

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 25973 of 2012 (V)

PETITIONER(S):

S. KRISHNAKUMAR
S/O.SANKARA PILLAI, RAHDA VILAS, VELLANADU P.O.
NEDUMANGADU, THIRUVANANTHAPURAM-695 543.

BY ADVS.SRI.V.G.ARUN
SRI.PRASAD CHANDRAN

RESPONDENT(S)/ADDL. RESPONDENTS:

1. THE VELLANADU SERVICE CO-OPERATIVE BANK
LTD.NO.2379,REPRESENTED BY ITS SECRETARY,
VELLANADU P.O. NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT-695 543.

2. THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, THIRUVANANTHAPURAM-695 001.

3. THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, THIRUVANANTHAPURAM-695 001.

4. THE CO-OPERATIVE INSPECTOR (AUDIT AND ENQUIRY),
OFFICE OF THE ASSISTANT REGISTRAR (GENERAL) OF CO-
OPERATIVE SOCIETIES, NEDUMANGADU,
THIRUVANANTHAPURAM-695 541.

5. STATE OF KERALA
REPRESENTED BY THE SECRETARY,
CO-OPERATION (C) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

*Addl.6. D.SATHYANESAN
S/O.DEVADASAN, SATHYABHAVAN, VATTAVILA,
URIAKKODU.P.O., NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.
(*ADDL. R6 IS IMPEADED AS PER ORDER DATED 10/01/2013
IN IA 279/2013.)

WP(C) .No. 25973 of 2012 (V) -: (2) :-

****Addl.7. V.SASIDHARAN NAIR**

ADITYILA VEEDU, VELLANAD.P.O., THIRUVANANTHAPURAM.

(**ADDL. R7 IS IMPEADED AS PER ORDER DATED 28/01/2013
IN IA 1109/2013.)

R2-5 BY GOVERNMENT PLEADER SRI.C.P. PADMALAYAM

ADDL.R6 BY ADV. SRI.SERGI JOSEPH THOMAS

ADDL.R7 BY ADV. DR.K.P.SATHEESAN (SR.)

ADDL.R7 BY ADV. SRI.M.R.JAYAPRASAD

ADDL.R7 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)

ADDL.R7 BY ADV. SRI.ANOOP.V.NAIR

R1 BY ADV. SRI.R.SREEHARI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-11-2015, ALONG WITH WPC. 27181/2012, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE JUDGMENT IN WPC NO.8901/2009 DATED 19/3/2009.
- EXHIBIT P2. TRUE COPY OF THE JUDGMENT IN WPC NO.22345/2009 DATED 6/8/2009.
- EXHIBIT P3. TRUE COPY OF THE ORDER NO.CRP(2) 3449/09/KDIS DATED 18/6/2009 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE ORDER NO.CRP(2) 7637/09 DATED 14/10/2009 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE ORDER NO.CRP(2) 4824/2011 DATED 26/8/2011 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6. TRUE COPY OF THE JUDGMENT IN WPC NO.25559/2011 DATED 26/09/2011.
- EXHIBIT P7. TRUE COPY OF THE COMMUNICATION NO.13845/C1/2011/CO-OP DATED 28/11/2011.
- EXHIBIT P8. TRUE COPY OF THE COMMUNICATION NO.13845/C1/2011/CO-OP DATED 22/3/2012.
- EXHIBIT P9. TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY UNIT INSPECTOR, VENJARAMOODU DATED 26/12/2011.
- EXHIBIT P10. TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED 17/4/2012.
- EXHIBIT P11. TRUE COPY OF THE ORDER NO.CRP(2) 8435/09/KDIS DATED 20/11/2009 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P12. TRUE COPY OF THE PLAINT FILED AGAINST M.S.JAYAKUMAR DATED 15/8/2011.
- EXHIBIT P13. TRUE COPY OF THE PLAINT FILED AGAINST L.SHEEBA DATED 15/8/2011.
- EXHIBIT P14. TRUE COPY OF THE PLAINT FILED AGAINST K.SANTHA DATED 15/8/2011.
- EXHIBIT P15. TRUE COPY OF THE PROCEEDINGS NO.ICDP/13612/2008 DATED 30/1/2009 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

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- EXHIBIT P16. TRUE COPY OF THE NOTICE NO.ICDP/TVPM/338/2009 DATED 12/1/2010 OF THE INTEGRATED DEVELOPMENT PROJECT.
- EXHIBIT P17. TRUE COPY OF THE AGENDA NOTE OF THE DISTRICT LEVEL TENDER COMMITTEE DATED 18/1/2009.
- EXHIBIT P18. TRUE COPY OF THE LETTER NO.ICDP/TVPM/354/2009 DATED 18/1/2010 OF THE INTEGRATED CO- OPERATIVE DEVELOPMENT PROJECT.
- EXHIBIT P19. TRUE COPY OF THE MINUTES OF THE MANAGING COMMITTEE MEETING OF THE 1ST RESPONDENT DATED 16/12/2011.
- EXHIBIT P20. TRUE COPY OF THE REPORT NO.V 390/2010 DATED 8/3/2010 OF THE 3RD RESPONDENT.
- EXHIBIT P21. TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONER AND OTHERS BEFORE THE ENQUIRY OFFICER DATED 23/4/2012.
- EXHIBIT P22. TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER DATED 23/4/2012.
- EXHIBIT P23. TRUE COPY OF THE SECTION 68(1) ENQUIRY REPORT NO.A & E 357/2012 dated 26/4/2012.
- EXHIBIT P24. TRUE COPY OF THE NOTICE NO.CRP (2) 4824/2011 DATED 29/5/2012 OF THE 2ND RESPONDENT.
- EXHIBIT P25. TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER AND OTHERS BEFORE THE 2ND RESPONDENT DATED 13/6/2012.
- EXHIBIT P26. TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER AND OTHERS BEFORE THE 2ND RESPONDENT DATED 24/8/2012.
- EXHIBIT P27. TRUE COPY OF THE ELECTION NOTIFICATION PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 31/10/2012.

RESPONDENTS' EXHIBITS: NIL

okb.

// True copy //

P.A. to Judge

K.HARILAL, J.

W.P.(C) Nos.25973 & 27181 of 2012

Dated this the 2nd day of November, 2015.

JUDGMENT

The petitioner in W.P(C).No.25973/12 is the former President and the petitioners in W.P(C).No.27181/12 are the erstwhile members of the Board of Directors of the 1st respondent society. The 1st respondent is a Co-operative society registered and functioning under the Co-operative Societies Act, 1969 and Rules made thereunder. Now, the petitioners are facing the surcharge proceedings initiated against them under Section 68 of the Co-operative Societies Act, on the basis of an enquiry conducted under Section 65 of the said Act by the 2nd respondent. The allegations against the petitioners and others pertain to construction of a new building for the 1st respondent bank, misappropriation of funds from time to time from the 1st respondent bank and also the

manipulation of marks in the interview conducted for the appointment to the post of Junior Clerk, non remittance of Rs.2 lakhs withdrawn for payment to India Cements, etc. All the above allegations were pertaining to the period when the petitioner in W.P(C). No.25973/12 was the President and the petitioners in W.P(C).No.27181/12 were the members of the Board of Directors. After conducting an enquiry by the 2nd respondent under Section 65 of the Act, Ext.P9 report was prepared and submitted to the 2nd respondent, by the 3rd respondent. Pursuant to the submission of Ext.P9 report the proceedings under Section 68 of the Act have been initiated against the petitioner to surcharge them for the financial liabilities caused by them during their period. After a detailed enquiry, Ext.P24 report was received by the 2nd respondent and consequent on the said report Section 68(2) notice was issued by the 2nd respondent to the petitioner. Pursuant to the said notice, the petitioner as well as the other concerned parties was present in person

before the 2nd respondent, and filed their objections. After analysing the objections and explanation filed by the parties concerned in total, the 2nd respondent found that the bank has sustained huge loss of nearly Rs.1.5 Crores, due to the illegal and irregular activities and mismanagement of Board of Directors including the petitioners, ignoring the status as trustees. Consequently, the 2nd respondent arrived at a conclusion that the managing committee members who were in office from 2006 and employees who were in charge of Secretary and the Pharmasist of Neethi Medical Store were liable for the huge financial loss and they are liable to be surcharged for the huge financial loss caused to the bank under Section 68 of the Co-operative Societies Act. Thus, the proceedings are at the verge of finalisation and final order is to be passed. While so, the petitioners filed this petition and now the further proceedings stand stayed by the interim order of this Court. These writ petitions are filed mainly on the ground that sufficient opportunity

of being heard was not given to the parties during the course of proceedings under both Sections 65 and 68 of the Co-operative Societies Act.

2. The learned counsel for the petitioner in W.P.(C) No.25973/12 advanced arguments mainly on this point. The learned Government Pleader, on the other hand, advanced arguments pointing out Exts.P10 & P25 to the notice of the court and contended that sufficient opportunity of being heard was given to the petitioner during the course of proceedings, both under Sections 65 and 68 of the Co-operative Societies Act.

3. The first point to be considered is, whether the petitioner has been given sufficient opportunity of being heard during the course of proceedings under Sections 65 and 68 of the Co-operative Societies Act. On a combined reading of Sections 65 and 68 of the said Act, it is seen that two opportunities have been provided to the parties concerned during the course of proceedings under Sections 65 & 68 of the Co-operative

Societies Act. Rule 66(5) of the Co-operative Societies Rules provides that an opportunity of being heard may be given to the parties before finalising the decision on the report filed under Section 65 of the Co-operative Societies Act. It is pertinent to note that no opportunity of being heard is provided to the parties before the enquiry officer, during the course of enquiry. Therefore, the contention raised by the learned counsel for the petitioner that no opportunity of being heard had been given to the petitioner during the course of enquiry is liable to be rejected at the threshold, as the same was not provided under law or rules.

4. Going by Ext.P10 in W.P.(C). No.25973/12 it is seen that in response to the notice issued to the petitioners under Rule 65(5) of the Co-operative Societies Rules, the petitioner in W.P(C).No.25973/12 had filed an objection stating the explanation to each and every finding of the enquiry officer. Therefore, as rightly contended by the learned Government Pleader,

it is discernible from Ext.P10 explanation given by the petitioners that notice under Rule 66(5) of the said Rules was given to the petitioners and I find that there is no irregularity in the procedure contemplated under Rule 66(5) of the said Rules. When an enquiry report is received under the said Rules, the Registrar is bound to hear the society and the Members of the Board, before any action affecting them is taken. Here, the 2nd respondent has complied the mandate of the relevant rule before taking a final decision on Ext.P9 report filed by the 3rd respondent.

4. Coming to Section 68 of the Co-operative Societies Act, under Section 68(2), an opportunity of being heard was given to the parties concerned, who are found liable to be proceeded against, to realise the loss caused to the society by them. As rightly pointed out by the learned Government Pleader, Ext.P25 shows that all the members of the Board of Directors including the petitioners herein filed a joint statement before the 2nd respondent denying the

liability quantified against them and in that notice they themselves admitted that they have already received the notice dated 29.5.2012 issued under Section 68(2) of the said Act. Thus, I find that all the petitioners and others, who were the members of the Board of Directors, were given sufficient opportunity of being heard provided under Rule 66(5) of the Co-operative Societies Rules and Section 68(2) of the Co-operative Societies Act and there is no procedural irregularity in the proceedings initiated against them. There is no illegality or irregularity in the procedure in this respect.

5. The learned counsel for the petitioners in W.P(C) No.27181/12 submitted that the proceedings under Section 65 of the Co-operative Societies Act had been initiated in violation of Section 65(1) of the said Act. The sum and substance of the argument advanced by the learned counsel is that the enquiry under Section 65 can be commenced under the circumstances provided under sub-sections (a) to (e) of Section 65

only. Here, there is no suo moto proceedings and the complaints/application which triggered enquiry were not filed by the majority of the members of the committee of the society or more than 1/3rd of the quorum of the general body meeting whichever is less. Going by Ext.P5 order passed by the 2nd respondent, it is seen that the proceedings have been initiated on his own motion as provided under Section 65(a) of the Co-operative Societies Act. The enquiry was ordered on the basis of the report filed by the 3rd respondent after making enquiry on several complaints as regards the general working of the society. It is pertinent to note that the 3rd respondent is a competent officer having supervision over the functioning of the bank under the Co-operative Societies Act and the Rules made thereunder. It is specifically stated that the enquiry is ordered on the matters pertaining to general functioning of the Society, the general financial position and the business of the Society.

6. It is pertinent to note that no enquiry has

been ordered against any member of the Board of Directors or President or any officer of the Society. It is to be remembered that Ext.P5 order passed by the 2nd respondent had been challenged before this Court in W.P(C).No.25559/11 by the 1st respondent Society and the petitioner in W.P(C) No.25973/12 and this Court dismissed the writ petition on the ground that there is no ground to entertain the writ petition challenging the order under which the proceedings under Section 65 of the Co-operative Societies Act has been commenced. Therefore, the contention raised by the learned counsel is also liable to be rejected.

7. The learned counsel for the petitioners in W.P.(C) No.27181/12 further contended that the 3rd respondent has gone beyond the matters which were referred to enquiry under Section 65 and went wrong in making an enquiry as regards the irregularities and misconduct in the appointment of clerk in the bank and the allegations pertaining to the construction of the new building in the place of the old building. Going by

Ext.P5 order it is seen that it is general order directing the enquiry officer to conduct an enquiry as regards the general functioning of the society including the financial position, business activities and the day-to-day affairs of the society. In an enquiry initiated on his own motion as mandated under Section 65(a) of the Co-operative Societies Act by the Registrar, the scope and extent of enquiry is very wide and the enquiry officer has the power to an make overall enquiry pertaining to general functioning of the society. Therefore, it can be held that since the enquiry was a general enquiry pertaining to entire functioning of the society, the enquiry officer is justified in unearthing the irregularities and malpractices in the appointment of clerks in the bank and with respect to misappropriation of funds, in the construction of the new building, in the place of the old one.

8. The learned counsel for the petitioners advanced arguments challenging the findings of the

enquiry officer with respect to the misconduct and misappropriation said to have been done by the petitioners as the members of the Board of Directors. I am of the opinion that the scope and extent of interference on a report filed under Sections 65 and 68 of the Co-operative Societies Act in exercise of the writ jurisdiction under Section 226 of the Constitution of India is very limited and confined to legality and regularity of the proceedings including the observance of the principles of natural justice only. This Court cannot sit in appeal over the findings of the enquiry officer. The statutory remedy to appeal is provided under the Kerala Co-operative Societies Act. But, the petitioners have not availed of those opportunities. Put it differently, this Court is concerned with irregularities or illegalities in the decision making process and not the decision. So also, this Court cannot substitute its own decision in the place of findings of the enquiry officer which is seen approved by the statutory authorities.

That apart, it is seen that these writ petitions were filed before passing the final order under Section 68(2) of the Co-operative Societies Act. In that respect the writ petitions are premature in nature also. At this stage, there is no reason to interfere with the proceedings which are going on in accordance with the law. It is made clear that the petitioners have the right to challenge the final order which is to be passed under Section 68(2) of the Co-operative Societies Act. In the above analysis, these writ petitions are devoid of merits and dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.