

(2006) 02 KL CK 0047

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15927 of 2005

Jose Paul

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Citation : (2006) 1 KLT 976

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; T.R. Ramachandran Nair and John Joseph Vettikkad Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner is a member of the second respondent Co-operative Society. By separate judgment delivered today, I have disposed of WP(C). No. 7143/2005 filed in relation to a no-confidence motion against an elected member of the Society, who is also the honorary Secretary. This Writ Petition was filed during the pendency of the aforesaid Writ Petition.

2. The petitioner herein seeks a direction to the first respondent, Joint Registrar, to convene an extra-ordinary meeting of the Society for considering a no-confidence motion by the petitioner against the committee of the Society. According to the petitioner, for different reasons, Ext.P2, a requisition in writing, was made by 1/5th of the total number of the members and following the inaction on the said requisition, the petitioner approached the first respondent on 5-3-2005, making Ext.P4 request and no proceedings have been initiated by the first respondent to convene the meeting pursuant to Ext,P4. in spite of a further written submission, Ext.P5. On such allegations, the petitioner seeks the issuance of a writ of mandamus directing the first respondent to convene an extra-ordinary meeting of the members of the Society, for the purpose of considering the no-confidence motion.

3. Respondents 2 and 3, namely, the Society and its Managing Committee, have filed a counter-affidavit stating, among other things, that following the actions of the petitioner in WP(C).No. 7143/2005 (Mr.K.T.Mattachan), there was a stalemate in the administration of the Society since the said person had unlawfully retained the books and other records that the same could be retrieved only by recourse to Section 34 of the Kerala Co-operative Societies Act (hereinafter referred to as the "Act"), by the intervention of the Revenue Divisional Officer and the police and that no requisition in the nature of Ext.P2 has ever been received by the Society. It is also the assertion of respondents 2 and 3 that the petitioner in this case is a close associate and supporter of Mr. Mattachan, the petitioner in WP(C).No. 7143/2005.

4. The short issue that arises for decision in this case is whether, on the facts and circumstances of the case, a writ of mandamus needs to be issued to the first respondent to convene a meeting of the members of the Society for consideration of Ext.P2, at the request of the petitioner.

5. To-resolve the issue, it is apposite to read Section 30 of the Act and Rule 36 of the Kerala Co-operative Societies Rules ("the Rules" for short). Section 30 of the Act is as follows:

30. Special general body meetings.--

(1) The committee of a society may at any time, call a special general body meeting of the society and shall call such meeting within one month after receipt of a requisition in writing from the Registrar or from such number of members or a proportion of the total number of members, as may be prescribed.

(2) If a special general body meeting of a society is not called in accordance with the requisition referred to in Sub-section (1), the Registrar or any person authorised by him in this behalf shall have power to call such meeting and that meeting shall be deemed to be a meeting called by the committee.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), the Registrar or any person authorised by him in this behalf may, at any time, call a special general body meeting of the society in such manner and at such time and place within the area of its operation as he may direct and such meeting shall be deemed to be a meeting called by the committee.

(4) Notwithstanding anything contained in the bye-laws of a society, the Registrar or any person authorised by him in this behalf may, at any time summon a meeting of the committee of the society and that meeting shall be deemed to be meeting called in accordance with the bye-laws of the society and shall have power to transact all business which can be transacted at a meeting of the committee under the bye-laws of the society and such other business as is specially mentioned in the requisition made by the Registrar or the person authorised.

(5) The Registrar or any other person deputed by him shall have the right to

attend the committee or general body meeting of any society convened in accordance with the provisions of this section.

Rule 36 of the Rules is as follows:

36. Power to call Special General Body meeting.--

(1) The committee of a society shall call a special general body meeting thereof under Sub-section (1) of Section 30-

(a) within one month from the date of receipt of a requisition in writing from the Registrar:

or

(b) within one month from the date of receipt of a requisition in writing from 1/5th of the total number of members.

(2) Notwithstanding anything contained in the bye-laws of a society as to the mode of summoning general meetings and the object, time and place of such meetings, the Registrar or any person authorised by him may at any time summon a special general body meeting of the society in such manner and at such time and place within the area of its operation as he may direct. He may also direct who should preside over such meetings and what matters shall be discussed by the meeting. Such meetings shall have all the powers of a meeting called according to the provisions of the bye-laws of the society notwithstanding that the meeting does not have the quorum fixed for a general body meeting under the bye-laws. Such meetings will not be invalid on the ground of any defect in the issue of notice, if the Registrar is of opinion that business transacted and the decision taken in the meeting were in the better interest of the society, and orders that the meeting and its deliberations were in order. The orders of the Registrar in the matter shall be final. The expenses for summoning such meetings shall be borne by the society.

(3) The procedure to be followed and the business to be transacted in a meeting of the committee summoned under Sub-section (4) of Section 30 shall be as directed in the requisition made by the Registrar or the person authorised. No decision of the committee shall be invalid on the ground that there was no quorum as stipulated in the bye-laws or that there was some defect in the issue of notice to the members of the committee in that behalf.

6. Going by Sub-section (1) of Section 30 and Rule 36(1)(b), the Committee is obliged to call a general body meeting within one month after a requisition in writing from 1/5th of the total number of the members of the Society. If such a meeting is not called on such a requisition, the Registrar or any person authorised by him in that behalf shall have the power to call such a meeting, going by Section 30(2). The argument advanced on behalf of the petitioner is that since the Committee of the Society has not convened the meeting on the basis of Ext.P2 requisition, the Registrar is legally bound to convene an

extraordinary meeting. However, the Committee of the Society has a contention that Ext.P2 was never made to it. It has to be considered whether the Registrar could, under all circumstances, be compelled to call a meeting in accordance with the requisition under Sub-section (1) of Section 30. While Sub-section (1) of Section 30 makes it obligatory on the Committee of the Society to call a special general body meeting on the requisition in writing by 1/5th of the members of the Society following the prescription in that behalf in Rule 36(1)(b); such compulsion being explicit in the use of the term "shall call such meeting" in Sub-section (1) of Section 30; the use of the term "shall have power to call such meeting" in Sub-section (2) of Section 30 makes the legislative intention clear; that the Registrar has the power to decide as to whether even in a situation where a requisition is alleged to have been made as provided in Section 30(1) a meeting ought to be called or not. May be that the Registrar would not be entitled to sit in judgment on the matters sought to be considered in the special general body meeting that is sought to be called for. While the Registrar shall not refrain from calling such a meeting under normal circumstances, Sub-section (2) of Section 30 admits such power with the Registrar to decide as to whether a meeting should be held at least in such cases where it would not be expedient to do so, going by the objects sought to be achieved by the fixation of the time limit in Section 30.

Under the aforesaid circumstances, having regard to the nature of the plea of the respondents, vis-a-vis, the facts and circumstances of the case, I am of the view that this is not a situation where the first respondent has failed to perform his statutory or public duty emanating out of Section 30 of the Act. No writ in the nature of mandamus or any direction of like nature is called for, on the facts and circumstances of the case. The Writ Petition fails. It is dismissed.