

(2006) 12 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition No's. 24820 and 27164 of 2006

Jose

APPELLANT

Vs

Joint Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Constitution of India, 1950 — Article 320, 320(3)
Mysore Town Municipalities Act, 1951 — Section 27(3)

Citation : (2007) 1 ILR (Ker) 11 : (2007) 1 KLJ 220 : (2007) 1 KLT 391

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P.C. Sasidharan, T.M. Sunil and A.S. Brijesh, for the Appellant;
George Kuruvilla and John Numpeli and Noble Mathew, Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—These Writ Petitions have been placed before us on a reference made by a learned single Judge doubting the correctness of the judgment reported in *Mattachan Vs. Joint Registrar (General)*, . In that judgment the learned single Judge has taken the view that Rule 43A(ii) of the Co-operative Societies Rules providing 15 clear days notice for moving a no-confidence motion is only directory and not mandatory. Learned single Judge has also taken the view that while going by the scheme of meetings for consideration of no-confidence motion a person against whom the motion is moved has no right to vote in that meeting.

2. Petitioner in WP(C) No. 24820 of 2006 has approached this Court seeking a declaration that Ext.P1 notice issued by the Assistant Registrar to convene the meeting to discuss the no-confidence motion is in violation of the statutory provisions contained in Rule 43A of the Rules as 15 clear days notice has not been given to the members. He has also sought for a direction to respondents 1 and 2 to consider and pass appropriate order on Exts.P6 and P7 before convening the meeting on 27-9-06 and also for other consequential reliefs. Respondents 3 to 6 along with others submitted R3(A) notice dated 25-8-06 to

convene a meeting to consider the no-confidence motion against the petitioner. Thereupon on 11-9-06 the second respondent Assistant Registrar issued Ext.P1 notice by registered post to all the committee members, including the petitioner as well as the respondents informing about the convening of the meeting on 27-9-06 in order to discuss the no-confidence motion against the petitioner. All the committee members received the said notice on 12-9-06. Petitioner submitted that he has received the notice issued by second respondent only on 13-9-06 and hence no meeting could be convened on 27-9-06 since it is a clear violation of Rule 43A(ii) of the Co-operative Societies Rules since no less than 15 clear days notice was not there from the date of receipt of notice to the date of convening of the meeting.

3. Question therefore to be decided is whether 15 clear days notice as provided under Rule 43A(ii) is mandatory or directory. We may in this connection extract Rule 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 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.

xxx xxx xxx

(v) No meeting under this rule shall be held, if at the time appointed under the foregoing provisions 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.

Learned single Judge in Mathachan's case has taken the view that considering the scheme of Rule 43A as a whole, the predominant requirement is that a no-confidence motion shall be considered not later than thirty days of the delivery of the notice to move the said motion, to the Registrar and that if such a meeting could not be held for want of quorum or if motion is not carried, no notice of any subsequent motion shall be allowed within a period of six months from the date

of meeting. Further, no notice of any no-confidence motion shall be allowed within six months from the date of assumption of office. The provisions relating to the said prescriptions are made in such manner as to affect the rights of those who intend to move, as also insulating those against whom such motion of no-confidence can be made. However, while coming to the provision in the last sentence of Rule 43A(ii) that the members shall be given not less than 15 clear days of notice, it does not prescribe the invalidity of meeting or adjournment of meeting or any other consequence for the non-conformity to the said rule of notice. Under such circumstance the learned single Judge took the view that the provisions in the last sentence of Rule 43A(ii) providing for 15 clear days notice is only directory and not mandatory.

4. The object and purpose of issuing notice among the members is for convening of a meeting for no-confidence motion. Rule 43A provides for removal of President, Vice President etc. by no-confidence motion. Fifteen clear days notice contemplated in the last part of Rule 43A(ii) is to inform the members of the convening of the meeting of the no-confidence motion. The main object of giving the notice is to make it possible for them so as to arrange their other business as to be able to attend the meeting. Legislature has not provided any consequence that is to follow if 15 clear days notice has not been given. Failure to give 15 clear days notice would be judged as directory or mandatory considering the facts and circumstances of each case. Petitioner in this case could not explain in what manner he is prejudiced by not getting 15 clear days notice. Admittedly notice has been received by him on 13-9-2006 for the convening of the meeting on 27-9-06. True, there was no 15 clear days notice. In the absence of any prejudice caused to the petitioner and that no consequences have been provided in the statute if 15 clear days notice is not given we are inclined to hold that the provision is directory. Reference may also be made to the decision of the Division Bench in Ahammed Vs. Antony, of which one of us, K.S. Radhakrishnan, J. is a member.

5. We may in this connection refer to the decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, wherein the Supreme Court was examining the scope of Section 27(3) of the Mysore Town Municipalities Act. That was a case where a notice under the Vice-President's signature stating that it was proposed to hold a special general body meeting of the Municipality on 14th October 1963 at 10 a.m. in the office premises and asking the members to be present in time was served on the councillors. One copy of the notice was also posted up at the Municipal Office as required by Section 27(3) of the Mysore Town Municipalities Act, 1951. The notice bore the date 10th October 1963. On fifteen of the twenty councillors the notice was personally served on 10th October. Contention was raised that requisite three days' notice was not served on all the members and so the meeting was not properly held. Rejecting the contention, apex court held as follows:

The question then is: Is the provision of three clear days' notice mandatory, i.e.,

does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid. The use of the word "shall" is not conclusive on the question. As in all the other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what is done invalid in law. That is the question to be answered. To ascertain the intention the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part. In *State of U.P. Vs. Manbodhan Lal Srivastava*, , where the question arose whether the provisions of Article 320(3) (c) of the Constitution are mandatory (which provides that the Union Public Service Commissioner or the State Public Service Commission shall be consulted on certain disciplinary matters), this Court stressed on the fact that proviso to the Article contemplates that the President or the Governor as the case may be, may make regulations specifying the matters in which either general or in any particular class or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted. Speaking for the Court Sinha, J. observed:

If the provisions of Article 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary.

It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period- of three clear days-is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period of such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days notice would be sufficient."

When we apply the above mentioned principle to the facts of this case we are of the view that the 15 days clear notice as provided in Rule 43A(ii) is only directory and not mandatory.

6. We may now examine the question as to whether the person against whom no-confidence motion is moved is entitled to participate in that motion. So far as this case is concerned admittedly petitioner has participated in the meeting and only the result is to be declared. Counsel appearing for the respondent's submitted that it would not affect the result of the meeting even if the petitioner's vote is counted. We are of the view that the principle that no man can be a judge in his own cause could be applied to this issue as well. A person

cannot be a Judge in a cause wherein he is interested. A person may have confidence in him, but the question is whether others have confidence in him, in such a situation whether he has confidence in him or not is immaterial, and he has to face the motion and prove that majority has confidence in him and not he has confidence in him. When petitioner himself is a person facing no-confidence motion, in our view, petitioner has no right to vote. As held by the learned single Judge in Mathachan's case it is not confidence of a member in himself, that matters; but the confidence, or the lack of it, of the other members of the body on him/her. Petitioner has evidently having a personal or direct interest in the matter of no-confidence and therefore in our view he shall not participate in the meeting convened for considering the no-confidence motion against him and the vote he has cast is not liable to be counted.

7. Petitioner has already participated in the meeting and hence in our view he has no right to challenge the invalidity in the notice for convening the meeting. See Shackleton on Law and Practice of Meeting Eighth Edition Page 4 and also Re British Sugar Refining Co. (1857) 3 K & J. 408. For that reason also the Writ Petition 24820/06 filed by him is not liable to be entertained.

8. Counsel appearing for the petitioner submitted that some of the respondents were disqualified to participate in the meeting since they were defaulters to the society. We are of the view, that is not a matter for us to consider in this case. If they have entailed disqualification, it is for the authorities to take action under the Co-operative Societies Act and Rules about which we express no opinion. We therefore answer the question referred to us as above and dismiss WP(C) No. 24820 of 2006. Consequently WP(C). No. 27164 of 2006 would stand allowed.