

(2005) 12 KL CK 0042
In the High Court Of Kerala
Case No : WP (C) No. 22818 of 2005 (N)

Ebrahim Syed Mohammed

APPELLANT

Vs

Pothanicadu Farmers Co-Op. Bank Ltd.

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Citation : (2006) 1 ILR (Ker) 393 : (2006) 1 KLJ 293 : (2006) 1 KLT 335

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.P. Jacob, for the Appellant; P.A. Anitha and B.S. Swathi Kumar (G.P.), for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner is a member of the Managing Committee of the 1st respondent Co-operative Bank. The total number of elected members of the said Committee is 12. It has an ex-officio member also. Ext. P2 no confidence motion was passed against the President of the 1st respondent Bank.

2. The 3rd respondent was to conduct the proceedings as authorised by the 4th respondent in accordance with Rule 43A of the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules"). Ext. P3 notice was issued notifying that the no-confidence motion will be considered at 11 a.m. on 29-07-2005 in the conference hall of the 1st respondent Bank.

3. According to the petitioner, six members and the ex-officio member, the Managing Director were present while one Sasikumar was not allowed to enter the hall. It is a matter of record that as of now, the said Sasikumar stands disqualified as per an order issued under Rule 44. This writ petition is filed contending that the meeting was not held but was dissolved by the 3rd respondent without making any minutes.

4. A counter-affidavit is filed on behalf of the 4th respondent Joint Registrar. It is

contended that the aforesaid Sasikumar was disqualified as per order dt. 27-07-2005 leaving the Managing Committee with 11 members. According to the counter-affidavit, only six elected members were present on 29-07-2005. The contention raised by the 4th respondent is that as per Clause 27(3) of the bye-laws of the 1st respondent Bank, 7 elected members shall constitute quorum for a meeting convened for the purpose of removing the President from his office and since with the 6 members there was no quorum and so the no-confidence motion could not be taken up for debate and therefore, the 3rd respondent, who was authorised to conduct the meeting, had no choice but to close the meeting.

5. Rule 43A of the Rules provides for removal of President, Vice-president etc. by no confidence motion. That was introduced by the amendment brought to the Rules as per S.R.O. No. 1185/2003. Rule 43A reads as follows:

43A. Removal of President, Vice-President etc., by no-confidence motion. A committee shall remove the President or the Vice-President or the Treasurer or any other officer of the Committee from his office by a no-confidence motion in the following manner, namely:-

(i) A notice of intention to move a no-confidence motion signed by such number of members as shall constitute not less than one third of the total strength of the committee, together with a copy of the motion which is proposed to be removed shall be delivered to the Registrar, in person, by any two members signing the notice.

(ii) Any officer duly authorised by the Registrar concerned in this behalf, shall arrange for the consideration of the motion in a meeting of the committee to be held at the office of the society on a date appointed by him, which shall not be later than thirty days from the date on which the copy of the motion referred to in clause (i) was delivered to the Registrar. The said officer shall give to the members, not less than fifteen clear days of notice of such meeting and of the time appointed, therefore.

(iii) The officer authorised under clause (ii) shall preside over the meeting convened under this rule.

(iv) A meeting convened for the purpose of considering a motion under this rule shall not for any reason, be adjourned.

(v) No meeting under this rule shall be held, if at the time appointed under the foregoing provision or, within half an hour from such time, such number of members as shall constitute one half of the total strength of the committee are not present.

(vi) As soon as the meeting convened has commenced, the officer presiding at the meeting shall read to it the motion for the consideration of which it has been convened and declare the motion to be open for debate.

(vii) No debate of any motion under this rule shall be adjourned.

(viii) The officer presiding over the meeting shall neither speak on the merits of the motion nor be entitled to vote thereon but shall regulate the proceedings of the meeting.

(ix) A copy of the minutes of the meeting showing the result of the voting, together with a copy of the motion shall, on termination of the meeting, be forwarded to the Registrar forthwith by the presiding officer of the meeting.

(x) If the motion is carried with the support of the majority of the members of the committee and if the President or the Vice-President or the Treasurer or any Officer of the committee, as the case may be, does not resign his office within two days after passing of the motion he shall cease to hold the office of the committee of the society forthwith.

(xi) If no meeting could be held for want of quorum as required under clause (v), or if the motion is not carried by such a majority as required under clause (x), no notice of any subsequent motion expressing want of confidence on the same President, Vice-President, the Treasurer or any officer of the committee, shall be allowed within a period of six months from the date of the meeting.

(xii) No notice of motion under this rule shall be allowed within six months from the date of assumption of office by the President or the Vice-President or the Treasurer or any officer of the committee.

6. Rule 43A is a self-contained code in so far as removal of President, Vice-President etc. by no-confidence motion is concerned. It provides for the notice and its requirement, the provision for the meeting and also fixes the modalities for meeting. Rule 43A (v) provides that no meeting under Rule 43A shall be held if at the time appointed under the foregoing provision or, within half an hour from such time, such number of members as shall constitute one half of the total strength of the committee are not present. Therefore, the quorum of such a meeting is one half of the total strength of the committee. This fixation of quorum for the purpose of considering a no-confidence motion is one fixed by the rules which are authorised subordinate legislation provided by the Kerala Co-operative Societies Act.

7. Bye-laws of a co-operative society will have to be in terms of the Co-operative Societies Act. So much so, the provision in Rule 43A(v) will have an overriding effect on any provision in the bye-laws in the society as regards the quorum for a meeting where a no-confidence motion is considered. In this view of the matter, the contention of the official respondents relying on the bye-laws of the society in defiance of the provisions contained in Rule 43 A(v) does not stand.

8. Sub-rule (x) of Rule 43A is also relevant in this context. It reads as follows:

(x) If the motion is carried with the support of the majority of the members of the committee and if the President or the Vice-President or the Treasurer or any Officer of the committee, as the case may be, does not resign his office within two days after passing of the motion he shall cease to hold the office of the

committee of the society forthwith.

9. In view of Sub-rule (x) of Rule 43A, the motion requires only the support of the majority of the members of the committee. This means simple majority of the total strength of the committee. When the provision in Sub-rule (x) is read in conjunction with the provision in Sub-rule (v), it is the requirement that at least one half of the total strength of the committee shall be present and the motion shall be carried except on a simple majority of the members of the committee.

10. It is the admitted case of the official respondents that barring the ex-officio member of the committee, six elected members were present. This means, out of the total strength of the committee of 12, there were six elected members present. There was no reason why the meeting could not have been held. Now, accepting the contention of the official respondents that the aforesaid Sasikumar was disqualified, then, the total number of elected members of the committee was only 22 and if six members were present, that was more than sufficient to hold the meeting scheduled on 29-07-2005. In any view of the matter, the stand taken by the official respondents that the meeting could not be held has to fail.

In the result, this writ petition is allowed directing that the meeting notified as per Ext. P3 shall be re-scheduled and held within a period of one month from the date of receipt of a certified copy of this judgment.