

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.

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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,  
9<sup>th</sup> Main Road, Santhi Colony,  
Anna Nagar, Chennai – 600 004.
6. Surendran, Secretary  
S.N.D.P Sakha Yogam  
Perungudi No.4303,  
No.9B, 3<sup>rd</sup> 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.



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 9<sup>th</sup> 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 1<sup>st</sup> respondent. The petitioner craves leave to submit there are circumstances among other suggesting that the activities of the 1<sup>st</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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

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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 1<sup>st</sup> 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 1<sup>st</sup> respondent as it stood on 19.03.1966 mainly intended to prevent all the members of the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 105<sup>th</sup> 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 105<sup>th</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> respondent and members of the 1<sup>st</sup> 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 1<sup>st</sup> respondent and its members and the investigation would further reveal the remaining atrocities, fraud and other misconduct of respondents 2 to 4 towards the 1<sup>st</sup> respondent and its

