

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
&
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

Thursday, the 7th day of April 2022 / 17th Chaithra, 1944
WA NO. 657 OF 2020

AGAINST JUDGMENT DATED 06.02.2020 IN WP(C) 30171/2019 OF THIS COURT

APPELLANTS/PETITIONERS:

1. REJI K.JOSHY, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD.NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT THUNDUVILA PUTHENVEEDU, ANAPPUZHAYKKAL, ANCHAL P.O., KOLLAM DISTRICT.
2. BABU GEORGE, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT PALLATH HOUSE, VADAKKEKKARA HOUSE, OZHUKUPARAKKAL P.O., KOLLAM DISTRICT.
3. INDIRAKUMARI AMMA, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT PUTHENVEEDU, EDAMULAKKAL P.O., KOLLAM-691 306.
4. K.SUDHAKARAN, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT THADATHIVILA HOUSE, NEDUNGOTTUKONAM, EDAMULAKKAL P.O., KOLLAM-691 306.
5. M.VASUDEVAN PILLAI, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT CHARUVILA PUTHENVEEDU, PERINGALLOOR, AYUR P.O., KOLLAM DISTRICT.
6. ABHILASH S., MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD, NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306, RESIDING AT ABU BHAVAN, PANACHAVILA, EDAMULAKKAL P.O., KOLLAM-691 306.
7. SHINEY ALEX, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT PANDAKASALA, OZHUKUPARAKKAL P.O., AYUR, KOLLAM DISTRICT.
8. M.S.SURESH KUMAR, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT SOMAVILASAM, PADINJATTINKARA, ANCHAL P.O., KOLLAM.
9. M.GOPINATHAN PILLAI, MEMBER, EDAMULAKKAL SERVICE CO-OPERATIVE BANK LTD. NO.2047, EDAMULAKKAL P.O., KOLLAM-691 306. RESIDING AT RAKESH BHAVAN, EDAMULAKKAL P.O., KOLLAM DISTRICT- 691 306.
10. ROOPESH UNNITHAN, INDIRA BHAVAN, PADINJATTINKARA, ANCHAL P.O., KOLLAM DISTRICT.

BY SENIOR ADVOCATE SRI.GEORGE POONTHOTTAM AND

ADV.SMT. NISHA GEORGE

RESPONDENTS/RESPONDENTS:

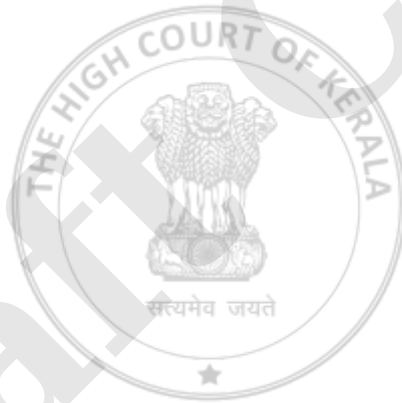
1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOLLAM-691 001.
2. SMT.SEENIYA, JUNIOR INSPECTOR,OFFICE OF THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,PUNALUR,KOLLAM DISTRICT-691 305.
3. SRI.MADHAVAN PILLAI R., MADHAVA MANDIRAM,EDAMULAKKAL P.O.,KOLLAM-691 306.
4. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT,DEPARTMENT OF CO-OPERATION,GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001.

BY STATE ATTORNEY SRI.N.MANOJ KUMAR FOR R1 & R4.

ADV.SRI.N.ANAND FOR R3.

This Writ Appeal having come up for orders along with connected cases on 07.04.2022, upon perusing the appeal memorandum and this court's order dated 02.08.2021, the court on the same day passed the following:

P.T.O.



C.R.

**P.B.SURESH KUMAR,
P.V.KUNHIKRISHNAN & C.S.SUDHA, JJ.**

Writ Appeal Nos.657, 798 & 1751 of 2020

Dated this the 7th day of April, 2022.

ORDER

P.B.Suresh Kumar, J. (For himself and on behalf of C.S.Sudha, J.)

These matters have come up before the Full Bench in the light of the order of reference dated 31.05.2021 in W.A.No.1751 of 2020, in terms of which a Division Bench of this Court entertained a doubt as to the correctness of the proposition of law laid down by another Division Bench in **State of Kerala v. Aravindakshan Nair**, 2010 (3) KLT 11 as regards the interpretation of Rule 66(5) of the Kerala Co-operative Societies Rules, 1969 (the Rules) framed under the Kerala Co-operative Societies Act, 1969 (the Act).

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2. As we do not propose to deal with individual cases on their merits, it is unnecessary to refer to the facts of each case. Suffice it to say that the facts necessary to consider the correctness of the proposition of law laid down in **Aravindakshan Nair** alone need to be stated.

3. Section 65(1) of the Act empowers the Registrar of Co-operative Societies (the Registrar) to hold an inquiry by himself or by a person authorised by him by order in writing, into the constitution, working and financial condition of any society, if he is satisfied that it is necessary to do so. Section 65(6) provides that if the Registrar, on completion of the inquiry, finds that there is any major defect in the constitution or working or financial condition of the society, he may initiate action in accordance with the provisions of Section 32 dealing with supersession of committees of societies registered under the Act. Section 66(2) provides that the Registrar may, on his own motion or on the application of a creditor of a society, inspect or direct any person authorised by him by order in writing in this behalf to inspect the books of the

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society. Section 68 provides, among others, that if it is found in the course of an inquiry or inspection that any person who is, or was entrusted with any organisation or management of a co-operative society or who is or has at any time been an officer or an employee of the society has made any payment contrary to the Act and the Rules or the bye-laws or has caused to any loss or damage in the assets of the society by breach of trust or wilful negligence or mismanagement or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, on his own motion, or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person. Section 68(2) provides that where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other property or any part thereof, with interest at such rate or to pay

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contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.

4. Rule 66 of the Rules deals with the procedure for the conduct of inquiry and inspection under Sections 65, 66 and 68 of the Act. Rule 66(5) provides that the person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order authorising the inquiry or inspection. The said sub-rule also provides that the report shall contain his findings and the reason therefore; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. The sub-rule also provides that the person authorised to conduct the inquiry or inspection shall specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire costs or a part thereof may be apportioned amongst the parties specified in Section 67 of the Act. The sub-rule further provides that the Registrar shall pass such orders thereon as may be considered just, after giving a reasonable

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opportunity of being heard to the society, person or persons concerned.

5. **Aravindakshan Nair** was a case where, on the basis of a report of inspection under Section 66, respondents 1 to 4 therein were surcharged under Section 68(2), and the order of surcharge was affirmed in appeal. In a writ petition instituted challenging the order of surcharge and the order affirming the same in appeal, a learned Single Judge set aside those orders on the ground that the parties who were surcharged were not heard on the report of inspection in terms of Rule 66(5) of the Rules. In an appeal by the State against the said decision, the Division Bench held that the hearing provided for in Rule 66(5) is only with regard to the apportionment of costs of inspection among the persons referred to in Section 67 of the Act. Paragraphs 5 and 6 of the judgment read thus:

“5. What is clear from the above is that cost of inspection could be demanded from the society concerned or creditor or member, as the case may be. Latter part of Rule 66(5) states that, in the report of inspection it is for the inspecting officer to recommend whether cost of inspection should be shared among the persons referred to in Section 67. Obviously, the Registrar is bound to take a decision on the recommendations

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contained in the report of the inspecting officer and in this regard Rule 66(5) specifically provides that orders to be passed against a person or society should be only after giving opportunity to the society or person concerned. The persons among whom the cost is to be shared contained in Section 67 are incorporated in Rule 66(5) and it is also made very clear that the adjudication by the Registrar under Rule 66(5) is only on Section 67. So much so, we are inclined to accept the argument of the Government Pleader that the principle contemplated under Rule 66(5) is only on orders imposing cost on the society and persons concerned referred to in Section 67 in terms of or in variance with the report of the inspecting officer contained in the inspection report. The contention raised by the counsel for the respondents is that orders to be passed by the Registrar after giving opportunity to the society or persons concerned referred to in Rule 66(5) applies to all against whom action is contemplated based on the report. However, this argument cannot be accepted because, wherever action is contemplated based on inspection report, whether it is the supersession of the management of the society under Section 32 or whether it is the surcharge on the officers or employees concerned under Section 68(2), separate opportunity of hearing specifically contemplated under the relevant sections has to be afforded. In fact, in this case, the action proposed against the respondents is based on surcharge under Section 68(2) and for this the section itself provides that, the Registrar shall pass order surcharging a person only after giving the person concerned an opportunity of being heard. This provision provides effective opportunity to file objections and hearing and if required, to adduce evidence by the persons

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concerned. The fact that action under Section 68(2) is initiated against any person concerned based on inspection report does not mean that the Registrar cannot give it up on being satisfied that there is no case is made out by him in the notice based on the report. In other words, in the course of adjudication under Section 68, it is upto the Registrar to accept the contention of the aggrieved persons and turn down or reject the findings in the inspection report. It is to be noted that, the opportunity referred to in Section 68(2) is specifically mentioned in Rule 66(7)(ii) of the Rules, which is a repetition of the opportunity referred to in Section 68 (2) of the Act.

6. In our view, Rule 66(5) does not contemplate any opportunity to be given to any society or any person, except with regard to the proposal of the Registrar for ordering cost of inspection, whether it be in terms of the report or in variation with the recommendation contained in the Report.”

As revealed from the extracted paragraphs, the argument advanced by the contesting respondents in the case was that the opportunity of hearing provided for in Rule 66(5) is for every action to be taken by the Registrar pursuant to the report and the said argument was repelled holding that wherever action is contemplated based on report of inspection, whether it is the supersession of the management of the society under Section 32 or surcharge on the officers or employees concerned

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under Section 68, separate opportunity of hearing is contemplated under the relevant provisions and therefore the opportunity of being heard provided for in the Rule can only be as regards apportionment of costs of inquiry or inspection. As noted, the correctness of the said view as regards the interpretation of Rule 66(5) of the Rules, is doubted in terms of the order of reference referred to in the opening paragraph.

6. Before examining the correctness of the decision in **Aravindakshan Nair**, it is worth referring to the reasons, on the basis of which the dictum in the said case was doubted. It is stated in the reference order that the difference that an opportunity of hearing before a tentative decision is taken on the report as to the further course of action would make to persons against whom an adverse report is filed, has not been considered in **Aravindakshan Nair** and that there is also no reason as to why the opportunity of hearing to the parties provided for in the Rule should be confined only as regards apportionment of costs. It is also stated in the reference order that the question whether it could be said that

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Rule 66(5) of the Rules provides for an opportunity of hearing only as regards apportionment of costs merely for the reason that notice is provided for under the relevant provisions before further action is taken on the report, has not been addressed in **Aravindakshan Nair**. The relevant portion of the reference order reads thus:

“5. It is true that in **Aravindakshan Nair** case (supra) a Division Bench of this Court held that Rule 66, more particularly Rule 66(5) of the KCS Rules did not contemplate affording of an opportunity of being heard to any society or any person, except in a situation where the report in the inquiry under section 65 of the KCS Act carries a recommendation for distribution of cost of inspection amongst the parties specified under Section 67 of the KCS Act. According to us, it requires a reconsideration. It is to be noted that recommendation for distribution of cost amongst the parties specified in Section 67 of the KCS Act cannot strictly be regarded as a drastic consequence arising from the report and, as the provision suggest, it is only a recommendation for recovering the cost of inspection from the specified parties. Is there any real difference in impact when an opportunity is given to the parties concerned before any tentative decision is taken on the report received after the inquiry under Section 65 of the Act and after a tentative decision is taken and then opportunity is provided. These aspects were not gone in detail and no specific reason is assigned as to why an opportunity should be confined only in cases where the report in the

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inquiry under Section 65 of the KCS Act carries a recommendation for distribution of cost of inspection amongst the parties specified under Section 67 of the KCS Act. Whether the statutory mandate for issuance of notice if proceedings are initiated based on such a report for supersession under Section 32 of the Act or for surcharging under Section 68 of the Act notice would be issued to the party concerned, be a reason for holding that Rule 66, more particularly Rule 66(5) of the KCS Rules did not contemplate affording of an opportunity of being heard to any society or any person, except in a situation where the report in the inquiry under Section 65 of the KCS Act carries a recommendation for distribution of cost of inspection amongst the parties specified under Section 67 of the KCS Act. It is true that the view taken in **Aravindakshan Nair** case was followed in the decisions in **Registrar of Co-operative Societies, Thiruvananthapuram v. N.P.Paulose and others** (ILR 2017 (3) Kerala 317) and in **Prabhakaran Pillai v. Asst. Registrar of Cooperative Societies (General)** (2017 (2) KLT 620).★

For all these reasons we are of the considered view that the decision in **Aravindakshan Nair case** (supra) requires reconsideration. Hence, place this matter before the Hon'ble the Chief Justice for appropriate orders."

The correctness of the decision in **Aravindakshan Nair** needs to be examined in the above background.

7. Heard the learned Senior Counsel Sri.George Poonthottam, Adv.Sri.B.S.Swathi Kumar and

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Adv.Sri.Liji.J.Vadakedom for the parties and the learned State Attorney Sri.N.Manoj Kumar.

8. The learned Senior Counsel Sri.George Poonthottam has made elaborate submissions to bring home his stand that **Aravindakshan Nair** did not correctly lay down the law. According to the learned counsel, if the provisions contained in Rule 66(5) is read and understood in its entirety, it could be seen beyond doubt that the hearing provided for in the last sentence in the Rule is for every action to be taken by the Registrar on the report of inquiry or inspection. The learned counsel has brought to our notice the decision rendered by a learned Single Judge of this Court in **Thiruvalla East Co-operative Bank Ltd. v. Joint Registrar**, 2009 (4) KLT 378 taking the aforesaid view, which was not taken note of by the Division Bench while rendering **Aravindakshan Nair**. The learned counsel has also submitted that even otherwise, insofar as the further action provided for under the Act on the report of inquiry or inspection, be it under Section 32 or under Section 68, being drastic in nature affecting the rights of parties, the

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Court should read into Rule 66(5) an opportunity of hearing to the affected persons before the report is acted upon. The learned counsel has relied on the decision of the Apex Court in **Managing Director, ECIL v. B.Karunakar**, (1993) 4 SCC 727, in support of the said proposition. Placing reliance on the various text books on Administrative Law, it was also contended by the learned counsel that the fair play in action adumbrated under the scheme of our Constitution also demands a hearing to the parties concerned on the acceptability of the report of inquiry or inspection, before it is acted upon.

9. Adv.B.S.Swathi Kumar supported the arguments advanced by the learned Senior Counsel Sri.George Poonthottam. In addition, the learned counsel has brought to our notice the decision of the Division Bench of this Court in W.A. Nos.2196 and 2198 of 2012, taking the position that the hearing provided for under Rule 66(5) is mandatory for every action to be taken by the Registrar pursuant to the report of inquiry or inspection.

10. Per contra, the learned State Attorney

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supported the view taken by the Division Bench in **Aravindakshan Nair** pointing out that the said decision is being followed consistently by this Court in identical and similar matters. The learned State Attorney has brought to our notice the various decisions of this Court which followed the dictum in **Aravindakshan Nair**. The learned State Attorney has however conceded that if an action is proposed based on the report of inquiry under Section 65 or inspection under Section 66, as the case may be, the parties concerned are entitled to be given a copy of the report concerned. On being required to State as to whether there exists any statutory provision obligating the Registrar to provide copy of the report of inquiry or inspection to the parties concerned who are facing proceedings under Section 32 or Section 68 of the Act based on the findings therein, the learned State Attorney submitted that Rule 24 of the Rules enables the persons concerned to obtain a copy of the report, if they choose to do so. The learned State Attorney has also relied on the decision of this Court in **Mukkom Service Co-operative Bank Ltd. v. Joint Registrar, 1998**

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(1) KLT 802, to bring home the point that if an application is preferred under Rule 24 for a copy of the report of inquiry or inspection with prescribed fee, the same will be given. The learned State Attorney has also submitted that the parties who are canvassing for the position that **Aravindakshan Nair** did not decide the law correctly, are in fact canvassing for the position that there shall be opportunity of hearing, not once, but twice, one at the stage of submission of the report of inquiry or inspection and the other at the stage of action, whether it be under Section 32 or Section 68. According to the learned State Attorney, principles of natural justice and fairness cannot be stretched to that extent. It was the submission of the learned State Attorney that when there is only one action, there cannot be more than one opportunity of hearing. The learned State Attorney has supported the view in **Aravindakshan Nair** placing reliance on the decision of the Apex Court in **Ashwin S. Mehta v. Union of India**, (2012) 1 SCC 83, also pointing out that while the requirement of giving reasonable opportunity of being heard to the party affected before an order is made by an

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administrative, quasi-judicial or judicial authority cannot be dispensed with, there can be exceptions to the said doctrine and the extent and its application cannot be put in a straight jacket formula. According to the learned State Attorney, the question whether the principle has to be applied, is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power, the nature of power conferred, the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected.

11. In reply to the submissions made by the learned State Attorney, Sri. George Poonthottam submitted that although the learned State Attorney has submitted in fairness that persons affected by the proceedings initiated under Section 32 or Section 68 based on the report of inquiry or inspection, are entitled to a copy of the report inasmuch as the report being one drawn without affording an opportunity of hearing to them, in reality, the report is never given when action is proposed under Section 32 or Section 68 based on the

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same. The learned counsel has reinforced the said submission pointing out that large number of writ petitions are being filed before this Court, for copies of the report after the parties are served with the notice in the proceedings initiated based on the same. It was pointed out by the learned counsel that Section 32 provides for action under that provision even without notice and in that event, the parties concerned will be in absolute darkness as to the findings against them in the inquiry or inspection until they are removed from office. In the context of the proceedings under Section 68, it was pointed out by the learned counsel that when an inquiry is ordered under Section 68(1), the officer delegated for the said purpose by the Registrar would never examine the correctness of the report of inquiry or inspection under Sections 65 or 66, as the case may be. The report of inquiry under Section 68(1), according to the learned counsel, is therefore drawn solely based on the findings in the report of inquiry or inspection, as if the same has become final. It was pointed out by the learned counsel that at the stage of Section 68(2), at times, the copy of the report under

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Section 68(1) will be served, but the copy of the report of inquiry or inspection based on which the report of inquiry under Section 68(1) is drawn, is never served. It was also submitted by the learned counsel that the submission made by the learned State Attorney that there was an opportunity of hearing in terms of Section 68(2) of the Act before an order of surcharge is passed may not also be correct, for what is provided for at that stage, going by the provisions contained in the statute, is only a hearing as regards the apportionment of the amount sought to be realised. To bring home the said point, the learned counsel has relied on the expression “require him to pay or restore the money or other property or any part thereof” used in Section 68(2). According to the learned counsel, if the view taken in **Aravindakshan Nair** is accepted, there will not be any fairness at all in the proceedings under Section 32 and Section 68 based on the report of inquiry or inspection.

12. We have anxiously considered the submissions made by the learned counsel for the parties on either side.

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13. The first and foremost question to be considered is the question raised as to the interpretation of Rule 66(5) of the Rules. Rule 66(5) reads thus:

“Rule 66(5).-The person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in clause (c) to sub-rule (1). The report shall invariably contain a latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary. The report shall also contain his findings and the reason therefore; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned amongst the parties specified in Section 67. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned.”

In order to understand the scope of Rule 66(5), it is necessary to refer to Section 67 of the Act as well, which reads thus:

“Section 67. Cost of inquiry or inspection:-Where an inquiry is held under Section 65, or an inspection is held under Section 66 on the application of a creditor, the Registrar may, by order, apportion the cost, or such portion of the cost, as he may deem fit, between the society to which the society concerned is affiliated, the society, the member or creditor

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demanding an enquiry or inspection, and the officers or former officers of the society;

Provided that:--

(a) no order of apportionment of the cost shall be made under this section unless the society or the person sought to be made liable to pay the costs thereunder has had a reasonable opportunity of being heard.

(b)The Registrar shall state in writing the grounds on which the costs are apportioned.”

As noted, while the parties who support the view taken in **Aravindakshan Nair** assert that the opportunity of being heard provided for in the last sentence of Rule 66(5) is only on the aspect of sharing the costs of inquiry or inspection in terms of Section 67 of the Act, the parties who oppose the said view assert that the opportunity of being heard provided for in the Rule is intended to apply for every action to be taken pursuant to the report of inquiry or inspection. As explicit from the Rule itself, the person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order authorising the inquiry or inspection. The Rule also mandates that the report shall contain his findings and the

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reason therefore, supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. The Rule further mandates that the officer conducting the inquiry or inspection shall also specify in the report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the said costs or a part thereof may be apportioned amongst the parties specified in Section 67. As noted, while the Rule insists only on findings on all points mentioned in the order authorising inquiry or inspection and the reasons therefore, supported by documentary or other evidence recorded by him, as regards the costs of inquiry or inspection, it insists a recommendation of the officer conducting the inquiry or inspection to the Registrar as to the manner in which the costs or part thereof may be apportioned amongst the parties specified in Section 67. It is in the sentence in the Rule succeeding the sentence dealing with the recommendation that it is provided that the Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity

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of being heard to the society, person or persons concerned. According to us, the word “thereon” in the last sentence of the Rule gives an answer to the question. Oxford Dictionary & Thesaurus defines the word “thereon” thus:

“on or following from the thing just mentioned”

Collins English Dictionary Online version also defines the word “thereon” on the same lines. If the word “thereon” in the last sentence of the provision is understood in the aforesaid fashion, it could be seen that the opportunity of being heard provided for in the last sentence of the Rule can only be with reference to the recommendation mentioned in the previous sentence of the Rule as regards the costs of the inquiry or inspection. It is all the more so since, as noted in **Aravindakshan Nair**, separate hearing is required to be given in terms of the relevant provisions of the Act before taking further action based on the report of inquiry or inspection, whether it be under Section 32 or Section 68, if the Registrar chooses to do so acting upon the report, except as regards the manner of apportionment of cost. Again, if the hearing provided for in the last sentence of the

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Rule was intended for every action, the expression “shall” ought not have been used therein, for there is no need for any hearing at all except on the recommendation made by the officer as regards the manner in which the cost of the inquiry/inspection is to be apportioned, if the Registrar does not propose to take any action based on the report. Again, the argument of the parties opposing the view taken in **Aravindakshan Nair** is that the hearing provided for in terms of the last sentence in the Rule is on the acceptability of the report of inspection or enquiry for initiating further action based on the same. Had that been the intention, we do not find any reason why that aspect should not have been clarified in the Rule.

14. The difference that an opportunity of hearing before a tentative decision is taken on the report as to the further course of action would make to persons against whom an adverse report is filed, according to us, may not be of any relevance in the matter of interpreting Rule 66(5), for if the rule does not provide for the same, such a hearing cannot be

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claimed. Likewise, the question whether there exists any reason for confining the opportunity of being heard provided for in the Rule to the aspect of apportionment of costs of inquiry or inspection also, according to us, loses its relevance in the light of the finding in the preceding paragraph that the Rule provides for an opportunity of being heard only on the aspect of apportionment of costs. Again, in the light of the various reasons stated in the preceding paragraph, the question whether an interpretation given therein to Rule 66(5) could be given to the said Rule for the reason that notice is provided for under the relevant provisions before further action is taken on the report, may not also be of any relevance in the context of examining the correctness of the decision in **Aravindakshan Nair**. In short, we do not find any reason to doubt the correctness of the decision in **Aravindakshan Nair** for the reasons stated in the reference order.

15. True, it is seen that a contrary view has been taken by a learned Single Judge in **Thiruvalla East Co-operative Bank Ltd** and the said decision has not been taken

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note of in **Aravindakshan Nair** and the view in the said case has been followed by the very same learned Judge while sitting in Division in W.A.Nos.2196 and 2198 of 2012. A reading of the judgment in W.A.Nos.2196 and 2198 of 2012 would show that the learned Judges in the Bench were proceeding as if the opportunity of being heard provided for in Rule 66(5) applies to every action to be taken by the Registrar pursuant to the report of inquiry or inspection without considering the scope of the Rule. But, in **Thiruvalla East Co-operative Bank Ltd.**, the learned Judge has considered the scope of the Rule. Paragraph 12 of the judgment in the said case reads thus:

“12. Counsel for the 3rd respondent contended that the hearing contemplated under R.66(5) of the Rules is only on the recommendation of the Registrar about the manner in which the cost of the enquiry or a part thereof is to be apportioned. In my view, there is no warrant for such a restricted reading of this provision. As is evident from the Rules, apportionment of costs can only be in respect of an enquiry held at the instance of a creditor. In such a case, S.67 of the Act contains provision for apportionment and also for hearing, before anybody is made liable for costs. In such a situation, there is no necessity for any further provision of the Rules and this also strengthen the view that the hearing provided in R.66(5) of the Rules is not

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confined to apportionment of costs. For these reasons, I am not inclined to accept this contention of the counsel for the respondents.”

As evident from the extracted paragraph, the view taken is that since Section 67 provides for apportionment of costs after hearing the parties concerned, there is no necessity for a hearing on the said aspect in terms of Rule 66(5) as well and the opportunity of being heard provided for in the Rule is, therefore, only in respect of matters other than the matter relating to apportionment of costs. We are unable to agree. Section 67, of course, provides that where an inquiry is held under Section 65 or inspection is held under Section 66 on the application of a creditor, the Registrar may, by order, apportion the costs or such portion of the costs, as he may deem fit, between the society to which the society concerned is affiliated, the society, the member or creditor demanding an inquiry or inspection, and the officers or former officers of the society. But, what is provided for in Rule 66(5) is a recommendation by the officer authorised to conduct the inquiry or inspection as regards the manner in which the costs or part thereof is to be

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apportioned among the parties mentioned in Section 67. In other words, the opportunity of hearing provided for under the Rule can only be with regard to the recommendation made by the officer conducting the inquiry or inspection as regards the manner in which the costs or part thereof of inquiry or inspection is to be apportioned amongst the parties mentioned in Section 67. Although it would appear that the manner in which the costs of inquiry or inspection is to be apportioned amongst the parties mentioned in Section 67 would fall within the scope of power of the Registrar under that provision, since Rule 66(5) provides for a recommendation as regards the manner of apportionment of costs also and the Rule being supplementary to the statutory provision, a harmonious construction of the two provisions would only lead to the inference that the power under Section 67 is one to be exercised in the manner provided for in the Rules.

16. Let us now consider the contention of the learned Senior Counsel Sri.George Poonthottam that insofar as the further actions provided for under the Act pursuant to the

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report of inquiry or inspection is either the supersession of the committee of the Society in terms of Section 32 or surcharge against the members of the Managing Committee and others in terms of Section 68 involving drastic consequences as far as the parties are concerned, in the absence of any provision in the Act or Rules for providing to the parties concerned a copy of the report of inquiry or inspection and for hearing them on the acceptability of the same, an opportunity of hearing should be read into the statute before the report is acted upon. There are two approaches possible to deal with this contention. One is to hold that the provisions of the Act are themselves unconstitutional as they do not provide an opportunity of hearing to the affected parties as to the acceptability of the report of inquiry or inspection, and the other is to hold that as there is nothing in the statutory provisions which debar the application of the principles of natural justice while the authorities exercise the statutory powers under the Act and as the principles of natural justice would apply unless the statutory provisions point to the contrary, it is obligatory for the statutory

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authorities to afford an opportunity of being heard to the parties concerned before an action affecting their rights adversely is taken. Insofar as the parties who oppose the view taken in **Aravindakshan Nair** do not have a case that the provisions in the Act are unconstitutional inasmuch as they do not provide an opportunity of hearing for the affected parties on the acceptability or otherwise of the report of inquiry or inspection, what was pressed into service by them by raising the above contention was the second approach mentioned above. The said approach could be adopted and "*audi alteram partem*" rule could be imported into a statute in a situation of this nature only if the nature of the statutory duty imposed itself necessarily implies an obligation to hear before deciding on an issue. The said aspect has been clarified by the Apex Court in **Government of Mysore v. J.V.Bhat**, (1975) 1 SCC 110. Paragraph 8 of the judgment in the said case reads thus:

"We think that the Electricity Commissioners' case (supra) which was followed by this Court in Khushaldas S. Advani's case (supra), was not really a departure from the general principle laid down in Cooper v. The Board of Works for the Wandsworth District (supra), but, it was an attempt to

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formulate the conditions under which the general principle laid down thereby Erle, C.J., who quoted the Biblical story of how even God Himself had given Adam an opportunity of answering why he had eaten the forbidden fruit before, expelling him from Paradies was applicable in the circumstances of an increasingly complex economic and social order whose problems compelled the emergence of the welfare socialistic State with its many organs armed with extensive powers. Courts attempted, in the interests of justice, where its imperative demands were not met, to control administrative action by assimilating it to judicial action over which Courts could exercise supervision. In later cases, emphasis was more on the needs of justice and fairness rather than upon the distinction between the judicial and administrative action. Administrative action had, however, to be given free scope within its legitimate sphere without jeopardizing rights of individuals affected. Policies and schemes framed under statutory provisions, which affected rights of individuals could impose the obligations upon the authorities taking what were essentially administrative decisions at points at which they begin to impinge on specific individual rights. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what its just and fair exercise required in the context of rights affected." (underline supplied)

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The question therefore is as to whether the nature of the statutory duty imposed on the Registrar implies necessarily an obligation to afford to the parties concerned an opportunity of being heard on the acceptability or otherwise of the report of inquiry or inspection before a tentative decision is taken as to the further action pursuant to the report.

17. As noted, Section 66 of the Act empowers the Registrar, on his own motion or on the application of a creditor of a society, to inspect or direct any person authorised by him by order in writing in its behalf to inspect the books of the society. Similarly, Section 65 empowers the Registrar, on his own motion or on any of the circumstances mentioned in clauses (b) to (f) of sub-section (1) of Section 65, to order an inquiry by himself or by a person authorised by an order in writing into the constitution, working and financial condition of the society, if he is satisfied that it is necessary to do so. Section 65 also empowers the Registrar to supersede the Managing Committee of a society in accordance with the provisions contained in Section 32, if any major defect in the

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constitution or working or financial condition of the society is noticed in an inquiry under Section 65(1). Section 68 provides that if in the course of an inquiry or inspection it is found that any person who is or was entrusted with any organisation or management of co-operative societies or who is or has at any time been an officer or an employee of the society has made any payment contrary to the Act or the Rules or the bye-laws or has caused to any loss or damage in the assets of the society by breach of trust or wilful negligence or mismanagement or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, on his own motion, or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person. Section 68(2) provides that where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or

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other property or any part thereof, with interest at such rate or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable. The aforesaid provisions would indicate that the Registrar would be competent to supersede the Managing Committee of the society under Section 32 of the Act or surcharge the members of the Managing Committee or others under Section 68 based on the report of the inquiry under Section 65 or inspection under Section 66. No doubt, supersession of the Managing Committee of a society and surcharge of the members of the Managing Committee and others are drastic measures involving adverse civil consequence as far as the parties are concerned which include infraction of property, personal rights and material deprivation. But it is seen that an opportunity of hearing is provided for under Section 32 of the Act before the Managing Committee of a society is superseded under that provision except in exceptional circumstances referred to therein. Similarly, a further inquiry under Section 68(1) of the Act is provided for, based on the report of inquiry under Section

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65 or inspection under Section 66 and an opportunity of hearing is required to be given in terms of Section 68(2) before a person is called upon to repay or restore the money or other property as found recoverable from him. Rule 66(7)(ii) also provides that on getting the report of inquiry or inspection, as the case may be, the Registrar shall give the person or persons concerned an opportunity of hearing before issuing an order of surcharge. In other words, the Act contemplates an opportunity of hearing to all affected persons before action is taken on the report of inquiry or inspection, whether it be under Section 32 or under Section 68, except in situations provided for in Section 32 where the Registrar is empowered to dispense with the opportunity of hearing. Section 32 empowers the Registrar to dispense with the opportunity of hearing before a committee is superseded only in cases where the Registrar is of the opinion that it is not reasonably practical to do so. The relevant provision contained in sub-section (3) of Section 32 reads thus:

“Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the

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Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months-

(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.”

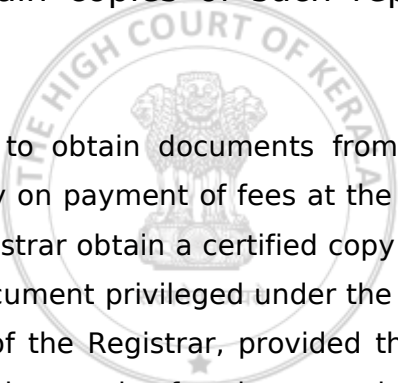
The exceptional situation provided for in sub-section (3) of Section 32 being one of the exceptions to the rule *audi alteram partem*, the scheme of the Act can certainly be understood as one providing for an opportunity of hearing to the persons concerned before an action is taken on the report of inquiry or inspection. True, the statute does not expressly provide for an opportunity of hearing to parties on the acceptability of the report of inquiry or inspection before the opportunity of hearing provided for under Sections 32 and 68. As noted, while the requirement of giving reasonable opportunity of being heard to

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the party affected before an order is made by an administrative or a quasi-judicial or judicial authority cannot be dispensed with, there can be exceptions to the said requirement and the extent and its application cannot be put in a straight jacket formula. In other words, the question whether the principle has to be applied and if so, to what extent and at what stage it is to be done etc. are matters to be decided bearing in mind the express language and the basic scheme of the provision conferring the power, the nature of power conferred, the purpose for which the power is conferred, and the final effect of the exercise of that power on the rights of the person affected. As noted, insofar as proceedings under Sections 32 and 68 are contemplated and provided for under the Act based on the report of inquiry or inspection, it is obligatory on the part of the Registrar initiating steps under Section 32 or Section 68, to give copy of the report, on the basis of which the action is proposed, to the parties concerned. This proposition has not been disputed by the learned State Attorney, although there was dispute between the counsel appearing for the parties on either

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side as to whether such reports are in reality being served to the parties concerned. Similarly, the fact that there is no provision in the Act and Rules obligating the Registrar under Sections 32 and 68 to provide copy of report of inquiry or inspection is also not disputed by the learned State Attorney. The only argument put forward by the State Attorney in this context is Rule 24 of the Rules which enables the parties concerned to obtain copies of such reports. Rule 24 of the Rules reads thus:



“24. Right to obtain documents from Registrar's Office:-(1) Any person may on payment of fees at the rates as may be prescribed by the Registrar obtain a certified copy of any public document not being a document privileged under the Indian Evidence Act, filed in the office of the Registrar, provided that no such person shall be entitled to the supply of such copy unless he satisfies the Registrar that he requires it to seek redress in any matter in which he is aggrieved or for any other lawful purpose.

(2) The application fee shall be paid in the shape of Court Fee Stamps.

(3) Along with every application for copies, copying sheets of the prescribed value for preparing the copies shall be supplied.

Note:- Each statement, account, report, petition, order or

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the like shall be treated as a separate document and shall be written on separate copying stamp paper.

(4) Copies must be transcribed only on the front page of every copying paper.”

A reading of the extracted Rule would only show that any person may on payment of fees at the rates as may be prescribed, obtain a certified copy of any public document filed in the office of the Registrar. Even the said provision clarifies that no such person shall be entitled to the supply of such copies unless he satisfies the Registrar that he requires it to seek redress in any matter in which he is aggrieved or for any other lawful purpose. In other words, the Rule does not confer an absolute right on an applicant under the same to claim copies of the documents filed in the office of the Registrar. The said Rule, according to us, does not satisfy the statutory obligation on the part of the Registrar under the Act to provide a copy of the report of inquiry or inspection before initiating action under Section 32 or Section 68, as the case may be, on the basis of the findings in the report of inquiry or inspection. Needless to say that if the committee of a society is superseded

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under Section 32 of the Act based on the factual findings rendered in a report of inquiry or inspection without providing to the party concerned a copy of the report of inquiry or inspection, the order of supersession would be plainly illegal. Similarly, if any person mentioned in Section 68(1) of the Act is surcharged based on the finding in an order of inquiry under Section 65 or inspection under Section 66 without giving to him a copy of the report of inquiry or inspection as also the report of inquiry under Section 68(1), the surcharge order would also be illegal. The argument advanced by the learned State Attorney that the party concerned, if chooses to obtain copy of the report of inquiry or inspection, he will have to obtain it under Rule 24 of the Rules cannot be accepted. But that does not mean that the statute contemplates an implied obligation on the part of the Registrar to afford an opportunity of hearing as to the acceptability or otherwise of the report of inspection before initiating proceedings pursuant to the same whether it be under Section 32 or under Section 68 of the Act. The scheme of the Act appears to us to be that the correctness or otherwise of the

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report of inquiry or inspection, shall be canvassed by the parties concerned in the hearing provided to them on the further action taken pursuant to the report, for the hearing would not serve any purpose if the Registrar does not propose any action based on the report. Even if the Registrar proposes any action, be it under Sections 32 or 68, the said action being one on the basis of the report of inquiry or inspection, the essential purpose of the opportunity of hearing in the proceedings initiated for taking action being to enable the parties concerned to canvass for the correctness of the findings in the report of inquiry or inspection, there is no need for a hearing before a tentative decision is taken on the action based on the report. Needless to say, it is unnecessary to have two hearings for the same purpose. In other words, we are of the view that the nature of the statutory duty imposed on the authorities under the Act does not imply any obligation to hear the parties concerned on the acceptability or otherwise of the report of inquiry or inspection as the case may be, before a tentative decision is taken on the further action on the report.

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18. What remains to be considered is the argument advanced by Sri.George Poonthottam, the learned Senior Counsel based on the decision of the Apex Court in **B.Karunakar**. The basic question considered by the Constitution Bench in the said case was whether the report of the inquiry officer, who is appointed by the disciplinary authority to hold an inquiry into the charges against a delinquent employee, is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The question was considered in the context of the provision contained in Article 311(2) of the Constitution that no civil servant or a person holding a civil post shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In terms of the Constitution (Forty-second Amendment) Act, 1976, it was

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clarified that it shall not be necessary to give the employee an opportunity of making representation on the penalty proposed. The said amendment gave rise to a controversy as to when the inquiry officer is other than the disciplinary authority, whether the employee is entitled to a copy of the findings recorded by him, before the disciplinary authority applies its mind to the findings and evidence recorded, or whether the employee is entitled to the copy of the findings of the inquiry officer only at the second stage namely, when the disciplinary authority had arrived at its conclusions and proposed the penalty. The Apex Court has held in the said case that what is dispensed with in terms of the amendment to the Constitution referred to above, is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the inquiry officer. The judgment takes note of the fact that before the Forty-second Amendment to the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage namely, the stage of considering the penalty and all that has happened after the

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Forty-second Amendment to the Constitution is to advance the point of time at which the representation of the employee against the officer's report would be considered. In other words, the view expressed by the Apex Court that insofar as it was not obligatory any more for the competent authority after the Forty-second Amendment of the Constitution to afford an opportunity of making representation on the penalty proposed, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to the guilt or innocence of the employee, for in the absence of any provision for the employee to be heard on the penalty to be imposed on him, if he is not heard before any decision is taken on the penalty, the provision would be futile. Consequently, the question was answered holding that when the inquiry officer is not the disciplinary authority, the delinquent employee has the right to receive a copy of the inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee as regards the charges levelled

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against him and that a denial of the inquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of the reasonable opportunity to the employee to prove his innocence and thus, is a breach of the principles of natural justice. The dictum in this case, according to us, has absolutely no bearing on the facts of the case on hand. Even if the inquiry and inspection provided for under Sections 65 and 66 of the Act is equated with the enquiry provided for under Article 311(2) of the Constitution on the charges framed against an employee, the position in the cases on hand would be similar only to the position prior to the Constitution (Forty-second Amendment) Act, for prior to the said constitution amendment, the right to raise objections against the report of inquiry on the charges was deferred till the stage of considering the penalty and the said procedure was not found fault with by the Apex Court. In other words, the said decision also fortifies the view which we are taking in this matter on the question.

In the light of the discussion aforesaid, we affirm the

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dictum laid down in **Aravindakshan Nair.**

Sd/-

P.B.SURESH KUMAR, JUDGE

Sd/-

C.S.SUDHA, JUDGE

YKB



Kunhikrishnan, J. (Dissenting)

I have gone through the order authored by my brother Justice P.B. Suresh Kumar. With great respect, I am not in a position to agree with the finding of my learned brother, and therefore I am passing a separate order with my own reasoning. My brother Justice P.B. Suresh Kumar narrated the

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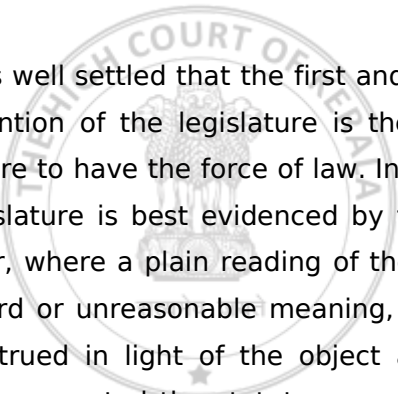
facts and the points for the decision in detail in his order. The contentions raised by the parties were also narrated in detail in the above order. Therefore, I am not repeating the same in this order. I will directly go to the point referred to the Full Bench in this case. As per the reference order dated 31.05.2021, the Division Bench is of the opinion that the decision in **State of Kerala v. Aravindakshan Nair**, 2010 (3) KLT 11 requires reconsideration.

2. The short point to be decided is whether the opportunity of being heard provided for in the last sentence of Rule 66(5) of the Kerala Co-operative Societies Rules, 1969 (the Rule) is only on the aspect of sharing the cost of inquiry or inspection in terms of Section 67 of the Kerala Co-operative Societies Act, 1969 (the Act) or whether the opportunity of being heard provided for in the Rule is intended to apply every action to be taken pursuant to the report of inquiry or inspection. For deciding the same, the interpretation of Rule 66(5) of the Rules is necessary. It is a settled position that, on a plain reading of a provision in a statute, if there is no

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ambiguity, then there is no question of interpreting the provision of that statute. An interpretation which would negate the intention of the legislature and would frustrate the statutory provision can not be accepted by a Court of Law (see **Gurpreet Singh Bhullar v. Union of India**, (2006) 3 SCC 758).

3. In **Council of Architecture v. Mukesh Goyal and Others**, AIR 2020 SC 1736, the Apex Court observed like this:



“28. It is well settled that the first and best method of determining the intention of the legislature is the very words chosen by the legislature to have the force of law. In other words, the intention of the legislature is best evidenced by the text of the statute itself. However, where a plain reading of the text of the statute leads to an absurd or unreasonable meaning, the text of the statute must be construed in light of the object and purpose with which the legislature enacted the statute as a whole. Where it is contended that a particular interpretation would lead to defeating the very object of a legislation, such an interpretative outcome would clearly be absurd or unreasonable.”

4. From the above decision, it is clear that the first and best method of determining the intention of the legislature is the very words chosen by the legislature to have the force of law. In other words, the intention of the legislature

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is best evidenced by the text of the statute itself. The Apex Court also observed that, where a plain reading of the text of the statute leads to an absurd or unreasonable meaning, the text of the statute must be construed in the light of the object and purpose with which the legislature enacted the statute as a whole. Keeping in mind the above principle, this Court has to consider Rule 66(5) of the Rules.

5. Rule 66 of the Rules says about the procedure for the conduct of inquiry and inspection. Section 65 of the Act deals with the inquiry by the Registrar and Section 66 of the Act deals with the supervision and inspection. As per Section 65, the inquiry is to be conducted by the Registrar. But a reading of Section 65(1) of the Act itself will show that the Registrar may hold an inquiry by himself or by a person authorized by order in writing. Similarly, Section 66 of the Act deals with supervision and inspection. As per Section 66, the Registrar shall supervise or cause to be supervised by a person authorised by him by general or special order in writing in this behalf, the working of every society as frequently as he may consider necessary. As

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per Section 66(2) of the Act, the Registrar may, on his own motion, or on the application of a creditor of a society, inspect or direct any person authorized by him, by an order in writing in this behalf, to inspect the books of the society. Therefore it is clear from Section 65 and 66 of the Act that the inquiry, supervision and inspection can be conducted either by the Registrar or by a person authorised by the Registrar. If the Registrar is authorising a person for an inquiry under Section 65 or inspection under Section 66 of the Act, certain procedures are prescribed in Rule 66 of the Rules. Rule 66 of the Rules is already quoted by my brother Justice P.B.Suresh Kumar in his separate order. But for convenience, Clauses (1) to (5) of Rule 66 of the Rules is extracted. Clauses (6) and (7) of Rule 66 is not relevant for deciding this case and therefore, I am not extracting the same.

“66. Procedure for the conduct of inquiry and inspection:-

(1)(i) An order authorising inquiry under Section 65 or inspection under Section 66 shall among other things, contain the following:

- (a) the name of the society whose affairs are to be inquired into or whose books of accounts

are to be inspected:

(b) the name of the person authorised to conduct the inquiry or inspection;

(c) in specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry or inspection is to be completed and report submitted to the Registrar;

(d) costs of inquiry or inspection;

(e) any other matter relating or pertaining to the inquiry or inspection.

(2) A copy of every order authorising inquiry under Section 65 or inspection under Section 66 shall be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. A copy of the order shall also be made available to the Central Society or societies, to which the society in respect of which the order is issued, is affiliated;

(3) If the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (1)(c), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection, and the Registrar, if he is satisfied, may grant such extension of time as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust to such other person as he deems fit.

(4) On receipt of the orders referred to in sub-rule (1) the person authorised to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts and other documents in the possession of the society or any of its officers, members, agents or servants and obtain such information or explanation from any such

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officer, members, agents or servants of the society in regard to the transaction and working of the society as he deems necessary for the conduct of such inquiry or inspection.

(5) The person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in clause (c) to sub-rule (1). The report shall invariably contain a latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary. The report shall also contain his findings and the reason therefor; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned amongst the parties specified in Section 67. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned."

6. A reading of Rule 66(1) will show about the details that is necessary in an order, authorising inquiry under Section 65 or inspection under Section 66. Clauses (a) to (e) mentioned in Rule 66(1) are the things that are necessary in an order authorising inquiry under Section 65 or inspection under Section 66. Rules 66(2) of the Rules says that a copy of every order authorising inquiry under Section 65 or inspection under

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Section 66 shall be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. Similarly, Rule 66(3) also will show that if the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (1)(c), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection, and the Registrar, if he is satisfied, may grant such extension of time as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust to such other person as he deems fit. Rule 66(4) says about the actions that are to be taken by the person authorised to conduct the inquiry or inspection as per sub-rule (1). Therefore, it is clear that Rule 66 of the Rules is applicable only in a situation where the Registrar is not conducting the inquiry under Section 65 or inspection under Section 66. If the Registrar, himself, is doing the inquiry under Section 65, Rule 66 has no application. Similarly, if the Registrar, himself, is doing the supervision and

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inspection under Section 66, Rule 66 has no application. If the inquiry under Section 65 or inspection under Section 66 is conducted by a person authorised by the Registrar, the procedure for the conduct of inquiry and inspection is narrated in Rule 66. As mentioned earlier, Clauses (1) to (4) of Rule 66 of the Rules deals with the preliminary stages and the actions to be taken by the officer authorised by the Registrar to conduct the inquiry as per Section 65 or to conduct the inspection under Section 66. After the preliminary stage mentioned in Clauses 1 to 4 of Rule 66, as per Rule 66(5), the person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in Clause (c) of sub-rule (1) of Rule 66. The other contents that are necessary in the report to be submitted to the Registrar by the person authorised is also narrated in Rule 66(5) and the same are extracted hereunder.

“(i) The report shall invariably contain a latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary.

(ii) The report shall also contain his findings and reason

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therefore; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection.

(iii) He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned amongst the parties specified in Section 67."

7. Therefore, as per Rule 66(5), the person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in Clause (c) to sub-rule (1) of Rule 66 and the report shall also contain the above three details as per Rule 66(5). Thereafter, it is mentioned in Rule 66(5) that "the Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned". The point to be considered in this case is whether this opportunity of being heard is applicable only to Clause (iii) extracted above or whether the same is applicable to other actions taken pursuant to the inquiry or inspection.

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8. A plain reading of Rule 66(5) will show that there is no ambiguity at all for an inference that the opportunity of being heard to be given by the Registrar is applicable for all the actions taken pursuant to the report of inquiry or inspection conducted by the authorised person. First of all, in Rule 66(5), there is full stop after all the sentences. The first sentence of Rule 66(5) says that, the person authorised to conduct inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in Clause (c) to sub-rule (1). The second sentence says that the said report shall invariably contain the latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary. The third sentence in Rule 66(5) says that the report shall also contain the findings of the person authorised to conduct the inquiry or inspection and the reason thereof supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. The fourth sentence says that the person authorised to conduct the inquiry shall also specify in his report the costs of the

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inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned amongst the parties mentioned in Section 67. After each of these sentence in Rule 66(5), there is a full stop. If the intention of the legislature was to give an opportunity of hearing only for the apportionment of cost, a full stop is unnecessary in that sentence, and the 'opportunity of hearing' can be used in that sentence itself without much difficulty. This Court need not guess the intention in a statute by interpreting the same if, on a plain reading, there is no ambiguity. When Rule 66(5) says that the report shall contain the findings of the person authorised to conduct the inquiry and the reason thereof supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection, the Registrar shall pass an order on it after giving an opportunity of hearing as per Section 66(5). As per Section 65, the inquiry is to be conducted by the Registrar. As per Section 66, the supervision and inspection are also to be conducted by the Registrar. But, the Registrar can authorise a person to

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conduct the inquiry as per Section 65 of the Act and also inspection under Section 66 by a person authorised by him. Therefore, if the Registrar delegates his power to another person, Rule 66 of the Rules will come into play, and in such situation, the person authorised to conduct the inquiry or inspection should submit a report to the Registrar which should contain the cost apportionment and thereafter the Registrar shall pass such orders thereon after giving a reasonable opportunity of being heard to the society, person or persons concerned. Therefore, from a reading of the Rule 66(5), there is absolutely no ambiguity and the only possible conclusion possible is that, the Registrar should pass such orders on the report submitted by the person authorised after giving a reasonable opportunity of being heard to the society, person or persons concerned.

9. As observed earlier, when the words in the statute are clear, the Court need not understand the provisions in any other fashion and the Court has to interpret and accept the Rule as such. If the intention of the legislature was to give

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an opportunity of hearing only for the apportionment of cost as mentioned in Rule 66(5), the wordings in Rule 66(5) would have been in another manner. This Court need not interpret the Rules to the effect that the opportunity of being heard should be restricted only regarding the cost apportionment.

10. Moreover, what is the problem or difficulty in giving an opportunity of hearing to the affected parties by the Registrar, when he himself is not conducting the inquiry? Section 65 and Section 66 of the Act says that the Registrar should conduct the inquiry or inspection. But as per the above sections, the Registrar is given power to authorise another person to conduct the inquiry. In such situation, Rule 66(5) of the Rules says that the Registrar shall pass such orders thereon as may be considered, just after giving a reasonable opportunity of being heard to the society, person or persons concerned. It is an additional duty given to the Registrar in situations where another person is authorised by the Registrar to conduct the inquiry or inspection. Therefore, no other interpretation is possible except the conclusion that the

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reasonable opportunity of being heard to the society, person or persons concerned is applicable not only with respect to the cost apportionment mentioned in Rule 66(5), but also to the other actions mentioned in Rule 66(5). The Registrar shall pass such orders thereon on those actions taken by the authorised persons is the only meaning that is possible to Rule 66(5). In **Aravindakshan Nair's** case (supra), the Division Bench of this Court held that hearing provided for in Rule 66 is only with regard to the apportionment of the costs of inspection among the persons referred to in Section 67 of the Act. Para Nos. 5 and 6 of the judgment in **Aravinkakshan Nair's** case (supra) is extracted hereunder :

“5. What is clear from the above is that cost of inspection could be demanded from the society concerned or creditor or member, as the case may be. Latter part of R.66(5) states that, in the report of inspection it is for the inspecting officer to recommend whether cost of inspection should be shared among the persons referred to in S.67. Obviously, the Registrar is bound to take a decision on the recommendations contained in the report of the inspecting officer and in this regard R.66(5) specifically provides that orders to be passed against a person or society should be only after giving opportunity to the society or person concerned. The persons among whom the cost is to be shared contained in S.67 are incorporated in R.66(5) and it is also made very clear that the

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adjudication by the Registrar under R.66(5) is only on S.67. So much so, we are inclined to accept the argument of the Government Pleader that the principle contemplated under R.66(5) is only on orders imposing cost on the society and persons concerned referred to in S.67 in terms of or in variance with the report of the inspecting officer contained in the inspection report. The contention raised by the counsel for the respondents is that orders to be passed by the Registrar after giving opportunity to the society or persons concerned referred to in R.66(5) applies to all against whom action is contemplated based on the report. However, this argument cannot be accepted because, wherever action is contemplated based on inspection report, whether it is the supersession of the management of the society under S.32 or whether it is the surcharge on the officers or employees concerned under S.68(2), separate opportunity of hearing specifically contemplated under the relevant sections has to be afforded. In fact, in this case, the action proposed against the respondents is based on surcharge under S.68(2) and for this the section itself provides that, the Registrar shall pass order surcharging a person only after giving the person concerned an opportunity of being heard. This provision provides effective opportunity to file objections and hearing and if required, to adduce evidence by the persons concerned. The fact that action under S.68(2) is initiated against any person concerned based on inspection report does not mean that the Registrar cannot give it up on being satisfied that there is no case is made out by him in the notice based on the report. In other words, in the course of adjudication under S.68, it is upto the Registrar to accept the contention of the aggrieved persons and turn down or reject the findings in the inspection report. It is to be noted that, the opportunity referred to in S.68(2) is specifically mentioned in R.66(7)(ii) of the Rules, which is a repetition of the opportunity referred to in S.68(2) of the Act.

6. In our view, R.66(5) does not contemplate any opportunity

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to be given to any society or any person, except with regard to the proposal of the Registrar for ordering cost of inspection, whether it be in terms of the report or in variation with the recommendation contained in the report."

11. I am not in a position to agree with the above observation in the light of the discussion made in the preceding paragraphs. Moreover, I also enquired in the High Court Library to verify, whether there is any official Malayalam version of the Kerala Co-operative Society Rules 1969. But, it was informed by the High Court Library that there is no official Malayalam version of the above Rule. But Adv.K.Narayana Kurup (who was subsequently elevated as a Judge of this Court) published a Malayalam version of the Co-operative societies Rules in the year 1975. The Malayalam version of Rule 66(5) as quoted in the book published by Adv. K.Narayana Kurup on 15.9.1975 is extracted hereunder :

“അമ്പലമുക്ക് വിചാരണയോ പരിശോധനയോ നടത്തുന്നതിനായികാരുക്കുത്തപ്പെട്ട ആൾ 1-) ഉപപട്ടം (സി) എന്ന ഖണ്ഡത്തിൽ പരാമർശിക്കുന്ന ഉത്തരവിൽ പറയുന്ന എല്ലാം വിഷയങ്ങളുമടങ്ങിയ തന്റെ റിപ്പോർട്ട് രജിസ്ട്രാർക്ക് സമർപ്പിക്കേണ്ടതാണ് റിപ്പോർട്ടിൽ സംഘത്തിന്റെ ഏറ്റവും ഒടുവിലത്തെ മെമ്പർസ് ഷീറ്റും കമ്മിറ്റി അംഗങ്ങളുടെയും സെക്രട്ടറിയുടെയും ഏറ്റവും ഒടുവിൽ അറിയാവുന്ന മേൽവിലാസങ്ങളും എല്ലായ്പ്പോഴും

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അങ്ങിയിരിക്കേണ്ടതാണ് റിപ്പോർട്ടിൽ അന്വേഷണ വിചാരണയോ പരിശോധനയോ ചെയ്ത സമയം താൻ രേഖപ്പെടുത്തിയ രേഖാമൂലമോ അല്ലാത്തതോ ആയ തെളിവുകളാൽ പിന്തുണയ്ക്കുന്ന തന്റെ തീരുമാനങ്ങളും അപയ്ക്കുള്ള കാരണങ്ങളും കൂടി അങ്ങിയിരിക്കേണ്ടതാണ് അദ്ദേഹം അന്വേഷണ വിചാരണയുടെയോ പരിശോധനയുടെയോ ചെലവുകൾ കാരണസഹിതം തന്റെ റിപ്പോർട്ടിൽ പ്രത്യേകം പറയേണ്ടതും 67-ാം വകുപ്പിൽ പ്രത്യേകം പറയുന്ന കക്ഷികളുടെയിടയിൽ മൊത്തച്ചലവോ അതിന്റെ ഭാഗമോ ഏതു രീതിയിൽ വിഭജിക്കണമെന്നു രജിസ്ട്രാറോട് ശുപാർശ ചെയ്യേണ്ടതുമാണ് രജിസ്ട്രാർ ബന്ധപ്പെട്ട സംഘത്തിനോ അതിനോ അതുകൾക്കെ പറയാനുള്ളതെ പറയുവാൻ ന്യായമായ അവസരം കൊടുത്തതിനുശേഷം ന്യായമെന്ന് കരുതാവുന്ന ഉത്തരവുകൾ പാസ്സാക്കേണ്ടതാണ്”

12. A reading of the above Malayalam version also will not give any inference that the opportunity of hearing mentioned in Rule 66(5) is applicable only for the cost apportionment. This only confirms the position that the opportunity of hearing is applicable to all the actions mentioned in Rule 66(5). Moreover, a learned Single Judge of this Court in **Thiruvalla (East) Co-operative Bank Limited v. Junior Registrar**, 2009 (4) KLT 378 considered the same issue. It will be beneficial to extract paragraph Nos.12 and 13 of the above judgment.

“12. Counsel for the 3rd respondent contended that the hearing contemplated under R.66(5) of the Rules is only on the

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recommendation of the Registrar about the manner in which the cost of the enquiry or a part thereof is to be apportioned. In my view, there is no warrant for such a restricted reading of this provision. As is evident from the Rules, apportionment of costs can only be in respect of an enquiry held at the instance of a creditor. In such a case, S.67 of the Act contains provision for apportionment and also for hearing, before anybody is made liable for costs. In such a situation, there is no necessity for any further provision of the Rules and this also strengthen the view that the hearing provided in R.66(5) of the Rules is not confined to apportionment of costs. For these reasons, I am not inclined to accept this contention of the counsel for the respondents.

13. In my view, R.66(5) of the Rules is very clear and it has already been held to be mandatory in nature, and therefore, the Registrar is bound to comply with the Rules. Therefore, once an enquiry report is received, the Registrar is bound to hear the society and the members of the Board of Directors before any action affecting them is taken.”

13. I am in full agreement with the above observation of the learned Single Judge in **Thiruvalla (East) Co-operative Bank's** case (supra). A contrary view was taken by another learned Single Judge in **V. Santhosh v. Asst. Registrar and others**, 2014 (4) KLJ 397 relying **Aravindakshan Nair's** case (supra). Since I am not agreeing with the principle laid down by the Division Bench in

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Aravindakshan Nair's case (supra), the principle in **V. Santhosh** case (supra) is also not the good law. In the reference order in this case, it is clearly stated that when consideration and consequential action on a report can lead to drastic consequences, strict adherence of principle should be the rule. I am in agreement with the above observation in the reference order. An inquiry or inspection under Section 65 and Section 66 of the Act may lead to drastic consequences including supersession under Section 32 of the Act or the proceedings under Sec. 68 of the Act. Therefore, before accepting the report submitted by the person authorised by the Registrar, an opportunity of hearing should be given to the affected parties as per Rule 66(5). Of course, if the Registrar is conducting the inspection or inquiry, Rule 66 (5) has no application at all, because Rule 66 is applicable only in a case where an inquiry or inspection is conducted by a person authorised by the Registrar. If a person authorised by the Registrar conducted the inquiry or inspection and if an action is taken under Section 32 of the Act, that will definitely prejudice

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the interest of the affected parties because it is not an inquiry/inspection report ratified by the Registrar after giving an opportunity of hearing to the affected parties. In certain situations mentioned in Section 32(3) of the Act, a supersession order can be passed even without hearing the affected parties. In such a situation, if an order is used, which is passed by a person authorised by the Registrar without the consequential orders of the Registrar as per Rule 66(5) after giving an opportunity of hearing to the affected parties, there will be substantial prejudice to the affected parties. Therefore, in my opinion, the dictum laid down by the **Aravindakshan Nair's** case (supra) is not good law, and the opportunity of hearing mentioned in Rule 66(5) is applicable to all the actions mentioned in Rule 66(5).

14. My learned brother Justice P.B.Suresh Kumar took a different view mainly based on the following reasons and the same is extracted hereunder :

1. The word “thereon” in the last sentence of Rule 66(5) will show that the opportunity of being heard provided for in the last sentence of the Rule can only be with reference to the

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recommendation mentioned in the previous sentence of the Rule as regards the costs of inquiry or inspection.

2. If the hearing provided for in the last sentence of the Rule was intended for every action, the expression "shall" ought not have been used therein, for there is no need for any hearing at all except on the recommendation made by the officer as regards the manner in which the cost of the inquiry / inspection is to be apportioned, if the Registrar does not propose to take any action based on the rule.
3. The difference that an opportunity of hearing before a tentative decision is taken on the report as to the further course of action would make to persons against whom an adverse report is filed, may not be of any relevance in the matter of interpreting Rule 66(5).
4. A harmonious construction of Rule 66(5) of the Rules and Section 67 of the Act is only lead to the inference that the power under Section 67 is one to be exercised in the manner provided for in the Rules.

15. Now, I will discuss the main points based on which my brother Justice P.B.Suresh Kumar concluded his order. The first reason mentioned by my learned brother is that the word "thereon" in the last sentence of Rule 66(5) gives an answer to the question. By relying on the meaning of "thereon" in Oxford Dictionary & Thesaurus and also Collins English Dictionary online version, it is concluded that the word "thereon" in the last sentence of Rule 66(5) will show that the

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same is applicable only for a thing 'following from the thing just mentioned'. I am not in a position to accept the above reasoning for the simple reason that if such an interpretation is accepted, the same is applicable to Rule 66(5) as such. Why is such a distinction given to the just previous sentence alone? In my opinion, Rule 66(5) is a sub-clause and "thereon" means only to the things mentioned in that sub-clause. That means it is applicable to all the actions in Rule 66(5). Moreover, in Rule 66(5), it is also stated that **"such orders thereon"**. In some situation, 'order' and 'orders' are given same meaning. But 'orders' is the plural form of the word 'order'. Since "orders thereon" is used in the last sentence of Rule 66(5), it is clear that the same is applicable not only to the cost apportionment, but it is applicable to all the actions mentioned in Rule 66(5). Therefore, even if the dictionary meaning of Rule 66(5) is accepted, this Court need not interpret the same to limit the application of the opportunity of hearing only to the cost apportionment. Moreover in Black Dictionary, the meaning of "thereon" is mentioned as "on that or them". The order and

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orders are separately mentioned in different statutes. It is true that in interpretation of statute by Justice J.P.Gupta (VIIth Edition, 1999) it is mentioned that the words 'order' and 'orders' can be used interchangeably. But, as I mentioned earlier, in different statutes, the word 'order' and 'orders' are separately mentioned in different situations. For example, in Sections 30, 35, 36, 99A and 104 of the Code of Civil Procedure, 1908, 'order' and 'orders' are used separately. The usage of 'order' and 'orders' is to be interpreted based on the circumstance in which the legislature have used the same. A reading of the last sentence of Rule 66(5) will clearly show that the "orders" mentioned in that sentence are meant not only for the apportionment of cost, but it is also applicable to the other actions that are mentioned in Rule 66(5). Similarly the usage of the word "shall" in the last sentence of Rule 66(5) also will not change much in the light of the fact that subsequent words used are "such orders thereon". As far as the other finding of my brother is concerned, it is already discussed by me in detail in the earlier paragraphs and therefore, I am not repeating the same.

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16. Therefore, in brief, I am not in a position to accept the findings of my brother Justice P.B.Suresh Kumar. According to me, the reference is to be answered affirmatively.

In the light of the above discussion, the dictum laid down in **Aravindakshan Nair's** case (supra) is overruled and the dictum laid down in **Thiruvalla East Co-operative Bank Limited** (supra) case is confirmed. Consequently, all decisions relying the dictum in **Aravindakshan Nair's** case(supra) are declared as not good law. It is declared that "the opportunity of hearing" mentioned in Rule 66(5) is necessary not only before passing orders by the Registrar on the apportionment of cost, but it is applicable to the other actions mentioned in Rule 66(5).

Sd/-

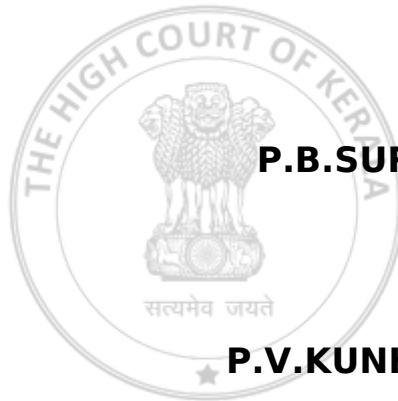
P.V.KUNHIKRISHNAN, JUDGE

JV/SKS/DM/das

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Order of the Court

1. The dictum in **State of Kerala v. Aravindakshan Nair**, 2010 (3) KLT 11 is affirmed.
2. Registry to post the writ appeals for hearing as per roster.



Sd/-

P.B.SURESH KUMAR, JUDGE

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

Sd/-

C.S.SUDHA, JUDGE

YKB