
(2005) 12 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31769 of 2005

Renosh Samuel

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Citation : (2006) 1 KLT 374

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.C. Sasidharan, for the Appellant; T.R. Ramachandran Nair, P.A. Anitha and B.S. Swathikumar, Spl. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—In this amended Writ Petition the petitioner seeks to quash Ext.P2 proceedings issued on 14-11-2005 by the 1st respondent invoking Section 33(1) of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") and superseding the Committee of the 9th respondent Bank. The petitioner is the President of the superseded Committee.

2. It is the admitted situation that no notice was issued to the Committee of the Bank before supersession as per the impugned Ext.P2 order.

3. On 30-11 -2003, a new Committee assumed office. On 29-10-2005, the President of the said Committee died. On 7-11-2005, the writ petitioner was elected as the President. On 7-11-2005 and 8-11-2005 Exts.R5(a) and R3(a) resignation letters were tendered by the 5th respondent and respondents 3 and 4 respectively to the writ petitioner President.

4. Though the writ petitioner disputes the receipt of the said resignation letters, I proceed on the basis that the said resignation letters were actually tendered to the President. This is because, after receipt of notice by special messenger from this Court, the 3rd respondent has filed a counter-affidavit, also on behalf of respondents 4 and 5, asserting that their resignations were tendered to the writ

petitioner and Ext.R3(a), copy of a joint resignation letter of respondents 3 and 4 is produced along with the said counter-affidavit, following which, the 5th respondent has filed I.A. 18489 of 2005 supported by his affidavit to accept on record, Ext.R5(a), which, according to him, is the copy of the resignation letter submitted by him to the writ petitioner, the President of the Committee. On the basis of Ext.R3(a) supported by the counter-affidavit and Ext.R5(a) supported by the affidavit filed in support of I.A. 18489/2005, I am inclined to act upon Exts.R3(a) and R5(a) respectively as resignation letters issued by respondents 3,4 and 5 to the writ petitioner, President as stated in the said documents.

5. Following this, on 9-11-2005, the Secretary of the Society wrote a letter which is reference No. 2 in Ext.P2. On 11-11-2005, the 2nd respondent Assistant Registrar wrote a letter referred to as Item No. 3 in Ext.P2. This was followed by the impugned Ext.P2, being issued on 14-11-2005.

6. From the aforesaid facts, it can be seen that out of the total strength of 9 members in the Committee, one died. Out of the remaining 8, respondents 3 to 5 having resigned, the remaining members in the Committee will be 5. If the absence of Mr.Viswambharan, another member from 18-9-2004 is treated as one by which he does not continue to be a member of the Committee, the remaining strength will fall to 4, lesser than the quorum required for the Committee to transact business.

7. The two issues to be considered are as to whether the decision in Ext.P2 that Viswambharan is not a member of the Committee and has ceased to be a member of the Committee by reason of his continuous absence from 18-9-2004 is to be accepted. For this, the right of the petitioner to challenge Ext.P2 decision to such extent would also have to be considered.

8. The petitioner is the President of the Committee and is entitled to continue as the President unless he is removed either by a no-confidence motion or until the strength of the Committee falls below the quorum, before the term of the Committee expires. That apart, Ext.P2 has been issued without hearing the said Viswambharan. Since, in the facts of this case, the decision on the question whether Viswambharan has or has not ceased to be a member of the Committee has a direct impact on the right of the petitioner to continue as President, the writ petitioner has the necessary locus to challenge the finding in Ext.P2 that Viswambharan has ceased to be a member of the Committee?

9. Admittedly, Viswambharan was not available after 18-9-2004. Clause 37(b)(7) of the Bye-laws of the Society reads as follows:

The aforesaid clause means that if a member of the Board remains absent without any reasonable cause for three continuous meetings of the Board, he may lose his office as a director. Rule 44(3) of the Rules provides for a declaration in writing by the Registrar that the said member shall cease to be a member of the Board of the Society, Such a decision calls for a pre-decisional hearing, which is inbuilt in Rule 44(3). Rule 44(3)(a) makes Rule 44(1)

applicable, to be among the grounds of disqualification. Rule 44(1)(j) provides for a ground of disqualification, to wit, that the said member is disqualified under any other provisions in the bye-laws of the Society. This means that if a person is disqualified under the provisions in the bye-laws of the Society, he can be declared as disqualified only by following the procedure and by passing a declaration to such effect as enjoined by Rule 44(3). Bereft of such an order being passed, Viswambharan cannot be treated as disqualified and hence, Ext.P2 order treating him as not available as a member of the Society falls.

10. If Viswambharan is an available member, then, obviously, there would have been five members in the Board, excluding respondents 3 to 5 when the said respondents tendered resignation to the President on 7-11-2005 and 8-11-2005. This means, going by Rules 38(3) and 38(4), the resignation will have to be placed by the President within seven days before the Board and the resignation, by the statutory terms contained in Rule 38(4) which is part of subordinate legislation, shall take effect only from the date of its acceptance by the Board. This proposition of law assumes importance because of the argument advanced on behalf of the contesting respondents relying on a decision of this Court in Varma's case 1987 (2) KLT 420.

11. Section 35 provides for appointment of a new committee or arbitrator. The explanation at the foot of Section 33 (1) reads as follows:

Explanation.-- For the purpose of this Sub-section, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the Committee.

(emphasis supplied)

12. Considering the above said provision, which is part of primary legislation, this Court held in Varma 's case (supra) that upon tender of resignation by a member of the Committee, the termination of his membership takes place and therefore, it is .not necessary that the procedure prescribed in Rules 38(3) and 38(4) be followed. The aforesaid decision was noticed in Sadasivan's case 1994 (2) KLT 238, wherein it was succinctly pointed out that the aforesaid decision in Varma's case was rendered where there was no President for the Committee in as much as he was removed from that office by a no-confidence motion and it was noticing the said situation of that vacuum, that this Court held that the resignation could be submitted to the Registrar. By holding so, it was held that excepting such situations, Rule 38(3) is mandatory. In holding so, this Court held as follows; .

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 place - 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.

13. Thereafter, in Baby Chemparathy's case. 2002 (2) KLT 730, after noticing the aforesaid two decisions and also the earlier decision of this Court rendered by the Division Bench in P.K. George's case 1974 KLT 189 which apparently was not referred to in Varma's case or in Sadasivan 's case, it was held that procedural violation of Rule 38(3) cannot invalidate a resignation.

14. In P. K. George's case, the Division Bench held that Rule 38(3) is only directory and non-compliance of the same will not invalidate the resignation. All that Their Lordships enunciated in paragraph 5 of the said judgment is that sub-r. (3) of Rule 38 enjoining that a member of the committee has to tender his resignation to the. President of the Committee is only directory and non-compliance of it does not invalidate the resignation. While declaring that sub-r. (3) of Rule 38 is only directory, Their Lordships immediately stated that it is so because the same cannot invalidate the resignation as the resignation is to be accepted by the appointing authority in the case of a nominated member and the resignation will become effective only on such acceptance. In fact, one of the reasons to hold that Rule 38(3) is only directory is the effect of sub-r. (4) of Rule 38. The President was noticed to be a conduit pipe for transmitting the resignation of such a member to the authority, who has appointed the nominated member and it was therefore that, in paragraph 4 of the judgment in P.K.George's case, it was held that non-conformity with Sub-rule (3) of Rule 38, would not invalidate the resignation. However, that is not the case when Sub-rule (4) of Rule 38 falls for consideration. The ratio of the judgment in P.K.George's

case does not water down the provision in Rule 38(4) that the resignation, in the case of 3 nominated member, has to be considered by the authority appointing that member and in the case of an elected member, the Committee of the Society has to consider the resignation and it is only on the acceptance of the resignation by the respective authority, does the resignation come into force. As already noticed, this provision, which is part of the statutory rule, has to be read as it is and the decision in P.K.George's case is no support for any proposition that the resignation need not be placed in the Committee, even in cases where there is no failure of quorum resulting in a situation contemplated in the explanation to Section 33(1). Further, the explanation occurring after Sub-section (1) of Section 33 of the Act is only for the purpose of the said Sub-section as is explicit from the opening portion of the said explanation itself. Therefore, the non-compliance of Rule 38(4) can be only in exceptionally exceptional situations as in Sadasivan's case where the President himself was not available owing to his removal on a no-confidence motion and that by the resignation of the other members, the quorum had fallen below the prescribed limit for transacting the business of the Committee. In cases where the quorum is available, there is no way but to follow Rule 38(4) of the KCS Rules.

15. Even if it has to be taken that respondents 3 to 5 had resigned on 7-11-2005 and on 8-11 -2005 and that the quorum fell to 5, having already held that the absence of Viswambharan is not a ground on which he could be treated to have ceased to be a member, in the absence of any statutory decision under Rule 44(3) of the Rules, the quorum remains at 5. It is sufficient quorum for transacting the business of the 9th respondent Bank.

16. The impugned Ext.P2 is issued only on ground of lack of quorum. Under such circumstances, the same does not stand. Ext.P2 is accordingly quashed. Following this, a meeting of the members of the Committee of the 9th respondent Bank, will be convened for consideration of the resignation of respondents 3 to 5 in terms of Rule 38(4) of the KCS Rules, in accordance with law and appropriate action shall be followed as enjoined by law regarding the business of the Society. Following the finding that even on the acceptance of the resignation of respondents 3 to 5, there will be sufficient quorum, the petitioner will be entitled to continue as President. It is so declared.

The Writ Petition is allowed as above.