



2023/KER/33379

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945

WP(C) NO. 20935 OF 2022

PETITIONER/S:

JOSHY PEREPPADAN
AGED 48 YEARS
PEREPPADAN HOUSE,
MALA- PALLIPURAM P.O.,
THRISSUR DISTRICT, PIN - 680732

BY ADVS.
MANU GOVIND
A. JAYASANKAR

RESPONDENTS:

- 1 JOINT REGISTRAR CO-OPERATIVE SOCIETIES (GENERAL)
THRISSUR, CIVIL STATION, AYYANTHOL,
THRISSUR, PIN - 680003
- 2 ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
CHALAKUDY - 680307
- 3 SMT. ALFIYA T.I,
INSPECTOR, CHALAKUDY UNIT,
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES, CHALAKUDY, THRISSUR, PIN - 680307
- 4 KURUVILASSERY SERVICE CO-OPERATIVE BANK LTD NO. 4185
VALIYAPARAMBU, KURUVILASSERY P.O.,
THRISSUR- PIN - 680732
REPRESENTED BY ITS SECRETARY,

BY ADVS.
Government Pleader,
A. JAYASANKAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R****JUDGMENT**

This writ petition is filed by the President of the management committee of the 4th respondent Co-operative Society challenging Ext.P4 notice of the 3rd respondent, the authorized officer of the Registrar, convening a meeting of the Committee, to consider a motion of no confidence against him. It is contended that, pursuant to a notice of intention to move a motion of no confidence against the petitioner delivered by certain members of the Committee before the Joint Registrar, the 1st respondent, the Unit Inspector, the authorized officer of the Registrar, issued Ext. P2 notice dated 03.06.2022 convening a meeting of the Committee on 21.06.2022. When the petitioner, *vide* Ext. P3, complained that the requirement of giving 'fifteen clear days notice' between the date of receipt of notice and the date of meeting as contemplated under Rule 43-A(ii) of



the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'Rules' for brevity) was not fulfilled, the authorized officer issued Ext. P4 fresh notice dated 10.06.2022 adjourning the meeting to 29.06.2022. Contending that he got the notice of the adjourned meeting only on 15.06.2022 and there is no fifteen clear days notice between the date of receipt of notice and the date of meeting, the petitioner submitted Ext. P6 complaint before the authorized officer requesting to defer the consideration of no confidence motion. Since the authorized officer did not accede to the request of the petitioner, this writ petition is preferred to set aside Ext. P4 notice and for direction to the authorized officer to issue fresh notice in accordance with the mandate of Rule 43-A of the Rules. The petitioner has produced Ext. P5 acknowledgment card issued by the Postal Department to show that he received Ext. P4 notice only on 15.06.2022. The petitioner contends



that Ext.P4, convening meeting to consider the motion of no confidence without giving 15 clear days of notice as contemplated under Rule 43-A of the Rules, is illegal and liable to be interfered with.

2. At the time of admission of the writ petition, this Court passed an interim order keeping in abeyance the proceedings proposed by Ext. P4 notice.

3. A counter affidavit is filed by the Assistant Registrar of Co-operative societies, the 2nd respondent, contending, *inter alia*, that Ext. P4 notice dated 10.06.2022 was sent on the very same day and as per the India Post Track Consignment, the petitioner has received the notice on 13.06.2022 and the requirement of 15 clear days notice has been complied with.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. Rule 43-A of the Kerala Co-operative Societies



Rules, 1969, insofar as it is relevant, reads as follows:

“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:-

(i) A notice of intention to move a no-confidence motion signed by such number of members as shall constitute not less than one third of the total strength of the committee, together with a copy of the motion which is proposed to be moved shall be delivered to the Registrar, in person, by any two members signing the notice.

(ii) Any officer duly authorised by the Registrar concerned in this behalf, shall arrange for the consideration of the motion in a meeting of the committee to be held at the office of the society on a date appointed by him, which shall not be later than thirty days from the date on which the copy of the motion referred to in clause (i) was delivered to the Registrar. The said officer shall give to the members, not less than fifteen clear days of notice of such meeting and of the time appointed therefor.

(iii) The officer authorised under clause (ii) shall preside over the meeting convened under this rule.



(iv) A meeting convened for the purpose of considering a motion under this rule shall not for any reason, be adjourned.”

(underlining supplied)

6. The meeting slated on 21.06.2022 pursuant to Ext. P2 to consider the motion of no confidence was challenged on the ground that there was no fifteen clear days between the date of receipt of notice and the date of meeting. Accordingly, the meeting was adjourned. Ext. P4 notice of adjourned meeting is also challenged on the same ground. The fifteen clear days notice contemplated in Rule 43-A(ii) of the Rules can only mean that fifteen clear days shall intervene the date of issue of notice and the date of meeting. The Rule does not provide that there shall be fifteen clear days between the date of receipt of notice and the date of meeting. In **Joseph Varghese v. BDO, Ranni [2003 (1) KLT 321]**, this Court considered the question as to



whether the seven clear days contemplated under sub-section 4 of Section 157 of the Kerala Panchayat Raj Act, 1994 for consideration of motion of no confidence has to be counted from the date of receipt of notice or from the date of despatch of notice. This Court held that, if the date of receipt of notice is taken as criteria for counting seven clear days, any member can dodge the receipt of the notice for a few days and effectively prevent any meeting being held for consideration of the motion. Therefore, it was held that seven clear days contemplated under sub-section 4 of Section 157 has to be counted from the date of despatch of notice. In **Jai Charan Lal Anal v. State of U.P. and others (AIR 1968 SC 5)**, the Hon'ble Supreme Court, interpreting the provisions of U.P Municipalities Act dealing with 'seven clear days notice' in the matter of motion of no confidence, held that seven clear days shall intervene



the date of despatch of notice and the date of meeting. Therefore, 'not less than fifteen clear days of notice of such meeting', as provided in Rule 43-A(ii), has to be understood as 15 clear days computed from the date of issue of the notice and not from the date of service of notice. If any other interpretation is given, it will make the provision unworkable as it is always possible that a person may evade the service for a longer period to frustrate the holding of the meeting for passing the motion of no confidence. In the counter affidavit filed by the 2nd respondent, it is stated that Ext. P4 notice dated 10.06.2022 was sent on the very same day. The meeting for consideration of the motion was slated on 29.06.2022. There are 18 clear days intervening the date of despatch of notice and the date of meeting.

7. A Division Bench of this Court in **V.A. Jose and another v. The Joint Registrar of Co-operative**



Societies (General) and others [2007(1) KHC 92: 2007 (1) KLT 391: ILR 2007 (1) Ker 10], considering the object and purport of issuing notice to the members as contemplated under Rule 43-A(ii) of the Rules, held as follows:

“Fifteen clear days notice contemplated in the last part of R.43A(ii) is to inform the members of the convening of the meeting of the no-confidence motion. The main object of giving the notice is to make it possible for them so as to arrange their other business as to be able to attend the meeting. Legislature has not provided any consequence that is to follow if 15 clear days notice has not been given. Failure to give 15 clear days notice would be judged as directory or mandatory considering the facts and circumstances of each case.”

The Division Bench also held that, when the petitioner himself is a person facing no confidence motion, he has no right to vote.

8. The petitioner has not stated in what manner he was prejudiced by the late service of notice. The right to



remove the President or the Vice-President or the Treasurer or any other officer of the Committee of a Society from his office by a no-confidence motion stems out of the Statute. It is also part of democratic process. This Court has passed an interim order on 28.06.2022 keeping in abeyance the proceedings proposed by Ext. P4 notice. When a meeting is stayed and could not be held under order of the Court, it has to be treated that the meeting has been adjourned by force of law. An adjourned meeting is treated as continuation of the earlier meeting. A notice of intention to move the no confidence motion against the petitioner has already been submitted before the 1st respondent as evident from Ext. P1 and other proceedings. There is no requirement of a fresh notice of intention to move the motion. The officer authorised shall convene a meeting of the Committee for consideration of the said motion in terms of the statutory requirements under Rule



2023/KER/33379

WP(C) NO. 20935 OF 2022 :11:

43-A(ii) of the Rules. The meeting, as aforesaid, shall be convened within thirty days from the date of receipt of a certified copy of this judgment.

The writ petition is disposed of accordingly.

**Sd/-
MURALI PURUSHOTHAMAN
JUDGE**

SB



APPENDIX

PETITIONER EXHIBITS

- Exhibit P1 A COPY OF THE ORDER DATED 30.05.2022
ISSUED BY THE 1ST RESPONDENT
- Exhibit P1(a) RETYPED COPY OF EXHIBIT P1
- Exhibit P2 A COPY OF THE NOTICE DATED 03.06.2022
ISSUED BY THE 3RD RESPONDENT TO THE
PETITIONER
- Exhibit P3 A COPY OF THE COMPLAINT SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT
WITH COPIES TO RESPONDENTS 1 AND 2
- Exhibit P4 A COPY OF THE NOTICE DATED 10.06.2022 BY
THE 3RD RESPONDENT
- Exhibit P5 A COPY OF THE PHOTOGRAPH OF THE AD CARD
- Exhibit P6 A COPY OF THE COMPLAINT DATED 16.06.2022
ADDRESSED TO THE 3RD RESPONDENT