



WEB COPY

W.P(MD)No.21356 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.21356 of 2019

and

WMP (MD)No.18001 of 2019

N.Jegan

.. Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Madurai Saragam,
Madurai.

2.The Cooperative Sub Registrar/Field Officer,
Vadipatti Saragam,
Madurai District.

3.Selvakumar

4.K.Vellaichami

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration declaring the special meeting held on 21.09.2019 based on the notice dated 10.09.2019 and the consequential proceedings of the 2nd respondent dated 16.09.2019 as null and void and consequently direct the respondents 1 and 2 to convene special meeting by following the procedures contemplated in Rule 62 of the Co-operative Societies Rules.

For Petitioner: Mr.AR.L.Sundaresan
Senior Counsel
for Mr.J.Anandkumar

For R1 & R2 : Mrs.J.Padmavathi Devi
Special Government Pleader

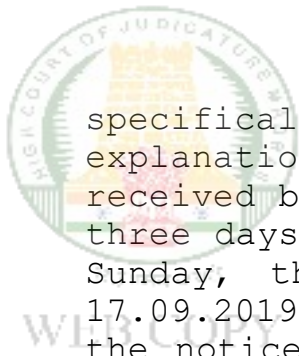
ORDER

This writ petition is filed for issuance of a writ of declaration, declaring the special meeting held on 21.09.2019 based on the notice dated 10.09.2019 and the consequential proceedings of the second respondent dated 16.09.2019 as null and void and consequently direct the respondents 1 and 2 to convene a special meeting by following the procedures contemplated under Rule 62 of the Tamil Nadu Co-operative Societies Rules, 1988.



2.The petitioner is the elected President of A1183, Karupatti Primary Agricultural Cooperative Thrift Society, having been elected on 11.08.2018 and he has assumed Office of the President-ship and has been discharging his duties. While so, on 08.07.2019, the first respondent has issued a notice calling upon the petitioner to submit his explanation on the ground that some members have requested to bring No Confidence Motion against him on various allegations. In response, the petitioner had also given his explanation dated 18.07.2019. However, without any response to the same, the first respondent had appointed the second respondent as Special Officer to convene a special meeting. The first respondent did not give any consideration to the explanation submitted by the petitioner and passed orders on 19.07.2019, appointing the Special Officer. Pursuant to the appointment of the Special Officer, namely, the second respondent herein, a consequent notice for convening a special meeting by fixing a date as 26.07.2019 was issued. Aggrieved by the same, WP(MD)No.16600 of 2019 was filed by the petitioner and an order of interim stay was granted. However, upon the information given by the learned Special Government Pleader that the request for No Confidence Motion was withdrawn by the letter dated 03.09.2019, the writ petition was disposed of. Once again, a notice of the first respondent dated 10.09.2019 was served on the petitioner on 14.09.2019, stating that a letter dated 03.09.2019 was given by the members for moving the No Confidence Motion against him on certain allegations. The allegations were identical to the earlier allegations made by the proceedings dated 08.07.2019. The said notice dated 10.09.2019 had given three days time for submitting the explanation by the petitioner. Even before the petitioner could submit his explanation, the Special Officer had convened a special meeting and the second respondent had fixed the meeting to be held on 21.09.2019 and notices were sent on 16.09.2019. In the meantime, the fourth respondent one Vellaichamy had informed the petitioner that he had not signed in the request for No Confidence Motion and there are also certain allegations made by the fourth respondent against the respondents 2 and 3. As there is no sufficient notice and time was given by the respondents, the said notices were put to challenge in this writ petition.

3.Mr.AR.L.Sundaresan, the learned Senior Counsel appearing on behalf of the petitioner contended that the very exercise of the respondents from the beginning is illegal as the earlier proceedings dated 08.07.2019 was withdrawn by them on 03.09.2019. However, the proceedings dated 10.09.2019 was issued against the petitioner on the same allegations. It is pointed out that the proceedings dated 10.09.2019, served on the petitioner on 14.09.2019 has clearly established the *mala fide* act of the official respondents. The proceedings dated 10.09.2019



specifically grants 3 days time for the petitioner to submit his explanation. It is relevant to mention that the said notice was received by the petitioner only on 14.09.2019. Therefore, the said three days has to be taken, commencing from 15.09.2019, which is a Sunday, then the petitioner has got three days till the date 17.09.2019. But, even before the end of three days as mentioned in the notice dated 10.09.2019, the Special Officer convened Special Meeting and the second respondent by the impugned order dated 16.09.2019 fixed the meeting to be held on 21.09.2019. Therefore, the proceedings dated 16.09.2019 is within the period of three days granted to the petitioner for submitting his explanation.

4. Admittedly, the petitioner had not filed any explanation as there was no time for him to submit his explanation. The said act itself is in violation of principles of natural justice. In this regard, it is relevant to advert to Rule 62(3) of the Tamil Nadu Cooperative Societies Rules, 1988, which reads as under:

"62(3). As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the officer-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 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. The purpose behind the Act is that the members have to come to an independent conclusion for analysing the request for No Confidence Motion and considering the explanation that will accompany the notice. In this case, the petitioner was not even given time even as mentioned in the notice. Further, the impugned notice was issued without the explanation being circulated to the members to know the stand of the petitioner. This only goes to show the *mala fide* intention on the part of the respondents 1 and 2.

6. When the learned Special Government Pleader appearing on behalf of the respondents 1 and 2 was enquired whether No Confidence Motion was supported by at least 2/3rd of the members, she furnished records, as per which, there were eight members have signed, out of total 11 members. As stated earlier, the fourth respondent Vellaichamy, who later had denied having signed in the request for No Confidence Motion. Therefore, if the fourth



respondent support is discounted, then, the respondents cannot take forward the No Confidence Motion for want of 2/3rd majority, which itself is a violation.

7. In support of the said contention, it is relevant to refer to the decision of this Court in *Thanga.Kathiravan, President Vs. Deputy Registrar of Cooperative Societies, Nagapattinam Circle, Nagapattinam* and another [(2015) 2 MLJ 395] wherein, it is observed as follows :

"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 of existing members of the Board of the Society.

15. In the present case, as already stated 2/3 of 11 comes to 7.33. Since the provisions of Rule 62(2) of the Rules says that "not less than 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 *Others (Supra)* and Calcutta High Court reported in *Shyamapada Ganguly V. Abani Mohan Mukherjee (supra)* squarely apply to the facts of the present case."

8. Secondly, when the petitioner was not even given time for submitting his explanation and also when the other members are not circulated the copy of explanation, which should have been filed by the petitioner for taking a decision independently, the entire proceedings become vitiated. Above all, the learned Special Government Pleader appearing for the respondents 1 and 2 had produced a copy of the resolution dated 21.09.2019, as per which, the No Confidence Motion was passed against the petitioner. A perusal of the same also goes to show that seven of the members have supported the No Confidence Motion and three of them have opposed the same. The fourth respondent Vellaichamy who is said to have given the request to bring No Confidence Motion, was not even present at the time of passing the above resolution. As the notice itself suffered from *mala fides* and it has not been passed in



accordance with law, the consequent resolution dated 21.09.2019 is *non est* in the eye of law.

9.Thirdly, the respondents have withdrawn the earlier writ petition for want of quorum on 03.09.2019. Once again, a notice of the first respondent dated 10.09.2019 was served on the petitioner on 14.09.2019. The said act of the first respondent is in violation of Rule 62(8) of the Rules, which reads as under:

"(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. "

10.In support of the above, this Court refer to the decision of this Court in *D.Arasu Vs. Deputy Registrar of Coop. Societies, Vellore Circle, Vellore - 1* and another [(2014) 2 MLJ 689] wherein, it is observed as follows :

"13. Sub-Rule 8 of Rule 62 of the Tamilnadu Co-operative Societies Rules, 1988, has no application to the facts of this case. Sub-Rule 8 of Rule 62, contemplates two situations viz.,

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

(ii) if the meeting cannot beheld for want of the quorum referred to in sub-rule(5)."

14. At this juncture, it is relevant to extract sub-rules 5 and 6 of Rule 62 of the Tamilnadu Co-operative Societies Rules, 1988.

(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 confident 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.

15. In the case on hand, the special meeting sought to be convened itself, has not been held, as the notice dated 12.08.2013, had been withdrawn by



the Deputy Registrar of Co-operative Societies, Vellore Circle, Vellore, vide R.C.No.2939/13 dated 08.11.2013. Unless and until, a special meeting had been convened and if any of the conditions mentioned in sub-rule 8 of Rule 62 of the Tamilnadu Co-operative Societies Rules, 1988, is not satisfied, then no request to convene a subsequent meeting expressing want of confidence in the office bearer shall be received, until after the expiry of six months of the date of the meeting. In the case on hand, such a situation has not arisen at all, for invoking sub-rule 8 of Rule 62 of the Tamilnadu Co-operative Societies Rules, 1988. The meeting has not been convened at all. Therefore, rule 62(8) has no application to the facts of this case. Therefore, the writ petition filed invoking rule 62(8), has to be dismissed. It is also pertinent to note that sub rule 3 of rule 62, contemplates the Registrar to communicate a copy of the requisition to the office bearer, calling upon him to make a representation, if any, within a time specified by him. It does not contemplate a meeting to be convened by the President, after the requisition expressing "No Confidence" against the office bearer, is received by the Registrar. Therefore, the question of giving an opportunity to the President does not arise and such a procedure is not contemplated in the rules."

11. In the light of the above, the special meeting held on 21.09.2019 based on the notice dated 10.09.2019 and the resolution passed on 21.09.2019 are declared as null and void. The first and second respondents are directed to convene a special meeting by following the due procedures contemplated under Rule 62 of the Tamil Nadu Cooperative Societies Rules, 1988 by issuing proper notice, affording sufficient time and convene the same in the manner known to law. The said exercise has to be completed within a period of three months from the date of receipt of a copy of this order.

12. The writ petition is allowed with the above direction. No costs. Consequently, WMP(MD)No.18001 of 2019 is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



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1.The Deputy Registrar of Cooperative Societies,
Madurai Saragam,
Madurai.

2.The Cooperative Sub Registrar/Field Officer,
Vadipatti Saragam,
Madurai District.

+1 CC to MR.J.ANANDKUMAR, Advocate (SR-3299[F] dated 28/01/2020)

W.P (MD) No.21356 of 2019
28.01.2020

KM/ (07.02.2020) 7P 4C