IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 20TH DAY OF OCTOBER 2021 / 28TH ASWINA, 1943

WA NO. 1322 OF 2021

AGAINST THE ORDER IN WP(C) 20425/2021 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANT/RESPONDENT NO.2:

DHANLAXMI BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
DHANALAKSHMI BUILDINGS, NAICKANAL,
THRISSUR, KERALA-650 001.

BY ADVS.
RAFIQUE DADA (SR)
L.VISHWANATHAN
VINEETH UNNIKRISHNAN
SANTHOSH MATHEW
ARUN THOMAS
JENNIS STEPHEN
KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL
JAISY ELZA JOE
ABI BENNY AREECKAL
MATHEW NEVIN THOMAS

RESPONDENTS/PETITIONER & RESPONDENT NOS.1, 3 TO 14:

1 P.K.VIJAYAKUMAR @ PUTHALATHKUTTAN NAIR VIJAYAKUMAR,
AGED 70 YEARS, S/O. P.K. NAIR, RESIDING AT 'MADHAVAM',
VANIYAN LANE, POONKUNNAM, THRISSUR-680 002.

2 RESERVE BANK OF INDIA,
BANERJI ROAD, ERNAKULAM, PIN-682 018,
REPRESENTED BY ITS REGIONAL MANAGER.

3 BOARD OF DIRECTORS OF DHANLAXMI BANK LTD.,
REPRESENTED BY THE MANAGING DIRECTOR, MR. SHIVAN J.K,
NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

4 G. SUBRAMANIA IYER,
PART-TIME CHAIRMAN OF DHANLAXMI BANK AND MEMBER, NOMINATION AND REMUNERATION COMMITTEE, DHANLAXMI BANK, NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

5 J.K. SHIVAN,
MANAGING DIRECTOR OF DHANLAXMI BANK,
NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

6 C.K. GOPINATH,
DIRECTOR OF DHANLAXMI BANK AND MEMBER, NOMINATION AND REMUNERATION COMMITTEE, DHANLAXMI BANK,
NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

7 DR. CAPTAIN SUSEELA MENON R,
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND MEMBER, NOMINATION AND REMUNERATION COMMITTEE, DHANLAXMI BANK, NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

8 G. RAJAGOPALAN NAIR,
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND MEMBER, NOMINATION AND REMUNERATION COMMITTEE, DHANLAXMI BANK, NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

9 NOMINATION AND REMUNERATION COMMITTEE OF DHANLAXMI BANK,
CORPORATE OFFICE, THRISSUR, REPRESENTED BY ITS CHAIRMAN, DR. CAPTAIN SUSEELA MENON R, NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

10 MR. VENKATESH H,
COMPANY SECRETARY, DHANLAXMI BANK,
NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

11 DR. G. JAGAN MOHAN,
RBI ADDITIONAL DIRECTOR, DHANALAXMI BANK,
DHANALAXMI BANK, NAICKANAL JUNCTION, THRISSUR, PIN-680 001.

12 D.K. KASHYAP,
RBI ADDITIONAL DIRECTOR, DHANLAXMI BANK,
DHANALAKSHMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN-680 001.

13 SECURITIES AND EXCHANGE BOARD OF INDIA,
THROUGH ITS MANAGER, 6TH FLOOR, FINANCE TOWER,
KALOOR, KOCHI, KERALA-682 017

14 REGISTRAR OF COMPANIES,
THROUGH THE DEPUTY REGISTRAR, COMPANY LAW BHAWAN,
BMC ROAD, THRIKKAKARA P.O, KAKKANAD, KOCHI,
KERALA-682 021.

BY ADVS.
P.CHITAMBARAM (SENIOR) FOR R1
CHINMOY PRADIP SHARMA (SR.)
SHIVSHANKAR R. PANICKER
SUMATHY DANDAPANI (SR.) FOR R2
K.M.JAMALUDHEEN FOR R13
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
JAGADEESH LAKSHMAN, CGC
MILLU DANDAPANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.10.2021 ALONG WITH WA 1325 OF 2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 20TH DAY OF OCTOBER 2021 / 28TH ASWINA, 1943

WA NO. 1325 OF 2021

AGAINST THE JUDGMENT IN WP(C) 19758/2021 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANT/RESPONDENT NO.2:

DHANLAXMI BANK LTD.
DHANALAKSHMI BUILDINGS,
REPRESENTED BY ITS MANAGING DIRECTOR,
NAICKANAL, THRISSUR, KERALA - 650 001.

BY ADVS.
RAFIQUE DADA (SR)
L.VISHWANATHAN
VINEETH UNNIKRISHNAN
SANTHOSH MATHEW
ARUN THOMAS
JENNIS STEPHEN
KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL
JAISY ELZA JOE
ABI BENNY AREECKAL
MATHEW NEVIN THOMAS

RESPONDENTS/PETITIONERS & RESPONDENTS 1, 3 TO 9:

1 K.N.MADHUSOODANAN,
AGED 62 YEARS, S/O. P.K. NARAYANA PANICKER,
SREENIKETHAN, KALANJOOR P.O., KONNI,
PATHANAMTHITTA, KERALA - 689 694.

2 P. MOHANAN,
AGED 73 YEARS, S/O.PARAMESWARAN PILLAI.K,
AADITHYA, SUDARSAN LANE, POOJAPPURA JUNCTION,
POOJAPPURA P.O., TRIVANDRUM , KERALA-695 012.

3 PRAKASH D.L.,
AGED 39 YEARS, PRAKASH BHAVAN,
PERUMKOOR, VEMBAYAM, TRVANDRUM,
KERALA-695 615.

4 RESERVE BANK OF INDIA,
BANERJI ROAD, ERNAKULAM, KERALA -682 018,
REPRESENTED BY ITS REGIONAL MANAGER.

5 BOARD OF DIRECTORS OF DHANLAXMI BANK,
REPRESENTED BY THE MANAGING DIRECTOR,
MR. SHIVAN J.K., NAICKANAL JUNCTION,
THRISSUR-680 001.

6 C.K. GOPINATH,
DIRECTOR OF DHANLAXMI BANK AND MEMBER,
NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR-680 001.

7 DR. CAPTAIN SUSEELA MENON R.
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR-680 001.

8 G. SUBRAMANIA IYER,
PART-TIME CHAIRMAN OF DHANLAXMI BANK AND MEMBER,
NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR-680 001.

9 G. RAJAGOPALAN NAIR,
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR-680 001.

10 NOMINATION AND REMUNERATION COMMITTEE OF
DHANLAXMI BANK, CORPORATE OFFICE,
THRISSUR, REPRESENTED BY ITS CHAIRMAN,
DR. CAPTAIN SUSEELA MENON R.,
NAICKANAL JUNCTION, THRISSUR-680 001.

11 MR. VENKATESH H.,
COMPANY SECRETARY, DHANLAXMI BANK,
NAICKANAL JUNCTION, THRISSUR-680 001.

BY ADVS.
RENJITH THAMPAN (SR.)
SHIVSHANKAR R.PANICKER
SUMATHY DANDAPANI (SR.)
MILLU DANDAPANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.10.2021 ALONG WITH W.A.1322 OF 2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of October, 2021

S.Manikumar, C.J.

W.P.(C)No.20425 of 2021 has been filed for the following reliefs:

"1. the 1st Respondent, the 13th Respondent, and the 14th Respondent to issue appropriate directions to the 2nd Respondent Bank and the 3rd Respondent Board to comply with the Corporate Governance requirements while conducting the 94th AGM.

2. The 1st Respondent and 13th Respondent to decide issues raised by the Petitioner in Ext.P and Ext.P and pass appropriate direction if need be.

3. the 1st Respondent, the 13th Respondent, and the 14th Respondent to issue appropriate directions to the 2nd Respondent Bank and the 3rd Respondent Board and the 9th Respondent Committee to identify appropriate candidates and place their recommendations before the members during the 94th AGM.

4. the 13th Respondent and the 14th Respondent to issue appropriate directions to the 2nd Respondent and the 3rd Respondent reassess the performance of the Petitioner and recommend the Petitioner for appointment as Director to be placed before the 94th AGM.

5. The quashing of the impugned letter dated 20.09.2021

rejecting the application of the Petitioner under Section 160 of the Companies Act 2013."

2. W.P.(C)No.19758 of 2021 has been filed for the following reliefs:

"i. Issue a writ in the nature of mandamus commanding the respondents 2, 3 and 8 to place the petitioner's candidature, before the General Body of the 2nd respondent scheduled to be held on 29.09.2021, under Sec. 160(2) of the Companies Act, within such time as may be fixed by this Hon'ble Court.

ii. Declare that Petitioners have a right under Section 160 of the Companies Act, 2013 to place their candidature before the members during the AGM (Annual General Body meeting) of the 2nd respondent scheduled to be held on 29.09.2021.

iii. Call for the records leading to Ext.P3 and issue a Writ in the nature of Certiorari quashing Ext.P3.

iv. Declare the Petitioners are fit and proper candidates meeting the criteria laid down by the 1st Respondent."

3. Learned single Judge, after hearing the parties, *prima facie* opined that there is no substance in the contentions put forth by the respondent Bank, as regards the maintainability of the writ petitions. Writ court has issued further directions.

4. Being aggrieved by the same, Dhanlaxmi Bank Ltd.,

respondent No.2 in the writ petition, has filed W.A.Nos.1322 of 2021 and 1325 of 2021.

5. Though elaborate submissions were made by Mr.Rafique Dada, learned Senior Counsel appearing for the appellant Bank in both the appeals, by inviting the attention of this court to the penultimate paragraph of the interim order dated 29.09.2021, made in the writ petitions, Mr.P.Chitambaram, learned Senior Counsel appearing for Mr.P.K.Vijayakumar, respondent No.1 in W.A.No.1322 of 2021, submitted that opinion of the writ court on the maintainability was only *prima facie* and not conclusive as to whether writ petitions are maintainable or not.

6. He further submitted that though respondents in the writ petition have cited several judgments, in support of the contention that the writ petitions are maintainable, there is no reference to the same in the interim order.

7. He further submitted that he has no objection for the writ court to hear the question of maintainability and all the contentious issues raised. For the above purpose, he requested the matter be remitted back to the writ court.

8. Mr.Rafique Dada, learned Senior Counsel appearing for the appellant Bank submitted that the interim order goes contrary

to the secretarial practice.

9. Mr.P.Chitambaram, learned Senior Counsel for respondent No.1 in W.A.No.1322 of 2021, fairly submitted that the above said issue can also be addressed by the writ court.

10. Mr.Rafique Dada, learned Senior Counsel for the appellant Bank and Mr.Ranjith Thampan, Senior Counsel for respondent Nos.1 to 3 in W.A.No.1325 of 2021 have no objection for the matter being remitted back to the writ court, to consider the issue of maintainability, for the final conclusion.

11. From the above submissions, we could see that there is consensus of all the learned Senior Counsel appearing for the contesting parties, for relegating the matter to the writ court, so as to enable the parties to advance submissions, for the final conclusion on the maintainability of the writ petitions, instead of a *prima facie* opinion.

12. Placing on record the consensus of all the contesting parties, we deem it fit to interfere with the impugned interim order dated 29.09.2021 made in W.P.(C)Nos.19758 of 2021 and 20425 of 2021 to the limited extent of remitting the matter, for attaining finality to the preliminary issue of maintainability of the writ petitions.

13. Accordingly, the matter is remitted back to the writ court, granting liberty to all the parties concerned, to advance submissions, regarding the maintainability of the writ petitions.

14. Learned single Judge is, therefore, requested to consider the question of maintainability as a preliminary issue and accordingly, proceed further.

15. However, we make it clear that all the contentious issues raised in the appeals are left open for consideration of the learned single Judge.

Writ appeals are accordingly disposed of.

Sd/-
S.Manikumar
Chief Justice

Sd/-
Shaji P.Chaly
Judge

vpv

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P.A. to Judge