
(1989) 10 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 7224 of 1989

N.A. Gregory

APPELLANT

Vs

The Secretary Manimala Service Co. Operative Bank and
others

RESPONDENT

Date of Decision : 26-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 KLJ 279

Hon'ble Judges : T.L. Vlswanatha Iyer, J

Bench : Single Bench

Advocate : P.P. Mathew, for the Appellant; M. Pathrose Mathai A Govt. Pleader
and K.K. Ravindranath, for the Respondent

Final Decision : Dismissed

Judgement

T.L. Vlswanatha Iyer J.

1. Parties are agreed that the original petition itself may be taken up and disposed of Counsel for the first respondent submits that the counter affidavit filed in C.M.P. No. 21931 of 1989 may be treated as the counter affidavit in the original petition. The petitioner was the Presedent of the Manimala Service Co-operative Bank Limited (hereinafter referred to as the Bank), a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act). On certain allegations of misconduct, seven out of the thirteen members of the managing committee of the Bank made requisition to the first respondent, Secretary of the Bank, to convene an extra-ordinary meeting of the managing committee to consider a motion of no confidence against the petitioner. The first respondent felt obliged by bye-law 38 (a) of the bye-laws of the Bank to convene the meeting of the managing committee, since the requisition was made by more than one third of the members of the committee. He accordingly convened a meeting of the Board on June 23, 1989 and served notice thereof on the petitioner on June 20, 1989.

2. The petitioner thereupon moved the Assistant Registrar of Cooperative Societies to stop the meeting on the ground that it was not properly convened. But, the latter did not take any action. The meeting was held on June 23, at which the seven requisitionists attended, the others boycotted, and the motion of no confidence was passed. The petitioner then received another notice Ext. P2 dated June 23, 1989 from the first respondent Secretary convening a meeting of the managing committee on June 27, 1989 to elect a new President. The petitioner moved the Assistant Registrar to stop the meeting, but this time also no action was taken. Thereupon, he filed writ petition O.P. No. 5312 of 1989 in this court complaining about the inaction of the Assistant Registrar. The Government Pleader who appeared submitted before this court that the Assistant Registrar "had not granted permission" to hold the meetings on 23rd or 27th June. This court noted the submission, and closed the original petition with the observation that the petitioner may move the appropriate authority under Rule 176 of the Kerala Cooperative Societies Rules, 1969 (the Rules) to rescind the resolution passed on June, 23. A copy of the judgment of this court dated July 3, 1989 is Ext. P4.

3 The petitioner moved the Joint Registrar accordingly under Rule 176, raising two points in substance. Firstly he contended that [neither the Act, the Rules nor the bye-laws contemplated a motion of no confidence for removal from office of the President of a Co-operative Society. Secondly it was stated that the meeting which was held on June 23, 1989, at which the motion of no-confidence was passed, had not been validly convened as the Secretary, who convened it, had no authority to do so, either under the Act, the Rules or the bye-laws. The motion of no-confidence passed at such a meeting was therefore null and void.

4. The Joint Registrar rejected the petition by his proceedings Ext. P8. He held that when the managing committee is entitled to elect a President, it was equally competent for them to remove him from office, on principles underlying section 16 of the interpretation and General Clauses Act, 1125. The decision of this court in Narayanan Nair v. Joint Registrar, 1982 KLT 602 holding like wise was relied on. On the second point, the Joint Registrar took an extreme view. He noted that the challenge to the resolution was based on the invalidity of the meeting at which it was passed. Such invalidity of a meeting, because of lack of quorum, or irregularity in its convening or otherwise, does not fall within the purview of rule 176, which permitted rescission of a resolution only on certain specified and limited grounds. The petition under rule 176 was not therefore, maintainable on the second ground alleged by the petitioner. The petition was therefore rejected.

5. Petitioner challenges Ext. P8, raising the same contentions as he had done before the Joint Registrar.

6. The power of the managing committee to remove the president, after passing a motion of no confidence has been upheld in the decision in Narayanan Nair v. Joint Registrar, 1982 KLT 602, with which I am in full agreement. If the managing committee could elect a President equally it must be within their power to undo

their action by cancelling the appointment in appropriate proceedings. It is well within their purview to undo an act done by them, which stands recognised in section 16 of the Interpretation and General Clauses Act, 1125. The resolution passed on June 23, 1989 is not therefore assailable on this ground.

7. The second point raised is the illegality in the convening of the meeting on June 23, 1989. Having heard counsel, I find it bereft of substance. The meeting in question was convened on the requisition made by seven out of the thirteen members of the managing committee. Bye-law 38(a) of the bye-laws of the Bank requires a meeting of the committee to be called when a requisition is made in that behalf by not less than one-third of the members of the committee. In such circumstances, the Secretary is empowered to convene a special meeting. In this case, the requisition was made by more than 50% of the members and therefore the Secretary was empowered, and bound, to convene a meeting of the committee. The distinction made by the petitioner between powers and duties is not very material so long as the power of the Secretary to convene a meeting is discernible from bye-law 38(a). When the requisition was made by the prescribed number of members, it was the duty of the Secretary to convene a meeting, and that is what he did by convening such a meeting on June 23, 1989. I do not find any illegality in the said meeting justifying interference under Article 226 of the Constitution. All the members who attended, numbering seven were unanimous in their resolution to remove the petitioner from the presidentship. The second contention of the petitioner also therefore fails.

8. This is sufficient to entail dismissal of the original petition. However, I must refer to the very curious reasoning adopted by the Joint Registrar in his order Ext. P8. He says that rule 176 does not enable him to scrutinise the validity of a resolution, assailed on the ground that the meeting in which it was passed had no proper quorum, or that it had not been properly convened. I am afraid that there is no warrant for such a constricted view of rule 176. Rule 176 reads:

Registrar's power to rescind resolution - Notwithstanding anything contained in the bye laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultravires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society.

Inter alia, it enables the Registrar to rescind a resolution if it is against the provisions of the Act, Rules or Bye-laws. The rule is intended to subserve a definite purpose, to provide effective control and supervision by the department over the functioning of Co-operative societies, a power which finds statutory expression in section 66 of the Act. Rule 176 subserves the provisions of section 66, by providing a machinery for effectuating that power. If the narrow view taken by the Joint Registrar be correct, the Registrar will be rendered a helpless

on looker against illegal resolutions, passed at meetings, not properly convened or held. Take for instance an extreme case where a meeting is held without quorum. Is the Registrar bound to fold his hands in stoic silence for the alleged inability of rule 176 to reach such a situation? The reasonable reading of rule 176 should be that it posits not merely invalidity by reason of the resolution being plainly contrary to the Act, Rules or the Bye-laws, but also invalidity caused by illegalities in the very convening or the conduct of the meeting at which it was passed. A resolution to be valid has to pass a dual test. It should not be contrary to the Act, Rules or Bye-laws. It should also be passed at a meeting convened and held in accordance with law. The Act, the Rules or the Bye-laws contemplate only resolutions passed at meetings properly convened and held. Such a meeting is the very sine qua non for a valid resolution. Any material illegality in convening or conducting a meeting will vitiate the resolution itself and render it contrary to the provisions of the Act, Rules or Bye laws. The resolution can be said to be in accord with the provisions of the Act, Rules or the Bye laws only if it is one passed at a meeting convened or held in accordance with the statutory provisions or the provisions of the Bye laws, and not otherwise. Therefore, a resolution passed at a meeting convened or held illegally is equally within the ambit of recession under rule 176 and subject to scrutiny in exercise of the powers thereunder.

9. This does not however afford any relief to the petitioner, for I am at one with the respondents on the plea that the meeting held on June 23, 1989 had been properly convened. I have made the observations in the preceding paragraph on the scope of rule 176 only because of the Joint Registrar's abnegation of jurisdiction by the order Ext. P8, on a misunderstanding of the scope of Rule 176. Counsel for the petitioner submits that the meeting held on June 27 1989 was also illegal. I do not think it necessary to go into this question. The petitioner has been removed from the Presidentship. The Bank cannot go without a President. A President was therefore, elected on June 27. In any case, none of the other interested parties is before this court. Therefore, I decline to "entertain this point, or to adjudicate on the same.

The original petition is dismissed, without however any order as to costs.