

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2016

Coram

The Hon'ble Mr. Justice T.S.SIVAGNANAM

Writ Petition No.33207 of 2014

&

M.P.Nos.1 and 2 of 2014

R.Mallan

...Petitioner

Vs.

1.The Deputy Registrar of Co-op Societies
(Full Additional Charge)
Dharmapuri Circle
Dharmapuri

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

3.N.C.Mariappan
(R3 impleaded as per order
dated 22.12.2015) made in
MP.3/2014 in WP.33207/14

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the 1st respondent in his proceedings in Na.Ka.No.5003/2014 Thosal(1) dated 06.12.2014 and consequential notice of the 2nd respondent dated 10.12.2014 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.Bala Ramesh, AGP for R1 and 2
Mr.C.Munusamy for R3

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O R D E R

Heard Mr.M.S.Palaniswamy, learned counsel appearing for the petitioner and Mr.Bala Ramesh, A.G.P. for the respondents 1 and 2 and the learned counsel for the 3rd respondent.

2. Petitioner has filed the writ petition being W.P.No.28165 of 2015, wherein he has sought for quashing the proceedings of the 2nd respondent - Deputy Registrar of Co-operative Societies, Dharmapuri, dated 25.08.2015, informing the petitioner that the

respondents 3 to 5 have not suffered any disqualification and they can continue as Directors of the said Co-operative Society. In the meantime, a motion of no confidence was moved based on which a notice dated 06.12.2014, has been received by the petitioner who is the president of the Society in terms of Section 62(4) of the Tamilnadu Co-operative Societies Rules, 1988. The said notice is subject matter of challenge in this writ petition on the ground that such notice is beyond statutory time limit prescribed in terms of Rule 62(3).

3. The legal issue raised in this petition is no longer res integra and has been decided by Hon'ble Justice M.Duraiswamy in Thanga. Kathiravan V. Deputy Registrar of Co-operative Societies, 2015 2 MLJ 395. In the said case an identical issue arose as to within what period the meeting has to be convened on a requisition received by 2/3rd members of the Board of a Co-operative Society. After analysing the facts in the case, it is pointed out that the requisition in that case was received by the Deputy Registrar on 01.09.2014 and the notice was issued on 07.10.2014 and from Rule 62(3) of the Rules, it is clear that the mandatory procedure was not followed as the notice convening the special meeting or moving the no confidence was beyond the period prescribed under Rule 62(3) or the said ground alone, the notice was quashed by this Court. At this stage, it would be beneficial to refer to the operative portion of the said order.

"...

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.

Thus in the instant case, learned counsel appearing for the respondents admit that the notice was issued beyond the period of 30 days from the date on which the requisition was received by the Deputy Registrar of Co-operative Societies. Therefore, the impugned notice is beyond the statutory period of limitation fixed under the Rules and in the absence of any provision for extension of the said statutory period, the impugned notice has to be necessarily held to be bad in law.

4. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(As)

//True Copy//

Sub Assistant Registrar

KPR

To

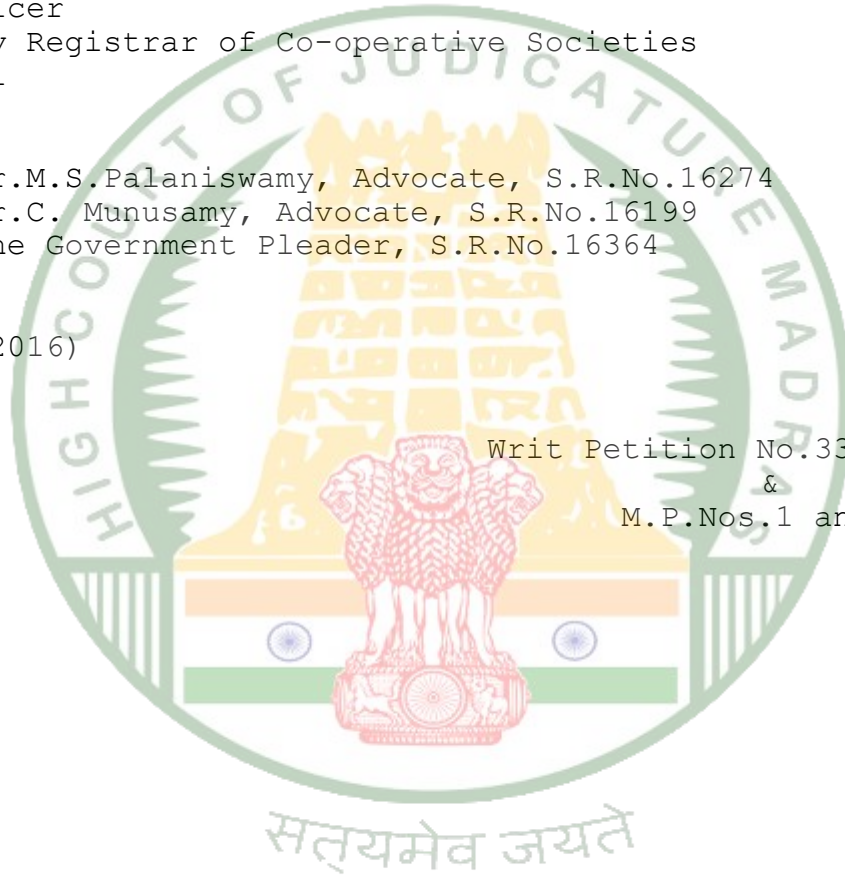
1.The Deputy Registrar of Co-op Societies
(Full Additional Charge)
Dharmapuri Circle
Dharmapuri

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

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.16274
+1cc to Mr.C. Munusamy, Advocate, S.R.No.16199
+1cc to the Government Pleader, S.R.No.16364

SCD(CO)
EU(23/03/2016)

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