

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WA.No. 1378 of 2015
IN WP(C).19146/2015

AGAINST THE ORDER IN WP(C) 19146/2015 of HIGH COURT OF KERALA DATED
26-06-2015

APPELLANTS/RESPONDENTS 4 AND 5:

1. THE PRESIDENT,
PEECHI SERVICE CO-OPERATIVE BANK,
PEECHI, PATTIKKAD P.O.,
THRISSUR DISTRICT - 680 652.
2. THE PEECHI SERVICE CO-OPERATIVE BANK,
PEECHI, PATTIKKAD P.O.,
THRISSUR DISTRICT.
REP. BY ITS SECRETARY - 680652.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 TO 3:

1. TESSY VARGHESE, VATTAMKONDATHIL HOUSE,
ASSARIKADU P.O., THRISSUR - 680751.
2. JASMINE SHAJI, PERUMANA HOUSE,
CHENNAIPPARA P.O., THEKKEKKULAM
THRISSUR DISTRICT - 680651.
3. MOHANAN C., MULLAPPILLY HOUSE,
VAZHUKKUMPARA, CHUVANNAMANNU P.O.,
THRISSUR- 680652.
4. THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
5. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
TRIVANDRUM - 695 001.

6. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(GENERAL), O/O JOINT REGISTRAR,
THRISSUR DISTRICT - 680 001.

R1 TO R3 BY SRI.M.P.ASHOK KUMAR

R4-R6 BY SR. GOVERNMENT PLEADER SRI.MOHAMMED SHAFI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W. A. No.1378 of 2015

Dated this the 1st day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Interim order passed by the learned single Judge on 26/06/2015 in W.P.(C) No.19146 of 2015 ordering to keep the implementation of the resolution, if any, passed to expel the members/writ petitioners from the membership of the fifth respondent Bank for a period of one month is sought to be challenged by the appellants herein who are the President and the Society concerned.

2. Writ petition was filed by the respondents 1 to 3 with the following prayers:

- “i. Issue a writ of mandamus or other appropriate writ or order quashing Ext.P5 and Ext.P8 series of show cause notices.
- ii. Declare that the board of directors of a co-operative society has no authority or jurisdiction to expel other Directors of the

board from the primary member of a society.

- iii. Declare a director elected to the board of directors of a co-operative society is entirely continue as director as a direct board member till the expiry of his elected term.
- iv. Declare that the special general body meeting of a Co-operative Society can be convened only on receipt of a requisition in writing from 1/5th of the total number of members or on requisition writing from the registrar under section 30 read with rule 36 of the co-operative societies Act and rule.
- v. Declare that a member has got a statutory right of making representation before expulsion and the board has no right to waive section 17(2) of the Kerala Co-operative Societies Act.
- vi. Issue a writ of mandamus or other appropriate writ or order directing the 4 to consider.”

3. The case of the respondents 1 to 3 appears that proceedings have been issued by the Society contrary to the actual facts and figures merely based on some allegations and it is proposed to expel them from the membership in the Society. A copy of the resolution dated 02/05/2015 is produced as Ext.P5. It is stated that the said resolution taken by the Society was sought to be challenged before the

second respondent under Section 176 of the Co-operative Society Rules by filing Ext.P6 and it is pending consideration before the second respondent Registrar. It is in the meanwhile that further proceedings were pursued issuing show cause notices by Ext.P8 series and this necessitated the petitioners/respondents 1 to 3 to challenge the proceedings by filing W.P.(C) No.19146 of 2015.

4. When the writ petition came up for admission before the learned single Judge of this Court, the writ petition was admitted taking note of the contentions raised by the writ petitioners that the Special General Body Meeting had already been decided to be convened on 28/06/2015 and implementation of the resolution, if at all to be taken in the Special General Body Meeting was ordered to be kept in abeyance for a period of one month. Simultaneously, it was also ordered that the third respondent or a senior officer deputed by him shall file a statement in terms of Section 30 (5) of the Kerala Co-operative Societies Act. The matter stands listed for consideration on 14/07/2015. This order is

sought to be challenged by the Bank and the President by filing the present appeal.

5. Heard the learned counsel appearing for the appellants in detail, who submits that the interim order passed by the learned single Judge is not correct or sustainable in the eye of law, mainly for the reason that the writ petition itself was not liable to be entertained. Specific reference is made to the nature of relief prayed for in the writ petition. Reference is also made to the relevant provisions of law, as to the course of various steps to be pursued with regard to the expulsion of members, if they act in violation of the interest of the Society. The writ petitioners happened to be the members of the Society, as well as the members of the Board of Directors and as such, the detrimental activities being pursued by such persons has to be viewed with more serious concern. The learned counsel seeks to make a reference to the provisions of the Act and Rules in support of the contention that the writ petition itself is not maintainable.

6. After going through the materials on record, this Court finds that the challenge raised by the appellants does not require to be examined by this Court on merits, mainly for the reason that the learned single Judge has only ordered to keep the implementation of the resolution, if any, to be taken to expel the members in the Special General Body which was sought to be convened on 28/06/2015, in abeyance for a period of one month and the matter has been listed for consideration on 14/07/2015. No much prejudice can be stated as caused, by keeping implementation of the proceedings in abeyance for a period of 'one month', as ordered by the learned single Judge. It is also relevant to note that the entire proceedings sought to be pursued by the Bank were never intercepted by the learned single Judge and the proceedings were let to go on, particularly with regard to convening of the Special General Body Meeting on 28/06/2015. It is always open for the appellants to bring the turn of events including both the factual and legal position to the notice of the learned single

Judge and have the matter adjudicated accordingly. The appeal is premature.

7. In the said circumstances, interference is declined, without prejudice to the rights and liberties of the parties concerned to have the matter pursued before the learned single Judge. All the issues raised both by the petitioners in the writ petition and the appellants in the writ appeal, both on the question of fact and law including maintainability, are left open.

The writ appeal is disposed of as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

