
(2016) 06 KL CK 0044
In the High Court Of Kerala
Case No : WP(C). No. 6045 of 2016 (E)

Aditya Varma Raja

APPELLANT

Vs

Kerala State Co-Operative Election Commission

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 28(1D), 28(1E)

Citation : (2016) 3 KerLJ 174 : (2016) 3 KLT 128

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. Renjith Thampan Senior Advocate and Smt. P.R. Reena, Advocate, for the Appellant; Sri. D. Somasundaram, Spl. Govt. Pleader, Sri. P.N. Mohanan, Advocate, Sri. V.G. Arun, Advocate and Sri. T.R. Harikumar, SC, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Shaji P. Chaly, J.—;This writ petition is filed by the petitioner seeking to quash Exts.P3, P4 and P5 and for other related reliefs. Brief facts for the disposal of the writ petition are as follows:

2. Petitioner was the President of the 4th respondent Bank. The area of operation of the 4th respondent was confined to Mukundapuram Taluk. On and with effect from 28.05.2013, a new Taluk was created namely Chalakudy Taluk, carving out areas from Mukundapuram Taluk by the State Government. Consequent to the formation of new Taluk, bifurcation of the assets and liabilities of 4th respondent for the purpose of creation of a new Bank in the newly created Taluk necessitated. It is the contention of the petitioner that, Section 14 of the Kerala Co-operative Societies Act, 1969 [hereinafter called "the Act"], read with Rule 13 of the Kerala Co-operative Societies Rules (hereinafter called "the Rules") lay down the procedure for bifurcation of assets and liabilities.

3. Accordingly, a resolution of the General Body of the 4th respondent, after obtaining prior approval of the Joint Registrar, has to decide with respect to the

bifurcation. That apart, according to the petitioner, thereafter a notice should be issued to each and every member as also to the creditors within a period of two months and their options have to be obtained either to continue with the Bank or to opt out from membership.

4. It is also urged that, Section 14(2) of the Act makes it clear that resolution passed by the General Body will not be effective till this statutory requirements are complied with. After notice to every member and every creditor, and after obtaining their consent, a report should be submitted to the Joint Registrar. The Joint Registrar after perusal of the report and on satisfaction that the procedure has been complied with, register the new society. Therefore, according to the petitioner, a new society can come into existence only in that manner.

5. That apart, it is contended that, General Body of the 4th respondent passed a resolution and thereafter nothing further, including notice to members and creditors has so far been issued. However, it is seen that the 3rd respondent stands registered and an election notification is issued for the conduct of election. According to the petitioner, membership of the 3rd respondent, newly created Bank, can be determined only after members exercising their option and the same is not done. Therefore, an election notification cannot be issued by the 1st respondent, is the contention advanced by the petitioner in this writ petition. That apart, it is also contended that, the entire exercise of registration of the 3rd respondent society is totally in violation of the provisions of the Act and Rules, and it is in this background, petitioner has filed this writ petition.

6. In fact, W.P.(C) No. 2501 of 2016 was filed by one U.V. Thomas and another, challenging Ext.P3 order passed by the Joint Registrar, and seeking to set aside Ext.P4 bye-law and Ext.P5 election notification. The said writ petition was withdrawn by the petitioners. The 3rd respondent had filed a counter affidavit in the said writ petition, which is sought to be adopted as a counter affidavit in this writ petition by filing an adoption memo. The 3rd respondent has refuted the allegations and claims and demands made by the petitioner in the writ petition.

7. The prime contention of the 3rd respondent is that the petitioners are not entitled to seek any relief in this writ petition as Exts.P3 and P4 are appealable under Section 83(1)(j) of the Act and validity of Ext.P5 can be assailed under Section 69 of the Act, and therefore according to the 3rd respondent, the writ petition itself is not maintainable under law.

8. It is also contended that, the 4th respondent Bank is defined under the Act as a society having its area of operation confined to a Taluk and the principal object of which is to provide long term credit for agricultural and rural development activities. It is contended that the societies having more than one Taluk as its area of operation, shall restrict such area of operation to the Taluk where the headquarters of the society is situated, within a period of six months. While so, by Act 13 of 2012, an amendment was brought to bifurcate assets and liabilities of the existing societies having area of operation of more than one Taluk and to

restrict their operation in the area of the respective society on such bifurcation. Simultaneously, an amendment was brought to Section 28 inserting sub-sections (1D) and (1E), appointing a Special Officer to bifurcate the societies having more than one Taluk as its area of operation.

9. That apart, it is stated that, the State Government by an order dated 28.05.2013, formed 12 new Taluks in the State. Thus Chalakkudy Taluk was formed incorporating certain parts of the Irinjalakkuda Taluk, where 4th respondent Bank is registered. Therefore, it is the contention of the 3rd respondent that, the Registrar of the Co-operative Societies issued an order dated 23.04.2015 to register a new Bank at Chalakkudy Taluk bifurcating the assets and liabilities of the existing 4th respondent Bank, on or before 31.05.2015. In order to carry out the essence of the said notification, a Special Officer was appointed as provided under Section 28 (1E) of the Act. That apart, it is contended that, the draft scheme was approved in the meeting convened on 09.05.2015. Thereupon, the division of the society became a statutory one in view of the formation of a new Taluk Chalakkudy and there was a direction dated 23.04.2015 of the Registrar to divide the parent society on account of the formation of new Taluk. It is also contended that, the petitioner a member of the parent Bank, challenged the afore-specified action by filing W.P.(C) No. 15917 of 2015, on the ground that the draft scheme was not approved by the 5th respondent. This Court by Ext.P1 judgment dated 25.11.2015 directed to place the draft scheme before the Joint Registrar, and who in turn, after hearing all the parties concerned, shall pass appropriate orders.

10. Aggrieved by the same, petitioner preferred appeal before a Division Bench of this Court, W.A. No.2715 of 2015. At the time of admission, the Division Bench by Ext.P2 interim order directed the Joint Registrar to take a decision as directed by the learned Single Judge in the judgment and to post the case for hearing. Accordingly, the Joint Registrar passed Ext.P3 sanctioning the scheme approved by the General Body. It is the contention of the 3rd respondent that, thereby Ext.P3 scheme approved by the Joint Registrar was produced before the Division Bench in the aforesaid writ appeal. Ultimately, the writ appeal was disposed of by judgment dated 15.01.2016 with certain observations, evident from Ext.R3(a). According to the 3rd respondent, two contentions were raised in the writ appeal that, (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, and 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 the 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. According to the 3rd respondent, the said contentions will not survive in view of Ext.P3 order of the Joint Registrar and the said contention was considered by the Division Bench and repelled and therefore Ext.R3(a) judgment settled the issues between inter parties.

11. That apart, it is contended that, pursuant to the direction contained in the judgment of the learned Single Judge and later in the order passed by the Division Bench, the 5th respondent passed Ext.P3 order. According to the 3rd respondent, Ext.P3 is an appealable order under Section 83(1)(j) of the Act. That apart, it is also contended that, a portion of Ext.P4 bye-law alone is produced by the petitioner and by producing a portion of the bye-law, according to the 3rd respondent, a challenge will not lie. That apart, it is also contended that, since the entire proceedings of bifurcation is completed and the Bank is registered and since the registration is not under challenge, the challenge made to the partial proceedings is not sustainable. It is also contended that, Ext.R3(b) is a certificate of registration issued, and the same is a conclusive evidence to establish that the 3rd respondent is duly registered under the Act.

12. It is also contended that, the contention raised by the petitioner that, as provided under Section 14(4) of the Act, no notice was served to the petitioner, the Special Officer under Section 28 (1B) issued notices by publishing the same in Mathrubhumi and Veekshanam dailies, evident from Ext.R3(c). Moreover, it is urged that, petitioner is not a creditor of the Bank and there is no prejudice pleaded due to the absence of individual notice. That apart, it is contended that, out of the 5923 members of the 4th respondent, the petitioner alone has the complaint and according to the 3rd respondent, the same is with malafide intention due to political reasons. That apart, it is also contended that, in the connected writ petition which was withdrawn by the petitioners, an interim order dated 21.01.2016 was passed declining to interdict the impugned order directing to proceed with the election on 14.02.2016 so far as concerning the 3rd respondent Bank, but only directed that the results are not to be announced without the leave of the Court, which is evident from Ext.R3(d). The said interim order was challenged before a Division Bench by filing W.A. No.179 of 2016. By Ext.R3(e) judgment, the Division Bench permitted to proceed with the election notification but postponed the polling with a direction to examine the issue as directed by the learned Single Judge, in Ext.R3(d) interim order. That apart, it is also contended that, Section 28(1) of the Act does not provide to publish the voters list on ward basis. But the voters list published by the Electoral Officer shows the ward of each and every member in the last column of the voters list.

13. That apart, it is also contended that, the said voters list was challenged by some of the members and was rejected by the Electoral Officer, but the same was not challenged before any forum and therefore it is the contention of the 3rd respondent that, the same is not a subject matter of challenge at a belated time. According to the 3rd respondent, the entire process of election is over except polling. The entire staff is also divided and 18 of them is transferred to the 3rd respondent Bank. The 3rd respondent Bank is having 5923 members and they can avail loan facilities from the 3rd respondent Bank alone and they cannot avail facilities from the 4th respondent Bank. The 3rd respondent is also affiliated to State Co-operative Agricultural Rural Development Bank and the only source of finance of the 3rd respondent is NABARD and Apex Bank and therefore the 3rd

respondent prays for dismissal of the writ petition.

14. Heard learned Senior Counsel appearing for the petitioner, learned Special Government Pleader appearing for the official respondents and the learned counsel appearing for the 3rd and 4th respondents.

15. The thrust of the contention advanced by learned Senior Counsel for the petitioner is with respect to the procedure contemplated under Section 14(4) of the Act, stating that the notice contemplated thereunder is an individual notice to each and every member of the society. Section 14(4) read thus:

"14. Amalgamation, transfer of assets and liabilities and division of society.

(1) xxxxx

(2) xxxxx

(3) xxxxx

(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."

16. That apart, it is contended that, a report as required in Rule 13 of the Rules is not filed by the 4th respondent to the 5th respondent, enabling the 5th respondent to register the society. It is also the contention of the learned Senior Counsel that, the Special Officer is not competent to exercise any power in view of Ext.R3(d), to file a counter or defend the case. Apart from the said contention, learned Senior Counsel has invited my attention to Section 2(oc), wherein, a Primary Cooperative Agricultural and Rural Development Bank is defined to mean, "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". According to the learned Senior Counsel, the said provision was brought into the statute book with effect from 01.01.2000 and therefore the bifurcation of the 3rd respondent Bank is done by invoking the said provision and therefore every formality contemplated under Section 14(4) of the Act and Rule 13 of the Rules have to be mandatorily followed by the 4th respondent Bank. According to the learned Senior Counsel, since that is not done, the entire exercise of the decision to bifurcate and consequential actions are bad in law. That apart, it is also contended that, Section 28 (1D) is brought to the statute book only with effect from 2012. Therefore, it is contended that, the bifurcation is to be done on the basis of Section 2(oc) and not under Section 28(1D). To establish the same, learned Senior Counsel has invited my attention to Section 28(1E), which contemplates appointment of Special Officer and specifically to clause (iii) of the said provision, which read thus:

"28(1E)(iii) such bifurcation shall be completed within a period of one year from the date of commencement of the Kerala Co-operative Societies (Amendment) Ordinance, 2012 (9 of 2012)".

17. According to the learned Senior Counsel, it was on the basis of Ordinance 9 of 2012, sub-section (1D) was incorporated to Section 28 and the purpose of Section 28(1D) was to complete the entire proceedings within a period of one year from the date of Ordinance, which thus means, Section 28 (1D) was for a specific purpose as contemplated under clause (iii) of Section 28(1E).

18. That apart, it is also contended by the learned Senior Counsel that, Section 104 of the Act dealt with service of notice, which read thus:

"104. Service of Notice.-Every notice or order issued or made under this Act may be served on any person, by properly addressing it to the last known place of residence or business of such person preparing and posting by registered post a letter containing the notice or order and, unless the contrary is proved, such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course."

19. Therefore, it is contended, admittedly no individual notices were issued to the members by properly addressing it to the last known place of residence or business of such person and according to the counsel, that by itself is a ground for interfering with the entire action of the 4th respondent Bank. That apart, it is also contended that, the service of notice contemplated under Section 14(4) is by way of issuing notice to each and every member in order to comply with the proceedings under Section 14 and Rule 13 of the Act and the Rules. It is also contended that, as per Rule 9, every proposal for amendment to the bye-laws of a society shall be made only by a resolution passed by a two-third majority of the members present and voting. So also, Rule 35A(3) of the Rules mandates the State Election Commission to notify the details of election to the committee of the society, in two vernacular dailies having wide circulation in the area and the copy of the information shall also be affixed on the Notice Board of the head office and the branches, if any, of the society. According to the learned Senior Counsel, none of the procedures contemplated under law are complied with by the 4th respondent.

20. Yet another prime contention advanced by learned Senior Counsel by relying on paragraph 18 of the judgment of the Division Bench of this Court, Ext.R3(a), it was held that Section 28(1D) and 28(1E) have no application when society was registered for one Taluk and by a subsequent event, that is by division of Taluk it became a society for more than two Taluks. Taking cue from the said judgment, learned Senior Counsel contended that, respondents are not at liberty to contend and canvass for the procedure contemplated under Sections 28(1D) and 28(1E) of the Act. Therefore, the entire action of the respondents with respect to the alleged bifurcation of the society is illegal and irrational and therefore warrants interference of this Court under the writ jurisdiction, is the contention.

21. Per contra, learned counsel for the 3rd respondent contended that, bifurcation of the 4th respondent Bank is necessitated consequent to the formation of Chalakkudy Taluk and as per the mandatory requirement contained under Section 28 (1D) and (1E) of the Act. According to the learned counsel, as per Section 28(1E), a procedure is contemplated for convening a meeting for the purpose of bifurcation and therefore other provisions of the Act or Rules have no bearing at all. Under Section 2(oc) of the Act, the societies like the 4th respondent are allowed to bifurcate in order to confine its operation to one Taluk by its own action. That apart, it is contended that, subsection (1D) of Section 28 starts with a non-obstante clause, excluding other provisions of the Act, judgment, decree or order of any court and therefore that itself is an indicative factor to show that the other provisions contained under the Act will not apply in order to bifurcate the 4th respondent Bank consequent to the formation of new Chalakkudy Taluk. It is also contended that, as provided under sub-section (1D), the Registrar is vested with powers to appoint a Special Officer for each of such societies which were registered without bifurcation of area and assets and liabilities. The Special Officer is vested with powers under sub-section (1E), to 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 and further to take such steps for the bifurcation of the area, assets and liabilities of the society and shall also take steps to register new society with the members of the society so bifurcated and constitute the committee. Therefore, according to the learned counsel for the 3rd respondent, when Section 28 (1D) and (1E) are read together, that by itself is a wholesome procedure for completion of the bifurcation procedure and therefore the provisions contained under Sections 14 and 104 of the Act and Rule 13 of the Rules have no bearing at all.

22. That apart, it is contended that, clause (iii) of Section 28 (1E) operates individually to comprehend a situation when Ordinance 9 of 2012 was brought into force and that by itself is not a complete and comprehensive provision to bonafidely believe that the bifurcation will have to be completed within a period of one year from the date of the Ordinance. According to the learned counsel, since Section 28 (1D) has come into being, no Bank in the nature of the 4th respondent can function without confining its operation to one Taluk, and it is by virtue of the said compulsion, the Special Officer has initiated necessary action to bifurcate the 4th respondent. That apart, learned counsel has invited my attention to Ext.R3(a) judgment of the Division Bench and specifically to paragraphs 29, 30 and 32, which read thus:

"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.

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 requirements for bifurcation and registration of new Society".

23. Therefore, the learned counsel contended that, a draft scheme was prepared on 28.04.2015 for bifurcating the 4th respondent and in accordance with the same, the General Body meeting was held on 09.05.2015, after publishing notices in Mathrubhumi daily dated 24.04.2015 and Veekshanam daily dated 23.04.2015. According to the learned counsel, as provided under Rule 8A, a notice of the General Body meeting stating the place, date and hour of the meeting together with agenda shall be given to every member at least fifteen clear days before the day of meeting in the manner specified in the bye-laws. Therefore, the counsel contends that in accordance with the terms of the bye-law, the publication in two newspapers alone is sufficient to constitute a General Body meeting. That apart, it is also contended that, the entire proceedings pursuant to the decision of the General Body to bifurcate the society and the consequential actions for registration of 3rd respondent were also completed. But anyhow, due to the interim order passed by this Court in the connected writ petition which was withdrawn, the Managing Committee election etc. etc. could not be constituted and the same is causing innumerable difficulties and losses to the 3rd respondent Bank. That apart, learned counsel contended that, no approval by the Joint Registrar is required since the entire proceedings had taken place by virtue of Section 28(1D) and (1E) of the Act.

24. Learned Special Government Pleader contended that, Section 14 of the Act contemplates suo motu action by the society and Rule 13 only deals with voluntary division. That apart, it is also contended that, except the petitioner, all other members who participated in the General Body ratified the draft order of the Special Officer by accepting division of assets and liabilities in the ratio of 60:40. Thereafter, the General Body of the 3rd respondent Bank was convened

and the draft bye-law was approved. Therefore, the learned Special Government Pleader contended that, the writ petition has no merits and the same is therefore liable to be dismissed. It is also contended that, petitioner has statutory remedy available under the Act with respect to Exts.P3 and P4 as well as Ext.P5 election notification and since the petitioner has not invoked the said remedy, there are no circumstances warranting interference of this Court under Article 226 of the Constitution of India.

25. Having heard learned Senior Counsel for the petitioner and the respective counsel appearing for the respondents, the question to be decided is whether the action initiated by the 4th respondent Society is under Section 28(1D) and (1E) of the Act, or as provided under Section 14 of the Act and Rule 13 of the Rules. On a reading of Section 28 (1D), it opens with a non-obstante clause, in my view, a procedure is contemplated thereunder by which no society in the nature of 4th respondent Bank can function without bifurcation of area, assets and liabilities of the society and the constitution of the committee pursuant to such registration without such bifurcation shall be void. That apart, in order to carry out the bifurcation, a Special Officer is to be appointed as contemplated under sub-section (1D) of Section 28. So also, subsection (1E) prescribes a procedure in accordance with clauses (i) to (iii) thereunder. As per clause (ii), sub-section (1E) of Section 28, the Special Officer is vested with powers to take such steps for the bifurcation of area, assets and liabilities of the society and also shall take all steps to register a new society with the members of the society so bifurcated and constitute the committee. In my considered opinion, sub-section (1D) of Section 28, by virtue of the non-obstante clause, excludes application of other provisions of the Act, which by itself is an indicative factor to show that a procedure is contemplated by the said provision itself.

26. That apart, sub-clause (ii) of sub-section (1E) of Section 28 clearly shows that the Special Officer appointed has the power to take such steps with respect to the bifurcation of the assets and liabilities. It thus means, the Special Officer is also entitled by virtue of the power conferred under sub-section (1E) of Section 28 to cause a notice of the General Body so as to enable the members of the 4th respondent to attend the General Body meeting in any manner acceptable to law. It is not in dispute that publications were carried out in two daily newspapers and accordingly only, the General Body meeting was convened on 09.05.2015. The most important aspect with respect to the convening of the General Body is that, petitioner is the sole person standing against the manner in which the General Body of the 4th respondent was convened, contending that since no individual notices were issued as contemplated under Section 14 of the Act, the constitution of the General Body is illegal and unsustainable. On a reading of Section 14 of the Act, it only says that notice shall be given to every member. It does not prescribe a procedure of giving individual notices in writing to all its members and creditors. But however, by virtue of sub-section (1D) of Section 28, Section 14 has no application at all.

27. Moreover, as provided under Rule 8A of the Rules, the service of notice to all members can be in a manner provided under the bye-laws of the 4th respondent. It is not in dispute that the bye-laws of the 4th respondent prescribe a procedure of publication in two daily newspapers for convening the General Body. Therefore, on a harmonious reading of Section 28 (1D) and (1E), read with Rule 8A of the Rules, it is clear that the Special Officer has adopted a procedure known to the Rules. So also, Rule 13 contemplates a special General Body meeting, giving fifteen clear days for the purpose of amalgamation, transfer of assets and liabilities or division of societies. True, a procedure is contemplated under Rule 13 for the purpose of bifurcation of the assets and liabilities of the society. In my view, by virtue of sub-section (1D) of Section 28, Rule 13 is also excluded since Rule 13 is contemplated in order to comprehend a situation under Section 14 of the Act. I have already held that Section 14 has no manner of role so far as the facts and circumstances of this case is concerned. That apart, as already stated above, Section 14 contemplates a situation of voluntary decision of the society to bifurcate its assets and liabilities whereas, sub-section (1D) of Section 28 contemplates a mandatory requirement under law to bifurcate the societies confining the operation of the 4th respondent in one Taluk, consequent to the formation of a new Taluk.

28. However, petitioner has a case that by virtue of the judgment rendered by this Court in Ext.R3(a), the provisions that apply to the 4th respondent are Section 14 of the Act and Rule 13 of the Rules. True, there are discussions in Ext.R3(a) judgment with respect to the rule and there are certain prima facie findings also with respect to the operation of Section 14 and Rule 13 vis-a-vis the bifurcation done to the 4th respondent society. However, on a reading of paragraphs 29 to 32 of the said judgment, it can be seen that, Ext.P3 decision taken by the 5th respondent was approved by the Division Bench of this Court, which only stated that 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 requirements for bifurcation and registration of new society. Therefore, in my considered opinion, Ext.R3(a) judgment did not conclude with respect to the exact provisions applicable for bifurcation of the society. By virtue of the interim order passed by the Division Bench of this Court as per Ext.P2, the Joint Registrar was given the liberty to take a decision as directed by the learned Single Judge and also to consider whether the resolution of General Body which is up for consideration, is in accordance with the procedure prescribed by law. After passage of Ext.P3 order by the 5th respondent, the same was placed before the Division Bench and the Division Bench has rendered the judgment taking note of Ext.P3 order passed by the 5th respondent and the same was approved also, which thus means, Ext.P3 was a subject matter of scrutiny in the said writ appeal. Therefore, if the Division Bench was not legally satisfied with respect to the procedure adopted till then, definitely, there would have been a finding accordingly.

29. Learned Senior Counsel appearing for the petitioner, Sri. Ranjith Thampan has invited my attention to the judgment of the Apex Court in "Shephard and others v. Union of India and others" [1987 (4) SCC 431] to canvass the proposition that the entire proceedings are bad for violation of principles of natural justice. Learned Senior Counsel has invited my attention specifically to paragraph 12 of the said judgment, wherein it is held as follows:

"12. Natural justice has various facets and acting fairly is one of them. RBI which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously not be taken on the ipse dixit of RBI officers without verification of facts. It is quite possible that a maneuvering officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identify cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinised. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a section of the employees without complying with requirements of natural justice was bad."

30. But however, looking back to the facts of the said case, that was a case with respect to the amalgamation of Bank of Cochin Ltd. by invoking the power under Section 45 of the Banking Regulation Act, 1949. There, the question considered was with respect to the adoption of the employees of the Banks under amalgamation and the Apex Court was considering the question whether proper notice was issued to those employees before excluding them for employment in the amalgamated Banks. In that context only, Apex Court held that no notice was served on the employees before they were condemned, since some of the employees of the Banks were facing disciplinary action. Therefore, in my view, the facts and circumstances of that case are entirely different.

31. Learned Senior Counsel has also invited my attention to the judgment of Allahabad High Court in "Sunita Rani v. XVIIIth Additional District Judge, Meerut and others" [2000 KHC 2920], therein the question considered was with respect to a notice provided under Section 68 of the Cantonments Act, 1924, wherein a mandatory notice was provided under the Act, to an occupier of a property who was at the relevant time only lessee of the building and not the owner. There, the Court has held that, Section 68(1) of the said Act mandatorily requires a notice to the occupier before revision of assessment. By citing the said decision, learned

Senior Counsel has attempted to canvass a proposition that in this case also a mandatory notice as required under Section 14 of the Act and Rule 13 read with Section 104 of the Act are not complied with. There, I have already held that, by virtue of sub-section (1D) of Section 28 of the Act, other provisions of the Act are excluded. But however, followed the procedure contemplated under Rule 8A of the Rules in the matter of causing notice.

32. On the other hand, learned Special Government Pleader has invited my attention to a Division Bench judgment of this Court in "Rameshan v. Jayavally" [2007 (2) KLT 325] and invited my attention to paragraphs 12 and 15. There, this Court has held that Court is not bound to interfere merely on the establishment of an irregularity or illegality. The Court must further be satisfied that such interference is called for to meet, or to further, the orders of justice. Therefore, taking cue from the said judgment, learned Special Government Pleader contended that a notice was published in a manner known to law and therefore there is no illegality and that apart, it is also contended that after publication of the notice, General Body was convened and the bifurcation and follow up procedure thereto have taken place dividing the 4th respondent Bank into two.

33. So also, learned counsel for the 3rd respondent has invited my attention to the judgment of the Apex Court in "Shaji K. Joseph v. V. Viswanath and others" [2016 (2) KHC 33 (SC)], wherein the Court was considering the question of interference of the Court when election is notified. There, the Court has held that whenever process of election starts, normally Courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by Courts, possibly no election would be completed without Court's order, and such disputes with regard to election should be dealt with only after completion of the election. This judgment was cited by the learned counsel to substantiate the point that after bifurcation, election to the 3rd respondent Bank was notified and therefore the petitioner is not entitled to approach this Court indirectly challenging the election process. In my view, the discussion on the said issue may not be of much relevance, in view of the findings rendered by me with respect to the procedure undertaken by the Special Officer in the matter of bifurcation of the Society.

34. Reckoning the facts and circumstances discussed above, the provisions of law, the judgments rendered by this Court, and the interim orders passed, I am of the considered opinion that, Ext.P3 order passed by the 5th respondent cannot be said to be in any manner illegal or irrational or suffers from any vice of arbitrariness. That apart, pursuant to Ext.P3, the entire proceedings are completed and the 3rd respondent Bank has also come into being by virtue of the bifurcation approved by the General Body and such proceedings are not under challenge also. So also, since the Special Officer had followed the procedure contemplated under sub-section (1E) of Section 28, prior approval of the Registrar for calling for a General Body meeting is not warranted under law.

This is more so, by virtue of sub-section (1D) of Section 28 of the Act, which excludes all other provisions of the Act for the purpose of bifurcation of the society.

35. Resultantly, writ petition fails and accordingly same is dismissed.