
(1999) 02 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 924 of 1999 and W.M.P. No's. 1249 and 1250 of 1999

R. Ramaraj

APPELLANT

Vs

Joint Registrar of Co-operative Societies and Another

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Citation : (1999) 97 CompCas 670

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; M.K. Hidayathullah, for the Respondent

Judgement

S.S. Subramani, J.—The petitioner seeks issuance of writ of certiorarified mandamus, calling for records of first respondent pertaining to his proceedings in Na. Ka. No. 25304 of 1998-Ve.1, dated December 14, 1998, and quash the same, and consequently direct the respondents to conduct the due elections to the three posts of directors already notified by the writ petitioner-management, and pass such further or other orders as this court may deem fit and proper in the circumstances of the case.

2. The petitioner is a director of Periyamayakkanpalayam Co-operative Primary Agricultural and Rural Development Bank, and he was also elected as president of the bank. It is stated that in accordance with the provisions of the Tamil Nadu Co-operative Societies Act, a board was constituted for the management. The board consisted of seven elected directors, and three directors co-opted, to give due representation to women and scheduled castes and schedule tribes. The Registrar has nominated a managing director and an ex-officio co-operative sub-registrar (Land Development Bank). Therefore, totally there are 12 directors to the board. All these 12 directors have equal rights and responsibilities in conducting the business of the bank. While the management was going on with the above 12 directors, one of the elected directors, Thamodharasamy, was disqualified from that post. A representation was given on September 8, 1997, to

the second respondent-deputy registrar, requesting him to conduct an election under Rules 52 and 53 of the Tamil Nadu Co-operative Societies Rules, and fill up that vacancy. So far the second respondent has not taken any action. On November 10, 1998, a show-cause notice was issued u/s 24(6) of the Tamil Nadu Co-operative Societies Act, to two of the directors for certain alleged disqualifications. The matter is pending consideration, and no orders have been passed therein. It is said that these two directors are coerced by official politicians, to submit their resignation so that they can avoid the consequences of disqualification. Along with the two directors, three more directors were also compelled by the rival group to submit their resignation. Even though the resignation letters are dated November 9, 1998, the same were submitted to the board only on December 4, 1998. It is said that one of the directors Selvaraj Gandhi has withdrawn his resignation as per letter dated December 7, 1998, and he has expressed his willingness to continue as director. It is also said that under Rule 60 of the Tamil Nadu Co-operative Societies Rules, the board of directors have got 60 days time to either accept or reject any resignation letter, and the board has got time from December 4, 1998, to consider the same. In the board meeting dated December 7, 1998, the resignation of two directors, namely, Viswanathan and Sarojini were accepted, and, regarding Selvaraj Gandhi, it was rejected, and the resignation of two directors, namely, Oosi and Nagarajan were kept pending for consideration. On December 7, 1998, even after resignation of the two directors, the board was having quorum, because there were nine directors holding their post. Immediately after the board meeting held on December 7, 1998, the board submitted a representation to the second respondent to conduct elections to the three vacant posts of directors as provided under Rules 52 and 53 of the Tamil Nadu Co-operative Societies Rules. Without considering the request for holding election, the second respondent has now passed the impugned order, u/s 89(i) (iv) of the Tamil Nadu Co-operatives Societies Act, superseding the board by appointing a special officer, stating that due to the resignation of five directors, there was no required quorum to conduct the administration. According to the petitioner, the impugned order has been passed without taking into consideration the relevant provisions of the rules, and the conduct of the respondents is only to give political pressure to control all the banks by unlawful means. The petitioner, therefore, prayed for quashing the impugned order.

3. Counter-affidavit has been filed on behalf of respondents Nos. 1 and 2, wherein it is admitted that one Thamodarasamy was disqualified as per order dated August 29, 1997. The allegation that there was coercion from outside agencies compelling the directors to resign, is denied. The resignation letters of Nagarajan and Oosi were received by the bank on December 4, 1998. The allegation that Selvaraj Gandhi withdrew his resignation is not correct. In fact, in his statement dated December 24, 1998, Selvaraj Gandhi has confirmed his resignation, and sticks to his resignation. It is also said that the 60 days time is to be treated as deemed acceptance. In the case of Nagarajan and Oosi, the

deemed date fell on January 10, 1999, and January 12, 1999, respectively. In the case of others, the due date is February 1, 1999. Though the other three resignations were received in the office on December 4, 1998, they have tendered their resignation with effect from November 9, 1998, and they must be deemed to have been accepted on January 8, 1999. It is said that for the board meeting held on December 7, 1998, there was no quorum, and, therefore, the decision taken in that meeting cannot be considered as valid. It is illegal and unsustainable. The special officer has already taken charge. It is said that the managing director and the co-operative sub-registrar (ex-officio member) cannot be taken into consideration for forming the quorum since they have only restricted powers. The respondents, therefore, prayed for dismissal of the writ petition.

4. The only question that requires consideration is, whether the impugned order dated December 14, 1998, is valid.

5. According to the petitioner, there are 12 directors which include a managing director nominated by the Registrar and ex-officio co-operative sub-registrar. It is said that these two persons have got equal rights with the other directors. The respondents dispute the same. Even according to the respondents, the board of directors consists of ten members having equal power. The reason for passing the impugned order is, the quorum is now less than half and, therefore, a meeting cannot be convened. According to the bye-laws, for convening a meeting, the quorum must be nearly half or half the members.

6. In paragraph 9 of the counter, it is said that three directors resigned from office on December 4, 1998, and they have tendered their resignation with effect from November 9, 1998, and they must be deemed to have been accepted on January 8, 1999. According to me, if this contention cannot be accepted, the impugned order also cannot stand. Rule 60 of the Tamil Nadu Co-operative Societies Rules deals with resignation from membership of the board. It reads thus :

"60. Resignation from membership of the board.-- (1) A member of the board may resign his membership of the board by sending his resignation to the board and such resignation shall be placed before the next meeting of the board by the chief executive or the president of the society, where there is no chief executive.

(2) The board shall decide whether or not to accept the resignation of the member of the board and the decision of the board shall be communicated by the chief executive or the president, as the case may be, to the concerned member within seven days of the decision of the board but not later than sixty days from the date of receipt of the resignation letter in the office of the society.

(3) Where the decision of the board is not communicated to the concerned member within the said period of sixty days, it shall be deemed that the board has accepted the resignation on the sixtieth day from the date of receipt of the resignation letter in the office of the society."

7. Resignation submitted by a member does not come into effect immediately. Either it has to be accepted by the board, or if no decision is taken, there is a deemed acceptance on the expiry of 60 days from the date of receipt of the resignation letter. Even as per the bye-laws, a resignation does not come into effect without acceptance. So, it is clear from these provisions that there must be an express acceptance or deemed acceptance, and then only there could be a vacancy, or it could be said that there is no quorum. It further follows that from the date of receipt of the resignation letter, the board must also be kept alive for not less than 60 days. Only then the question of acceptance could be taken into consideration. If the board itself is dissolved before the expiry of 60 days, u/s 89 of the Co-operative Societies Act, it cannot be argued that the resignation has been accepted. Regarding the three directors who have resigned, though the resignation letters were dated November 9, 1998, they were received by the board only on December 4, 1998. The period of 60 days will have to be calculated only from that date. The impugned order was passed on December 14, 1998. That means, the board has not been given an opportunity either to consider the resignation, whether to accept or reject the same. The principle of deemed acceptance will not apply to such cases. The impugned order is, therefore, invalid. The managing director and the ex officio sub-registrar are also members of the board, and, along with the admitted members, if these two members are also added, sufficient quorum is there for convening the meeting. u/s 26(1) of the Tamil Nadu Co-operative Societies Act, every member will have one vote while they are dealing with the affairs of the society, "Member" has been defined in the Act. The managing director as well as the ex-officio member also will be considered as members as given in the definition. The contention that they have got only limited power and their inclusion cannot be considered for deciding quorum, is not correct. The argument based on Section 26(4) of the Act has no application in such cases. Their disability is only at the time of election as per Sub-section (4) of Section 26 of the Act, For managing the affairs of the society, they have got equal rights with the other members. The petitioner has been demanding the respondents to fill up the existing vacancies. The respondents are statutorily bound to take immediate action on that request, when they are informed about the vacancy. In this case, the vacancy has arisen in 1997, and resignation of two directors has also been accepted. Regarding these vacancies, the matter has been informed to the respondents, and they were also requested to immediately fill up the vacancies. Instead of filling up the vacancies, initiating action u/s 89 of the Act is not proper. By virtue of the impugned order, respondents have virtually killed the democratic set-up of a society. Such action is in violation of the Act and rules. Going by the provisions of the Co-operative Societies Act, the respondents are duty-bound to preserve the democratic set up of the society. They are also duty-bound to see that the management is entrusted and continued in the hands of the elected office bearers. When the statute provides for the same, the respondents cannot act otherwise.

8. In the result, there will be a direction to the respondents to conduct elections for the three posts of directors already notified by the petitioner, within a period of one month from today. The impugned order is quashed.

9. It was represented at the time of arguments that the management is now in the hands of the special officer. The respondents are directed to see that the management is restored to the petitioner forthwith. The writ petition is allowed as indicated above. No costs. Connected W. M. Ps. are closed.