

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

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

WP(C).No. 9395 of 2015 (Y)

PETITIONER(S):

**PREETHA B.,
W/O.BINUKUMAR R., SECRETARY
THE THIRUVANANTHAPURAM AYURVEDA OUSHADA NIRMANA VYAVASAYA
CO-OPERATIVE SOCIETY LTD.NO.S.IND(T) 254
KANNETTUMUKKU, THYCAUD , THIRUVANANTHAPURAM
RESIDING AT VILAYIL VEEDU, TC 20/181, MELARANNOOR
KARAMAN, THIRUVANANTHAPURAM-695 002.**

**BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY ITS SECRETARY, INDUSTRIES DEPARTMENT
GOVT. SECRETARIAT, THIRUVANANTHAPURAM 695 001**
- 2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, THIRUVANANTHAPURAM - 695 001**
- 3. THE DEPUTY REGISTRAR,
DISTRICT INDUSTRIES CENTRE, THIRUVANANTHAPURAM -695 001**
- 4. THE THIRUVANANTHAPURAM AYURVEDA OUSHADA NIRMANA VYAVASAYA
CO-OPERATIVE SOCIETY LTD. NO.S.IND(T) 254,
KANNETTUMUKKU, THYCAUD, THIRUVANANTHAPURAM - 695 001
REP. BY ITS PRESIDENT.**
- 5. THE BOARD OF DIRECTORS,
THE THIRUVANANTHAPURAM AYURVEDA OUSHADA NIRMANA VYAVASAYA
CO-OPERATIVE SOCIETY LTD. NO.S.IND(T) 254
KANNETTUMUKKU, THYCAUD, THIRUVANANTHAPURAM**
- 6. THE PRESIDENT,
THE THIRUVANANTHAPURAM AYURVEDA OUSHADA NIRMANA VYAVASAYA
CO-OPERATIVE SOCIETY LTD. NO.S.IND(T) 254
KANNETTUMUKKU, THYCAUD, THIRUVANANTHAPURAM**

**R4 - R 6 BY ADV. SRI.RAJESH P.NAIR
R1 - R3 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1 : TRUE COPY OF THE PROCEEDINGS DATED 18.3.2011 OF THE 2ND RESPONDENT.

EXT P2 : TRUE COPY OF THE PROCEEDINGS NO.CS.8/3327/2010 DATED 5.7.2011 OF THE 3RD RESPONDENT.

EXT P3 : TRUE COPY OF THE PROCEEDINGS NO.CS.8/3327/10 DATED 26.3.2012 OF THE 2ND RESPONDENT.

EXT P4 : TRUE COPY OF THE MEMO DATED 22.5.2012 ISSUED TO THE PETITIONER BY THE 6TH RESPONDENT.

EXT P4 (A) : TRUE COPY OF THE EXPLANATION DATED 30.5.2012 SUBMITTED BY THE PETITIONER TO EXT P4.

ET P5 : TRUE COPY OF THE MEMO DT 29.1.2013 ISSUED TO THE PETITIONER BY THE 6TH RESPONDENT.

EXT P6 : TRUE COPY OF THE MEMO DT 22.3.2013 ISSUED BY THE SUB COMMITTEE TO THE PETITIONER.

EXT P6(A) : TRUE COPY OF THE EXPLANATION DATED 5.4.2013 SUBMITTED BY THE PETITIONER BEFORE THE SUB COMMITTEE.

EXT P7 : TRUE COPY OF THE MEMO DATED 17.1.2014 ISSUED TO THE PETITIONER BY THE 6TH RESPONDENT.

EXT P7(A) : TRUE COPY OF THE EXPLANATION DT 28.1.2014 SUBMITTED BY THE PETITIONER TO EXT P7.

EXT P8 : TRUE COPY OF THE PROCEEDINGS NO.FA/12/2014 DT 22.4.2014 ISSUED BY THE 6TH RESPONDENT FOR AND ON BEHALF OF THE BOARD OF DIRECTOR OF THE 4TH RESPONDENT.

EXT P9 : TRUE COPY OF THE SUSPENSION PROCEEDINGS NO.FA-12/2014 DT 7.7.2014 OF THE 6TH RESPONDENT.

EXT P9(A) : TRUE COPY OF THE PROCEEDINGS NO.FA-12/2-14 DATED 7.7.2014 OF THE 6TH RESPONDENT.

EXT P10 : TRUE COPY OF THE REPRESENTATION DATED 6.8.2014 SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT.

EXT P11 : TRUE COPY OF THE APPEAL DT 6.8.2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.

EXT P12 : TRUE COPY OF THE REPRESENTATION DT 28.8.2014 SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT.

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EXT P13 : TRUE COPY OF THE JUDGMENT DT 7.11.2014 IN WPC.29433/2014 OF THIS HONOURABLE COURT.

EXT P14 : TRUE COPY OF THE CHARGE MEMO DT 24.11.2014 ISSUED BY THE 6TH RESPONDENT.

EXT P15 : TRUE COPY OF THE EXPLANATION DT 8.12.2014 SUBMITTED BY THE PETITIONER TO EXT P14.

EXT P16 : TRUE COPY OF THE PROCEEDINGS NO.FA/27/15 DT 1.1.2015 OF THE 6TH RESPONDENT.

EXT P17 : TRUE COPY OF THE COMMUNICATIONN DT 11.3.2015 ISSUED BY THE ENQUIRY COMMISSIONER.

EXT.18: TRUE COPY OF THE PROCEEDINGS NO.AK/101/2014 DATED 29.10.2014 OF THE JUNIOR CO-OPERATIVE INSPECTOR.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.9395 OF 2015

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Dated this the 1st day of July, 2015

JUDGMENT

The paid Secretary of Thiruvananthapuram Ayurveda Oushada Nirmana Vyavasaya Co-operative Society Ltd – 4th respondent has filed this writ petition, aggrieved by Ext.P14 memo of charges and Ext.P17 notice issued by the Enquiry Officer directing her to appear for the enquiry. The Enquiry Commissioner has issued a memo since he has been appointed as Enquiry Commissioner by the Board of Directors of the Co-operative Societies.

2. The grievance of the petitioner is that almost all of the allegations raised in the memo of charges had already been enquired into by issuing memo of charges which culminated into punishment of censure as per Ext.P8 order. According to the petitioner memo of charges were being issued from time to time, repeatedly against which

she has submitted explanations and the society had by orders issued on 29.1.2013 and 17.1.2014 awarded for punishment of censure. The petitioner approached this court challenging the memo of charges as well as Ext.P17 proceedings, on the ground that she has been punished unnecessarily.

3. Learned counsel appearing for the petitioner submitted that when a punishment is already awarded under Rule 198(1)(a) of the Kerala Co-operative Societies Rules she could not be subjected, on the basis of same set of charges, to further disciplinary proceedings initiated against her and therefore Ext.P14 memo of charges as well as the appointment of Enquiry Commissioner as per Ext.P17 are liable to be quashed.

4. There are very serious allegations raised against the 6th respondent also alleging that it is a personal animosity of the 6th respondent the proceedings are initiated every now and then and the petitioner has been subjected to harassment.

5. Counter affidavit filed is by the 6th respondent for the respondents 4 to 6 refuting all the allegations in the writ petition. According to them the petitioner has been causing very serious difficulties to the very functioning of the society on account of her defiant attitude and insubordination. According to the learned counsel for the respondents since the punishment of censure alone was awarded to the petitioner it cannot be said that she has been subjected to double jeopardy as contended by the petitioner. According to him stringent action became necessary against the petitioner in the light of various instances of misconduct.

6. At any rate it is conceded that the charge Nos.1 to 3 has already been enquired into earlier, which has culminated in Ext.P8 order of punishment. It is therefore, fairly conceded by the learned counsel for respondents 4 to 6 that the said charges can be excluded from the scope of enquiry and enquiry will be confined to the charge Nos. 4 to 7.

7. Yet another contention raised by the counsel for

the petitioner is regarding the constitution of disciplinary sub committee as envisaged under Rule 2A of Rule 198 of Kerala Co-operative Societies Rules. It is pointed out that the Enquiry Officer has been appointed by the Board of Directors and not by the Sub Committee to be constituted under Rule 198(2)A. At the same time it is the contention of the learned counsel for the respondent that an independent agency is enquiring into the entire matter, in order to have a transparency in the matter on account of allegations raised.

8. As the Enquiry Officer has already been appointed, as can be seen from Ext.P17 and there are factual disputes on the allegations, I think it will be appropriate to allow the enquiry to be continued, but only in respect of the charge Nos. 4 to 7 in Ext.P14, in accordance with law. Respondents 4 to 6 will be free to conduct the disciplinary proceedings as contemplated in the Co-operative Societies Rules.

The petitioner has produced Ext.P18 report of the Joint Registrar, which indicates the enquiry under Section 65.

The 2nd respondent will take appropriate action on the basis of Ext.P18 proceedings along with reply affidavit without any delay.

With the above observations, this Writ Petition is disposed of.

Sd/
P.V.ASHA, JUDGE

SKV