IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 15207 of 2015 (A)

PETITIONERS:

1. M.ARAVINDAKSHAN NAIR, S/O.GOPALAN NAIR,
   BUILDING NO.6/275, NEAR C.T.O., ANAVATHIL,
   KOCHI 682 002.

2. B.S.RAMESH, 10/201, J.D.NORTH STREET,
   FORT KOCHI - 682 001.

3. URSULA LENIN, KALAYATH HOUSE, 17/1204,
   MUNDAMVELI, KOCHI - 682 007.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G),
   ERNAKULAM.

3. THE MATTANCHERY MAHAJANIK CO-OPERATIVE URBAN BANK
   LIMITED NO.665, P.O.BOX NO.304, PALLIYARAKAVU ROAD,
   KOCHI - 682 012, REPRESENTED BY ITS GENERAL MANAGER.

ADDL.R4 IMPLEADED

PRATHAP P., SREEVIHAR, T.D EAST ROAD,
MATTANCHERRY, KOCHI - 682 002.

Impleaded as per order dated 27.05.2015 in IA 6665/2015

ADDL.r4 BY ADV. SRI.P.P.JACOB
R1 & R2 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-12-2015 ALONG WITH WPC. 15330/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 15207 of 2015 (A)

PETITIONER'S EXHIBITS:

EXT. P1: TRUE COPY OF THE ORDER NO.UBD(T)NO.2044/06.01.10/2002-03 DATED 13/1/2003.

EXT. P2: TRUE COPY OF THE NOTICE NO.C.R.B 860/04 DATED 12/6/2007 ISSUED BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, ERNAKULAM ALONG WITH ENGLISH TRANSLATION

EXT. P3: TRUE COPY OF THE REPLY DATED 20/8/2007 GIVEN BY THE PETITIONERS

EXT. P4: TRUE COPY OF THE ORDER NO.C.R.B/860/04/K.DIS. DATED 4/3/2008 ISSUED BY TEH JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, ERNAKULAM ALONG WITH ENGLISH TRANSLATION

EXT. P5: TRUE COPY OF THE APPEAL MEMORANDUM PREFERRED BEFORE THE GOVERNMENT DATED 21/5/2008.

EXT. P6: TRUE COPY FO THE G.O.(RT) NO.534/2009/CO-OP DATED 24/9/2009
EXT. P7: TRUE COPY OF THE JUDGMENT IN WPC NO.28629/2009 DATED 12/3/2013.

EXT. P8: TRUE COPY OF THE JUDGMENT DATED 6/6/2014 IN WA NO.540/2013 DATED 6/6/2014.

EXT. P9: TRUE COPY OF THE ORDER NO.13525/PS2/2014/CO-OP DATED 17/12/2014.

EXT. P10: TRUE COPY OF THE ARGUMENT NOTE BEFORE THE GOVERNMENT SECRETARY DATED 16/2/2015.

EXT. P11: TRUE COPY OF THE FINANCIAL STATEMENT OF THE BANK AS ON 15/5/2015.

EXT. P12: TRUE COPY OF THE G.O.NO.269/2015 CO-OP. DATED 12/5/2015 WITH ENGLISH TRANSLATION

RESPONDENT'S EXHIBITS:

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.15207 & 15330 of 2015

Dated this the 17th day of December, 2015

JUDGMENT

Introduction:

The petitioners in W.P.(C)No.15207/2015 are the members of the Managing Committee of the third respondent Urban Bank. They are aggrieved by Exhibit P12 order of dismissal passed by the Government, the first respondent, which affirmed Exhibit P4 order of surcharge passed by the second respondent.

2. On the other hand, the additional fourth respondent filed W.P.(C)No.15330/2015 seeking implementation of Exhibit P12 order of the appellate authority, the first respondent. He has also sought a declaration that the petitioners shall not be on the Managing Committee their having suffered a disqualification.

3. Since both the writ petitions raise substantially similar issues involving the same parties, I deem it

appropriate to dispose of both the writ petitions together through a common judgment. For the adjudicatory purpose, I take as the basis the pleadings and exhibits as have been placed in W.P.(C)No.15207/2015. The parties are also referred to as they have been arrayed in the said writ petition.

Facts:

4. The Petitioners, the members of the Managing Committee of the respondent Bank, a licensed bank under the Banking Regulation Act, are aggrieved by Exhibit P12 order dated 12.05.2015, passed by the Government affirming Exhibit P4 order of the Joint Registrar. Both the orders are in the context of surcharge proceedings initiated against the petitioners, purportedly, under Section 68 of the Kerala Co-operative Societies Act ('the Act' for brevity).

5. The facts alleged, stated briefly, are that in the region of 2002 when the petitioners had been at the helm of the affairs, there was said to have been a 'run on the Bank' as a result of certain rumours. Under those pressing

circumstances, having no alternative, the Bank was forced to borrow funds from the Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) maintained by it.

6. This state of affairs was said to have continued till about March 2003 when the situation was brought under control with the resumption of the normal banking business. As the Bank could not maintain the CRR and SLR for the period from 20.11.2002 to 30.11.2002, 01.12.2002 to 31.12.2002, and 01.02.2003 to 09.02.2003, the RBI imposed penal interest totalling to Rs.5,39,995/-.

7. As a consequence, the Joint Registrar on 07.04.2004 ordered an inspection of the Bank under Section 66(1) of the Act, which measure resulted in a report dated 05.08.2005. Later, Joint Registrar issued a notice dated 12.06.2007 to the Bank proposing to impose a surcharge under Section 68(2) of the Act.

8. Having not been satisfied with the Exhibit P2 objections/explanation filed by the petitioners, the Joint Registrar imposed surcharge through Exhibit P4 dated

04.03.2008. Each of the Petitioners was required to pay Rs.69,240/-. The petitioners are said to have paid the surcharge under protest, though.

9. Initially, the petitioners challenged Exhibit P4 under Section 83 of the Act in Exhibit P5 appeal before the Government. Later, through a judgment dated 30.06.2008, this Court in W.P.(C)No.19197/2008 directed the Government to keep Exhibit P4 order in abeyance and hear the appeal. The Government, in fact, rejected Exhibit P5 appeal through Exhibit P6 order dated 24.09.2009.

10. Aggrieved, the petitioners filed W.P.(C)No. 28269/2009 impugning Exhibits P4 and P6. This Court, per a learned Single Judge, allowed the writ petition through judgment dated 24.03.2010. But, later, a learned Division Bench in W.A.No.576/2010 remanded the matter to the learned Single Judge for adjudication on other issues raised in the Writ Petition. The petitioners are said to have been allowed to continue in office, for they had been, in the interim, re-elected to the Managing Committee.

11. On remand, the learned Single Judge ultimately dismissed the Writ Petition through Exhibit P7 judgment. Thus, the petitioners earned a disqualification as contemplated under Rule 44(1) of the Kerala Co-operative Societies Rules ('the Rules' for brevity).

12. In the face of their disqualification, two members of the Managing Committee resigned leading to a loss of quorum. And it led to the appointment of an administrator. In the meanwhile, however, the petitioners took Exhibit P7 judgment in appeal in W.A.No.540/2013. A learned Division Bench, on the appreciation of the issue, through Ext.P8 judgment set aside both Exhibit P6 Order and Exhibit P7 judgment and directed the Government to consider the appeal afresh—de novo.

13. In the wake of Exhibit P8 judgment, the Joint Registrar, in the meanwhile, passed an order dated 08.07.2014, letting the petitioners resume the charge as the Board of Directors. Certain third parties challenged the order of the Joint Registrar before this Court in W.P.(C)

Nos.18530/2014 and 18567/2014. The Court allowed both the writ petitions on 20.10.2014, thereby setting aside the order impugned. In fact, the petitioners' subsequent appeal in W.A.No.1540/2015 was dismissed by a learned Division Bench on 19.11. 2014.

14. At any rate, in the petitioners' appeal, which was directed by the learned Division Bench to be heard afresh, the Government, once again, on 17.12.2014 stayed Exhibit P4, the order of surcharge impugned. On the strength of Exhibit P9 order of stay, the petitioners are said to have continued on the Board till the disposal of the appeal.

15. Eventually, the Government, being the appellate authority, dismissed the petitioners Exhibit P5 appeal through Exhibit P12 order dated 12.05.2015, which is now assailed. In the present writ petition, too, the petitioners initially obtained a status quo order on 25.05.2015.

16. Heard the learned counsel for the petitioners and the learned Government Pleaders, as well as the learned counsel for the fourth respondent, apart from perusing the

record.

Submissions:

Petitioners':

17. The learned counsel for the petitioners and the learned counsel for the additional fourth respondent both have argued extensively on various aspects of the case. This Court, however, is of the opinion that for the decision it seeks to render any elaborate reference to those arguments is not necessary; suffice it to have the summary of the submissions on the part of the learned counsel on either side.

Petitioners':

18. The learned counsel for the petitioners has contended that the infraction of not maintaining CRR and SLR is under the Banking Regulation Act, but not under the Kerala Co-operative Societies Act. According to him, it boggles one's imagination how the respondents could initiate penal measures under one statute for the violation of another statute, which is distinct and different.

19. The learned counsel has further contended that it is a pre-requisite for the invocation of Section 68 of the Act that the persons charged ought to have acted contrary to the Act and the Rules. In other words, any violation of SLR & CLR ratios is not contrary to the Act or the Rules. He has also contended that the first respondent, the appellate authority, has rendered Exhibit P12 order on appeal without much application of mind. Simply stated, the order is perfunctory and perverse in its scope and content.

20. Adverting to the facts of the matter, the learned counsel has also submitted that both the primary and the appellate authorities ought to have appreciated under what compelling circumstances the managing committee had failed to comply with the SLR & CLR norms. In elaboration, he has submitted that essentially because of the unprecedented withdrawal that took place during the relevant period the managing committee could not adhere to SLR/CLR norms.

21. Eventually, the learned counsel has submitted that earlier this Court set aside Exhibit P6 order passed by the Government having found it to be vague. According to him, Exhibit P12 suffers from the same vagueness. Summing up his submissions, the learned counsel has urged this Court to set aside both Exhibits .P4 and P12, apart from declaring that the petitioners are not liable to be surcharged under Section 68 of the Act.

Fourth Respondent's:

22. The learned counsel for the additional 4th respondent, on the contrary, has contended with equal vehemence that the respondent Bank has suffered immensely because of the gross mismanagement perpetrated by the petitioners. According to him, non-compliance with SLR and CLR ratios is only a case in point. He has further submitted that despite the order passed by the Joint Registrar under Rule 44 of the Rules disqualifying the petitioners, apart from removing them from the committee, the petitioners still continue on the committee

illegally and without justification.

23. In support of his submissions, the learned counsel has extensively referred to various observations of this Court—both the learned Single Judge and the learned Division Bench—in the connected writ petitions and writ appeals; they are concerning the validity of the orders passed by the Joint Registrar initially disqualifying the petitioners and later recalling the orders.

24. The learned counsel has, in fact, laid specific emphasis on Exhibit P9 judgment of this Court. Eventually, the learned counsel has submitted the Government shall forthwith enforce Exhibit P12 order and see that the petitioners are debarred from taking part in the affairs of the respondent Bank.

Discussion:

Whether Exhibit P12 Order is Sustainable?

25. Without any prefatory formalities, I may observe that in Exhibit P4, the primary authority has found that the managing committee, as was evident from letters 1 to 8,

ignored all directions, instructions, and warning from the RBI in the matter of credit deposit ratio. The authority has found 'without any shred of doubt' that the managing committee exhibited irresponsible, culpable attitude in ignoring the dangerous and critical financial condition of the Bank. The committee was found to have disregarded the guidelines for their private profit. It resulted in the Bank's paying a fine of Rs.5,39,995/- to the Reserve Bank.

26. According to the primary authority the managing committee has driven the bank that was operating in profits into a very critical financial crisis by ignoring the various instructions, directions, and warnings issued by the controlling authorities like the Co-operative Affairs Ministry and the RBI.

27. To get the measure of Exhibit P4 order, I must observe that the authority has cogently dealt with each and every issue. I, however, hasten to add that this Court by observing thus has not, at any rate, given its imprimatur to the findings. For any such observation is prejudicial to the

petitioners in further proceedings. Be that as it may, the observation is in the context of the adjudicatory ambit of a quasi-judicial authority.

28. On the other hand, Exhibit P12, the order in appeal, cryptically concludes that the Appellants have not been able to produce any clarifications or new evidence. Not to sound uncharitable to the appellate authority, this Court does acknowledge that Exhibit P8 touches—and only touches—upon certain aspects of the alleged misconduct of the managing committee. But, it is too perfunctory to pass for a judicial order. It reads as if it were in continuation of Exhibit P4 order rather than an order in appeal against it.

29. It needs no reminding that the appellate forum is the final place for the adjudication of any dispute in all its nuances—legal and factual. The order in appeal, trite to observe, is expected to be elaborate, at least reasonably, as regards the issues that have fallen for consideration before the primary authority. If the order appealed against is unassailable, still, the appellate authority is required to

refer to all the issues addressed by the primary authority and supply the reasons, briefly though, how the order deserves the appellate authority's imprimatur.

30. Exhibit P8 order in appeal, as has been contended by the learned counsel for the petitioner, lacks these prerequisites as have been referred to above, to qualify itself to be a reasoned order.

31. In these facts and circumstances, it is but inevitable for this Court to remand the matter—unfortunately once again, however—to the appellate authority for fresh adjudication and disposal, especially after addressing all the issues raised by the appellants. This conclusion compels this Court to set aside Exhibit P12, and it does.

32. The issue could have come to an end here, but it was not to be. The learned counsel for the petitioner has insisted that whatever interim order granted by this Court earlier needs to be continued until the disposal of the appeal. On the converse, the learned counsel for the 4th

respondent has contended that all along the continuation of the petitioner on the committee has been grossly illegal. And this Court cannot lend its hand to perpetuate the illegality further. Hence, the further discussion.

On the Issue of the Petitioners' continuance on the Board:

33. The grievance of the additional fourth respondent concerns what is said to be the unauthorised functioning of the petitioners as president and committee members of the 3rd respondent Bank without any right or authority. For the petitioners being the Board of Management have violated all the RBI norms and made the bank suffer severe losses.

34. In the course of time, in keeping with the remand, a learned Single Judge of this Court, contends the learned counsel, considered W.P.(C)No.28629/09 and dismissed it through Judgment dated 12.03.2013. By that time—in fact, much prior to that, i.e., on 09.10.2011—election to the committee took place, and the petitioners were re-elected.

35. On the dismissal of W.P.(C) 28629/2011, the Joint Registrar issued an order in CRB 860/2004 dated

22.03.2013 under Rule 44 of the Rules and disqualified the petitioners from functioning as committee members, further contended the learned counsel. The Judgment was challenged in W.A.No.540/13 but, he avers, no interim order was granted. Hence on and from 12.03.2013, the petitioners were not in office as committee members.

36. According to the learned counsel for the additional 4th respondent, Exhibit P4 order got revived and held the field. As a result, the petitioners had not been on the committee since 12.03.2013. It is also the contention of the learned counsel for the additional fourth respondent that, in the wake of Exhibit P4, the balance six committee members, continuing in office, elected one Mr.Vijaya Chandra Menon as the new President. Owing to the subsequent events, the Committee lost its quorum; it resulted in the Joint Registrar issuing order in CRB 4215/2014 dated 13.05.2014 appointing an Administrator.

37. It is the specific grievance of the fourth respondent that on 08.07.2014, the Joint Registrar

erroneously issued an order in CRB 5889/2014. The net result was that Exhibit P4 dated 22.03.2013 and the order dated 13.05.2014 stood withdrawn. The said order, in fact, enabled the petitioners to function as the committee members, again.

38. The learned counsel contends that as per Section 28(B) of the Act, the president of a bank can be elected only through the proceedings issued by the State Co-operative Election Commission.

39. In fact, this Court quashed the order dated 08.07.2014, of the Joint Registrar through Ext.P9 judgment in W.P.(C)Nos.18530/2014 and 18576/2014. The challenge to Exhibit P9 judgment in W.A.No.1550/2014 by the respondents to 3 to 5 yielded no result, as it was dismissed through Exhibit P10 judgment. In substance, the fourth respondent has contended that the petitioners cannot continue on the Board.

40. Indeed, the petitioners have countered the plea of the fourth respondent by saying that all through either

this Court, the primary authority or the appellate authority has stayed the operation of Exhibit P4 order. According to them, even now, in the light of the interim direction given by this Court, they have been continuing on the Board.

41. At any rate, this Court has already concluded that the matter needs to be remanded to the appellate authority. The petitioners' continuation, in the face of Exhibit P4 order, which stood revived owing to the setting aside of Exhibit P12 order, it is for the appellate to decide, in an interlocutory application or otherwise, the validity or the legality—even the desirability—of the petitioners' continuing on the Board. It is not for this Court to indulge in piecemeal adjudication.

Whether the interim order granted earlier needs to be continued?

42. I may observe that in the continuing saga of multiple litigations, the additional fourth respondent filed W.P.(C)No.29444/2014 seeking the implementation of Exhibit P9 Judgment and prohibiting the petitioners from

functioning as president and committee members. Contending that the petitioners moved a separate appeal instead of reviving the earlier one after the remand, the fourth respondent filed W.P.(C)No.34373/2014. He further challenged the Government's order of staying Exhibit P4 in W.P.(C)No.35173/2014. This Court disposed of all the writ petitions together through Exhibit P11 judgment directing the Government to consider the issues of maintainability of the appeal and also the legality of stay.

43. W.P.(C)No.29444/2014, too, was disposed of by this Court allowing the additional fourth respondent to take further steps against the petitioners depending on the orders to be passed in the appeal.

44. When the Government dismissed Exhibit P5 appeal, the petitioners filed W.P.(C)No.15207/2015 and obtained an order of 'status quo' on 25.05.2015, and the said order has continued to this day. It is appropriate to examine what actually the petitioners sought as an interim relief. The interim relief sought is as follows:

> "For the reasons and averments made above, it is most respectfully prayed to this Hon'ble Court to stay the operation of Exts.P4 and P12, pending the disposal of the Writ Petition."

45. Indisputably, through Exhibit P4 order the petitioners had earned their disqualification; as a result, aggrieved, they filed Exhibit P5 appeal. The appeal now stands dismissed through Exhibit P12 order of the Government, the appellate authority. Let me assume that as far as the reasoning or ratio in Exhibits P4 and P12, the quasi-judicial orders, is concerned, the principle of merger applies. To that extent Exhibit P4 has lost its existence.

46. That said, I may proceed to observe that, by way of the doctrine of merger only Exhibit P12 is in existence. The findings in Exhibit P4 as regards surcharge have now become part of Exhibit P12. At any rate, this Court on 25.05.2015 did not suspend Exhibit P12. As a result, the disqualification, once again, came into being once Exhibit P5 appeal was dismissed. In the absence of either the suspension of Exhibit P12 or this Court granting a positive

direction that the petitioners be continued as members on the Committee, I am at a loss to understand how the order of status quo comes to the petitioners' rescue—status quo ante could have.

47. An order of status quo, at best, preserves the position that obtains on the day the order is given. Evidently by 25.05.2015, Exhibit P12 brought back the disqualification into operation. And with the 'status quo' the disqualification continued to be operative.

48. **Black's Law Dictionary**[1] defines the Latin term 'status quo' to mean 'the situation that currently exists'. The Hon'ble Supreme Court in **Bharat Coking Coal Ltd. v. State of Bihar**[2] has observed that the expression "status quo" is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term "status quo" implies the existing state of things at any given point of time.

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1 9th Edn.

2 AIR 1988 SC 127

49. Incidentally, in Bharat Coking Coal (supra), the order is to the following effect: “status quo as in the High Court”. The appellant, at whose instance the Supreme Court has granted 'status quo' has contended that “status quo as in the High Court” means status quo as prevailing between the parties when the matter was pending in the High Court and not after the High Court had passed the impugned judgment and disposed of the writ petition.

50. Their Lordships seems to have accepted the above contention for the observation is that the qualifying words “as in the High Court” clearly limit the scope and effect of the status quo order. Nevertheless, the finding is to the effect that the only issue determined by the High Court was that slurry was not coal or mineral. In that context, the Apex Court has held that the order of status quo is of no consequence. In fact, the further observation is to the following effect: “It is unfortunate that the appellant rested itself content by obtaining the status quo order in terms in which it was passed. It should instead have for safeguarding

its interests insisted upon a prohibitory order".

51. Indeed, the above adjuration aptly applies here as well.

52. Both learned counsel on either side have expended enormous time on the issue whether this Court, while remanding the matter to the appellate authority, can preserve its interim order. The learned counsel for the petitioners has submitted that it can; the learned counsel for the fourth respondent, on the contrary, has said that it cannot, for the Court, according to him, with the disposal of the writ petition becomes functus officio. Both the learned counsel, to their credit, have placed reliance on many decisions.

53. I am afraid, any discussion on the issue has been obviated. Even if I am inclined to continue the order of status quo, as has already been held, it does not enure to the petitioners' benefits. On the other hand, at the stage of disposal, it is inappropriate for this Court to enlarge the scope of the interim order given earlier, thereby suspending

the operation of Exhibit P12 to the extent of disqualification. It is impermissible. No doubt, on remand, by filing a fresh interlocutory application, the petitioners can revive their request before the appellate authority as they did earlier. In such an eventuality, it entirely lies in the discretion of the appellate authority to pass appropriate orders as it deems fit and proper.

54. To sum up, this Court hereby sets aside Exhibit P12 order and remands the matter to the appellate authority for fresh adjudication. Of course, the appellate authority is expected to render a reasoned order after addressing all the issues being raised by both the parties to the appeal proceedings.

55. As a matter of abundant caution, this Court observes that it has not pronounced, not even expressed, any opinion on the merits of the matter. Any observations incidentally made in the above disposition are only to elucidate the issues involved in the writ petitions and shall not be taken as an expression of opinion of this Court on the

merits of the matter.

With the above observations, the writ petitions are disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv