IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

WP(C) NO. 17041 OF 2024

PETITIONERS:

1 K.K.RAJU
AGED 63 YEARS
PRESIDENT, CHENGALAM SERVICE CO-OPERATIVE BANK LTD. CHENGALAM P.O, KOTTAYAM.
RESIDING AT MAVELI VETTATH HOUSE,
CHENGALAM P.O, KOTTAYAM., PIN – 686585.

2 DINTO.M.JOY
AGED 41 YEARS
MANAGING COMMITTEE MEMBER OF
CHENGALAM SERVICE CO-OPERATIVE BANK LTD.,
CHENGALAM P.O, KOTTAYAM.RESIDING AT
NJANDUPARA P.O, KOTTAYAM., PIN – 686585.

3 SHAJI JOSEPH
AGED 54 YEARS
MANAGING COMMITTEE MEMBER OF
CHENGALAM SERVICE CO-OPERATIVE BANK LTD.,
CHENGALAM P.O, KOTTAYAM . RESIDING AT
KANIKKATHODU, CHENGALAM P.O,
KOTTAYAM., PIN – 686585.

4 JAYAMOL PRADEEP
AGED 51 YEARS
MANAGING COMMITTEE MEMBER OF
CHENGALAM SERVICE CO-OPERATIVE BANK LTD.,
CHENGALAM P.O,KOTTAYAM. KRESIDING AT
KUZHIMATTATHIL , CHENGALAM P.O,
KOTTAYAM, PIN – 686585.

5 BABITHA JOSE
AGED 50 YEARS
MANAGING COMMITTEE MEMBER OF CHENGALAM SERVICE CO-OPERATIVE BANK LTD., CHENGALAM P.O,

KOTTAYAM. RESIDING AT KALLORATHU,
CHENGALAM P.O, KOTTAYAM., PIN – 686585.

6 RENY JOSEPH
AGED 50 YEARS
S/O JOSEPH,CHAKKALAYIL HOUSE,
CHENGALAM P.O, KOTTAYAM, PIN – 686585.

7 ARUN ANTONY
AGED 42 YEARS
THANNIKKAL HOUSE, CHENGALAM P.O,
KOTTAYAM, PIN – 686585.

8 SIJO MATHEW
AGED 42 YEARS
CHAMPANATTU, CHENGALAM P.O,
KOTTAYAM., PIN – 686585.

BY ADVS.
P.N.MOHANAN
C.P.SABARI
AMRUTHA SURESH
GILROY ROZARIO

RESPONDENTS:

1 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, COLLECTERATE POST, KOTTAYAM., PIN – 686001.

ADDL.R2 JOSSY BASTIAN,
AGED 53 YEARS, SON OF SEBASTAIN P.J,
PUTHUVAYALIL HOUSE, CHENGALAM EAST P.O.,
KOTTAYAM DISTRICT PIN – 686585.

[ADDL. R2 IS IMPLEADED AS PER ORDER DATED 28.05.2024 IN I.A-1/2024 IN WP(C)NO.17041/2024

BY ADVS.
SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.E.G.GORDEN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 31st day of July, 2024

The 1st petitioner is the President and other petitioners are the Managing Committee members of the Chengalam Service Co-operative Bank. The petitioners state that the Managing Committee took charge of office on 24.11.2019. The Committee has its tenure up to 23.11.2024.

2. The Managing Committee consists of 11 members. Out of it, seven Managing Committee members belong to the Indian National Congress and four to the Kerala Congress (Mani group). According to the petitioners, at present, there are seven Managing Committee members in the office. The petitioners state that 11 Managing Committee members were originally selected. Subsequently, on 27.12.2023, three of the

Managing Committee members ceased to be members since two of them became defaulters in loan transactions and one member resigned to go abroad. Accordingly, the strength of the Managing Committee was reduced to eight. Eight was sufficient to form quorum.

3. The petitioners state that the Managing Committee met on 01.02.2024 and nominated the 6th petitioner to the Committee. The said nomination of the 6th petitioner, was rescinded by the Joint Registrar on 17.02.2024.

4. The said order was subjected to challenge in W.P.(C) No.7796 of 2024. This Court set aside the order passed by the Joint Registrar rescinding the nomination of the 6th petitioner. According to the petitioners, when this Court set aside the rescinding order, the strength of the Managing Committee stood at nine, which is also more than the quorum.

5. Subsequently, on 09.02.2024, two Managing Committee members resigned, reducing the strength of the

Managing Committee to seven. One more person resigned on 26.02.2024. The said resignation brought down the strength of the Managing Committee to six, which is sufficient quorum according to the petitioners. On 27.03.2024, the Committee nominated two more members exercising powers under Section 28(1J) of the Kerala Co-operative Societies Act in the two casual vacancies arose due to resignation. Therefore, the total strength of the Managing Committee now stands at eight.

6. While so, the Joint Registrar passed an order dated 22.04.2024 again rescinding the resolution nominating the 6th petitioner to the Managing Committee, stating that there was no Committee meeting held on 01.02.2024. According to the petitioners, Ext.P4 is bad in the eye of law. Consequent to Ext.P4 order rescinding the resolution of the nomination of the 6th petitioner from the Managing Committee, the Joint Registrar has issued Ext.P6 notice dated 30.04.2024 to remove the Committee from office. Ext.P6 notice is also

unsustainable, contended the petitioners.

7. It is under the threat of supersession of the Committee that the petitioners have approached this Court challenging Exts.P4 and P6, seeking to declare that the Committee cannot be superseded by Ext.P6 as the Committee has quorum of seven persons, even after the rescinding of the resolution of the nomination of the 6th petitioner to the Committee.

8. Counsel for the petitioners relied on the judgment of the Hon'ble Apex Court in **Bharat Sanchar Nigam Limited v. Tata Communication Limited** [(2022) SCC Online SC 1280] to contend that in the matter of administrative / executive orders or circulars, in the absence of any legislative competence, such executive orders / circulars cannot be made applicable with the retrospective effect. Relying on the said judgment, the Counsel for the petitioners argued that Ext.P4 proceedings of the Joint Registrar (General) cannot operate

retrospectively. Based on Ext.P4, the respondents cannot be heard to contend that the Managing Committee has lost its quorum.

9. The 1st respondent filed counter affidavit. On behalf of the 1st respondent, it is submitted that out of the 11 Managing Committee members, three members resigned on 24.12.2023 and the number of the Committee members was reduced to eight. After that, on 09.02.2024, another two members resigned from the Committee and the Committee was left with six members. The petitioners forged the minutes of the Bank and made a false Board Meeting minutes, which is recorded to be held on 01.02.2024 to nominate the 6th petitioner. According to the 1st respondent, as per Section 28(1J), causal vacancy of an elected member of the Committee shall be filled up by nomination by the Committee out of the same class of members, if the term of the office of the Board is less than half of its original term.

10. The 1st respondent further contended that in a petition filed by two of the members who resigned from the Committee, they complained that the signature of Smt.Sherly Anto is made unauthorisedly by somebody without her consent in the meetings recorded as held on 03.01.2024 and 01.02.2024. In the above two meetings, the said member had attended on 03.01.2024 and she had not agreed with any of the resolution taken in the meeting. On 01.02.2024, there was no such Board Meeting.

11. The 2nd respondent also resisted the writ petition filing a counter affidavit. The 2nd respondent submitted that three members of the Managing Committee resigned on 27.12.2023. On 09.02.2024, two more members have resigned. Such resignation has brought down the strength of the Managing Committee to six, which is equal to the quorum of the Committee. This caused functional difficulties to the Managing Committee and to overcome the deficit in quorum,

the Managing Committee forged the minutes book of the Bank and made false entry in the minutes book that a Board Meeting was held on 01.02.2024 and nominated the 6th petitioner to the Managing Committee.

12. The 2nd respondent urged that there was no Board Meeting held on 01.02.2024 and no proper notice was served on the members regarding the alleged Board Meeting. Smt.Sherly Anto's signature was forged and later erased using whitener. As there was no Board Meeting on 01.02.2024, there is no question of the 2nd respondent attending the meeting. The 2nd respondent reiterated that no Managing Committee meeting was held on 01.02.2024. No notice for conducting Managing Committee meeting was served. A joint meeting of the Committee members and staff was held on 08.02.2024. In the margin of the same minutes, the date is written as 01.02.2024. So, it is evident that no meeting of Managing Committee was held on 01.02.2024 and the

minutes of the joint meeting of the staff and Committee members held on 08.02.2024, is manipulated. The 1st respondent, therefore, issued Exts.P4 and P6 orders, which is assailed in the writ petition.

13. I have heard the learned Counsel for the petitioners, the learned Government Pleader representing the 1st respondent and the learned Counsel appearing for the 2nd respondent.

14. The pleadings in the writ petition would show that the Managing Committee to the Chengalam Service Co-operative Bank was elected on 24.11.2019. There were 11 elected Managing Committee members. The quorum of the Managing Committee is six. It is an admitted position that three members were no more members of the Managing Committee on 27.12.2023, bringing down the strength of the Committee to eight.

15. The case of the petitioners is that the Committee nominated the 6th petitioner to the Managing Committee, in the meeting held on 01.02.2024. This nomination is the bone of contention in this writ petition. According to the 2nd respondent, there was no quorum in the meeting held on 01.02.2024 and therefore, the nomination of the 6th petitioner is non-est in the eye of law.

16. It is to be noted that on the same allegation, the resolution was rescinded by the Joint Registrar on 17.02.2024. The said decision of the Joint Registrar was subjected to challenge in W.P.(C) No.7796 of 2024. The said writ petition was disposed of as per Ext.P3 judgment dated 19.03.2024. The operative portion of the judgment reads as follows:-

> "12. Resultantly, these writ petitions are disposed of as under:
>
> a) Ext.P4 order passed in W.P.(C) No.8345 of 2024 and Ext.P4 order in W.P.(C) No.7096 of 2024 are quashed. The matter is remitted back to the Joint Registrar to pass fresh orders in accordance with law in the light of the observations made above.

> b) If the Registrar proposes to initiate proceedings under Section 32(1) of the Act for violation of Section 32(1)(d), it shall be in full adherence to the observations in **Rajagopalan Nair and Urukunnu** (supra)."

17. Therefore, it is evident that this Court has set aside the decision of the Joint Registrar rescinding the resolution. When this Court has set aside the decision of the Registrar to rescind the decision, naturally, the decision of the Committee would revive in which case, it has to be assumed that the Committee had a strength of eight, when the 6th petitioner was nominated to the Committee.

18. Subsequently, on 09.02.2024, two Managing Committee members, namely, Josy Bastin and Sherly Anto, resigned reducing the strength of the Managing Committee. It is to be noted that even then, the strength is more than the quorum. On 26.02.2024, one Mr.Gopi also resigned bringing down the strength of the Managing Committee to six. The

Committee with the strength of the six which is quorum, nominated two members on 27.03.2024. Thus, the strength of the Managing Committee members in office is now eight.

19. Relying on Exts.R2(a) and R2(b) minutes, the respondents would contend that the meeting allegedly held on 01.02.2024 is a fraud played. Out of the seven members stated to have participated in the meeting, two of the members have not signed the minutes book. Therefore, the said Committee Meeting is illegal and it cannot be treated as valid meeting, in which case, the nomination of the 6th petitioner is illegal.

20. If the respondents have any dispute relating to the legality of the minutes of the Managing Committee meeting, the respondents will have to take the matter appropriately under law. As things stand, the Managing Committee which had a strength of eight, has nominated the 6th petitioner in the meeting held on 01.02.2024. The decision nominating the 6th

petitioner was rescinded by the Joint Registrar on 17.02.2024. This Court in W.P.(C) No.7796 of 2024 set aside the said order.

20. When this Court set aside the rescinding of the nomination, it has to be assumed that the nomination of the 6th petitioner becomes valid. Subsequent meetings and nominations by the Committee meeting were therefore on the strength of a quorum.

21. In such circumstances, I am of the view that Exts.P4 and P6 cannot stand the scrutiny of law. Exts.P4 and P6 are quashed. If the respondents are aggrieved by the legality of the decision taken by the Committee on 01.02.2024, it will be open to the respondents to take steps appropriately.

The writ petition is disposed of as above.

Sd/-
N. NAGARESH
JUDGE

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APPENDIX OF WP(C) 17041/2024

PETITIONERS EXHIBITS

Exhibit P1	**TRUE COPY OF THE RESOLUTION NO.7 DATED 27.03.2024 ALONG WITH THE LETTER TO THE PRESIDENT TO INTIMATE THE SAME TO THE NOMINEES**
Exhibit P2	**TRUE COPY OF THE ORDER DATED 17.02.2024 OF THE JOINT REGISTRAR**
Exhibit P3	**TRUE COPY OF THE JUDGMENT DATED 19.03.2024 IN W.P.(C). NO.7796/2024**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 22.04.2024 OF THE JOINT REGISTRAR**
Exhibit P5	**TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 12.02.2024**
Exhibit P6	**TRUE COPY OF THE NOTICE DATED 30.04.2024 OF THE JOINT REGISTRAR**
Exhibit P7	**TRUE COPY OF THE JUDGMENT OF SIEMENS LTD. V. STATE OF MAHARASHTRA REPORTED IN 2007 (1) KLT 88 (SC)**
Exhibit P8	**TRUE COPY OF THE JUDGMENT RAJAGOPALAN NAIR V. STATE OF KERALA REPORTED IN 1995 (2) KLT 184**
Exhibit P9	**TRUE COPY OF THE JUDGMENT OF ORUKUNNU SCB V. STATE OF KERALA REPORTED IN 2012 (4) KLT 941**

RESPONDENT EXHIBITS

Exhibit R1(a)	**TRUE COPY OF THE JOINT MEETING MINUTES OF THE STAFF AND COMMITTEE MEMBERS DATED 08-02-2024**

Exhibit R2(c)	**TRUE COPY OF COMPLIANT DATED 09.02.2024 SUBMITTED TO 1ST RESPONDENT**
Exhibit R2(a)	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 31/01/2024 ISSUED BY PUBLIC INFORMATION OFFICER**
Exhibit R2(b)	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 01/02/2024 ISSUED BY PUBLIC INFORMATION OFFICER**
Exhibit R2(d)	**TRUE COPY OF THE COMPLAINT DATED 03.04.2024 SUBMITTED BEFORE THE 1ST RESPONDENT**
Exhibit R2(e)	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 31.01.2024 OF THE MANAGEMENT COMMITTEE ISSUED BY PUBLIC INFORMATION OFFICER**