
(2013) 02 KL CK 0051

In the High Court Of Kerala

Case No : Writ Petition (C) .No. 1843 of 2013 (E)

S. Shylaja

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 KL CK 0051

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Thomas Abraham, Smt. Merciamma Mathew, Sri. K.S. Haridas and Sri. V. Renjith Kumar, for the Appellant; D. Somasundaram, SPL. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner is a member of the Board of Directors of the 4th respondent, Vakkom Farmers Service Co-operative Bank Ltd. No. 542. She was elected on 13.02.2011 and according to the learned counsel for the petitioner, her term expires only on 12.02.2016. As per Ext. P7 order of the 2nd respondent, she has been disqualified from continuing as a member of the Board of Directors. The allegation against her is that she had absented from four consecutive meetings, without permission and has therefore entailed the disqualification that is stipulated in clause 24(4) of the Bye-laws of the 4th respondent bank which has been produced as Ext. P1. According to the petitioner, she could not attend the meetings due to circumstances beyond her control created by a necessity to discharge the official duties assigned to her by the District Co-operative Bank and the Pariyaram Cooperative Managing Committee to which bodies she had been elected/nominated in her capacity as a representative of the 4th respondent bank. However, it is her case that she had sought permission as required by clause 24(4) of the Bye-laws, by submitting applications for leave to the President of the Society. It is the case of the 5th respondent President that such leave applications were received but, were

retained by him without handing them over to the Managing Director or the Board. Therefore, it is contended that she had not absented from four consecutive meetings without permission. Advocate Thomas Abraham, who appears for the petitioner, contends that clause 24(4) of the Bye-laws does not specify the authority from whom, prior permission had to be obtained, in order to satisfy the requirements of the said provision. In the absence of any specific authority being mentioned, the permission of the President was sufficient and the understanding of the requirement of the provision by the petitioner in the said manner cannot be found fault with. At any rate, if the President had exercised a power that was not available to him, the petitioner should not be made to suffer for the consequences thereof. The counsel also places reliance on clause 24(3) of the Bye Laws to draw an analogy that in cases where a resignation is submitted, though the President is authorised to receive the same, it has been specifically provided that the Board of Directors should approve the same. In the case of leave applications, there is no similar stipulation that the leave applications should be approved by the Board of Directors. In the absence of such a specific stipulation, it is contended that the President was competent to grant the leave that was sought for by the petitioner under clause 24(4) of Ext. P1. It is also contended that it was the practice of the 4th respondent Bank for the President to grant such permissions. No rule, circular or other legal provision requires that the leave applications should be approved by the Board of Directors or that such leave applications should be kept in a register that is to be maintained. Neither the Act nor the Rules mandate the maintenance of such a register, it is contended. In spite of the above legal position, it is contended that the appeal filed by the petitioner against Ext. P7 to the 1st respondent has also been rejected by Ext. P10 order. The petitioner therefore seeks the issue of appropriate orders and directions setting aside Exts. P7 and P10.

2. The learned Special Government Pleader Sri D. Somasundaram, appears for respondents 1 to 3. According to the learned counsel, the Bye-law provision does not suffer from any ambiguity as sought to be made out by the learned counsel for the petitioner. The Bye-law provision is clear. It is contended that, the leave of absence should be obtained from the Board, before a person absents himself from four consecutive meetings. Such permission not having been obtained by the petitioner, it is contended that she has been rightly disqualified. It is also pointed out that the petitioner had been absent for 10 consecutive meetings, without obtaining any leave of absence. The Assistant Registrar had conducted an inspection of the 4th respondent Bank whereupon also, no such applications for leave were made available. Therefore, further action was initiated and as per Ext. P7, the petitioner was disqualified. All the contentions of the petitioner have been gone into and found against by the 1st respondent in the appellate order also. It is further contended by the learned Special Government Pleader that for every resolution that is to be adopted by the Board of Directors, the prescribed quorum is necessary and therefore, it is not sufficient that a member of the Board is present at the commencement of the meeting, but he should continue

to be present until the proceedings of the meeting are completed.

3. Heard. I have been taken through the records of the case in detail. I have considered the contentions raised before me anxiously.

4. The question that arises for consideration is whether the petitioner is disqualified in view of clause 24(4) of Ext. P1 Bye-laws. Rule 44(i)(j) of the Kerala Co-operative Rules, 1969 (hereinafter referred to as "the Rules" for short) provides that, a person is disqualified, if he is so disqualified under any of the provisions of the Bye-laws of the Society. As per the bye law provision, a member who absents himself from four consecutive meetings of the Board without permission, shall cease to be a member thereof. Therefore, the consequence of disqualification upon a member of the Board who absents from four consecutive meetings without permission is automatic. It is not in dispute here that the petitioner had absented from ten consecutive meetings. But her case is that, she had submitted leave of absence at every fourth consecutive meeting, seeking permission.

5. In order to substantiate her contentions, the petitioner places reliance on Exts. P2 and P5. As per Ext. P2, the President of the Society, the 5th respondent herein, has written to the Assistant Registrar, Chirayinkeezhu, stating that he had received the applications for leave of absence of the petitioner and had retained them with him in his own file, without handing them over to the Managing Director. It is stated that no direction has been issued by the Registrar stipulating that such applications for leave should be placed before the Board and that the permission of the Board should be obtained. Ext. P5 is a letter addressed by the President to the Joint Registrar, who is the 2nd respondent herein. In the said letter, the President explains the reasons for not having handed over such leave applications when an inspection was conducted by the officer concerned stating that the leave applications were retained by him separately in his custody. Ext. P6 is a resolution adopted by the Board of the 4th respondent bank on 09.06.2012. A perusal of the resolution shows that the same was adopted in the wake of the show cause notice issued by the 2nd respondent. The show cause notice had also been placed before the Board of Directors. The applications for leave allegedly received by the petitioner were also placed before the Board and ratified.

6. A perusal of Exts. P2, P5 and P6 makes it clear that the applications for leave alleged to have been submitted by the petitioner were kept by the President in his own personal file. In other words, no other person or functionary of the Society had any knowledge of the existence of such leave applications in the custody of the President, until they came to light by way of reference in the documents referred to above. Therefore, there is absolutely no material or record available to evidence the fact that applications for leave of absence were actually submitted, before the petitioner absented from four consecutive meetings. It is also pertinent to note that even when an Enquiry Officer of the department inspected the office of the 4th respondent, no such applications for leave of

absence were made available to him by anyone. It is clear from Ext. P6 resolution that the resolution was adopted only to provide an explanation to the show cause notice issued by the 2nd respondent. The reasons for the leave of absence stated are also different at different places. In one place according to the petitioner, she was not able to attend the meetings because of the official duties assigned to her by various other banks. In another place what is mentioned is that due to personal inconvenience she was prevented from attending the meetings. Therefore, the authorities cannot be found fault with for not having accepted the contention that leave applications were actually submitted by the petitioner.

7. Apart from the above, the claim of the 5th respondent, the President of the Society, that he was empowered to receive such applications for leave of absence is not supported by any provision of the Bye-laws. It is worth noticing that clause 24 deals with the term of office of the Board. It is true that clause 24 only says that prior permission is required for leave of absence. It does not specify the authority whose permission is required. However, it is clear from the context that it is the permission of the Board that is required for leave of absence from its meeting. The Board is the ultimate authority to decide whether leave of absence should be granted to a member or not. The proper procedure that was to be adopted was to place such applications for leave of absence before the Board and to get them sanctioned and properly minuted. Such minutes should have been read and passed at the next meeting of the Board also. Only such a procedure would be able to give authenticity to the proceedings. The administrative affairs of a Society are to be conducted properly, following proper procedures, with the seriousness that the discharge of such functions demand. It is such casual manner of functioning that gives opportunities to devious people to manipulate the proceedings.

8. Another contention of the learned counsel for the petitioner is that, though clause 24(3) specifically stipulates the approval of the Board in the case of acceptance of the resignation of a Board member, 24(4) does not contain a similar stipulation. The difference between the two clauses is evident. Clause 24(3) deals with the submission of resignation of a member of the Board. A member of the Board may tender his resignation at any time, even when it is not possible for a meeting of the Board of Directors to be convened or conducted. Therefore, the President is authorised to receive such resignation letters. But it is stipulated that the resignation would take effect only from the date of approval by the Board of Directors. In the case of leave of absence, what is contemplated is absence from attending a Board meeting, and therefore, there is no impediment in submitting a leave of absence to the Board and getting it approved. It is for the said reason that no similar stipulation is found in clause 24(4). I do not find that any contention raised before the authorities before the issue of Ext. P7 or before the appellate authority that the 4th respondent Bank was following a practice of the President granting such applications for leave of absence. Therefore, I do not venture to consider the said contention. I also

notice that no such contention is raised in the Writ Petition. The further contention of the learned counsel for the petitioner is that no rule or circular mandates that the leave of absence should be approved by the Managing Committee. Since I have already found that it is the requirement of clause 24(4) itself that the leave of absence should be obtained from the Board, the said contention does not require any further consideration. I find that the contentions of the petitioner have all been considered and adverted to in Ext. P10. The learned counsel for the petitioner has further pointed out with reference to Ext. P9 Memorandum of Appeal that the petitioner has been attending all subsequent meetings. The fact that she has been attending the subsequent meetings cannot absolve her from the disqualification that she has already entailed, by the operation of clause 24(4) of Ext. P1 Bye-laws.

I do not find any grounds to interfere with the impugned orders Exts. P7 and P10. This Writ Petition fails and is accordingly dismissed.