

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 3973 of 2011 (V)

PETITIONER:

N.S.JOSEPH, NADAKKAL HOUSE, KADANADU P.O.,
KOTTAYAM DISTRICT.

BY ADVS.SRI.JOHNSON MANAYANI
SRI.BENHUR JOSEPH MANAYANI

RESPONDENTS:

1. THE KADANADU SERVICE CO-OPERATIVE BANK LTD.,
KADANADU, KOLLAPPILLY P.O., ANTIHNADU VIA.,
KOTTAYAM DISTRICT-686 653 REP. BY ITS SECRETARY.
2. THE JOINT REGISTRAR (GENERAL), CO-OPERATIVE
SOCIETIES, COLLECTORATE P.O., KOTTAYAM-686 001.
3. THE REGISTRAR (GENERAL), CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.
4. STATE OF KERALA REP. BY ITS SECRETARY TO
CO-OPERATION, SECRETARIAT, THIRUVANANTHAPURAM-1.

ADDL. R5 TO R10 IMPLEADED

5. C.C.AUGUSTHY, JUNIOR CLERK, THE KADANAD SERVICE
CO-OPERATIVE BANK LTD. NO.K.2, KOLLAPPALLY,
ANTHINADU P.O.
6. V.R.KERALA VARMA RAJA, SENIOR CLERK,
THE KADANAD SERVICE CO-OPERATIVE BANK
LTD. NO.K.2, KOLLAPPALLY, ANTHINADU P.O.
7. THOMAS MATHEW, CHIEF ACCOUNTANT,
THE KADANAD SERVICE CO-OPERATIVE BANK
LTD. NO.K.2, KOLLAPPALLY, ANTHINADU P.O.
8. SUCY AUGUSTINE, ASSISTANT SECRETARY,
THE KADANAD SERVICE CO-OPERATIVE BANK
LTD. NO.K.2, KOLLAPPALLY, ANTHINADU P.O.
9. GEORGE AUGUSTINE, ACCOUNTANT.
THE KADANAD SERVICE CO-OPERATIVE BANK
LTD. NO.K.2, KOLLAPPALLY, ANTHINADU P.O.
10. M.M.JACOB, BRANCH MANAGER,
THE KADANAD SERVICE CO-OPERATIVE BANK
LTD. NO.K.2, KOLLAPPALLY, ANTHINADU P.O.

Impleaded as per order dated 31.3.2011 in IA 5836/2011

R1 BY ADVS. SRI.DOMSON J.VATTAKUZH
SRI.MATHEW JOHN (K)
R2 TO R4 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R5 TO R10 BY ADV. SRI.O.D.SIVADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 3973/2011

PETITIONER'S EXHIBITS:

EXT. P1 THE TRUE COPY OF THE BALANCE SHEET FOR THE YEAR 31.3.2007
ATTACHED TO THE GENERAL BODY MEETING NOTICE DATED 14.1.2010

EXT. P2 THE TRUE COPY OF THE BANK PROFIT AND LOSS ACCOUNT FOR
THE YEAR 2007-2008

EXT. P3 THE TRUE COPY OF THE BALANCE SHEET FOR THE YEAR ENDING
ON 31.3.2008

EXT. P4 THE TRUE COPY OF THE SALARY STATEMENT AND IMPROVEMENT
OF THE BANK

EXT. P5 THE TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT
JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KOTTAYAM DATED
23.1.2008

EXT. P6 THE TRUE COPY OF THE APPEAL PETITION FILED BY THE
PETITIONER BEFORE RESPONDENTS 3 AND 4 DATED 30.12.2010

EXT. P7 THE TRUE COPY OF THE PETITION FILED BY THE PETITIONER
BEFORE RESPONDENTS 3 AND 4 DATED 20.10.2010

RESPONDENT'S EXHIBITS:

EXT. R1(a) A TRUE COPY OF THE PROVISIONAL PROFIT AND LOSS ACCOUNT
FOR THE YEAR 2010-2011 IN RESPECT OF THE FIRST RESPONDENT BANK

EXT. R2(a) TRUE COPY OF THE GOVERNMENT ORDER IN GO(P)NO.2/2010
DATED 4.1.2010

EXT. R2(b) TRUE COPY OF THE GOVERNMENT ORDER IN GO(P)NO.
225/2010/COOP. DATED 31.12.2010

EXT. R2(c) TRUE COPY OF THE LETTER NO.CP(5)55802/2006 DATED
22.11.2011

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.3973 of 2011 V

Dated this the 16th day of September, 2015

JUDGMENT

The first respondent Bank, ostensibly having suffered continuous loss, initially resolved to request the authorities to reclassify it from the present position of Special Grade to that of Class-I.

2. After submitting its resolution to the Joint Registrar, the second respondent, for the necessary action; it seems that the Managing Committee had a change of heart. Accordingly, it passed another resolution and further requested the Joint Registrar to preserve the present classification and to ignore its earlier resolution for re-classification.

3. It is also evident that, apart from the Managing Committee, the employees of the Bank have also submitted a representation to the Joint Registrar to the same effect. In

response, underlining the importance of continuing the same classification, lest it should affect the morale of the employees, apart from having adverse impact on the growth of the Bank; the second respondent acceded to their request. It thus resulted in the second respondent's issuing Exhibit P5 proceedings declining to re-classify the respondent Bank.

4. In that context, the petitioner, a member of the first respondent Bank, impugning Exhibit P5 order of the second respondent filed Exhibit P6 statutory appeal before the Government. In the said appeal, he is also said to have filed I.A.No.18281/2010 dated 20.08.2010 seeking the appellate authority's intervention against the respondent Bank indulging in further appointments in the Bank.

5. Ventilating his grievance that the statutory appeal has not so far been disposed of, the petitioner has approached this Court.

6. In response to the submissions made by the learned counsel for the petitioner, the learned counsel for the first respondent Bank has submitted that the Bank has no objection if the Government disposes of Exhibit P6 appeal on merits after affording an opportunity of hearing to all the parties concerned. He has further submitted that the respondent Bank has considerably improved its financial position and that it may be reclassified to a higher grade, instead.

7. The learned counsel for the respondent Bank would contend that the petitioner is coming in the way of the authorities' considering the issue of upgrading the classification of the respondent Bank, his taking shelter under the excuse that the present writ petition is pending. The learned counsel has also contended that Exhibit P6 appeal is belated.

8. In the end, the learned counsel for the first respondent Bank has urged this Court to dispose of the writ petition observing that pendency of Exhibit P6 appeal shall not come in the way of the second respondent's considering the request of the 1st respondent Bank for further upgradation.

9. In reply, the learned counsel for the petitioner has submitted that Exhibit P6 appeal does contain abundant explanation concerning the delayed approach, if any, on the part of the petitioner.

10. Heard the learned counsel for the petitioner, the learned counsel for the first respondent Bank, and the learned counsel for the additional respondents, as well as the learned Government Pleader, apart from perusing the record.

11. Indeed, I do not see much of a dispute to be adjudicated upon in the present writ petition. Firstly, it is

not proper for this Court, if not impermissible, to consider the issue on merits once the statutory appeal is pending before the competent authority. At the same time, I find sufficient force in the contention of the learned counsel for the first respondent that the very pendency of the appeal, unless there are any restrictive orders passed therein, cannot be a ground for the second respondent not to consider the legitimate request of the respondent Bank even with regard to its further upgradation.

12. In so far as the objections of the learned counsel for the additional respondents is concerned, it is made clear that they are at liberty to raise all their defences, including that of delay, before the appellate authority.

13. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the first respondent

Bank, as well as the learned Government Pleader, this Court disposes of the writ petition with a direction to the fourth respondent to consider Exhibit P6 appeal of the petitioner on merits, after affording an opportunity of hearing to all parties concerned and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

It is further explicitly made clear that pendency of Exhibit P6 appeal shall not come in the way of the authority considering the claim of the first respondent for its further upgradation, if it has fulfilled all the statutory norms in that regard.

Dama Seshadri Naidu, Judge.

tkv