



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.4080 of 2019

and

WMP(MD)No.3171 of 2019

S.Sivaraman

... Petitioner

Vs.

- 1.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies,
Kanyakumari Region, District Collectorate,
Nagercoil, Kanyakumari District.
- 3.The Deputy Registrar of Co-operative Societies,
Thuckalay - 629 175.Kanyakumari District.
- 4.The Kalkulam Vilavancode Taluk
Co-operative Marketing Society Ltd., Y-285,
Rep.by its Managing Director,
Marthandam, Kanyakumari District.
- 5.Nanchil Dominic, President,
The Kalkulam Vilavancode Taluk
Co-operative Marketing Society Ltd., Y-285,
Marthandam, Kanyakumari District.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 3 to consider the requisition of the petitioner and 196 members of Kalkulam Vilavancode Taluk Co-operative Marketing Society Ltd, Y-285, Marthandam, Kanyakumari District (KVTCMS) dated 10.12.2018 within a time frame that may be stipulated by this Court and consequently direct the first respondent to convene a special general body meeting of KVTCMS with the single agenda of removing the fifth respondent from the primary membership of KVTCMS under the presidenship of either the first respondent or any officer authorised by him in accordance with Rule 61(4) of the Tamil Nadu Cooperative Societies Rules, 1988.



For Petitioner : Mr.L.Victoria Gowri

For Respondents : Mr.M.Rajarajan for R1 to R4

Mr.S.Xavier Rajini for R5

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ORDER

The Kalkulam Vilavancode Taluk Co-operative Marketing Society Ltd., Y-285 is a Society registered under the provisions of Tamil Nadu Co-operative Societies Act, 1983. It is said to have several thousand members. It is a leading society in implementing the Public Distribution System in Kalkulam Vilavancode Taluks of Kanyakumari District. On 09.06.2018, the term of the previous Board of Directors expired. Election was held on 13.10.2018 for the Board. On 16.10.2018, one Nanchil Dominic and R.Lekshmana Chandra were elected as the President and Vice President of the society. The petitioner is one of the members of the society. Some 197 members of the society including the petitioner submitted a written requisition to the fourth respondent for convening a special general body meeting of the society with a single agenda to remove Thiru.Nanchil Dominic from the basic membership of the society. Since no action has been taken based on the said requisition, this writ petition came to be filed.

2.The learned counsel appearing for the fifth respondent filed his counter affidavit and also written arguments. The fifth respondent has strongly denied the allegations made against him. According to the fifth respondent, the society has 11 Board of Directors on its board who elected him as the president. He is an office bearer of the society as per Section 2(18) of the Act. If the office bearers are to be removed from their posts, Rule 62 is applicable. Reliance on Rule 61 of the Act is misplaced. The president of the society can be removed only by following the procedure set out in Rule 62 and not in any other manner. The learned counsel for the fifth respondent would point out that Section 25 of the Act deals only with expulsion of a member from the society. It does not give any power to the Registrar to convene special general body meeting if the board fails to do so. It is further alleged that this writ petition has been hastily filed even without making a formal demand to the Registrar of the Cooperative Societies.

3.The learned counsel for the fifth respondent placed reliance on a host of decisions in support of the contention that if the statute requires a thing to be done in a particular manner, it should be done in that manner and not in any other manner. The Registrar can convene such general body meeting of board only if the request is made by 2/3rd of the members of the board under Rule 62(2) of the Tamil Nadu Cooperative Societies Rules, 1988. He also pointed out that the requirements set out in Rule 62(3) are mandatory. The learned counsel placed reliance on the decisions



reported in 2000 W.L.R. 379, 2015 (2) CTC 52 and 2001 (1) CTC 279.

4.I carefully considered the rival contentions. The submission of the petitioner's counsel is that Rule 61(3) casts a duty on the Registrar to arrange to convene a special meeting of the members of the society for consideration of the resolution expressing no confidence in the member of the society. Per contra, the stand of the contesting respondent is that Thiru.Nanchil Dominic is not a mere elected member of the board. He had graduated to the status of an elected office bearer. Therefore, requirements of Rule 62 will have to be satisfied. Since admittedly the requirements of Rule 62 have not been fulfilled, the question of arranging to convene a special meeting by the Registrar does not arise.

5.I am of the view that Rule 61 is clearly not applicable in this case since Thiru.Nanchil Dominic as the President of the Society is an elected office bearer. But, the matter cannot end there. Rule 62 is all about removing an elected office bearer from the post which he is holding. But, in the instant case, the endeavor of the requisitionists is not to remove the contesting respondent from the post alone. On the other hand, the attempt is to expel him from the society itself. In other words, the target of attack is not the post held by Thiru.Nanchil Dominic. It is his very membership. Therefore, neither Rule 61 nor Rule 62 will apply in this case. What will apply is Section 25 of the Tamil Nadu Cooperative Societies Act, 1983. The protective provision for Thiru.Nanchil Dominic is only Rule 62. It being only a Rule obviously cannot prevail over Section 25 of the Act. Section 25 of the Act reads as follows :

25.Expulsion.- (1) Any member of a registered society who has acted adversely to the interests of the society may be expelled upon a resolution of the general body passed at a special meeting convened for the purpose by the votes of not less than two-third of the total number of the members present and voting at the Meeting. The quorum for such special meeting shall be-

(i) in the case of societies having membership not exceeding one thousand, not less than one fourth of the total membership, or one hundred members, whichever is less;

(ii) in other cases two hundred members:

Provided that no such special meeting shall be called by the board except upon the requisition in writing by not less than one fourth of the total number of members of the society or twenty five members, whichever is less.

(2) No member shall be expelled under sub-section (1) without being given an opportunity in the manner prescribed of making his representations and until the resolution referred to in that sub-section is approved by



the Registrar. A copy of the resolution expelling the member as approved by the Registrar shall be communicated to the member."

6. As per the proviso to Section 25 (1) of the Act, the total number of requisitionists should be not less than 25 members. In this case, the said condition is met. The quorum for such meeting shall be 200 members. A member can be expelled only if the resolution is passed by the votes of not less than 2/3rd of the total number of members presenting in the meeting at the voting. Of course, the member concerned shall be given an opportunity in the manner prescribed for making his representation and the resolution must also be approved by the Registrar.

7. Section 32(4) (a) of the Act states that if the board refuses or fails to call a meeting, the Registrar shall, if he is satisfied that there are sufficient and valid reasons to convene the special general meeting, call the meeting himself. The expression employed in 32(4)(a) of the Act is "shall". But, this duty to convene will arise only if the Registrar is satisfied that there are sufficient and valid reasons to convene the special general meeting. Merely because a person has been elected as a board member or he has been elected as an office bearer, that does not mean that he is no longer a member of the registered society. Section 25(1) of the Act commences with the expression "any member". As per Section 2(16) of the Act "member" means a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the provisions of this Act, the rules and the bye-laws and includes an associate member. Therefore, an elected office bearer would also fall within the meaning of the expression "any member".

8. The objection of the contesting respondent with regard to the maintainability of the writ petition may not hold water for more than one reason. A learned Judge of this Court vide order, dated 30.08.2016, in W.P.(MD)Nos.14737 of 2016 and batch, after referring to 97th Constitutional Amendment and also the decision of the Honourable Supreme Court reported in (2014) 7 SCC 633, held that a writ petition against the Co-operative Societies is very much maintainable. It is relevant to note here that the learned Judge has considered the Larger Bench decision of this Court, reported in **2006 (6) CTC 689**. The Honourable Division of this Court in W.A.(MD) No.537 of 2011, dated 01.09.2017, in P.Marichamy vs The Joint Registrar, Co-Operative Societies and another, has held that post 97th Constitutional amendment, in view of the conferment of Constitutional status, a writ petition against a co-operative Bank is very much maintainable. Therefore, I hold that this writ petition is very much maintainable.



9. That apart, what is sought to be enforced in these writ proceedings is the statutory duty cast on the Registrar of Co-operative Societies. This Court has already held that a valid requisition has been submitted by the writ petitioner for convening a special general body meeting with a single agenda to remove Thiru. Nanchil Dominic from the very membership of the society namely, Kalkulam Vilavancode Taluk Co-operative Marketing Society Ltd., Y-285, Kanyakumari District. The board has failed to convene a special meeting. Since this writ petition has been filed, the Registrar of Cooperative Societies is very much aware of the developments. Therefore, the Registrar has to satisfy himself if there are sufficient and valid reasons for convening the special general body meeting. If he is so satisfied, he shall call the meeting himself. Of course, any authorised person can also preside over such meeting. But then, the Registrar will have to take a call in the matter. The Registrar of the Cooperative Society will take a decision in this regard within a period of two weeks from the date of receipt of a copy of this order.

10. This writ petition is ordered on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd
ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR(CS IV)

Skm

TO

1. The Registrar of Co-operative Societies,
N.V. Natarajan Maligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
2. The Joint Registrar of Co-operative Societies,
Kanyakumari Region, District Collectorate,
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3. The Deputy Registrar of Co-operative Societies,
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4. The Kalkulam Vilavancode Taluk
Co-operative Marketing Society Ltd., Y-285,
Rep. by its Managing Director,
Marthandam, Kanyakumari District.



5.Nanchil Dominic, President,
The Kalkulam Vilavancode Taluk
Co-operative Marketing Society Ltd., Y-285,
Marthandam, Kanyakumari District.

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1CC TO MR S. XAVIER RAJINI, ADVOCATE SR 54450
1CC TO M/S. L. VICTORIA GOWRI, ADVOCATE SR 54699

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