

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.14308 of 2017 &
W.M.P.No.15506 of 2017

P.Dhasarathan

.. petitioner

Vs.

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

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

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the notice issued by the second respondent dated 30.03.2017 and consequential resolution dated 05.04.2017 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For respondents : Ms.T.Girija,
Government Advocate for R1
Mr.L.P.Shanmuga Sundaram
Special Government Pleader for R2

ORDER

According to the petitioner, petitioner is the President of Palapattu Primary Agricultural Co-operative Credit Society, Tindivanam Taluk, Villupuram District. There are 11 directors elected for the petitioner society. Out of the 11 directors, 7 directors gave representations to the first respondent on 15.3.2017. Then, explanation was called for from the petitioner with regard to seeking No Confidence Motion by the seven directors on 20.3.2017. Petitioner submitted his explanation on 27.3.2017. Pursuant to the said representation,

the impugned order has been passed, removing the petitioner from the post of President of the society. Challenging the impugned order, petitioner has filed the present writ petition.

2. The learned Government Advocate for the respondents would draw the attention of this Court in para 5 of the counter affidavit, by stating that there are 7 directors who gave representations to the first respondent on 15.3.2017. On the basis of the said representations, No Confidence Motion was passed with the support of 6 directors who have signed in the Minutes book. Subsequently, on the basis of representation made by the 7 directors, no confidence motion was passed against the petitioner and the impugned order was communicated to the petitioner by acknowledgment, dated 13.4.2017. Therefore, the writ petition is not maintainable and the same is liable to be dismissed.

3 In support of his submission, the learned Government Advocate for the respondents relied upon the judgment of this Court in Thanga Kathiravan vs. The Deputy Registrar of Co-operative Societies, Nagapattinam reported in 2015(2) CTC 52 wherein this Court held as under:

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 Member 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 that "not less than 2/3 of the existing Member", 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 violative of the provisions of Rule 62(2) of the Rules. The ratio laid down by the Punjab and Haryana High Court, reported in Jardar Khan v. State of Haryana and others, AIR 1998 P & H 249 and Calcutta High Court reported in Shyamapada Ganguly v. Abani Mohan Mukherjee, AIR 1951 Cal.420 squarely apply to the facts of the present case.

17. Therefore following the ration 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, 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 Section 33 of the Tamil Nadu Cooperative Societies Act, 1983, which is meant for "Constitution and Meeting of the Board" is not applicable to the case on hand.

19. In these circumstances, the impugned Notice dated 07.10.2014 is liable to be set aside and accordingly, the same is set aside."

4. Heard the rival submissions of the parties and perused the materials on record.

5. It is seen from the record that out of 11 directors, 7 directors made representation to the first respondent on 15.3.2017 and the first respondent called for explanation from the petitioner with regard to seeking of no confidence motion passed by the 7 directors. Petitioner also submitted his explanation on 20.7.2017. Thereafter, board meeting was convened on 5.4.2017. Thereafter, the impugned order has been passed by the respondent and the same was communicated to the petitioner. As per the rule 6(2) of the Tamilnadu Co-operative Societies Act, no board meeting shall be convened unless requisite representation not less than 2/3rd majority. But in the case on hand, out of 11 directors, only 7 directors made representation to the respondent. Therefore, there is no quorum as contemplated under Rule 6(2) of the Tamilnadu Co-operative Societies Rules.

6. In the light of the decision rendered by this Court in the judgment cited supra and Rule 6(2) of the Tamilnadu Co-

operative societies Rules, I have no hesitation to quash the impugned notice issued by the second respondent, dated 30.03.2017 and consequential resolution, dated 05.04.2017.

7. Accordingly, the Writ Petition is allowed. No Costs. Consequently, miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Deputy Registrar of Co-operative Societies,
Tindivanam Circle,
Tindivanam.
- 2.The Co-operative Sub Registrar
Field Officer, Mayilam/Special Officer,
O/o, Deputy Registrar of Co-operative
Societies, Villupuram.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.45061
+2cc to MR.M.S.Palaniswamy, Advocate SR.No.45270

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BR(CO)
GN(11/07/2017)

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