

BEFORE THE COMPANY LAW BOARD
CHENNAI BENCH
AT CHENNAI

CP. No. 70/2010

Present: SHRI KANTHI NARAHARI, JUDICIAL MEMBER

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)
SECTION 237(b)
AND

IN THE MATTER OF M/S ARUVIPURAM SREE NARAYANA
DHARMA PARIPALANA YOGAM

BETWEEN

1. P. Chandran
Kolavizhilamma Nagar,
Palavakkom,
Chennai – 600041.

... PETITIONER

AND

1. M/s Aruvipuram Sree Narayana Dharma
Paripalana Yogam,
Aruvipuram Siva Temple,
Perumkadavila Taluk,
Thiruvananthapuram Dist,
Kerala.
2. V.K Natesan
Vellapalli House,
Cherthala,
Alappuzha Dist,
Kerala.
3. M.N Soman, President
S.N.D.P Yogam
P.B No.512,
Kollam, Kerala.



4. Thushar Vellappalli, Vice President
S.N.D.P Yogam
P.B No.512,
Kollam, Kerala.
5. E.V Vasavan, Administrator
Chennai S.N.D.P Union,
Gurukripa, 92/A2,
9th Main Road, Santhi Colony,
Anna Nagar, Chennai – 600 004.
6. Surendran, Secretary
S.N.D.P Sakha Yogam
Perungudi No.4303,
No.9B, 3rd Cross Street,
Govind Nagar, Palavakkom,
Chennai – 600 041.
7. P. Santhosh Kumar, Advocate
'Chandrakantham',
Thirumala Bhagom P.O,
Alappuzha – 688 540
Kerala.
8. State of Kerala
Secretary to the Government
Taxes Department,
Government of Kerala,
Thiruvananthapuram, Kerala.
9. Inspector General of Registration
Government of Kerala,
Thiruvananthapuram,
Kerala.
10. Arayakandi Santhosh (Impleaded as per order in CA No.54/2011)
S.N.D.P Yogam
P.B No.512,
Kollam, Kerala.



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11. Union Bank of India
 Represented by Secretary to Government,
 Ministry of Corporate Affairs
 'A' Wing, Shastri Bhavan,
 Rajendra Prasad Road,
 New Delhi - 110 001.

12. Registrar of Companies
 M.G Road, Ernakulam,
 Cochin - 682 011,
 Kerala.

... RESPONDENTS

PARTIES PRESENT:

1. Shri. A. Sudhi Vasudevan, Advocate	... For Petitioner
2. Shri. A.N Rajan Babu, Advocate	... For Respondents 1 to 4
3. Ms. R.T Shyamala, Advocate	... For Respondent No.5

ORDER

The present petition is filed under section 237(b) of the Companies Act, 1956 praying this Bench to pass on order to declare that the respondents 2 to 4 being persons concerned with the management of the R1 Company been guilty of fraud, misfeasance and misconduct towards the petitioner and its permanent members and seeking directions to call for the entire records of the R1 Company from the 9th respondent.

2. The counsel appeared for the petitioner narrated the brief facts of the case. He submitted that the petitioner is a permanent member of the 1st respondent. The petitioner craves leave to submit there are circumstances among other suggesting that the activities of the 1st respondent are being conducted fraudulently, in a manner oppressive of some of its members. The following facts among other would show that respondents 2 to 4 are guilty of fraud, misfeasance and misconduct towards the company and its members.

(a) It is submitted that 33 cents of land along with a 2 storeyed terraced building wherein Arts and Science College of the S.N.D.P Yogam located



at Quilandi was sold on 13.06.2008 by the 2nd respondent for sum of Rs.37 lakh (Rs.24 lakhs for land and Rs.13 lakhs for building) by a registered sale deed No.1709 of Quilandi sub registry. As per the prevailing market rate, the above land and building would have easily fetched not less than Rs.1.50 crore. Sufficient advertisement in leading dailies was not effected before conducting the sale. On enquiries it is learnt that the above property was sold to a business partner of the 2nd respondent's son, who is nominated as Yogam Dewasom Secretary w.e.f 09.05.2008. No decision according sanction was taken by the members of the company in the General Body Meeting held on 19.04.2008 for sale of the said property of the company. There was absolutely no need or purpose for selling any properties of the company at all.

- (b) It is submitted that the Educational Institutions are owned and managed by the Yogam. Admissions and appointments in the educational institutions owned by the Yogam are effected without following any norms or transparency whatsoever. Appointments are being made at the whims and fancies of few office bearers of the Yogam on the directions of the 2nd respondent without making advertisement. Crores of rupees collected from the appointees and students who are admitted to the various courses in the educational institutions by way of donations are not accounted in the Yogam account and all those amounts are diverted and siphoned off for the personal benefits of the respondents 2 to 4 and their henchmen collectively.
- (c) It is submitted that more than 300 vacancies had arisen in the various educational institutions run by the Yogam and not even a single penny was accounted in the 1st respondent's account towards the donations received from those appointments. It is also learnt that, crores of rupees thus collected by way of donations from the members of the company for



the purpose of the Yogam at the time of making admission and appointments in the 33 educational institutions run by the Yogam from November 1996 onwards are permitted to be exclusively used by the 2nd respondent for his personal purpose and gain. As per Article 23 of the Articles of Association of the company, the Board of the Yogam is the competent authority to acquire and establish educational institutions. After November 1996, not even a single education institution or any immovable properties were purchased by the Yogam.

- (d) It is submitted that the 2nd respondent has been adopting antidemocratic and illegal method of dissolving elected Union Sakhas, alleging breach of discipline and creating internal dissensions within such a committee. The 2nd respondent has upon such dissolution appointed his own cronies who are mostly Abkari contractors, thus resulting in distancing of the majority of the members from participating in the affairs of the Sakhas, Unions and Yogam itself, out of fear of the might of the predominantly criminal disposition of these Abkari Contractors.
- (e) It is submitted that Section 160 of the Companies Act mandates that every company not having a share capital shall within 60 days from the day on which each of the annual general meeting referred to in section 166 is held, prepare and to file with the registrar a return stating the following particulars as they stood on that day: (a) the address of the registered office of the company, (aa) the names of the members and the respective days on which they became members and the names of persons who ceased to be members since the date of annual general meeting of the immediately preceding year and the dates on which they so ceased.
- (f) It is submitted that Section 220 of the Companies Act, 1956 mandates that after the balance sheet and the profit and loss account have been laid before a company at annual general meeting, the same shall be filed with



the registrar within 30 days from the date on which the balance sheet and profit and loss account were so laid. The respondents 2 to 4 have not complied with any of the aforesaid requirements envisaged in sections 160 and 220 of the Companies Act for the past several years. In pursuance of an application submitted by Prof. G. Mohandas a permanent member of the 1st respondent before the State Public Information Officer and Inspecting General of Registration, Thiruvananthapuram seeking information under the Right to Information Act regarding the non compliance of section 160 and 220 of the Companies Act and other aspects, the State Public Information Officer and Registration Deputy Inspector General (Licensing) had by her reply dated 28.06.2010 had stated that returns upto the year 2007 alone are submitted before the Inspector General of Registration and that no information regarding the removal of the names of permanent members consequent upon their death is given to the Inspector General of Registration.

- (g) It is submitted that Article 47 of the Memorandum and Articles of Association of the 1st respondent as it stood on 19.03.1966 mainly intended to prevent all the members of the 1st respondent from participating in the ordinary general body meeting or in the extraordinary general body meeting and prescribes eligibility of a person for becoming a representative for the purpose of attending the general body meeting and the rights and conditions of a Sakha to send the representatives for the S.N.D.P Yogam general body meeting and to vote. The validity of Article 47 was challenged in court by a member of the 1st respondent. The Hon'ble High Court however in paragraph 21 of the judgment observed that it is open to the company to take advantage of section 25(6) of the Companies Act providing for exemption by the Government from certain provisions of the Companies Act. The persons in management of




the affairs of the 1st respondent then moved the Central Government seeking exemption from section 172(2), 219 and Article 14 of Table C of the Companies Act. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs), New Delhi by an order dated 20.08.1974 had exempted the 1st respondent from the provisions of section 172(2), 219 and Article 14 of Table C of Schedule 1 of the Companies Act subject to the following conditions: (i) A general notice shall be issued by the Yogam to its members indicating the date, time and place of holding the annual general meeting specifically informing that a copy of the full text of the notice and copy of the balance sheet and profit and loss account and other documents attached thereto, will be made available to any member on demand at the office of branches and unions as defined in Article 1(g) and (h) of the Articles of the Association and the notice shall be published atleast 21 days before the meeting in a newspaper in the Malayalam language having wide circulation in the State of Kerala (ii) A full text of the notice calling the meeting along with agenda, explanatory statement, copy of the balance sheet and profit and loss account and other documents attached thereto, together with a copy of the report of the Board of directors under section 217 shall be kept at the office of the branches and unions of the Yogam as defined in Article 1(g) and (h) of the Articles of Association atleast 21 days before the date on which the annual general meeting is required to be called under section 166 of the Act, for inspection of the members of the Yogam; and (iii) Copies of the notice and documents shall be given to the members on demand personally at the offices of the Branches and Unions. It deserves notice that section 25(6) of the Companies Act only enables the State Government by general or special order could grant the exemption referred to therein to the 1st respondent. A reading of Annexure A8 shows that the exemption granted therein by the Central Government



purportedly under section 25(b) of the Companies Act cannot be of any use to deprive all the members of the 1st respondent the right to vote in the general body meeting conferred upon by them by Article 14 of Schedule C of the Companies Act. Assuming that section 25(6) of the Companies Act confers power on the Government to exempt the 1st respondent from section 172, 219 and Article 14 of Table C of Schedule 1, such an exemption is to be sought from the State Government in relation to the 1st respondent since it is non trading company governed by provisions of Kerala Non-Trading Companies Act r/w Companies Act. There are 15 S.N.D.P Sakhas under the Chennai S.N.D.P Union Perungudi S.N.D.P Sakha has strength of 225 permanent members. The said Sakha is entitled to elect and send atleast 2 representatives for the S.N.D.P Yogam general body meeting and to vote in the event of the S.N.D.P Yogam election. It is respectfully submitted that no election of the representatives of the Perungudi S.N.D.P Sakha or any of the remaining 14 Sakhas under the Chennai Union for attending the 105th Annual General Body meeting of S.N.D.P Yogam and to vote was conducted. Not even a draft voters list of the members of Perungudi S.N.D.P Sakha of any other Sakhas under the Chennai Union was prepared. No publication whatsoever was effected with regard to draft voters list of Perungudi S.N.D.P Sakha or any other Sakhas. Needless to say the election to the S.N.D.P Yogam could be thought of only after conducting elections of the representatives in accordance with law from among the permanent members of the Yogam attached to respective sakhas. The final voters list of the S.N.D.P Yogam election does not take in the elected representatives of various Sakhas under Chennai S.N.D.P Union.

3. The petitioner had submitted a representation dated 04.07.2010 before the secretary of the Perungudi S.N.D.P Sakha Yogam complaining about the non



publication of draft voters list and election of representatives. The Secretary of Perungudi S.N.D.P Sakha Yogam by a reply dated 16.08.2010 had informed the petitioner that, the non preparation of the draft voters list of Thazathumuri S.N.D.P Sakha and the non conduct of the election of representatives of the Perungudi Sakha was on account of the fact that the respondents 2 and 5 on being contacted took up the stand that the election of the representatives need not be conducted. The Secretary in the said reply made it clear that the Perungudi S.N.D.P Sakha Yogam having strength of 225 permanent members is entitled to send 2 representatives for attending the 105th annual general body meeting of the S.N.D.P Yogam and to vote. The wilful omission on the part of the respondents 2 to 5 to see that election of the said representatives are conducted democratically and in accordance with rules, prior to the S.N.D.P Yogam election. An administrator is expected to take immediate steps to conduct election at the earliest. The administrator at the instigation of the 2nd respondent however has not taken any steps to conduct elections either in the Chennai S.N.D.P Union or any other Sakhas under the said union. Continuance of the administrator turned out to be highly detrimental to the interest of the Chennai S.N.D.P Union and sakhas under the said union. It is respectfully submitted that the functioning of the 1st respondent has been in total negation of the provisions of the Companies Act, and the principles of democratic functioning. The circumstances would clearly show that is a clear breach of duties which equity has imposed on the majority and the respondents 2 to 4 are guilty of misconduct towards the 1st respondent and members of the 1st respondent. It is respectfully submitted that the aforesaid facts are only a tip of the iceberg and a proper investigation would expose fraud, misfeasance and misconduct of respondents 2 to 4 towards the 1st respondent and its members and the investigation would further reveal the remaining atrocities, fraud and other misconduct of respondents 2 to 4 towards the 1st respondent and its



members. In support of his case the learned counsel replied upon the following citations.

1. *(1981) KLT short notes pg 159 High Court of Kerala in the matter of Kumaranunni Vs. Mathrubhumi Printing and publishing Company Ltd.*
2. *(2000) (1) KLT pg 10 High Court of Kerala in the matter of Mohammed Vs. Trichur Heart Hospital.*

4. The respondents 1 to 4 have filed a detailed counter. The counsel appeared for the respondents submitted that the company petition filed is not maintainable either in law or on facts. The Company Law Board has no jurisdiction to make an order directing the investigation into the affairs of the 1st respondent as this jurisdiction is exclusively reserved to the Central Government or to the company court as stated in section 237(a) (ii). The language of section 237(b) shows that the jurisdiction conferred upon the Board to form an opinion that the circumstances suggesting that the conditions and the ingredients under section 237(b) (i) (ii) (iii) could only be exercised in respect of a company when some other proceedings are pending against the company before the Board under other provision of the Act. The petition is not filed in good faith. It is clear that the petitioner has approached this Hon'ble Board under section 237(b) with a view to circumvent the provision under section 399(4) of the Companies Act. The petitioner is not eligible to file a petition under section 397 and 398 alleging mismanagement and misconduct misfeasance or fraud unless he satisfy the eligibility conditions prescribed under section 399 of the Act. The minimum numerical strength prescribed under section 399(1) is an essential precondition for filing a petition under section 397 or 398. The petitioner could not muster the support of statutorily required minimum number of members out of total about 23 lakhs members of the 1st respondent and it disentitles him to file a petition under section 397 and 398



before the Company Law Board, thus the petitioner has made the section 399 meaningless. This also speaks of his lack of good faith in levelling baseless allegations against the respondents 2 to 4 seeking an order for appointing inspectors for investigation. It is submitted that the 1st respondent is a public limited company registered under section 26 of the Travancore Company Regulation 1 of 1063 ME adopting Indian Companies Act 1882. It is an association formed for the purpose of promoting and encouraging religious and secular education and industrial habits among the Ezhava Community without the addition of the word Ltd in its name. The SNDP Yogam is a company limited by guarantee. The liability of it is, are limited by its memorandum. Therefore the SNDP Yogam is not a company having share capital. The said company will come under the category of Table C of 1st Schedule of the Companies Act. In such a company every provision in the memorandum of articles is binding on the members therein. The Articles of Association is the rules for the SNDP Yogam which empowers to expel or remove any person as per the provisions in the Rules. The article 28 and 29 empowers to supersede the unions of or shakas committees if the committee of unions and the shaka acts against the interest of the yogam or against the decision and instruction of the yogam and also due to the reason that due to internal affairs it is not feasible to allow the committees of any unions or shakas to continue in office. The union committee and shaka committee can be dissolved if they are not convening annual general body meeting and over staying in office. The 1st respondent yogam has about 23 lakhs members and more than 5700 shakas and about 122 unions having an area of operation in a taluk or a part of the taluk. The 1st respondent has got shakas and unions all over the Kerala, Tamilnadu, Karnataka, Maharashtra, Delhi etc. From all these places the representatives will attend the AGM and election. All the members of the 1st respondent at present are permanent members. It is submitted that company petition is filed without any bonafide. It is filed at the instigation of disgruntled member Sri



A.M Gopalan alias Gokulam Gopalan the former union president of Chennai SNDP Union who was removed from the office of the president of the Chennai Union. At the instigation of Gokulam Gopalan a company petition CP No.40/2010 was filed with many of the allegations herein, before the Hon'ble High Court of Kerala praying for winding up of SNDP Yogam and the appointment of administrators to the 1st respondent and for the removal of office bearers of the 1st respondent. The respondents 2 to 4 are also respondents therein. Though the said petition is dismissed by the Hon'ble High Court of Kerala a company appeal No.10/2010 was filed before the Division Bench of company court of the Hon'ble High Court of Kerala and it is still pending.

5. The sale of 33 cents of land with a two storeyed building at Quilandy where in arts and science college of the SNDP Yogam was sold without any decision or sanction of the general body of the 1st respondent is absolutely incorrect and hence it is denied. As per the article 26 of A1 bye law of the 1st respondent the movable or immovable property can be sold by the Yogam council with the consent of the Board of directors. The above said land and building was sold by the 1st respondent with the consent of the Board. The educational institutions are managed and admissions and appointments in the educational institutions owned by the yogam are effected without following any norms or transparency is not correct. Hence it is emphatically denied. Similarly the allegation that appointments are made at the whims and fancies of some office bearers of the yogam on the directions of the 2nd respondent without making advertisement is not correct and baseless. The admission and appointment in the educational institutions are made in compliance with the Kerala Education Act and Rules, the university laws and other educational laws. The allegation that crores of rupees collected from appointees and students who are admitted to various courses in the educational institution by way of donations are not accounted in the yogam account is concerned the said



allegation is absolutely vague. Hence it is empathically denied. The donations are not collected for admissions from students and appointees. After November 1996 not even a single educational institution or any immovable property was acquired by the yogam is not correct. During the tenure of the 2nd respondent, 10 higher secondary schools, 1 vocational higher secondary school, 10 high schools were got sanctioned and started. Three arts and science colleges were also started at Perinthalmanna and Nelleswaram and Pulpally. At Adimally and Kodungaloor Training College M.ED courses were started. Now courses are started at Quilandy and Konni. The averment that the college building at Perinthalmanna was constructed by local people collecting funds from the public is not fully correct. Apart from the local collection yogam has also directly spent Rs.10,00,000/- for the college. New school buildings were constructed at Keezhumbara, Neeravil, Chithara, Udayamperoor, Ananad, Karamveli, Aluva, Venkuringi and Muttathukonam for high schools and higher secondary schools, landed properties to the extent of 3.78 acres was purchased at Konni and 11.33 cents at Guruvayoor. Sanctions were obtained for B.sc Computer Science College at Quilandy and also M.sc computer course at SNDP College Konni. During the periods from 1996-2009 an amount of Rs.10,87,06,257.00/- was received as donations as evidenced by audited balance sheet passed by the general body for the respective years from 1996-2009. Moreover an amount of Rs.11,14,24,986.00/- was expended for construction of school building, construction of schools and colleges purchase of land and building, temporary building statute of C. Keshavan and compound wall for land at Kollam. The 2nd respondent himself has no right to dissolve any committee. The committee are dissolved on valid grounds by the council of the 1st respondent in exercise of their powers under article 28 of Annexure A1. The micro finance scheme is introduced in the shakas under the control of unions to save poor women who are below the poverty line from the clutches of blade mafia. It is a social justice scheme to achieve the object of improving the



temporal life of women and their families as contemplated by the Memorandum of Association. The right to vote in the general body meeting of the 1st respondent was provided by the 1st respondent as per Annexure A8 and Article 44 of the Annexure A1. Hence there is no substance in the contention that the respondents 2 to 4 and the Board of directors wrongly restricted a set of permanent members depriving their right to vote in the election of the 105th AGM. There is no act of misfeasance and misconduct on the part of respondents 2 to 4 and persons in the management of the 1st respondent. While the 1st respondent was being fully governed by the Indian Companies Act, 1956 the Central Government was the appropriate government in the matters of the 1st respondent including in respect of the matters under section 25(6) of the Companies Act. While the 1st respondent was governed so, Annexure A8 order was validly passed by the Central Government under its statutory authority on 28.08.1974. But in the meanwhile the Central Government by order dated 23.08.2005 held that the Kerala non trading companies Act 1961 is applicable to the 1st respondent, but the said order was set aside by the Hon'ble High Court of Delhi by judgment dated 09.02.2009 in WPC Nos.22699-22701/2005. All the previous annual general body meetings after 1974 are held by issuing general notice in the nature of annexure A6 to all members by publications in Malayalam daily papers namely Kerala Kaumuthi. The present notice is valid and the Kerala Kaumudi and Madhyamam daily have got wide circulation in state of Kerala. As per article 44 now in force the representatives to the AGM is to be elected in the general body meetings of the respective shakas at the ratio of one representative for every 200 members. But a shakas having 100 or more members but less than 200 can also elect one representative. The list of elected representatives from the shakas are to be forwarded to the office of the 1st respondent through unions. The rule 4 to 12 of annexure A10 framed under Article 12 and article 47 under A7 bye laws of 1996 is no longer in force after 09.11.1974. Hence the petitioner produced the Annexure A10 election rules



with an intention to mislead this Hon'ble Board purposefully especially after the Munsiff Court Kollam found in I.A No.3612/2010 in OS 571/2010 that the said rule is no longer in force. The petitioner cannot claim that he is not aware of the said order. The validity of election of 1st respondent Yogam is not a subject matter under section 237(b) within the jurisdiction of the Company Law Board hence the petition challenging the validity of election to 1st respondent is not maintainable before the Company Law Board under section 237. The annual general body meeting had been convened on 04.09.2010 with adequate police protection granted by Hon'ble High Court of Kerala. Even though Sri A.M Gopalan and his henchmen tried to create obstruction, the police have taken proper action and elections have been convened smoothly. The voters were admitted on production of identity card which is verified by the police. Around 600 police men were deployed for the smooth conducting of the election under the direct control of I.G of police and S.P of Kollam. 20 booths were arranged. Advocate from High Court and subordinate court were acted as polling officers. In each booth identity card of voter is verified by police and then only voters were allowed to enter the polling booth. In total 90.49% votes were polled. The article 44 of Annexure A1 clearly provides how the representatives are to be elected. The representatives are to be elected by the shakas by convening general bodies as per the shaka bye laws. This petition is an abuse of process of this Hon'ble Board. The allegation in para 5, 6, 7, 8 & 9 of the application are subject matter of a company appeal No.5 of 2010 pending before the Hon'ble High Court of Kerala. There is no circumstances suggesting even an inferences or intent to defraud members or guilty of fraud misfeasance or misconduct on the part of respondents 2 to 4. A petition seeking to go on fishing expedition to find out evidence if any is also not maintainable. The petitioner has misled this Hon'ble Board by producing A10 election rules which is no longer in force. In support of the contention the learned counsel relied upon the following decisions.



1. *AIR 1967 SC 295 in the matter of Barium Chemicals Ltd & Another Vs. Company Law Board & Others.*
2. *(1970) Vol 40 CC pg 102 (High Court of Calcutta) in the matter of New Central Jute Mills Company Ltd Vs. Deputy Secretary, Ministry of Finance, Department of Revenue & Company Law & Others.*
3. *(1977) Vol 47 CC pg 285 (P & H High Court) in the matter of Niranjana Singh & Others Vs. Edward Ganj Public Welfare Association & Others.*
4. *(1978) Vol 51 CC pg 634 (Delhi High Court) in the matter of Ashoka Marketing Ltd Vs. Union of India.*
5. *(1978) Vol 48 CC pg 401 (P & H High Court) in the matter of Ravinder Kumar Jain Vs. Punjab Registered (Iron & Steel) Stock Holders Association Ltd.*
6. *(1980) Vol 50 CC pg 611 (High Court of Kerala) in the matter of R. Prakasam Vs. Sree Narayana Dharma Paripalana Yogam*
7. *(1982) Vol 52 CC pg 589 (Delhi High Court) in the matter of Modi Industries Ltd Vs. Union of India & Others.*

6. The 5th respondent filed counter affidavit to the petition. It is submitted that the company petition filed under section 237(b) (ii) of the Act itself is not maintainable in law. The section is only a residuary clause and procedure clause and it has no substantial right to decide the issue which is purely governed under section 397 and 398 of Indian Companies Act. If there are allegations of oppression and mismanagement, then the aggrieved person can only invoke section 397 and 398 of the Act, 1956 subject to section 399 of the Act and not by way of the present petition. He submitted that if a petition can be filed under section 237(b) of the Act, then such petition can be filed before

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the court under section 237(a)(ii) of the Act also. The section is incorporated only with the motive that if the court or the Company Law Board while deciding an issue under section 397 and 398 of Indian Companies Act, 1956 gave a finding that the company affairs need investigation as per the provisions of section 237 and this section is not an independent section, and no petition can be filed under this section. It is submitted that to file a petition either under section 235 or section 397 and 398 then the petitioner must come with the eligible criteria laid down under section 235 (2) (b) and section 399 that is as follows:

“399 (1) the following members of a company shall have the right to apply under section 397 and 398:

(a)

(b) in the case of a company not having a share capital, not less than one fifth of the total number of the members”.

It is submitted that the total member of the Yogam is more than 23,00,000. When the yogam is having 23 lakhs members, then the members of nearly 4,60,000 has to sign for invoking section 235 or section 397 and 398 of the Act, 1956. Without the applications of 4,60,000 no petition can be entertained and the petition filed by the petition has to be rejected on this preliminary issue itself. To circumvent, this procedural hazard, the petitioner has filed a petition under section 237 (b) of the Act, which is not maintainable in law and the same has to be dismissed in limine. He submits that the petitioner in his petition in para 4 of the petition had stated as follows:

“4. The petitioner craves leave to submit that there are circumstances among other suggesting that the activities of the 1st respondent are being, conducted fraudulently, in a **manner oppressive of some of its members.**” If the petitioner is alleging any oppression then, his remedy is to get the support of 4,60,000 members and only then he can file a petition. In this present case, the



entire allegations stated in the petition are only oppression and mismanagement and those things cannot be decided in the present petition. Further indirectly the petitioner is challenging the election process of the Yogam and the same cannot be challenged in a company petition and only suit is maintainable in law”.

It is submitted that the prayer in the petition is also not maintainable. The Company Law Board is not a court of record, hence there is no provision laid down to call for the entire records. Further the prayer is to declare that the 2nd to 4th respondents concerned with the management of the affairs of the 1st respondent been guilty of fraud, misfeasance and misconduct. The intention of the petitioner is to get an order under section 397 and 398 of Indian Companies Act, 1956 through this petition by an individual by overcoming the eligible criteria under section 399 of the Act. It is submitted that as per the Articles of Associations, Yogam has to send notice to sakhas through union regarding the 105th annual general body meeting to the Yogam, directing the sakhas to convene their general body meeting to elect their representatives (one for 200 members) to attend the general body meeting to be convened by the Yogam. The 5th respondent received the notice from the Yogam to directing the sakhas to convene their general body meeting to elect their representatives in a series of letters and the same is enclosed in annexure A1. Even a notice was sent by me to Perungudi Sakha as sent to other sakhas about the general body meeting to be held by the Yogam by certificate of posting on 03.05.2000 and asked them to convene their general body meeting to elect their representatives to attend the Yogam on their behalf and the same was received by the 6th respondent. After receiving the notice, they did not convene their general body meeting of the Perungudi Sakha and no reply was sent by them. Further no representatives were sent by the 6th respondent to attend the general body meeting and they purposely boycotted the same. It is submitted that the petitioner's sakha also did not take any steps to convene the general body meeting to their sakha to



elect the representatives to the annual general body meeting. Failing to do his job, now he is making false and frivolous allegations against the Yogam and Union. In fact the fraud and misfeasance was conducted only by the 6th respondent and not by the union or the yogam. It is admitted fact that out of the then 15 sakhas only 6 sakhas convened their general body meeting and sent their representatives to attend the general body meeting of the yogam. Including Perungudi, the other sakhas which were under the patronage of Mr Gokulam Gopalan did not convene their general body meeting and sent their representative to attend the general body meeting and now blaming the 1 to 5 respondents. Further Mr Gokulam Gopalan, who contested for the post of General Secretary of the 1st respondent Yogam filed a suit challenging the election, with several other prayers including the prayer challenging the supersede of Chennai Union by the council in O.S No.571 of 2010 on the file of the court of Principal Munsif Court at Kollam and the same is pending. The I.A filed by Mr Gokulam Gopalan to stay the election of office bearers of Yogam was also dismissed on the ground that there is suppression of material facts. The same allegations in verbatim repeated in the present petition filed by the petitioner with different prayer through the same counsel. This itself show that the present petitioner was set up by Mr Gokulam Gopalan to file the petition before this Hon'ble Board. Further the counsel for Mr Gokulam Gopalan before Kollam Court is the counsel in the present petition also. When the matter is sub-judice before the Civil Court, the same allegations cannot be reiterated before this Hon'ble Board. On this ground also the present petition is not maintainable in law. It is therefore prayed that this Hon'ble Board may be pleased to dismiss the petition with exemplary costs.

7. The 7th respondent filed counter to the petition. It is submitted that the validity of election and election process of a company cannot be the subject matter that can be raised in a company petition filed under section 237(b) of the



Companies Act, 1956 where the scope of relief that can be sought for by the petitioner is for an opinion to be formed by this Hon'ble Bench that there are circumstances suggesting that the company's affairs need be investigated by the Central Government that the business of the company is being conducted with intent to defraud its creditors, members of any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose and that the persons concerned in the formation of the company or the management of its affairs have in connection therewith guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members or that the members of the company have not given all the information with respect to this affairs which they might reasonably expect, including information relating to the calculation of commission payable to a managing or other director or manager of the company. The annual general meeting of the 1st respondent company was held on 04.09.2010 and adequate police protection was given as per the order passed by the Hon'ble High Court of Kerala. The election could take place smoothly and without any interference from any persons. The voters were admitted only on production of their identity cards which were duly verified at the entrance of each booth with the assistance of the police to ensure law and order to conduct the election in a peaceful and orderly manner. In fact about 600 policemen were deployed to ensure the smooth conduct of the election and the police force was under the control of the Inspector General of Police and District Superintendent of Police, Kollam. The total number of voters who were eligible to exercise their voting rights were 9600. Out of the aforesaid 9600 voters, 8606 voters exercised their voting right. Thus the percentage of polling was 90.45%. For facilitating the voting, 20 polling booths were arranged. The Advocates from the Kerala High Court and nearby Subordinate Courts acted as the polling officers. The voters were admitted at the entry gate only on productions of their identity cards. At the

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entry point, the voters were further verified by policemen and thereafter only the voters were allowed to enter their concerned polling booth. It is submitted that the panel headed by the 2nd respondent secured 7592 votes which is 88.22% of the total votes polled and whereas the petitioner's group with their panel headed by Sri Gokulam Gopalan could secure only 884 votes which represents only 10.22% of the total votes polled. As investigation under section 237 of the Companies Act, 1956 cannot be carried out by the State Government. The Central Government is not a party to the above company petition. Therefore, strictly and legally speaking the above company petition is not maintainable and no opinion can be formed suggesting that the affairs of the 1st respondent company need to be investigated by the State Government.

8. The 12th respondent filed counter affidavit to the petition. It is stated that the R1 Company was registered under the Indian Companies Act, 1882 (VI of 1882) i.e. under the Travancore Companies Regulation 1 of 1063 (Malayalam Era) with the Registrar of Joint Stock Companies, Travancore as company No.2 of 1078 (Malayalam Era). Upon the enactment of the Companies Act, 1956, (the Act), the said company was functioning as a company under the jurisdiction of Registrar of Companies, Kerala and was numbered as company No.995 in the Registrar of Companies maintained by the Registrar of Companies, Kerala, since then the 1st respondent company was filing documents as section 25 company in the office of the Registrar of Companies, Kerala upto the year 2001. Three persons who alleged to be members of the company had moved a petition under section 399(4) of the Companies Act before the Central Government (then Ministry of Company Affairs, New Delhi) requesting for authorization to file an application before the Company Law Board for relief under section 397/398 of the Companies Act as against the company. On consideration of the application, the Central Government by its order dated 23.08.2005 held that the SNDP Yogam (1st respondent) was deemed to be



incorporated under provisions of section 3 of the Kerala Non Trading Companies Act, 1961 (Act 42 of 61) since its coming into effect with effect from 01.03.1962. Under the said Act, the Registrar means, the Inspector General of Registration for the State of Kerala. Therefore, the petition was dismissed being non-admissible under the provisions of Companies Act, 1956 read with the provisions of Kerala Non Trading Companies Act, 1961 with liberty to the petitioner to approach for remedy to the Government of Kerala under relevant provisions of above said Act. The 1st respondent company represented by its General Secretary, Sri Vellappalli Natesan filed an application before the Registrar of Companies on 10.10.2005 requesting for transferring the records related to the said company under section 6 of the Kerala Non Trading Companies Act, 1961 to the office of the Inspector General of Registration, Government of Kerala. On receipt of the petition the matter was taken up with the Ministry of Corporate Affairs, New Delhi. In pursuance of the same, Regional Director, Ministry of Corporate Affairs vide letter dated 23.11.2007 communicated its decision with a direction to transfer the record of the company to Inspector General of Registration. Accordingly all the records of the company have been transferred to the Inspector General of Registration, Government of Kerala, Vanchiyoor, Thiruvananthapuram on 16.01.2009. It is stated that no returns has been accepted from the R1 Company subsequent to transfer of entire records to Inspector General of Registration. All the documents are now under the custody of Inspector General of Registration. In view of the above it is prayed that this Hon'ble Bench may consider the above facts and pass orders.

9. Heard the learned counsel appeared for the respective parties, perused the pleadings, documents and citations relied upon by them. After analysing the pleadings the only issue is whether the petition is maintainable and the petitioner has made out any case to seek the relief as prayed in the petition



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invoking the jurisdiction of this Bench under section 237(b) of the Companies Act, 1956. When the petition was filed initially before this Bench with a prayer seeking declaration that the affairs of the first respondent ought to be investigated by an inspector/inspectors to be appointed by the 8th respondent (State of Kerala, Secretary to the Government) since there are circumstances suggesting that the respondents 2 to 4 being persons concerned with the management of affairs of the first respondent have been in connection therewith being guilty of fraud, misfeasance and misconduct towards the petitioner and its permanent members. Further a direction was sought to the 8th respondent to authorise the petitioner to file an application before this Bench for orders under Section 397 or 398 of the Companies Act against the respondents 2 to 4 and call for the records of the R1 Company from 9th respondent. Later the petitioner filed an amended petition before this Bench on 21.07.2011 praying this Bench to declare that there are circumstances suggesting that the respondents 2 to 4 being persons concerned with the management of affairs of the first respondent have been in connection therewith being guilty of fraud, misfeasance and misconduct towards the petitioner and its permanent members. Further a direction was sought for call for the entire records of the R1 Company from 9th respondent. From the comparison of the reliefs sought by the petitioner the petitioner by way of amendment deleted a direction regarding investigation by an inspector or inspectors to be appointed by the State Government of Kerala and deleted the direction that the 8th respondent has authorised the petitioner to file an application before this Bench for orders under Section 397 or 398 of the Companies Act against the respondents 2 to 4. The petitioner confined to the reliefs as prayed in para 8(a) and (b) of the main reliefs. By way of prayer 8(b) of the main relief the petitioner seeking directions from this Bench to call for the records from the 9th respondent herein i.e. the Inspector General of Registration, Government of Kerala, Thiruvananthapuram. From the said relief it is evident that the records are maintained by the 9th respondent not by the



Registrar of Companies, Kerala, Ministry of Corporate Affairs, who is the 12th respondent herein. The core issue for consideration is whether this Bench (CLB) has jurisdiction to entertain the petition under Section 237(b) of the Act to pass orders. The Companies Act, 1956 is a central legislation which deals with the companies either private, public or public sector undertakings, registered under the Act. Section 235 of the Act deals with the investigation of the affairs of the Company by the Central Government upon a report made by the Registrar of Companies. If the Central Government satisfies to appoint an inspector to investigate into the affairs of the Company on the basis of the report submitted by the Registrar of Companies, it may appoint an inspector or inspectors to investigate into the affairs and the inspectors shall submit their report to the Central Government. Without prejudice to Section 235, the Central Government under Section 237(a) may appoint one or more competent persons as inspectors to investigate the affairs of a company in such manner as the Central Government may direct, if the company by, special resolution or the court, by order declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government. Further under subsection (b) of Section 237, the Central Government may do so on the opinion of the Company Law Board that there are circumstances suggesting -

(i) that the business of the Company is being conducted with intend to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose,

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members or



(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other directors or the manager of the company.

10. The petitioner invoked the jurisdiction of the Bench under Section 237(b) of the Companies Act seeking directions from this Bench. Even as per the petition, the petitioner admits that the records of the company are not maintained by the Registrar of Companies, Kerala and the company is not governed by the Companies Act, 1956. The following are the evidences to establish that the Company is not governed by the Companies Act but for all the purposes the company is governed by the Kerala Non-Trading Companies Act, 1961. It is an admitted fact that the R1 Company is a non-trading company incorporated in 1903 under the Travancore Regulation 1 of 1063 of ME corresponding to Indian Companies Act, 1882 with Registration No.2 of 1078. The petitioner admits the fact that the R1 Company is governed by the Kerala Non-Trading Companies Act, 1961 and the Companies Act, 1956 by virtue of Section 3 of the Kerala Non-Trading Companies Act, 1961. Though the petitioner mentioned that the R1 Company is also governed by the Companies Act, 1956, however the subsequent events establish that the company is not governed by the Companies Act, 1956, but governed by the Kerala Non-Trading Companies Act, 1961. Some of the members of the R1 Company have filed an application under Section 399(4) of the Companies Act, 1956 before the Government of India, Ministry of Company Affairs, New Delhi seeking permission from the central Government for filing a petition under Section 397/398 of the Act before the Additional Principal Bench of the Company Law Board, at Chennai. As stated supra, the R1 company is a non-trading company having no share capital and as per the Companies Act, 1956 if the Company is



not having a share capital, to apply to the Company Law Board under Section 397/398, the 1/5th members of that Company may file an application to the Company Law Board under Section 399(1)(b). Under Section 399(4) the Central Government may authorise the members or members to apply to the CLB under Section 397 or 398 notwithstanding that the requirement of Clause (a) or (b) of Section 399(1) is not fulfilled. Accordingly, some of the members filed application before the Central Government and the Central Government, Ministry of Company Affairs vide its order dated 23.08.2005 dismissed the said application as non-admissible under the provisions of the Companies Act, 1956, however gave liberty to the petitioners to approach the Government of Kerala under the relevant provisions of Kerala Non-Trading Companies Act, 1961. After passing the above order by the Central Government, the R1 Company has filed an application dated 02.10.2005, under Section 6 of Kerala Non-Trading Companies Act, 1961 before the Registrar of Companies, Kerala requesting the ROC to transfer all the records relating to R1 Company to the office of the Inspector General of Registration for the State of Kerala, Trivandrum. In the said application at Para 2 it is clearly stated that as per the Memorandum of Association, the objects of the R1 Company are to conduct daily pooja, varshikostavam etc in Aruvippuram Siva Temple and in other temples under it and to promote and to encourage religious and secular, education and industrious habits among Ezhava community. It is further stated that in the light of objects of the R1 Company, being a non-trading company and the objects confined to Kerala State and the provisions of the Non-Trading Companies Act, 1961 will attract and requested the ROC to transfer all the records to the office of Inspector General of Registration, State of Kerala Thiruvananthapuram. The ROC, Kerala vide his letter dated 16.01.2009, transferred all the records to the Inspector General of Registration, Government of Kerala Thiruvananthapuram.

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11. Aggrieved by the order dated 23.08.2005 passed by the Central Government, the members have filed a Writ Petition before the Hon'ble High Court of Delhi challenging the above order. The Hon'ble High Court of Delhi by its order dated 09.02.2009 set aside the order of the Central Government dated 23.08.2005 by directing the Central Government to decide the issue afresh after giving appropriate notice to the parties and taking into consideration all materials existing on record. Further, the Hon'ble High Court gave liberty to the parties to file additional documents.

12. From the records there is no evidence that neither the petitioners to the Writ Petition nor the Company have filed any application before the Central Government as directed by the Hon'ble High Court of Delhi.

13. While so some of the members have filed Company Petition being C.P.No.3 of 2009 before the High Court of Kerala at Ernakulam under Section 237 read with Section 274 of the Companies Act, 1956 seeking directions from the Hon'ble High Court appointment of inspector by the Central Government to investigate into the affairs of the Company. The Hon'ble High Court of Kerala by its Order dated 21.05.2010, dismissed the petition for default on the ground of non-appearance of the Petitioners. The ROC, Kerala vide its letter dated 02.09.2010, addressed to the Bench Officer of this Bench stated that the records have been transferred to the Inspector General of Registration, Thiruvananthapuram on 16.01.2009 and no returns have been filed by the R1 Company in the office of the ROC subsequent to transfer of entire of records to the office of the Inspector of General of Registration, Kerala. Being a party to this petition, the Registrar of Companies, Kerala filed their counter affidavit to this petition on 07.06.2013, wherein it is reiterated that all the records of the Company have been transferred to the Inspector General of Registration, Government of Kerala, Thiruvananthapuram on 16.01.2009 and all the documents are now under the custody of Inspector General of Inspection.



14. Even after passing of the Order by the Hon'ble High Court of Delhi dated 09.02.2009 there is no evidence that the records have been re-transferred to ROC of Kerala. As per the counter affidavit dated 07.06.2013, filed by the ROC, Kerala it is evident that the records are under the custody of Inspector General of Registration, Government of Kerala and all the returns or being filed with the Inspector General of Registration, Kerala. The R1 Company is being treated as non-trading company governed by the Kerala Non-Trading Companies Act, 1961. There is no dispute with regard to the company's position. When the R1 Company is not governed by the Companies Act, 1956 and all the records are maintained by the State Government admittedly, I am of the view that this Bench cannot direct the Central Government to appoint inspectors to investigate into the affairs of the Company, in such a situation wherein the Central Government lacks its supervisory and jurisdictional powers.

15. It is more apt to mention that some of the members have filed company petition being CP No.40 of 2008 before the Hon'ble high Court of Kerala under Section 203 read with Section 433(f) of the Companies Act, 1956 praying the Hon'ble Court to appoint a committee of not less than five members to take over the administration and management of R1 Company and institutions functioning under that Company, to declare that the respondents No.1 to 4 therein are disqualified from continuing as office bearers of the R1 Company and to direct the respondents to take immediate steps for ordering elections in all union and branches and in the alternate to wound up the R1 Company by appointing provisional liquidator to preserve the assets of the R1 Company. The Hon'ble High Court by its order dated 14.09.2009 dismissed the Company Petition as not maintainable.

16. Now I deal with the merits of the case. As stated supra the petition is filed under Section 237(b) of the Companies Act, 1956 praying this Bench to declare that the circumstances suggesting that the respondents No.2 to 4 being

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persons concerned with the management of affairs of the 1st Respondent Company being guilty of fraud, misfeasance and misconduct towards the petitioner and its permanent members. As stated supra it is an admitted fact that all the records of the R1 Company is with the 9th Respondent i.e. Inspector General of Registration, Government of Kerala. To seek the relief the petitioner has to establish a prima facie case of fraud, misfeasance and misconduct in the affairs of the company towards any of its members. To establish the fraud, misfeasance and misconduct, the petitioner has to furnish the details with regard to fraud and misfeasance in the affairs of the Company. The petitioner in the petition contended that the 33 cents of land with a two storeyed terraced building of the R1 Company was sold on 13.06.2008 by the 2nd respondent for a sum of Rs.37 lakhs and alleged that sufficient advertisement was not given before conducting the sale. The respondents contended that as per Article 26 of A1 bye law of the R1 Company, the immovable or immovable property can be sold by the Yogam Council with the consent of the Board of Directors and the above said land and building was sold by the 1st respondent with the consent of the Board and the company has invited tenders and the advertisement was published twice in Kerala Kaumudi daily. The highest bid amount was Rs.37 lakhs for the land and building together and the Yogam Council vide its meeting held on 04.02.2008 decided to accept the quotation for Rs.37 lakhs and execute the sale deed. The respondents also enclosed the extracts of the minutes of the Yogam Council held on 04.02.2008. I do not see any merit in the allegation made by the petitioner and do not warrant for any kind of investigation. Further the petitioner contended with regard to the admissions and appointments in the educational institution owned by the Yogam. The respondents in their counter affidavit specifically stated that the admissions and the appointments in the educational institutions are made in compliance with the Kerala Education Act Rules made thereunder and other educational laws. It is categorically stated that the respondents advertised in the newspaper dated 15.07.2005, 22.05.2005,





11.04.2007 and 22.09.2007 etc. The respondents also enclosed the copies of paper cuttings advertised in the newspapers along with their counter affidavit. From the perusal of advertisements, it is unequivocal the respondent company has duly followed the procedure and there does not appear to be any lapse on the part of the respondents. The other contention of the petitioner is that crores of rupees collected from appointees and students who are admitted to various courses in the educational institutions by way of donations and the same was not accounted in the Yogam account is concerned, the respondents specifically denied the allegations as vague. Even otherwise the petitioner has not made out any specific case of non accounting of donation received with regard to the said allegation. The allegations made by the petitioner are bald and appear to be baseless and unsubstantiated.

17. The other allegations in the petition are mainly with regard to the elections of the office bearers of the R1 Company and most of allegations with regard to the conduct of 105th AGM of the R1 Company which was already convened and held on 04.09.2010. With regard to the conduct of AGM, one Mr. A.M. Gopalan filed suit being O.S.No.571 of 2010 before the Principal Munsiff Court, Kollam. The suit was filed under Order 39 Rule 1 of the Code of Civil Procedure seeking injunction restraining the defendants therein from conducting the AGM and also the elections as stated in the notice dated 10.08.2008. The main allegations in the suit are with regard to violation of procedure as contemplated under the Articles of the Company. The Hon'ble Court by its Order dated 28.08.2010 taken note of the allegations and averments made by the plaintiff therein and dismissed the suit by holding that *"interference in the process of elections particularly at the interim stages should be sparing. The election process should not be stopped in between because the final results will always be challenged"*. In the present petition also most of the allegations are with regard to violation of the Rules of the R1



Company during the said elections. Per se no case is made out regarding violations of Rules. Even from the perusal of the copy of plaint and the petition most of the allegations are with regard to the elections and the same are reproduced in the present petition. The respondents herein have filed the written objections to the I.A. 3612 of 2010 in O.S.570 of 2010. The stand taken by the defendants therein are that as per Section 36 of the Companies Act, 1956, the Articles of Association is to be a contract signed by each member and company. A person who becomes member of R1 Company shall undertake that he will abide by the Articles of Association and the decisions of the R1 Company. It is also stated that there is no separate membership to the sakhas. The R1 Company at present has 23 lakhs members, more than 7000 sakhas and about 123 unions. As stated supra some of the members have filed company petition being CP No.40 of 2008 before the Hon'ble High Court of Kerala under Section 203 read with Section 433(f) of the Companies Act, 1956 and the prayers therein inter alia are in relation to the mismanagement, oppression, fraud and illegal activities in the alternate prayed the Hon'ble Court to wound up the R1 Company. The Hon'ble High Court has dismissed the petition as not maintainable. The present petition is also on the same lines making similar allegations with regard to fraud, misfeasance and misconduct. From the perusal of the prayer in the instant petition, the petitioner seeking declaration that the circumstances suggesting that the respondents 2 to 4 being persons concerned with the management been guilty of fraud, misfeasance and misconduct towards the petitioner and its permanent members. As per Black's Law Dictionary the meaning of various forms of fraud has been given however a general meaning of fraud is "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment". The petitioner has failed to specifically mention the kind of fraud the respondents had allegedly committed. Further as per Black's Law Dictionary the meaning of misfeasance connotes "a lawful act performed in a wrongful manner". The meaning of

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misconduct is “a dereliction of duty”. Except the petitioner-member, there are no other members supporting this petition, indicating that the serious allegation of fraud and misfeasance towards its permanent members without duly substantiating it is only to be viewed as an allegation of general nature without any seriousness attached to it. In the absence of anything to the contrary, I am of view that R1 Company is following due procedure with regard to conduct of general meetings and elections duly complying the rules and procedure. From the perusal of documents it is evident that all the averments and allegations are either copied or repeated from various affidavits filed before various respective courts. Some of the proceedings are subjudice. The petitioner has failed to establish the circumstances suggesting that the respondents are being guilty of fraud, misfeasance and misconduct. There are no other members supporting this petition, thereby the contention that fraud and misfeasance towards its permanent members is to be viewed as random allegation. The learned Counsel for the respondents relied upon the celebrated judgment of the Hon’ble Supreme Court (1) supra in the matter of **M/s Barium Chemicals Limited**, wherein the Hon’ble Supreme Court has held that “considered from this angle there would be no difficulty in holding that even if the provision as to investigation amounts to a restriction, it is a reasonable restriction, especially so when the power under Section 237(b) as stated earlier can only be exercised on an opinion formed on the objective test of the existence of circumstances suggesting things set out in clause (b) of Section 237”. Further the Calcutta High Court in the matter of **M/s New Central Jute Mills Company Limited Vs. Deputy Secretary, Ministry of Finance** held that if an order appointing an inspector for investigating into the affairs of a company is made by the Central Government under Section 237(b) (1) and (2), the Central Government must on being challenged, show to the court that prima facie reasons existed when the order was made and were considered before the orders was made. An order cannot be made to commence a fishing expedition in order to find the reasons for making



an order. The learned counsel for petitioner relied upon the judgment of the Kerala High Court in the matter of **KA. Abdul Gafoor**, wherein the Hon'ble High Court by dismissing the petition directed the petitioner to move the Company Law Board in terms of Section 237(b) of the Companies Act, 1956. The said judgment is not applicable to the facts of this case. The decisions relied upon by the learned Counsel for the respondents are in principle applicable on the legal issue.

18. In view of the aforesaid reasons, the subsequent events establish that the R1 Company is governed by the Kerala Non-Trading Companies Act, 1961 and the Registrar of Companies, Kerala is not maintaining the records of the R1 Company. The R1 Company is filing its returns with the 9th Respondent and the 9th respondent is maintaining the records of the R1 Company. Accordingly, the petition lacks its jurisdiction to approach the Company Law Board. The petition is not maintainable either on facts or on law. It is reiterated that the averments made in the present petition are mostly related to the conduct of concluded Annual General Meeting and elections to the office bearers on the basis that the R1 Company is in violation of certain procedure prescribed under the rules and regulations which I already dealt with. I am of the view that the petition is nothing but an abuse of process of law by wasting the valuable time of the Company Law Board. The petition has miserably failed both on facts and on law and liable to be dismissed. Accordingly, the petition is dismissed. No orders as to cost.


KANTHI NARAHARI
JUDICIAL MEMBER

DATED THIS THE 21ST DAY OF APRIL, 2015

33 | CP/70/2010 – Aruvipuram Sree Narayana Dharma Paripalana Yogam



Certified to be True Copy


 Company Law Board
 சென்னை மாண்புமிகு
 Chennai Bench
 திகதி 21-4-2015
 Dated the