

Mathai Vs. Ebrahim Syed Mohammed

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Court : Kerala

Decided On : Jan-30-2006

Reported in : 2006(1)KLT696

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Kerala Co-operative Societies Act, 1969 - Sections 28, 28(1), 28(5) and 28AA; Kerala Co-operative Societies Rules, 1969 - Rule 43A

Appeal No. : W.A.No. 101 of 2006

Appellant : Mathai

Respondent : Ebrahim Syed Mohammed

Advocate for Def. : B.S. Swathi kumar, Spl.Government Pleader and; P.P. Jacob, Adv.

Advocate for Pet/Ap. : George Poonthottam, Adv.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Unit Inspector of the Kothamangalam Unit of the office of the Assistant Registrar of Co-operative Societies published notice dated 12,07.2005 convening a meeting

on 29.07.2005 so as to consider the motion for no confidence against the President of the Pothanikkad Farmers Co-operative Bank. Total strength of the Managing Committee fixed by the bye-law was 12. On 29.07.2005 only six members were present. The Unit Inspector took the view that the meeting could not be convened since as per Clause 27 (3) of the bye-laws of the Bank, seven elected members shall constitute the quorum for a meeting convened for the purpose of removing the President and since there was only six members present there was no quorum. Therefore no confidence motion could not be taken up for debate.

2. Petitioner, a member of the Managing Committee is aggrieved by the non conduct of the meeting on 29.07.2005 and has approached this court seeking a writ of mandamus directing respondents 3 and 4 to complete the procedure pursuant to Exts. P2 and P3 as contemplated under Rule 43-A of the Kerala Co-operative Societies Rules and also for other consequential reliefs.

3. Learned single Judge allowed the Writ Petition holding that there was sufficient quorum to consider the no confidence motion on 29.07.2005. Learned Judge took the view that by-law has to be in consonance with Rule 43-A(v) of the Co-operative Societies Rules. Consequently presence of one half of the total strength of the committee members is sufficient for considering the no confidence motion. Writ Petition was accordingly disposed of directing respondents 3 and 4 to conduct the meeting as notified as per Ext.P3 within a period of one month from the date of receipt of a copy of the judgment. Aggrieved by the same this appeal has been preferred.

4. Counsel appearing for the petitioner submitted that learned single Judge has overlooked Section 28(5) of the Kerala Co-operative Societies Act which says that quorum for a meeting of a committee shall be such number of members just above fifty per cent of the total number of members of that committee. Counsel submitted, this provision is in consonance with the bye-laws and therefore Unit Inspector as well as the Joint Registrar are justified in not holding a meeting due to lack of quorum. Counsel for the first respondent, on the other hand, submitted that learned single Judge was justified in holding that bye-law should be in consonance

with Rule 43(v) of the Rules and there was sufficient quorum on 29.07.2005 so as to consider the motion of no confidence against the President.

5. Section 28 is a general provision which deals with appointment of Committee. Section 28 states that the general body of the society shall constitute a committee, for a period not exceeding five years in accordance with the bye-laws and entrust the management of the affairs of the society to such committee. But we are in this case concerned with the question relating to quorum required for the consideration of no confidence motion to remove President of the Co-operative Society. Statute has laid down specific provision for the election and removal of President, Vice President, etc. which is extracted below.

28AA. Election and Removal of President, Vice-President etc.- (1) A committee constituted under Sub-section (1) of Section 28 shall elect from themselves a President, a Vice-President a Treasurer or any other officer by whatever name he is designated in the manner as may be prescribed.

(2) A committee shall remove from office the President, Vice-President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the members of such committee in accordance with the procedure as may be prescribed.

Section 28AA (2) states that the Committee shall remove from office the President, Vice President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the members of such committee in accordance with the procedure as may be prescribed. Procedure for removal of President, Vice President etc. by no confidence motion is prescribed in Rule 43-A. The relevant rule is extracted below for easy reference.

43. A. Removal of President, Vice-President etc. by no confidence motion-

A committee shall remove the President or the Vice President or the Treasurer or any other officer of the committee from his office by a no confidence motion in the

following manner, namely-

xxx xxx xxx(v) No meeting under this rule shall be held, if at the time appointed under the foregoing provisions or, within half an hour from such time, such number of members as shall constitute one half of the total strength of the committee are not present, xxx xxx xxx

Section 28AA read with Rule 43-A would show that a no confidence motion can be considered if one half of the total strength of the committee are present. Sub-section (5) of Section 28 cannot be imported while dealing with the motion of no confidence against the President. Provisions are laid down in Section 28AA read with Rule 43-A. Clause 27 (3) of the bye-laws, in our view, is not in consonance with the statutory provision. Section 28AA read with Rule 43-A. Consequently learned single Judge is justified in holding that statutory provision would override the bye-laws and there was sufficient quorum for considering the no confidence motion on 29.07.2005. In such circumstances, the Writ Appeal lacks merits and the same would stand dismissed for the aforesaid reasons.

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