

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 3256 of 2012 (F)

PETITIONER(S):

**SUNISH GEORGE, AGED 40 YEARS,
S/O.GEORGE, 37/104 7A
VRINDAVAN COLONY, ERNAKULAM, KOCHI-682019.**

**BY ADVS.SRI.E.S. ASHRAF
SMT.K. MALINI**

RESPONDENT(S):

**1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
FISHERIES AND PORTS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

*** 2. THE MANAGING DIRECTOR (CORRECTED)
KERALA AQUA VENTURES INTERNATIONAL LTD., (KAVIL)
EAST KADUNGALLOOR, U.C.COLLEGE P.O., ALUVA,
ERNAKULAM DISTRICT, PIN-683102.**

*** RESPONDENT 2 IS CORRECTED**

**KERALA AQUA VENTURES INTERNATIONAL LTD., (KAVIL)
EAST KADUNGALLOOR, U.C.COLLEGE P.O., ALUVA,
ERNAKULAM DISTRICT, PIN-683102, REPRESENTED BY ITS
MANAGING DIRECTOR.**

AS PER ORDER DATED 6/3/13 IN IA.3598/2013

**3. THE CHAIRMAN
KERALA AQUA VENTURES INTERNATIONAL LTD., (KAVIL)
EAST KADUNGALLOOR, U.C.COLLEGE P.O., ALUVA
ERNAKULAM DISTRICT, PIN-683102.**

**4. S.FELIX SIMON
DIRECTOR, KERALA AQUA VENTURES INTERNATIONAL LTD.
(KAVIL), EAST KADUNGALLOOR, U.C.COLLEGE P.O.
ALUVA, ERNAKULAM DISTRICT, PIN-683102.**

PJ

...2/-

WP(C).No. 3256 of 2012 (F)

5. KUTTY KRISHNAN NAIR,
DIRECTOR, KERALA AQUA VENTURES INTERNATIONAL LTD.
(KAVIL), EAST KADUNGALLOOR, U.C.COLLEGE P.O.
ALUVA, ERNAKULAM DISTRICT, PIN-683102.

R1 BY GOVERNMENT PLEADER SRI.SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015
THE COURT ON 27-05-2015, DELIVERED THE FOLLOWING:

PJ

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE RELEVANT PAGES FROM THE WEBSITE ABOUT KAVIL.
- EXHIBIT P2:** TRUE COPY OF THE RELEVANT PAGES FROM THE PROJECT REPORT.
- EXHIBIT P3:** TRUE COPY OF THE SHARE CERTIFICATE WORTH RS.20 LAKHS ISSUED TO THE PETITIONER.
- EXHIBIT P4:** TRUE COPY OF THE SHARE SUBSCRIPTION AGREEMENT DATED 29-6-2009.
- EXHIBIT P5:** TRUE COPY OF THE AVAILS SENT BY A PURCHASER FROM TRANCE EXPRESSING HIS DISPLEASURE ABOUT THE BAD SHIPMENT AND THE QUALITY OF FISHES.
- EXHIBIT P6:** TRUE COPY OF THE ORDER DATED 29-12-2011 SANCTIONING THE AMOUNT TO THE PETITIONER.
- EXHIBIT P7:** TRUE COPY OF THE RELEVANT MINUTES OF THE 25TH MEETING.
- EXHIBIT P8:** TRUE COPY OF THE NOTICE TO THE BOARD MEETING.
- EXHIBIT P9:** TRUE COPY OF THE AGENDA NOTICE ISSUED TO THE PETITIONER.
- EXHIBIT P10:** TRUE COPY OF THE NOTE.
- EXHIBIT P11:** TRUE COPY OF THE NOTICE DATED 30-1-2012 TAKING OVER THE HUB ALLOTTED THE PETITIONER.
- EXHIBIT P12:** TRUE COPY OF SAID OBJECTION DT.20-1-2012 SUBMITTED BY THE PETITIONER.
- EXHIBIT P13:** TRUE COPY OF THE RELEVANT PAGES CONTAINING CLAUSE G(C) OF THE MOU.
- EXHIBIT P13(A):** RELEVANT PAGE OF THE LEASE DEED DEALING WITH THE NOTICE PERIOD FOR TERMINATING THE LEASE.
- EXHIBIT P14:** TRUE COPY OF ONE OF SUCH REPRESENTATION SUBMITTED BEFORE THE CHAIRMAN OF KAVIL BY FATHER OF THE PETITIONER ON BEHALF OF THE PETITIONER.
- EXHIBIT P15:** TRUE COPY OF ONE OF SUCH REPRESENTATION SUBMITTED BEFORE THE MINISTER FOR FISHERIES BY FATHER OF THE PETITIONER ON BEHALF OF THE PETITIONER.

WP(C).No. 3256 of 2012 (F)

EXHIBIT P16: TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE R3

EXHIBIT P17: TRUE COPY OF THE REPORT ON ACTION TAKEN OF THE 27TH BOARD MEETING OF KAVIL.

EXHIBIT P18: REPRESENTATION DATED 20/2/2013.

RESPONDENTS' EXHIBITS

EXHIBIT R2(A): TRUE COPY OF THE AGENDA NOTE OF THE 26TH BOARD MEETING OF KERALA AQUA VENTURES INTERNATIONAL LIMITED DATED 12/1/12.

EXHIBIT R2(B): TRUE COPY OF THE MINUTES OF THE 26TH BOARD MEETING OF KERALA AQUA VENTURES INTERNATIONAL LIMITED DATED 12/1/12

EXHIBIT R2(C): TRUE COPY OF ONE OF THE EXPORT ORDER CIRCULATED AMONG HUB OWNERS OF KERALA AQUA VENTURES INTERNATIONAL LIMITED, DATED 9/2/11

EXHIBIT R2(D): TRUE COPY OF THE LIST OF EXPORT ORDERS PROCURED BY THE KERALA AQUA VENTURES INTERNATIONAL LIMITED, DATED 25/2/12.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.3256 of 2012

Dated this the 27th day of May, 2015

JUDGMENT

The petitioner is aggrieved by the taking over of the conditioning and packing unit (CPU) No.3 in the Aqua Technology Park for ornamental fish production and marketing by the respondents without notice and hearing the petitioner. Therefore, he is praying to quash Exts.P1 to P15 as well as resolution No.174/26/2012 and 175/26/2012 of the 26th meeting of the Board of Directors of the second respondent.

2. The petitioner is a citizen of India. He is a graduate in Computer Engineering. Kerala Aqua Ventures International Limited (for short KAVIL) is a State Government venture for establishment of an Aqua Technology Park for ornamental fish production and marketing. The park was set up inviting investment from private individuals like the petitioner along with

governmental agencies. Being optimistic that the new venture would work smoothly and properly with all infrastructure facilities, he invested an amount of Rs.25 lakhs and he was allotted a hub in the Aqua Park a Controp Packing Unit (for short CPU) CPU No.5. However, as in the case of almost new ventures started at the initiative of the State Government, due to lack of required infrastructural facilities, poor management of the affairs of the Aqua park by not procuring fishes to the hub and also due to the absence of regular and timely export, heavy loss was sustained by the petitioner. In the Board meeting headed by Chief Minister, the petitioner and another board member pointed out the lack of adequate infrastructural facilities in the park. This was not liked by the Managing Director. In order to wreck vengeance against the petitioner in collusion with 2 Board members, who are actually not operating the hub allotted to them and who are closely associated with the Managing Director, without issuing a notice or seeking explanation or hearing a communication dated 30.1.2012 was issued

taking over the hub allotted to the petitioner stating a vague reason that the hub allotted to the petitioner is not functioning properly. The resolution dated 12.1.2012 stated in the said communication is not served to the petitioner. The mandatory requirement of one month notice before cancellation of the lease agreement is blatantly violated. No proper minutes of the board meeting were prepared and recorded and everything is manipulated by the Managing Director; it is alleged. The objection against the illegal action submitted by the petitioner was ignored. Now, hasty steps are under way to transfer the hub of the petitioner to persons to the choice of the M.D. Now after receiving such huge amounts from the petitioner, he is asked to go out that too even without a notice or hearing him. It is with this background the petitioner has come up before this Court.

3. In the counter affidavit filed by the second respondent, it was contended that the averment in the writ petition would show that the dispute cannot be resolved without entering the finding on disputed facts

and the petitioner has to resolve his disputes before the civil court, more particularly, when the petitioner has sought a direction against the respondent not to terminate the lease awarded in favour of the petitioner without awarding adequate and sufficient compensation for the loss sustained in making the investment in the new project of KAVIL and for providing improvements in the unit. They would further contend that the respondent company KAVIL has provided necessary infrastructure facility to the hub like electricity, water, plumbing, roofing, air conditioning etc. and the only improvement made by the petitioner is installing a Bio-filter which costs Rs.35,000/- and the petitioner has made a false claim of investment of Rs.17 lakhs towards improvement. They would further contend that the company is having export to foreign countries and having aqua infrastructure facilities are incorrect.

4. In the counter affidavit filed by the second respondent, it was contended that in the 27th meeting held on 23.3.2012, it was resolved that the petitioner be

permitted to sell the shares held by him to other prospective investors, without resorting to the option of buy back of shares from the petitioner which was already dropped by the Board of Directors of the company. The petitioner is free even now to dispose of the same as decided in the 27th meeting of the Board of Directors of the company. It is also stated that the company is in the path of revival under the present management and it has taken various steps in this direction.

5. Arguments have been heard.

6. The stand of the petitioner is that from the very inception, the petitioner pointed out the shortcomings allotted to him and sought for remedial measures. Disliked by the said complaints raised by the petitioner, as a part of victimization the impugned decision was taken to take over the hub allotted to the petitioner; it is alleged.

7. The gist of the petitioner's case is that as per the decision of the 26th meeting of the Board, it was decided to take over the hubs of Sri.S.Krishnakumar and the petitioner paying a compensation of Rs.25 lakhs each.

Mr.Krishnakumar was paid this amount and the petitioner had not been paid. According to the petitioner, this was because of the fact that the petitioner has approached this Court for a stay. According to him, the decision taken in the 27th board meeting was after keeping the petitioner outside the board room. Therefore, he was not responsible for any decision taken in his absence. As the decision was taken in the 26th meeting to take over hub Nos.2 and 5, at that time the question of buy back of shares did not arise. A fresh point regarding the buyback was introduced later in the 27th meeting after keeping the petitioner outside; so submitted the learned counsel for the petitioner.

8. As it appears from record that Sri.S.Krishnakumar was paid Rs.25 lakhs, it was submitted by the learned counsel for the petitioner that at least a direction be given to the respondents to exonerate the petitioner by giving the petitioners compensation of Rs.25 lakhs as decided in the 26th meeting. I see valid force in the said submission.

9. As the relationship between the petitioner and the

respondent company has been strained, it may not be possible for the petitioner to continue and therefore, it is only just and proper to direct the respondent to take a decision in the matter of refunding a sum of Rs.25 lakhs to the petitioner at the earliest taking note of the 26th meeting minutes of the KAVIL.

In the result, this writ petition is disposed of directing respondents 3 and 4 to convene a meeting to take a decision in the matter of refunding a sum of Rs.25 lakhs taking note of the 26th board meeting minutes of KAVIL and to pass formal orders in the matter within a period of two months from the date of receipt of a copy of this judgment.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE

The words "Respondents 3 and 4" occurring in the decretal portion of the judgment dated 27.5.2015 in WPC No.3256/2012 are corrected and substituted as "Respondents 1 to 3" as per order dated 23.6.2015 in I.A.No.7540/2015.

Sd/- Registrar (Judicial)