



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34541 of 2019
and
W.M.P. No. 35244 of 2019

V.S. Sarathykumar

... Petitioner

-vs-

1. The Co-Operative Sub Registrar/ Convener Special meeting
office of the Deputy Registrar of
Cooperative Societies Tirupattur,
Thirupathur,
Thirupathur District.
2. The Deputy Registrar of Cooperative Societies Tirupattur,
Thirupathur,
Thirupathur District.
3. Managing Director,
Vaniyampadi Town Cooperative Bank,
Vaniyampadi,
Thirupathur,
Thirupathur District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, for issue of Writ of certiorari to call for the records from the 1st respondent relating to the impugned notice on the file of the 1st respondent issued under Rule 62(4) of the Tamil Nadu Cooperative Society Rules, 1988 dated 09.12.2019 and quash the same.

For Petitioner : Mr. S. Sairaman

For Respondents: Mr. L.P. Shanmugasundaram,
Special Government Pleader (Co-operatives)

O R D E R

Heard Mr. S. Sairaman, Learned Counsel for the Petitioner and Mr. L.P. Shanmugasundaram, Learned Special Government Pleader (Co-operatives), who takes notice for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.



2. The Petitioner claims to be officiating as elected President of the Third Respondent from 21.08.2018 onwards. The Second Respondent had sent a notice No. Na. Ka. 130/2019 Saba(1) dated 16.10.2019 under Rule 62 of the Tamil Nadu Co-operative Societies Rules, 1988, requiring the Petitioner to convene a special meeting of the Board of Directors of the Third Respondent within 7 days to decide whether the Petitioner enjoys two-third majority, but the Petitioner was not furnished with the copies of the letters received from the Directors, who had expressed no confidence in him. At that stage, the Second Respondent by another letter No. Na. Ka. 130/2019 Saba(1) dated 21.10.2019 informed that if the Petitioner fails to convene a meeting, he would himself convene such meeting. The Petitioner challenged the same in W.P. No. 30911 of 2019 before this Court, which was disposed by this Court at the time of admission on 01.11.2019 stating as follows:-

"3. When the matter was taken up in the morning session Mr.L.P.Shanmugha Sundaram, learned Special Government Pleader, by accepting notice on behalf of the respondents 1 and 2, sought pass-over to get instruction and accordingly, when the matter is taken up at 2.30 p.m., after getting instruction, he has submitted that the petitioner is entitled to get a copy of the requisition/representation received from the office bearer requesting to convene No Confidence Motion. He has also handed over a copy of such requisition/representation to the learned counsel for the petitioner in the open Court.

4. Therefore, in view of the above, since the learned counsel for the petitioner has received a copy of such requisition/representation in the Court, the petitioner is given 10 days time from today to give his explanation and after receiving such explanation, the respondents are directed to take a decision in accordance with law. With this direction, the writ petition is disposed of. No Costs."

3. It is complained that though the Petitioner had submitted his reply dated 08.11.2019, the meeting of the Board of Directors had not been convened within 30 days from the date of requisition on 16.10.2019 as required under Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, 1988. It is the further grievance of the Petitioner that by notice dated 09.12.2019, which was served on him at 4.30 p.m. on 10.12.2019, a special meeting of the Board of Directors had been proposed to be held at 11.00 a.m. on 13.12.2019, which does not satisfy the requirement of three clear days. In that backdrop, the present Writ Petition has been filed challenging the same.



4. Learned Counsel for the Petitioner submits that this Court in Thanga. Kathiravan -vs- Deputy Registrar of Co-operative Societies, Nagapattinam Circle, Nagapattinam [(2015) 2 MLJ 395], after referring to earlier decisions interpreting Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, 1988, has held that the requirements stipulated therein are mandatory and any violation of the same would have to be necessarily set aside. In this regard, reference may be made to the relevant portions from that decision, which reads as follows:-

"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."

It would also be beneficial to extract Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, 1988, 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."

5. It is clear from the relevant dates in this case that the Second Respondent received the requisition on 16.10.2019 and the meeting of the Board of Directors has been proposed to be convened on 13.12.2019, which is beyond the period of 30 days. That apart, the notice dated 09.12.2019 for the meeting of the Board of Directors proposed to be convened on 13.12.2019 has



been served on the Petitioner at 4.30 p.m. on 10.12.2019, which also does not satisfy the requirement of 3 clear days required for the same.

6. In the aforesaid circumstances, the impugned notice dated 09.12.2019 passed by the Second Respondent, which cannot be sustained, is set aside. However, this would not preclude any fresh motion of no confidence moved against the Petitioner in the manner prescribed by law.

7. The Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

tsh/vjt
To

1. The Co-Operative Sub Registrar/ Convener Special meeting
office of the Deputy Registrar of
Cooperative Societies Tirupattur,
Thirupathur,
Thirupathur District.

2. The Deputy Registrar of Cooperative Societies Tirupattur,
Thirupathur,
Thirupathur District.

3. Managing Director,
Vaniyampadi Town Cooperative Bank,
Vaniyampadi,
Thirupathur,
Thirupathur District.

+1 CC to Spl. Govt. Pleader (CO OP) sr 104477

+1 CC to Mr.L.P.Shanmugha Sundaram, Advocate sr 104463.

W.P. No. 34541 of 2019

SV(CO)
SP(09/01/2020)