



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.9901 and 9535 of 2016

and

W.M.P(MD)Nos.7818, 7819, 7587 and 7588 of 2016

The President,
M.M.348, Koundampatti Primary Agriculture
Cooperative Credit Society Limited,
Koundampatti,
Tiruchirappalli District.

... Petitioner in both WPs

vs.

1)Joint Registrar of Co-operative Societies,
Trichirappalli Region,
Trichirappalli.

2)The Deputy Registrar of Cooperative Societies,
Trichirappalli Circle,
Trichy.

3)Mr.Rajkumar,
Cooperative Sub-Registrar,
Managing Director,
Trichirappalli District Cooperative Union,
Trichirappalli.

4)The Board of Directors,
M.M.348, Koundampatti Primary Agriculture
Cooperative Credit Society Limited,
Koundampatti,
Tiruchirappalli District.

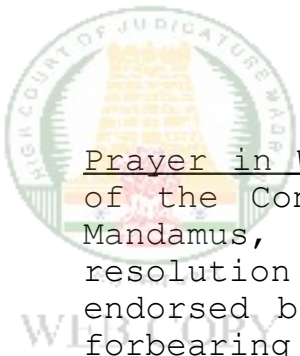
..Respondents in W.P(MD)No.9901/16

1)Joint Registrar of Co-operative Societies,
Trichirappalli Region,
Trichirappalli.

2)The Deputy Registrar of Cooperative Societies,
Trichirappalli Circle,
Trichy.

3)The Board of Directors,
M.M.348, Koundampatti Primary Agriculture
Cooperative Credit Society Limited,
Koundampatti,
Tiruchirappalli District.

..Respondents in W.P(MD)No.9535/16



Prayer in W.P(MD)No.9901 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned resolution dated 31.05.2016 passed by the Board of Directors and endorsed by the 3rd respondent and quash the same and consequently forbearing the respondents from any way interfering with the petitioner's function as President of M.M.348 Koundampatti Primary Agriculture Cooperative Credit Society Limited, Koundampatti, Tiruchirappalli District.

Prayer in W.P(MD)No.9535 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned resolution dated 31.03.2016 passed by the Board of Directors and the consequential notice issued by the second respondent vide Na.Ka.1057/2016/Sa.Pa dated 13.05.2016 and quash the same and consequently forbearing the respondents from any way interfering with the petitioner's function as President of M.M.348, Koundampatti Primary Agriculture Cooperative Credit Society Limited, Koundampatti, Tiruchirappalli District.

W.P(MD)No.9901 of 2016

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1 & R2	: Mr.T.R.Janarthanam Additional Government Pleader
For R4	: Mr.R.Aravindan

W.P(MD)No.9535 of 2016

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1 & R2	: Mr.T.R.Janarthanam Additional Government Pleader
For R3	: Mr.R.Aravindan

COMMON ORDER

Aggrieved by the impugned resolution, dated 31.05.2016, passed by the Board of Directors of M.M.348, Koundampatti Primary Agriculture Co-operative Credit Society Limited, Koundampatti, Tiruchirappalli District, passing 'no-confidence motion' against the petitioner which is endorsed by the 3rd respondent/Co-operative Sub-Registrar, Managing Director, Trichirappalli District Cooperative Union, Trichirappalli, the petitioner has filed W.P(MD) No.9901 of 2016 to quash the same with the consequential prayer to forbear the respondents from in any way interfering with his functioning as President of M.M.348 Koundampatti Primary Agriculture Cooperative Credit Society Limited, Koundampatti, Tiruchirappalli District (hereinafter referred to as 'the society').

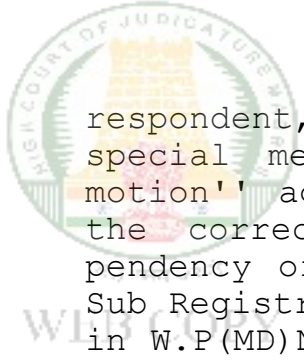
2.Learned counsel for the petitioner would submit that after the petitioner was elected as the President of the Society by the Election Officer, he has been rendering dedicated and unblemished



services to the Society by following the mandate of law. While so, the Board of Directors of the petitioner's society have committed various financial irregularities and misappropriation in connivance with one Mr.Ganapathy, Secretary and Mrs.Shanthi, Clerk/Cashier of the Society. In view thereof, the 2nd respondent/Deputy Registrar of Cooperative Societies, Trichy, ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, vide proceedings dated 05.01.2016, to find out the irregularities committed by the Board of Directors. Since the 2nd respondent, in his proceedings dated 04.03.2016 directed to initiate action against the persons responsible for the irregularities, the President of the petitioner's Society has passed an order of suspension dated 16.03.2016, placing some of the erring employees of the Society under suspension, pending contemplation of the disciplinary proceedings. Immediately after the initiation of enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, the Board of Directors and some of the delinquent employees interfered with the affairs of the Society by holding agitations, therefore, the petitioner being the President of the society, lodged the complaints dated 23.03.2016 and 31.03.2016 respectively, to the Inspector of Police, Valanadu Police Station and also to the Deputy Superintendent of Police, Manapparai, to take action against the persons responsible for creating chaotic atmosphere and also to provide protection to the properties of the Society. Subsequently, the 2nd respondent has also issued proceedings, dated 29.03.2016, to all the Board of Directors and the erring employees of the society to co-operate with the enquiry. Learned counsel for the petitioner would also submit that the impugned resolution has not been recorded in the resolution book maintained by the Society, thus the same is not in accordance with the procedure established by law, hence, the impugned resolution, he pleaded, is liable to be set aside.

3.Placing reliance on Rule 62(3) of the Tamil Nadu Co-operative Societies Rules 1988 (hereinafter referred to as, 'the Rules'), he would submit that, if any requisition is made by not less than two-thirds of the existing members of the Board of the Society to hold a special meeting to pass 'no-confidence motion' against the President of the society, the Registrar shall communicate a copy of the requisition to the office bearer concerned, calling upon him to make his representation, if any, within such time as may be prescribed by him. Moreover, the Registrar within 30 days from the date of receipt of such requisition, shall arrange to convene a special meeting of the Board of the Society for consideration of the resolution expressing no-confidence motion against the office bearer namely, President.

4.Pleading further, he would submit that, in the present case, the requisition to hold a special meeting was given on 31.03.2016, therefore, as per Rule 62(3) of the Rules, within 30 days from the date of receipt of the requisition, the Registrar has to hold a special meeting. But in the present case, since the petitioner was aggrieved by a Notice, dated 13.05.2016, issued by the 3rd

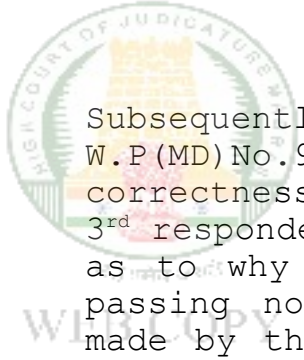


respondent, calling upon him to give his explanation as to why a special meeting should not be held for passing 'no-confidence motion' against him, he filed W.P(MD)No.9535 of 2016, challenging the correctness of the Notice, dated 13.05.2016. During the pendency of the said writ petition, the 3rd respondent/Co-operative Sub Registrar, citing the pendency of the petitioner's writ petition in W.P(MD)No.9535 of 2016, cancelled the holding of special meeting scheduled on 31.05.2016, by proceedings dated 31.05.2016. Therefore, a no-confidence motion, if at all, had taken place against the petitioner, learned counsel for the petitioner pleaded, the same cannot be given any legal sanctity.

5.Again, continuing his arguments, he would submit that, as per Rule 62(2) of the Rules, there cannot be any holding of special meeting of the Board, unless the requisition in writing signed by not less than two-third of the existing members of the Society is presented to the Registrar. In the present case, once the 3rd respondent has cancelled the special meeting scheduled on 31.05.2016, by his proceedings dated 31.05.2016, he cannot once again hold any special meeting, unless once again he follows the procedure contemplated under Rule 62(2) and (3) of the Rules, viz., after cancellation of the special meeting, he has to once again get another requisition from the members of the Board. In the present case, no such further requisition was ever made by any of the members of the Board of the Society, requesting to hold a special meeting for passing the no-confidence motion, said to have been passed against the petitioner, thus, the impugned resolution has to be set aside, he pleaded.

6.Concluding his arguments, learned counsel for the petitioner would submit that when the petitioner has been duly discharging his duties and admittedly initiated action against all the Board of Directors, who have committed various financial irregularities and also misappropriation in connivance with Mr.Ganapathy, Secretary and Mrs.Shanthi, Clerk/Cashier of the society, in order to escape from the proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and also to escape from the departmental proceedings, all the Board of Directors, joining hands with each other, have resolved to remove the petitioner by passing no-confidence motion through the impugned resolution, therefore, the said resolution should be nullified.

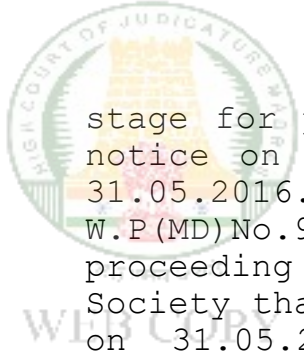
7.A detailed counter affidavit has been filed by the 4th respondent. Learned counsel appearing for the 4th respondent would submit that the contention made by the petitioner that the impugned no-confidence motion passed against him is *non est*, is liable to be discarded *in limine*, since the petitioner has informed the 3rd respondent about the writ petition filed by him viz., W.P(MD)No.9535 of 2016, and wrongly projected that an order has been obtained him, not to hold the special meeting on 31.05.2016 and believing his statement, the 3rd respondent has passed the order dated 31.05.2016, cancelling the special meeting scheduled to be held on 31.05.2016.



Subsequently, on verification, the 3rd respondent came to know that W.P(MD)No.9535 of 2016 was filed by the petitioner only against the correctness of the show cause notice dated 13.05.2016 issued by the 3rd respondent, calling upon the petitioner to submit his explanation as to why a special meeting of the board should not be held for passing no-confidence motion against him, as per the requisition made by the Members of the Board of the Society and after finding that there was no such order passed by this Court, prohibiting the 3rd respondent from proceeding with the holding of special meeting for passing no-confidence motion against the petitioner, on the very same day, namely, 31.05.2016, the 3rd respondent has informed all the Board of Directors of the Society to come for the special meeting scheduled on 31.05.2016 as per his previous communication and accordingly, all the members of the Board of the Society participated and all the 9 members passed the no-confidence motion unanimously, stating that they do not have confidence on the petitioner/President of the society. Therefore, he pleaded, the contention made by the petitioner that there was no special meeting held on 31.05.2016, is liable to be rejected.

8. Adding further, he would submit that the complaint said to have been made by the petitioner against the Board of Directors of the Society has nothing to do with the impugned resolution passed by the majority of the Board of Directors against the petitioner. Therefore, the resolution passed on 31.05.2016 against the petitioner is fully justified and the writ petition is liable to be dismissed. Moreover, when the majority of the members of the concerned Society are seeking for a change in the president-ship of the Society, rightly, as per the procedure contemplated under the Tamil Nadu Co-operative Societies Act, they have given the requisition letter on 31.03.2016 to the 3rd respondent to hold a special meeting to pass the no-confidence motion and this has been accepted by the 3rd respondent. Accordingly, a special meeting was held on the same day, and in the said special meeting, no-confidence motion was passed against the petitioner. Hence, there is no illegality, as alleged by the petitioner, found. On this basis, he prayed for dismissal of the writ petition. Finally, he has submitted that, if for any reason, this Court is not inclined to accept the veracity of his arguments, the impugned order may be set aside with liberty to the 3rd respondent to once again hold a special meeting for passing a fresh no-confidence motion against the petitioner.

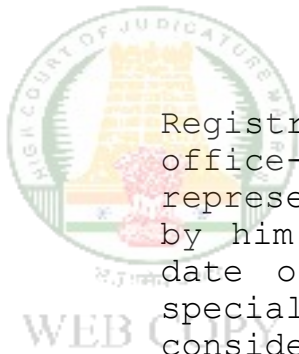
9. Mr. T.R. Janarthanam, learned Additional Government Pleader appearing for respondents 1 and 2 would submit that when the petitioner was issued with a show cause notice on 13.05.2016, calling upon him to give his explanation as to why as per the requisition letter dated 31.03.2016, a special meeting should not be held, the petitioner rushed to this Court and filed W.P(MD)No.9535 of 2016. When the said writ petition was filed, challenging only the correctness of the show cause notice dated 13.05.2016, the 3rd respondent presuming that holding of a special meeting at this



stage for passing no-confidence motion would not be fair, issued a notice on 31.05.2016, cancelling the special meeting scheduled on 31.05.2016. However, on obtaining the legal advice that pendency of W.P(MD)No.9535 of 2016 would not restrain the respondents from proceeding further, he has informed the Members of the Board of the Society that the special meeting, as informed earlier, would be held on 31.05.2016. Accordingly, a special meeting was held on 31.05.2016. Therefore, the resolution subsequently passed by the majority of the Members of the Board of the Society on 31.05.2016 against the petitioner and now, challenged in the present writ petition has no legs to stand. Adding further, he would submit that, if for any reason, this Court comes to the conclusion that, any of the provisions of the Act or Rules framed thereunder, is not complied with, liberty may be given to the respondents to proceed with holding of a special meeting afresh.

10.Admittedly, in the present case, the 3rd respondent has informed the petitioner and all the Board of Directors that a special meeting will be held on 31.05.2016, accepting the requisition, dated 31.03.2016, made by the members of the Board of the Society to hold a special meeting, since most of the members of the Co-operative society have expressed no-confidence on the petitioner to continue as the President of the Society. Although the said request was made by most of the members of the Board of the Society on 31.03.2016, to hold a special meeting so as to pass no-confidence motion against the petitioner, the petitioner has filed W.P(MD)No.9535 of 2016, challenging the correctness of the Notice, dated 13.05.2016.

11.Admittedly, no Notice was issued in the said writ petition by this Court and when the writ petition was listed on 25.05.2016, this Court has just adjourned the matter to 06.06.2016. This was brought to the notice of the 3rd respondent. Immediately thereafter, the 3rd respondent, for the reasons best known to him and keeping in mind the pendency of the writ petition challenging the Notice dated 13.05.2016, decided to call-off the special meeting scheduled on 31.05.2016. Accordingly, the meeting was cancelled. After cancelling the said meeting by his proceedings dated 31.05.2016, the 3rd respondent, in my considered view, cannot again hold it on the same day, for, he should have followed the conditions mentioned under Rule 62(3), which says that as soon as a requisition is received from the person seeking special meeting, the Registrar shall communicate a copy thereof to the concerned person calling upon him to make his representation, if any, within such time as may be specified by him, and thereafter, the Registrar shall within 30 days from the date of receipt of such requisition shall arrange to convene a special meeting of the members of the Board of the Society for consideration of the resolution expressing no-confidence in the office bearer, for which not less than three clear days' notice shall be given. For ready reference, Rule 62(3) of the Rules is given as under.



Registrar shall communicate a copy of the requisition to the office-bearer concerned, calling upon him to make his representations, if any, within such time as may be specified by him. 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 in the office-bearer for which not less than three clear days' notice shall be given. 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.''

12.A careful reading of the above provision indicates that there are two steps set to be followed by the Registrar. Firstly, the Registrar shall arrange to convene a special meeting of the members of the Board of the Society within 30 days from the date of receipt of such requisition. Secondly, not less than 3 clear days' notice shall be given. But, in the present case, as I mentioned above, if the 3rd respondent was of the view that he can proceed to hold a special meeting on the basis of the previous requisition dated 31.03.2016, since he has already cancelled the meeting scheduled on 31.05.2016, he should have atleast given some reasonable time namely, 3 days as per Rule 62(3) of the Rules, which course has not been followed by the 3rd respondent.

13.Therefore, for all these reasons, this Court is not inclined to accept the contentions of the respondents. Accordingly, the impugned order is set aside. However, it is left open to the respondents to work out their remedy in the manner known to law and if any fresh requisition is made by the majority of the members of the Board of the Society, the same can be looked into by the respondents, as per law.

14.In the result, W.P(MD)No.9901 of 2016 is allowed. In view of the order passed in W.P(MD)No.9901 of 2016, the prayer has become infructuous, hence, no order is required to be passed in W.P(MD) No.9535 of 2016 and the same is closed. No costs. Consequently, W.M.P(MD)Nos.7818, 7819, 7587 and 7588 of 2016 are closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1)The Joint Registrar of Co-operative Societies,
Trichirappalli Region,
Trichirappalli.



2) The Deputy Registrar of Cooperative Societies,
Trichirappalli Circle,
Trichy.

3) The Board of Directors,
M.M.348, Koundampatti Primary Agriculture
Cooperative Credit Society Limited,
Koundampatti,
Tiruchirappalli District.

+1cc to M/s.D.Shanmugaraja Sethupathi, Advocate in SR.28392
+1cc to M/s.T.Vadivelan, Advocate in SR.29226

W.P(MD)Nos.9901 and 9535 of 2016
07.06.2016

nbj

PBK/GSV-PM/SAR-II 17/06/2016 ::8P-6C::