

(2016) 01 KL CK 0054

In the High Court Of Kerala

Case No : WA.No. 2715 of 2015 IN WP(C).15917 of 2015

Adhithya Varma Raja.T.K Member No.26429 Irinjalakuda Co-
Operative Agricultural And Rural Development Bank Ltd No. R
312 Thrissur APPELLANT

Vs

Irinjalakuda Co-Operative Agricultural & Rural Development
Bank Ltd. and others RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 14

Citation : (2016) AIRCC 1270 : (2016) 1 KLT 78

Hon'ble Judges : Ashok Bhushan, C.J.;A.M. Shaffique, J.

Bench : Division Bench

Advocate : V.G. Arun and T.R. Harikumar, Advocates, Sr. Government Pleader, D. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J. - This writ appeal has been filed by the petitioner against judgment and order dated 25.11.2015 in W.P.(C) No. 15917 of 2015 by which judgment the writ petition has been dismissed. Brief facts giving rise to this writ appeal are :

The 1st respondent Irinjalakuda Co-operative Agricultural and Rural Development Bank Ltd. (for brief Bank) had been originally registered with an area of operation comprised of Mukundapuram and Kodungalloor Taluk. By Act 1 of 2000 Section 2(oc) was inserted in Co-operative Societies Act, 1969 (hereinafter referred to as the Act) which defines the Primary Cooperative Agricultural and Rural Development Bank to be Societies having its area of operation confined to "a Taluk". Consequently, the 1st respondent Bank was bifurcated into two namely the Irinjalakuda Bank and Kodungalloor Bank. The State Government formed 12 Taluks in the year 2013 among which one of the newly formed Taluk was Chalakkudy Taluk, by bifurcating the area of Mukundapuram Taluk.

Consequent to the formation of a new Taluk out of Mukundapuram Taluk, it became statutorily necessary to bifurcate the existing 1st respondent Bank.

2. The Registrar of Co-operative Societies issued an order dated 23.04.2015 directing all the President/Secretary of the Bank and Joint Registrar/Special Officer/Assistant Registrar to take steps for bifurcation of existing bank which have area of operation of more than one Taluk. Along with the order of Registrar dated 23.04.2015 a draft scheme for bifurcation was also circulated. A meeting of the general body of the Bank was convened on 09.05.2015. The general body adopted a resolution for bifurcation of the Bank's assets and liabilities. Prior to the holding of general body, notice was issued in the newspaper. The petitioner who is also a member of the 1st respondent Bank participated in the meeting held on 09.05.2015. The petitioner in the meeting raised objection regarding the "last clause" of Ext.P1 Scheme which provided that assets other than those mentioned in the Scheme if any, would be divided among the 1st respondent Bank and the proposed Chalakkudy Bank in the ratio 60:40. The scheme was put to vote and was voted in favour of the last clause.

3. The petitioner filed the writ petition in this Court praying for the following Reliefs :

"i) Issue a writ in the nature of mandamus commanding the 3rd respondent to issue appropriate direction to the 1st respondent to effect the division of the 1st respondent strictly in the manner provided under Rule 13 of the Kerala Co-operative Societies Rules;

ii) Declare that the general body meeting convened on 7.5.2015 which approved Ext. P1 is in violation of Rule 13 of the Co-operative Societies Rules and therefore void.

iii) Issue a writ in the nature of mandamus commanding the 3rd respondent to require the 1st respondent to convene a general body for the purpose of bifurcation of the assets strictly in accordance with Rule 13 of the Co-operative Societies Rules before bifurcating the assets of the 1st respondent;

iv) Issue a writ in the nature of mandamus commanding the 3rd respondent to take up Ext.P5 and pass appropriate orders on Ext.P5, in accordance with law forthwith.""

4. During the pendency of the writ petition meeting dated 06.06.2015 was held, where draft bye-laws of the proposed Bank was approved. In the Writ Petition counter affidavit was filed by the 1st respondent giving sequence of events and justifying the resolution dated 09.05.2015 of the general body. A counter affidavit was also filed on behalf of the 2nd and 3rd respondents through the Special Government Pleader opposing the prayers made in the writ petition. It was pleaded that in view of the formation of new Chalakkudy Bank by culling out the area of 1st respondent, bifurcation of 1st respondent Bank was a statutory compulsion and a Special Officer was already appointed by the Registrar of Co-

operative Societies, who, as per communication dated 23.04.2015, took steps. The scheme for bifurcation of assets and liabilities was made available to all the members and despite the objection raised by the petitioner in the meeting dated 09.05.2015, the scheme for bifurcation as approved by the Joint Registrar and as per the guidelines dated 23.04.2015, has been placed before the Special general body meeting held on 09.05.2015 and approved.

5. The learned Single Judge, after hearing the parties and taking note of the contentions of the petitioner that the scheme of bifurcation had been approved in the meeting of general body without the prior approval of the Joint Registrar, disposed of the writ petition directing that the draft scheme, Ext.P1, be placed before the Joint Registrar, who in turn, after hearing all the parties, shall pass appropriate orders within a period of three weeks from the date of receipt of a copy of the judgment.

6. This writ appeal was filed challenging the judgment of learned Single Judge dated 25.11.2015. Consequent to the judgment of learned Single Judge the Joint Registrar proceeded with the hearing of the matter. This Court passed an interim order on 17.12.2015 permitting the Joint Registrar to proceed with the decision, as directed by learned Single Judge, after considering as to whether the resolution of the general body which was up for consideration is in accordance with the procedure prescribed by law. The Joint Registrar during the pendency of the writ appeal has taken a decision on 26.12.2015 after hearing the petitioner, approving the scheme of bifurcation and permitting the functioning of proposed Chalakkudy Primary Co-operative Agricultural and Rural Development Bank. The said decision of the Joint Registrar has been brought on record by filing I.A. No. 32 of 2016 by the appellant before us.

7. Sri.P. Ravindran, learned Senior Counsel appearing for the appellant contends that the resolution dated 09.05.2015 approving the scheme of bifurcation could not have been passed without obtaining "prior approval of the Registrar" as required by Rule 13 of the Co-operative Societies Rules 1969. It is contended that the procedure for division of Society is provided under Section 14 of the Act and Rule 13 of the Rules, which procedure has not been followed while passing the resolution on 09.05.2015. Hence the entire steps have to be set aside being in violation of the statutory procedure. It is submitted that no prior approval was obtained from the Joint Registrar for the draft scheme, hence the scheme could not have been approved in the meeting dated 09.09.2015. It is further submitted that after passing of the resolution for division, as per Section 14 of the Act, notice has to be given to all members and creditors calling upon them to exercise their option of withdrawing their shares, deposits or loans, but no such notice has been given to the members and creditors. It is submitted that when statute provides a particular thing to be done in a particular manner, it has to be done in the said manner alone. It is submitted that subsequent decision of the Joint Registrar dated 26.12.2015 shall not cure the defect in the procedure.

8. Sri.V.G. Arun, learned counsel appearing for the 1st respondent, opposing the

submission of learned counsel for the appellant, contends that the division of the 1st respondent became necessary on account of formation of new Taluk out of Mukundapuram Taluk and the Bank had no other option except to proceed with the bifurcation of the Bank. It is submitted that all steps were taken under the orders issued by the Registrar dated 23.04.2015 with the supervision of Joint Registrar and all steps had approval of the Joint Registrar who was directed to supervise the steps. It is submitted that the scheme of bifurcation received approval of the general body on 09.05.2015 which steps cannot be said to be contrary to the procedure prescribed. The meeting dated 09.05.2015 of general body was called for the purpose of deciding upon bifurcation of the assets and liabilities of the 1st respondent Bank in accordance with Ext.P3 draft scheme. The ratio 60:40 was approved with regard to assets and liabilities other than those mentioned in the Scheme which clause was also approved by voting in the general body meeting. It was only the petitioner and one other member who opposed the above Clause. It is submitted that the Special Officer was already appointed by the Registrar for the purpose of bifurcation, hence no separate approval is required. It is alternatively submitted that Rule 13 has no application when the bifurcation of the assets and liabilities were taken in accordance with Section 28(1D) of the Act. In any view of the matter under the judgment of learned Single Judge the Joint Registrar has heard the parties and has approved the Scheme of bifurcation and the grievances of the petitioner if any, stood satisfied and there is no ground to interfere with the bifurcation of the Bank effected as per the statutory scheme.

9. Sri.D. Somasundaram, learned Special Government Pleader appearing for the State contended that bifurcation of 1st respondent Bank was a statutory compulsion in view of formation of new Chalakkudy Taluk out of Mukundapuram Taluk. The proceeding for bifurcation could not have been objected by the Registrar or Joint Registrar and in fact the entire proceedings were undertaken under the directions issued by the Registrar dated 23.04.2015. The order dated 23.04.2015 specified that bifurcation should be based on the assets and liabilities as it stood on 31.03.2015. A Special Officer was appointed by the Registrar for effecting the bifurcation and the procedure is in accordance with Section 28(1D), (1E), Section 13(2) and Rule 13 of the Act. In accordance with the draft scheme regarding formation of new Chalakkudy PCARD Bank, general body meeting was convened on 09.05.2015 with proper notice. The scheme approved by the Joint Registrar as per the guidelines and the draft scheme issued by the Registrar of Co-operative Society has been placed before the general body meeting held on 09.05.2015 and was approved.

10. We have considered the submissions made by learned counsel for the parties and perused the record.

11. As noted above the submissions which have been pressed by learned counsel for the appellant in support of the appeal are : (1) No prior approval for the bifurcation of the 1st respondent Bank was obtained from the Registrar as

required by Rule 13 of 1969 Rules, hence the Resolution dated 09.05.2015 cannot be acted upon and (2) the hearing and approval of the Scheme by the Joint Registrar as per the direction of learned Single Judge and issuance of the order dated 26.12.2015 shall not cure the defect of not obtaining prior approval before passing the resolution.

12. Before we proceed to examine the facts and submissions in the present case it is necessary to look into the statutory scheme and procedure which is required to be followed for division of the 1st respondent Bank in the facts of the present case.

13. Section 2(oc) defines the Primary Co-operative Agricultural and Rural Development Bank which definition was inserted in the Act by Act 1 of 2000. A proviso to Section 2(oc) was also substituted by Act No.13 of 2012 with effect from 12.08.2011. The amended definition of Section 2(oc) is as follows:

"2[(oc) "Primary Co-operative Agricultural and Rural Development Bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities;

[Provided that no Primary Co-operative Agricultural and Rural Development Bank shall be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one Taluk and the societies shall restrict their operation in the area of the respective society on such bifurcation]"

14. Section 14 of the Act provides for amalgamation, transfer of assets and liabilities and division of Society. Section 14 which is relevant for the present case is as follows:

"14. Amalgamation, transfer of assets and liabilities and division of society:- (1) A society may, by a resolution passed by a two third majority of the members present and voting at a general body meeting of the society;

(a) transfer its assets and liabilities in whole or in part to any other society;

(b) divide itself into two or more societies.

(2) Any two or more societies may, by a resolution passed by a two-third majority of the members present and voting at a general body meeting of such society, amalgamate themselves and form a new society.

(3) The resolution of a society under sub-section (1) or subsection (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) When a society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and, notwithstanding the provisions of Section 24 or any bye-law or contract to the contrary, any member, or creditor

shall, within a period of two months from the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have given his assent to the proposals contained in the resolution.

(6) A resolution passed by a society under this section shall not take effect until either-

(a) the assent thereto of all the members and creditors has been given or deemed to have been given; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (4) within the period specified therein have been met in full.

(7) Where a resolution passed by a society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any law for the time being in force be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance."

15. Another provision on which learned counsel for the parties have made reference is Section 28(1D) and Section 28 (1E) which are quoted as follows:

"Sec.28(1D) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any Court the registration of any Primary Co-operative Agricultural and Rural Development Bank without the bifurcation of area, assets and liabilities of the society and the constitution of the Committee pursuant to any such a registration without such bifurcation shall be void and the Registrar shall appoint Special Officer for each of such societies which were registered without bifurcation of area assets and liabilities.

Section 28(1E) The Special Officer so appointed shall,-

(i) take into custody or bring under his control, the property, effects and actionable claims to which the erstwhile society is, or appears to be entitled to and shall take steps as may be necessary or expedient to prevent loss or deterioration of or damage to, such property, effects and claims;

(ii) take such steps for the bifurcation of area, assets and liabilities of the society and also shall take all steps to register new society with the members of the society so bifurcated and constitute the Committee;

(iii) such bifurcation shall be completed within a period of one year from the date of commencement of the Kerala Cooperative Societies (amendment) Ordinance, 2012 (9 of 2012)."

16. Rules have been framed under the Act and Rule 13 deals with amalgamation, transfer of assets and liabilities and division of Society. Rule 13 reads as follows:

"13. Amalgamation, transfer of assets and liabilities or division of societies.-

(1) Every co-operative society desiring to effect amalgamation, transfer of assets and liabilities or division shall convene a meeting of a special general body, called for the purpose, giving fifteen clear days notice and pass resolution, for amalgamation, transfer of assets and liabilities or division as the case may be, by a two third majority of the members present and voting at that meeting:

Provided that in the case of an insured co-operative bank, no resolution shall be passed without the prior approval in writing of the Reserve Bank of India and in the case of an assisted society, no resolution shall be passed without the prior approval of the Registrar. In the case of amalgamation or division, the resolution shall include the scheme and the draft bye-laws proposed for adoption, consequent on the approval of the proposals. The draft bye-laws shall include provisions of appointment of the first committee by nomination.

(2) Where the resolution so passed is deemed to have been taken effect under sub-section (6) of Section 14, the society concerned shall report the fact to the Registrar.

(3) On receipt of the report from the society under sub-rule (2) the Registrar shall, after satisfying himself that the procedure has been properly followed, declare that the resolution has taken effect and register the amalgamated or divided societies."

17. The first question to be considered is as to which is the procedure required to be followed while effecting division. As noted above, Section 14 deals with division of Society. It is to be noted that earlier there was a provision in Section 14(1) which requires resolution to be passed with the previous approval of the Registrar by two third majority of the members present and voting at the general body meeting. The requirement "with the previous approval of the Registrar" was deleted by Act No.8 of 2013 and Section 14 now requires passing of resolution by two third majority of the members present and voting at a general body meeting for division of the Society into two or more Societies.

18. Now we come to Section 28(1D) and (1E). Section 28 is comprised in Chapter IV of the Act which deals with "Management of Co-operative Societies". Section 28 contains a heading "Appointment of committee". Section 28(1) provides that general body of the Society shall constitute a committee for a period of five years in accordance with bye-laws and entrust the management of the affairs of the society to such committee. Section 28(1D) and 28(1E) obviously had to relate to the management of the Society. Section 28(1D) begins with a non-obstante clause which provides the registration of any Primary Co-operative Agricultural and Rural Development Bank without the bifurcation of area, assets and liabilities of the Society and the constitution of the Committee pursuant to any such a registration without such bifurcation shall be void and the Registrar shall appoint Special Officer for each of such societies which were registered without bifurcation of the area, assets and liabilities. Thus, the above

sub-section contemplates registration of any Primary Co-operative Agricultural and Rural Development Bank without bifurcation of area, assets and liabilities of the Society which pre-supposes that such registration shall relate to a society, the area of operation of which is more than one Taluk. The provision is thus confined to those societies which were registered for an area comprising of more than one taluk and thereafter management committee has been constituted. The provision thus shall apply to those societies which were registered comprising an area of more than two taluk's. The said provision has no application when Society was registered for one taluk and by a subsequent event i.e. by division of taluk it became society of more than two taluk's. In the present case the 1st respondent Bank was already divided into two prior to 2003 when two taluk's were separated namely Mukundapuram Taluk and Kodungalloor Taluk. In 2013 another Taluk, Chalakkudy was formed taking certain part of Mukundapuram Taluk. The 1st respondent Society was already registered prior to the formation of new taluk from Mukundapuram Taluk. Section 28(1D) thus relates to those societies which were got registered for more than one taluk's without bifurcation of assets and liabilities. For the purpose of present case Section 28(1D) is not attracted and Section 28(1D) and (1E) cannot be looked into for finding out a procedure for effecting bifurcation in the facts of the present case.

19. Now we come to Rule 13 which has been amended after amendments made in Section 14. Rule 13(1) contains two provisions i.e. firstly no resolution shall be passed without prior approval of the Reserve Bank of India in the case of an insured Co-operative Bank and secondly in the case of an assisted society, no resolution shall be passed without prior approval of the Registrar. There is no dispute that 1st respondent is an assisted Society hence the requirement of prior approval of the Registrar is clearly applicable by virtue of proviso to Rule 13(1).

20. Now we revert back to the facts of the present case. There is no dispute that new taluk-Chalakkudy was constituted in the year 2013, after registration of 1st respondent Bank, which necessitated bifurcation of 1st respondent into two societies. The Registrar himself has issued an order dated 23.04.2015 [Ext.R1(a)]. The order dated 23.04.2015 directed as follows :

"Office of the Registrar of Co-operative Societies,

C.L.T(3)52616/2014 Thiruvananthapuram, dated : 23/04/2015

Registrar of Co-operative Societies, Thiruvananthapuram.

1. President/Secretary Irinjalakuda PCARD Bank.
2. Joint Registrar (General) Thiruvananthapuram, Kollam, Pathanamthitta, Idukki, Thrissur, Palakkad, Malappuram, Kozhikode, Kannur.
3. Special Officer/Assistant Registrar.

Sir,

Sub:- Co-operative Department-Primary Co-operative Agricultural and Rural

Development Banks - formation of new Taluk's - formation of new Primary Co-operative Agricultural and Rural Development Banks-reg;

Ref:- 1.Order No.227/13/Revenue dated 28-05-2013 issued by the Government of Kerala.

2. Government of Kerala Notification No.G.O(P) 283/13/RD dated 27-06-2013.

4. Decisions taken pursuant to the meetings held on 07-04-2015, 18-04-2015, attended by of the Central Bank President, Joint Registrars, Joint Directors, Special Officers, Officer bearers of societies etc.

In view of the formation of 12 new Taluk's based on G.O(MS)227/13/Revenue dated 28-05-2013, new Primary Cooperative Agricultural and Rural Development Banks should be registered in those Taluk's in accordance with the conditions stipulated in Section 2 (oc) of the Kerala Co-operative Societies Act. Pursuant thereto, the following directions are issued based on communication No.12594/B1/2014/Co-op dated 20-11-2014 and decisions taken in the meetings held on 07-04-2015 and 18-04- 2015.

1) A draft scheme for bifurcation of assets and liabilities of the existing bank (parent bank) with the new bank/banks to be registered should be prepared and the bifurcation scheme should be approved by the managing committee with the approval of the Joint Registrar and approval of the general body obtained, by placing the bifurcation scheme before the general body. "

21. The Registrar by order dated 23.04.2015 directed that the resolution be passed before 31.05.2015. It has been stated in the counter affidavit filed by the 2nd respondent, who is the special officer appointed by the Registrar, that the procedure followed by the special officer for effecting the bifurcation was also in accordance with the rules and in accordance with the draft scheme approved in the meeting convened on 09.05.2015.

22. In paragraph 10 of the counter affidavit following has been stated :

"10. Though this Hon"ble Court has initially granted an interim order staying all further proceedings for bifurcation of assets and liabilities of the first respondent Bank, the interim order was subsequently modified permitting the conduct of the general body meeting dated 06.06.2015 and further directing that any decision taken in the meeting shall not be implemented without obtaining orders from the court. In view of the permission granted from this Hon"ble Court the general body meeting of the proposed Chalakudy PCARD Bank was conducted on 06.06.2015 and after a detailed discussion on the draft bye-laws of the proposed Chalakudy PCARD Bank, the general body unanimously approved the same. A true copy of the minutes of the general body meeting held on 06.06.2015 is produced herewith and marked as Exhibit-R2(b)."

Though it is stated that the Scheme approved by the Joint Registrar was placed before the general body meeting which was held on 09.05.2015, there is no

specific date of approval mentioned anywhere.

23. The division of the Society became a statutory compulsion in view of formation of a new Taluk - Chalakkudy and there being direction by Registrar on 23.04.2015 to divide the Society on account of formation of new taluk, no exception can be taken by the proceedings which were proceeded for bifurcation of the 1st respondent Society. What in essence learned counsel for the appellant contends that prior approval which is contemplated under Rule 13(1) proviso is a prior approval with regard to the Scheme and the draft bye-laws which was proposed for adoption, and unless the draft scheme and bye-laws are not placed before the Registrar for approval, there will be no purpose for providing for prior approval for division of a society. We find substance in the submission of learned counsel for the appellant. The prior approval contemplated under Rule 13(1) proviso is not a prior approval to go ahead with bifurcation alone but the draft scheme and bye-laws have also to be placed before the Registrar so as to enable him to give prior approval to proceed with the division. The above interpretation shall advance the purpose and object of providing prior approval in Rule 13(1) proviso. Although in the counter affidavit filed by all the respondents it is mentioned that draft scheme had approval of Joint Registrar, but there being no details or dates or other material, we have to proceed on the premise that in so far as the draft scheme and bye-laws are concerned, there was no prior approval of the Registrar. As noted above, there was very much prior approval for proceeding with the exercise of division which is evident from the order dated 23.04.2015 issued by the Registrar of Co-operative Societies himself. Thus what was lacking in the facts of the present case may be the prior approval to the draft scheme and bye-laws. The learned Single Judge after considering the contention of both the parties have issued following directions in paragraph 43 and 44:

"43. Taking into account the totality of the circumstances, as a measure of equitable adjudication, I am of the opinion that Exhibit P1 draft scheme should be placed before the Joint Registrar, who in turn, after hearing all the parties concerned, shall pass appropriate orders. If the order to be passed is in tune with the decision taken earlier by the general body, the respondent Society shall proceed further from where it had left prior to filing of this writ petition.

44. If, for whatever reason, the Joint Registrar takes a different view on Exhibit P1 draft scheme, from that stage onwards the procedure contemplated under Section 14 of the Act read with Rule 13 of the Rules shall be followed."

24. It is on the record that consequent to the directions of learned Single Judge the matter was placed before the Joint Registrar who proceeded with the hearing of the matter after giving notice to the petitioner and the Joint Registrar has approved the bifurcation scheme. Following order was passed by the Joint Registrar :

"ORDER

It is seen that the scheme for bifurcation of the Irinjalakuda Co-operative Agricultural and Rural Development Bank No.R 312 for formation of Chalakudy Primary Agricultural and Rural Development Bank is in accordance with the directions contained in orders referred 1 to 5 and the special general body for approving the scheme for bifurcation was conducted after publishing in the Veekshnam daily dated 23.4.15 and the Mathrubhoomi dated 24.4.15. It is also found that the division of assets and liabilities are in accordance with the provisions of Section 14 of the Co-operative Societies Act and Rule 13 of the Rules and that out of 32 employees, 11 persons have opted for being posted in the Chalakudy Bank and 21 persons have opted to be retained in the parent bank and that their deployment is on the basis of their option. With the formation of new Taluk's by way of Government notification, bifurcation has become inevitable since the division of assets and liabilities of the Irinjalakuda bank is a statutory obligation and that its area of operation cannot be extended to the Chalakudy taluk. The shareholders do not have any objection relating to the scheme of bifurcation. As per the scheme for bifurcation approved by decision No.9 dated 22.4.2015 by the Board of Directors of the parent Irinjalakuda Co-operative Agricultural and Rural Development Bank and which was approved by the special general body meeting which was held on 9.5.15, the shares, deposits and the loans pertaining to all the members within the Chalakudy taluk and their proportionate advances and their share amount given by the Central Society are being transferred to the proposed Chalakudy bank and the other assets and liabilities of the Irinjalakuda Co-operative Agricultural and Rural Development Bank are being transferred to the Chalakudy Primary Agricultural Bank without effecting any financial burden to the bank and bifurcate the Irinjalakuda Co-operative Agricultural and Rural Development Bank and to form Chalakudy bank and to divide the employees subject to the directions contained in reference cited 5, directions are issued to the special officer and on the basis of the general body meeting, the bifurcation scheme is approved and to register the draft bye-laws approved by the special general body which was convened on 6.7.15 and it is hereby decided to grant permission for functioning of the proposed Chalakudy Primary Co-operative Agricultural and Rural Development Bank. The judgment dated 25.11.15 in W.P.No.15917/15 and the interim order dated 17.12.15 in W.A.No.2715/15 issued by the Hon"ble High Court of Kerala are hereby complied with.

Joint Registrar (General), Thrissur"

25. The Joint Registrar has thus consciously approved the scheme of bifurcation after hearing the writ petitioner. The objection of the petitioner that the Scheme did not receive any prior approval, has now been substantially met. As noted above, in so far as the proceedings of division of Society is concerned, that became a statutory compulsion in view of the creation of new Taluk and there was a specific direction in writing by Registrar of Co-operative Societies to proceed with the division of the Society. Thus in the facts of the present case we are not persuaded to accept that the proceedings undertaken for division of

society deserve to be set aside by this Court in exercise of jurisdiction under Article 226 of the Constitution. The learned Single Judge has done substantial justice between the parties by issuing directions in paragraphs 43 and 44 as quoted above remitting the matter to the Joint Registrar to consider the matter afresh. The scheme of bifurcation has been considered by the Joint Registrar in its order dated 26.12.2015 which has been approved.

26. Learned counsel for the petitioner has placed reliance on the judgment of Apex Court reported in *J. Jayalalitha and others v. State of Karnataka and others* [(2014) 2 SCC 401] in which judgment following was laid down by the Apex Court in paragraphs 34 and 35:

"34. There is yet an un-controverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim *expressio unius est exclusio alterius*, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

35. In *State of U.P. v. Singhara Singh* [AIR 1964 SC 358] this Court held as under : (AIR p.361, para 8)

"8. The rule adopted in *Taylor v. Taylor* [(1875) 1 Ch D 426] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

(See also *State of M.P. v. S.K.Dubey* [(2012) 4 SCC 578])

27. To the similar effect another judgment relied on by learned counsel for the appellant is the judgment reported in *Laxmi Devi v. State of Bihar and others* [(2015) 10 SCC 241] wherein following was laid down in paragraph 18.2:

"18.2. It is axiomatic that if a statute prescribes the manner in which an action is to be performed, it must be carried out strictly in consonance thereto or not at all. This legal principle has been articulated over a century ago in *Taylor v. Taylor* [(1875) LR 1 Ch D 426] and has admirably and in fact unquestionably withstood the test of time. It was approved by the Privy Council in *Nazir Ahmad v. King Emperor* [(1935-36) 63 IA 372] and subsequently applied by three-Judge Bench in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [AIR 1954 SC 322], *State of U.P. v. Singhara Singh* [AIR 1964 SC 358], *Babu Verghese v. Bar Council of Kerala* [(1999) 3 SCC 422] and most recently in *Hussein Ghadially v. State of*

Gujarat [(2014) 8 SCC 425]."

28. There cannot be any dispute to the proposition laid down by the Apex Court in the aforesaid cases. When a statute prescribes a manner in which an action is to be performed, it has to be carried out strictly in consonance thereto. We have also held that Rule 13 is applicable with regard to the division of the 1st respondent Bank.

29. In the present case as far as initiating proceeding for division is concerned, there was clear direction by the Registrar on 23.04.2015 to proceed with the division of Society which became a statutory compulsion on account of creation of new Chalakkudy Taluk out of the existing Mukundapuram Taluk and a Special Officer was appointed by the Registrar, the draft scheme was prepared and circulated to the members which was approved by the general body meeting held on 09.05.2015. The petitioner has raised objection that the draft scheme never received prior approval from the Joint Registrar. Although in the counter affidavit it has been pleaded that the draft scheme was put up before the general body with the approval of Registrar but there being no material on record, learned Single Judge has rightly directed the Joint Registrar to examine the draft scheme and take a fresh decision. Consequent thereon fresh decision dated 26.12.2015 has been taken.

30. In the special facts of the present case as noted above and especially when Joint Registrar has approved the draft scheme by order dated 26.12.2015 we do not find it a fit case where this Court in exercise of jurisdiction under Article 226 should interfere with the proceedings of bifurcation of Society which has now become a statutory requirement in view of the division of the Taluk.

31. In so far as the other submission of learned counsel for the appellant that after passing of the resolution notice has to be given to the members and creditors to opt for withdrawal of their shares, deposits or loans etc and other steps to be taken thereafter, in the present case the issue before the learned Single Judge was as to whether the resolution dated 09.05.2015 deserves to be approved or set aside. All necessary steps which may be required, according to the statute, has to be taken before the resolution passed by the Society takes effect to.

32. We thus clarify that after the resolution dated 09.05.2015 which has been approved by the Registrar on 26.12.2015, other statutory steps regarding bifurcation and registration of society may take place in accordance with law and it is the bounden duty of the authorities to proceed to complete all statutory requirement for bifurcation and registration of new Society.

33. Subject to the above observation, the Writ Appeal is dismissed.