IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 16166 of 2013 (U)

PETITIONER(S):

P.N.KUNJUMON, AGED 56 YEARS,
S/O.NARAYANAN, MAMALAKANDAM POST, KOTHAMANGALAM
ERNAKULAM DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENT(S):

1. STATE OF KERALA
REP. BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF CO-OPERATION, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
ERNAKULAM - 682 016.

3. THE MAMALAKANDAM SERVICE CO-OPERATIVE BANK LTD NO.1225,
REP. BY ITS SECRETARY, MAMALAKANDAM
KOTHAMANGALAM - 686 691, ERNAKULAM DISTRICT.

4. THE ADMINISTRATIVE COMMITTEE,
MAMALAKANDAM SERVICE CO-OPERATIVE BANK, MAMALAKANDAM
KOTHAMANGALAM - 686 691, ERNAKULAM DISTRICT
REP. BY ITS CONVENER.

ADDL. R5. STATE CO-OPERATIVE ELECTION COMMISSION,
THIRUVANANTHAPURAM-695 001
REP. BY ITS SECRETARY.

ADDL. R6. THE ELECTORAL OFFICER,
MAMALAKANDAM SERVICE CO-OPERATIVE BANK LTD.NO.1255
MAMALAKANDAM
KOTHAMANGALAM - 686 691, ERNAKULAM DISTRICT (ASSISTANT
REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOTHAMANGALAM.

ADDL. R7. THE RETURNING OFFICER,
MAMALAKANDAM SERVICE CO-OPERATIVE BANK LTD.NO.1255,
MAMALAKANDAM, KOTHAMANGALAM - 686 691, ERNAKULAM DISTRICT
(UNIT INSPECTOR, KOTTAPPADY, OFFICE OF THE ASSISTANT
REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOTHAMANGALAM.

(ADDL.R5 TO R7 ARE IMPLEADED AS PER ORDER DT.15.7.13 IN
I.A.NO.9431/2013.)

R3 & 4 BY ADV. SRI.P.P.JACOB
R1&R2 BY SR. GOVERNMENT PLEADER SRI C.M.ABDUL KHADER
R5-R7 BY SPL.GOVERNMENT PLEADER SHRI D.SOMASUNDARAM,B/O.15.7.13.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16166 of 2013 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: A TRUE COPY OF THE NOTICE DATED 8/11/2012 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: A TRUE COPY OF THE JUDGMENT DATED 27/11/2012 IN WPC NO.28098/2012.

EXT.P3: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT.12.12.12.

EXT.P4: A TRUE COPY OF THE NOTICE DATED 10/5/2012.

EXT.P5: TRUE COPY OF THE ORDER COMMUNICATING THE AUDIT REPORT OF THE YEAR 2008-09.

EXT.P6: TRUE COPY OF THE ORDER COMMUNICATING THE AUDIT REPORT OF THE YEAR 2009-10.

EXT.P7: TRUE COPY OF THE ORDER COMMUNICATING THE AUDIT REPORT OF THE YEAR 2010-11.

EXT.P8: A TRUE COPY OF THE NOTICE OF GENERAL BODY HELD ON 9/2/2012.

EXT.P9: A TRUE COPY OF THE INTERIM ORDER DATED 14/12/2012 IN WPC NO.29916 OF 2012.

EXT.P10: A TRUE COPY OF THE ORDER NO.CRP(1)609/12 DATED 4/1/2013 ISSUED BY 2ND RESPONDENT.

EXT.P11: A TRUE COPY OF THE ORDER DATED 23/1/2013 IN WPC NO.1358/2013.

EXT.P12: A TRUE COPY OF THE APPEAL DATED 28/1/2013.

EXT.P13: A TRUE COPY OF THE STAY PETITION ALONG WITH AFFIDAVIT DATED 28/1/2013.

EXT.P14: A TRUE COPY OF THE ORDER NO.277/2013 DATED 8/4/2013 OF THE 1ST RESPONDENT GOVERNMENT.

EXT.P15: TRUE COPY OF THE NOTICE DT.15.6.2013 ISSUED BY THE ELECTION COMMISSIONER.

RESPONDENT(S)' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

K.SURENDRA MOHAN, J.

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W.P(c) No.16166 of 2013-U

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner has filed this Writ Petition challenging Exts.P10 and P14 proceedings issued by the Joint Registrar of Co-operative Societies and confirmed by the 1st respondent in appeal.

2. The petitioner was the President of the Managing Committee of the Mamalakandam Service Co-operative Bank, a Society registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as `the Act' for short) and the Rules thereunder. The committee under the petitioner assumed office on 16.08.2009. The term of office of the committee was 5 years. According to the petitioner, at the instance of the ruling political party action was initiated on the basis of false allegations and a notice, Ext.P1 was issued under Section 32(1) of the Act proposing to supersede the committee. Though the petitioner sought for an extension of time to submit objections, the same was not granted. Therefore the petitioner approached this Court by filing W.P(c) No.2809 of 2012. As per Ext.P2

judgment, the said Writ Petition was disposed of granting sufficient time to the petitioner to submit explanation and also directing that a copy of the enquiry report on the basis of which the action was initiated be furnished to the petitioner. The petitioner submitted explanation, Ext.P3, denying the allegations. However, the explanation was not accepted. As per Ext.P10 order, the 2nd respondent superseded the committee and appointed an Administrator to be in charge of the administration of the society.

3. The petitioner then filed W.P(c) No.1358 of 2013 challenging the said order, before this Court. As per Ext.P11 judgment, the Writ Petition was disposed of by this Court relegating the petitioner to his statutory remedy of filing an appeal before the 1st respondent under Section 83(1) (j) of the Act. Pursuant to Ext.P11, the petitioner preferred an appeal before the 1st respondent. However, by Ext.P14 the appeal has been dismissed, confirming the order Ext.P10.

4. According to Sri M.Sasindran, who appears for the petitioner, the allegations levelled against the petitioner and the committee headed by him are absolutely baseless and untenable. The petitioner and his committee had assumed office only on

16.08.2009. The allegation that no meeting of the general body had been held at any time thereafter is not correct. A meeting of the general body was held on 28.05.2012. Ext.P4 is the notice convening the general body meeting. The general body had approved the budget of the society up to the year 2012-'13. The audit reports were also passed. The other allegations against the petitioner have also been convincingly explained in Ext.P3. However, the impugned order Ext.P10 has been passed without considering the explanation, on extraneous considerations. Therefore, it is contended that Exts.P10 and P14 are unsustainable and liable to be set aside. Reliance is also placed on the decision of a Division Bench of this Court in **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.** [2013 (2) KLT 74] to contend that, an omission to convene the annual general body meeting per se is not sufficient to supersede a committee. There must be a further finding that the omission was not only persistent but was also with a culpable mind. The counsel also contends that the present committee cannot be made liable for the acts of the previous committee that was in office.

5. A counter affidavit has been filed by the 2nd

respondent. According to the 2nd respondent, a petition had been received from one Mr.Jose Varkey and others on 20.01.2012 making various allegations against the petitioner and his committee. It was alleged that the annual general body meeting had not been held since 2009, that, the committee was acting against the interests of the society and that, there were gross irregularities in the sale of rubber sheets. The petition was forwarded to the Assistant Registrar, Kothamangalam, for enquiry and report. The report of the Assistant Registrar disclosed serious irregularities. Therefore, detailed enquiry was ordered under Section 65 of the Act by order dated 12.06.2012. Accordingly, an enquiry was conducted. The enquiry report revealed that there were serious irregularities in the functioning of the committee. Therefore, explanation was called for, the petitioner was personally heard and thereafter, Ext.P10 was issued. The appeal submitted by the petitioner was also considered properly and rejected for valid reasons.

6. Advocate Sri D.Somasundaram, the learned Special Government Pleader, who appears for the respondents contends that the irregularities detected are serious. Section 29 of the Act mandates that the general body of the society shall be convened

at least once in a year. The said provision has been amended by the Kerala Co-operative Societies (Amendment) Act, 2013, that came into force on 14.02.2013. As per the amended provision, a disqualification has also been enacted to the members of the Board for not convening the annual general body meeting within the stipulated time. Therefore, it is contended that the omission to hold the annual general body meeting itself is a grave omission under the Amendment Act that justifies the impugned action. Apart from the above, there are other irregularities in the manner of functioning of the society as evident from the irregularities itemised in Ext.P1. Financial loss has also been caused to the society by the various acts of the petitioner and the committee headed by him. According to the learned Special Government Pleader, the decision reported in **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.** (supra) relied upon by the learned counsel for the petitioner, was rendered before Section 29 was amended. The dictum applicable to the facts of the present case is that of another Division Bench decision, **State of Kerala v. Sudarsanan** [1997(2) KLT 522]. Therefore, it is contended that, the Writ Petition is only to be dismissed.

7. Heard. Ext.P1 is a notice issued by the 2nd respondent under Section 32(1) of the Act. The said notice has listed the allegations made against the petitioner and his committee. They are the following:

1) The Managing Committee that took charge on 17.08.2009 had not convened an annual general body meeting, or passed the accounts and audit reports from the year 2006-07 onwards or passed the budget from the year 2008-09 onwards (Ext.P1 is seen issued on 08.11.2012, more than 3 years after the committee assumed office);

2) The Managing Committee has by taking irregular decisions caused loss to the society to the tune of Rs.13,200/- (Rupees Thirteen thousand two hundred only) in implementing the computerisation. The managing committee has also not obtained any cash security or bond from Sri Bharathan who is working as a daily wages employee at the Neethi Store conducted by the bank;

3) The stock taking conducted on 31.03.2012 revealed a shortage of Rs.17,945.30. As per the audit report of the year 2010-2011, there is a shortage of Rs.14,434/-. The committee has not initiated any proceedings for recovery of the above

amounts;

4) The Managing Committee has by taking a wrong decision misled the department in regularising the services of Smt. Divya K.M in the Neethi Store;

5) The Day Book of the society was not found to be maintained properly and showed a backlog of about 41 days;

6) Rubber sheets, rubber sap, paper etc. were being collected from both, members as well as non members of the society without maintaining proper records for the same. Consequently, details of the said activities are not available for verification. It was also found that the collected rubber was being sold to profit individuals. A deficit of Rs.1,03,065/- was detected for the year 2009-2010, Rs.1,02,215/- for the year 2010-2011 and Rs.75,000/- on 20.11.2012. No action to make good the said amounts have been initiated;

7) Sri George Joseph and Sri Babumon Das, who were members of the Managing Committee, were found to be defaulters of loans availed by them. No action has been taken against them;

8) No action has been taken to recover an amount of Rs.5,000/- that was received by Sri K.J.Saijan, a former managing

committee member, advanced in the year 2006;

9) No action has been taken to recover the arrears under the MBFS Scheme, for an amount of Rs.10,400/- due from one Smt. D.Rajamma and an amount of Rs.40,131/- due from one Smt.Radha Sathyan;

10) In the matter of recovery of amounts advanced as gold loans, no action was taken to recover the amount as mandated by the rules applicable.

8. The explanations submitted by the petitioner to the above allegations are set out in Ext.P3. According to the explanation, the annual general body meting had been held on 28.05.2012 and appropriate decisions for the efficient administration of the society had been taken. It is further stated in the explanation that, a decision has been taken to recover the loss caused to the society in the matter of implementing the computerisation program from the then Secretary of the society. Sri Bharathan, against whom allegations are raised, has been terminated from service and another person appointed in his place. Regarding the shortage in stock, it is contended that the same is only Rs.3,511.30. A decision to issue notice to Sri Bharathan who was in charge of the stock, for the purpose of

making good the shortage, was also taken. It has been admitted that, the Day Book was not being maintained up-to-date. The explanation is that, the available staff had been deputed for preparing the audit schedule for three years. It is also stated in the explanation that various steps have been taken to rectify the anomalies pointed out.

9. A perusal of the allegations in Ext.P1 shows that, the Managing Committee under the petitioner had been functioning without convening the annual general body meeting as mandated by Section 29 of the Act, from the day they took office. Ext.P1 was issued on the basis of a report of enquiry conducted under Section 65 of the Act. The said report is dated 29.10.2012. The above report was preceded by a preliminary report that was submitted by the Assistant Registrar (General) on 21.03.2012. The reports are referred to as Sl.Nos.2 and 3 in Ext.P1. The authorities have initiated action 3 years after the Managing Committee under the petitioner had taken charge. Therefore, they had been continuing in administration of the society without any budget, without getting any approval for the accounts maintained by them with scant regard for the provisions of the Act and the Rules. Section 29 of the Act mandates that a general

body meeting of a society shall be held once in a year, for the purposes mentioned therein. The purposes include approval of the budget, consideration of audit report and the annual report, disposal of the net profit and any other matter. Section 2(u) defines an `year' to mean the period commencing from the `first day of April of any year' and ending on the `31st of March of the succeeding year'. Therefore, it was the duty of the petitioner and his committee to have conducted the annual general body meeting every year, in accordance with the above provision. Ext.P4 is the notice convening the general body meeting on 10.05.12. Agenda Nos.6 and 7 show that, the audit reports and accounts of the society had not been passed for the years 2006-07 and 2008. It further shows that no budget of the society had been passed for the years 2009, 2010, 2011 and 2012. It is clear that the annual general body meeting was convened after the Assistant Registrar (General) had submitted his report dated 21.03.12 listing the discrepancies in the functioning of the petitioner and the committee members (headed by him). It is obvious that the meeting was convened to avoid any further action. Section 29 of the Act has been amended by the Kerala Co-operative Societies (Amendment) Act, 2013 by adding sub sections 3 to 5 to the said section. They are extracted hereunder for convenience of reference.

> “(3) Where the board of a co-operative Society fails to convene the annual general meeting within the period specified in sub-section (1), the Registrar or the person authorized by him in this behalf shall be competent to convene such annual general meeting within a period of ninety days from the date of expiry of the period mentioned in sub-section (1) and the expenditure incurred on such meeting shall be borne by the Co-operative society.
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> (4) Members of the Board who, in the opinion of the Registrar, were responsible for not convening the annual general meeting within the stipulated period shall be disqualified for one term for being elected as committee members and to continue as members of a society in addition to being liable for any other provisions under this Act:
>
> Provided that the Registrar shall, before passing order under this sub-section, afford a reasonable opportunity of being heard to each such person, who

in his opinion were responsible for not convening the annual general meeting within the specified period.

(5) A notice of the general meeting stating the place, date and hour of the meeting together with the agenda shall be given to every member, as may be prescribed.”

10. The above provision shows that an omission to convene the annual general body meeting as mandated by Section 29 is considered to be grave enough to attract disqualification to the members of the Board. Therefore, the omission to convene annual general body meetings for three years after the petitioner and his committee took office, cannot be dismissed lightly. The learned counsel for the petitioner has placed reliance on the decision of a Division Bench of this Court reported in **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.** (supra). In the said case, though the last general body meeting had been convened only on 23.08.2009, the said meeting had passed the budget for the years 2009-2010 and 2010-2011 also. Therefore, it was found that in the facts of the said case, it could not be said that the society had been functioning without a budget. Though no annual general body

meeting had been held after the committee in the said case had taken charge on 02.02.2010, since they had been functioning on the basis of a budget that was duly passed by a general body, it was found that, the omission in not convening the general body was neither persistent nor with a culpable mind. In sharp contrast, in the present case, the committee under the petitioner had been functioning from 16.08.2009, without a duly approved budget. It is an admitted fact that, the budget was approved only at the meeting held pursuant to Ext.P4 notice, on 28.05.2012. Therefore, the dictum relied upon by the learned counsel for the petitioner cannot apply to the facts of the present case.

11. In another Division Bench decision, **State of Kerala v. Sudarsanan** (supra) relied upon by the Special Government Pleader, the facts are more or less identical. In para.12 Sankarasubban J., speaking for the Bench has concluded the issue in the following words:

> "12. ... ... Under S.29 of the Act, it is mandatory that a general body meeting of a society shall be held once in a year. It is, interalia, for the purpose of approval of the budget and for

consideration of the audit report and the annual report. From the reply of the managing committee, it is clear that no such meeting had been conducted. This means that neither the budget nor the audit report was placed before the annual general body meeting for the last three years. According to us, this itself is sufficient for superseding a committee, since it is the duty of the managing committee to place the budget and the audit report before the annual general body meeting.”

12. It is true that the subsequent Division Bench decision reported in **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.** (supra) has distinguished the dictum in the above case on facts. However, it is the facts of the earlier decision, that is identical with the present case on facts. I also take note of the fact that the discrepancy in not convening the general body has been subsequently cured by holding the same on 28.05.2012 and getting the budgets passed. Since the irregularity has been held to be a curable one by the dictum in State of **Kerala v. Sudarsan** (supra), the said infirmity cannot by itself support an action under Section 32 of the Act. However, in the present case there are other irregularities also.

13. As noticed earlier, the omission to conduct annual

general body meetings was only one of the irregularities detected. There were various other irregularities also. They include shortage of cash, shortage of stock, omission to maintain the Day Book and other accounts properly, omission to take action against an employee who caused loss to the society, improper implementation of the computerisation process causing loss to the society etc. A perusal of Ext.P3 explanation shows that the discrepancy alleged have all been admitted. The shortage in stock is admitted, disciplinary action has been initiated to recover the loan from the erring employee. Similarly a decision has been taken to recover the loss caused by the improper implementation of computerisation from the Secretary who was an officer at that time. The explanation in not maintaining the Day Book properly is that, the concerned employee was engaged in preparing the audit schedule for three years. Therefore, while admitting the discrepancies detected, the explanation is only that, decisions to set right matters had been taken. The decisions are said to have been taken after the irregularities had been detected by the enquiry conducted under Section 65 of the Act. Therefore, the fact remains that the administration of the society was being carried on by the petitioner and the committee headed by him, not in accordance with law. It is also clear that had the present proceedings not been initiated, no action to rectify the discrepancies also would have been taken. The 2nd respondent has not accepted the explanation of the petitioner. It cannot be said that the allegations are frivolous or insignificant. In the totality of the circumstances noticed above, I find that the 2nd respondent was justified in initiating action under Section 32 of the Act by issuing Ext.P10. The matter has been examined by the 1st respondent in appeal and sustained by Ext.P14.

For the foregoing reasons, I find no grounds to interfere with Exts.P10 and P14 or to grant any of the reliefs sought for in the Writ Petition. This Writ Petition is therefore dismissed. No costs.

Sd/-
(K.SURENDRA MOHAN, JUDGE)

rtr/

/true copy/

P.S to Judge