

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.A.V. dated 19.12.2014

DATED: 03.02.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.30469 of 2014

and

M.P.Nos.1 and 2 of 2014

The Tamil Nadu Circle Postal Co-operative
Bank Ltd., rep. by its President
C.Janakiraman
No.18/19, Jehangir Street,
(II Line Beach), Chennai-600 001.

... Petitioner

Vs.

1.The Central Registrar of Co-operative Societies,
Department of Agriculture & Cooperation,
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi 110 001.

2.Mr.Nirmal Singh, IAS (Retired)
Arbitrator,
A-81, Sector 46, Noida - 201 303.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the entire records relating to the impugned communication passed by the 1st respondent F.No.R-11017/33/2012-L&M dated 14.11.2014 and quash the same as illegal and unlawful.

For Petitioner : Mr.V.Raghavachari

Mr.P.R.Raman

for Mr.J.Suresh (for Impleading petitioner)

For Respondents :M/s.R.Maheswari (for R1)

O R D E R

The petitioner submit that he is the President of the Elected Board of Directors of the Tamil Nadu Circle Postal Co-operative Bank Limited. The petitioner Bank namely Tamil Nadu Circle Postal Co-operative Bank Limited is a Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 and the first respondent is the Registrar of Co-operative Societies appointed under the said Act. The petitioner additionally added that the area of operation of the said bank extends to whole state of Tamil Nadu and Puducherry consisting of members who are employed under the Department of Posts, Government of India. The said Bank was registered and started working from 1913 and completed its Centenary year in 2013.

2. He states that the said Bank is managed by the Elected Board of Directors in accordance with the provisions of the said Act, Rules and Bye-laws framed there under the Elections are held once in Five years. He states that the last elections to the Board of Directors of the said Bank was held on 08.02.2013 and total of 12 Directors were elected by the General Body and the Board has been duly constituted in accordance with the provisions of the said Act and all the 12 Elected Directors assumed office on and from 11.02.2013 for a period of five years. He states that the Elected Board of Directors have elected him as President and one Mr.M.B.Sukumar as the Vice President of the said Bank from among the Board of Directors in the elections held on 08.02.2013 conducted by the Returning Officer appointed for that purpose by the first respondent and the petitioner, the President and the above Vice President have assumed office on and from 11.02.2013 as Office bearers. Therefore, the Elected Board of Management of the Bank is duly constituted and functioning in accordance with the said Act, Rules, Bye-laws of the said Bank. He states that the elected Board of Directors with whom the management of the said Bank has been entrusted functioned smoothly until 07.05.2013 and all the Directors had extended full cooperation in attending 14 Board meetings and approved all the transactions. He states that 9 out of 12 Directors, who have attended 17 Board meetings out of 21 meetings convened and conducted, except the meetings held on 07.06.2013, 08.07.2013, 08.08.2013 and 19.08.2013 and approved all the subjects and transactions placed before the Board of management, unanimously without any dissent.

3. He states that one of the Directors Mrs.Ezhil Rosaline along with the above Vice President by getting support of other 7 Directors

have started to non-Co-operate with him in the proper management of the said Bank besides acting detrimental to the interest of the said Bank and its members and customers. Further two other Directors viz., P.Kamaraj and M.Pugalendhi, are fully cooperating with him in the Management of the said Bank. It is pertinent to state that the above mentioned 9 Directors by mobilizing the strength among themselves started to non Co-operate with the existing 3 Board Members including him as President by absenting themselves in attending and transacting the business of the Board of the said Bank by failing to perform duties cast on them by the statute and bye-laws of the Bank consecutively for more than 4 meetings and thereby they are acting detrimental to the interest of the bank and its members, violating the provisions of the said Act and bye-laws besides they attracted disqualification and ceased to hold the post of Board of Directors as per Section 43(1)(m) of the Multi-State Co-operative Societies Act, 2002. Therefore, in the interest of the said Bank and to run the smooth administration and management of the said Bank, the said Bank submitted a Proposal dated 23.08.2013 to the first respondent Registrar as per Section 43(1)(m) of the said Act R/w Bye-law No.33 of the said Bank, requesting the first respondent Registrar to initiate disqualification proceedings against the 9 disqualified Directors who committed continuous absence of more than 4 Board Meetings. But in the meanwhile, the first respondent passed an order No.L-11014/20/2013-L&M dated 02.12.2013 invoking Section 84(4) of the Multi-State Co-operative Societies Act, 2002 and appointed an Arbitrator to settle the dispute among the members of the Board of Directors of the Bank in respect of the petitions dated Nil submitted by the above disqualified Directors to the first respondent and the reply to the petition dated 20.08.2013 submitted by the President of the said Bank. It is pertinent to state that the subject matter of disqualification attracted by the above 9 Directors in terms of Section 43(1)(m) of the said Act is not at all referred for Arbitration by the first respondent as per the proceedings dated 02.12.2013.

4. He states that a Writ Petition in W.P.No.1902 of 2014 was filed challenging the appointment of Arbitrator to decide the alleged dispute referred by the first respondent besides praying for a direction to the first respondent to initiate disqualification proceedings against them in accordance with law, respondents 2 to 10 herein and the above writ petition was dismissed by this Court on the date of admission itself on 28.01.2014 by directing the petitioner to raise the objections as jurisdiction and maintainability of the dispute before the Arbitrator, without any decision or direction or orders as to the directions prayed for the initiation of disqualification proceedings against the 9 Directors. In view of the above, another writ petition in W.P.No.5835 of 2014 which was also

dismissed directing to file appeal for the direction prayed for and in consequence, a writ appeal in W.A.No.307 of 2014 was filed before the Hon'ble Division Bench of this Court which was disposed of on 19.03.2014 observing that it is open to the appellant Bank to raise the issue before the Arbitrator in terms of Section 84(3) of the said Act.

5. He states that since the matter of disqualification was not at all referred by the first respondent for Arbitration under the reference orders dated 02.12.2013, a Review Application in R.A.No.56 of 2014 was filed before the Division Bench which has been disposed of on 25.09.2014 by modifying the orders in W.A.No.307 of 2014 dated 19.03.2014 as "If the appellant is not of the view that it is not arbitrable, the first respondent shall referred the matter for Arbitration before the Arbitrator in terms of Section 84(3) of the Act. When the arbitration proceedings ordered by the first respondent on 02.12.2013 is pending before the second respondent herein, the General Body of the Bank which is the ultimate authority in the Annual General Body meeting held on 25.09.2013 have resolved to authorize the existing 3 qualified Directors including the President to function and exercises the power of the full Board and the same was communicated to the first respondent on 30.09.2013 itself. Further the first respondent herein by the communication dated 25.09.2013 have permitted the President of the Bank to run the affairs of the Bank including convening Annual General Body meeting.

6. He states that according to Section 39 of the said Act, the Annual General Body meeting shall be convened and conducted within 6 months of the closure of financial year and also in view of the final audit report for the year ended 31.03.2014 was issued on 05.09.2014, the authorized and qualified Board of Directors have convened the Annual General Body meeting to be held on 26.09.2014 and meetings notices along with Annual report were sent to more than 7000 members. He states that after adopting unlawful methods to all the above Annual General Body meeting to be held on 26.09.2014 the above disqualified 9 Directors filed a Civil Suit in O.S.No.5489 of 2014 praying for permanent injunction against the convening of the above General Body along with I.A.No.14796 of 2014 praying for an interim injunction restraining the Bank from convening the above General Body meeting. As the application for interim injunction was dismissed by the III Assistant Judge, City Civil Court, Chennai on 25.09.2014 and hence the Annual General Body meeting scheduled on 26.09.2014 was conducted on 26.09.2014.

7. He states that in the Annual General Body meeting held on 26.09.2014, among many transactions, a Resolution No.7 was unanimously passed by the above General Body removing the

disqualified 9 Directors including the Vice President under the powers vested on the General Body under Section 47 of the said Act and the copy of the proceedings of the Annual General meeting was communicated on 01.10.2014 to the first respondent authority as required under Section 120 of the said Act. In the circumstances, to the shock and surprise, the President and the Chief Executive Officer of the Bank received a communication dated 14.11.2014 from the authority of the first respondent stating that any action for disqualification of any Directors elected in the last election during the pendency of Arbitration proceedings shall stand nullified. Therefore, the impugned communication passed by the first respondent authority in F.No.R-11017/33/2012-L&M dated 14.11.2014 is illegal, unlawful, without jurisdiction and authority besides in violation of mandatory provisions of law laid down in the Multi-State Co-operative Societies Act and in flagrant violation of Principles of Natural justice, hence the above writ petition is filed.

8. In the above writ petition, 7 persons have filed impleading petition and opposed the above writ petition. The first impleading petitioner namely Mrs.Ezhil Rosaline has filed an affidavit on behalf of other 6 impleading petitioners and herself. She submits that the said Mr.C.Janakiraman, who filed the present writ petition as President of the Tamil Nadu Circle Postal Co-operative Bank Limited, is now legally not the President of the Tamil Nadu Circle Postal Co-operative Bank Limited. She begs this Court to allow her to refer the Tamil Nadu Circle Postal Co-operative Bank Limited as third respondent herein and it does not amount to petitioners admitting that the said writ petitioner is the President of the Tamil Nadu Circle Postal Co-operative Bank Limited. She further submits that in the general body meeting of the third respondent held on 08.02.2013 the impleading petitioners herein and the writ petitioner, who now claims to be the President of the third respondent Co-operative Bank and four others, totally 12 persons were elected as Directors of the third respondent Co-operative Bank. At present 2 other Directors have retired due to their superannuation.

9. The petitioner additionally added that on 07.05.2013 a Board meeting of the third respondent / writ petitioner was held and the writ petitioner did not allow the Directors to raise the important approved agenda matters including reduction of interest rate. The writ petitioner threatened 9 Directors who are for the said agenda with rowdy elements and fudged the minutes book. The fifth impleading petitioner herein has submitted his objections to the said happenings in the board meeting on 11.05.2013. On 13.06.2013, the impleading petitioners, who also gave their objections to the said happenings in the board meeting.

10. She states that further the said C.Janakiraman illegally usurped the powers of cheque withdrawal to himself and in that aspect created stamps which is against the bye-laws. Subsequently on 21.05.2013 further objections were also given to the happenings in the board meeting dated 07.05.2013. She states that on 01.07.2013 the Secretary of the third respondent issued notice for the Board of Directors meeting to be held on 08.07.2013. Petitioners have given a letter to include subjects 1)functioning of C.Janakiraman as President 2)Dismissal of employees without board approval 3)to discuss the issue raised in letter dated 13.06.2013. Further the petitioners have given on 03.07.2013 a letter about the financial irregularity committed by the said C.Janakiraman as President. Further on 05.07.2013 the Petitioners gave a letter to add the agenda of removal of the said C.Janakiraman from the President of the third respondent.

11. She states that on 08.07.2013, C.Janakiraman refused to conduct the board meeting and refused to allow and discuss the agenda raised and closed the board meeting as not conducted. Subsequently, the petitioners came to know that the said C.Janakiraman fudged the minute records showing that the board meeting was conducted. She states that since the said C.Janakiraman refused to conduct the board meeting on 08.07.2013 and then the Vice President M.B.Sukumar conducted the board meeting on the same day and it was unanimously resolved by the board meeting to remove the said C.Janakiraman as President of the third respondent and elected the said C.Janakiraman as President of the third respondent and authorized him to operate the bank account. The said decision was communicated to the first respondent herein. In the meanwhile the said C.Janakiraman has fudged records and minutes to show that the petitioners and other two directors have not attended the meeting and illegally, fraudulently and falsely held that the petitioners are disqualified as per Section 43(1)(m) of the Multi-State Co-operative Societies Act, 2002. Further, the said C.Janakiraman sent a proposal dated 23.08.2013 to the first respondent herein to initiate the disqualification proposal against the petitioners. The first respondent appointed on 26.08.2013 the Deputy Registrar of Co-operative Societies (Facts Finding Committee) Chennai - 600 001 to conduct enquiry and the said facts committee ordered that C.Janakiraman not to take policy decisions till the outcome of the enquiry. Further the fact finding committee submitted a report to the first respondent.

12. She states that the first respondent on coming to the conclusion that the above said removal of C.Janakiraman from the post of the President of the third respondent and the alleged removal of the petitioners from the post of the Directors of the third

respondent are issues touching the constitution, management or business of the third respondent and as per Section 84 of the Multi-State Co-operative Societies Act, 2002 referred the matter to arbitration vide order No.L-11014/20/2013 dated 02.12.2013 and appointed the second respondent herein as the Arbitrator. She states that the said C.Janakiraman through the third respondent challenged the said order in W.P.No.1902 of 2014 and by the order dated 28.01.2014, this Court dismissed the said Writ Petition stating that the issues involved in the dispute are arbitrable matter. Again the said C.Janakiraman filed another W.P.No.5835 of 2014 and the same was dismissed by order dated 26.02.2014. The said C.Janakiraman challenged the said Writ Petition order in W.A.No.307 of 2014 and the said Writ Appeal came to be dismissed directing that the said objections raised by C.Janakiraman can be raised before the second respondent.

13. She states that the same objections were raised before the second respondent before the arbitrator and the arbitrator by his order dated 08.07.2014 dismissed the said objections by the said C.Janakiraman. Against the said order of the Arbitrator the said C.Janakiraman filed Arbitration O.P.No.466 of 2014 before this Court and at present there is no stay of the proceedings of arbitration before the second respondent and the arbitration proceedings are continuing before the second respondent. She states that the issues raised in this petition are also raised before the above said Writ Petitions and Writ Appeals and before the second respondent and the said contentions of the C.Janakiraman were rejected by this Court and the Arbitrator. She states that in the meanwhile the said C.Janakiraman conducted a sham and alleged general body meeting and wrote a letter dated 09.10.2014 to the first respondent to disqualify the petitioners herein.

14. She states that the first respondent by the impugned order dated 14.11.2014 has stated that the dispute between has been referred to the Arbitrator and therefore any action for disqualification of any Director elected in the last election during the pendency of the arbitration proceedings shall stand nullified. She states that the said C.Janakiraman through the guise of the third respondent has filed the present Writ Petition without impleading the petitioners herein and also by suppression of the material facts of the case. The said impugned order clearly states that the copy of the impugned order has been served to the petitioners through one M.B.Sukumar Vice President who is now not a Director due to his retirement. She states that this Court gave an interim stay of the operation of the impugned order in M.P.No.1 of 2014 till 05.12.2014. The said impugned order does not stay the proceedings of the second respondent but the said C.Janakiraman gave a letter dated 26.11.2014

to the second respondent stating that the arbitration proceedings were stayed by the order of this Court. The said C.Janakiraman through the third respondent has obtained the said order malafidely suppressing material facts and without impleading the petitioners herein. The said C.Janakiraman has committed contempt of Court.

15. She states that for the reasons stated above the petitioners are necessary parties to this writ petition and their rights are involved in the issues to be decided in the present writ petition. In all the proceedings involved in the writ petition the petitioners are parties involved and petitioners are not third parties to the issue involved in the present writ petition. Hence, it is necessary for the petitioners to be impleaded in the present writ petition as respondents and if not done the petitioners will be put to irreparable hardship, harm and injury. The prima facie and balance of convenience is on the side of the petitioners. She states that with regard to the affidavit filed on behalf by C.Janakiraman in the Writ Petition, she would like to state as follows. With regard to para-1 of the affidavit she denies as false and incorrect that the said C.Janakiraman is the President of the third respondent. She does not have any authority or authorization to file the present Writ Petition. For the personal gain of C.Janakiraman he has filed the present Writ Petition through the third respondent which he is not authorized to do so. She denies what is stated in para-6 as false. The said C.Janakiraman has created and fudged records to show that the petitioners have not attended the meetings on 07.06.2013, 08.07.2013, 08.08.2013 and 19.08.2013. There is dissent in some of the board meetings of the board as stated above and it is suppressed illegally by the said C.Janakiraman and the said board meetings were not conducted as per bye-laws Act and Rules. It is only the said C.Janakiraman who acted against the bye-laws by Act and did not allow the agendas to be raised in the board meeting. He threatened the petitioners with rowdy elements and conducting the affairs of the third respondent with only two Directors who are his henchmen. They with the help of rowdy elements criminally assaulted the petitioners and did not allow the board to function. The claim that the petitioners have acted detrimental to the third respondent is false. The claim that petitioners have absented from the board meeting is false. The claim that petitioners have attracted disqualification under Section 43(1) of the Multi-State Co-operative Societies Act, 2002 by not attending four consecutive board meeting is false and incorrect.

16. She states that in respect of para-9 and 10 of the affidavit, she states that the said C.Janakiraman through third respondent has no authority to send a proposal dated 23.08.2013 to the first respondent and the said proposal is based on false records.

The first respondent has correctly referred the matter to the arbitrator and the subject matter of disqualification of the petitioners herein is the subject matter of the arbitration before the second respondent and the contrary claim is denied as false. She states that the orders passed by this Court in the Writ Petitions and Writ Appeal is correct and as per the said orders C.Janakiraman can raise all the disputes including the dispute raised in this writ petition before the second respondent Arbitrator. The General body meeting held on 25.09.2013 is illegal and not proper and is not as per bye-laws of the third respondent and is against the Act and rules. The said C.Janakiraman and other two Directors do not have authority to function and exercise the power of the full board. She denies that the first respondent by communication dated 25.09.2013 have permitted C.Janakiraman to run the affairs of the third respondent including convening of the Annual General Meeting. The notice issued on 05.09.2014 is not proper and is against the bye-laws of the third respondent and Section 39 of the Act. Despite the interim order granted by the City Civil Court in the suit the said C.Janakiraman conducted the alleged Annual General Meeting by committing contempt of Court. She denies that by the said Annual General Meeting petitioners have been removed and without prejudice to petitioners herein, she states that the said alleged resolution if it exists is illegal, against the bye-laws of the third respondent and against the Act and it does not bind the petitioners. The alleged resolution is improper.

17. She states that the said impugned order from the first respondent is legal, lawful, with jurisdiction and authority and as per the Multi-State Co-operative Societies Act and not violative of Principles of natural justice and not violative of the canon of "Audi alteram partum", and it just and reasonable. She states that ground (B) is false. The petitioners do not attract disqualification under Section 43(1)(m) of the Multi-State Co-operative Societies Act. She states that ground (C) is false. The first respondent has authority and jurisdiction to pass impugned order to nullify the illegal disqualification of the petitioners herein. The ground (c) is false and incorrect. Since the entire matter of disqualification and removal of petitioners were in adjudication before the second respondent, it is just and legal on the part of the first respondent to pass the impugned order. The principles of Natural justice and Audi Alteram Partum does not apply to the present case more so when the said C.Janakiraman did not himself apply the said principles to the petitioner. The first respondent for the adjudication has appointed the second respondent to resolve the dispute. The C.Janakiraman has come to Court with unclean hands and he is not entitled to equity. The subject matter of disqualification of the Petitioners is subject matter of the reference of arbitration.

18. The assumption of the first respondent is not misconceived and not perverse. There is nothing in orders passed in W.A.No.307 of 2014 and Review Application No.56 of 2014 by this Court to make the impugned order illegal or unjust. The impugned order passed by the first respondent is as per the Multi-State Co-operative Societies Act, 2002 and its rules and bye-laws of the third respondent and the said order is sustainable in law and on facts and it is legal and lawful and is not liable to be set aside. By the said impugned order the third respondent is not put to any irreparable loss, damages, hardship and inconvenience and it is not detrimental to the interest of more than 7000 members and customers of the third respondent. The removal of the petitioners from the directorship is prima facie illegal and if petitioners are allowed to continue, the administration and management of the third respondent will not be spoiled and also smooth functioning of the third respondent will not be ensued. If petitioners are allowed to continue the spoiling and the non smooth work of the third respondent by the said C.Janakiraman will be stopped. Hence, the impugned communication is not to be stayed till the disposal of the writ petition.

19. She states that the said Writ Petition on facts and law is liable to be dismissed. She states that this Court has granted interim orders on 21.11.2014 to stay the operation of the impugned order. There is no prima facie case or balance of convenience or hardship for the third respondent for granting of the said interim order. By the said interim order the working of the bank is usurped by the said C.Janakiraman who is committing financial irregularities and is acting against and in detriment to the third respondent. She states that the stay is for limited period of till 05.12.2014. If the said stay is not vacated or extended it will cause irreparable harm, damage, hardship to the impleading petitioners herein. Hence the above impleading petition is before this Court.

20. The writ petitioner has filed a counter statement and resisted the impleading petition, he submits that the impleading petition filed by the petitioners / proposed respondents 3 to 9 is unsustainable, false and suppression of facts besides misleading this Court. He submits that the above writ petition was admitted and Rule NISI has been served on the respondents therein and also this Court was pleased to grant an interim stay of operation of the impugned order till 05.12.2014 by their orders dated 21.11.2014 made in M.P.No.1 of 2014 in W.P.No.30469 of 2014 and which was extended till 19.12.2014 by the order of this Court dated 11.12.2014.

21. He submits that in the above Writ Petition, challenge was made against the order passed by the first respondent Central

Registrar of Co-operative Registrar of Co-operative Societies, New Delhi in the proceedings dated 14.11.2014 by unilaterally annulling the unanimous resolution passed by the General Body of the Bank and thereby the first respondent authority have committed Contempt of Court as the Division Bench of this Court in R.A.No.56 of 2014 in W.A.No.307 of 2014 dated 25.09.2014 have directed the first respondent Registrar to refer the subject matter of disqualification attracted by the impleading petitioners herein for Arbitration under Section 84 of the Multi-State Co-operative Societies Act. He states that in the meantime, the impleading petitioners from 1 to 7 have applied for impleading themselves as party respondents 3 to 9 in the above writ petition which is not sustainable in law and on facts. It is pertinent to submit that the impleading petition is false, misleading and misrepresenting that the first petitioner Mrs.Ezhil Rosaline described herself as the President of the Tamil Nadu Circle Postal Co-operative Bank, Chennai and other petitioners as Directors of the said Bank, is unlawful and by suppression of the real facts besides misleading this Court.

22. The writ petitioner is the Tamil Nadu Circle Postal Co-operative Bank, represented by its President Mr.C.Janakiraman who was lawfully elected as the President of the Bank in the election held on 08.02.2013 as per law and still he is permitted to act as the President of the Bank including the power of convening the General Body by the authority of the General Body which is ultimate authority of the Bank besides the first respondent Registrar themselves by their proceedings dated 25.09.2013 and etc., permitted him to act as President of the Bank during the pendency of the arbitration referred by the first respondent Registrar, relating to the matter of removing him from the office of the Presidentship of the said Bank by conducting parallel meeting by illegal way without due process of law.

23. He states that the above impleading petitioner Mrs.Ezhil Rosaline was stated to have been elected as the President in an unlawful and irregular Board Meeting held on 08.07.2013 by removing the Writ Petitioner from the Post of the President, which is referred for Arbitration under Section 84 of the Multi-State Co-operative Societies Act and it is pending before Arbitrator at New Delhi and also before this Court in O.P.No.466 of 2014. He states that the General Body meeting held on 26.09.2014 have unanimously removed the impleading petitioners from the office of the Board Members on the ground of disqualification attracted as per law and they have not challenged the same before the appropriate Forum. He further states that the other impleading petitioners described themselves as the Directors of the Tamil Nadu Circle Postal Co-operative Bank under the address of the Bank, is also without any authority as they have been removed from the office of the Membership of the Board in the General

Body held on 26.09.2014 and they have not challenged the removal so far before any Forum.

24. He states that the issue in the present Writ Petition filed by the Bank through him is whether the unilateral interference and annulment of the General Body Resolution, removing impleading petitioners from the office of the Board Member is valid in law? And hence the present impleading petitioners are not at all just and necessary parties for adjudication of the above writ petition, since the impleading petitioners can very well challenge their removal from the office of the Board of Members of the said Bank through the competent Forum and not before this Court. He craves the indulgence of this Court to treat the averments contained in the affidavit filed in support of the writ petition and documents filed along with the writ petition as part hereof. He states that at the risk of repetition that the issue in this writ petition is between the Bank and the first respondent Registrar regarding the authority and jurisdiction of them to interfere and annul the general body resolution and therefore the impleading petitioners are unnecessary parties and impleading them will no way help this Court to arrive at a just decision in this writ petition. He states that all other averments and statements made by the petitioners in the affidavit under reply are not at all connected with the issue raised in the above writ petition and the same are denied as false, incorrect and made without any basis. Therefore, in the circumstances, that this Court may be pleased to dismiss the impleading petition filed by the petitioners calling themselves as the President and Directors of the Bank with costs.

25. The highly competent counsel Mr.V.Raghavachari appearing for the petitioner submits that the writ petitioner is the duly elected President of the Tamil Nadu Circle Postal Co-operative Bank Limited, who has been elected by the Board of Directors. The said Co-operative Bank has been registered under the Multi-state Co-operative Societies Act. The first respondent has been appointed under the said Act. The said Co-operative Bank is functioning for over one century. As per the bye-laws of the Bank the elections were held once in five years. The last elections to the Board of Directors of the said Bank was held on 08.02.2013 and a total of 12 Directors were elected by the General Body and the Board has been duly constituted in accordance with the provisions of the said Act and all the 12 Elected Directors have been in office from 11.02.2013 for a period of 5 years as per the bye-laws of the bank. The learned counsel additionally added that the elected Board of Directors have elected the writ petitioner as President and one Mr.M.B.Sukumar has been elected as Vice President of the Bank from among the Board of Directors. After the election the petitioner and Vice President have

assumed office on 11.02.2013. Thereafter, the Management of the Bank had been functioning until 07.05.2013 with the full co-operation of all the Directors. Further, out of 12 Directors 9 Directors had not attended four meetings held on 07.06.2013, 08.07.2013, 08.08.2013 and 19.08.2013.

26. The very competent counsel further submits that the first impleading petitioner i.e. Mrs.Ezhil Rosaline, who is one of the Directors along with the Vice president by getting support of other 7 Directors, have started to non-co-operate with the writ petitioner and acting in a manner detrimental to the bank. Other two Directors namely P.Kamaraj and M.Pugalendhi are fully co-operating with the Bank Management. Further, the 9 Directors have started to non-co-operate with the existing 3 Board Members including the President by absenting themselves in attending and transacting the business of the Board of the said Bank by failing to perform their duties. The 9 Directors consecutive to their not attending 4 meetings, as such they are violating the bye-laws of the bank besides they have attracted disqualification and ceased to hold the post of Board of Directors as per Section 43(1)(m) of the Multi-State Co-operative Societies Act, hence a proposal had been submitted to the Registrar, the first respondent herein to initiate disqualification proceedings against the 9 disqualified Directors who committed continued absence of more than 4 meetings. The first respondent has passed orders under Section 84(4) of the Multi-State Co-operative Societies Act and appointed an Arbitrator to settle the dispute among the Board of Directors of the Bank instead of initiating disqualification proceedings against the 9 Directors after invoking Section 43(1)(m) of the Multi-State Co-operative Societies Act read with bye-law No.33 of the bank, the Arbitrator / first respondent had not considered the subject matter of disqualification as per the Act and bye-laws.

27. The highly competent counsel further submits that the petitioner had filed a Writ Petition No.1902 of 2014 before this Court and challenged the appointment of Arbitrator. The said writ petition was dismissed and directed the petitioner to raise the objections before the Arbitrator. This Court had not given any direction or order or discussion for initiating disqualification proceedings against the 9 Directors who continuously absented themselves for 4 meetings, therefore the writ petitioner had filed another Writ Petition No.5835 of 2014 before this Court is also dismissed. Hence, the writ petitioner had filed Writ Appeal No.307 of 2004 and the same was disposed of with the observation that it is open to the Bank to raise the issue before the Arbitrator. Further, the matter of disqualification was not at all referred by the first respondent for Arbitration under his order dated 02.12.2013. The matter of disqualification is the main issue in the instant case,

this was not considered by the first respondent herein and this Court. Hence, the petitioner has filed a review application. In the review application, the Hon'ble Division Bench had modified their order stating that "if the appellant is not of the view that it is not arbitrable, the first respondent shall refer the matter for Arbitration before the Arbitrator as per Section 84(3) of the Act.

28. The very competent counsel additionally submits that the arbitration proceedings is pending before the second respondent herein, the General Body of the bank which is the ultimate authority in the Annual General Body meeting held on 25.09.2013 have resolved to authorise the existing 3 qualified Directors including the President to function and exercise the power of the full Board. The decision taken by the Annual General Body was communicated to the first respondent herein. The first respondent also permitted the writ petitioner to run the affairs of the Bank as President. As per Section 39 of the Act, the Annual General Body meeting shall be convened within 6 months of the closure of the financial year, accordingly the qualified Board of Directors have conducted the Annual General Body meeting to be held on 26.09.2014 and notices of the meetings along with the Annual report were sent to more than 7000 members. Under these circumstances, the 9 disqualified Directors filed Civil Suit in O.S.No.5489 of 2014 along with a supplementary application in I.A.No.14796 of 2014 praying for an interim order for restraining the Bank from convening the above General Body meeting. The interlocutory application was dismissed since there is no prima facie case on the side of the plaintiff, hence, the Annual General Body meeting was conducted on 26.09.2014.

29. The very competent counsel further submits that the Annual General Body meeting passed resolution unanimously and removed the 9 disqualified Directors under the powers vested on the General Body under Section 47 of the Act and the copy of the resolution was communicated to the first respondent herein as required under the Act. This is the factual position. Under the circumstances, the Chief Executive Officer (CEO) of the Bank received a communication from the first respondent stating that any action for disqualification of any Directors elected in the last election during the pendency of Arbitration proceedings shall stand nullified. This order had been passed without a hearing from the petitioner herein. Therefore, the impugned order from the first respondent is violating the principles of natural justice. Further, the first respondent had not conducted any comprehensive enquiry in the presence of necessary parties and also not given any opportunity specifically to the petitioner herein, as such the impugned order is not sustainable under law. Hence, the highly competent counsel requests this Court to allow the above writ petition.

30. The learned counsel additionally submits that the impugned order passed by the first respondent runs against the order passed in review application No.56 of 2014 in WA.No.307 of 2014 dated 25.09.2014 passed by the Division Bench of this Court. The Division Bench order directing the first respondent to refer the subject matter of disqualification attracted by the impleading petitioners herein for arbitration under Section 24 of the Act. Under the circumstances, the impleading petition is not maintainable. Further, the first petitioner herself described as the President of the Bank and other impleading petitioners as Directors of the said Bank and this position asserted by themselves and in this way misleading this Court. Actually, the writ petitioner was elected as the President of the Bank as per the bye-laws, further the first impleading petitioner unlawfully held a meeting on 08.07.2013 by removing the writ petitioner from the post of the President which is improper since the arbitration proceedings is pending before the Arbitrator at New Delhi. Furthermore the general body meeting held on 26.09.2014 have unanimously removed the impleading petitioners from the office of the Board members on the ground of disqualification, as such the impleading petitioners have no locus standi to file the said petition. Hence, the learned counsel entreats the Court to dismiss the impleading petition.

31. The very competent counsel Mr.J.Suresh appearing for the impleading petitioners submits that the Arbitrator has been appointed on 02.12.2013 and the proceedings are going on, on these circumstances, the Secretary, Tamil Nadu Circle, Postal Co-operative Bank sent a communication stating that the dispute between the Board of Directors had been referred to arbitration and the arbitration proceedings are going on. Considering the present prevailing position of the Board of Directors, the impugned order has been passed which is not prejudicing both parties. Further, the same petitioner has filed a writ petition before this Court challenging the first respondent's order dated 02.12.2013, consequently directs the first respondent to initiate statutory proceedings under Section 43(1)(m) read with Section 47 of the multi-state Co-operative Societies Act, for the removal of the impleading petitioners. The writ petition viz. 1902 of 2014 is dismissed on merits and become final. Therefore, the writ petitioners plea to disqualify the impleading petitioners from the posts of Directors is not sustainable under law since this Court's judicial order has become final and also confirmed by the Hon'ble Division Bench of this Court in Writ Appeal No.307 of 2014. Further, the arbitration proceedings was conducted by the second respondent wherein the writ petitioner had raised some objections, the same was dismissed. Aggrieved by this judicial order, the writ petitioner has filed arbitration O.P.No.466 of 2014

before this Court which is pending enquiry. Under the circumstances, the above writ petition is not maintainable since on the same cause of action now the proceedings is pending on the file of this Court. In the said arbitration O.P. all the Directors are included as necessary parties. But in the above writ petition the necessary parties namely elected Directors were not ordered as necessary parties, as such the writ petition is not maintainable.

32. The highly competent counsel further submits that on the same cause of action 2 petitions were filed in W.P.No.1902 of 2014 and W.P.No.5835 of 2014 which were dismissed on merits, besides on the same issue the second respondent herein had conducted arbitration proceedings in the presence of all the parties. The arbitrator namely the second respondent herein passed orders and not being satisfied with the said order, the writ petitioner has filed arbitration O.P. before this Court. Therefore, on the same cause of action, same parties, same issues have been already decided by the competent authority namely the Arbitrator and competent forum i.e. this Court. Further, the writ petitioner himself had created a minute book stating that all the impleaded petitioners did not attend the 3 continuous meetings which is incorrect. Hence, the very competent counsel entreats the Court to dismiss the above writ petition.

33. The highly competent counsel Miss.R.Maheswari appearing for the respondents submits that the impugned order passed by the first respondent in order to maintain the status quo of the elected Directors and which will not be prejudiced to other parties. The learned counsel further pointed out that the same issue is pending on the file of this Court as Arbitration O.P. Further, the impugned order passed by the first respondent on the basis of the letter of the Secretary of the Bank. Therefore, the impugned order had been passed on the strength of documentary fact, which is appropriate for its operation considering the current prevailing position.

34. From the above discussions, this Court is of the view:-

(1)The general body has elected 12 Directors on 08.02.2013, out of them the writ petitioner has been elected as a President and one Mr.M.B.Sukumar has been elected as Vice President. The writ petitioner's allegation that 9 Directors out of 12 Directors had not attended the meetings held on 07.06.2013, 08.07.2013, 08.08.2013 and 19.08.2013, hence, the writ petitioner had submitted a proposal dated 23.08.2013 to the first respondent herein as per Section 43(1)(m) of the said Act, read with by-law No.33 of the bank and requesting the first respondent to initiate disqualification proceedings against the 9 disqualified Directors who committed continuing absence of more than 4 Board meetings. Before submitting the said proposal, the writ

petitioner had not issued any communication to the 9 Directors, regarding their absence. Therefore, the writ petitioner without giving an opportunity had submitted a proposal, which does not confirm to the principle of natural justice.

(2) All the 4 meetings held on 07.06.2013, 08.07.2013, 08.08.2013 and 19.08.2013 respectively conducted by the 3 Directors including the writ petitioner and Vice President. Out of the 12 Directors only 3 Directors which constitute absolute minority have conducted the meetings, therefore, the minority members cannot initiate disqualification proceedings by prevailing over the 9 other Directors, which is the original cause of action and as such not suitable for any further proceedings. Accordingly, the proposal submitted by the writ petitioner dated 23.08.2013 to the first respondent / Registrar as per Section 43(1)(m) of the said Act.

(3) The impleading petitioners have stated in their counter statement stating that the writ petitioner threatening the impleading petitioners with the help of rowdy elements did not allow the impleading petitioners / 9 Directors from attending the meeting. This allegation / accusation against the writ petitioner, this Court treating the accusation as a counter complaint, therefore, arbitration proceedings are absolutely necessary for conducting a comprehensive enquiry to determine the veracity of the issues. Accordingly, the second respondent herein had been appointed as Arbitrator. Under the circumstances, the Secretary, Tamil Nadu Circle Co-operative Bank Limited had sent a letter dated 09.10.2014 to the first respondent and informed the dispute between the Board of Directors and for which the arbitration proceedings are going on. Considering the situation of the disputes, the competent authority namely the first respondent herein passed the impugned order which becomes fit for operation since the writ petitioner and other Directors were elected as per the bye-laws of the Bank. Therefore, the first respondent's order will not be prejudiced.

(4) On the same dispute it has been challenged before this Court in W.P.No.902 of 2014 and W.P.No.5835 of 2014, besides the same issue had been decided by the second respondent herein on 08.07.2014. Against the order, now the writ petitioner has filed arbitration O.P.No.466 of 2014 on the file of this Court. Considering the prevailing position of the litigations, the above writ petition is not maintainable.

35. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides, perusing the typed set of papers and the views of this Court as mentioned in 1 to 4, the above writ petition is dismissed. Consequently, the impugned

order passed by the first respondent F.No.R-11017/33/2012-L&M dated 14.11.2014 is confirmed.

36. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Central Registrar of Co-operative Societies,
Department of Agriculture & Cooperation,
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi 110 001.

1 cc to Mr.V.Raghavachari ,Advocate, SR.No.5355

1 cc to Mr. J.Suresh,Advocate, SR.No.5479

br(co)
pmk.25.2.2015

W.P.No.30469 of 2014
and
M.P.Nos.1 and 2 of 2014

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