



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2020

CORAM:

WEB COPY THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.26251 of 2019

and

WMP (MD)Nos.22666 & 22667 of 2019

R.Angala Eswari

.. Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Uthamapalayam Circle,
Theni District.

2.The Cooperative Sub Registrar/Field Officer,
(Full Additional Incharge),
Bodinayakanur, District.

3.The Board of Directors,
rep.thro' the President K.Kannadasan,
M.D.Spl.6 Kottakudi Primary Agriculture
Cooperative Credit Society,
Bodinayakanur, Theni District.

(R3 impleaded vide order dated 17.02.2019)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records pertaining to the impugned proceedings dated 26.11.2019 as well as the impugned order made in minute book dated 30.11.2019 passed by the 2nd respondent and quash the same.

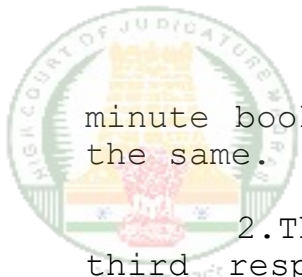
For Petitioner : Mr.D.Sadiq Raja

For R1 & R2 : Mr.M.Murugan
Government Advocate

For R3 : Mr.V.O.S.Kalaiselvam

ORDER

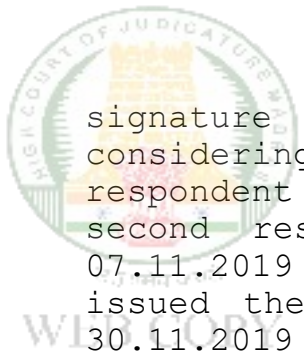
This writ petition is filed for issuance of a writ of certiorari, calling for the records pertaining to the impugned proceedings dated 26.11.2019 as well as the impugned order made in



minute book dated 30.11.2019 passed by the 2nd respondent and quash the same.

2.The petitioner has been elected as the President of the third respondent Society/M.D.Spl.6 Kottakudi Primary Agriculture Cooperative Credit Society, Bodinayakanur, on 02.04.2018. There are 11 Directors in the said Society. Out of 11 Directors, one K.Subburaj, died in the year 2018 and 2 Directors viz., A.Rajendran and Y.John David were disqualified through the resolution dated 22.10.2018 and 26.06.2019 respectively. Therefore, at present, there are 8 Directors in the said Society. On 03.10.2019 and on 09.10.2019, 7 Directors have given their respective requisition to the first respondent to remove the petitioner, based on which, the first respondent issued a notice dated 18.10.2019 as per Rule 62(3) of the Tamil Nadu Cooperative Societies Rules, 1988 [hereinafter referred to as 'the Rules'] to the petitioner to submit her explanation for the requisition made. Subsequently, the petitioner came to know that one G.Mariammal, who is one of the Directors of the Society never made such a requisition dated 09.10.2019 before the first respondent and her signature was forged by the third respondent in order to show the 2/3rd majority for No Confidence Motion against the petitioner. Thereafter, the second respondent was appointed on 31.10.2019 to convene the special board meeting. Subsequently, on 02.11.2019, the second respondent fixed the date as 07.11.2019 for the 'No Confidence Meeting' against the petitioner. While so, the second respondent vide the proceedings dated 05.11.2019 adjourned the meeting without mentioning further date. Finally the second respondent issued the impugned notice dated 26.11.2019, fixing the date as 30.11.2019 for the No Confidence Meeting and the same has been served to the petitioner only on 27.11.2019. The said meeting was attended by 8 Directors and 6 Directors cast their votes against the petitioner. Out of 6 Directors, 2 Directors viz., A.Rajendran and Y.John David were already disqualified and the same has been brought to the knowledge of second respondent. However, without considering the same, the impugned order has been passed, removing the petitioner from the post of President and appointing the Vice President namely Kannadasan as President (Incharge). Challenging the same, the petitioner is before this court.

3.The learned counsel appearing on behalf of the petitioner contended that the petitioner who is the elected member of the said Society was removed from the post by passing the 'no confidence motion' without following the procedures contemplated under Rule 62 of the Rules. On 03.10.2019 and 09.10.2019, seven Directors of the Society made a requisition before the first respondent to remove the petitioner from the post of President citing false allegations against her. Based on the said requisition, the first respondent has issued the notice dated 18.10.2019 to the petitioner to give her explanation. The petitioner has also approached the first respondent



signature of G.Mariamammal on impersonation. However, without considering the same, the first respondent appointed the second respondent to convene a special meeting. It is pointed out that the second respondent has not conducted the meeting as fixed on 07.11.2019 and adjourned the meeting *sine die*. Subsequently he issued the impugned notice dated 26.11.2019, fixing the date as 30.11.2019 for convening the special meeting. The said notice was served on the petitioner on 27.11.2019 and the petitioner was not provided with 3 clear days for submitting her explanation as mandated under Rule 62(3) of the Rules.

4.The learned counsel further submitted that out of 11 members in the society, one Subburaj died and 2 Directors viz., A.Rajendran and Y.John David were disqualified under Section 34(1) (b)(i) of the Tamil Nadu Cooperative Societies Act, 1983 and they were not eligible to vote for the 'No confidence motion'. But in the special board meeting held on 30.11.2019, 8 members were participated, including those who were already disqualified, which is contrary to law and it has been done only to secure the 2/3rd majority to move the 'No Confidence Motion'. Further, out of the said 8 members, 2 members supported the petitioner and 6 members cast their votes against the petitioner.

5.The learned Government Advocate for the respondents 1 and 2 denied all the averments made by the petitioner and submitted that the respondents 1 and 2 after following all the procedures contemplated under Rule 62 of the Rules, rightly removed the petitioner from the post of President.

6.The third respondent has filed counter affidavit stating that one K.Mariamammal herself has signed in the requisition dated 30.10.2019 and it has not been forged as alleged by the petitioner. Further it is stated that notice has been served to all the ten directors including the petitioner on 26.11.2019 itself and there is no delay on the part of the respondents in serving the notice and the petitioner has wilfully failed to refer to the receipt of date of notice. It is also averred that the resolution dated 26.06.2019 disqualifying the two Directors viz., A.Rajendran and Y.John David is not legal. _Therefore, question of majority will not arise in moving the no confidence to disqualify the petitioner.

7.This Court heard the submissions made on either side and perused all the necessary documents.

8.In so far as the contention of the petitioner that no opportunity was provided to give her explanation for the allegations made against her by the third respondent is concerned, the petitioner failed to give her reply to the notice dated 18.10.2019 with respect to the requisition made by the seven Directors. Instead, she complained that one G.Mariamammal has not made any



the petitioner was not supported by any proper documents. Further, the notice dated 18.10.2019 had already provided an opportunity to the petitioner to make her explanation within three days from the date of receipt of notice. But, the petitioner has given her explanation only on 29.11.2019, which is after a lapse of one month.

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9.The learned counsel for the petitioner also submitted that the notice regarding convening of the special meeting on 26.11.2019 never called for any explanation from the petitioner and 3 clear days time was not provided to give her explanation, as the notice dated 26.11.2019 was served only on 27.11.2019, fixing the meeting on 30.11.2019.

10.With respect to the said averment this court is of the considered view that the notice issued on 26.11.2019 is only a continuation of the postponed meeting vide the proceedings of the second respondent dated 05.11.2019 and there is no need to call for second explanation from the petitioner, who failed to give her reply for the notice dated 18.10.2019. If that is so, no question of giving three clear days as contended by the petitioner will arise.

11.The Society passed the resolutions dated 22.10.2018 and 26.06.2019 to communicate the disqualification of the two members namely A.Rajendran and Y.John David under Section 34(1) (b) (i) of the Tamil Nadu Cooperative Societies Act to the first respondent. But the petitioner failed to prove whether the Society has communicated the disqualification and the same was approved by the first respondent or not. Till such time, these two members cannot be considered as disqualified.

12.In the special meeting held on 30.11.2019, 8 directors were participated. Though one G.Mariamammal made a requisition for 'no confidence motion' on 30.01.2019, she was not present on the date of special meeting. Out of 8 directors, 6 directors voted against the petitioner and two directors voted in favour of the petitioner. As per Rule 62(6) of the Rules, there should not be less than 2/3rd members present and vote to remove the members. In the case on hand, 2/3rd of 10, comes to 6.66.

13.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 :

"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".

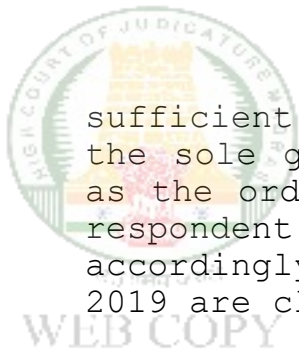
14. In the case on hand, $2/3$ of 11 comes to 7.33. Admittedly, only 7 members had given the requisition for moving No confidence motion. The provisions of Rule 62(2) says that the requisition, in writing, should be signed by not less than two-third of existing members of the Board of the Society.

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.

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 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."

14. As per the said decision and relevant provisions of the Rules, $2/3^{\text{rd}}$ majority comes to seven members. In the present case, only 6 members were present and cast their votes, which is not



sufficient to move no confidence motion against the petitioner. On the sole ground, the impugned proceedings dated 26.11.2019 as well as the order made in minute book dated 30.11.2019 passed by the 2nd respondent are set aside and this writ petition is allowed accordingly. No costs. Consequently, WMP(MD)Nos.22666 & 22667 of 2019 are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

To

1.The Deputy Registrar of Cooperative Societies,
Uthamapalayam Circle,
Theni District.

2.The Cooperative Sub Registrar/Field Officer,
(Full Additional Incharge),
Bodinayakanur, District.

+1 CC to M/s.Special Govt.Pleader (SR-3590[F] dated 29/01/2020)

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-3401[F] dated
28/01/2020)

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-3501[F] dated 28/01/2020)

W.P (MD) No.26251 of 2019
28.01.2020

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