

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 24222 of 2009 (W)

PETITIONER:

**P.J. MOHANAN
PRESIDENT OF THE SUPERSEDED MANAGING COMMITTEE OF THE
NETHAJI KSHEEROLPADAKA SAHAKARANA SANGAM (LTD), NO.A 86 (D)
APCOS, VADAKKANARYAD P.O., ALAPPUZHA.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENTS:

- 1. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT, ALLAPPUZHA.**
- 2. THE PART TIME ADMINISTRATOR
NETHAJI KSHEEROLPADAKA SAHAKARANA SANGAM (LTD) NO.A.86 (D)
APCOS, (DAIRY DEVELOPMENT OFFICER, ARYAD).**

R1 BY GOVERNMENT PLEADER SRI. P.V.ELIAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-01-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

- | | |
|-----------|---|
| EXT- P1- | TRUE COPY OF THE MINUTS OF THE COMMITTEE HELD ON 17-10-2007 |
| EXT- P2- | TRUE COPY OF THE RESIGNATION LETTER OF THE SECRETARY DATED 17-10-2007. |
| EXT- P3- | TRUE COPY OF THE UNDERTAKING. |
| EXT- P4- | TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED UNDER SECTION 33 (1) OF THE CO-OPERATIVE SOCIETIES ACT DATED 17-04-2008. |
| EXT- P5- | TRUE COPY OF THE SUPERSESSION ORDER No.3467/2008 DATED 24-05-2008. |
| EXT- P6- | TRUE COPY OF THE JUDGMENT IN WPC No.15685/2008 DATED 02-07-2008. |
| EXT- P7- | TRUE COPY OF THE NOTICE ISSUED REQUIRING PETITIONERS TO SUBMIT EXPLANATION REGARDING THE DEFECTS POINTED OUT IN EXT.P4, BASED ON AN ALLEGED REPORT SUBMITTED BY THE ASST. INSPECTOR DATED 08-06-2009. |
| EXT- P8- | TRUE COPY OF THE EXPLANATION DATED 31-05-2009. |
| EXT- P9- | TRUE COPY OF THE EXPLANATION DATED 05-05-2009. |
| EXT- P10- | TRUE COPY OF THE REPLY SUBMITTED BEFORE THE DAIRY DEVELOPMENT DEPUTY DIRECTOR DATED 01-07-2009. |
| EXT- P11- | TRUE COPY OF THE JUDGMENT IN WPC No.19173/2009 DATED 08-07-2009. |
| EXT- P12- | TRUE COPY OF THE ORDER OF SUPERSESSION No.E 3467/2007 DATED 16-07-2009. |
| EXT- P13- | TRUE COPY OF THE ORDER APPOINTING PART TIME ADMINISTRATOR No.E-3467/07 DATED 22-07-2009. |
| EXT- P14- | TRUE COPY OF THE ORDER No.E 3467/2007 DATED 24-11-1009. |
| EXT- P15- | TRUE COPY OF THE NOTICE ISSUED BY THE RETURNING OFFICER TO ONE OF THE MEMBERS DATED 20-10-2010. |
| EXT- P16- | TRUE COPY OF THE VOTERS LIST PUBLISHED BY THE RETURNING OFFICER ON 14-10-2010. |

RESPONDENTS' EXHIBITS

EXT- R1 (a) - TRUE COPY OF THE OPINION OF THE CIRCLE
CO-OPERATIVE UNION.

EXT- R1(a)(a)-TRUE COPY OF THE CERTIFICATE OBTAINED FROM SECRETARY.

EXT- R1 (b) - TRUE COPY OF THE CERTIFICATE OBTAINED FROM THE
SECRETARY.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 24222 OF 2009-W

DATED THIS THE 27th DAY OF JANUARY, 2015.

J U D G M E N T

The petitioner was the President of the Managing Committee of “Nethaji Ksheerolpadaka Sahakarana Sangam A-86, Vadakanaryad”, which is a Co-operative society functioning since 1982 onwards. The Managing Committee to which the petitioner was the president, was elected and assumed charges on 17-09-2007. After the committee had taken over charge of the society, the inspection conducted in the Books of Accounts revealed large scale manipulations and misappropriations committed by the Secretary. By virtue of Ext.P1 the Secretary had undertaken to re-pay the amounts misappropriated and she had submitted resignation as per Ext.P2. Exhibit P3 is a letter issued by the husband of the petitioner undertaking to remit the entire amount found due, for which she is responsible. Thereafter, at the instance of the Secretary who had

resigned, a mass petition was submitted before the 1st respondent seeking enquiry into the affairs of the society. On the basis of that said request an inspection as contemplated under Section 66 of the Co-operative Societies Act was conducted. Based on the report of enquiry, action under Section 32 (1) for supersession of the committee was initiated. Exhibit P4 notice was issued and Ext.P5 order of supersession was passed. The petitioner challenged the order of supersession in a writ petition filed before this court, which was disposed of through Ext.P6 judgment. This court found that the proceedings initiated on the basis of an enquiry conducted under Section 66 and merely basing upon the interim report, is totally unsustainable. It was observed that in all cases Section 32 proceedings cannot be initiated on the basis of a proceedings under Section 66. In normal course, following an inspection under Section 66, there could be an enquiry under Section 65 and the society can be directed to rectify discrepancies or irregularities and it can be called upon to

submit a report regarding compliance of such directions. This court observed that, normally a proceedings under Section 32 is warranted only if a direction for rectification is not properly carried out. This court found that, on the basis of the mass complaints the Dairy Extension officer had given only an interim report of inspection. The Managing Committee of the society ought to have been heard based on the interim report or based on the final report of the inspection. But the materials revealed in the interim report is wholly insufficient to invoke the authority vested under Section 32 of the Act, is the findings. This court found that no sufficient opportunity was afforded to the society as contemplated under the Rules. Therefore Ext.P6 order of supersession was quashed. But a fresh proceedings was initiated based on the very same allegations. Exhibit P7 notice was issued calling upon the society to submit explanations regarding the defects pointed out in the inspection report, under Section 66. Eventhough the petitioner submitted Ext.P10 detailed explanation, Ext.P9

show cause notice was issued without referring to such explanations. The petitioner again submitted Ext.P8 reply to the show cause notice. Apprehending that the society will be superseded again, the petitioner had approached this court in W.P (c) No.19173/2009. In Ext.P11 judgment this court noticed that the petitioner was invited for a personal hearing and that he will be entitled to raise all objections before the respondent. The 1st respondent was directed to consider such objections and to pass final orders in the matter. Thereafter the 1st respondent had issued Ext.P12 order superseding the committee and by virtue of Ext.P13 the 2nd respondent was appointed as Administrator. In this writ petition the petitioner is challenging Ext.P12 order of supersession.

2. The above writ petition was filed as early as in the year 2009. It is conceded that on the basis of Ext.P13 the 2nd respondent had taken charge of the society as Administrator. Thereafter election for the new committee was taken out in the year 2010 and the said committee is

continuing in the administration. Learned counsel for the petitioner submitted that term of the present committee is going to expire in the year 2015. But the petitioner could not contest for the election because of the disqualification continuing based on Ext.P12 order, as provided under Section 32 (1) (e) of the Act. Hence challenge against Ext.P12 was canvassed on merits.

3. Eventhough the petitioner contended that the initiation of proceedings under Section 32 based on the very same set of allegations contained in Ext.P5, which was already quashed by this court is unsustainable. It is noticed that in Ext.P6 judgment this court has not taken any decision on the sustainability of those allegations. Nor any findings have been arrived by this court to the effect hat any of such allegations are factually incorrect or unsustainable. On the other hand, Ext.P5 was quashed merely on the basis that the initiation of the said proceedings under Section 32 was not in strict adherence to the procedure contemplated under the Act and also finding

that effective consultation as required under Section 32 (2) has not been done.

4. Elaborate arguments were advanced based on the factual aspects involved in various allegations upon which the supersession was ordered. But this court is of the opinion that the veracity of such allegation cannot be examined in this proceedings, which may require evaluation of various factual aspects based on materials and evidence. However, learned counsel for the petitioner had specifically pointed out that there was no effective consultation made even before issuing Ext.P12 proceedings, as required under Section 32 (2) of the Act. Referring to the contents of Ext.P12 it is pointed out that, the 1st respondent had only forwarded a letter to the circle co-operative union and there is nothing mentioned to show that all particulars and details with respect to the proceedings proposed was forwarded to the circle union. It is also contended that no effective reply has been received from the circle co-operative union after considering the materials based on which the proceedings

for supersession was initiated. So also it is contended that there was no effective consultation with the financing Bank of the co-operative society concerned.

5. From the materials available it is evident that the 1st respondent had forwarded a letter to the circle co-operative union as well as to the financing Bank. Exhibit R1 (a) produced proceedings along with counter affidavit of the 1st respondent would indicate that, the circle co-operative union had informed the 1st respondent that they have no objection in proceeding against the managing committee, since it is stated that the society had failed in rectifying the defects pointed out in the inspection conducted under Section 66 of the Act. It is further contended that there is no defect with respect to consultation with the financing Bank because the Bank had intimated that there is no finance rendered to the society in question.

6. Learned counsel for the petitioner had placed reliance on a Division Bench decision of this court in **K.B. Sahadevan V. P.K. Padmanabhan and others (2004**

(2) ILR Ker.169). It is held therein that, the Joint Registrar had to forward the financing bank and the circle co-operative union the objections submitted on behalf of the committee of the society and the tentative findings arrived by the Joint Registrar, after considering such explanations. The consultation contemplated under sub section (2) of Section 32 can be effective and meaningful only if the show cause notice issued under Section 32 (1), explanations/objections given on behalf of the committee and the tentative findings arrived by the Joint Registrar after considering such explanation, are also forwarded to the financing bank and to the circle co-operative union requesting them to offer their views on the proposal to supersede the committee. If such consultation process is not taken place, it cannot be said that there is proper compliance of sub section (2) of Section 32, is the findings. In a latter decision of another Division Bench in **State of Kerala V. Urukunnu Service Co-operative Bank Ltd. (2013 (2) KLT 74)** it is held that, it is mandatory for the

Joint Registrar to state in his order the opinion of the financing bank and the circle co-operative union obtained on consultation, it is which the function of the financing bank to intimate there opinion on the proposal to supersede the society. So also it is the function of the circle co-operative union to offer their views on the matter of supersession of the committee. The Joint Registrar cannot lightly exclude such consultations without any cogent or convincing reasons and is mandatory to consult such expert bodies before taking the drastic steps to supersede the Managing Committee, which is democratically elected. The legal principles in this regard has been reiterated by the hon'ble Apex Court in **State of M.P. V. Sanjay Nagayach (2013 (2) KLT 733 (SC))**.

7. Learned counsel contended that despite the allegations regarding lack of proper consultation, what was produced by the respondent would only show that a letter was forwarded to the circle co-operative union and that they have intimated the decision that they have no objection in

taking steps under Section 32. But such a letter and reply cannot be taken as an effective consultation. In view of the failure to prove that the notice proposing supersession, the objection received from the society and the preliminary findings arrived by the Joint Registrar were forwarded to the circle co-operative union, the impugned order lacks from compliance of effective consultation contemplated under Section 32 (1), is the contention. Therefore it is contended that the impugned order is vitiated by procedural irregularities and is liable to be quashed.

8. While evaluating the contentions based on the legal precedents cited above, this court is inclined to hold that the impugned order is lacking proof regarding effective consultation made before passing Ext.P12 order.

9. Under the above mentioned circumstances, this writ petition is disposed of by quashing Ext.P12 order of supersession. However, it is made clear that the above judgment will not in any manner affect functioning of the society carried out by the 2nd respondent Administrator and

subsequently by the elected Managing Committee, which is continuing in the administration at present. None of the decisions or actions taken during the time of administration by the 2nd respondent or by the elected managing committee will be affected in any manner. The above judgment is having only the effect of removing the disqualification if any acquired on the petitioner as contemplated under Section 32 (1) (e), against the petitioner contesting in any further elections to the Managing Committee of the society.

Sd/-
C.K. ABDUL REHIM
JUDGE

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P.A. to Judge