

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 125 of 2015 (M)

PETITIONER:

**THE PALLIKUNNU SERVICE CO-OPERATIVE BANK LTD
NO.C-350, REPRESENTED BY PRESIDENT, CHALAD P.O.
KANNUR-670 014.**

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

**1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
KANNUR-670 001.**

*** ADDL. RESPONDENTS 2 & 3 IMPEADED**

**2. K. UMMAR, S/O. ABDULLAH
AGED 67 YEARS, MEMBER
BOARD OF DIRECTORS, THE PALLIKUNNU SERVICE CO-
OPEARATIVE BANK LTD. NO. C. 350, CHALAD P.O., KANNUR
- 670 014, KANNUR DISTRICT**

**3. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO-OPERATION
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001**

*** ADDL. R2 AND R3 ARE IMPEADED AS PER ORDER DATED
16.01.2015 IN I.A. NO. 662/2015, I.A. NO. 730/2015 RESPECTIVELY**

**R1 & R3 BY SPL. GOVERNMENT PLEADER SRI. D. SOMASUNDARAM
R2 BY ADV.SRI.GEORGE POONTHOTTAM**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE NOTICE DATED 17/12/2014 OF THE RESPONDENT**
- EXT.P2. TRUE COPY OF THE LETTER DATED 24/12/2014 SENT TO THE JOINT REGISTRAR**
- EXT.P3. TRUE COPY OF THE LETTER HADED OVER TO THE RESPONDENT ON 31/12/2014.**
- EXT.P4. TRUE COPY OF THE REPLY DATED 5/1/2015 FILED BY THE MANAGING COMMITTEE OF THE BANK BEFORE THE RESPONDENT**
- EXT.P5. TRUE COPY OF THE COMMUNICATION DATED 23/12/2014 OF THE REGISTRAR**
- EXT.P6. TRUE COPY OF THE CIRCULAR NO.45/2013 DATED 12/7/2013 OF THE REGISTRAR.**
- EXT. P7. A TRUE COPY OF THE ACKNOWLEDGMENT DATED 6.1.2015 ISSUED BY ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETES, KANNUR**
- EXT. P8. A TRUE COPY OF THE ACKNOWLEDGMENT DATED 6.1.2015 ISSUED BY JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) KANNUR**
- EXT. P9. A TRUE COPY OF THE RESOLUTION OF THE MANAGING COMMITTEE DATED 7.1.2015 WITH AGENDA**
- EXT. P10. TRUE COPIES OF THE NEWS ITEM PUBLISHED IN THE MAKTHAB SUDHINAM DAILIES DATED 08.01.2015**
- EXT. P11. A TRUE COPY OF THE ORDER DATED 6.1.2015 OF THE RESPONDENT**

ANNEXURE A1: A SAMPLE COPY OF THE PRINT OUT FORMAT

ADVOCATE COMMISSIONER'S EXHIBITS:-

- EXHIBIT C1 TRUE COPY OF THE LETTER NO. CDAC-T/RCCF/ADV-KOCHI/2014-15/01/01 DATED 23.01.2015**

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EXHIBIT C2 TRUE COPY OF THE NOTICE OF PRELIMINARY INSPECTION

**EXHIBIT C3 SCREENSHOT OF THE FOLDER CONTAINING THE WORD FILE OF
EXT. P11**

**EXHIBIT C4 SCREENSHOT SHOWING PROPERTIES DIALOGUE BOX WITH THE
TAB 'GENERAL' TAB SELECTED**

**EXHIBIT C5 SCREENSHOT SHOWING PROPERTIES DIALOGUE BOX WITH THE
TAB 'DETAILS' TAB SELECTED**

**EXHIBIT C6 SCREENSHOT SHOWING PROPERTIES DIALOGUE BOX WITH THE
TAB 'DETAILS' TAB SELECTED**

EXHIBIT C7 SCREENSHOT OF THE FOLDER “D:\LASI/CRP”

**EXHIBIT C8 NOTICE OF INSPECTION DATED 11.02.2015 CONTAINING ORIGINAL
ENDORSEMENTS BY THE PARTIES**

EXHIBIT C9 ORIGINAL REPORT DATED 20.02.2015 SUBMITTED BY THE EXPERT

EXHIBIT C10 RECEIPT ISSUED BY THE EXPERT

**EXHIBIT C11 TRUE COPY OF THE BILL BEARING NO. CDAC/RCCF/L15-25 DATED
25.02.2015**

RESPONDENT(S)' ANNEXURES:-

ANNEXURE-I TRUE COPY OF THE ORDER DATED 6.01.2015

ANNEXURE-II TRUE COPY OF THE LOCAL DELIVERY REGISTER

**ANNEXURE III TRUE COPY OF THE ACKNOWLEDGMENT REGARDING LETTER
OF ADMINISTRATOR**

ANNEXURE IV TRUE COPY OF THE REPLY LETTER OF THE SECRETARY

ANNEXURE V TRUE COPY OF THE PAGE-I OF THE MINUTES BOOKS

**ANNEXURE VI TRUE COPY OF THE ACKNOWLEDGMENT REGARDING SECTION
34 NOTICE**

**ANNEXURE VII TRUE COPY OF THE RESOLUTIONS RECORDED IN THE
MINUTES BOOK PAGE NO. 2 AND 3**

ANNEXURE VIII TRUE COPY OF THE LETTER DATED 8.1.2015

**ANNEXURE IX TRUE COPY OF THE “SCREEN SHOT” SHOWING THE FACT OF
HAVING SENT IT BY E-MAIL**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 125 OF 2015

Dated this the 18th day of March, 2015

JUDGMENT

Ext. P11 order of supersession of the Managing Committee of the petitioner bank is impugned in this amended writ petition. Section 32(2) of the Kerala Co-operative Societies Act, 1969 mandates that the first respondent shall consult the financing bank (the District Co-operative Bank in the instant case) and the Circle Co-operative Union before passing an order of supersession. The issue has been considered in detail by the Division Bench of this Court in **Sahadevan v. Padmanabhan [2004(1) KLT 192]** wherein it is held as follows:-

“5. xxxx Learned Single Judge, relying on the decisions in Jose Kuttiyani v. Registrar, Co-operative Societies (AIR 1982 Ker. 12) and Elakkal Service Co-operative Bank v. State of Kerala (1997 (2) KLT 85) held that the mere sending of the copy of the show cause notice to the consultees would not satisfy the requirement of the provisions contained in sub-s.(2) of S. 32 of the Act. According to the

learned Single Judge, the notice, the reply and the tentative findings of the Joint Registrar should be forwarded to the consultees so that they can form an opinion and inform the same to the Joint Registrar. The learned Single Judge has also pointed out that the impugned order, Ext. P8, does not show that any such consultation was made. xxxx”

2. The Supreme Court has reiterated this proposition of law in **State of Madhya Pradesh v. Sanjay Nagayach [2013 (2) KLT 733 (SC)]** wherein it is held as follows:-

“16. The mere serving a copy of the show-cause-notice on R.B.I. with supporting documents is not what is contemplated under the second proviso to S. 53(1). For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them should also be made available to the R.B.I. as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, R.B.I. should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the views expressed by the R.B.I. will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before forming an opinion by the Joint Registrar to supersede the Board of Directors or not”

3. The Special Government Pleader on instructions fairly submits that there has not been a consultation in the case on hand as laid down in the decisions aforequoted. The notice preceding supersession has been merely forwarded to the first respondent without waiting for the reply from the Managing Committee or rendering any tentative findings. There has been an infraction of the statutory provisions in passing an order of supersession under Section 32(1) of the Kerala Co-operative Societies Act, 1969. Resultantly Ext. P11 order is quashed and the first respondent is directed to restore the Managing Committee of the petitioner bank in office within a period of two days.

4. The parties are at variance as to whether Ext. P11 order of supersession was passed after the interim order was rendered in this writ petition on 06.01.2015. The said dispute cannot be adjudicated without the parties letting in oral evidence especially in the light of two reports of the Advocate Commissioner. I do not want to delve deep into those aspects in this writ petition in view of the ultimate decision to annul Ext. P11 order of supersession and restore the Managing Committee to office. The Advocate Commissioner shall however be paid a further sum of Rs. 25,000/- (Rupees Twenty

Five Thousand only) by the petitioner bank for the meticulous analysis made by him with the aid of experts. The invocation of fresh proceedings afresh if there are good and valid grounds is however not precluded by this judgment.

The writ petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

DCS