

(1994) 06 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 2911 of 1994

P.K. Sadasivan and others

APPELLANT

Vs

Joint Registrar (Dairy) and others

RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 33, 33(1)

Citation : (1994) 2 KLJ 230

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

Bench : Single Bench

Advocate : K.A. Abdul Gafoor, for the Appellant; D. Somasundaram Govt. Pleader and George Poonthottam, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—The five petitioners are the President and four members of the third respondent Co-operative Society registered under the Kerala Co-operative Societies Act, 1969. The managing committee of the society consists of five members, which assumed office on 24-6-1991 for a period of three years. The term of the committee thus expires on 23-6-1994. This writ petition has been occasioned by the order Ext. P9 passed by the first respondent Joint Registrar on 22-2-1994 superseding the managing committee u/s 33 of the Act. The facts are a bit tangled and it is necessary to state the same in chronological order for a proper understanding of the dispute between the parties. I am stating the facts as borne out by the writ petition, the counter affidavit of the first respondent as also the counter affidavit filed by the fourth respondent one Joy Varghese, who was also a member of the managing committee of the society and who got himself impleaded as a party to this writ petition. The managing committee had nine members in it at its inception. One member by name C.V. Kuriakose was disqualified in the year 1993 and three others admittedly resigned on 17-11-1993. The controversy between the parties is in relation to the alleged resignation of the second petitioner one P.M. Vasudevan Nair, the petitioners

alleging that he had not resigned, while respondents 1, 2 and 4 contend that he has resigned on 17-11-1993. The reason for this controversy is that if he has really resigned, the number of members in the managing committee gets reduced to four on 17-11-1993 and therefore being no sufficient quorum for the meeting of the committee, the managing committee cannot function and therefore it became liable to be superseded u/s 33. If on the other hand, the second petitioner had not resigned as contended by the petitioners, then the managing committee has sufficient quorum and is not liable to be superseded u/s 33 as was done by Ext. P9.

2. Alleging that the second petitioner had resigned from the managing committee of the society, a printed notice appears to have been circulated in the locality about his resignation. The second petitioner thereupon issued a bit notice Ext. P1 on 20-11-1993 stating that he had not resigned from the managing committee and that the notice to the contrary had been issued without his knowledge or consent. At the same time he also wrote the letter Ext. P2 on 19-11-1993 to the first petitioner President of the managing committee affirming that he had not resigned from the managing committee. The first petitioner thereupon issued another bit notice on 24-11-1993 alleging that the second petitioner had not resigned from the managing committee and that there was no obstacle in the way of the managing committee functioning as such.

3. The managing committee met on 23-11-1993 when it discussed the question of resignation of the other three members and recorded it. It also discussed the alleged resignation of the second petitioner, when the second petitioner affirmed that the news about his resignation was not true and that he had not resigned. The managing committee authorised the President to take necessary action to counter act the propaganda set afoot. The managing committee again met on 27-11-1993 and on 10-1-1994 to transact its business at both of which the second petitioner attended. All this is evident from the photo-stat copy of the minutes of the managing committee produced as Ext. P4.

4. A copy of the alleged resignation letter of the second petitioner has been produced by Joy Varghese who was one of the members who resigned on 17-11-1993 marked as Ext. P4 (a). On 18-11-1993 the second petitioner denied his resignation in a letter which he sent to the Dairy Extension Officer, Idukki. It is so stated in the counter affidavit of the first respondent. On 29-11-1993 the Assistant Director (Dairy), Thodupuzha issued a registered letter to the second petitioner calling upon him to appear before the said officer before 1 p.m. on 3-12-1993 to affirm or disaffirm his resignation. He stated that the notice was being sent because of the conflicting versions about his resignation, with an alleged letter of resignation on 17-11-1993 and the denial there of on 18-11-1993. The Assistant Director wanted to be informed as to which of these was true. He stated therein that if the second petitioner did not appear before him before the time fixed, he will presume that the letter of resignation dated 17-11-1993 was a true one and proceed accordingly. The original of this letter

has been produced by the 4th respondent along with his counter affidavit. I must state that I am really surprised as to how the original letter got into the hands of the 4th respondent who appears to be in the rival camp. There is no explanation in the fourth respondent's counter affidavit as to how he came into possession of this letter in original. This letter is stated to have been received by the second petitioner only on 4-12-1993 (vide the counter affidavit of the first respondent) and it is stated that he did not appear before the Assistant Director in response of this notice. It is stated by the respondents that in the meanwhile and on 30-11-1993, even before the receipt of Ext. R4 (b), the second petitioner had appeared before the Dairy Extension Officer and given him a letter affirming that he had not withdrawn his resignation and that allegations to the contrary were baseless.

5. The Assistant Director (Dairy) Idukki sent a report dated 6-12-1993 to the first respondent about this state of affairs with conflicting versions about the resignation in which he enclosed a letter from the second petitioner in which he had claimed that he had not resigned from the managing committee of the society. It is also stated by the first respondent that the second petitioner had given him a letter alleging that he had resigned and that the statements to the contrary were not correct.

6. On 21-12-1993, the Assistant Director (Dairy) Thodupuzha sent a letter Ext. R1 (a) to the first respondent stating that he found no reason to doubt the resignation of the second petitioner. This was based on the absence of any reply to his registered letter Ext. R4 (b) and the non-appearance of the petitioner pursuant thereto. The Assistant Director therefore requested the first respondent to appoint an Administrator for the society.

7. The first respondent thereafter published a notice Ext. P5 on 7-1-1994 stating that five members of the managing committee of the society have resigned on 17-11-1993, that the managing committee had therefore no quorum and therefore directing interested parties to show cause why the committee shall not be superseded u/s 33. According to the petitioners, all of them went to the office of the first respondent and filed a statement Ext. P6 dated 12-1-1993 (obviously a mistake for 1994) affirming their stand that the second petitioner had not resigned, They also produced copies of Exts. P1 and P4 in support of this stand. The appearance was on 14-1-1994. The first respondent also took a sworn statement from the second petitioner, a copy of which is Ext. P7, witnessed by the other four petitioners in which he affirmed his stand that he had not resigned from the managing committee. The Secretary of the society also wrote a letter Ext. P8 to the Joint Registrar affirming that the second petitioner continued to be a member of the managing committee. In the sworn statement Ext. P7 the petitioner had stated that the letter of resignation had been taken from him forcibly by certain other members of the committee. According to the petitioners their appearance on 14-1-1994 was before the then Joint Registrar one Surendrababu and according to them he was satisfied about the bona fides of

their claim. The second petitioner again filed another statement before the first respondent affirming that he had not resigned from the society and denying the truth of the documents to the contrary alleging that these papers were signed by him at the instigation of some others (vide page 5 of the counter affidavit of the first respondent). This statement was attested by an Advocate A.G. Babu Mohan. The second petitioner had therein stated that only statements attested by the said advocate may be considered as his and not others. It is after all this that the first respondent passed the order Ext. P9 on 22-2-1994 superseding the managing committee of the society u/s 33 of the Act and appointing the second respondent as the Administrator for a period of three months.

8. I may mention one more fact arising from the pleadings of the 4th respondent before dealing with the case on the merits. The fourth respondent has in his counter affidavit made a further statement that the second petitioner along with three other members who resigned on 17-11-1993, namely C.V. Kuriakose, K.P. Narayanan Achari and K.G. Aravindakshan Nair as also one N.P. Joy, had submitted a letter Ext. R4 (d) before the Joint Registrar requesting for the suppression of the managing committee and for the appointment of an administrator.

9. The order of supercession is Ext. P9. Despite all the welter of notices and welter Of allegations, the first respondent only found it necessary to say in Ext. P9 that the explanation offered by the petitioners is not satisfactory. (

) . Absolutely nothing else is stated in Ext. P9 as to the truth or otherwise of the claims and counter claims made by either side. Counsel for the petitioner Sri. Abdul Gafoor stresses on this aspect of the matter considerably in submitting that the first respondent should have applied his mind to the matter seriously and not in this fashion before appointing an administrator for a society. He points out that appointment of an administrator is a very serious matter. More than that he points out that the supercession of the managing committee entails very serious civil consequences for the members of the managing committee, inasmuch as Rule 44 (I) (k) renders a member of a managing committee which has been superseded ineligible for being elected to the managing committee for a period of one year from the date of supercession. This he says, is a very serious matter and therefore the question of supercession has to be taken not light-heartedly, but very seriously by the Joint Registrar and adequate reason should be set forth why the committee should be superseded. There has been no such consideration of the matter in this case by the first respondent. It is inter alia pointed out that when the second petitioner himself appeared before the first respondent in response to Ext. P5 notice and filed statements Exts. P6 and P7 affirming his continuance in the society and of his having not resigned therefrom, it was upto the first respondent to deal with the matter with all seriousness and arrive at a conclusion whether the resignation letter was in fact genuine. In this context Mr. Gafoor refers to the very telltale circumstances in the case that a copy of the letter of resignation is produced by Joy Varghese one of those who

resigned on 17-11-1993. He also refers to the very telling circumstance that the original of the letter dated 29-11-1993 issued to the second petitioner has been produced not by the second petitioner but by Joy Varghese. He also refers to other circumstances which rouse suspicion about the genuineness of the resignation stated to have been submitted by the 2nd petitioner.

10. The Government Pleader on the other hand, relies on the appearance of the second petitioner before the Dairy Extension Officer on 30-11-1993 when he is stated to have written a letter refuting the withdrawal of his resignation and affirming that he had resigned. He therefore states that there was no scope for any doubt in the matter at all and the second petitioner must be taken to have resigned from the committee. He also refers to the second petitioner's letter dated 5-12-1993 in which he had stated that he had resigned from the committee. But the second petitioner rebuts it immediately referring to Ext. P11 copy of that letter which reads to the contra. As a matter of fact the second petitioner has therein affirmed that he had not resigned from the managing committee of the society and that the alleged resignation letter is a concoction. He also refers to the fact that certain papers had been got signed by him by use of force. He actually makes a request in Ext. P11 that the alleged letter of resignation may not be accepted or acted upon:

11. A legal point was also raised by counsel for the petitioner that the letter of resignation which by the explanation to section 33(1) takes effect on its being tendered cannot operate as a resignation unless it is presented in the manner prescribed. He refers to Rule 38 (3) which prescribes that any member of a committee may tender his resignation to the President of the committee. Sub-rule (4) lays down that the President on receipt of the resignation shall place it before the committee within seven days for consideration, if the member is an elected person. In this case, admittedly the resignation was not submitted to the first petitioner President of the committee of the society, but to the Assistant Director (Dairy). It is pointed out therefore that the resignation has not taken effect; nor is it a valid resignation and that therefore the second petitioner was in any event entitled to withdraw the same before it took effect.

12. The Government Pleader's reply to this contention of counsel for the petitioners is that the committee had ceased to exist when once the number of members got reduced to four by the resignation of five members and therefore the second petitioner could tender his resignation only to the Assistant Director, a course which is permitted to him by the decision of this court in Varma v. Joint Registrar, 1987 (2) KLT 420. I shall deal with this point first.

13. The alleged letter of resignation Ext. R4 (a) was addressed to the Assistant Director (Dairy) and handed over to him. It was not handed over to the first petitioner President of the Society. The explanation given for not handing it over to the first petitioner President is that by the resignation of the five members on 17-11-1993, the committee ceased to exist and that therefore the first petitioner was no longer the President.

14. The Explanation to section 33(1) states that the tendering of resignation by a member of the committee shall have the effect of terminating his membership from the committee. As to how he should tender his resignation is laid down in Rule 35 (3) namely that it should be tendered to the President of the committee. As soon as the resignation is so tendered it takes effect and the member ceases to be a member of the committee. Though sub-rule (4) requires the President to place the resignation before the committee for consideration, the committee has no role to play in the matter of acceptance or non-acceptance of the resignation, inasmuch as it takes effect on its being tendered to the President, and the member ceases to be a member when it is tendered to the President. When the consequence of tender of a resignation is so serious and the member ceases to be in the committee immediately on such tender, it is imperative that the mode prescribed for tender of resignation is strictly followed, before it can take effect as a resignation. The procedure prescribed is mandatory. The Act or the Rules do not prescribe any other mode of tendering resignation by a member of the committee. It is beyond controversy that when an act is required to be done in a particular manner, it shall be done in that manner and not in any other. Other modes of performance are necessarily forbidden. This is so even if there are no negative words. The position is so well established since the decision, of the Privy Council in AIR 1936 253 (Privy Council) . If this be so, the only permitted mode of resignation of a member of a committee is to tender it to the President, except in the exceptional circumstance postulated in Varma's case, to which I shall refer later.

15. The explanation offered by the respondents that the committee had ceased to exist when once the number of members got reduced below the quorum and therefore there was no President to whom the resignation could be tendered is not capable of acceptance. For one thing, it is not possible for a member of the committee when he resigns to know whether the quorum has got reduced below the limit or not. Secondly, there is no automatic termination of the term of the committee even when it ceases to have quorum. No such automatic cesser of the term is provided anywhere in the Act or the Rules. What section 33 does is to provide a ground for the Registrar to supersede a committee in cases where the number of remaining members cannot constitute the quorum for a meeting of the committee. In that event, the Registrar has to act in the manner provided in the section and pass an order either suo motu or on application of any member of the society, and after intimating the Circle Co-operative Union about it, appointing either a new committee or one or more administrator or administrators to manage the affairs of the society. Unless and until the Registrar acts in the manner provided in section 33, the remaining members of the committee do not cease to be members of that committee, though they may not be in a position to act or transact business without the necessary quorum, except carrying on the day to day administration. The Act does not envisage a vacuum in the management of a Co-operative society. Either a managing committee is there or an administrator comes in its places - there is no hiatus. That will be the

result, if there is an automatic cesser of the office of the managing committee as soon as its membership gets reduced below the quorum. A necessary concomitant of this conclusion is that the President of the committee does not cease to be its President, merely because the number of members got reduced below the quorum. The fact that he cannot place it before the committee under Rule 38 (4) cannot lead to a contrary conclusion because the requirement of placing before the committee is only for informing it about the resignation and not for any other purpose, as the Act or the Rules do not require the committee to accept the resignation. It takes effect the moment it is tendered in accordance with Rule 38 (3) to the President. Therefore, the tender of the resignation (assuming that it is a true one) by the second petitioner to the Assistant Director (Dairy) was not in accordance with law, and was not a valid resignation, which takes effect eo instanti.

16. The situation in Varma's case was different. That was a case where there was no President for the committee inasmuch as he was removed from that office by a no confidence motion. It was in that vacuum that this court held that the resignation could be submitted to the Registrar. That is not the situation here.

17. The order Ext. P9 is also vitiated for the other reasons stated by Mr. Gafoor. It is a blank order without reasons. A quasi judicial order which has serious impacts, ought to give reasons in support of it, particularly on the facts of this case when there is a mass of conflicting versions and materials either way, with assertions and counter assertions, and more particularly in the light of the fact that the second petitioner had appeared before the first respondent as late as on 14-1-1994 and 17-1-1994 denying his resignation. The matter should have entailed proper consideration by the first respondent. Absence thereof vitiates Ext. P9.

18. One further fact according to me vitiates Ext. P9. The hearing was done by Sri. Surendra Babu, the then incumbent in the Office. But the order was passed by Sri. Aravindakshan Nair, the successor, and that too without advertence to the fact's. This itself is sufficient to strike at the validity of Ext. P9. I am not satisfied that Ext. P9 satisfies the requirements of a proper quasi judicial order. It deserves to be quashed. The term of the managing committee has expired on 23-6-1994. In the view that I have taken that there is no valid or legal resignation by the second petitioner, no further action is possible on the proceedings initiated as per Ext. P5, since the number of the members in the committee is sufficient to constitute a quorum. But the committee cannot be reinducted into office as its term is over on 23-6-1994. The respondents 1 to 3 must however take steps to have the election conducted on or before August 31, 1994.

I therefore allow the original petition and quash Ext. P9. Respondents 1 to 3 are directed to have the election to the managing committee conducted on or before August 31, 1994. Since the term of the committee has expired on 23-6-1994, there is no question of the petitioners being reinducted into office as the

managing committee of the society.