

**(1966) 02 MAD CK 0019**  
**In the Madras High Court**

K. Sadasiva Reddiar

APPELLANT

Vs

R. Duraiswamy Reddiar and Others

RESPONDENT

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**Date of Decision :** 09-02-1966

**Acts Referred:**

**Citation :** (1966) 79 LW 711 : (1966) 2 MLJ 366

**Hon'ble Judges :** P.S. Kailasam, J

**Bench :** Single Bench

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## Judgement

P.S. Kailasam, J.—This petition is for grant of a writ, direction or order, as may be necessary in the circumstances of the case, particularly a writ in the nature of quo warranto to the first respondent calling upon him to show under what legal authority he is acting as President of the Valaieduppu Multi-purpose Co-operative Credit Society.

2. The facts necessary for the disposal of the petition may be stated. The petitioner was one of the Executive Committee members elected u/s 27 of the Madras Co-operative Societies Act, 1961. Under the bye-laws, he was also elected President of the Committee for the management of the society. There were some misunderstandings between the members of the Executive Committee, and on 9th June, 1965, a few members of the Committee expressed dissatisfaction of the management of the society by the President. The Extension Officer (Co-operation) Thathiangarpet conducted an enquiry into the affairs of the society. He issued notice to the petitioner, but he refused to acknowledge the receipt of the same. On 22nd June, 1965, the third respondent, as Enquiry Officer issued a notice calling for the meeting of the Panchayat at 2 P.M. on 25th June, 1965. No agenda or particulars of business were mentioned in this notice. It was requested that the Panchayatdars may be present at the meeting. This notice was issued on 22nd June, 1965 by registered post and it was acknowledged by the petitioner on 28th June, 1965. While so, the meeting as directed was held at 2 P.M. on 25th June, 1965. Four members were present and the petitioner was absent. As the petitioner was absent, a new Minutes Book was

opened and the proceedings of the previous meeting dated 9th June, 1965 were recorded and the meeting was adjourned. On the same day, the four panchayatdars gave a requisition to the third respondent to elect a new President. The third respondent issued notices fixing the meeting at 5 P.M. on the same day to consider the action to be taken in the circumstances, and to elect a new President. It is stated that an attempt was made to serve the petitioner for the adjourned meeting at 5 P.M. but as he was not available, it was served on him by affixture in his house. At the meeting at 5 P.M. the Panchayat passed a resolution removing the petitioner from the office of the President and elected the first respondent herein as the President and authorised him to convene a meeting for deciding who was to retire in rotation and for electing new members. The Panchayat again met at 5-30 P.M. and passed a resolution to the effect that a general body meeting be convened at 3 P.M. on 28th June, 1965 for determining as to which of the two members should retire by drawing lots. Timings for calling for nominations, withdrawals and election if necessary and declaration of the result were fixed. The general body meeting was held at 3 P.M. on 28th June, 1965, and lots were drawn in that meeting. The petitioner and one Ramaswami Reddiar were declared retired by rotation. As there were only two nominations for the two vacancies, they were declared elected. Subsequently, a meeting of the new Panchayat was held, and the first respondent was elected as the President.

3. The petitioner submits that there is no provision in the Act for removal of the President, that the meeting convened was without notice to him and illegal and that, in any event the convening of the meeting at 5 P.M. on 25th June, 1965 without notice to him and the passing of the resolution removing him from the office of the President and appointing the first respondent as President cannot be sustained in law. The petitioner also submits that the retirement of two members at the general body meeting on 28th June, 1965 is opposed to the requirement of the Act, whereby the retirement can only be effected by the Committee. It is further urged that the Board is in error in declaring the petitioner retired and electing two new members to the two vacancies. The subsequent election of the first respondent is also questioned as the Panchayat was not properly constituted.

4. u/s 26 of the Madras Co-operative Societies Act, 1961, the ultimate authority of a registered society vests in the general body of its members. The general body of the society elects a Committee in accordance with the bye-laws and entrusted the management of the affairs of the society to such Committee. The term of office of an elected member of the Committee constituted under the Act is 3 years. It is provided that one-third of the members elected to the Committee at the first election shall retire at the end of the first year after such election and as nearly as may be, another one-third of the members elected as aforesaid shall retire at the end of the second year after such election, the members so to retire at the end of the first and second years aforesaid being determined by lot by the Committee. Section 28 mentions the disqualifications which would make a person ineligible for being elected or appointed as a member of the Committee. Section

28(2) provides that a member of the Committee shall cease to hold office on the happening of certain contingencies. While the Act provides that a member of the registered society who had acted adversely to the interests of the society may be expelled by a resolution of the general body passed at a special meeting convened for the purpose by votes of not less than two-thirds of the total number of the persons present, it does not provide for removal of a member of the Committee constituted under the Act. The Act does not provide for the election of a President, or for removal of the President, or members of the Committee. But bye-law 20 of the society empowers the general body to remove anyone of the Panchayat members by a resolution. Bye-law 25 provides that no notice is necessary for an ordinary meeting, but if it is a meeting specially convened, three days notice should be given mentioning the subjects that are brought in the meeting. The provisions relating to the removal of the members, as well as the President, make it clear that it can be done only by a general body meeting. Section 27 also provides that two of the members will retire at the end of the first year by casting of lot by the Committee. It is not in dispute that the meeting for which the third respondent gave notice on 22nd June, 1965 did not mention any particular subject. If a resolution was intended to be passed removing the President or appointing any person as the President, even according to the bye-laws, 3 days" notice specifying the subject to be brought before the meeting is necessary. Notice by the third respondent dated 22nd June, 1965 does not comply with this requirement. It is stated that a Panchayat meeting was held at 2 P.M. and after recording the proceedings of the previous meeting, it was adjourned. As the petitioner was absent, on a requisition by the four members, another meeting was convened for the purpose of election of a new President. The third respondent in his affidavit does not state that the meeting was for the purpose of removal of the present petitioner from his President ship. This meeting was convened without notice to the petitioner. The petitioner was admittedly absent at 2 P.M., and no notice was served on him. It is stated that as the petitioner was absent notice was served by affixture at his door. As already stated, the meeting for the purpose of removal of the President is a special meeting and 3 days" notice is required according to the bye-laws. At this stage, it may also be stated that the notice issued by the third respondent on 22nd June, 1965 was received by the petitioner only on 28th June, 1965 and the petitioner pleads that he had no information about the meetings at 5 P.M. and at 5-30 P.M. on 25th June, 1965. The two meetings were held with unseemly hurry without notice to the petitioner and the petitioner was removed. The way in which the meeting was conducted was extraordinary and obviously intended to pass the resolutions in the absence of and without notice to the petitioner. Apart from the illegalities in the service of notice and the convening of the meetings, it has to be noted that the bye-laws empower only the general body to remove the President. The resolution removing the President from his office is therefore beyond the powers of the Committee.

5. The retirement of two members, one of them being the petitioner, is also

challenged as not in accordance with law. Section 27(3) of the Act provides that every year one-third of the members shall retire by casting of lot by the Committee. This function is that of the Committee and in this case it is admitted that the lots were drawn by the general body. The powers that are specifically granted to the Committee cannot be exercised by the general body. The contention of the learned Counsel for the respondent that as all the powers of a registered society are vested in the general body they can also retire members by casting lots, is opposed to the specific provision in Section 27(3). Rule 30 of the Madras Co-operative Societies Rules, 1963, provides that the election shall be held at a general meeting of the society specially convened for the purpose of which not less than 7 days' notice shall be given to the members. Admittedly in this case only 3 days' notice was given. The meeting convened is therefore not in accordance with law and the election of the two Committee members cannot be held valid. The subsequent election of the President by this illegally elected Committee cannot also be sustained. On the facts, therefore, the meeting held at 5 P.M., on 25th June, 1965 the removal of the petitioner from the office of President, the election of the first respondent as the new President, the subsequent general body meeting on the 28th, the retirement of two members, including the petitioner, and the subsequent election of two new members are all wholly opposed to law and unsustainable.

6. The learned Counsel for the respondent sought to contend that this Court should not interfere even if the meetings were improperly convened and the petitioner was improperly removed and a new President appointed, as "the petitioner had a right to take the dispute to the Registrar u/s 73 of the Act. This may be so. But the existence of an alternative remedy will not prevent this Court from interfering with such flagrant violations of the provisions of the Act. The learned Counsel for the respondent submitted that if there was any irregularity in the convening of the meetings, it was only a breach of the provisions of the bye-laws and it cannot be agitated in writ proceedings. As already observed, there is not only contravention of the bye-laws, but also of the provisions of the statute.

7. In the result, the meeting held at 5 P.M. on 25th June, 1965 and the resolutions removing the petitioner from the post of President and electing the first respondent as the President and the retirement of two members including the petitioner at the meeting held on the 28th and the subsequent election of two new members, and the first respondent as the President are set aside. This writ petition is ordered accordingly. No order as to costs.