

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 26556 of 2015 (T)  
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PETITIONER : -  
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K.J.SHAJU, AGED 42 YEARS,  
S/O.JOHNY,  
ZONAL MANAGER (UNDER SUSPENSION), ZONAL OFFICE,  
CONSUMERFED,  
THRISSUR (RESIDING AT KALLOOKKARAN HOUSE,  
P.O.VETTUKADU, THRISSUR 680 014).

BY ADVS.SRI.V.A.MUHAMMED  
SRI.V.RAJASEKHARAN NAIR

RESPONDENTS : -  
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1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
DEPARTMENT OF CO-OPERATION, SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
THIRUVANANTHAPURAM - 695 001.
3. THE KERALA STATE CO-OPERATIVE CONSUMER FEDERATION LTD,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
(CONSUMERFED), GANDHI NAGAR,  
COCHIN 682 020.

R3 BY ADV.SRI.RAJU JOSEPH (SR.)  
R3 BY ADV.SRI.K.T.PAULOSE, SC, CONSUMERFED  
BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

PETITIONER'S EXHIBITS : -

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EXHIBIT P1 : COPY OF THE ORDER OF THE MANAGING DIRECTOR DATED 28.3.15.

EXHIBIT P2 : COPY OF THE PROCEEDINGS OF THE MANAGING DIRECTOR DATED 18.6.15.

EXHIBIT P2(a) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2.

EXHIBIT P3 : COPY OF THE REPLY STATEMENT OF THE PETITIONER DATED 26.6.15.

EXHIBIT P3(a) : COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P3.

EXHIBIT P4 : COPY OF THE REGISTERED BYE-LAWS.

RESPONDENTS' EXHIBITS : -

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EXHIBIT R3(a) : COPY OF THE SUSPENSION ORDER DATED 03.01.2014.

EXHIBIT R3(b) : ENGLISH TRANSLATION OF EXHIBIT R3(a).

EXHIBIT R3(c) : LETTER ISSUED BY SECRETARY TO GOVERNMENT CO-OPERATION (a) DEPARTMENT TO THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

EXHIBIT R3(d) : COPY OF THE LETTER ISSUED BY THE 2<sup>nd</sup> RESPONDENT TO THE MANAGING DIRECTOR OF CONSUMER FED DATED 13.03.2014.

EXHIBIT R3(e) : ENGLISH TRANSLATION OF EXHIBIT R3(d).

EXHIBIT R3(f) : COPY OF THE MEMO OF CHARGES ISSUED BY THE MANAGING DIRECTOR DATED 17.09.2014.

EXHIBIT R3(g) : ENGLISH TRANSLATION OF EXHIBIT R3(f).

EXHIBIT R3(h) : COPY OF THE ORDER ISSUED BY THE MANAGING DIRECTOR DATED 26.09.2014.

EXHIBIT R3(i) : ENGLISH VERSION OF EXHIBIT R3(h).

EXHIBIT R3(j) : COPY OF THE LETTER ISSUED BY THE 1<sup>st</sup> RESPONDENT DATED 24.10.2014.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 26556 of 2015**  
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Dated this the 16<sup>th</sup> day of October, 2015

**JUDGMENT**

Having joined the service of the third respondent Federation as a Field Assistant in 1999, the petitioner is presently working as Sales Assistant. In the course of time, the Managing Director of the third respondent Federation, through Exhibit P1, placed the petitioner under suspension. Aggrieved, the petitioner has filed the present writ petition challenging, inter alia, the vires of the Managing Director of the third respondent Federation to suspend him.

2. Earlier, when the Managing Director of the third respondent had suspended certain other employees as well, they approached this Court. In W.P. (C) No.23865/2015, this Court through Judgment, dated 12.08.2015, held that the Managing Director is not competent to place the employees under suspension; it is, in fact, the Managing Committee or the Disciplinary Sub-Committee, as the case may be. Subsequently, this Court has disposed of certain other writ petitions applying the same ratio.

3. When this Court has sought to dispose of the present writ petition, too, on the same lines, the learned Senior Counsel has submitted that the facts in the present writ petition are different and distinct from those that have led this Court to render the judgment in W.P. (C) No.23865/2015.

4. The learned Senior Counsel has initially submitted that the Managing Director on his own has not exercised the power of suspending the petitioner. In elaboration, he has submitted that the Government, through Exhibit R3(c), has directed the Registrar of the Co-operative Societies, the second respondent, to initiate disciplinary action against the petitioner. The direction was, it is averred, due to the investigation carried out by the Vigilance and Anti-Corruption Bureau.

5. The learned Senior Counsel has also drawn my attention to Exhibit R3(e) which is a consequential communication from the Registrar to the Managing Director to act in accordance with the Exhibit R3(c) direction of the Government.

6. It is the specific contention of the learned Senior Counsel that once a direction is given either by the

Government or by the Registrar of Co-operative Societies, it is imperative that the Managing Director shall follow them in terms of Sections 66 (5) and 66B of the Kerala Co-operative Societies Act ('the Act'). In the words of the learned Senior Counsel, if the Managing Director does not comply with the direction of the Government or the Registrar of Co-operative Societies, it amounts to his disobeying the statutory orders of the Government or the Registrar, as the case may be.

7. The learned counsel for the petitioner, on the converse, has submitted that this Court in the judgment, dated 12.08.2015, in W.P. (C) No.23865/2015 has considered an identical issue, for the second petitioner in that writ petition was placed under suspension under identical circumstances: as a result of the Vigilance Enquiry. Adverting to those circumstances, this Court, contends the learned counsel, has specifically observed that grave as the allegations may be, it is still essential that only the competent authority, and none else, shall place the employee under suspension.

8. Heard the learned counsel for the petitioner, the learned Senior Counsel for the respondent Federation, as well as the learned Government Pleader, apart from perusing the

record.

9. Indeed, the facts are not in dispute. It is the singular contention of the learned Senior Counsel for the respondent Federation that the Managing Director has simply complied with the direction of the Government, as has been communicated through the Registrar. He has done nothing beyond. In that context, it is profitable to examine Exhibit R3 (c) communication of the Government to the Registrar, a part of which reads as follows:

"The SC Team found Sri. K.J. Shaju, Senior Manager and Smt. P. Valsala, Godown in-charge of Consumerfed Distribution Centre, Palakkad are responsible for the above mentioned irregularities and recommended to take action against them. Hence, I am to request you to initiate disciplinary action against the above mentioned officers and to furnish the action taken report to Government as early as possible."

10. As can be seen, the Government has required the Registrar to initiate disciplinary action against the petitioner as well as another person and furnish an action-taken report to the Government.

11. In turn, the Registrar addressed a consequential communication to the Managing Director, and a part of the

communication reads as follows:

"It was found by the enquiry officer Sri. K.J. Shaju, Senior Manager and Smt. Valsala who was in charge of the godown in the Distribution Centre were responsible for the irregularities and they had reported that the above said persons are liable to be proceeded against. The above fact was informed by the Government as per reference and directed to take disciplinary action against the officer immediately and report back to the Government.

In the said circumstances, in accordance with the Government direction, you are requested to take immediate action in time bound manner and report under reference is also forwarded herewith."

12. It is evident from the above extract that the Registrar, instead of *suo motu* exercising any statutory power vested in him, has simply acted in compliance with Exhibit R3 (c) directive of the Government. Thus, what is material is the validity or the scope of the direction as contained in Exhibit R3(c).

13. It is also relevant to examine the statutory scheme in this regard. Section 66(5) of the Act mandates that the Registrar or the person authorized by him under sub-section (1) or sub-section (2) may, by an order in writing, direct the society or its officers to take such action as may be specified in

the order within the stipulated time. Further, Section 66B specifically mandates that as a result of any of the eventualities specified therein, the Registrar can issue a direction to the committee of a society to suspend forthwith the officer or officers responsible for the offence.

14. Before proceeding further, it is also relevant to examine the observation of this Court on the issue of the legality of the Managing Director placing an employee under suspension, especially, in the wake of the findings rendered by the Vigilance and Anti-Corruption Bureau.

"56. As regards, the petitioner in W.P. (C) No. 28365/2015, it is the contention of the learned counsel for the respondents 1 and 2 that the petitioner was placed under suspension by the Vigilance Department. In the writ petition, however, Exhibit P1(a) proceedings of the first respondent, the Managing Director, have alone been assailed. A reading of Exhibit P1(a) makes it clear that a special investigation team was appointed for conducting an enquiry. The investigating officers, having *prima facie* found that there was substance in the allegation of misappropriation of money on the petitioner's part, have recommended the petitioner to be kept out of service. In my considered view, the investigating officials themselves have not placed the petitioner under suspension; they have only recommended. It is the Managing Director who suspended the petitioner through Exhibit P1(a)

proceedings, albeit, acting on the advice of the investigating officers. The advice on the part of the investigating officers could only be taken towards the competent authority who can place the petitioner under suspension. As a result, Exhibit P1(a) in W.P. (C) No.28365/2015 also cannot be sustained. Accordingly, it is set aside.”

15. This Court, in the judgment under reference, has finally made it clear that it has not held even remotely that the petitioners in both the writ petitions, facing grave charges, cannot be placed under suspension under any circumstance. It has only declared that the first respondent has no power and that it is only the Managing Committee that can exercise the said power in terms of Rule 198(6) of the Rules. Indeed, there is a specific observation to the effect that given the gravity of allegations, the Managing Committee shall consider the issue and take appropriate decision expeditiously.

16. In the present instance, too, the facts, in my considered view, are identical. Further, in Exhibit R3(c) the Government, assuming it has got the power, has not issued any peremptory direction either to the Registrar or any other authority to place the delinquent officer, the petitioner, under suspension. The gravamen of the directive is that disciplinary

proceedings shall be initiated against the petitioner. Further, having said that the Registrar has not exercised statutory powers on his own, I am, nevertheless, inclined to observe that even in terms of Section 66B of the Act, the direction to be given by the Registrar shall be to the Managing Committee, and none else.

17. Under these circumstances, in my considered view, unless the ratio laid down in the judgment, dated 12.08.2015 in W.P. (C) No.23865/2015, is interfered with in an intra-court appeal, it does govern the present situation.

I, therefore, make it clear that it is entirely open, nay necessary, for the Managing Committee of the third respondent Federation to take appropriate steps in terms of Exhibits R3(c) and R3(e) at the earliest. As a corollary, this Court sets aside Exhibit, leaving it open for the third respondent Federation to take appropriate action in the manner mentioned above.

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

DMR/-