

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 08TH DAY OF FEBRUARY 2021 / 19TH MAGHA, 1942

WP(C).No.26857 OF 2020(F)

PETITIONERS:

- 1 O.V.APPACHEN
PRESIDENT, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.
- 2 P.M. JOSEPH
MEMBER, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.
- 3 K.V. VARKEY
MEMBER, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.
- 4 SREEJA SREEKUMAR
MEMBER, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.
- 5 MARY BENNY
MEMBER, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.
- 6 K. CHANDU
MEMBER, THE BOARD OF DIRECTORS OF THE PALLIKKUNNU
KSHEEROLPADAKA SAHAKARANA SANGHAM LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122.

BY ADVS.
SRI.P.P.JACOB
SMT.MARIYAM JACOB

RESPONDENTS:

- 1 THE DIARY EXTENSION OFFICER,
DEPARTMENT OF DIARY, PANAMARAM VILLAGE,
WAYANAD-670721.

- 2 THE ASSISTANT DIRECTOR,
DIARY DEVELOPMENT (C) BLOCK, CIVIL STATION,
WAYANAD, KALPETTA NORTH, WAYANAD-673121.
- 3 THE DEPUTY DIRECTOR OF DIARY DEVELOPMENT (C) BLOCK,
CIVIL STATION, WAYANAD, KALPETTA NORTH,
WAYANAD-673121.
- 4 DAIRY EXTENSION OFFICER,
SULTHAN BATHERY, PART TIME ADMINISTRATOR, THE
PALLIKKUNNU KSHEEROLPADAKA SAHAKARANA SANGHAM
LIMITED NO. D 1940, APCOS, PALLIKKUNNU P.O.,
WAYANAD DISTRICT-673122.
- 5 THE PALLIKKUNNU KSHEEROLPADAKA SAHAKARANA SANGHAM
LIMITED NO. D 1940,
APCOS, PALLIKKUNNU P.O., WAYANAD DISTRICT-673122,
REPRESENTED BY SECRETARY.

SMT MABLE C KURIAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners herein are the elected members of the Board of Directors of the Pallikkunnu Ksheerolpadaka Sahakarana Sangham. They have approached this Court challenging Ext. P15 order by which the 3rd respondent has superseded the Committee invoking its powers under Section 32(1) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act'). The only point raised by the petitioners is that while superseding the committee, the 3rd respondent had failed to comply with the mandatory provisions contained in Section 32(2) of the Act. To be more specific, the petitioners contend that the 3rd respondent ought to have forwarded the show cause notice issued under S.32(1), the explanations/objections given by the Committee to such show cause notice and the tentative findings arrived at by 3rd respondent after considering such explanations/objections to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the proposal to supersede the Committee. As Ext.P15 order is silent with regard to compliance of Section 32(2) of the Act, on that sole ground, the order is liable to be set aside, is the contention.

2. It appears from the records that an enquiry was ordered under Section 65 of the Act into the Constitution, working and financial condition of the Society as per proceedings dated 18.12.2018. The enquiry is stated to have revealed that huge sums were misappropriated by the Chief Executive Officer and

Board of Directors of the Society. The report was approved by the 3rd respondent and a copy was forwarded to the petitioners. They furnished a detailed objection explaining their stand and they were also heard. The 3rd respondent after considering the report under Section 65 and the explanation offered by the petitioners was satisfied that the committee was liable to be superseded under Section 32(1) of the Act. Ext.P10 show cause notice was issued on 8.10.2020 by which an opportunity was granted to the committee to state its objections. Simultaneously proceedings under Section 68(1) of the Co-operative Societies Act was initiated which were challenged by the petitioners by filing W.P.(C) No.26617/2020 which petition was disposed of with directions. The petitioners also approached this Court and filed W.P.(C) No.22692 of 2020 seeking to quash the notice issued under section 32(1) and also for a further direction to the 3rd respondent to consider their objection and also to afford them an opportunity of being heard before superseding the committee. This Court by judgment dated 23.10.2020, refused to interfere with the show cause notice. However, having regard to the apprehension expressed by the petitioners, this Court had directed the 3rd respondent to hear the explanation offered by the petitioners herein and to pass orders bearing in mind the principles laid down in **State of Madhya Pradesh and Ors. v. Sanjay Nagayach and Ors**¹. and in **Vallappuzha Service Cooperative Bank Ltd. v Joint Registrar**². On 17.11.2020 and on the next day, the petitioners were heard and on 27.11.2020, the impugned order was

¹ [(2013) 7 SCC 25]

² (2009 (3) KLT 838)

passed superseding the society under Section 32(1) of the Act. The last line of the impugned order reads thus:

“ദി ഉത്തരവ് സമ്പന്നിച്ച് അഭിപ്രായങ്ങൾ ബന്ധപ്പെട്ട സർക്കിൾ സഹകരണ യൂണിയൻ ജില്ലാ സഹകരണ ബങ്ക് തുടങ്ങിയവരെ ശ്രദ്ധമൂലം അറിയിച്ചിട്ടുള്ളതാണ്”

3. The 2nd respondent has filed a counter affidavit. It is contended that huge amounts were misappropriated by the members of the Committee in the name of Bio village-SHGS, Building Construction, Plant and Machinery Purchase. It is further stated that no proper audit reports were submitted after the financial year 2015-2016 and this fact would be evident from Ext.R2(a). Instead, the society has prepared accounts and the same was approved in the general body meeting. When serious discrepancies were found, an enquiry under Section 65 of the Act was ordered. In the course of the enquiry, it was found that there was misappropriation to the tune of Rs.49,97,238/- carried out by the Chief Executive Officer and the Board of Directors of the Society. The provisions of the Act mandate that previous sanction in writing of the Registrar is mandatory before granting on lease any plant and machinery funded by the Dairy Development Department. In clear violation to the said stipulation, the plant and machinery was given on lease to a certain Prason. According to the respondents, the managing committee has persistently been negligent in the performance of the duties and have failed to recoup the amount which has been misappropriated. It is in the said circumstances that notice under Section 32(1) of the Act was served on the petitioners. The reply submitted by the petitioners was found unsatisfactory

and hence, the order of supersession was made, after compliance of all mandatory formalities. It is stated that the vigilance department has also registered a case as Case No. VE3/WYD/2020 consequent to the unearthing of the misappropriation. Though the contention of the petitioners that there has not been an effective consultation with the Circle Co-operative Bank and the Financing bank has not been controverted in the counter, the respondents have produced Ext.R2(c) letter issued to the District Co-operative Bank and Ext.R2(b) communication issued by the Financing bank to substantiate that the 3rd respondent had forwarded the records and had consulted the authorities in terms of the mandate under Section 32(2) of the Act.

4. Sri.P.P.Jacob, the learned counsel appearing for the petitioners, submitted that the order passed by the 3rd respondent suffers from patent illegalities. He would contend that the order of supersession is politically motivated and clearly against the mandatory provisions contained in the Act. He would vehemently urge that Section 32(2) of the Act provides for mandatory consultation with the Circle Co-operative Union and the financing bank before passing an order superseding the Managing Committee of a society. However, there is not even a whisper in Ext.P15 order that the financing bank or the Circle Co-operative union was consulted before deciding to supersede the society. Referring to Ext.R2(c), which is relied on by the learned Government Pleader, the learned counsel would contend that this Court in **State of Kerala and Ors. v. Board of Directors of Urukunnu Service C-op. Bank Ltd. , Kollam and**

Others³ had held that mere sending of a copy of the notice to the Circle Co-operative Bank would not satisfy the requirement of the provisions of Section 32(2) of the Act. Ext.R2(c) would also not reveal that the explanation offered by the petitioners to the notice under Section 32(1) or the tentative finding of the 3rd respondent, after considering the objection, was forwarded to the consultee. Furthermore, no records are produced to show that the Circle Co-operative Bank had applied its mind and that the consultation is effective and meaningful. Insofar as Ext.R2(d) is concerned, Sri. P.P.Jacob pointed out that all that is mentioned is that the Financing bank was required to furnish their opinion as per communication issued on 24.8.2020 and that they had already furnished an opinion on 3.9.2020 as referred to in Ext.R2(d). According to the learned counsel, this Court had disposed of the writ petition filed by the petitioners only on 23.10.2020 directing the petitioners to furnish Ext.P12 objection which was furnished on 30.10.2020. Neither the objection submitted by the petitioners nor the tentative opinion of the 3rd respondent was forwarded to the Financing Bank by the 3rd respondent and according to the learned counsel, Ext.R2(d) is the mere reiteration of an order which was passed on 3.9.2020.

5. Smt. Mable C. Kurian, the learned Government Pleader, would vehemently oppose the prayer. It is submitted that notice was issued to the petitioners on each of the stages and their explanations were obtained. It was revealed that the petitioners have misappropriated huge sums of money and were persistently negligent in the performance of their duties. It is contended that the acts committed by the petitioners have adversely affected the working

3 [2013 (2) KLT 74]

and financial condition of the society. Insofar as violation of Section 32(2) is concerned, it is contended that Ext.R2(c) would reveal that the tentative findings were forwarded to the Circle Co-operative Bank and since no objection was raised, the 3rd respondent proceeded to pass the order which is impugned. It is further contended that in view of Ext.R2(d) the contention of the petitioners that there has not been any effective consultation with the financing bank cannot be sustained. According to the learned Government Pleader, since by the acts of the petitioners herein loss and damage has been caused to the assets of the society surcharge proceedings have also been initiated. It is also pointed out that the vigilance department has also registered a case against the committee members.

6. I have considered the submissions advanced by the learned counsel appearing for the petitioners and the learned Government Pleader and have carefully perused the records.

7. In order to appreciate the contentions advanced, it would be apposite to refer to the statutory provisions. Section 32 of the Act deals with supersession of committee which reads as follows:

32. Supersession of Committee

- (1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance, and Anticorruption Bureau of the Government or the Vigilance Officer or otherwise, is satisfied that the committee of any society,-
 - (a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society; or

- (b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules; or
- (c) makes any payment contrary to this Act or the rules or the bye-laws or causes any loss or damage to the assets of the society, by breach of trust or wilful negligence; or
- (d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and appoint in its place, one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months [***]

[Explanation I. For the Purposes of this proviso, financial assistance includes any financial assistance from the Kerala Co-operative Deposit Guarantee Fund Board, Kerala Co-operative Development and Welfare Fund Board, National Bank for Agriculture and Rural Development, National Co-operative Development Corporation and any other financial institution under the control of the State or Central Government and also any financial financial institution under the Control of the State or Central Government and also any financial assistance guaranteed by the said institutions.]

Explanation [II]. - A notice and an order given as per this clause to the President, in his absence to the Vice President or any committee member who is holding charge of President or Vice President or to the Chief Executive of a society shall be treated as an order given to the committee of the society.]

[(e) Every member of the committee superseded under this section shall from the date of order of such

supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms;]

[Provided that in the case of co-operative society, carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (Central Act 10 of 1949) shall also apply:

Provided further that in the case of a co-operative society, carrying on the business of Banking, appointment of administrator/administrative committee shall not exceed one year in the aggregate:

Provided also that the board of a co-operative society shall not be superseded or kept under suspension where there is no Government share holding or loan or financial assistance or any guarantee by the Government or any Board or Institutions constituted by the Government.]

- (2) The Registrar shall consult the financing bank and circle co-operative union or State Co-operative Union, as the case may be, before passing an order under sub-section (1) .
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases, the period of supersession shall generally be for six months and in case a new committee cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months-
 - (a) in the case of a Co-operative society only after consulting the circle co-operative union concerned; and

- (b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.
- (4) The committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give [have power to exercise all or any of the powers and functions] of the committee or of any officer of the society and take all such action as may be required in the interests of the society.
- (5) The committee or administrator or administrators shall, before the expiry of its or his or their terms of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.
- (6) Every order made by the Registrar under sub-section (1) shall be communicated to the circle co-operative union.

8. As per sub-section (1) of Section 32, if the Registrar, after an enquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance and Anti Corruption Bureau of the Government or the Vigilance Officer or otherwise, is satisfied that the committee of any society, persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the Rules or bye-laws or does anything which is prejudicial to the interests of the society; or wilfully disobeys or fails to comply with any lawful order or direction issued under the Act or the rules; or makes any payment contrary to the Act or the rules or the bye-laws or causes any loss or damage to the assets of the society, by breach of trust or wilful negligence; or misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, the Registrar may, after giving the committee an opportunity to state its objections, if any, by

order in writing, remove the committee and appoint in its place, one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months. The 3rd proviso to sub-section (1) of Section 32 provides that, the Board of Co-operative Society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government or any Board or Institutions constituted by the Government. Going by subsection (2) of Section 32, the Registrar shall consult the financing bank and Circle Co- operative Union or State Co-operative Union, as the case may be, before passing an order under sub-section (1). Sub-section (3) of Section 32, which begins with a non-obstante clause provides that, notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession, the period may be extended for a further period not exceeding six months in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.

9. In **Vallapuzha Service Co-operative Bank Ltd. v. Joint Registrar** (supra), it was held by a learned Single Judge that supersession of a democratically elected committee is a very drastic and extreme step cannot, therefore, be taken lightly for mundane violations. Only if the findings against the committee are such that the continuance of the committee would be extremely prejudicial to the interests of the Society, the exceptional and rare action under S.32 shall be taken. Findings on the culpability of the committee on their improper action should inform the action of the Registrar while initiating proceedings under S.32. In other words, the mere finding that the committee has done the acts alleged alone is not sufficient; the same should be supported by a further finding that they did the same with a culpable mind, failing which the action of the Registrar would be improper.

10. In **Sahadevan v. Padmanabhan**⁴ on the question of compliance with sub-s.2 of S.32 a Division bench of this Court had occasion to observe as follows:-

“Sub-s.(2) of S. 32 provides that the Registrar shall consult the Financing Bank and the Circle Co-operative Union or the State Co-operative Union as the case may be before passing an order under sub-s.(1) of S.32. It is seen from Ext.P6 that a copy of the notice dated 24-9-2003 issued under sub-s.(1) of S.32 of the Act was sent to the General Manager, Palakkad District Co-operative Bank (Financing Bank) and the Secretary, Co-operative Union, Palakkad.

⁴ (2004 (1) KLT 192)

Apart from sending a copy of the notice, no further request or direction was made. Ext.P8 order of the Joint Registrar shows that the views of the financing bank and the Circle Co- operative Union were not received on time and therefore, the Joint Registrar proceeded on the assumption that they had nothing to say in the matter. Learned Single Judge, relying on the decisions in Jose Kuttiyani v. Registrar, Co-operative Societies (AIR 1982 Ker. 12) and Elakkal Service Co-operative Bank v. State of Kerala (1997 (2) KLT 85) held that the mere sending of the copy of the show cause notice to the consultees would not satisfy the requirement of the provisions contained in sub-s.(2) of S.32 of the Act. According to the learned Single Judge, the notice, the reply and the tentative findings of the Joint Registrar should be forwarded to the consultees so that they can form an opinion and inform the same to the Joint Registrar. The learned Single Judge has also pointed out that the impugned order, Ext.P8, does not show that any such consultation was made. There is no case for the appellant that, apart from sending a copy of Ext.P6 notice to the Financing Bank and the Circle Co-operative Union, the Joint Registrar had forwarded to them the explanations/objections given on behalf of the Committee and the tentative findings arrived at by the Joint Registrar after considering the explanations/objections of the Committee. Therefore, we have to proceed on the basis that, apart from sending a copy of Ext.P6 to the Financing Bank and the Circle Co-operative Union, no further action was taken by the Joint Registrar as part of the consultation process contemplated under sub-s.(2) of S.32 of the Act. The consultation contemplated under sub-s.(2) of S.32 of the Act can be effective and meaningful only if the show cause notice issued under S.32(1), the

explanations/objections given by the Committee to such how cause notice and the tentative findings arrived at by the Joint Registrar after considering such explanations/objections are also forwarded to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the proposal to supersede the Committee. Such a consultation process has not taken place in this case. Therefore, the provisions of sub-s.(2) of S.32 of the Act have been violated. Hence, Ext.P8 order was liable to be set aside on the second ground mentioned by the learned Single Judge.

11. In **State of Kerala v Board of Directors of Urukunnu Service Co-Operative Bank Ltd., Kollam and Others**⁵, a Division Bench of this Court had observed thus:

We are of the opinion that insofar as as the Co-operative Societies should normally be managed by elected representatives, the very drastic step of superseding the Managing Committee under S.32 can be resorted to only in exceptional circumstances, that too only after scrupulously following the procedure prescribed in S.32. In fact, if a Managing Committee is superseded under S.32 that attracts disqualification of every member of the Managing Committee in the matter of contesting future elections to the Managing Committee for two consecutive terms. It is in view of the drastic nature of the power that the legislature has incorporated safeguards in the matter of exercise of such powers, so that it will not be arbitrary. Therefore, we are of opinion that sub-s.2 is mandatory unless the Joint Registrar gives very cogent and

⁵ [2013 (2) KLT 74]

acceptable reasons for dispensing with such requirement. The least that is expected of the third appellant is to give some indication in the order itself as to why the Joint Registrar had chosen to dispense with the consultation with a Financing Bank and Circle Co-operative Union. As admitted in Ext.P7 itself that procedure has not been complied with and no reasons worth mentioning has been stated in the order.

12. In **Sanjay Nagayach** (supra), the Apex Court while considering the supersession of a committee registered under the provisions of the Madhya Pradesh Co-operative Societies Act had held that previous consultation was a condition precedent. It was further held that the consultation must be effective, since that would be a relevant material to consider the extreme step of supersession. The consultation, required by Statute, to oust a democratically elected body was construed as mandatory. While issuing sweeping directions, it was directed as under:

“Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not”.

13. In **Krishnan Nair v Joint Registrar of Co-operative Societies**⁶, a learned Single Judge of this Court had held that the hedged-in

⁶ [2014 (1) KLT 116]

safeguards cannot be reduced to an empty formality rendering the process a mere farce. S.32 cannot be reduced to a naming ceremony, intended only at hanging the named one and it also cannot be assumed that the consultants would have concurred with the Registrar.

14. Having considered the law laid down by this Court, there cannot be any dispute that compliance of Section 32(2) of the Act is mandatory in nature. It would not be enough for the 3rd respondent to merely forward a copy of the show cause notice to the consultees. The authority is bound to forward the objections/explanations given on behalf of the committee and the tentative findings arrived at by the Deputy Director after considering the explanations/objections of the Committee. It has also been held that the consultation contemplated under sub-s.(2) of S.32 of the Act can be effective and meaningful only if the show cause notice issued under S.32(1), the explanations/objections given by the Committee to such show cause notice and the tentative findings arrived at by the Joint Registrar after considering such explanations/objections are also forwarded to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the proposal to supersede the Committee. The said provision will have to be followed in its letter and spirit.

15. In the case on hand, the petitioners had approached this Court challenging the notice under Section 32(1) and while repelling the challenge over the show cause notice, this Court had directed the petitioners to

approach the 3rd respondent and file their explanation and the said respondent was directed to consider the objections and take a decision in tune with the directions issued by this court as well as the Apex Court. In tune with the directions, objection was furnished by the petitioners on 30.10.2020, the opinion of the consultees were sought on 4.11.2020, the petitioners were called for a hearing on 17.11.2020 and the orders were passed on 27.11.2020. A perusal of Ext.R2(c) would reveal that all that was forwarded to the Circle Co-operative Bank is the notice issued under Section 32(1) of the Act by the 3rd respondent. This is the only enclosure and this fact is evident from Ext.R2(c) itself. The objections submitted by the petitioners and the tentative opinion of the 3rd respondent after considering the objection was not forwarded to the Circle Co-operative Bank. The respondents have no case that the Circle Co-operative Bank had responded to Ext.R2(c) and had given the go ahead. Insofar as Ext.R2(d) is concerned, a reading of the said communication would reveal that a request for initiation of action for supersession was made on 24.8.2020 and that the financing bank had given the assent on 3.9.2020. In other words, the objection submitted by the petitioners nor the tentative opinion of the 3rd respondent was forwarded to the Financing Bank. The Financing Bank has merely reiterated that they had given their consent earlier. As held by this Court in **Jose Kuttiyani and Others v The Registrar of Cooperative Societies**⁷ though it is for the Registrar to be satisfied that whether circumstances exist for supersession of the Society, such satisfaction cannot be arbitrary. The

⁷ [AIR 1982 Ker. 12]

legislature has prescribed very strict formalities before embarking upon the act of supersession of an elected body. When procedural formalities which are prescribed under the statute are dispensed with, the burden of the 3rd respondent to justify the very extreme act of supersession will be very high. The 3rd respondent ought to have been conscious of the fact that his act of superseding the Society by bypassing the formalities prescribed under the statute had serious repercussions to the members of the Committee as they are disqualified to be a member for a period of one year as provided under Rule 44 (1) (k) of the Rules. Section 32 (1)(e) of the Act provides that every member of the committee superseded under the said provision shall from the order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any society or to be appointed as an administrator in any society for two consecutive terms. Thus there can be no manner of doubt that an order of supersession without following the procedure embodied above have far-reaching consequences on the rights of the members of the superseded committee. In view of the above discussion, I hold that there has been no effective consultation as mandated under law and on that ground, Ext.P15 order cannot be sustained.

16. Now the question is whether in view of the setting aside of Ext.P15 order, the erstwhile managing committee is to be reinstated. I find from the records that surcharge proceedings have been initiated against the petitioners and they are also facing the investigation in a case registered by the vigilance department. It would not therefore be proper to reinstate the

petitioners. It appears that consequent to the passing of the order, an administrative committee is managing the society. Let the Committee so appointed act in tune with Section 32(4) and (5) of the Act.

Resultantly, Ext.P15 order will stand quashed. The 3rd respondent shall complete the exercise of consulting the financing bank as well as the Circle Co-operative Union and pass appropriate orders as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

This writ petition will stand disposed of.

sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

ps

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE PHOTOCOPY OF THE RESOLUTION NO.1
DATED 25/05/2019.
- EXHIBIT P2 TRUE COPY OF THE RESOLUTION ADOPTED BY
THE PETITIONER SOCIETY DATED 27/12/2019.
- EXHIBIT P3 TRUE PHOTOCOPY OF THE AGREEMENT EXECUTED
BY THE SOCIETY WITH ONE MR. PRASOON
DATED 16/06/2020.
- EXHIBIT P4 TRUE PHOTOCOPY OF THE NOTICE ISSUED BY
THE THIRD RESPONDENT DATED 06/08/2020.
- EXHIBIT P5 TRUE PHOTOCOPY OF THE EXPLANATION FILED
BY THE PETITIONER DATED 18/08/2020.
- EXHIBIT P6 TRUE PHOTOCOPY OF THE STOP MEMO ISSUED
BY THE THIRD RESPONDENT DATED
24/09/2020.
- EXHIBIT P7 TRUE PHOTOCOPY OF THE ORDER DATED
24/01/2020 ISSUED BY THE THIRD
RESPONDENT TO THE PETITIONER.
- EXHIBIT P8 TRUE PHOTOCOPY OF THE RELEVANT PORTION
OF THE ENQUIRY REPORT ALONG WITH LETTER
DATED 25/08/2020. PAGES 1-7 AND 23-29
- EXHIBIT P9 TRUE PHOTOCOPY OF THE REPLY SUBMITTED TO
THE THIRD RESPONDENT BY THE PETITIONER
DATED 09/09/2020.
- EXHIBIT P10 TRUE PHOTOCOPY OF THE RELEVANT PORTION
OF NOTICE PAGES 1-8 AND 35-36 DATED
08/10/2020.
- EXHIBIT P11 TRUE PHOTOCOPY OF THE JUDGMENT IN WPC
NO.22692/2020 DATED 23/10/2020.
- EXHIBIT P12 TRUE PHOTOCOPY OF THE REPRESENTATION
SUBMITTED BY PETITIONER TO THE THIRD
RESPONDENT DATED 30/10/2020.
- EXHIBIT P13 TRUE PHOTOCOPY OF THE LETTER ISSUED BY
THE THIRD RESPONDENT TO THE PETITIONER
DATED 02/11/2020.

- EXHIBIT P14 TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE PETITIONER TO THE LESSEE, PRASOON DATED 14.10.2020.
- EXHIBIT P15 TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE THIRD RESPONDENT DATED 27/11/2020.
- EXHIBIT P16 TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY THE AUDITOR WITH DEFECTS NOTED NIL.
- EXHIBIT P17 TRUE PHOTOCOPY OF THE REPORT FILED BY THE SECRETARY TO THE COMMITTEE.
- EXHIBIT P18 TRUE PHOTOCOPY OF THE JUDGMENT IN WPC 2481/2020 DATED 20/02/2020.
- EXHIBIT P19 TRUE PHOTOCOPY OF THE REPRESENTATION DATED 4.1.2021 SUBMITTED BY THE FIRST PETITIONER BEFORE THE DEPUTY DIRECTOR, WAYANAD

RESPONDENTS' EXHIBITS:

- EXHIBIT R2 (a) TRUE COPY OF THE AUDIT REPORT FOR THE FINANCIAL YEAR 2014-2015
- EXHIBIT R2 (b) TRUE COPY OF THE PETITIONERS REPLY
- EXHIBIT R2 (c) TRUE COPY OF THE LETTER ISSUED TO THE CIRCLE CO-OPERATIVE UNION AND FINANCING BANK DATED 04.11.2020
- EXHIBIT R2 (d) TRUE COPY OF THE LETTER RECEIVED FROM THE FINANCING BANK DATED 13.11.2020