

(1973) 04 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 329 of 1972

S. Seetha Ramaiah Naidu

APPELLANT

Vs

Ongole Co-operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 02-04-1973

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 21

Citation : AIR 1974 AP 49

Hon'ble Judges : Gopal Rao Ekbote, C.J.; Madhava Rao, J

Bench : Division Bench

Advocate : M.B. Rama Sarma and S. Krishnamohan, for the Appellant; A. Gangadhara Rao, for the Respondent

Judgement

Ekbote, C.J.—This appeal is from the judgment of our learned brother Chinappa Reddy, J., given in Writ Petition 1441 of 1972 on 7-7-1972, whereby the learned Judge dismissed the Writ Petition.

2. The facts in outline are : The Ongole Co-operative Bank Ltd., has a Board of Directors, It consists of 7 Directors. The petitioner was elected to the Board of Directors in January, 1971. The term of office of a Director is three years. Accordingly , he would have normally continued till the end of December, 1974.

3. On 29-3-1972, however, the petitioner was served with a communication from the President of the Ongole Co-operative Bank Ltd., that he has ceased to be a Director of the Bank under bye-law 22 on account of his having absented himself from three consecutive meetings of the Board of Directors held on 6-1-1972, 14-2-1972 and 19-2-1972. It is that communication which gave rise to the writ petition.

4. It was contended before the learned single Judge by the petitioner that bye-law 22 was ultra vires as it offended Section 21B of the Co-operative Societies Act and Rule 24 (3) of the Rules made thereunder. The argument was that the words "ipso facto" appearing in the impugned bye-law go contrary to Section 21-

B. The learned Judge rejected this contention holding that the position would be the same even without the words "ipso facto". Even u/s 21-B , a member automatically ceases to be a member if he fails to attend three consecutive meetings of the Board of Directors. It was next contended before him that the meeting said to have been held on 14-2-1972 was not a meeting in the eye of law as there was no quorum and the meeting had to be adjourned. The learned Judge rejected this contention also holding that the only result of absence of any prescribed quorum is that the members would not be able to transact any business, but that would not mean that there was no meeting at all. Although thus on 14-2-1972 three directors alone were present which number could not constitute a quorum, it was held by the learned Judge that it was nevertheless a meeting.

5. The last submission before the learned Judge was that on 24-1-1972 , certain decisions were taken by the committee by circulation and inasmuch as the petitioner has given his opinion, he shall be deemed to have been present at the meeting on 24-1-1972. The learned Judge rejected the contention that any opinion got by circulation would not mean that it was taken at a meeting of the Board of Directors. As a result, the writ petition was dismissed.

6. In this writ appeal, the only question which was pressed was that the presence of three members on 14-2-1972 would not constitute a meeting within the meaning of bye-law 22 and as a result, the petitioner's absence at that meeting should not be computed for the purpose of finding out whether he has absented himself from attending three consecutive meetings of the Board of Directors.

7. It was not in doubt that for the meeting of 14-2-1972, a notice was given on 7-2-1972 with 8 items on the agenda.

8. On 14-2-1972, the President , Vice President and one of the Directors Sri R. Hanumantha Rao were present. The rest of the four directors did not attend the meeting . From the proceedings of the meeting, it appears that the President wrote "only three attended" and below it , he again wrote "adjourned for want of quorum" and signed the same.

9. The next meeting was held on 19-2-1972 . A notice of that meeting was given on 16-2-1972. The notice does not refer to the proposed meeting as adjourned meeting as was decided in the proceedings of 14-2-1972 referred to above. Apart from the 8 items which appear on the agenda in the notice of 7-2-72 for being considered at the meeting of 14-2-1972 a fresh item was added to the agenda. That related to the authorisation of Co-operative Sub-Registrar Secretary to sign the returns.

10. The proceedings of the meeting of 19-2-1972 also do not indicate that that meeting was treated as an adjournment meeting as was decided earlier. What is thus clear is that a fresh notice was given for the meeting of 19-2-1972 and the meeting was treated as an independent meeting and not an adjourned meeting.

11. It is in this background that we have to consider whether the assemblage of 3 directors on 14-2-1972 constituted a meeting within the meaning of the bye-law 22.

12. Now there are two bye laws which we will have to consider. The first bye-law is bye-law 21. It reads as under :

" The Board of Directors shall meet once a month or often if necessary to conduct the affairs of the society. No decision of the Board of Directors shall be valid unless it is assented to by atleast 4 members. No member of the Board of Directors shall be present at a meeting of the Board when any matter in which he is personally interested is being discussed. In case of urgency where there may not be sufficient time to convene a meeting of the Board of Directors and in all cases in which such a procedure may from time to time be prescribed by the Board of Directors the Secretary may obtain the orders of the Board of Directors by circulation of papers among members present at the headquarters of the Society , Such decision arrived at by circulation shall be placed before the next meeting of the Board of Directors for their ratification. Should a difference of opinion arise in the course of such circulation , the matter shall not be decided by circulation, but shall be placed before a meeting of the Board of Directors."

13. Bye-law 22 under which the petitioner has been declared to have ceased to be a member of the Board of Directors reads as follows :-

" Should a member of the Executive Committee including the President, Vice President or the Board of Management absent himself from three consecutive meetings of the Body in which he serves , he shall ipso facto cease to be a member of that body. The fact shall be intimated to the member concerned in writing and it shall be reported by the Secretary to the next meeting of the body with any reply that may be received from that member, it shall be open to that body to re-instate and provided also that he shall not be re-instated more than once during the term of the Executive Committee of the Board as the case may be."

14. Even a casual reading of these bye-laws would indicate that the Board of Directors have to meet once a month or as often as is necessary to conduct the affairs of the society . Bye-law 21, however, makes it abundantly plain that no decision of the Board of Directors shall be valid unless it is assented to by atleast 4 members.

15. It was a common ground that the Act or the Rules made thereunder or the bye-laws do not provide for an adjournment of a meeting or an adjourned meeting. There is no provision anywhere even in regard to the quorum. Bye-law 21 does not speak of the minimum number of Directors whose presence would constitute the quorum. Reference to the prohibition that no decision shall be valid unless it is assented to by atleast 4 members, it was conceded cannot be said to be laying down the quorum for a valid meeting.

16. Our attention was drawn to a memo No. 1094 dated 20th December, 1968 issued by the Government . That memorandum , however, is not relevant for the purpose of quorum to be laid down under Rule 23 of the Rules made under the Co-operative Societies Act 1964. Rule 23 says that "unless as otherwise expressly provided in those rules , no general meeting or committee meeting shall be held or proceeded with unless the number of members required to form a quorum as specified in the bye-laws is present." The Memo then goes on to say that Rule 23 applies only to a general meeting and a committee meeting. It does not apply to a meeting convened under Rule 23-C for the election of office bearers. The memo then poses the question "in the absence of any prescribed quorum for a meeting contemplated under Rule 23-C, what should be the quorum for such a meeting?" and then gives certain directions in that behalf. It is obvious that the said memo is not relevant for our purpose. Admittedly, the bye-laws of the present Co-operative Society has not in pursuance of Rule 23, specified the number of members required to form a quorum. The said memo does not govern the present case.

17. The absence of a bye-law prescribing the quorum, however , in our judgment , does not affect the consideration of the main question.

18. The word "quorum" denotes the number of members of (or?) any body of persons whose presence is requisite in order that business may be validly transacted by the body and that its acts may be legal. The quorum is thus the foundation for the validity of the meeting.

19. In *Narayandas Shreeram Somani Vs. The Sangli Bank Ltd.*, the Supreme Court held :

"..... If the interested Director votes and without his vote being counted, there is no quorum, the meeting is irregular."

The principle that is deducible from this decision is that there cannot be a valid meeting if there is no quorum.

20. *Ved Prakash Dusaj v. Municipal Corporation* ILR (1958) AP 17 can also be taken as an authority for the proposition that unless there is a quorum there is no meeting and once a meeting has begun , it cannot transact the business provided the requirement of quorum is always present.

21. B. A. Masodkar in his *Law of Meetings in India*, in Chapter II considers elaborately the meaning and concept of a meeting. He then summarises the whole discussion at page 69 in para 11 and draws certain principles. One of the principles he drew reads :

"The quorum is the minimum that is required to constitute any meeting and in want of quorum in law, there is no meeting."

22. There are two trends in regard to the question of quorum. In the absence of any specific rule prescribing the number which constitutes the quorum, one view

is that the presence of all the members would constitute the quorum. The other view is that the presence of a majority of the members would constitute a valid quorum. It is not necessary to decide which view is correct for the purpose of this case, because the presence of 3 Directors cannot be said to constitute a majority of the Board of Directors, because the presence of at least 4 members is required in order to form a majority. There was thus no quorum at all from either point of view.

23. The question therefore is whether coming of three directors together in response to a notice of the meeting of the Board of Directors, in these circumstances constitute a meeting as is held by the learned Judge. It was not doubted before us that the three directors who were present could not have taken any valid decision in the face of the express language used in bye-law 21. The language used in bye-law 21 is wide enough to even include a decision to adjourn the meeting. Thus, if the three members who were present had taken a decision to adjourn the meeting, it would not be a valid decision according to bye-law 21.

24. In Nilkanth Devrao Nadkarni Vs. Murari Govind Mhale, there was an appointment made of trustees to a temple committee and at the given time only two members were present and it was an admitted position that the quorum requirement was three. Then the two members having met, purported to adjourn the meeting and having met at the time of adjourned meeting had appointed the co-trustees. The challenge was that as there was no quorum, there could be no adjournment. The High Court held :

"There being no quorum, assembled members have no power to adjourn the meeting unless at any rate notice of adjournment is given to all members. If no notice of adjournment is given to all, the adjourned meeting is invalid."

What is thus plain is that if there is no meeting legally constituted, there can be no question of its adjournment, the principle being that a valid meeting alone can transact a business including the motion of adjournment.

25. The decision, however, does not seem to have been taken by the three members present. It is the President who wrote that the meeting is adjourned. Assuming that he had such power, we have already seen that this endorsement of the President was not subsequently carried out. The next meeting was not an adjourned meeting at all. It was admittedly a fresh meeting held by giving a fresh notice and it was treated as such. The endorsement of the President therefore that the meeting is adjourned in practice became ineffective.

26. What is the result then of the three directors being present on 14-2-1972? If the adjourned meeting had been held subsequently on 19-2-1972 as an adjourned meeting, it could not be in doubt that such a meeting would be same meeting and a continuation of the adjourned meeting. Both the meetings would have constituted a single meeting for purpose of the Act. If any authority is required in support of such a conclusion, the decision in Watrap S. Subramania

Aiyar, High Court Vakil and Others Vs. The United India Life Insurance Company Limited , a company carrying on bussiness of life Insurance and Others, can easily be cited. We have already seen that the next meeting not being an adjourned meeting would not therefore be considered as a continued meeting of the previous one. It was a fresh meeting.

27. When the meeting which was adjourned on 14-2-72 by the President was not at all continued , and when the three members present could not have transacted any business at all in the face of Bye-law 21, we fail to see how the mere physical presence of the three members at that meeting could constitute a meeting. It may have constituted a meeting , if the meeting stood adjourned and the adjourned meeting had been held, because in that case the meeting would be deemed to have been continued as a single meeting. That is however not the case here. We do not therefore think that the mere presence of the three members , in those circumstances , could constitute a meeting within the meaning of Bye-law 22. In order to count the meeting for the purposes of Bye-law 22, it must be a valid meeting.

28. Now what do we mean by "meeting". The word "meeting" by its etymology can have myraids of meanings. The meaning of this word has a comprehensive sweep. Shorter Oxford Dictionary defines the word "meeting" to mean "an assembly of a number of people for entertainment ; discussion or the like". Corpus Juris Secundum, Vol. 57, page 1044 puts it as follows :

"Meeting" - As a noun . A number of people having a common duty or function who have come together for any legal purpose , or the transaction of business of a common interest; an assemblage."

29. In Sharp v. Dawes (1876) 2 QBD 26 it is held :

"A meeting means coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest."

30. In ILR (1958) AP 17 it was held that :

"Meeting implies the coming together of persons for certain purposes or consultations : it is an assembly and is not constituted every time a subject is introduced. The entire assembly as such transacting the business before it , is the meeting and the fact that the number of members present fluctuates during the meeting does not make any difference to the nature of the meeting itself....."

31. Frank Shackleton in his Law and Practice of Meetings defines a meeting as follows :

"A meeting is a gathering or assembly of a number of people for purposes of intercourse , entertainment, discussion , legislation and the like or for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters."

What follows from the abovesaid definition of the meeting as well as the principles relating to quorum is that a meeting can be said to be a meeting only when it meets for the purpose of discussing and deciding something for which the meeting is called. If that purpose cannot be achieved because of lack of the requisite minimum number of members , then it does not constitute a valid meeting. In the eye of law , therefore , in order to constitute a meeting within the meaning of bye-law 22, the meeting should be validly constituted and in our opinion, the meeting cannot be said to be validly constituted unless the factors like quorum , notice, eligibility of the persons to attend , the business to be transacted which all go to make valid constitution of a particular meeting are satisfied. It is only such a meeting that can be said to have met for the purpose of discussing and transacting business . Mere assemblage of 3 persons which do not constitute a quorum can be a meeting only when it adjourns and again and again meets a second time as an adjourned meeting because in that case, the next meeting would be considered as a continuation of the first meeting, not otherwise. Except in that case therefore in all other cases, merely because some members who do not constitute a quorum meet in response to a notice, it cannot be a meeting for the purpose of Bye-law 22.

32. Bye-law 22 has penal consequences . It deprives an elected member of a seat to which he is elected . Such a provision obviously has to be interpreted very strictly. The word "meeting" appearing in that bye-law in our view , means "a validly constituted meeting". In the present case , the meeting of 14-2-1972 was not treated as an adjourned meeting as the next meeting was not held as an adjourned meeting. The meeting of three directors on 14-2-1972 does not constitute , therefore, a "meeting", within the meaning of Bye-law 22. The absence of the petitioner therefore at that meeting cannot be counted towards his absence at three consecutive meetings. It is admitted that if the meeting on 14-2-1972 is held not to be a meeting, then the petitioner does not suffer from any disqualification under Bye-law 22.

33. For the reasons stated above, we would allow the appeal, set aside the judgment of the learned Judge and allow the writ petition and quash the communication issued to the petitioner declaring him to be disqualified by issue of a writ of Certiorari. The petitioner will get his costs throughout. Advocate's fee 100 in each court.

34. Appeal allowed.