

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WA.No. 813 of 2015 () IN WP(C).10533/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 15033/2015 of HIGH COURT OF KERALA
DATED 31/3/15**

APPELLANT(S)/3rd RESPONDENT IN WPC 10533/2015:

**COCHIN CO-OPERATIVE HOSPITALS SOCIETY LTD.NO.E-288, GANDHI
NAGAR, KOCHI-682020
REPRESENTED BY THE PART TIME ADMINISTRATOR
(DEPUTY REGISTRAR (ADMINISTRATION)
O/O.THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G),
ERNAKULAM.**

BY ADV. SRI.P.P.JACOB

RESPONDENT(S)/PETITIONERS 1 AND 2 AND R1, 2, 4 & 5 IN WPC 10533/15:

- 1. P.C.CHERIAN
PRESIDENT
COCHIN CO-OPERATIVE HOSPITALS SOCIETY LTD.NO.E-288
GANDHI NAGAR, KOCHI-682020
RESIDING AT PADINJARATHALAKKAL, THE NEST, TOWER ROAD
FORTKOCHI-01.**
- 2. MANU JACOB
THE HONORARY SECRETARY
COCHIN CO-OPERATIVE HOSPITALS SOCIETY LTD.NO.E-288
GANDHI NAGAR, KOCHI-682020, RESIDING AT ARAKKAL HOUSE
A.L.JACOB ROAD, KOCHI-682035.**
- 3. THE JOINT REGISTRAR OF CO OPERATIVE SOCIETIES(G)
ERNAKULAM, CIVIL STATION, B-2 BLOCK, 5TH FLOOR,
KAKKANADU,
ERNAKULAM-682030.**
- 4. THE DEPUTY REGISTRAR (ADMINISTRATION)
O/O.THE JOINT REGISTRAR
ERNAKULAM/PART TIME ADMINISTRATOR
COCHIN CO-OPERATIVE HOSPITALS SOCIETY LTD.NO.E-288
GANDHI NAGAR, KOCHI-682020.**

5. GOVINDANKUTTY M.V.
UNIT INSPECTOR, EDAPPALLY UNIT
O/O.THE ASST.REGISTRAR OF CO-OPERATIVE SOCIETIES (G)
KANAYANNOOR, ERNAKULAM DISTRICT-682011.

6. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM-695001.

BY SPL.GOVERNMENT PLEADER SRI.D.SOMASUNDARAM
R BY SRI.N.RAGHURAJ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-04-2015
ALONG WITH WA NO.850/15 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WA NO.813/15

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE 1: ORIGINAL INTERIM ORDER IN WPC 10533/15 DT 31.3.15.

ANNEXURE II: TRUE PHOTOCOPY OF THE LEASE DEED EXECUTED BY APPELLANT SOCIETY WITH THE GOVERNMENT DATED 24.6.1977.

ANNEXURE III: TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE KSEB TO THE APPELLANT SOCIETY DT NIL.

ANNEXURE IV: TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), KANAYANNOOR DT 12.1.13.

ANNEXURE V: TRUE PHOTOCOPY OF THE STATEMENT OF THE AMOUNT DUE TO THE APPELLANT SOCIETY.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & RAJA VIJAYARAGHAVAN V., JJ.
=====

WA Nos.813 & 850 OF 2015
=====

Dated this the 10th day of April, 2015

J U D G M E N T

Antony Dominic, J.

WP(C) No.10533/15 was filed by the President and Honorary Secretary of the Cochin Co-operative Hospitals Society challenging Exts.P6 and P7, which are orders dated 25/3/15 placing the Board of Directors of the Society under suspension for a period of six months and also appointing a part time administrator to the society. In the said writ petition, the learned single Judge passed order dated 31/3/15 staying Ext.P6 for a period of three months and directed the 1st respondent in the writ petition to restore the elected Board of Directors to office forthwith. The learned single Judge also restrained the Administrator from interfering with the administration of the society and permitted the proceedings under Section 65 of the Kerala Co-operative Societies Act to continue.

2. WA No.813/15 is filed by the Society represented by its Administrator, while WA No.850/15 is filed by the Joint Registrar and

the Registrar of Co-operative Societies. In both these appeals, interim order is under challenge.

3. We heard the learned counsel for the appellant in WA No.813/15, learned special Government Pleader appearing for the appellants in WA No.850/15 and the learned senior counsel appearing for the writ petitioners.

4. Reading of the order passed by the learned single Judge would show that according to the learned single Judge, despite the provisions of Article 243ZL of the Constitution of India and Section 32 of the Kerala Co-operative Societies Act, to which his attention was invited, he was not *prima facie* satisfied that these provisions did confer any power on the appellants in WA No.850/15 to order “suspension” of the elected Board of Directors of a Co-operative Society, as has been done by Ext.P6 order dated 25/3/15. It is on that *prima facie* satisfaction that the learned single Judge has passed the interim order.

5. The contention raised by the learned counsel for the appellants is that Article 243ZL read with Article 243ZT require that the statutes governing Co-operative Societies to also amend statutes providing for suspension/removal of the Board of

Directors and that in the event, such amendment is not brought into the statute within the period provided in Article 243ZT, the above provisions of the Constitution would prevail. It is therefore submitted that the word “removal” provided in Section 32 of the Kerala Co-operative Societies Act, as amended, would also take in the power of suspension. This, according to the counsel, is further clear from the third proviso to Section 32(1), which specifically used the word 'suspension'.

6. Counsel also referred us to the judgments of the Apex Court in **S.Sundaram v. V. R Pattabiraman** (AIR 1985 SC 582) and **Sidharth Vyas v. Ravi Nath Misra** [(2015) 2 SCC 701] to impress upon the functions of the proviso incorporated in the statute. Learned special Government Pleader also made reference to the audit report recommending an enquiry and the preliminary enquiry report submitted by the Assistant Registrar and also to Ext.P6 to satisfy us that the order of suspension was eminently justified in the factual circumstances highlighted herein.

7. On the other hand, learned senior counsel for the writ petitioners submitted that the power of suspension is the power

which should be conferred and that Section 32(1) did not contain any such express conferment of power. According to him, the proviso cannot amount to independent conferment of power and to support that contention, counsel relied on the judgment of the Apex Court in **Haryana State Co-operative Land Development Bank Ltd. v. Haryana State Co-operative Land Development Banks Employees Union** (2004) 1 SCC 574) and also referred to Section 65(6) of the Kerala Co-operative Societies Act to contend that action under Section 32 is possible only after receipt of a report of enquiry and pointed out that enquiry under Section 65 is only pending. Therefore, according to the counsel, at any rate, action taken under Section 32 is premature.

8. We have considered the submissions made. Admittedly, the appeals now before us are against an interim order passed by the learned single Judge and in these appeals, we are only concerned with the question whether the learned single Judge was justified in passing such an interim order.

9. As we have already stated, reading of the interim order shows that the learned single Judge was *prima facie* satisfied that

in the absence of any express conferment of such power under Section 32, appellants in WA No.850/15 could not have placed the elected Board of members of a Co-operative Society under suspension. While appreciating the question whether this view taken by the learned single Judge is a plausible one, we have to concede to the fact as contended by the appellants and admitted by the respondents also that there is no such express conferment of power of suspension in Section 32 of the Kerala Co-operative Societies Act. The question whether power of suspension is a power incidental to the power of removal, the expression used in Section 32(1) of the Kerala Co-operative Societies Act or whether such a power can be drawn from the wording of the third proviso to the said section are matters, in our view, which are to be considered at the stage when the writ petition itself is heard and not at this interlocutory stage.

In this background, the *prima facie* satisfaction of the learned single Judge on the material now produced and in the light of the language of Section 32 and 243 ZL, according to us, cannot be said to be erroneous for any reason. Therefore, we

decline to interfere with the interim order passed by the learned single Judge and the appeals are accordingly dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**RAJA VIJAYARAGHAVAN V.,
JUDGE**

Rp