

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.27441 of 2019

and WMP Nos.26907, 13308, 13310 of 2019

K.R.Haldorai

..Petitioner

Vs.

1. The Sub Registrar /Deputy Registrar (crime) Office,
Deputy Registrar of Co-operatives Societies,
Additional Collectorate Buildings, Finger post, Ooty.

2. The Deputy Registrar,
Deputy Registrar of Co-operatives Societies,
Additional Collectorate Buildings,
Finger Post, Ooty.

3. The Joint Registrar,
Deputy Registrar of Co-operatives Societies,
Additional Collectorate Building,
Finger Post - Ooty.

4. N.Raman

5. S.Kannapiran

6. K.Thangavelu

7. Ponjayaseelan

8. Tmt.Radhika

9. Tmt.S.Saraswathi

10.T.Usha

..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ or direction to call for the records on the file of 1st respondent in Proceedings No.Nil dated 09.09.2019 seeking to convene the meeting on 18.09.2019 for the purposes of moving a "No confidence motion" as against the petitioner for the alleged acts of getting the shops for auction that are under the control of the society and quash the same as illegal, incompetent and wholly without Jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.Bala Ramesh

Special Government Pleader
(co-op) for R1 to R3

Mr.B.Vijayakumar for R4 to R10

ORDER

This writ petition has been filed challenging the impugned notice issued by the 1st respondent seeking to convene the meeting for the purpose of moving a "No confidence motion" against the petitioner and the consequential proceedings of the Executive committee dated 18.09.2019.

2. The petitioner is an elected member in the Nilgiris Co-operative Marketing Society Limited along with nine others and the petitioner was chosen as the President of the society. On 28.06.2019, a letter was circulated by some of the elected members, whereby they had sought for moving a No confidence motion against the petitioner. The reasons assigned for moving such a motion is that the petitioner had sought to bring the property belonging to the society for auction without the concurrence of the other members. The 1st respondent convened a meeting on 09.08.2019. The petitioner was served with a notice on 03.08.2019 informing him about the proposed meeting convened on 09.08.2019.

3. The petitioner challenged the said notice before this Court by filing WP No.23505 of 2019. The writ petition was disposed of by an order dated 09.08.2019. The relevant portions in the order is extracted hereunder:-

4. The main attack on the impugned order, which proposed to convene the special meeting to pass No Confidence Motion against the petitioner is that, before convening the meeting, the procedure contemplated under Rule 62 of the Tamil Nadu Co-operative Societies Rules has not been complied.

5. The learned counsel appearing for the respondents 1 to 3 submits that on receipt of the complaint from majority of the members to convene the special meeting to move the No Confidence Motion, the copy of the complaint was sent to the petitioner through RPAD and the same was received by him on 18.07.2019. Thereafter, the Co-operative Sub Registrar has fixed the date of special meeting to move the No Confidence Motion on 09.08.2019.

6. As per Rule 62 of the Tamil Nadu Co-operative Societies Rules, any request by more than 2/3rd members to convene the special meeting to remove the office bearers is to be considered within a period of 30 days and the meeting should be convened, after affording opportunity to the said officer bearers.

7. As far as this case is concerned, the learned counsel appearing for the respondents 1 to 3 would submit that the complaint from eight members was received on 09.07.2019. Immediately that was forwarded

to the petitioner calling for his explanation within seven days and the said communicated dated 15.07.2019 was received by the petitioner on 18.07.2019. Since no explanation was received from the petitioner, the Co-operative Sub Registrar has fixed the date of special meeting as 09.08.2019, which is well within the time frame and procedure contemplated under Rule 62 of the Tamil Nadu Co-operative Societies Rules.

8. The objection raised by the learned counsel appearing for the petitioner is that the alleged show cause notice was not received by the petitioner and the signature found in the postal acknowledgment is not that of the petitioner, but somebody has signed and affixed the seal of the Society.

9. In the said circumstances, this Court is of the opinion that fair opportunity should be given to the petitioner to explain before convening the special meeting to move No Confidence Motion against the petitioner. Hence, the respondents are directed to serve the show cause notice on the petitioner in-person. [Advance copy is served to the learned counsel appearing for the petitioner today in Court]. Within 7 days from the receipt of the show cause notice, the petitioner shall give his explanation. On receipt of the explanation or on expiry of 7 days, the respondents shall decide and proceed further.

10. In view of the above fact, direction stand extended by excluding the days between 15.07.2019 (the date of the show cause notice) and the date, on which the fresh show cause notice to be served, shall stand excluded for reckoning the 30 days limitation prescribed in Rule 62. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

4. After the above order was passed by this Court, according to the petitioner, no notice was served on him in person and only a copy of the show cause notice was served on the counsel and based on the same, the petitioner gave an explanation on 26.08.2019. Pursuant to the explanation given by the petitioner, the impugned notice dated 09.09.2019 was issued by the 1st respondent informing the petitioner regarding convening of the meeting on 18.09.2019 for moving a "no confidence motion" against the petitioner.

5. When this writ petition was pending, a resolution was passed on 18.09.2019, wherein it was resolved to remove the petitioner from the office of President. This resolution is also challenged by way of amendment petition, which was allowed by this Court in WMP No.13308 of 2020 by an order dated 17.08.2020.

6. The 2nd respondent has filed a counter affidavit in this case. The relevant portions in the counter is extracted hereunder :-

6. It is submitted that the writ petition came up for admission on 09.08.2019, the date of special meeting of the board. The learned Special Government Pleader appearing for the the 2nd respondent submitted the above facts of serving notice on the petitioner before this Hon'ble Court and sought time to produce the files relating to the case. But this Hon'ble Court asked the Special Government Pleader to furnish the copy of the show cause notice to the petitioner counsel in open Court itself and also direct the 2nd respondent to serve a copy of the show cause notice in person to the petitioner. Then learned Special Government pleader served the show cause notice to the petitioner counsel in the open Court itself and this Hon'ble Court pleased to disposed the writ petition by directing the petitioner to give the explanation to show cause notice within a period of 7 days, the relevant portion of the order extracted as follows :-

9. In the said circumstances, this Court is of the opinion that for opportunity should be given to the petitioner to explain before commencing the special meeting to move No Confidence Motion against the petitioner. Hence, the respondents are directed to serve the show cause notice on the petitioner in-person [Advance copy is served to the learned counsel appearing for the petitioner today in Court]. Within 7 days from the receipt of the show cause notice, the petitioner shall give his explanation. On receipt of the explanation or on expiry of 7 days, the respondents shall decide and proceed further.

10. In view of the above fact, direction stand extended by excluding the days between 15.07.209 (the date of the show cause notice) and the date, on which the fresh show cause notice to be served, shall stand excluded for reckoning the 30 days limitation prescribed in Rule 62. Accordingly, the writ petition is disposed of".

7. It is submitted that since the petitioner has received the show cause notice from the 2nd respondent on 20.07.2019 itself still he got the one more copy of the show cause notice in open Court, he submitted his explanation dated 26.08.2019 to the show cause notice with the 2nd respondent who on receipt of the explanation has authorized the 1st respondent to

conduct the special meeting of the Board. The 1st respondent vide notice dated 09.09.2019 has arranged the Special meeting of the board on 18.09.2019 for consideration of resolution expressing no confidence against the petitioner. As such the meeting was conducted on 18.09.2019. In the meeting, Ten Board of Directors including the petitioner and respondents 4 were participated. In the Special Meeting of the board, the resolution expressing no confidence against the petitioner was passed successfully with the support of Seven Board of Directors who voted in favour of the resolution. On account of the resolution, the petitioner was removed from the post of President.

8. It is submitted that while the process was going on, the petitioner filed the present writ petition challenging the show cause notice date 09.09.2019 issued by the 1st respondent to convene the special meeting of the board for consideration of the resolution expressing no confidence motion against the petitioner. The present writ petition came up for admission on 17.09.2019 before this Hon'ble Court. This Court has found no violation of rules and not granted stay. Therefore, the 1st respondent conducted the Special meeting on 18.09.2019, where the resolution expressing no confidence was passed against the petitioner herein.

9. It is submitted that the 2nd respondent is denying the allegations made by the petitioner that the meeting was convened by violating Rule 62 of the Tamil Nadu Co-operative Society Rules, 1988. The petitioner contended that the meeting was not conducted within 30 days from the date of requisition for conducting the Special Meeting of the board for consideration of the resolution expressing no confidence against the petitioner herein. As per the Rule 62(3) of the Rules, the registrar has to arrange to convene a Special meeting of the board within a period of 30 days from the date of requisition. The rule has not stated that meeting has to be concluded within 30 days from the date of requisition. In this case the 2nd respondent received requisition from the respondents 4 to 10 on 09.07.2019, which is within 30 days as prescribed in the Rule. The meeting may be conducted after 30 days but it should be arrange within 30 days. The relevant portion of the Rule 62(3) extracted as follows :-

"3. As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the office bearer {xxx} 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 [xxx] for which not less than three clear days notice shall be give. A copy or gist of the requisition and of the representation, if any, received from the office -bearer [xxx] concerned shall also be sent as the members along with the notice for the special meeting of the board.

10. It is submitted that though the meeting was scheduled on 09.08.2019, pursuant to the order passed by this Hon'ble Court in WP No.23505 of 2019, the meeting was canceled. This Hon'ble Court was pleased to disposed the writ petition by directing the 2nd respondent to conduct the special meeting of the board after receiving the explanation from the petitioner. As such, the 2nd respondent received the explanation dated 26.08.2019 from the petitioner and authorized the 1st respondent to arrange the special meeting of the board. The 1st respondent by the impugned notice date 09.09.2019 has arranged the special meeting of the board. Hence, there cannot be any violation of procedure contemplated in the said rule.

11. It is submitted that the petitioner has stated in Paragraph 2 to 5 of the affidavit filed in support of this writ petition that there is a dispute among the board of directors with regard to the auction of the shops which has lead the initiation of no confident motion against the petitioner by the respondents 4 to 10. There may be disputes arise between the board of directors. But there is reason necessitate for the initiation of no confidence motion against on office bearer. The no confidence can be initiated against the office bearers, if the 2/3 rd of the board of directors has lost confidence with the office bearer. As long as the office bearers enjoying the majority support of the board of directors, they can continue as an office bearer. When they lost the confidence of the 2/3 rd of the board of directors, they need to step down from the post. It is principle of democracy. In this present case, the petitioner lost the confidence of the majority of the board of the directors and removed from the post of president by resolution brought by the majority of the board of directors. The petitioner has to accept the same and he cannot challenge the same.

7. Mr.V.Raghavachari, learned counsel appearing for the petitioner has made the following submissions :-

(a) The meeting convened by the 1st respondent without issuing a fresh show cause notice in person to the petitioner is ex-facie illegal and is violative of the orders passed by this Court in WP No.23505 of 2019.

(b) The 1st respondent failed to comply with the procedure contemplated under Rule 62 of the Tamil Nadu Co-operative Societies Rules.

(c) The petitioner was not given an opportunity to explain himself before the elected members before the meeting was convened.

(d) The learned counsel in order to substantiate his submission relied upon the judgment of this Court in [V.Kuppanna Vs.The Deputy Registrar, Co-operative Societies, Thiruvallur and two others] reported in 2001 1 CTC 279.

8. Per contra, Mr.Bala Ramesh, Special Government Pleader appearing on behalf of the respondents 1 to 3 made the following submissions :-

(a) A copy of the show cause notice was served on the counsel appearing on behalf of the petitioner in the open Court and therefore, the petitioner had sufficient notice to give his explanation and the explanation was also submitted by the petitioner on 26.08.2019.

(b) The petitioner was informed vide notice dated 09.09.2019 that the special meeting of the Board for considering the resolution expressing "No confidence motion" is convened on 18.09.2019 and the petitioner also attended the meeting and seven out of ten Board of Directors voted in favour of the resolution and the petitioner was removed from the post of President.

(c) The meeting was convened strictly in accordance with the Rule 62 of the Tamil Nadu Co-operative Societies Rules, 1988.

(d) As per Rule 62(3), the Registrar has to arrange to convene the Special meeting of the Board within a period of 30 days from the date of requisition. In this case the 2nd respondent received a requisition on 09.07.2019 and a meeting was arranged vide notice dated 03.08.2019 and the said rule only contemplates arranging to convene a special meeting within 30 days and it is not necessary that meeting itself should be conducted within 30 days. The petitioner lost the confidence of the 2/3rd of the Board of Directors and they have also passed a resolution against the petitioner resulting in the removal of the petitioner from the post of President and there is no ground to challenge the same.

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

10. Before proceeding further to decide the issues raised in the present writ petition, it will be beneficial to extract Rule 62 of the Tamil Nadu Co-operative Societies Rules, 1988 hereunder :-

62. Removal of an elected office-bearer.- (1) An elected office-bearer may be removed by a resolution expressing no confidence in him passed in a special meeting of the board.

(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.

(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.

(4) The special meeting of the board shall be presided over and conducted by the Registrar or any officer subordinate to him authorized in this behalf.

(5) The quorum for such special board meeting shall be a majority of the existing members of the board who are eligible to vote at elections.

(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.

[(7) The society shall communicate a copy of such resolution to the office-bearer concerned who shall cease to be such office-bearer from the date of such resolution.]

(8) If the no confidence motion is not carried by such a majority referred to in sub-rule (6), or if the

meeting cannot be held for want of the quorum referred to in sub-rule (5), no requisition for bringing any subsequent motion expressing want of confidence in the same office-bearer shall be received until after the expiry of six months of the date of the meeting.

11. A careful reading of the above rule indicates the following ingredients for removal of an Elected officer :-

(a) A requisition in writing sent by not less than 2/3rds of existing members of the Board of the society, who are eligible to vote, must be presented to the Registrar.

(b) The Registrar must communicate a copy of the requisition to the office bearer concerned calling upon him to give his explanation within such time specified by him.

(c) The Registrar must arrange to convene a special meeting of the Board of the society, within 30 days from the date of receipt of the requisition from the 2/3rd members.

(d) Not less than three days clear notice should be given before the date of the Special meeting.

(e) The special meeting of the board shall be presided over and conducted by the Registrar or any officer authorized by him in his behalf.

(f) The resolution must be passed by not less than 2/3rd of the members present and voting at the special meeting of the Board.

(g) The officer bearer shall cease to hold the office from the date of such resolution.

12. In the present case, the petitioner came before this Court challenging the earlier notice through which the Special meeting was convened on the ground that Rule 62 has not been complied with.

13. This Court while disposing of the writ petition felt that a fair opportunity should be given to the petitioner to explain himself before convening the Special meeting. Therefore, this Court directed the official respondents to serve the show cause notice on the petitioner in person. This Court also took note of the fact that advance copy was served to the learned counsel appearing for the petitioner. This Court directed the petitioner to give his explanation within seven days from the date of receipt of the show cause notice. On receipt of the explanation, the respondents were directed to decide the further course of action. This Court also made it clear that the period

between 15.07.2019 and the date on which, the fresh show cause notice that is going to be served on the petitioner, will stand excluded for reckoning the 30 days period prescribed in Rule 62.

14. Admittedly, in this case, no notice was served on the petitioner in person after the orders were passed by this Court on 09.08.2019. The petitioner had submitted his explanation on 26.08.2019, based on the copy received by him from his counsel, who was handed over the copy of the show cause notice in the open Court.

15. Rule 62 clearly contemplates serving a copy of the requisition to the office bearer concerned in person. This is a mandatory requirement. This was taken note of by this Court and that is the reason why a specific direction was given to serve a show cause notice on the petitioner in person. Serving a copy of the requisition on the counsel for petitioner cannot be construed as service of notice in person on the petitioner. Specific time line has been fixed for convening the meeting and it has been held to be mandatory in the decision referred by the learned counsel for the petitioner. The relevant portions in the judgment is extracted hereunder :-

4. In any event, there is no dispute as to the fact that the requisition of five out of six directors of the third respondent bank, dated 24.7.2000, expressing 'no confidence' against the petitioner, was received by the first respondent on 27.7.2000 and the first respondent convened the meeting by the impugned notice dated 23.8.2000 only on 28.8.2000 which is beyond thirty days. Therefore, on this ground itself, the impugned notice dated 23.8.2000 and the consequential resolution of the third respondent bank dated 28.8.2000 are set aside.

5. In the light of the above admitted facts, there is no necessity to go into other contentions of both the counsel. Hence, the impugned notice dated 23.8.2000 and the consequential resolution dated 28.8.2000 stands quashed and the writ petition is allowed as prayed for. No costs. Consequently, W.M.P.Nos.21753 and 21754 of 2000 are closed.

16. The 1st respondent by not serving a notice in person has not only violated the mandatory requirement of the Rule but also the specific directions issued by this Court in the order referred supra.

17. When law provides a particular act to be done in a particular manner, it should be done in the same manner or not at all. The non-service of the notice on the petitioner in person is fatal to the convening of the meeting as well as the resolution passed in the meeting on 18.09.2019 and the same is liable to be interfered by this Court. Just because the

petitioner has proceeded to give his explanation on 26.08.2029, it does not in any way wipe out the illegality committed by the respondents.

18. In the result, the impugned proceedings of the 1st respondent dated 09.09.2019 and the proceedings of the Executive Committee dated 18.09.2019, is held to be illegal and accordingly, the same stands quashed. This writ petition is allowed as prayed for. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Registrar /Deputy Registrar (crime) Office,
Deputy Registrar of Co-operatives Societies,
Additional Collectorate Buildings, Finger post, Ooty.
2. The Deputy Registrar,
Deputy Registrar of Co-operatives Societies,
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Additional Collectorate Building,
Finger Post - Ooty.

+1 cc to Mr.B.Vijayakumar, Advocate Sr.No.27571

+1 cc to Mr.V.Raghavachari, Advocate Sr.No.27604

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and WMP Nos.26907, 13308, 13310 of 2019

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