTTAYAM -
WHOLESALE CO-OPERATIVE CONSUMER STORES
LTD NO K 162, CENTRAL JUNCTION, KOTTAYAM-686 001
2. THE KOTTAYAM WHOLESALE CO-OPERATIVE CONSUMER-
STORES LTD NO. K 162, CENTRAL JUNCTION,
REPRESENTED BY ITS MANAGING DIRECTOR,
KOTTAYAM 686 001.
3. THE BOARD OF MANAGEMENT,
KOTTAYAM WHOLESALE CO-OPERATIVE CONSUMER STORES LTD
NO. K 162, CENTRAL JUNCTION
KOTTAYAM 686 001
REPRESENTED BY ITS PRESIDENT

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS/PETITIONERS/FOURTH RESPONDENT:

1. P.R.THANKAPPAN
S/O. P.J RAVEENDRAN, PALLIKKUNNIL HOUSE
PATHAMUTTOM P.O KOTTAYAM DISTRICT 686 532
2. V.T BABY,
S/O.THOMAS, VARAPALLIL HOUSE, KIDANGOOR P.O.
KOTTAYAM DISTRICT 686 583.
3. K.S RAMESH BABU,
S/O. T.S SANKU, DARSANA BHAVAN, KUDAMALLOOR P.O
KOTTAYAM DISTRICT 686 017.

4. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001

R1,R2,R3 BY ADV. SRI.V.M.KURIAN

R1,R2,R3 BY ADV. SRI.MATHEW B. KURIAN

R1,R2,R3 BY ADV. SRI.K.T.THOMAS

BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

W. A. No.788 of 2015

Dated this the 3rd day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The appellants are the respondents in the writ petition. The writ petitioners were compelled to approach this Court challenging the unilateral fixation of liability to an extent of ₹ 4,95,029.42/- alleging shortage of materials in the concerned establishment where the writ petitioners are stated to be working as Managers. The prayers are in the following terms:

- “i) To issue a writ of certiorari or other appropriate writ order or direction quashing Exts.P3 and P5 orders passed by respondents 2 and 3 respectively.
- ii) To declare that the proceedings initiated by respondents 2 and 3 on the basis of Ext.P3 memo is illegal and unsustainable in law.
- iii) To issue a writ of mandamus or other appropriate writ order or direction directing

the 2nd respondent to disburse the D.A. arrears, Leave Surrender etc. to the petitioners immediately.

- iv) To grant such other and further reliefs as this Honourable Court may deem fit to grant in the facts and circumstances of the case.”

2. After hearing both the sides, the learned Judge observed that the course pursued by the respondent Society fixing the liability as aforesaid was not correct and sustainable in so far as no proper quantification exercise was done or any decision was taken with regard to the alleged delinquency. It was accordingly that Exts.P3 and P5 issued by the Society were set aside directing the matter to be considered and enquired into by the executive committee with proper notice to the writ petitioners as to the grievance projected by them. The allowance payable to the writ petitioners which was stated as withheld was ordered to be released in the said circumstances. This in turn is sought to be challenged by the Society by filing the present appeal.

3. During the pendency of the appeal, I.A. No.489 of

2015 was filed by the Society producing a copy of the enquiry report submitted by the concerned enquiry officers on 13/01/2015. Based on the said enquiry report, action was taken by the competent authority against the writ petitioners/respondents 1 to 3 as per the proceedings dated 29/04/2015 fixing the liability to the tune of ₹ 4,95,029.42/- as the loss stated as caused to the Society as per Annexure-A4. The learned counsel for the writ petitioners/ respondents 1 to 3 submits that, as contained in Annexure-A4 itself, the writ petitioners/respondents 1 to 3 have been set at liberty to prefer statutory appeal before the Managing Committee.

4. The learned counsel appearing for the appellant Society submits that the Society had passed Ext.P3 in the earlier round of litigation, seeking to realize the amount stipulated therein, based on the quantification of loss stated as resulted because of the deficiency in the stock. In fact, the writ petitioners/respondents 1 to 3 had submitted an application on 04/01/2014 requesting to waive interest

(sought to be realized at the rate of 15%) which in turn was replied vide Ext.P3 dated 03/02/2014, that the request for waiver of interest will be considered subject to satisfaction of the liability as aforesaid. It is also pointed out that no other punitive action was intended to be taken against the writ petitioners/respondents 1 to 3, but only required to compensate the loss sustained to the Society or else it will be recovered from the allowance payable to the writ petitioners/respondents 1 to 3.

5. The fact remains that, as on date, the domestic enquiry ordered against the writ petitioners/respondents 1 to 3 who are the delinquent employees has been finalised and based on Annexure-A1 Domestic Enquiry Report, finding the writ petitioners/respondents 1 to 3 guilty, Annexure-A4 has been passed, confining the same to the extent of realizing the loss, with liberty to the writ petitioners/respondents 1 to 3 to challenge the same before the Managing Committee by way of appropriate proceedings. In

the above circumstances, this Court finds that nothing further requires to be considered in this appeal and the same stands closed, without prejudice to the rights and liberties of the writ petitioners/respondents 1 to 3 to challenge Annexure-A4 by way of appropriate proceedings, in accordance with law.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE