



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
10.03.2020

Delivered on
12.03.2020

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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.1812 of 2020

and

WMP Nos.2116, 6304 & 6463 of 2020

M.Subramaniyan,
President,
Chennai Government Officers
Co-operative Building Society Ltd.,
No.372, Mudichur Road,
West Tambaram,
Chennai 600 045.

..Petitioner

.v

- 1.The Registrar (Housing),
No.40, Ritherdon Road,
Vepery,
Chennai 600 007.
2. The Deputy Registrar (Housing),
No.7, Varadhanar Street,
Vedachalam Nagar,
Chengalpattu.
- 3.The Co-operative Sub-Registrar (Housing),
Tambaram II,
Co-operative Sub-Registrar's Office,
Chengalpet.
- 4.The Vice President,
Chennai Government Officers Co-operative
Building Society Ltd.,
No.372, Mudichur Road,
West Tambaram,
Chennai 600 045.
- 5.The Secretary,
Chennai Government Officers Co-operative
Building Society Ltd.,
No.372, Mudichur Road,
West Tambaram,
Chennai 600 045.



6. Radhakrishnan,
Director,
Chennai Government Officers Co-operative
Building Society Ltd.,
No.372, Mudichur Road,
West Tambaram,
Chennai 600 045.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned Resolution No.1 dated 22.1.2020 of the 3rd Respondent herein and quash the same.

For Petitioners: Mr.AR.L.Sundaresan, Senior Counsel
for Mrs.AL.Ganthimathi

For R 1 to R 3 : Mr.L.P.Shanmugasundaram
5 & 6 Special Government Pleader

For R 4 : Mr.L.Chandrakumar

O R D E R

This Writ Petition has been filed challenging the impugned resolution dated 22.01.2020, passed by the 3rd respondent.

2. The case of the petitioner is that he was elected as a President of the 4th respondent Society in the year 1997. While so, some of the members of the Society had made a representation to the 1st respondent on 03.12.2019, to the effect that the petitioner is acting against the interest of the Society and he had made unauthorised payments. The petitioner was thereafter removed from the post of President by a resolution passed by the 3rd respondent. The same became a subject matter of the challenge before this Court in W.P.No.34586 of 2019. When the writ petition was pending, the 2nd respondent passed an order on 16.12.2019, to the effect that the resolution is not valid and hence, the petitioner can continue to act as the President of the Society. This was recorded by this Court and the writ petition was disposed of on 17.12.2019.

3. There was yet another complaint given against the petitioner and the 2nd respondent issued a notice on 07.01.2020, which according to the petitioner was served on 13.01.2020, calling for explanation from the petitioner with regard to the allegations made in the notice. The petitioner had submitted his explanation on 20.01.2020 to the 2nd respondent. In the meantime, the 3rd respondent issued a notice signed on 18.01.2020, to all the members for the purpose of conducting a special Meeting to decide the no confidence motion moved against the petitioner. The date was



fixed on 22.01.2020, for the said Meeting. According to the petitioner, this notice was served on him on 20.01.2020. Thereafter, the meeting was conducted on 22.01.2020 and all the 11 members were present and 7 members voted against the petitioner and 4 members voted in favor of the petitioner, including the petitioner. Based on the same, the 3rd respondent passed a resolution removing the petitioner from the post of President. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the petitioner raised the following contentions.

- The act of the 3rd respondent in passing the impugned resolution is clearly arbitrary and is attended by malafides. This is the second attempt made to dislodge the petitioner from the post of President.
- The petitioner was issued with the notice dated 07.01.2020, by the 2nd respondent calling for explanation, only on 13.01.2020. Thereafter, the Society was closed for Pongal holidays and the first working day was only on 20.01.2020. The petitioner submitted the explanation on the same day. In the meantime, the 3rd respondent had already issued notice to all the members calling for the special Meeting. This was done even without the explanation given by the petitioner being circulated to the members. This is in violation of Rule 62(3) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as "Rules").
- The petitioner is entitled to be given three clear days notice to give his explanation as per Rule 62 (3) of the Rules. However, the petitioner was given only one day since he received the notice only on 20.01.2020.
- During the Meeting, 7 members voted against the petitioner and 4 members voted in favour of the petitioner, including the petitioner. As per Rule 62(6) of the Rules, a no confidence will be valid only if the resolution is passed by not less than two-third of members present and voting at the special Meeting. The two-thirds strength comes to 7.33 and when the same is rounded off, there should be at least 8, who should have voted against the petitioner. Since the same was not satisfied, the no confidence resolution itself becomes invalid. To substantiate this submission, the learned Senior



Counsel relied upon the judgment of this Court in Thanga Kathiravan .v. The Deputy Registrar of Co-operative Societies and Another in W.P.No.27137 of 2014, dated 19.02.2015.

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5.Mr.L.Chandrakumar, learned counsel appearing on behalf of the 4th respondent apart from reiterating the contentions made in the counter affidavit filed by the 3rd respondent, submitted that the petitioner is governed by the Rules, and the by-laws of the Society. The learned counsel submitted that as per by-law No.19, no member shall be present at a Meeting of the Board in any matter in which, he is personally interested and the same is being discussed. The learned counsel submitted that in view of this by-law, the petitioner was not entitled to participate in the Meeting and consequently, his vote cannot be taken into consideration and in which case there were 7 votes against the petitioner and 3 votes in favour of the petitioner. This satisfies the requirement under Rule 62(6) of the Rules. The learned counsel further submitted that there are serious allegations against the petitioner since he has caused loss to the Society to the tune of Rs.15 crores by sanctioning a term loan. Therefore, the learned counsel submitted that this writ petition is liable to be dismissed.

6. In reply to the submissions made by Mr.L.Chandrakumar, Mr.AR.L.Sundaresan, learned Senior counsel submitted that the by-law that was pointed out will not have any application when it comes to a no confidence motion. The learned Senior Counsel submitted that the concerned by-law only deals with the regular Meetings conducted by the Board of Directors while dealing with the affairs of the Society. The learned Senior Counsel further submitted that the 3rd respondent was well aware of the same and that is why a notice was issued to the petitioner also asking him to participate in the special Meeting. The learned Senior Counsel submitted that the petitioner having been allowed to participate in the Meeting was also entitled to cast his vote and in a no confidence motion, the person against whom it is called for, is also entitled to vote in the Meeting.

7.Heard the learned Special Government Pleader appearing on behalf of the other respondents.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court is of the considered view that the main issue as to whether the resolution is in accordance with Rule 62(6) of the Rules, can be taken up first since a finding on this issue will decide whether this Court must go into the other issues raised by the learned Senior Counsel appearing



on behalf of the petitioner.

10. In the present case, in the special Meeting, that was held on 22.01.2020, all the 11 members participated and 7 voted against the petitioner and 4 voted for the petitioner, including the petitioner. Thereafter, the 3rd respondent through the impugned resolution has removed the petitioner from the post of President. Rule 62(6) of the Rules is extracted hereunder:

62. Removal of an elected office-bearer -

(6) No resolution of the board passing the no confidence motion against an elected office-bearer and removing him from the office shall be valid unless such a resolution is passed by not less than two-thirds of the members present and voting at the special meeting of the board.

11. This Court had an occasion to deal with this issue in the judgment referred supra. The relevant portions in the judgment is extracted hereunder:

7. In support of his contention, the learned counsel, relied on the following judgments:

(i) AIR 1998 Punjab and Haryana 249 (Jardar Khan vs State of Haryana and others), wherein the Division Bench of Punjab and Haryana High Court, in the case of a Gram Panchayat having 8 members, the resolution of no-confidence motion passed by five members only although $\frac{2}{3}$ of 8 is more than 5 and comes in fraction, the said fraction cannot be ignored and has to be treated as one whole. Therefore, the High Court held that the Resolution cannot be said to be passed with requisite majority of $\frac{2}{3}$ members.

(ii) AIR 1951 Calcutta 420 (Shyamapada Ganguly vs Abani Mohan Mukherjee), wherein, the Calcutta High Court, dealing Sec.61(2) of Bengal Municipality Act held that "in case of 11 Commissioners voting out of 17 Commissioners, was not sufficient compliance with the sanction and the resolution for removal of the opposite party was ineffective and must be deemed to have been lost.

As per Sec.61(2) of the Bengal Municipalities Act, the Section requires that not less than two-thirds of the whole number of the Commissioners, must vote before a Chairman or a Vice-Chairman can be removed. However, the Section is mandatory.

Therefore, the number of votes must not be



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less than two-thirds in any event, but it may be more. Two-thirds of 17 is 11.33, whereas only 11 members had voted. Therefore, the Calcutta High Court held that the resolution for removal of the opposite party was ineffective and must be deemed to have been lost".

In 2001 (1) CTC 279 (V. Kuppanna vs The Deputy Registrar, Co-operative Societies, Thiruvallur and two others), this Court held that

"Rule 62(3) of the Tamil Nadu Co-operative Societies Rules requires that the Registrar shall exercise such power under Section 33 (14) and 33(15) within thirty days from the date of receipt of Notice inviting exercise of such powers. If the meeting is held after thirty days, the consequential resolution is liable to be set aside.

8. Mr.L.P. Shanmuga Sundaram, learned Special Government Pleader appearing for the respondents submitted that since 7 members had signed the requisition, that is sufficient for moving No Confidence Motion under Proviso-1 of Sec.33 of the

Act. Further, the learned Special Government Pleader submitted that the principles laid down in the said proviso is applicable to Rule 62(2). Therefore, according to the learned Special Government Pleader, the impugned notice is valid under law.

13. Coming to the next point that out of 11 members, 7 members had filed the requisition before the first respondent to move no confidence motion against the petitioner, Rule 62 (1) and (2) of the Rules read as follows: "(1) An elected office-bearer may be removed by a resolution expressing no confidence in him passed in a Special Meeting of the Board and (2) No special Meeting of the Board shall be convened unless a requisition in writing signed by not less than two-third of existing Members of the Board of the Society at the time of such requisition who are eligible to vote at elections is presented to the Registrar".

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



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of existing members of the Board of the Society.

15. In the present case, as already stated $\frac{2}{3}$ of 11 comes to 7.33. Since the provisions of Rule 62(2) of the Rules says that "not less than $\frac{2}{3}$ of the existing members", 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 7 members out of 11 members to move a No confidence Motion, is violative of the provisions of Rule 62(2) of the Rules. The ratio laid down by the Punjab and Haryana High Court, reported in AIR 1998 Punjab and Haryana 249 (Jardar Khan vs State of Haryana and others), and Calcutta High Court reported in AIR 1951 Calcutta 420 (Shyampada Ganguly vs Abani Mohan Mukherjee) squarely apply to the facts of the present case.

17. Therefore, following the ratio 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 i.e., 8 (eight members), because restricting it to the lower number, 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.

12. It is clear from the above judgment that two-third members works out to 7.33 and this Court had held that "not less than two-thirds of the existing members" will mean that the next higher number must be taken into consideration which is "8 members". This Court has held that 7 members voting against the candidate is less than 7.33 and therefore, it does not satisfy the requirements of Rule 62 of the Rules.

13. The learned counsel appearing on behalf of the 3rd respondent relied upon by-law No.19 and contended that the petitioner did not have the right to participate in the Meeting and vote and therefore his vote cannot be taken into consideration. Therefore, the resolution satisfies the requirements under Rule 62(6) of the Rules. In order to appreciate this submission, it will be relevant to extract by-



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law No.19, as follows:

The Board of Directors shall meet once a fortnight or often if necessary to conduct the affairs of the society. No decision of the Board of Directors shall be valid unless it is passed by at least five members. All questions before the Board of Directors shall be decided by a majority or votes. Should there be an equality of votes, the President or other presiding member shall have a casting vote. No member of the Board of Directors shall be present at a meeting of the Board when any matter in which he is personally interested is being discussed. In case of urgency where there may not be sufficient time to convene a meeting of the Board of Directors and in all cases in which such a procedure may, from time to time, be prescribed by the Board of Directors, the Secretary may obtain the orders of the Board of Directors by circulation of papers among the members present at the headquarters of the society. Such decisions arrived at by circulation shall be placed before the next meeting of the Board of Directors for their information. Should a difference of opinion arise in the course of such circulation the matter shall not be decided by circulation but shall be placed before a meeting of the Board of Directors. The quorum for a meeting shall be Four.

14. The above by-law deals with the Meeting of the Board of Directors, which is convened to deal with the affairs of the Society. During those Meetings, where any matter in which a member is personally interested, he should not be present at the Meeting. This by-law cannot be taken into consideration when it comes to a no confidence motion.

15. The removal of a President of the Society involves the rights of the person to hold the post and therefore, he will also be entitled to participate in the Meeting and vote in the said Meeting. He cannot be disallowed from participating in the Meeting on the ground that he has a personal interest. If this is applied to the petitioner, the same logic will also apply to those members, who are interested in the removal of the petitioner. By-law of the Society cannot have an overriding effect over the Statutory Rules. Therefore, this Court is not in agreement with the submission made by the learned counsel appearing on behalf of the 3rd respondent in this regard. The above judgment squarely covers the facts of the present case.



16. In view of the above, the impugned resolution of the 3rd respondent is not in accordance with Rule 62(6) of the Rules. Consequently, the resolution will have to be interfered and the same is accordingly quashed. In view of this finding, this Court does not want to go into the other issues raised by the learned Senior Counsel appearing on behalf of the petitioner.

In the result, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

KP

To

1. The Registrar (Housing),
No.40, Ritherdon Road,
Vepery,
Chennai 600 007.
2. The Deputy Registrar (Housing),
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No.372, Mudichur Road,
West Tambaram,
Chennai 600 045.

+1cc to Mrs.AL.Ganthimathi, Advocate SR.No.21933



+1cc to Mr.L.Chandrakumar, Advocate SR.No.22332

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.22607

+1cc to Special Government Pleader (CO-OP)SR.No.23185

W.P.No.1812 of 2020

SV (CO)
GMY (09/07/2020)