**(2022) 01 KL CK 0212**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No.5 Of 2022

| | |
|---|---|
| K.Sivadasan Nair | APPELLANT |
| Vs | |
| State Of Kerala | RESPONDENT |

**Date of Decision :** 27-01-2022

**Acts Referred:**

Kerala Co Operative Societites Act, 1969 — Section 28AB, 30(1), 30(3), 33
Air (Prevention and control of Provisions) Act, 1981 — Section 19
Uttar Pradesh (Kshetra Panchayat and Zilla Panchayats) Act, 1961 — Section 29, 29(1), 29(1)(e)

**Citation :** (2022) 01 KL CK 0212

**Hon'ble Judges :** Sathish Ninan, J

**Bench :** Single Bench

**Advocate :** George Poonthottam, Nisha George, Arun Chandran, Madona Raj, P.P.Tajudheen, M.A.Asif, N.Raghuraj, P.Ravindran, M.Sasindran, Sayujya, Sreedhar Ravindran, Sreehari Indukaladharan

**Final Decision :** Dismissed

## Judgement

Sathish Ninan, J.

(a) Is there any provision under the Kerala Co-operative Societies Act (hereinafter referred to as â??KCS Actâ?) enabling a no-confidence

motion be moved against the Managing Committee of a Society?

(b) Is that part of Section 33 of the KCS Act providing for moving of a no-confidence motion against the Managing Committee, a dead

letter, applying the doctrine of desuetude?

(c) In the absence of any Rules prescribing the procedure for moving a motion of no-confidence against a Managing Committee in terms of

Section 33 of the KCS Act, is not the statutory provision unenforceable/ sterile?

(d) Does the Registrar have the power to summon a Special General Body under

 

Section 30(3) of the KCS Act for considering a motion of

no-confidence against a Managing Committee?

(e) Can the Registrar summon a General Body under Section 33 of the KCS Act without requisition from the prescribed number of members

in terms of Section 30(1)?

(f) Can the delegatee of the Registrar further delegate the power under Section 30(3) of the KCS Act to summon a Special General Body

Meeting?

1. â??Noâ? is the answer to all the questions and hence the motion of no-confidence sought to be moved against the Managing Committee of the

Kerala State Co-operative Agricultural and Rural Development Bank Ltd. No.T-4017 (hereinafter referred to as â??the Societyâ?) is bad in law, is

the argument of Sri.George Poonthottam, the learned Senior Counsel for the petitioners. The arguments are unfounded, urges Sri.P.Ravindran, the

learned Senior Counsel, Sri.Raghuraj N., Sri.M.Sasindran and Sri.Asif M.A, the learned counsel for the party respondents and Sri.P.P.Thajudheen the

learned Special Government Pleader.

2. The Society is an Apex Society. Its General Body consists of 76 members, being representatives/ delegates from primary societies. The petitioners

are two such delegates. They were elected as members of the Board of Directors of the Society.

3. On 30.10.2021, a non-confidence motion was moved by two members of the Society against its Managing Committee. Notice requiring convening

of a General Body to consider the no-confidence motion was given to the Registrar by 31 members. On 13.12.2021, the Registrar passed an order

(Ext.P8) in terms of Section 30(3) of the KCS Act, nominating the Additional Registrar (consumer) to call for a Special General Body, to consider the

no-confidence motion.

4. Pursuant to the above, the additional Registrar decided to convene a special general body of the Society at the head office of the Society, to be held

on 06.01.2022 at 11.00 am. As per Ext.R2(b) communication dated 14.12.2021, the Managing Director of the Society was instructed to send notice

regarding the meeting to all the members. It is at that stage that, on 03.01.2022, the writ petition has been filed challenging the consideration of the no-confidence motion on the grounds first above noted.

5. Before I proceed to deliberate upon the questions posed, it would be appropriate to refer to the factual background leading up to the present

proceedings.

6. The Annual General Body meeting of the Society was scheduled to be held on 30.09.2021. Just three days prior to it, a no-confidence motion

against the Managing Committee was sought to be included in the agenda as an additional item. On challenge before this Court by the first petitioner

herein and another member, in WPÂ© 20383/2021, an interim direction was passed by this Court, to defer consideration of the no-confidence motion.

It appears that in the General Body meeting held on 30.09.2021 there was chaos. The budget was not passed. The president resigned. Observing that

there is administrative stalemate in the Society, an administrator was appointed. On challenge by the first petitioner herein and another, in WPC

21049/2021, this Court passed an interim order, directing the administration of the Society to be handed over back to the Committee. The president,

who claimed to have resigned, re-assumed office.

7. Thereafter, 16 members of the Managing Committee (14 elected and two nominated) requested the Managing Director of the Society to convene a

meeting of the Board of Directors. The first petitioner herein and another approached this Court in WPC 23669/2021, seeking a direction for

convening of the meeting. As per order dated 08.11.2021, this Court directed the Registrar to convene a meeting of the Managing Committee/Board

of Directors of the Society within a period of ten days. It appears that in compliance with the direction though a meeting was convened, no business

was effectively transacted therein. It is in the meanwhile that, on 30.10.2021, the no-confidence motion which is the subject matter of issue in the

present writ petition was mooted and the Registrar was requested to convene a general body meeting for consideration of the same. On 15.11.2021,

one of the members who mooted the motion approached this Court in WPC 25555/2021 seeking a direction to the Registrar to convene a general

body. Pending consideration of the writ petition, on 13.12.2021, Ext.P3 order was passed by the Registrar, authorising the Additional Registrar to call

for a Special General Body meeting of the Society. Notice of the meeting was issued. It is thereupon that the present writ petition has been filed.

 

8. The learned counsel on either sides referred to various precedents to canvass their respective contentions. They are being adverted hereinafter

during the course of the discussions.

9. Section 33(1) of the KCS Act empowers the General Body of a Society to pass a no-confidence motion against the Managing Committee. The

relevant portion of Section 33(1), reads thus:-

â??â?¦.. where a no-confidence motion is passed by the general body against the existing committeeâ?¦.., the Registrar may â?¦â?¦., appoint one Administrator or

Administrative Committeeâ?¦..â??

10. The contention of the petitioners is that, the above provision has become a â??dead letterâ? consequent on its non-user; they rely on the doctrine

of Desuetude. Though the provision for a no-confidence against a Managing Committee was brought in the statute book as early as in the year 1971,

there has not even been a single instance where it has been applied; therefore, on the doctrine of Desuetude, the provision has to be held as

â??lifelessâ??, contends the learned senior counsel.

11. Authorities explaining the doctrine of desuetude are umpteen. For the doctrine to apply, two essentials are to be proved (i) non-user for

considerably long period (ii) contrary procedure being followed in its place [see State of Maharashtra v. Narayan Shamrao Puranik (1982) 3 SCC

519, Municipal Corpn. For City of Pune v. Bharat Forge Co. Ltd. (1995) 3 SCC 434, Monnet Ispat & Energy Ltd. v. Union of India (2012)

11 SCC 1, Davis B. O. and Anr. v. B.T.Martin and Ors. [2014 KHC 173 = 2014 (2) KLJ 402, Shoba Ramachandran v. State of Kerala

[2017 (1) KLT 217], Basheer v. Kozhikode Corporation 2021 (4) KLT 82]. Proof of both the ingredients are integral to establish Desuetude. The

burden of proof to establish the ingredients is on the person who banks upon the doctrine. The mere fact that the first limb calls for proof of a

negative, does not relieve him of his burden. A person cannot be called upon to prove the negative, is not an absolute rule. In Abrath v. North Eastern

Rail Company (1983) 11 QBD 440, Bown LJ observed as follows:-

Â â??If the assertion of a negative is an essential part of the plaintiffâ??s case, the proof of the assertion still rests upon the plaintiffâ??.

Instances are many where the onus to prove the negative have been placed on the person who asserts the same. The one who seeks to take shelter under the doctrine of desuetude needs to prove and establish that, though occasions arose, the Rule was not applied and that a contrary procedure was

adopted. The mere fact that a person is ignorant about instances of application/ user of such rule, does not satisfy the requirement of proof of â??non-

userâ?. In the case at hand, the petitioners have failed to prove either of the ingredients. At the same time, the respondents point out that, in the lis that

came up before this Court in Manojkumar K.M. and Ors. v. Joint Registrar of Co-operative Societies (General), Kannur and Anr. [2018 (1)

KHC 717 (DB), theÂ issueÂ relatedÂ toÂ a no-confidence motion that was moved against the Managing Committee. Therefore, it cannot be held

that the provision under Section 33 of the KCS Act, recognising a motion of no-confidence against the Managing committee of a Society, has become

a â??dead letterâ?? on the application of the doctrine of Desuetude.

12. The power under Section 33 of the KCS Act cannot be exercised by the general body in the absence of a procedure being prescribed by Rules, is

the next contention. It is not in dispute that no procedure/rules have been prescribed regarding the mode or manner of moving a no-confidence motion

against a managing committee of the Society. As pointed out by the learned senior counsel for the petitioners, the fact that there is no rule or

procedure laid down even though the provision was incorporated as early as in the year 1971, was taken note of by the Division Bench in

Manojkumar K.M. and Ors. v. Joint Registrar of Co-operative Societies (General), Kannur and Anr. (supra).B ut it is to be noticed that, the

Division Bench in the said judgment had also observed thus:-

â??In a given case, where the entirety of the general body is present, even without notice in that regard, a motion of no-confidence against the office bearers of

any organisation can be validly moved and passedâ??.

In the said case, notice of the motion for no-confidence was not given to any of the members.

13. To contend that, in the absence of Rules laying down the procedure, the power conferred under Section 33, for moving a no-confidence motion

against the Managing Committee, remains inoperative and unworkable, the learned Senior Counsel for the petitioner placed reliance on the answer on

a reference order by a Full Bench of this Court in S.Lakshmanan, President, Thiruvilwamala Weavers Co-operative Society Ltd. v. Vellankeri

Member of Board of Directors, Thiruvilwamala Weavers Co-operative Society Ltd. And Ors. [AIR 2002 Ker. 325].T he issue involved therein

related to a motion of no-confidence against a president of the Co-operative Society by the Managing Committee. The question referred to the Full

Bench for its decision was as follows:-

â??whether absence of a specific provision in the Kerala Co-operative Societies Act, 1969 and the Rules framed thereunder, will stand in the way of any motion

for loss of confidence relating to president of a co-operative Society ?â??

The Full Bench answered the reference thus:-

â??In the absence of a specific provision in the Kerala Co-operative Societies Act 1969, the Rules framed thereunder and the bye-laws of a Co-operative Society,

the Managing Committee has no right to move or consider a motion for loss of confidence in the president, vice president or treasurer or any other office bearer of

the managing committee elected in accordance with Rule 43 of the Rules.â??

14. The Full Bench noticed that no power is vested under the KCS Act or Rules (as it then existed) or in the bye-laws of the Society enabling removal

of the president etc. by a motion of no-confidence, and that, an implied power cannot be read in. The Full Bench agreed with the view expressed by

the Division Bench of the Bombay High Court in Hindurao Balwant Patil and another v. Krishnarao parshuram Patil and ors. AIR 1982 Bom. 216

which held,

â??â?¦.. a right arisen in connection with election laws is not a common law right. It is a special right created by the conditions and manner prescribed by the

law concerned, and the argument of implied power by application of common law principles has no relevanceâ??.

It is subsequent thereto that, Section 28AB and Rule 43A were brought into the statute book providing for election and removal of president, vice

president, etc. of the Managing Committee of a Society. Incidentally, I would refer to a slightly different note struck by the Honourable Apex Court in

Vipulbhai M. Chaudhary v. Gujarat Coop. Milk Mktg. Federation Ltd. [(2015) 8 SCC ]1. Therein, the Apex Court at paragraph 51 of the

judgment held :-

 

â??In case there is no express provision under the Act or Rules or bye-laws for removal of an office â?" bearer, such office-bearer is liable to be removed in the

event of loss of confidence by following the same procedure by which he was elected to officeâ??.

Be that as it may, it is pertinent to note that, even in the reference order in Lakshmanaâ??s case (supra), the Full Bench took note of the provision in

Section 33 empowering the General Body of a Society to move a motion of no-confidence against the Managing Committee, and the stark absence of

such a provision enabling a motion of no-confidence by the Committee against the President, vice president etc. The Full Bench observed thus:-

Â â??The only contingency under which the Committee may be removed before the end of its tenure is indicated in Section 33(1) of the Act. Section 33(1) of the

Act envisages the passing of a no-confidence motion by the General Body which results in wholesale removal of the Committee. Barring this provision there is no

other provision by which an elected individual part of the committee can be removed.â??

Suffice to note that, the Full Bench had recognised the power conferred under the KCS Act on the General Body of a Society to remove its Managing

committee through a motion of no-confidence.

15. The respondents canvass for the proposition that, the absence of rules or prescriptions of procedure is of no consequence when power is

conferred, and especially when, the empowering Section does not say that the power is to be exercised â??in the mannerâ? or â??in the manner

which may be prescribedâ??. The respondents place reliance on various judgments of the Apex Court in support.

In Orissa State (Prev. & Contl. Of Poln.) Brd. v. M/s Orient Paper Mills JT [2003 (3) SC 74] t,he point presently mooted was specifically dealt

with, in detail. Therein, the issue related to the exercise of the power conferred on the State Government under Section 19 of the Air (Prevention and

control of Provisions) Act, 1981 to declare an area within the state as â??air pollution control areasâ?. The section required the declaration to be

made â??in such a manner as may be prescribedâ??. However, no rules/ procedure were prescribed. The question was posed thus, (at para 10):-

â??The question for consideration is, as to whether, as long as the manner is not prescribed under the Rules for declaration of an area as air pollution control area, a valid notification under Section 19(1) of the Act can be published in the official gazette or notâ??.

After elaborate discussions, the Apex Court concluded as follows:-

â??â?¦.. the power which vests in an authority would not cease to exist simply for the reason that the Rules have not been framed or the manner of exercise of the

power has not been prescribedâ??.

â??Once the manner is prescribed under the Rules, undoubtedly the declaration of the area has to be only in accordance with the manner prescribed, but

absence of rules will not render the Act inoperativeâ?¦â?¦Non-framing of Rules does not curtail the power of the state government to declare any area as air

pollution control area by means of a notification published in the official gazetteâ??.

Reference was made by the Apex Court to the following observations in Surinder Singh v. Central Government and Ors (1986) 4 SCC 667:-

Â â??â?¦.. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power

conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not

condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression â??subject to the rulesâ? only means, in

accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are

framed there is no void and the authority is not precluded from exercising the power conferred by the statuteâ?¦..â??.

The same is the law laid down by the Apex Court in the judgments in The Mysore State Road Transport Corporation v. Gopinath Gundachar

Char [AIR 1968 SC 464]Â and U.P.S.E.B. v. City Board, Mussoorie [(1985) 2 SCC 16].

16. Here, Section 33 of the KCS Act does not prescribe any procedure for moving a motion of no-confidence, nor does it provide that the motion is to

be moved in any particular manner â??prescribedâ? or â??as may be prescribedâ?. Therefore, viewed in any manner, the mere absence of rules

laying down the procedure for moving a no-confidence motion against the Managing Committee, when ample authority is conferred by the Act, does not fetter the exercise of such right. A co-operative society is a democratic institution, bound to function so, and to conduct its affairs based on

democratic principles. That is the basis of co-operative movement. In Usha Bharti v. State of U.P. [2014 (7) SCC 663] ,wherein the validity of

Section 29 of the UP (Kshetra Panchayat and Zilla Panchayats) Act, 1961 which provided for removal of â??Adhyakshaâ?? by a no-confidence

motion was considered, the Apex Court, at para 37 of the judgment observed thus:-

Â â??In our opinion, the amendment as well as the main provision in S.28 is in absolute accord with the vision explicitly enunciated in the Preamble of the

Constitution of India. In fact, the spirit which led to ultimately encoding the goals of â??WE THE PEOPLEâ? in the Preamble of the Constitution of India,

permeates all other provisions of the Constitution of India. The fundamental aim of the Constitution of India is to give power to the People. Guiding spirit of the

Constitution is â??WE THE PEOPLE OF INDIAâ?. In India, the People are supreme, through the Constitution of India, and not the elected Representatives.

Therefore, in our opinion, the provision for right to recall through the Vote of No Confidence is in no manner repugnant to any of the provisions of the

Constitution of India.â??

17. To crown all these, is the provision in Clause 58(1) of the bye-laws of the Society which provides :-

â??â?¦.The following among other matters shall be dealt with by the General Body:- (1) The election of the members of the Board and their removalâ??.

Therefore, adding teeth to the power conferred under Section 33 of the KCS Act, the bye-laws of the Society also provide for removal of the

Managing Committee of the Society by its general body. The absence of prescription of any procedure does not stall the operation of the provision.

18. Now adverting to the contention regarding lack of power of the Registrar to summon a General Body for considering a no-confidence motion,

Section 29(3) and Section 30(3) of the KCS Act empower the Registrar to call for a general body meeting of the Society. Section 29(1) provides for

the matters to be transacted in an annual general body meeting. Sub-clause (e) of Section 29(1) reads thus:-

â??Consideration of any other matter which may be brought forward in accordance with the bye-lawsâ??.

 

In Abdul Rahman v. Cheranellor Service Cooperative Bank Ltd. [2015 (1) KLT SN 86 ]this court held that, all business that could be transacted

in a General Body meeting can be transacted in a Special General Body meeting also. Section 30(3) of the KCS Act and Rule 36(2) of the KCS Rules

gives wide powers to the Registrar to call for a Special General Body Meeting. The relevant provisions read thus:-

â??30(3)-Notwithstanding anything contained in sub section (1) or subsection (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.â??

â??36(2)- Notwithstanding anything contained in the bylaws 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 any 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 meeting called according to the provisions of the bylaws of the society notwithstanding that the meeting does

not have the quorum fixed for a general body meeting under the bylaws. Such meetings will not be invalid on the ground of any defect in the issue of notice, if

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.â??

As provided therein the powers conferred thereunder are, â??notwithstandingâ? the stipulations in the other provisions. Therefore, it could only be

held that, the Registrar is, under the KCS Act and the Rules thereunder, vested with powers to call for a Special General Body to consider a no-

confidence motion against the Managing committee. It is further to be held that, requisition by a prescribed number of members etc., as provided in

Section 30(1), does not apply to summoning of a Special General Body by the

 

Registrar.

19. Now I shall come to the contention that, Section 30(3) enables the summoning of a General Body, only by the Registrar or a person authorised by

him, and that Ext.P9 whereunder the Special General Body is summoned is issued by the Managing Director who is a delegatee of the person

authorised by the Registrar, which is without authority and bad in law. A reading of Ext.P9 shows that, it is only an intimation/notice regarding a

meeting fixed/summoned by the Additional Registrar who is the person authorised by the Registrar. The contents of Ext.P9 are vivid and clear in the

said regard. Ext.P9 acknowledges the summoning of the Special General Body by the Additional Registrar. The relevant sentence in Ext.P9 reads

thus:-

â??Based on the orders of the Registrar of co-operatives societies dated 13.12.2021, Sri.Jyothi Prasad R., Additional Registrar (consumer) vide letter

No.RCS/ADDL(con)/1/21 dated 14.12.2021 has ordered to convene a Special General Body Meeting as per Section 30(3) of Kerala Co-operative Societies Act.

Accordingly notice is hereby given that a special general body meeting of the Kerala State Cooperative Agricultural and Rural Development Bank Ltd. will be

held on â?¦â?¦â??.

20. When the meeting has been summoned by the competent person, the mere fact that notice intimating the meeting is sent by another does not

invalidate the notice. Therefore, the contention that the meeting has been summoned by a sub delegate, does not appeal. Moreover, the fact that the

notice intimating the holding of the meeting is not under the signature of the authorised person is not of much significance when the contents of the

notice acknowledges summoning of the meeting by the authorised person. Here it would be appropriate to refer to Shackleton on the Law and

Practice of Meetings, 7th Edition, Page 37 wherein it is stated thus:-

â??If a meeting is summoned without authority, it will be invalid. It is customary for a notice to indicate clearly on whose authority it is issued, and for it to be

issued over the name of an authorised official. The first requirement is fundamental, but the second is more than a matter of form and is perhaps not indispensable,

provided the notice is in other respects good.â??

Therefore, the challenge raised against the invalidity of the holding of the meeting on the said ground, lacks merit.

21. The sum total of the above discussions result in, answering all the questions posed first above in the affirmative and against the petitioners.

Therefore, the challenge raised in the writ petition against the convening of Special General Body, for consideration of the no-confidence motion

moved against the Managing Committee of the Society, fail.

22. As per interim order dated 05.01.2022, this Court had permitted the consideration of the no-confidence motion proposed on 06.01.2022, but had

directed that the motion if passed shall not be given effect to without orders from the Court. It appears that the no-confidence motion was passed with

39 votes favouring the motion and 36 votes against. Arguments were advanced by the learned Senior Counsel for the petitioners raising various

ground of challenge against the resolution/ passing of no-confidence. Noticeably, there is no such pleading or relief claimed in the Writ Petition. The

learned Senior Counsel would contend that such plea or relief are not necessary to be incorporated in the Writ Petition since those are events which

took place pending the Writ Petition and consequent on the interim order dated 05.01.2022 passed by this Court.

23. Here it is to be noted that, the writ petition, as is filed, challenges the convening of a Special General Body for considering a motion of no-

confidence, on certain grounds. This Court as per the interim order permitted the consideration to go on, but, subject to the Writ Petition. The mere

fact that the motion for no-confidence was passed pending the writ petition would not stand in the way of this Court considering the challenge against

the validity of the convening of the Special General Body on the grounds as urged in the writ petition. The subsequent event will not fetter the powers

of the court in considering the challenge raised in the Writ Petition. If the challenge against convening of the Special General Body is upheld by this

Court, then the motion of no-confidence, even though passed by the General Body, will automatically fall. However, if the petitioners want/seek to

challenge the decision on the no-confidence motion/resolution, it has to be done in accordance with law on raising proper pleadings and grounds, and

incorporating a relief to the said effect. The challenge sought to be made against the decision on the no-confidence motion/ resolution is a separate

relief, based on distinct and separate grounds. They are required to be pleaded specifically and proved. Being events that have occurred pending the

Writ Petition it would have been open for the petitioners to have incorporated the events, grounds, and reliefs by amending the writ petition, and sought

for consideration of the same in the Writ Petition. However, that has not been resorted to. Without any pleadings and reliefs sought for in the Writ

Petition, I do not deem it appropriate to entertain and consider the challenge levelled against the decision on the no-confidence/resolution passed by the

General Body on 06.01.2022.

24. Resultantly, the Writ Petition fails and is accordingly, dismissed. Needless to say that the restraint under the interim order dated 05.01.2022 no

longer survives. The right of the petitioners to challenge the resolution/decision on the motion of no-confidence is left open.