

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 9.02.2015

DELIVERED ON: 19.02.2015

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY

W.P.No.27137 of 2014

and

M.P.Nos.1 and 2 of 2014

Thanga.Kathiravan,
President,
10707, Sikkal Primary Agricultural
Co-operative Credit Society Ltd,
Sikka Post,
Nagapattinam Taluk and District

...Petitioner

vs

1. The Deputy Registrar of Co-operative Societies,
Nagapattinam Circle,
Nagapattinam
2. The Co-operative Sub Registrar/Field Officer,
O/o Deputy Registrar of Co-operative Societies,
Nagapattinam.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorari to call for the records of the Proceedings of the second respondent in Na.Ka.No.1/2014 dated 7.10.2014 and quash the same.

For petitioner : Mr.M.S. Palaniswamy

For respondents : Mr.L.P. Shanmuga Sundaram
Spl. Govt.Pleader (Co-operatives)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records of the Proceedings of the second respondent in Na.Ka.No.1/2014 dated 7.10.2014 and quash the

same.

2. The brief averments of the petitioner is as follows:

(a) According to the petitioner, the Sikkal Primary Agricultural Co-operative Credit Society Ltd consist of 11 elected Members and the elected Members elected the petitioner as President and the petitioner assumed Office on 9.5.2013.

(b) According to the petitioner, for the self gain of some of the members , false and frivolous petitions against him were presented before the first respondent and other higher officials. Out of the eleven (11) elected members, seven (7) members filed a requisition before the first respondent to move a " No confidence Motion" against him and have requested the first respondent to convene a special meeting to discuss the no confidence against the petitioner.

(c) The petitioner received a Notice from the second respondent on 8.10.2014. He met the second respondent on 9.10.2014 and requested him to provide a copy of the proceedings dated 29.9.2014. However, the second respondent directed the petitioner to approach the first respondent on 9.10.2014 and obtain a copy of the proceedings.

(d) On 9.10.2014, the Office of the first respondent refused to receive the petitioner's application for the issuance of the certified copy of the proceedings dated 29.9.2014. According to the petitioner, the respondents, without following the provisions of Rule 62 of Tamil Nadu Co-operative Societies Rules (hereinafter referred to as " Rules") has convened the Special meeting for No Confidence Motion against him. Since the requisition itself does not satisfy the statutory requirements, the decision if any is taken, based on the same, shall have no legal force.

(e) As per Rule 62(3) of Tamil Nadu Co-operative Societies Rules, the Registrar shall, within thirty days from the date of receipt of requisition, arrange to convene a special meeting of the board of the society, for consideration of the resolution expressing no confidence in the office bearer (supported by 2/3 of the members and) for which not less than three days' notice shall be given. Further, a copy or gist of the requisition and of the representation, if any, received from the office bearer concerned shall also be sent to the members along with the notice for the special meeting of the board.

(f) Since only seven (7) members had signed the requisition for moving no confidence motion, their strength does not represent 2/3

majority. If less than 2/3 of the existing members move for no confidence motion, the first respondent should not accept their request. 2/3 of 11 comes to 7.33. Hence the next whole number is eight (8) will have to be construed to represent 2/3 majority. When 2/3 of the existing members have not moved the no confidence motion, the first respondent cannot entertain the said no confidence motion and issue notice under 62 (4) of the Rules.

(g) The second respondent, pursuant to the authorisation, has issued the notice dated 7.10.2014 under Sec.62(4) of the Rules to convene a special meeting on 14.10.2014 at 11.30 a.m for the purpose of considering the no confidence motion. The petitioner was not given an opportunity to explain his stand before the first respondent. The petitioner was not communicated the copy of requisition made by the members of the Society.

(h) As per Rule 62(3), the meeting should be convened within thirty days from the date of receipt of requisition. When the requisition was received by the first respondent on 1.9.2014, the meeting was convened on 14.10.2014, which is beyond the period prescribed under 62(3) of the Rules. In these circumstances, the petitioner has filed the above writ petition seeking for the above relief.

3. The brief case of the respondents are as follows:

(a) According to the respondents, as per the principle enunciated in Section 33, proviso 1 of the Tamil Nadu Co-operative Societies Act, 1983, the Board of Directors should consist of 30% reservation for women and 18% for scheduled caste and schedule tribes. As far as the said section and explanation is concerned, while calculating 18% and 30% of the reservation, the fraction, if any, shall be ignored and if it is less than half, it should be rounded off to the nearest whole number. According to the respondents, the above principle for calculating the quantum of reservation in the Board of Directors may be adopted for Rule 62(2) also.

(b) Therefore, according to the respondents, though 2/3 of 11 members comes to 7.33, since the nearest whole number is seven (7), the requisition given by the seven (7) Directors is valid.

4. In these circumstances, the respondent prayed for dismissal of the writ petition.

5. Heard Mr.M.S. Palaniswamy, learned counsel for the petitioner and Mr.L.P. Shanmuga Sundaram for the respondents.

6. Mr.M.S. Palaniswamy, learned counsel appearing for the petitioner submitted that since the requisition given by the members, to move No Confidence Motion, against the petitioner was signed by less than eight (8) members, the first respondent should not have entertained the same. Further, the learned counsel submitted that since the meeting was not convened within thirty days under 62(3) of the Rules, the impugned notice dated 7.10.2014 is liable to be set aside.

7. In support of his contention, the learned counsel, relied on the following judgments:

(i) AIR 1998 Punjab and Haryana 249 (Jardar Khan vs State of Haryana and others), wherein the Division Bench of Punjab and Haryana High Court, in the case of a Gram Panchayat having 8 members, the resolution of no-confidence motion passed by five members only although $\frac{2}{3}$ of 8 is more than 5 and comes in fraction, the said fraction cannot be ignored and has to be treated as one whole. Therefore, the High Court held that the Resolution cannot be said to be passed with requisite majority of $\frac{2}{3}$ members.

(ii) AIR 1951 Calcutta 420 (Shyamapada Ganguly vs Abani Mohan Mukherjee), wherein, the Calcutta High Court, dealing Sec.61(2) of Bengal Municipality Act held that

" in case of 11 Commissioners voting out of 17 Commissioners, was not sufficient compliance with the sanction and the resolution for removal of the opposite party was ineffective and must be deemed to have been lost.

As per Sec.61(2) of the Bengal Municipalities Act, the Section requires that not less than two-thirds of the whole number of the Commissioners, must vote before a Chairman or a Vice-Chairman can be removed. However, the Section is mandatory.

Therefore, the number of votes must not be less than two-thirds in any event, but it may be more. Two-thirds of 17 is 11.33, whereas only 11 members had voted. Therefore, the Calcutta High Court held that the resolution for removal of the opposite party was ineffective and must be deemed to have been lost".

In 2001 (1) CTC 279 (V. Kuppanna vs The Deputy Registrar, Co-operative Societies, Thiruvallur and two others), this Court held that

"Rule 62(3) of the Tamil Nadu Co-operative Societies Rules requires that the Registrar shall exercise such power under Section 33(14) and 33 (15) within thirty days from the date of receipt of Notice inviting exercise of such powers. If the meeting is held after thirty days, the consequential resolution is liable to be set aside.

8. Mr.L.P. Shanmuga Sundaram, learned Special Government Pleader appearing for the respondents submitted that since 7 members had signed the requisition, that is sufficient for moving No Confidence Motion under Proviso-1 of Sec.33 of the Act. Further, the learned Special Government Pleader submitted that the principles laid down in the said proviso is applicable to Rule 62(2). Therefore, according to the learned Special Government Pleader, the impugned notice is valid under law.

9. In support of his contention, the learned Government Pleader relied upon an unreported judgment of the Division Bench of this Court in W.A.No.39 of 2014 dated 21.1.2014. In the said judgment, the Division Bench rejected the plea of the counsel for the appellant that the Resolution passed by the seven directors, out of 11 directors, is bad for the reason that the appellant has not questioned the resolution passed on 13.10.2013 and the appellant had challenged only the consequential proceedings issued by the second respondent dated 29.11.2013.

10. On a careful consideration of the materials available on record and the submissions made on either side, it could be seen that the petitioner was elected as a Member of the Society, which consists of 11 members. The members elected the Petitioner as President and the petitioner assumed office on 9.5.2013. Thereafter, 7 members, out of 11 elected members, filed a requisition before the first respondent to move "No confidence Motion" against the petitioner. The requisition was received by the first respondent on 1.9.2014. On 7.10.2014, the second respondent issued a notice for convening a Special Meeting for moving "No confidence motion" against the petitioner.

11. As per the Provisions of Rule 62 (3) of Tamil Nadu Co-operative Societies Rules, "the Registrar shall, within thirty days

from the date of receipt of such requisition, arrange to convene a special meeting of the Board of the Society for consideration of the resolution expressing no confidence motion in the office bearer for which not less than three clear days' notice shall be given.

12. From the dates mentioned above, it can be seen that the first respondent received the requisition on 1.9.2014 and the second respondent issued the impugned notice on 7.10.2014. It is clear that the provisions of Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, which is mandatory, was not followed by the respondents. The respondents should have convened the meeting within thirty days from 1.9.2014. In the case on hand, the impugned notice was issued on 7.10.2014 to convene the special meeting for moving no confidence motion only on 14.10.2014, which is beyond the period prescribed under Sec.62(3) of the Rules. On this ground alone, the impugned notice dated 7.10.2014 is liable to be set aside.

13. Coming to the next point that out of 11 members, 7 members had filed the requisition before the first respondent to move no confidence motion against the petitioner, Rule 62 (1) and (2) of the Rules read as follows: "(1) An elected office-bearer may be removed by a resolution expressing no confidence in him passed in a Special Meeting of the Board and (2) No special Meeting of the Board shall be convened unless a requisition in writing signed by not less than two-third of existing Members of the Board of the Society at the time of such requisition who are eligible to vote at elections is presented to the Registrar".

14. In the case on hand, 2/3 of 11 comes to 7.33. Admittedly, only 7 members had given the requisition for moving No confidence motion. The provisions of Rule 62(2) says that the requisition, in writing, should be signed by not less than two-third of existing members of the Board of the Society.

15. In the present case, as already stated 2/3 of 11 comes to 7.33. Since the provisions of Rule 62(2) of the Rules says that "not less than 2/3 of the existing members", it cannot be taken as "7", it should be taken as the next whole number, since the words used is "not less than".

16. Therefore, I am of the considered view that the requisition signed by 7 members out of 11 members to move a No confidence Motion, is violative of the provisions of Rule 62(2) of the Rules. The ratio laid down by the Punjab and Haryana High Court, reported in AIR 1998 Punjab and Haryana 249 (Jardar Khan vs State of Haryana and others), and Calcutta High Court reported in AIR 1951 Calcutta 420

(Shyamapada Ganguly vs Abani Mohan Mukherjee) squarely apply to the facts of the present case.

17. Therefore, following the ratio laid down in the above said judgments, I am of the considered view that in the case of Rule 62(2) of the Rules, since the phraseology used is "not less than two-third of existing Members of the Board of the Society", only the next higher whole number should be taken as the required number of members i.e., "8" (eight members), because restricting it to the lower number, by ignoring the fraction, shall amount to violation of the statutory provision. It cannot be taken as the nearest whole number as proposed by the respondents and the normal practice of arithmetical calculation does not apply here.

18. Since the provisions of Rule 62(2) itself is very clear as to the number of members for moving No confidence motion, the provisions of Explanation II of Sec.33 of the Tamil Nadu Cooperative Societies Act, 1983, which is meant for "Constitution and Meetings of the Board" is not applicable to the case on hand.

19. In these circumstances, the impugned notice dated 7.10.2014 is liable to be set aside and accordingly, the same is set aside.

20. In the result, the writ petition is allowed. No costs. Consequently, connected Mps are closed.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

sr

To

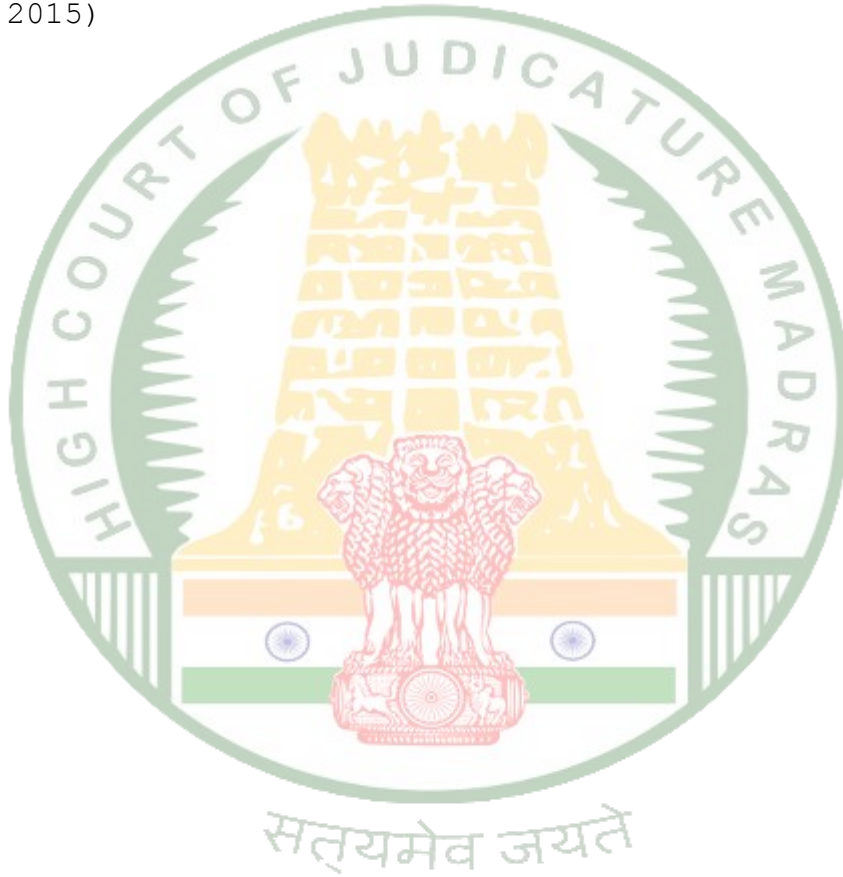
1. The Deputy Registrar of Co-operative Societies,
Nagapattinam Circle,
Nagapattinam

2. The Co-operative Sub Registrar/
Field Officer,
O/o Deputy Registrar of Co-operative Societies,
Nagapattinam

1 CC to Mr.M.S. Palaniswamy, Advocate SR.No. 9122

W.P.No.27137 of 2014

RV (CO)
PSI (05.03.2015)



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