

(2022) 04 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17331, 17200 Of 2021

Dileepkumar K. L.

APPELLANT

Vs

Joint Registrar (General) Co Operative Societies Ernakulam,
Civil Station, Kakkanad, Kochi 682030

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co Operative Societies Act, 1969 — Section 33, 33(1)
Kerala Cooperative Societies Rules, 1969 — Section 29(2)(a), 44

Citation : (2022) 04 KL CK 0022

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : P.Ramakrishnan, Preethi Ramakrishnan, T.C.Krishna, C.Anil Kumar, Asha K.Shenoy, Pratap Abraham Varghese, Bimal K. Nath, P.C.Sasidharan, K.S.Anil

Final Decision : Dismissed

Judgement

Sathish Ninan, J

1. Order of disqualification under Rule 44 of the Co-operative Societies Rules, and the consequential order of supersession of committee under Section 33 of the Co-operative Societies Act, are under challenge in W.P.(C) No.17331/2021 by the disqualified persons. For the sake of convenience, they are hereinafter referred to as "the Petitioners". The order of supersession is under challenge in W.P.(C) No.17200/2021, by the remaining committee members. They are hereinafter referred to as, "the remaining members". The Exhibits referred to in this judgment are those produced in W.P.(C) No. 17331/2021.

2. The Managing Committee of the third respondent Bank is comprised of 13 members. One among them resigned. As per Ext.P14 order dated 18.08.2021, the petitioners in W.P.(C) No.17331/2021, ("the Petitioners") six in number, were held disqualified. (Exts.P14 to 19 are copies of the same order which are served

on the petitioners 1 to 6 respectively). On the very same day, the Joint Registrar, on finding that there is lack/loss of quorum for the committee, issued Ext.P13 order appointing an Administrator in terms of Section 33 of the Co-operative Societies Act. The challenge in W.P.(C) No.17200/2021 is against Ext.P13 order, by the remaining members of the Committee ("the remaining members"), and the challenge in W.P.(C) No.17331/2021 is against Exts.P14 and P13 orders by the disqualified members ("the Petitioners").

3. Heard Sri.P.Ramakrishnan, learned counsel for the petitioner, Sri.P.C.Sasidharan learned counsel for the 3rd respondent, and Sri.Bimal K. Nath the learned Senior Government Pleader.

4. According to the learned counsel for the petitioner, Exts.P14 and P13 orders are vitiated by malafides, violation of the principles of natural justice, and is bad even on its merits.

5. To substantiate the contention of malafides, the learned counsel for the petitioners refers to the sequence of events relating to the issuance of Exts.P14 and P13 orders. They are given hereunder in a tabulated form for an easy understanding:-

Sl.

No.

Date

Event

1

17/08/21

Ext.P14 order of disqualification by

2

17/08/21

Joint Registrar under Rule 44

Report by Assistant Registrar that

there is lack of quorum for

Committee

3

18/08/21

Ext.P13 order by Joint Registrar

appointing Administrator under

Section 33 for lack of quorum

4

18/08/21

At 1.00 p.m. Administrator assumes
office

5

18/08/21

At 1.30 p.m Ext.P14 order is
despatched

6. As could be noticed from the above, on the very same day on which the Joint Registrar passed Ext.P14 order of disqualification, it has been communicated to the Assistant Registrar. The Assistant Registrar after verification finds that there is lack of quorum and reports the same to the Joint Registrar on the very same day. On the next day (18.08.2021), the Joint Registrar passes Ext.P13 order appointing Administrator. At 1 o'clock in the afternoon, the Administrator assumed office. But, Ext.P13 order of disqualification is despatched to the petitioners only after that. No doubt, the lightening speed at which actions have been taken raises a concern/apprehension. But that by itself is not sufficient to lead to an inference of malafides, nor is it adequate to decide the fate of the proceedings.

7. The allegation against the petitioners is that, they were absent in four consecutive meetings of the committee held on 14.12.2020, 18.12.2020, 23.12.2020 and 31.12.2020 and hence, they are disqualified in terms of Clause 37(B)(7) of the bye-laws.

8. Copy of the relevant pages of the minutes book of the Society is produced as Ext.R3(a). The attendance of a member is marked by affixing his signature. In the minutes book, the presence of the petitioners on the relevant dates is not marked. However, the petitioners would contend that, in fact they were present in the meetings. According to them, the minutes book was not properly maintained by the Secretary which is the reason for not marking their attendance.

9. To substantiate the presence of the petitioners in the meetings in question, they rely on the attendance registrar (Ext.P7-pages 14 to 17), vouchers regarding sitting fee (Ext.P7-pages 5 to 8) and also the corresponding day book entries (Ext.P7-pages 9 to 13). Learned counsel for the petitioners would further point out that, in Ext.R3(a) minutes book, at the close of the minutes recorded for the meeting held on 31.12.2020, the petitioners have affixed their signatures. This evidences their presence in the meeting held on 31.12.2020 and that being so, the alleged absence of the petitioners in four consecutive meetings is not

correct. Hence the finding of disqualification entered into in Ext.P14 is not correct, it is contended.

10. The learned senior Government Pleader would contend that, the attendance register relied on by the petitioners has no statutory backing and that, there is no such book maintained or required to be maintained. As regards the payment of sitting fee, it is contended that Ext.P14 order of disqualification takes note of the illegality committed by the petitioners in drawing sitting fee for the meetings in which they were not present. As regards the signature at the closing of the minutes for 31.12.2020, the learned senior Government Pleader would draw the attention of the Court to Circular No. 11/72 wherein it is stated that the minutes are to be read out and recorded at the subsequent meeting and that the minutes must be attested by the members who were present at the meeting. The petitioners must have, in the subsequent meeting, affixed the signature at the bottom, he contends.

11. The explanation offered by the petitioners for not having affixed their signatures in the minutes book on the relevant dates is that, the Secretary-in-charge used to write down the minutes in another book and was subsequently written down in the minutes book and the signatures of the members obtained. It is the said laches on the part of the Secretary that resulted in the absence of signatures of the petitioners on the relevant dates in the minutes book, is the contention.

12. Before I proceed to consider the merits of the said contention I must straight away note that, the procedure stated to have been adopted by the Secretary in writing down the minutes and lamented upon by the petitioners, appear to be in tune with Circular No. 11/72 noted in the preceding paragraph. Now coming to the merits of the contention, two aspects are to be noted. The signatures of the petitioners in W.P.(C) No.17200/2021 (the remaining members) who sail along with the petitioners, have affixed their signatures in the minutes book on the relevant dates. As against the names of the petitioners, the place for signature is scored, marking their absence. This is not just for one meeting but in respect of all the four meetings in question. There is no case for the petitioners that the remaining members (petitioners in W.P.(C) No.17200/2021) are at loggerheads with the petitioners. The presence of the signatures of the remaining members, in the minutes book on the relevant dates, could not be explained away by the petitioners. So also, if as contended by the petitioners, the minutes were being subsequently written up and thereafter the signatures of the members were obtained, there is no reason why in the subsequent meetings which were held, the petitioners did not affix their signatures for the previous meetings. Therefore, on the reasons above, the explanation put forward by the petitioners for the absence of their signatures in the minutes book cannot be accepted.

13. The presence of a member in a meeting is to be primarily proved by the marking of attendance in the minutes book. Rule 29 (2) (a) of the Co-operative Societies Rules mandates the keeping and maintaining of a minutes book. The

minutes book (Ext.R3(a)) does not indicate presence of the petitioners on the relevant dates. The receipt of sitting fee by the petitioners cannot outweigh the probative value of the minutes book, which is the primary document evidencing the presence of members in the meeting and which is statutorily maintained. Therefore, Ext.P14 order disqualifying the petitioners in terms of Clause 37(B)(7) of the bye-laws of the Society, for consecutive absence in four meetings of the Committee, cannot be faulted. The challenge against Ext.P14 order of disqualification thus, fails.

14. Coming to Ext.P13 order appointing Administrator, it is challenged mainly for non-compliance with the first proviso to Section 33(1) of the Co-operative Societies Act, requiring publication to be effected in the notice board of the Society, calling for objections before appointing Administrator. It is in the said context that the remaining Committee members urge a contention of, violation of principles of natural justice. To canvass the contention that compliance with the first proviso to Section 33 is mandatory, the learned counsel for the petitioners rely on a host of decisions.

15. Out of the 13 members of the Board, one had resigned. If the petitioners (six in number) are disqualified, then the remaining Committee members, six in number (the petitioners in W.P.(C) No.17200/2021), cannot constitute the quorum. The second proviso to Section 33(1) provides that, the publication of notice as stipulated under the first proviso to the section can be dispensed with if, in a given case, the Registrar is of the opinion that it is not practicable to publish such notice. In Ext.P13 order the first respondent has specifically adverted to the mandate under the first proviso and has stated that, since the Committee has lost its quorum there is an administrative stalemate affecting the functioning of the Society, and hence compliance with the requirement of publication is not practicable. Obviously, he has invoked the powers under the second proviso. It is sworn to by the first respondent in his counter affidavit that, it is in the wake of loss of quorum for the Committee, and to avoid an administrative stalemate, the Administrator was appointed. The action cannot be held to be unjustified.

16. Even assuming that the order appointing Administrator is set aside for lack of compliance with the first proviso to Section 33(1), the order of disqualification of the petitioners having been upheld, the remaining members cannot constitute the quorum. The failure to effect publication in terms of the first proviso could not have made any difference. Even after such a publication, the same consequence would follow. The petitioners were not able to point out any prejudice that has resulted consequent to the failure to comply with the first proviso, or that if such a publication was effected the appointment of an Administrator would not have ensued. This Court is not to issue a writ in futility. For the said reason also, I do not consider it proper or necessary to interfere with Ext.P13 order.

17. The learned counsel for the petitioner urges a further contention that, since

the order of disqualification was not served on the petitioners, it had not taken effect, and hence Ext.P13 order of supersession passed prior to such service, is bad. In the light of the findings supra, the contention raised is only academic and hence I do not consider it necessary to ponder over the same. Even assuming that there is force in the contention and Ext.P13 order is set aside, the by-product is the same – appointment of an Administrator through another order. Under such circumstances, as mentioned above, this Court should not be invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India.

18. The order of disqualification having been upheld, going by the strength of the Committee, there is a resultant lack of quorum and an administrative stalemate. An Administrator is liable to be appointed in terms of Section 33(1). Exhibits P14 and P13 orders warrant no interference.

Resultantly, the writ petitions fail and are dismissed.