
(2006) 02 KL CK 0050
In the High Court Of Kerala
Case No : Writ Petition (C) No. 7143 of 2005

Mattachan	Vs	APPELLANT
Joint Registrar (General)		RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 ILR (Ker) 8 : (2006) 2 KLT 45

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This writ petition relates to Parur Taluk Merchants' Co-operative Society Ltd. No.E. 1060. An 11 member Committee came into office on 24-12-2001. Respondents 3 and 4 were elected as President and Vice President respectively and the petitioner and respondents 5 to 10 were the members of the Managing Committee. The said Managing Committee is stated to be the first elected committee after the registration of the Society.

2. The Society, not being in a financial position to adopt the statutory staff pattern, provided for the appointment of an elected member to work as Secretary in an honorary capacity instead of paid Secretary under Rule 188 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the "Rules"). The petitioner, an elected member, was thus made the honorary Secretary.

3. This Writ Petition is filed to quash Ext.P6 proceedings by which a meeting was convened to discuss a no-confidence motion against the petitioner the honorary Secretary -- and for a direction to the statutory authorities, namely, respondents 1 and 2 to refrain from proceeding with the request for consideration of the no-

confidence motion. A further direction is also sought for to interdict respondents 7 to 10 from participating in the meeting to consider the no-confidence motion, on ground that they are disqualified persons.

4. I shall first deal with the relief sought against the participation of respondents 7 to 10 in the meeting. Even going by the petitioner's case, no order has been passed by the statutory authority, disqualifying the said persons. So much so, as held in *Sasisekharan Nair Vs. Registrar of Co-operative Societies*, , the said persons cannot be treated as disqualified unless the statutory authority has passed an order to that effect. The said contention and the claim for relief against respondents 7 to 10 thus fail.

5. Section 28AA(2) of the Kerala Co-operative Societies Act, 1969 (for short, the "Act") provides that a committee shall remove from office President, Vice-President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the-members of such committee in accordance with the procedure as may be prescribed. Section 2(n) of the Act defines the term "officer" as follows:

(n) "officer" means the President, Vice-President, Chairman, Vice-Chairman, Secretary, Manager, member of committee or Treasurer and includes a Liquidator. Administrator and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a co-operative society.

(emphasis supplied)

6. The term "officer" includes any person empowered under the bye-laws to give directions in regard to the business of a co-operative society. Any member of the committee is also an officer, going by the definition of that term. In the absence of a paid Secretary, the petitioner is, admittedly, appointed as the Secretary only on an honorary basis and his such appointment to work in lieu of a paid secretary does not improve his quality of appointment from anything more than could be co-terminus with the term of the committee. So much so, he is only an officer of the committee and can be removed by proceedings under Sub-section (2) of Section 28AA of the Act, The contention of the petitioner to the contrary is hence rejected.

7. The next contention of the petitioner is that the notice for the meeting was sent by registered post on 21-2-2005 and received by him on 22-2-2005 while the meeting was scheduled to be held on 7-3-2005 before the expiry of 15 clear days as contemplated under Rule 43A of the Rules. According to the petitioner, under such circumstances, the meeting is one without a valid notice as provided by Rule 43A and is, therefore, invalid.

8. Section 28AA of the Act provides for only the support of the simple majority of the members of the committee to carry the no-confidence motion. None of the other members of the Committee has challenged the convening of the meeting

on the basis of notice issued on 21-2-2005, convening the meeting on 7-3-2005. The petitioner was himself, the person facing the no-confidence motion. So much so, going by the scheme of meetings for consideration of no-confidence motion the petitioner should have no right to vote. 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. It should be accepted as a salutary principle that one would not get a right to vote in support of, or against a no-confidence motion against him. Further, there is a subtle distinction between a motion seeking confidence of a body and a no-confidence motion against a member of that body. In contrast to a situation where a member is to prove his majority in the body to which he belongs, in the case of a no-confidence motion, the same will be carried only if there is prescribed majority of votes in favour thereof, in this case, simple. So much so, a vote that the person against whom no-confidence motion is sought for may cast, will be irrelevant. Hence, in my view, the petitioner is not entitled to insist that 15 clear days" notice ought to have been given to him.

9. Now, it requires to be considered whether the provision in R.43A(ii) that the officer shall give to the members, not less than 15 clear days" notice of such meeting and of the time appointed therefor, is mandatory or directory. Rule 43A(ii) provides that the meeting to consider the motion shall be convened not later than thirty days from the date on which the copy of the motion was delivered to the Registrar and the officer authorised by the Registrar to arrange for the consideration of the motion, shall give 15 clear days" notice of such meeting. If this provision is mandatory, the meeting which is to be convened within thirty days of delivery of the copy of the motion to the Registrar, has to be convened with a notice of 15 clear days before the expiry of the outer limit of thirty days fixed for consideration of the motion. The learned Clause for the petitioner, relying on the decisions of the Apex Court in *Jai Charan Lal Vs. State of U.P. and Others*, and *The Pioneer Motors (Private) Ltd. Vs. The Municipal Council, Nagercoil*, , contended that the statutory expression being that there shall be notice of "not less than so many days", both the terminal days have to be excluded and the number of days mentioned must be clear days and that when the statutory prescription is that a notice shall be given, of "not being less than a particular period", it is the requirement of law that there should be notice of such clear period. As already noticed, Section 28AA(2) provides for prescription of the procedure by the Rules. Considering the scheme of Rule 43 A 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 of 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.

The non-conformity as to such prescriptions invites a statutory consequence by way of exclusion of further proceedings. So much so, going by the policy of law relating to interpretation of statutes that the penalty or consequence brought by the statute is relevant to decide whether a particular provision is mandatory or directory, it has to be held that such provisions are mandatory. However, while coming to the provision in the last sentence of Section 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. The notice of the meeting is not intended to provide any further or particular gestation period for the motion, but only to notify the meeting. Hence, unless particular situation results in failure of justice, lack of notice of a particular number of clear days would make no difference. Under such circumstances, the provision in the last sentence of Rule 43A(ii) providing for 15 clear days" notice is only directory and not mandatory.

10. The third respondent has filed I.A. 15265/2005 accompanied by an affidavit averring, among other things, that all the 11 member committee, including the petitioner were present in the meeting held on 7-3-2005 and the no-confidence motion was carried by eight votes against three. None of the other voters had any complaint regarding any absence of notice. An interlocutory order was passed on 4-3-2005, that any no confidence motion shall be passed subject to the result of the writ petition. The petitioner has not pleaded or proved any prejudice arising out of the absence of 15 clear days between the date of service of notice on the petitioner and the date of the meeting. That apart, post held by the petitioner is only honorary and hence no civil consequences are involved - See *State of Gujarat v. Akshay Amrutlal Thakkar* AIR 2006 SCW 373. In any view of the matter, the petitioner is not entitled to discretionary remedy by recourse to Article 226 of the Constitution of India.

11. There is yet another aspect which cannot escape from being noticed. On 4-3-2005, this Court had issued an order that any no-confidence motion shall be passed subject to the result of the writ petition. This means, this Court did not deter the holding of the meeting or the passing of the resolution or its consequence and made all such matters, subject only to the final decision of the Writ Petition. On 7-3-2005, the meeting was held as convened and the motion was passed subject to the result of this writ petition. Per force the order dated 4-3-2005, the petitioner was obliged to act in accordance with Rule 43A(x) which is well in consonance with the mandate of Section 28AA(2) of the Act which requires the committee to remove the officer of the committee, if the motion expressing want of confidence in any or all of them is carried. After the motion was carried on 7-3-2005 and long after the period prescribed in Rule 43A(x), I. A.7311/2005 was filed on 25-11-2005 on behalf of the petitioner supported by an affidavit of the petitioner, scant in details of the allegations, however, merely stating that he is continuing in office despite no-confidence motion by virtue of the direction, of this Court, the only one that was issued on 4-3-2005, and alleging that the police is interfering to take over charge from the petitioner due

to political interference. The petitioner is before the constitutional Court seeking exercise of discretionary jurisdiction in his favour and is therefore expected to not only initiate the proceedings, but also continue to conduct himself during the pendency of the proceedings, with clean hands. His conduct as disclosed by Exts. Rule 3(a) and Rule 3(b) produced by the third respondent along with I. A.7311/2005 discloses the petitioner's affront to the authority of law. I say so because, following the no-confidence motion against the petitioner having been duly passed, the 10th respondent was elected to be the Secretary. The petitioner did not hand over charge to him and the Joint Registrar, the statutory authority had to pass an order on 11-4-2005. Petitioner never obeyed that. Nor did he seek any orders from this Court. He continued to hold office. This resulted in the RDO's intervention u/s 34 of the Act, at the instance of the Joint Registrar. The RDO had to get the police involved to seize the documents from the petitioner which ultimately happened on 23-5-2005. It is also the assertion of the third respondent in the said I. A. that as of now, all the materials are not handed over by the petitioner. In my considered view, the conduct of the petitioner does not behove an elected office, be that of a member of the committee of a co-operative society, or of any other elected body. The petitioner does not deserve any aid of this Court.

The Writ Petition fails. The same is accordingly dismissed. No costs.