

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 19727 of 2015 (M)

PETITIONERS : -

1. STANLY JOHN, AGED 35 YEARS,
S/O.JOHN, STANLYBHAVAN,
KANDAMTHITTA, PANTHA PO, PIN 695505.
2. SATHEESH C, PARAKKAL VEEDU,
PAMBARAMKAVU, AMBOORI PO, PIN 695505.
3. DILEEPKUMAR R,
MUNDANPARA ROADARIKATHU VEEDU,
KUTTAMALA PO, PIN 695505.
4. P.OMANA,
CHARUVILAPUTHEN VEEDU,
PARATHIKARIKUZHI PO, PIN 695505.
5. RETNAMMA THOMAS,
SHINE BHAVAN,
MARAPPALAM, THEKKUPARA PO, PIN 695505.
6. AMBILY THOMAS,
PUTHOOR VEDU,
MAYAM PO, PIN 695505.
7. PS.NAINAN,
MUTHIYAMALAVEEDU,
MAYAM PO, PIN 695505.
8. D.THANKAMANI,
SHEEBA BHAVAN,KUTTAPPU,
THEKKUPARA PO, PIN 695505
9. V.A.MATHEW, VELLAPPALLIL VEEDU,
AMBOORI PO, PIN 695505.

BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP
SMT.M.BINDUDAS
SMT. P.S.ANJU

RESPONDENTS : -

1. THE SECRETARY, DEPARTMENT OF CO-OPERATION,
SECRETARIAT, THIRUVANANTHAPURAM 695001.
2. REGISTRAR OF CO OPERATIVE SOCIETIES,
OFFICE OF REGISTRAR OF CO OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM 695001.
3. JOINT REGISTRAR OF CO OPERATIVE SOCIETIES (GENERAL),
OFFICE OF THE JOINT REGISTRAR OF CO OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM 695001.
4. ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES (GENERAL),
OFFICE OF THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES,
NEYYATTINKARA 695121.
5. JAYAN,
RETURNING OFFICER/UNIT INSPECTOR PERUMKADAVILA,
OFFICE OF THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
(GENERAL), NEYYATTINKARA 695121.
6. BIJU JOSEPH, PRESIDENT,
AMBOORI SERVICE CO OPERATIVE SOCIETY BANK LTD. NO.T274,
RESIDING ATTHURUTHEL, AMBOORI PO, PIN 695505.
7. AMBOORI SERVICE CO OPERATIVE SOCIETY BANK LTD. NO.T 274,
REPRESENTED BY ITS SECRETARY, HEAD OFFICE, AMBOORI - 695505.

R6 BY ADV.SRI.MURALI PURUSHOTHAMAN, SC

R6 BY ADV.SRI.DEEPU LAL MOHAN

R6 BY ADV.SMT.S.LEENA

R6 BY ADV.SRI.K.S.PRENJITH KUMAR

R7 BY ADV.SRI.S.RAJEEV

R7 BY ADV.SRI.K.K.DHEERENDRAKRISHNAN

R7 BY ADV.SRI.V.VINAY

BY SPL. GOVERNMENT PLEADER SRI. D. SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE NOTICE DATED 10.06.2015 ISSUED BY THE 5TH RESPONDENT TO THE MEMBERS OF MANAGING COMMITTEE WITH ENGLISH TRANSLATION.

EXHIBIT P2 : TRUE COPY OF THE COMPLAINT DATED 27.06.2015 BY PETITIONERS BEFORE 3RD RESPONDENT WITH ENGLISH TRANSLATION.

EXHIBIT P3 : COPY OF THE FIR DATED 26.6.2015 IN CRIME No. 606/2015 OF VELLARADA POLICE STATION ALONG WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS :

EXHIBIT R6(a) : COPY OF THE LETTER ISSUED BY THE DISTRICT CONGRESS (I) COMMITTEE PRESIDENT DATED 19.06.2015 TO THE MANDALAM CONGRESS COMMITTEE PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT R6(b) : REPORT SUBMITTED BY THE 5th RESPONDENT BEFORE THE 4th RESPONDENT No. PKD/1656/15 DATED 27.06.2015 AND REFERRED TO IN PARAGRAPH 7 OF THE WRIT PETITION ALONG WITH ITS ENGLISH TRANSLATION.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 19727 of 2015

Dated this the 14th day of July, 2015

JUDGMENT

Briefly stated, the petitioners, nine in number, being the majority members of Managing Committee of the seventh respondent Society, have a grievance that the sixth respondent in collusion with the fifth respondent has been preventing them from moving a no-confidence motion against the sixth respondent.

2. Expressing lack of faith in the fifth respondent, who has been initially appointed by the third respondent to officiate the proceedings for moving the no-confidence motion, the petitioners seek a relief that by fixing another date and by appointing an officer other than the fifth respondent as the Authorized Officer, the third respondent shall take necessary steps to have the no-confidence motion carried out, without any further hindrance.

3. In the above context, the learned counsel for the petitioners has strenuously contended that on 26.06.2015 when the meeting to consider the no-confidence motion had to take place, all the thirteen members of the Managing Committee were present. Though the fifth respondent commenced the proceedings, the sixth respondent, however, snatched away the minute book and other papers from the fifth respondent and tore them off. In the melee that had ensued, the sixth respondent also physically assaulted some of the petitioners.

4. The learned counsel, drawing my attention to Exhibit P3 FIR, dated 26.06.2015, in Crime No. 606/2015 on the file of the Vellarada Police Station, contends that since the sixth respondent, along with his henchmen, has physically assaulted the petitioners, one of them had been constrained to approach the Police, who have already commenced the investigation in the said crime.

5. Eventually, summing up his submissions, the learned counsel has submitted that the third respondent shall once again initiate the necessary steps to ensure that the meeting

is held properly and peacefully, so that the majority members could exercise their right to express no confidence against the incumbent President, i.e. the sixth respondent.

6. Given the past experience, the fifth respondent, contends the learned counsel, shall not be at the helm of the affairs; the third respondent, instead, may appoint some other Authorized Officer to conduct the proceedings in terms of Rule 43A of the Co-operative Societies Rules (the 'Rules' for brevity).

7. *Per contra*, the learned counsel for the sixth respondent has drawn my attention to Exhibit R6(a) to contend that after notice was issued by the petitioners to move no-confidence motion, the political party to which they owe their allegiance issued a communication that the issue should be resolved at party level and that they should not proceed further with the no-confidence motion. Under those circumstances, only with a view to avoiding any disciplinary proceedings by the political party, the petitioners have, according to the learned counsel, devised a method of obstructing the meeting by disrupting the proceedings. It is

also his contention that the whole drama of disruption has been enacted only to damage the reputation of the sixth respondent, the president.

8. The learned counsel for the sixth respondent has also submitted that in the light of Rule 43A (xi) no notice of any subsequent motion expressing want of confidence in the sixth respondent can be allowed within a period of six months. In furtherance of his submissions, the learned counsel for the sixth respondent contends that despite all the members being present, the petitioners who moved no-confidence motion did not sign the minute book.

9. The learned Government Pleader, on his part, has submitted that the third respondent, if directed by the Court, will take all necessary steps to initiate further steps in terms of Rule 43A of the Rules to enable the majority members to express, if they desire, no-confidence in the present office bearers.

10. Heard the learned counsel for the petitioners, the learned Government Pleader, the learned Standing Counsel as well as the learned counsel for the sixth respondent, apart

from perusing the record.

11. Predictably, the petitioners on one hand and the sixth respondent on the other show accusing finger at each other for the debacle on the eventful day, that is on 26.06.2015. They both have rival versions regarding from whose custody the minutes book was recovered by the police in the course of their enquiry pursuant to the crime registered by them on the complaint lodged by one of the petitioners.

12. Be that as it may, the issue of culpability of either of the rival groups for the violence and disruption on the day of meeting may not be germane at this juncture for the issue to be decided. More particularly, since the police have already been investigating the crime, this Court refrains from making any observations concerning the alleged incident on 26.06.2015, lest it should prejudice the criminal investigation.

13. Indeed, it is not in dispute that on 26.06.2015 a meeting was convened and the fifth respondent had to officiate. There is, as mentioned earlier, any amount of

controversy with regard to the incidents allegedly took place on that day. The petitioners did lodge a police complaint in Crime No.606/2015 accusing the sixth respondent and his supporters of disrupting the proceedings.

14. On the other hand, the fifth respondent, the Authorized Officer appointed by the third respondent, is also said to have submitted Ext.R6 (b) report, dated 26.06.2015, to the third respondent to the effect that before he could read out the motion of no-confidence motion, the members present in the meeting tore 'the ballet', snatched the minute book and gave a blow on his head with the chair. The fifth respondent has also informed the third respondent that after dragging him out of the hall, they closed the shutter of the hall. The fifth respondent has thus supplied a justification for abandoning the proceedings. According to him, only under those compelling circumstances no-confidence motion could not be discussed.

15. Though the fifth respondent has been arrayed *eo nomine*, the learned Government Pleader seems to be representing his interest as well. Though I do not want to be

uncharitable to the fifth respondent, who is a Government Official, I am afraid his conduct is far from satisfactory. In the first place, in Exhibit R6(b) report he did not specify who actually disrupted the proceedings and who actually assaulted him. If at all he has been assaulted and dragged out of the hall, it is without any doubt a serious offence committed by any perpetrator—evidently some member or other of the Managing Committee. Among thirteen persons it may not have been difficult for the fifth respondent to identify the persons responsible. Further, having been subjected to such humiliation and physical assault, if his statement had any element of truth, I do not see any valid reason forthcoming from him why he did not lodge a complaint with the police. The fifth respondent's Ext.P6(b) report, I am constrained to observe, is more politically correct than factually.

16. It could be seen that one of the members of the Managing Committee has in fact lodged a complaint and ensured registration of the crime. Under these circumstances, I cannot but conclude that the conduct of the

fifth respondent in discharging the duty assigned to him by the third respondent does not inspire confidence; on the contrary, leaves much to be desired. Suffice on that issue.

17. At this juncture, I may have to address the contention raised by the learned counsel for the sixth respondent that in terms of Rule 43A(xi) of the Rules, no notice of any subsequent motion to express want of confidence on the President should be allowed within a period of six months from the date of the aborted meeting. It is appropriate to refer to the said provision, which reads as follows:-

"43A. Removal of President, Vice-President etc. by no-confidence motion - A committee shall remove the President or the Vice-President or the Treasurer or any other officer of the committee from his office by a no-confidence motion in the following manner, namely : -

.....

(xi) If no meeting could be held for want of quorum as required under clause (v). or if the motion is not carried by such a majority as required under clause (x), no notice of any subsequent motion expressing want of confidence

on the same President, Vice-President, the Treasurer or any officer of the committee, shall be allowed within a period of six months from the date of the meeting.”

18. A perusal of the above provision makes it manifestly clear that if at all a meeting could not be held for want of quorum as required under clause (v) thereof or if the motion has not been carried out by majority as required under clause (x), indeed there shall be a hiatus of six months before any member could ask for a meeting for expressing no-confidence, once again. In the present instance, it is not the case of lack of quorum; in fact, all the members were present. Nor has it been a failure of the persons who moved the no-confidence to prove their majority.

19. Indisputably, owing to sheer anarchy and lawlessness in a democratic process of expressing no-confidence, the proceedings had to be scuttled. If such an incident as occurred, the uncertainty being only with regard to who committed it, is to be taken as falling within the ambit of Rule 43A(xi) of the Rules, it will be a sure recipe for

lawlessness, for every stakeholder who does not want the no-confidence motion to take place can easily thwart it for six more months only by ensuring that there is law and order problem on the day of meeting.

20. Further, as has already been noted, given the evasive Ext.P6(b) report of the fifth respondent, I have any amount of doubt with regard to what actually happened on the eventful day. At any rate, since a crime has been registered in that regard it is left for the Investigating Agency to get at the truth.

21. In the facts and circumstances, in my considered view, Rule 43A (xi) will not come in the way of the third respondent exercising his powers to reconvene a meeting for the purpose of the majority members, if at all, expressing their no-confidence in the present office bearers. For the said purpose, the third respondent is required to appoint an Authorized Officer. Needless to observe that it may not be appropriate, especially owing to the concern expressed by the petitioners, to reappoint the fifth respondent.

22. In the light of the above discussion, taking into account the totality of circumstances, this Court deems it appropriate to direct and accordingly directs the third respondent to take necessary steps under Rule 43A of the Rules by appointing a suitable Authorized Officer to ensure another meeting being held for the purpose desired by the petitioners. In terms of the statutory scheme, the third respondent may act in this regard as expeditiously as possible, at any rate, within thirty days from the date of receipt of a copy of this judgment.

Subject to the above observations, this writ petition is allowed. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-