

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.18885 of 2017 and
MP.No.20401 of 2017

K.Ramasamy,
President,
S.418, B.Kosavampatti Primary
Agricultural Cooperative
Credit Society Ltd.,
S.Uduppam Post,
Namakkal Taluk &
District. ..Petitioner

Vs.

The Deputy Registrar of
Cooperative Societies,
Namakkal Circle,
Namakkal District ..Respondent

PRAYER:

The writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the respondent in his notice Na.Ka.3383/2017/sapa (2) dated 18.07.2017 to convene a special meeting of the board for no confidence motion against the petitioner and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.V.Selvaraj,
Additional Government Pleader

ORDER:

By consent of both the parties, the writ petition is taken up for final disposal today. Mr.S.Venkatachalam, Cooperative Sub Registrar, Credit and Marketing Circle, DR Office, Namakkal is present, at the time of disposal of the writ petition.

2. According to the learned counsel for the petitioner, being a member, the petitioner was elected as the President of the S.418, B.Kosavampatty Primary Agricultural Cooperative Credit Society Ltd. and assumed office on 09.05.2013. Having grudge on the petitioner, five elected members out of seven submitted a requisition letter dated 12.06.2017 to convene a special meeting of the board of directors to facilitate moving a no-confidence motion against the petitioner. After the receipt of the requisition, the respondent issued a notice in Na.Ka.3383/2017/sa.pa dated 05.07.2017 directing the petitioner to submit explanation within seven days. On receiving the notice with enclosures, the petitioner submitted the explanation on 13.07.2017. Pursuant to that, the respondent issued an order in Na.Ka.3383/2017/sa.pa(2) dated 18.07.2017 appointing the above Cooperative Sub Registrar to convene a special meeting of the board of directors on 25.07.2017 at 11.00 a.m. at the Office of the society. The same was received by the petitioner on 22.07.2017.

3. The learned counsel for the petitioner would submit that the date fixed for convening the special meeting on 25.07.2017, not within the period of 30 days as prescribed under Rule 62(3) of the Tamil Nadu Cooperative Societies Rules, 1988. Further, the learned counsel for the petitioner has contended that as defined in the "LAW LEXICON" a three clear days' notice shall be given in case of convening such special meeting. But, in this case, the petitioner received the notice on 22.07.2017 wherein the meeting was meant to be held on 25.07.2017. By excluding the first day, the last day and the day of 23.07.2017 happened to be Sunday, there was no three clear days and the impugned notice is not in accordance with the provisions under Rule 62 of the Act. Hence, the impugned order is liable to be quashed.

4. The learned Government Pleader submitted that only on receiving such requisition from the elected members Mr.S.Venkatachalam, Cooperative Sub Registrar, Credit and Marketing Circle, DR Office, Namakal was appointed for convening a special meeting of the board of directors on 25.07.2017 at 11.00 a.m. at the Office of the society and admitted that Rule 62 (3) was not considered to convene the special meeting.

5. Heard, the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

6. It is seen, based on the requisition letter dated 12.06.2017 the respondent had issued a notice in Na.Ka.3383/2017/sa.pa dated 05.07.2017 directing the petitioner to submit explanation. As such, the petitioner had submitted the explanation on 13.07.2017. Then, the respondent issued an

order in Na.Ka.3383/2017/sa.pa(2) dated 18.07.2017 appointing a Cooperative Sub Registrar to convene a special meeting of the board of directors on 25.07.2017 at 11.00 a.m. at the Office of the society and the same was received by the petitioner on 22.07.2017. The first contention of the petitioner, the date of the special meeting falls beyond 30 days from the date of the requisition letter as prescribed under Rule 62(3) of the Tamil Nadu Cooperative Societies Rules, 1988. At this stage, it is useful to extract Rule 62(3) of the Tamil Nadu Cooperative Societies Rules which reads as follows.

"62(3). As soon as such a requisition is received, 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 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"

7. It is also useful to extract the decision rendered by this Court in the case of S.Mathuram Vs. the Deputy Registrar of Cooperative Societies (Credit) (Full Additional Charge), Chennai and Others reported in 2017-2-Writ L.R.379, wherein this Court has held as follows.

"22.Point No.3:

Since the main ground raised in this Writ Petition is violation of Rule 62 (3) of the Tamil Nadu Cooperative Societies Rules, 1988, it is useful to extract Rule 62 (3) of the Tamil Nadu Cooperative Societies Rules, 1988, which reads as follows.

"62. Removal of an elected Office bearer

(1) An elected officer-bearer--- --- ---

(2) No special meeting of the board ---

(3) As soon as such a requisition is received, the 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 of 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".

The aforesaid rule mandates that on receipt of any requisition, the Registrar shall arrange to convene a special meeting of the Board of the Society within 30 days from the date of receipt of such requisition. The said rule also mandates that not less than three clear days' notice shall be given, to convene a special meeting of the Board.

23. In the case of "R.Mallan ..vs.. The Deputy Registrar of Cooperative Societies and others" in W.P.No.33207 of 2014 dated 14.03.2016, relied on by the learned counsel for the petitioner, this Court quashed the notice impugned therein, on the ground 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 Cooperative Societies by relying on the decision of this Court reported in (2015) 2 MLJ 395 (Thanga Kathiravan Vs. Deputy Registrar of Cooperative Societies and another), wherein this Court set aside the impugned notice stating that the same was issued beyond the period prescribed under Rule 62 (3) of Rules. The relevant portions are extracted as follows:-

"11. As per the Provisions of Rule 62 (3) of Tamil Nadu Cooperative 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 01.09.2014 and the second

respondent issued the impugned notice on 07.10.2014. It is clear that the provisions of Rule 62 (3) of the Tamil Nadu Cooperative Societies Rules, which is mandatory, was not followed by the respondents. The respondents should have convened the meeting within thirty days from 01.09.2014. In the case on hand, the impugned notice was issued on 07.10.2014 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 07.10.2014 is liable to be set aside.

19. In these circumstances, the impugned notice dated 07.10.2014 is liable to be set aside and accordingly, the same is set aside. Thus in the instance 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 Cooperative 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. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24. In yet another decision, relied on by the learned counsel for the petitioner, reported in 2001 (1) CTC 279 (V.Kuppanna .vs. Deputy Registrar of Cooperative Societies and two others), this Court set aside the impugned notice of meeting the consequential resolution on the ground that the notice was issued beyond the period of 30 days prescribed under Rule 62 (3) of Rules."

8. From the above, it is very clear that the respondent has issued an order to convene a meeting on 25.07.2017 which is not within thirty days' time and hence the order is liable to be quashed.

9. The first contention of the petitioner raised in the writ petitioner succeeded. Therefore, the other ground raised in the writ petition is not required to be considered.

10. Considering the above facts and circumstances of the case, without hesitation, the impugned order is quashed. Consequently, the writ petition stands allowed. However, liberty is granted to the respondent to proceed as per rules and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Registrar of
Cooperative Societies,
Namakkal Circle,
Namakkal District.

+ 1 cc to M/s. M.s. Palaniswamy, Advocate Sr.52795

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RSI (CO)
EU(28/11/2017)



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