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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.21838 of 2021

and

W.M.P.Nos.23018, 23019 & 25224 of 2021

S.Natarajan

... Petitioner

-Vs-

1. The Deputy Registrar of Co-operative Society
Mannarkudi Circle, Thiruvarur.
2. The Cooperative Sub Registrar / Field Officer
Needamangalam, O/o Deputy Registrar of
Co-operative Societies, Mannarkudi
Thiruvarur District.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the order passed by the 1st respondent in Na.Ka.No.1915/2021/Sa.Pa dated 30.09.2021 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mrs.S.Anitha,
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records of the order passed by the 1st respondent in Na.Ka.No.1915/2021/Sa.Pa dated 30.09.2021 and quash the same.

2. The case of the petitioner is that, the petitioner was elected as a member of T.948 Devangudi Primary Agricultural Co-operative Credit Society Ltd.,(hereinafter referred to as the 'Society'). It consisted of 11 elected members. The members elected the petitioner as the President of the Society and he assumed office on 09.08.2019.



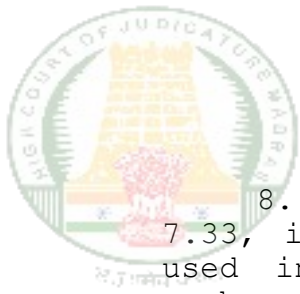
3. When that being so, a notice for no-confidence motion was given against the petitioner by some of the members of the Society on 06.09.2021. In the said notice, 7 out of the total 11 members have signed, pursuant to which, the first respondent had convened the meeting of the Society to decide about the no-confidence motion. Pursuant to the said meeting, the first respondent, by a communication dated 30.09.2021, has confirmed it that the no-confidence motion has been passed with the majority of 7 out of 11 members.

4. Challenging the said order passed by the first respondent dated 30.09.2021 declaring that the no-confidence motion brought against the petitioner was passed, the present writ petition has been filed.

5. Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner, who has raised a point that, Rule 62(2) of the Tamil Nadu Cooperative Societies Rules, 1988 (In short 'the Rules') made under the Tamil Nadu Cooperative Societies Act, 1983 (In short 'the Act') makes it mandatory that, 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.

6. Thereby, not less than two-third of the members, who are eligible to vote at that time must have given the notice for no-confidence motion. Unless two-third members have given the notice, such no-confidence motion shall not be taken into account by convening a special meeting, is the mandate of Rule 62(2).

7. In this context, the learned counsel for the petitioner would further contend that, in the present case, admittedly only 7 out of 11 members have given the notice for no-confidence motion and if the two-third members is calculated, that comes to 7.33 out of 11 members and the 7.33 shall be rounded off to full member ie., 8. Therefore, since the no-confidence motion notice admittedly has been given only by 7 members, it does not meet the requirement of two-third ie., 8 members. Therefore, on that ground itself the very initiation of no-confidence motion against the petitioner is unlawful and therefore what culminated pursuant to the said no-confidence motion ie., the impugned order is also equally unlawful, and hence it is liable to be quashed, he contended.

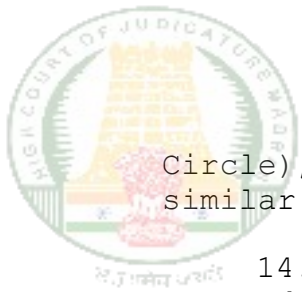


8. In order to substantiate his contention that, if it is 7.33, it should be rounded off only to 8 because the language used in the provision ie., words "not less than two-third members who are eligible to vote at the time of giving such notice for no-confidence motion" was already considered and interpreted by this Court in reported judgment in 2015 (2) MLJ 295 (Thanga Kathiravan -Vs- Deputy Registrar of Co-operative Societies, Nagapattinam Circle). Relying upon the said judgment, the learned counsel for the petitioner would contend that, if it is not 8 members out of the total 11 members, it does not meet the requirement of two-third majority as contemplated under Rule 62(2). Therefore, in the present case it is only 7 members which is less than two-third, hence the impugned proceedings by way of no-confidence motion against the petitioner is vitiated, he contended.

9. However, Mrs.S.Anitha, learned Special Government Pleader appearing for the respondents would submit that, insofar as the no-confidence motion notice is concerned, though it was given by 7 members, it cannot be treated as less than two-third of the total members of 11, since the President against whom the no-confidence motion was brought in, cannot be treated as one of the members in the total count of 11 members. Therefore, the remaining members are only 10. Out of 10 members, if the no-confidence motion is brought by 7 members, certainly that would meet the two-third majority under Rule 62(2). Therefore, the ground urged by the petitioner that, it does not meet the requirement of two-third majority at the time of moving the no-confidence motion does not hold good. Therefore, there is no infirmity in taking up the no-confidence motion given by 7 members out of 10 members ie., minus the petitioner, the President and in that case, the impugned order declaring the no-confidence motion by voting of 7 members out of 10 members since has been passed, that order is to be sustained, she contended.

10. I have considered the submissions made by the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents and have perused the materials placed on record.

11. The issue raised in this writ petition is in a very narrow compass. The petitioner's contention is that, out of 11 members in the Society, two-third constitutes 7.33 members, and that should be rounded off to 8 members as per the order passed by this Court reported in 2015 (2) MLJ 295 (Thanga Kathiravan -Vs- Deputy Registrar of Co-operative Societies, Nagapattinam



Circle), where the learned Judge has confronted with exactly similar issue and has held as follows,

14. In the case on hand, $\frac{2}{3}$ 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 $\frac{2}{3}$ 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 (Shyamapada 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.

18. Since the provisions of Rule 62(2) itself is very clear as to the number of members for moving No confidence motion, the provisions of Explanation II of Sec.33 of the Tamil Nadu



12. Here in the case in hand, the total members of the Society is 11 including the petitioner, out of whom only 7 members admittedly have given the notice for no-confidence motion. In this context, it is the contention of the respondents, as projected by the learned Special Government Pleader that, if the President against whom the no-confidence motion is brought in, he cannot be treated as one of the members among the 11 members. Therefore, the remaining members are only 10 and therefore, out of 10, if 7 members have given a notice for no-confidence motion, that should be construed as more than two-third of the total members. Accordingly, the no-confidence motion can very well be taken into account for the purpose of passing the same in the special meeting conducted in this regard.

13. However, if we look at the order which is impugned herein dated 30.09.2021, the first respondent has stated that 7 members have voted in favour of the no-confidence motion out of the 10 members, who are eligible to vote in the no-confidence motion because, one member since has become the President ie., the petitioner, minus the petitioner alone the total members should be taken into account and that is the reason why the impugned order has been passed as if the no-confidence motion has been passed with two-third majority.

14. However, Rule 62(2) of the Rules speaks about the notice of no-confidence motion to be brought in ie., the first step to be taken as per the language used in Rule 62(2) starting with the words "No special meeting". Hence, it shall be construed that, in case the special meeting would have to be convened, unless a request in writing signed by two-third of the existing members of the board is given, such special meeting shall not be convened. The words "existing members of the board" does not mean that the members present for voting. The word "existing members of the board" includes the total members of the Society, which includes the President. The President originally was elected as one of the members and among the elected members, one must have been selected as President. Therefore, the word "total members of the Society" means the total members of the Society including the President.

15. May be, at the time of taking the no-confidence motion, the President may not vote and in that case, the total calculation as 10 members as taken into account by the first



respondent may be correct. However, for taking up the no-confidence motion, first of all, a special meeting should have been convened and for convening the special meeting, the prerequisite criteria is that not less than two-third members should have signed the no-confidence motion ie., not less than 8 members, particularly 7.33 members which is exactly two-third of the total members viz., 11 members.

16. If the interpretation given by the learned Judge in the judgment cited supra in Thanga Kathiravan's case is applied to the facts of the present case, here also the total members is 11, out of whom two-third constitute 7.33, which should be rounded off to 8. That means the notice for no-confidence motion should have been given by at least 8 members. Then only the special meeting as contemplated under Rule 62(2) should be convened by the first respondent. Therefore, at the first instance, the very convening of the special meeting itself is without quorum if we strictly interpret the provisions of Rule 62(2) of the Rules, as has been interpreted by the learned Judge in Thanga Kathiravan's case. When that being the position, the further action taken in conducting the business by taking up the no-confidence motion in a special meeting, where 7 out of 10 members voted is immaterial. Therefore, based on the same, the first respondent ought not to have even convened the special meeting unless and until the notice for no-confidence motion satisfied Rule 62(2) of the Rules as discussed above.

17. In view of the aforesaid facts and circumstances and the discussions made herein above, this Court has no hesitation to hold that, the very convening of the special meeting under Rule 62(2) itself is bad because admittedly there were only 7 members who have signed in the notice for no-confidence motion, which does not constitute two-third of the 11 members of the Society. Hence, the business what was transacted in the said special meeting itself is bad in law. Consequently, the impugned order is unlawful and it is vitiated.

18. In view of the above discussion, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order passed by the first respondent in Na.Ka.1915/2021/Sa.Pa dated 30.09.2021 is quashed and the writ petition is allowed.
- As a sequel, the petitioner is entitled to continue as President of the Society. But, this



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will not preclude the other members of the Society, wherein the petitioner is now restored as President, to bring one more no-confidence motion as per law if they desire to do so, provided they satisfy Rule 62(2) of the Rules in stricto sensu.

19. With these observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Deputy Registrar of Co-operative Society
Mannarkudi Circle, Thiruvarur.
2. The Cooperative Sub Registrar / Field Officer
Needamangalam, O/o Deputy Registrar of
Co-operative Societies, Mannarkudi, Thiruvarur District.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.346

+1cc to the Government Pleader, S.R.No.326

W.P.No. 21838 of 2021

GSM(CO)
SU(28/02/2022)