

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C) .NO. 19880 OF 2011 (H)  
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PETITIONER(S) :  
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1. FIRST COMMODITIES EXCHANGE OF INDIA  
LIMITED, A COMPANY REGD. UNDER THE INDIAN  
COMPANIES ACT AND HAVING ITS REGD. OFFICE AT  
2ND FLOOR, VEE YEM TOWER, PALARIVATTOM  
KOCHI, KERALA-682025  
REP. BY ITS DIRECTOR A.A.HANEEFA.

2. A.A.HANEFA, DIRECTOR,  
FIRST COMMODITIES EXCHANGE OF INDIA LIMITED  
SURYA TRADERS, BLDG. NO. VIII/333B, KAITHAKAD  
PATTIMATTOM, ERNAKULAM-683562.

3. K.K.NIZAM, DIRECTOR,  
FIRST COMMODITIES EXCHANGE OF INDIA LIMITED  
KAIRALI TRADERS, KALAPURACKAL, MANATHUPADAM  
CHANGAMPUZHA NAGAR, KALAMASSERY, COCHIN-682033.

BY ADVS.SRI.BECHU KURIAN THOMAS  
SRI.PAUL JACOB (P)  
SRI.ROSHEN.D.ALEXANDER  
SMT.INDU SUSAN JACOB  
SMT.NISHA JOHN  
SRI.ENOCH DAVID SIMON JOEL

RESPONDENT(S) :  
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1. UNION OF INDIA,  
REP. BY ITS SECRETARY, MINISTRY OF CORPORATE AFFAIRS  
'A' WING, SHASTRI BHAWAN, RAJENDRA PRASAD ROAD  
NEW DELHI-110001.

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2. FORWARD MARKETS COMMISSION,  
'EVEREST' 3RD FLOOR, 100, MARINE DRIVE  
MUMBAI-400002, REP. BY ITS, DEPUTY DIRECTOR.

3. K.V.KRISHNAKUMAR, AGED 37 YEARS,  
S/O.VISWANATHAN, SREE KRISHNA OILS, TC 20/1358  
KARAMANA P.O., THIRUVANANTHAPURAM-2.

4. NAVAS P.A., AGED 36 YEARS,  
S/O.P.S.ABDUL GAFOOR, PALLIVEETI HOUSE, YENDEYAR P.O.  
KOTTAYAM-686514.

5. K.K.KUNJIKOMU, AGED 73 YEARS,  
S/O.KUNGU SEETHI HAJI, SEETHI OIL MILLS, ENYAD P.O.  
KODUNGALLUR-680666.

6. M.P.KRISHNAN,  
DEPUTY DIRECTOR, FORWARD MARKETS COMMISSION, 'EVEREST'  
3RD FLOOR, 100, MARINE DRIVE  
MUMBAI-400002.

(R6 DELETED AS PER ORDER DATED 14/03/2013 IN IA 4113/2013)

ADDL.7. FIRST COMMODITIES EXCHANGE OF INDIA LTD.  
2ND FLOOR, VEE YEM TOWER, PALARIVATTOM  
KOCHI, KERALA - 682 025.  
REP. BY ITS CHAIRMAN - T.VIDYASAGAR.

ADDL.R7 IS IMPEADED AS PER ORDER DATED 25.01.2012 IN  
IA.18277/2011.

R1-42 BY ADVOCATE SHRI PHILIP MATHEW  
R3-5 BY ADV. SRI.P.K.IBRAHIM  
RADDL 7 BY ADV. SRI.BABU KARUKAPADATH  
RADDL 7 BY ADV. SMT.M.A.VAHEEDA BABU  
RADDL 7 BY ADV. SRI.JAGAN GEORGE  
RADDL 7 BY ADV. SRI.K.A.NOUSHAD  
RADDL 7 BY ADV. SRI.P.U.VINOD KUMAR  
RADDL 7 BY ADV. SRI.P.G.PRAMOD  
RADDL 7 BY ADV. SRI.KANDAMPULLY RAHUL  
RADDL 7 BY ADV. SRI.J.RAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
08.01.2015 ALONG WITH W.A. NO.1289 OF 2011 AND CONNECTED CASES,  
THE COURT ON 29.01.21015 DELIVERED THE FOLLOWING:

**APPENDIX**

**PETITIONER(S)' EXHIBITS:**

**EXHIBIT P1            TRUE COPY OF THE NOTICE OF THE AGM DATED 26.11.2010 ISSUED BY THE CEO.**

**EXHIBIT P2            TRUE COPY OF THE NOTICE APPOINTING THE RETURNING OFFICER DATED 25.11.2010.**

**EXHIBIT P3            TRUE COPY OF THE NOMINATION DATED 02.12.2010 SUBMITTED BY MR.KETTY CHERIAN**

**EXHIBIT P3(A)            TRUE COPY OF THE NOMINATION DATED 03.12.2010 SUBMITTED BY THE 4<sup>TH</sup> RESPONDENT.**

**EXHIBIT P3(B)            TRUE COPY OF THE NOMINATION DATED 3.12.2010 SUBMITTED BY THE 5<sup>TH</sup> RESPONDENT.**

**EXHIBIT P3(C)            TRUE COPY OF THE NOMINATION DATED 3.12.2010 SUBMITTED BY THE 3<sup>RD</sup> RESPONDENT.**

**EXHIBIT P4            TRUE COPY OF THE ELECTION NOTIFICATION ISSUED BY THE RETURNING OFFICER DATED 3.12.2010.**

**EXHIBIT P5            TRUE COPY OF THE NOTICE ISSUED BY MR.KETTY CHERIAN OPPOSING THE PROCESS OF ELECTION.**

**EXHIBIT P6            TRUE COPY OF THE LEGAL OPINION DATED 9.12.2010 TAKEN FROM MATHAI & MATHAI**

**EXHIBIT P6(A)            TRUE COPY OF THE LEGAL OPINION TAKEN FROM BVR ASSOCIATES COMPANY SECRETARIES DATED 10.12.2010.**

**EXHIBIT P7            TRUE COPY OF THE MINUTES OF THE AGM HELD ON 11.12.2010.**

**EXHIBIT P8            TRUE COPY OF THE NOTICE OF BOARD MEETING DATED 16.12.2010 ALONG WITH THE AGENDA.**

**EXHIBIT P9            TRUE COPY OF THE MINUTES OF THE BOARD MEETING HELD ON 30.10.2010.**

**EXHIBIT P10            TRUE COPY OF THE MEMORANDUM OF COMPANY PETITION IN C.P. NO.14 OF 2011 OF THE COMPANY LAW BOARD CHENNAI.**

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**EXHIBIT P10(A) TRUE COPY OF THE LETTER DATED 18.3.2011 ISSUED BY PETITIONERS 16 TO 19 AND 45<sup>TH</sup> PETITIONER IN C.P. NO.14 OF 2011.**

**EXHIBIT P10(B) TRUE COPY OF THE AFFIDAVIT DATED 29.5.2011 FILED BY THE 2<sup>ND</sup> RESPONDENT THROUGH THE 6<sup>TH</sup> RESPONDENT HEREIN AS 13<sup>TH</sup> THE COUNTER PETITIONER IN C.P. NO.14 OF 2011 BEFORE THE CLB.**

**EXHIBIT P11 TRUE COPY OF THE WITHDRAWAL MEMO FILED BY THE PETITIONERS THEREIN BEFORE THE COMPANY LAW BOARD.**

**EXHIBIT P12 TRUE COPY OF THE ORDER DATED 22.6.201 IN C.P. NO.14/397 & 398/CB/2011 ISSUED BY THE COMPANY LAW BOARD.**

**EXHIBIT P12(A) TRUE COPY OF THE ORDER SHEET DATED 23.2.2011 IN C.P. NO.14 OF 2011.**

**EXHIBIT 13 TRUE COPY OF THE NOTICE NUMBERED AS NO.1/1/2011/LAD-1/CLB/2544 DATED 21.06.2011.**

**EXHIBIT P14 TRUE COPY OF THE NOTICE NUMBERED AS NO.1/1/2011/LAD-1/CLB/2571 DATED 27.6.2011.**

**EXHIBIT P15 TRUE COPY OF THE MINUTES OF HEARING AND ORDER DATED 11.7.2011 ISSUED BY THE 6<sup>TH</sup> RESPONDENT PURPORTING TO BE ISSUED ON BEHALF OF THE 2<sup>ND</sup> RESPONDENT.**

**RESPONDENT(S)' EXHIBITS:**

**EXHIBIT R2(A) TRUE COPY OF THE LETTER DATED 29.7.2011 ISSUED BY THE 2<sup>ND</sup> RESPONDENT TO THE 1<sup>ST</sup> PETITIONER.**

**EXHIBIT R2(B) TRUE COPY OF THE REPLY DATED 29.7.2011 RECEIVED FROM HE CHAIRMAN OF FIRST COMMODITIES EXCHANGE OF INDIA LIMITED.**

**EXHIBIT R2(C) TRUE COPY OF THE NOTIFICATION DATED 23.1.2009 ISSUED BY THE GOVERNMENT OF INDIA, GRANTING RECOGNITION TO THE EXCHANGE.**

**EXHIBIT R2(D) TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 21<sup>ST</sup> JULY, 2009 GRANTED TO THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED.**

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EXHIBIT R2(E) TRUE COPY OF THE NOTIFICATION DATED  
12.7.55

EXHIBIT R2(F) TRUE COPY OF THE SAID COMPLAINT  
RECEIVED 27 SHAREHOLDERS OF THE FIRST COMMODITIES EXCHANGE OF  
INDIA LIMITED.

EXHIBIT R2(G) TRUE COPY OF THE NOTIFICATION DATED  
12.7.80 DELEGATING POWERS OF THE FORWARD CONTRACTS (REGULATION)  
ACT.

EXHIBIT R2(H) TRUE COPY OF THE INQUIRY REPORT DATED  
17.3.11.

EXHIBIT R2(I) TRUE COPY OF THE LETTER DATED 25.11.2010  
APPOINTING THE RETURNING OFFICER BY THE FIRST COMMODITIES  
EXCHANGE OF INDIA LIMITED.

EXHIBIT R2(J) TRUE COPY OF THE NOTICE DATED 26.11.2010.

EXHIBIT R2(K) TRUE COPY OF THE REPORT DATED 03.12.2010  
OF THE ELECTION OFFICER DECLARING THE RESULT OF ELECTION OF BOARD  
OF DIRECTORS OF THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED.

EXHIBIT R2(L) TRUE COPY OF CHARGE TAKEN REPORTS OF  
THE NEW DIRECTORS OF THE FIRST COMMODITIES EXCHANGE OF INDIA  
LIMITED.

EXHIBIT R2(M) TRUE COPY OF THE ORDER DATED 11.07.2011  
OF THE FORWARD MARKETS COMMISSION

EXHIBIT R2(N) TRUE COPIES OF THE ORDERS OF THE 2<sup>ND</sup>  
RESPONDENT APPOINTING DIRECTORS ON THE BOARD OF THE FIRST  
COMMODITIES EXCHANGE OF INDIA LIMITED.

EXHIBIT R2(O) TRUE COPY OF THE INTERIM ORDER DATED  
22.06.2011 OF THE COMPANY LAW BOARD, CHENNAI.

ANNEXURE A1 TRUE COPY OF THE MINUTES OF BOARD  
MEETING OF THE PETITIONER COMPANY HELD ON 5.5.2011.

EXHIBIT R3(A) TRUE COPY OF THE RESOLUTION OF THE  
BOARD OF DIRECTORS DATED 9.8.2008.

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EXHIBIT R3(B) TRUE COPY OF THE NOTIFICATION  
PUBLISHED IN THE OFFICIAL GAZETTE OF INDIA GRANTING RECOGNITION TO  
THE COMPANY.

EXHIBIT R3(C) TRUE COPY OF THE CERTIFICATE OF  
REGISTRATION ISSUED BY THE 2<sup>ND</sup> RESPONDENT.

EXHIBIT R3(D) TRUE COPY OF THE COMPLAINT DATED  
7.1.2010.

EXHIBIT R3(E) TRUE COPY OF THE DRAFT COPY OF THE  
MINUTES OF THE 8<sup>TH</sup> AGM

EXHIBIT R3(F) TRUE COPY OF THE PRINTOUT OF THE  
REPORT OF THE ANNUAL GENERAL BODY MEETING HELD ON 11.12.2010  
PUBLISHED IN THE WEBSITE OF THE COMPANY ON 1.1.2011.

EXHIBIT R3(G) TRUE COPY OF THE COMMUNICATION DATED  
30.12.2010.

EXHIBIT R3(H) TRUE COPY OF THE LETTER DATED 22.12.2010  
ADDRESSED TO CEO OF THE COMPANY BY SHRI V. GOPAKUMARAN NAIR.

EXHIBIT R3(I) TRUE COPY OF THE LETTER OF SHOMY  
GEORGE DATED 28.12.2010.

EXHIBIT R3(J) TRUE COPY OF THE PRINTOUT OF THE  
MINUTES OF THE ALLEGED BOARD OF DIRECTORS MEETING HELD ON  
30.12.2010 AS PUBLISHED IN WEBSITE OF THE COMPANY.

EXHIBIT R3(K) TRUE COPY OF THE PRINT OUT OF THE  
INFORMATION MADE AVAILABLE IN THE WEBSITE OF CREDIT INFORMATION  
BUREAU INDIA LIMITED.

EXHIBIT R3(L) TRUE COPY OF THE PRINTOUT OF THE  
INFORMATION.

EXHIBIT R3(M) TRUE COPY OF THE NEWS ITEM APPEARED IN  
MALAYALA MANORAMA UNDER THE HEAD "LOAN CHEATING: CBI FILED FIR"

EXHIBIT R7(A) TRUE COPY OF THE EXTRACT OF THE  
ARTICLES OF ASSOCIATION OF THE COMPANY.

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**EXHIBIT R7(B)                      TRUE COPY OF THE LETTER ISSUED BY THE  
STATE BANK OF TRAVANCORE, PALARIVATTOM BRANCH.**

**EXHIBIT R7(C)                      TRUE COPY OF THE NOTICE FOR CONVENING  
9<sup>TH</sup> ANNUAL GENRAL MEETING OF THE COMPANY ON 11.12.2010.**

**ANTONY DOMINIC, J.**  
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**W.P.(C) NO. 19880 OF 2011**

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**Dated this the 25<sup>th</sup> day of August, 2011**

**O R D E R**

This writ petition is filed by a Company and its two Directors, challenging Ext.P15 order passed by the 2<sup>nd</sup> respondent directing that respondents 3, 4 and 5 be taken on the Board of Directors of the Company with immediate effect. When the interlocutory application to stay Ext.P15 order was heard, the main contention urged by the counsel for the petitioners was that the 2<sup>nd</sup> respondent did not have any power under the Forward Contracts (Regulation) Act, 1952 to issue such an order.

2. On the other hand, it was contended by the respondents in their counter affidavits that the order is perfectly within the statutory powers and that in pursuance to Ext.P15, respondents 3, 4 and 5 have already assumed charge as Directors as per Ext.R2(I) dated 16.7.2011.

3. The first petitioner Company made an application for recognition under Section 5 of Forward Contracts (Regulation) Act [Act 74 of 1952] and accordingly, the Central Government granted recognition to the first petitioner under Section 6 of the

Act. Ext.R3(b) is the notification dated 23<sup>rd</sup> of January 2009 issued by the 1<sup>st</sup> respondent renewing the recognition granted to the first petitioner for the period up to 31<sup>st</sup> January, 2012. Similarly in terms of the provisions contained in Section 14A(2) of the Act, the Company also made an application for certificate of registration to carry on business relating to forward contracts and accordingly certificate of registration under Section 14B was granted by the Central Government, a copy of which is Ext.R3(c).

4. Section 6(1) of the Act which provides for grant of recognition to an Association reads thus:

***“6. Grant of recognition to association – (1) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member”.***

5. A reading of this provision shows that the grant of recognition to an association shall be subject to such conditions as may be prescribed or specified. In Ext.R3(b) notification dated

23/1/09 also, recognition granted to the petitioner Company has been made subject to the condition that *“said exchange shall comply with such directions as may, from time to time be given by the Forward Markets Commission”*. Therefore, on the strength of the enabling provision contained in Section 6(1), while issuing Ext.R3(b) notification, the Central Government specified that the first petitioner shall comply with such directions as may be issued from time to time by the Commission.

6. Similarly, Section 14A(1) provides as follows:

***“14-A. Certificate of registration to be obtained by all associations-*** (1) *No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (hereinafter referred to as such commencement) carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission”.*

7. This section therefore obliges the association to carry on business relating to forward contracts only under a certificate of registration and in accordance with the conditions specified therein. In Ext.R3(c) certificate of registration, various conditions have been specified and the first condition is that *“the said association shall comply with such directions as may from time to*

*time, be given by the Forward Markets Commission”.*

8. Therefore, both in Ext.R3(b) and in Ext.R3(c) and in Sections 6 and 14A of the Act, enabling provisions have been incorporated entitling the Forward Markets Commission to issue directions from time to time and the first petitioner Company is obliged to comply with such directions.

9. The provisions of the Act shows that various powers have been reserved in favour of the Central Government and also the Forwards Markets Commission to grant recognition, to withdraw recognition, to call for periodical returns or direct enquiries to be made, to furnish annual reports, to direct rules to be made or to make rules, to make or amend bye laws, to prohibit forward contracts in certain cases, to levy penalties, to supersede the governing body of association, to suspend members etc. These statutory provisions and the scheme of the Act thus show that pervasive control has been conferred on the Central Government and the Forward Markets Commission and there is nothing in the Act which suggests that the Central Government or the Commission cannot direct induction of members to the Director Board of the 1<sup>st</sup> petitioner Company in

the circumstances as pointed out in Ext.P15.

10. In fact, counsel for the petitioner relied on the Apex Court judgment in **Indramani v. W.R.Natu** (AIR 1963 SC 274) and referred me to the dissenting opinion of Justice K.Subba Rao and contended that the Commission has no administrative functions or powers of interference in the internal management of the registered association. However, in the judgment, the manner in which the powers of the Commission should be understood from the provisions of the Act has been indicated by the Apex Court in the following words:-

*“What we are here concerned with is whether it is legally competent to vest a particular power in a statutory body, and in regard to this the proper rule of interpretation would be that unless the nature of the power is such as to be incompatible with the purpose for which the body is created, or unless the particular power is contra-indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it. Judged by this test, it would be obvious that the power conferred by the bye-law is one which could be validly vested in the Commission”.*

11. The aforesaid principle has been followed by the Apex Court in its judgment in **Union of India v. Rajdhani Grains and Jaggery Exchange** (1975(1) SCC 676). Applying the aforesaid

principles laid down by the Apex Court, prima facie, I am of the view that it was perfectly within the jurisdiction of the 1<sup>st</sup> respondent to have issued Ext.P15.

Taking note of this prima facie finding, as also the fact that the respondents have already assumed charge as Directors w.e.f 16.07.2011, I decline the interim prayer sought for by the petitioners.

**ANTONY DOMINIC, JUDGE**

Rp