

(2008) 04 KL CK 0027

In the High Court Of Kerala

Case No : Writ Petition No. 36047 of 2007-N

Nataraj Gownder S.

APPELLANT

Vs

Registrar and Dy. Director of Dairy Devt. Dept.

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Citation : (2008) 2 ILR (Ker) 361 : (2008) 2 KLJ 211

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, K.N. Balachandra Kaimal, Sherly Thomas and T.V. George, for the Appellant; Rajesh Sivaramankutty, K.S. Sharmila, A. Premakumari and Anu Sivaraman, GP, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The committee of the second respondent society consisted of nine members. On 27-11-2007, an urgent meeting of that committee was held at 5 p.m. to accept the resignation letters of the petitioners, who are 2 in number and of respondents 4 and 5. Ext.P15 will show that respondents 4 and 5 had written to the President that they are withdrawing their resignations. The committee accepted such withdrawal, going by Ext.P15. It is not in dispute that another member G. Veluswamy Gownder had tendered his resignation on 30-11-2007 and the committee accepted it on 9-10-2008.

2. The resignation of the petitioners and the aforesaid Veluswamy, not being in dispute,, the number of members of the committee is reduced from 9 to 6, which is sufficient to sustain the committee, going by the quorum rule.

3. According to the petitioners, respondents 4 and 5 having tendered their resignations, they were not entitled to withdraw such resignations since, in terms of the Explanation to Section 33(1) of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the "Act", "a tender of resignation" by a member of the committee shall have the effect of terminating his membership from the Committee. It is accordingly contended in the writ petition and argued by the learned senior Counsel appearing for the petitioners that the further provision in

Rule 38(4) of the Kerala Co-operative Societies Rules, 1969, hereinafter, the "Rules", that the resignation shall have effect only from the date of its acceptance by the committee is contrary to the provisions in the Act and therefore, the resignation of respondents 4 and 5 had taken place the moment it was tendered b them to the President.

4. Accordingly, it was argued that the committee had no authority to enter into Ext.P15 resolution accepting the withdrawal of the resignation of respondents 4 and 5, by them.

5. The 3rd respondent, the President of the society has filed counter affidavit placing, therewith Exts. R3(1) and R3(2) stating that the so-called resignation letters were obtained from respondents 4 and 5 in the manner stated in Exts.R3(1) and R3(2). The 4th respondent has filed a counter affidavit for herself and on behalf of the 5th respondent producing Exts.R4(1) and R4(2), which are nothing but copies of Exts.R3(1) and R3(2), stating further that since they came to know that the papers obtained from them were misused and even put to use as their resignation letters, they approached the first respondent Registrar and put him on notice about the true state of affairs, by tendering their sworn statements before him.

6. I may also notice the version of the first respondent that no case of mismanagement, corruption and favouritism has come to the notice of the first respondent.

7. In answer to the arguments on behalf of the petitioners, the learned Counsel appearing for respondents 4 and 5 argued that the case in hand is not one where resignations were tendered and then withdrawn, but a case where, respondents 4 and 5, two females who, apparently, are either illiterate or persons with poor knowledge of malayalam, going by the materials on record, were duped and made victims of fraud and undue influence and that, therefore, notwithstanding the provisions in the Explanation to Section 33(1), whatever documents are shown to be their resignations, cannot be acted upon.

8. Section 33(1) of the Act provides, among other things, that where vacancies occur in the committee either by resignation or otherwise and the number of remaining members cannot constitute the quorum for the meeting of the committee, the Registrar may, either suo motu or on the application of any member of the society, appoint administrator or administrators. The terms "resigns" and "resignation" in Section 33(1) have an explanation at the foot of Section 33(1) which provides that for the purpose of that sub-section, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the committee. Rule 38 of the Rules deals with, among other things, resignation from membership in the committee. Sub-rule 3 thereof enjoins that any member of a committee may tender his resignation to the President of the committee. Sub-rule 4 of Rule 38 reads as follows:

(4) The President, on receipt of a resignation, shall within seven days from the

date of receipt thereof place it before the committee of the society for consideration if the member is an elected person or send it to the authority who nominated the member, if he is a nominee. The resignation shall have effect only from the date of its acceptance by the committee or the authority who nominated the member concerned as the case may be. The fact of its acceptance or otherwise shall also be communicated to the member concerned. In the case of nominees the fact of acceptance or otherwise shall be communicated to the society also.

9. It appears that the aforesaid provision was among the rules even before the introduction of the Explanation to Section 33(1) referred to above. Even otherwise, a provision among the rules, being a piece of subordinate legislation, cannot contradict a specific provision in the parent statute. Therefore, Sub-rule 4 of Rule 38 to the extent it provides that the resignation shall have the effect only from the date of its acceptance by the committee is ultra vires Section 33(1) read with Explanation thereto and is hence void. I may hasten to add that this conclusion is arrived at only at regards elected members and not regarding nominated members. [See also Deputy Registrar of Co-operative Society and Anr. v. P.K. George 1974 KLT 189] holding that in the case of nominated members, the President is a mere conduit pipe for transmitting the resignation to the nominating authority. Formidable support to this, can be found in the unreported judgment of this Court in O.P. No. 13060/1998 and connected cases delivered taking note of the decisions in Varma v. Joint Registrar 1987 (2) KLT 420 and Sadasivan v. Joint Registrar 1994 (2) KLT 238. The requirement that the President shall place the resignation before the committee for consideration does not clothe the committee with any role in the matter of acceptance or non-acceptance of the resignation, in as much as, the resignation takes effect on it being tendered to the President and does not depend upon acceptance by the committee or even the President. In support, is Thomas v. Jaihind Powerloom Industry 2001 (1) KLT 10 Case No. 12 at Page .

10. Profitable reference has been made by the learned senior Counsel for the petitioners to the decision of the Apex Court in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , to state that the general principle that in the absence of a legal or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective, is applicable in all cases where the office is one from which one can demit by his unilateral act of tendering resignation.

11. It has, therefore, to be held that an elected member of a co-operative society ceases to be in office by tendering his resignation to the President of the Society.

12. With the aforesaid, it requires to be resolved as to whether respondents 4 and 5 had resigned. The fact that two papers were submitted to the President as the resignation letters of respondents 4 and 5 is not in dispute. The materials on record appear to suggest that the question whether those were resignation letters of respondents 4 and 5 may require to be dealt with. This is because,

resigning from an office cannot be the result of fraud, misrepresentation or such other vitiating elements as would take away the credibility of the resignation when it is put against a person, who is alleged to have resigned. A particular status of mind, influenced by relevant or irrelevant considerations; motives which may be ill or otherwise; tactics which may be self-generated or imposed; all considerations which may vary from person to person, situation to situation etc. may have a bearing on the act of any person who may be resigning from office. Therefore, the factors that led a person to decide for himself to resign and on the basis of which he tendered the resignation may be irrelevant. But, it has to be necessarily decided as to whether the person, who is alleged to have resigned, had decided for himself to resign and has issued a resignation letter in exercise of his decision to resign. Different relevant aspects may have to be considered to decide this issue. The question would be as to who ought to decide, in the event of such dispute.

13. Section 33(1) provides that before making an order as enjoined therein, the Registrar shall invite objections to the making of the order and consider such objections. This is the net result of the first proviso to Section 33(1). That requirement can be dispensed with by taking recourse to the second proviso. In the case in hand, the Registrar has not decided to take any action in terms of Section 33(1). The counter affidavit of the official respondents is to the effect that the resignation letters of respondents 4 and 5 were withdrawn by them; the committee accepted such withdrawal of resignations; and that, therefore, there is no fall in quorum. The exercise of power u/s 33(1) can be either suo motu or on the application of any member of the society. Ext.P14 is a representation of the first petitioner to the first respondent to take action in terms of Section 33(1). The reason stated in that representation is the alleged resignation of respondents 4 and 5. That is a question which can, therefore, be considered by the first respondent on the basis of any objections that may be raised by respondents 4 and 5 to the request made by the first petitioner in Ext. P 14.

14. For the aforesaid reasons, this writ petition is ordered directing that the first respondent shall take up Ext.P14, issue notice to the necessary parties, giving opportunity to respondents 4 and 5 to file objections and any other person interested to file objections and consider the matter in accordance with law, in the light of what is stated herein, if necessary, after taking on record such further materials, including evidence, having regard to the facts and circumstances of the case. Let this exercise be done within an outer limit of four months from the date of receipt of a copy of this judgment.