

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 13TH DAY OF JANUARY 2016/23RD POUSHA, 1937

WP(C).No. 25034 of 2014 (D)  
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PETITIONER(S):  
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BOARD OF DIRECTORS OF THE VARANAM PUTHENANGADI  
KSHEEROLPADAKA SAHAKARANA SANGHAM LTD.  
NO.A-139 D (APCOS), VARANAM P.O., CHERTHALA -688 555,  
REPRESENTED BY ITS PRESIDENT.

BY ADVS.SRI.V.G.ARUN  
SRI.T.R.HARIKUMAR

RESPONDENT(S):  
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1. THE DAIRY EXTENSION OFFICER,  
OFFICE OF THE DAIRY EXTENSION OFFICER, CHERTHALA,  
ALAPPUZHA DISTRICT - PIN - 688 524.
2. THE DEPUTY DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT, DISTRICT OFFICE,  
IRUMPUPALAM P.O., NEAR KALLUPALAM,  
ALAPPUZHA DISTRICT - PIN - 688 001.
3. V.P.DHANAPALAN,  
S/O.S.PADMANABHAN, AANAKUZHICKAL HOUSE, VARANAM P.O.,  
CHERTHALA, ALAPPUZHA DISTRICT - PIN -688 555.

R1 & R2 BY GOVERNMENT PLEADER, SRI. ABHIJETT LESSLI  
R3 BY ADV. SRI.A.JAYASANKAR  
R3 BY ADV. SRI.C.V.MANUVILSAN  
R3 BY ADV. SRI.MANU GOVIND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-01-2016, THE  
COURT ON 13.01.2016 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS  
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- EXT.P-1: A TRUE COPY OF THE JUDGEMENT DATED 9.4.2013 IN WP(C) NO.10046 OF 2013.
- EXT.P-2: A TRUE COPY OF THE ORDER NO.G2/9961/2013 DATED 11.12.2013 OF THE DIRECTOR, DAIRY DEVELOPMENT.
- EXT.P-3: A TRUE COPY OF THE COMMUNICATION NO.E/618/1035/2013 21.6.2014 OF THE 2ND RESPONDENT, ALONG WITH THE LIST OF DEFECTS.
- EXT.P-4: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 4.8.2014.
- EXT.P-5: A TRUE COPY OF THE NOTICE NO.E/618/1036/2014 DATED 10.9.2014 ISSUED BY THE 2ND RESPONDENT.
- EXT.P-6: A TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.9.2014.
- EXT.P-7: A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.9.2014.

RESPONDENT(S)' EXHIBITS  
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- EXHIBIT R3(A): A TRUE COPY OF THE REPORT PREPARED BY THE 1ST RESPONDENT AFTER CONDUCTING THE ENQUIRY UNDER SECTION 65 OF KERALA CO-OPERATIVE SOCIETIES ACT, 1969 DATED 14.05.2014.

//TRUE COPY//

P.S. TO JUDGE

St/-

**SHAJI P. CHALY, J.**

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**W.P.(C) No.25034 of 2014**  
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**Dated this the 13<sup>th</sup> day of January, 2016**

**JUDGMENT**

This writ petition is filed seeking to quash Ext.P5 notice issued by the 2<sup>nd</sup> Respondent, whereby the petitioner was asked to show cause why action shall not be initiated under Sec.32(b) of the Kerala Co-operative Societies Act, 1969.

2. Brief facts required for the disposal of the writ petition are that the petitioners are the Managing Committee members of the Varanam Puthenangadi Ksheerolpadaka Sahakarana Sangham Ltd. A few members of the Society, in spite of repeated attempts, were not elected as Managing Committee members who had been submitting repeated complaints before the Departmental Authorities raising patently false allegations during the tenure of the previous and present Managing Committee. One such complaint filed by the 3<sup>rd</sup> Respondent was with regard to the inclusion of ineligible members and exclusion of eligible members in the voters list. Alleging that the said complaint was not being considered, the 3<sup>rd</sup> Respondent filed W.P.(C) No.10046 of 2013 before this

Court and the same was disposed of directing the Director, Dairy Development to consider the grievance of the petitioner, evident from Ext.P1 judgment.

3. Pursuant to the judgment, the Director considered the grievance of the 3<sup>rd</sup> Respondent and found the allegations in the complaint were false. In the said order, it is also mentioned that an enquiry under Sec.65 of the Kerala Co-operative Societies Act with regard to the functioning, trade and financial transactions of the Society with effect from 01.04.2008, had already been ordered by the 2<sup>nd</sup> Respondent, which is evident from Ext.P2 order dated 11.12.2013.

4. In pursuance of the enquiry under Sec.65, the 2<sup>nd</sup> Respondent issued a communication to the petitioner along with a number of defects alleged to have been found out during the course of enquiry and directed that steps should be taken to cure the defects forthwith, evident from Ext.P3 dated 21.06.2014. It is further contended by the petitioner that most of the defects pointed out in Ext.P3 were immaterial or non-existent and the rest of the defects were cured or effective steps were taken to cure the defects and accordingly Ext.P4 reply, pointing out these aspects was submitted before

the 2<sup>nd</sup> Respondent. However, the petitioner was served with Ext.P5 notice under Sec.32(b) of the Kerala Co-operative Societies Act, asking the petitioner to show cause why action shall not be taken against the petitioner under the said provision of law. It is contended by the petitioner that there are no specific reasons stated in Ext.P5 warranting to invoke the power under Sec.32(b) other than factually stating that though the Society has submitted its explanation pointing out that the defects had been cured, the submission was not correct. Anyhow, on receipt of Ext.P5, Ext.P6 letter was issued stating that the petitioner was not served with enquiry report and therefore the action pursuant to Ext.P5 is bad, illegal and cannot be sustained under law. Apart from the same, Ext.P7 reply was also issued to counter the statement contained under Ext.P5 and it was at that stage, apprehending that the Board of Directors will be superseded without providing further opportunity, the captioned writ petition is filed.

5. It is also contended that Sec.32(b) takes care of a situation where there are persistent violations and even according to Ext.P5 show cause notice, only one instance is mentioned. Therefore, Ext.P5 show cause notice is illegal on

the said ground itself.

6. Counter affidavits have been filed by the 2<sup>nd</sup> Respondent as well as the 3<sup>rd</sup> Respondent refuting the statements and contentions raised in the writ petition. It is further submitted in the counter affidavits that the entire action initiated by the 2<sup>nd</sup> Respondent pursuant to Ext.P5 show cause notice is legal and is in order. It is also contended that Ext.P5 is only a show cause notice and the petitioner has filed Ext.P7 reply to the same, which still remains to be considered. There are no circumstances warranting interference by this Court under Article 226, contends the Respondents.

7. Heard learned counsel for the petitioner as well as the 3<sup>rd</sup> Respondent and learned Government Pleader appearing for Respondents 1 and 2.

8. Having taken into consideration the totality of the facts and circumstances of the case, assimilating the factual situations pointed out by the learned counsel for the petitioner and the Respondents, I am of the considered opinion that since Ext.P5 is only a show cause notice asking the petitioner to show cause why action shall not be taken against the petitioner under Sec. 32(b) of the Kerala Co-operative

Societies Act, the same is not a concluded order and the petitioner was provided with liberty to show cause and pursuant to which, petitioner has submitted Ext.P7 reply also. On a perusal of Ext.P5 and other related documents, I do not think that the action initiated by the 2<sup>nd</sup> Respondent is suffering from any legal infirmity warranting interference at this stage invoking the discretionary power conferred on this Court under Article 226 of the Constitution of India.

9. However, it is also pointed out by the learned counsel for the Respondents that along with the counter affidavit filed by the 3<sup>rd</sup> Respondent, the enquiry report is produced, and therefore the apprehension of the petitioner voiced in Ext.P6 has also no basis at present. Petitioner has also filed Ext.P7 reply to Ext.P5 show cause notice. Therefore, in the fitness of things and in the interest of justice, it is only proper that a direction is issued to the 2<sup>nd</sup> Respondent to take into account Ext.P7 reply filed by the petitioner to Ext.P5 show cause notice and take a decision on the same after providing opportunity to all parties concerned.

10. Therefore, there will be a direction to the 2<sup>nd</sup> Respondent to take a decision on Ext.P5 taking into account

Ext.P7 reply and after providing reasonable opportunity to the petitioner as well as all concerned, within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

//true copy//

P.S. to Judge

St/-  
13.01.2016