IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 22515 of 2015 (L)
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PETITIONER : -
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KADUNGALLOOR SERVICE CO-OPERATIVE BANK LTD.2165,
EAST KADUNGALLOOR, ALUVA,
ERNAKULAM DISTRICT - 683 102,
REPRESENTED BY ITS SECRETARY N. SANTHOSHKUMAR

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.DARSAN SOMANATH

RESPONDENTS : -
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1. STATE OF KERALA,
   REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT.,
   CO-OPERATION (C) DEPARTMENT,
   THIRUVANANTHAPURAM - 695 001.

2. THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,
   ERNAKULAM - 682 011.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM - 695 001.

4. ELOORKKARA SERVICE CO-OPERATIVE SOCIETY LTD., No.1765,
   ELOORKKARA, KADUNGALLOOR, ALUVA,
   REPRESENTED BY ITS SECRETARY - 683 102.

R4 BY ADV.SRI.SHAJI CHIRAYATH
R4 BY ADV.SMT.JIJI M. VARKEY
R4 BY ADV.SMT.SAVITHA GANAPATHIYATAN
R4 BY ADV.SRI.M.M.SHAJAHAN
BY SPL. GOVERNMENT PLEADER SRI. D. SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-09-2015 ALONG WITH WPC No. 23188/2015. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 22515 of 2015 (L)
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**APPENDIX**

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPY OF THE RELEVANT PAGE OF THE BYE-LAWS OF THE BANK CONTAINING CLAUSE 4, ALONG WITH ENGLISH VERSION OF CLAUSE 4.

EXHIBIT P2 : COPY OF THE RESOLUTION AND THE REQUEST DATED 16.01.2015 MADE TO THE 2nd RESPONDENT.

EXHIBIT P3 : COPY OF THE ORDER DATED 16.07.2015 OF THE 2nd RESPONDENT, ALONG WITH ITS ENGLISH VERSION IS PRODUCED.

EXHIBIT P4 : COPY OF THE ORDER DATED 17.07.2007 OF THE 2nd RESPONDENT, ALONG WITH THE CONCERNED AMENDMENT PROPOSAL WITH ITS ENGLISH VERSION.

EXHIBIT P5 : COPY OF THE ORDER DATED 31.10.2005 OF THE 2nd RESPONDENT.

EXHIBIT P6 : COPY OF THE CIRCULAR No.30/2014 DATED 21.06.2014, ALONG WITH ITS ENGLISH VERSION.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 22515 of 2015**
**&**
**W.P.(c) No. 23188 of 2015**

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Dated this the 07th day of September, 2015

## JUDGMENT

Introduction:

The petitioner in W.P. (C) No.22515/2015 being a Co-operative Bank has a grievance that the second respondent without any prior notice issued Exhibit P3 order directing the petitioner to close its Customer Service Centre within its area of operation, thereby violating the principles of natural justice.

2. The petitioner in W.P. (C) No.23188/2015, being a member of the fourth respondent Society in W.P. (C) No.22515/2015, has a grievance that the Bank has opened its so called Customer Service Centre without prior permission from the authorities and that it cannot be allowed to carry on any operations even in the name of customer service.

3. Since both the writ petitions deal with the same issue involving substantially the same parties, this Court has proposed to dispose of both the writ petitions through a common judgement. For ease of reference and convenience, the facts as have been set out in W.P. (C) No.22515/2015 and the parties as have been arrayed therein are taken as the basis for the narrative purpose.

**Facts in Brief:**

**In W.P. (C) No.22515 of 2015:**

4. The facts in brief are that the petitioner, a Primary Co-operative Bank, functioning for the past seven decades, has its banking operations confined to certain specific areas in Kadungalloor Village. On 16.01.2015 it submitted Exhibit P2 application to the second respondent seeking permission to open another branch. While the said representation was pending consideration, the petitioner, on 01.07.2015, opened what is said to be a Customer Service Centre within its area of operation, though.

5. Acting on the complaint made by the Secretary of the fourth respondent Society, a rival society, and also a letter of Assistant Registrar, the second respondent issued

Exhibit P3 order to the petitioner directing it to close forthwith its operations in the said Customer Service Centre. Aggrieved, the petitioner Bank has approached this Court.

**In W.P. (C) No.23188 of 2015:**

6. The petitioner, said to be a member of the fourth respondent Society in W.P. (C) No.22515/2015, has ventilated his grievance that the petitioner Bank has been continuing its operations in the name of Customer Service Centre without prior permission from the second respondent. It is the singular grievance of the petitioner in the said writ petition that the banking operations being carried on by the Bank in the name of a Customer Service Centre are *per se* illegal and Exhibit P3 order is required to be enforced without any further delay.

**Summary of Submissions:**

**For Petitioner:**

7. Sri. T.A. Shaji, the learned Senior Counsel for the petitioner Bank, has submitted that neither the Act nor the Rules, not even the administrative instructions issued from time to time in the form of circulars by the department compel the petitioner to obtain any prior permission to open

a Customer Service Centre in its own area of operation. In other words, it is the specific contention of the learned Senior Counsel that the prior permission is required from the second respondent only in the event of any Co-operative Bank opening a branch or an extension counter.

8. The learned Senior Counsel has submitted that though the petitioner on 01.07.2015 sought permission to open a branch, so far the authorities have not taken any action on the said representation. According to him, since no permission is required for opening a Customer Service Centre, the pendency of Exhibit P2 application is of no consequence.

9. The learned Senior Counsel has further submitted that the fourth respondent, a Rival Society, which was initially established as a service Society, seems to have been converted into a Credit Society only in December 2014 without any notice to the petitioner, however.

10. In elaboration, the learned Senior Counsel has submitted that neither the petitioner in W.P. (C) No.23188/2015 nor the fourth respondent Society, which is a rival society, has any *locus standi* to object to the

petitioner's banking operations, especially well within its own area of operation.

11. Eventually, drawing my attention to Circular No.30/14 concerning the guidelines regarding opening a new branch, the learned Senior Counsel has contended that the second respondent has misconstrued it and accordingly fallen in error in issuing Exhibit P3. The Circular, according to the learned Senior Counsel, does not apply to Customer Service Centre. He has also drawn my attention to paragraph 4 of the writ petition where the performance of the petitioner Bank has been highlighted.

**Respondents':**

**The Government:**

12. *Per contra*, the learned Government Pleader has strenuously contended that in terms of Section 74B(2) of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity), and Rule 180 of the Co-operative Societies Rules ('the Rules'), it is mandatory that any Co-operative Bank is required to obtain prior permission from the second respondent to open either a branch or an extension counter. According to the learned Government Pleader, Customer

Service Centre is only a camouflage for a branch or at least an extension counter. It cannot, according to him, be permitted to be operated without prior sanction by the authority concerned.

13. The learned Government Pleader has also contended that Exhibit P3 was issued by the second respondent having taken into account the admitted fact that the petitioner Bank had opened the so called Customer Service Centre without prior permission. It is his specific contention that if Exhibit P3 is to be interdicted on the premise that it has been issued without prior notice to the petitioner, it would only result in reviving an illegality, i.e. the operation of the Customer Service Centre, which in the first place does not have any permission, admittedly.

14. The learned Government Pleader has also strenuously contended that under Section 83(1)(j), the petitioner has an efficacious alternative remedy of an appeal before the first respondent, the Government.

**Petitioner in W.P.(C) No.23188 of 2015:**

15. The learned counsel, having substantially adopted the submissions of the learned Government Pleader, has

further submitted that there is no justification for the petitioner Bank to continue its banking operations in violation of the law. The learned counsel has also drawn my attention to Exhibit P5 in W.P. (C) No.23188/2015 that the President of the petitioner Bank issued a press statement on 02.07.2015 that the petitioner Bank had been carrying on full-scale banking operations in its Customer Service Centre.

16. The learned counsel has further submitted that the question of following the principles of natural justice would only come into play when it was established that the activities of the petitioner Bank were *prima facie* legal and that they had been interdicted without any opportunity to the bank.

**Fourth Respondent's:**

17. The learned counsel for the fourth respondent Society has adopted the submissions made by both the learned Government Pleader and the learned counsel for the petitioner in W.P. (C) No. 23188/2015.

**Reply:**

18. The learned Senior Counsel in reply has submitted that Section 74B(2) of the Act is only an enabling provision

and it has not been couched in negative terms to hold that no Co-operative Bank shall open a branch without a prior permission.

19. Adverting to the defence pleaded by the second respondent in the counter affidavit, the learned Senior Counsel has further submitted that since Exhibit P3 has been issued without prior notice to the petitioner, the plea of alternative remedy cannot be sustained. In support of his submissions concerning the writ remedy despite the alternative remedy in the face of violation of principles of natural justice, the learned counsel has placed reliance on **Usha Jacob v. Corporation of Thiruvananthapuram**[1], **Commissioner of Income Tax and others v. Chhabil Dass Agarwal**[2] and **South Travancore Distilleries v. Assistant Commissioner of Commercial Taxes.**[3]

20. Heard the learned Senior Counsel for the petitioner, the learned counsel for the fourth respondent Society, and the learned counsel for the petitioner in W.P. (C) No.23188 of 2015, as well as the learned Government Pleader, apart from perusing the record.

1 2015 (2) KLT 525
2 (2014) 1 SCC 603
3 1999 (1) KLJ 506

**Issues:**

21. Indeed, the issues that are required to be determined in the writ petitions are as follows:

(1) Whether the petitioner Bank is entitled to open its Customer Service Centre without prior permission from the second respondent in terms of Section 74B(2) of the Act and Rule 180 of the Rules?

(2) Whether Exhibit P3 order of the second respondent has been vitiated on account of infraction of the principles of natural justice?

***In re, Issue No.1:***

22. It is the specific and persistent contention of the learned Senior Counsel that the prohibition concerning banking operations without prior permission from the second respondent applies only as regards either a branch or an extension counter. According to him, a Customer Service Centre falls under neither of the categories.

23. Indeed, the petitioner Bank had chosen to call its new place of business, which it admittedly established without prior permission, a customer service centre. The fact remains that a Co-operative Bank, for that matter any Bank, renders only Customer Services which include a multitude of

operations. Even accepting deposits or remittances such as instalments towards loans would also be a facet of those services. Once the plea of the learned Senior Counsel is to be accepted that it is only a full-fledged Bank or an extension counter that requires permission, it is not far to visualize the strategy that could be adopted by any Bank to obviate the need of obtaining prior permission. It could split its operations into various categories and can have different centres in the proximity, even in the same building, thereby carrying on its banking operations: in one centre accepting the deposits, in another making the payments and yet in another extending some other banking service. Any stipulation concerning any financial activities, be it banking or otherwise, requires strict interpretation and *a fortiori* strict compliance with the statutory formalities.

24. It needs not much cogitation on the part of the Court to hold that the petitioner Bank has been carrying on its banking operations, at least a part of them, in the name of a Customer Service Centre without prior permission. In fact, having held that services rendered in a Customer Service Centre are also part of the banking operations and

that the Customer Service Centre has the trappings of either a branch or an extension counter, the Court is left with no other option than declaring that the petitioner's banking operations even in the name of a customer service centre cannot be countenanced in the absence of prior permission from the second respondent.

25. Indeed, the petitioner Bank did apply long back for prior permission through Exhibit P2, but the second respondent, for reasons not forthcoming from the counter affidavit filed by the said authority, has so far not decided on the said application. It is hoped that the authority would act with promptitude and pass orders at the earliest.

26. There is no denying the fact that the petitioner in W.P. (C) No.23188/2015 placed reliance on Exhibit P5 news report to hammer home his contention that the petitioner Bank has been carrying on full-fledged banking operations in its so-called customer service centre. Nevertheless, firstly this Court cannot take Exhibit P5 as a document of much probative value since it is only a news report, but not any press statement or communiqué issued by the petitioner Bank or its officials, even the President. Secondly, since it

has already been held that the petitioner could not be permitted to carry on its operations even in the name of a customer service centre, it is not germane to consider the said plea of the learned counsel for the petitioner in W.P. (C) No.23188/2015.

**In re, Issue No.2 :**

27. On the issue of alternative remedy, the petitioner has cited a plethora of precedents. It is not in dispute that under Section 83(1)(j) concerning any order passed by the second respondent, including Exhibit P3 herein, the aggrieved person has an efficacious alternative remedy of an appeal to the Government. It is further not in dispute that the second respondent issued Exhibit P3 order of closure without any show cause notice to the petitioner.

28. In **Usha Jacob** (supra), this Court has observed that a cause may afford the affected person multiple remedies: some are in the alternative; some, cumulative; and some, mutually exclusive. It is essentially a matter of election. If the remedies are not mutually exclusive unless the court weighs the options on the scales of efficacy, it is the affected person, the *dominus litis*, who could elect his or

her option. Having observed thus, the Court has further held that in a judicial review, a Constitutional Court may have the inherent power to decline to interfere on the principle of efficacious alternative remedy. But a statutory authority is ordained to act under a statutory mandate, once an affected person approaches it; it cannot turn around and advise the person to have recourse to an alternative course on the ground of a perceived inconvenience. So long as the statute mandates, it is ineluctable for the authorities to abide by the provision in letter and spirit.

29. I am afraid the ratio of **Usha Jacob** (supra) has no application to the facts of the present case. In that case, the Municipal authorities, instead of exercising the statutory power vested in them, advised the aggrieved person to approach the police complaining against the persons conducting illegal market. It is not a case of judicial remedies.

30. In **Chhabil Dass Agarwal** (supra), the Hon'ble Supreme Court, after citing its numerous earlier decisions with approval, has held that though Article 226 confers a very wide powers in the matter of issuing writs on the High

Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for the decision has not been adopted.

31. In **South Travancore Distilleries** (supra), a learned Division Bench of this Court has held that an alternative remedy is not an absolute bar for the maintainability of a writ petition under Article 226 of the Constitution where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction. There is a plethora of precedents on this point.

32. From the above definitive judicial pronouncements, it is not in dispute that once there is an admitted infraction of the principles of natural justice, the principle of alternative remedy, which is at best a self-imposed restriction, will not

come in the way. The contention of the learned Senior Counsel for the petitioner is that Exhibit P3 suffers from the vice of procedural irregularity: the second respondent had not put the petitioner Bank on notice before passing the order. At the same time, it cannot be forgotten that if an order has to be interdicted on account of its suffering from any legal infirmity, the impact of its revival cannot be ignored. There is, thus, sufficient force in the contention of the learned Government Pleader that under Article 226 no order could be interdicted if it has the potential of reviving an order which is otherwise admittedly illegal.

33. In the present instance, this Court has already held that the petitioner's banking operations in the name of a customer service centre cannot be sustained in the absence of any prior permission from the authorities concerned. As such, the issue of alternative remedy, in my view, has been rendered academic.

**Conclusion:**

34. In the facts and circumstances, this Court holds that the petitioner's banking operations in the name of a customer service centre without prior permission cannot be

sustained; as a result, Exhibit P3 order cannot be interfered with.

35. I, however, hasten to add that though the petitioner submitted Exhibit P2 representation on 16.01.2015, the second respondent has not so far taken a decision in that regard. As a result, this Court directs the second respondent to consider Exhibit P2 as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment, provided the petitioner complies with all other statutory requirements in that regard.

36. At this juncture, the learned Senior Counsel has pointed out that, firstly, the fourth respondent Society was allowed to be converted into a Co-operative credit society evidently under Section 7(1)(c) without notice to the petitioner. Secondly, as could be seen from paragraph 4 of the writ petition, the petitioner Bank has achieved spectacular progress on all fronts of its operations. Under these circumstances, closure of the so-called customer service centre forthwith may ultimately cause severe hardship to its members.

37. With the above justification, the learned Senior Counsel has sought the indulgence of the Court to allow the petitioner Bank to have its Customer Service Centre until the second respondent takes a decision on the petitioner's Ext.P2 application.

38. I am, however, of the opinion that the conversion said to have been granted to the fourth respondent bank without notice to the petitioner has nothing to do with the issue at hand. Indeed, the credentials of the petitioner Bank, *prima facie*, are impeccable. As such, in the interest of justice, this Court suspends the operation of Exhibit P3 for two months or until the second respondent takes a decision on Exhibit P2 application of the petitioner, whichever is earlier. Any further continuation of the customer service centre shall be subject to the outcome of Exhibit P2.

39. At this juncture, in the face of the objection raised by the petitioner in W.P. (C) No.23188 of 2015 that the so-called Customer Service Centre has been functioning as a full-fledged branch, the learned Senior Counsel, to his credit, has undertaken that the petitioner Bank will not function as a full-fledged Bank and it would run the Customer Service

Centre only for the limited purpose of accepting the remittances, etc.

With the above observations, this Court disposes of both the writ petitions. No order as to costs.

**DAMA SESHADRI NAIDU**
**JUDGE**

DMR/-