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**(2014) 03 KAR CK 0289**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 45822 to 45826 and 45827 to 45836 of 2013 (CS-RES) connected with Writ Petition No. 51303 of 2013 (CS-EL/M)

Abhaykumar Dhanpal Janaj

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 04-03-2014

**Acts Referred:**

Constitution of India, 1950 — Article 243-ZI, 243-ZK, 243-ZL, 243-ZT  
Karnataka Co-operative Societies Act, 1959 — Section 121, 30, 30(1), 30-B, 31(1)

**Citation :** (2014) 3 KarLJ 457

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** Jayakumar S. Patil, Senior Counsel and Ashok Haranahalli, Senior Counsel for Manmohan P.N, Advocate for the Appellant; Kiran Kumar T.L., Additional Government Advocate, M. Keshava Reddy, G.F. Hunasikattimath and M.S. Rudraiah, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.S. Patil, J.—In W.P. Nos. 45822 to 45836 of 2013, petitioners are challenging the order dated 23-9-2013 passed by the 2nd respondent-Commissioner, Co-operative Election Commission vide Annexure-C thereby appointing a Returning Officer to conduct election to the 5th respondent-Raibag Sahakari Sakkare Karkhane Niyamitha (for short, "the Society"). Petitioners in W.P. Nos. 45822 to 45836 of 2013 claim to be members of the 5th respondent-society which is registered under the Karnataka Co-operative Societies Act, 1959 (for short, "the Act"). The said Society has established a Sugar Factory at Bavachi Village of Raibag Taluk in Belgaum District. It is engaged in the manufacture of sugar and its by-products. As per the petition averments, there are in all 8903 members out of whom 7709 are sugarcane growers. It is alleged that due to grave mismanagement of the affairs of the 5th respondent-society, the factory stopped crushing operation during 2003-2004. It was unable to clear the dues of the farmers, workers and the banks. Steps were indeed taken towards winding up of

the factory. However, due to intervention of the State Government, action was taken to revive the factory.

2. Tenders were floated inviting bids from interested parties to take over the factory on lease basis for 30 years. Shree Renuka Sugar Limited was declared as successful bidder and lease agreement was entered into on 16-10-2008 by the 5th respondent in favour of Shree Renuka Sugar Limited for a period of 30 years. The factory is presently operated and run by the lessee Shree Renuka Sugar Limited by carrying on crushing operation and making payments to the farmers, workers and others.

3. The 4th respondent-Joint Registrar of Co-operative Societies was appointed as a Special Officer to the Society. His appointment was extended from time to time. Some of the members of the 5th respondent-Society made a request for extending the period of the 4th respondent-Special Officer by a further period of three years. In exercise of the powers u/s 121 of the Act, State Government passed an order dated 15-11-2012 extending the tenure of the 4th respondent-Special Officer/Administrator by relaxing the application of Section 31(1) of the Act. In the operative portion of the said order produced at Annexure-B, it is stated that exercising the power u/s 121 and relaxing the provisions contained u/s 31(1) of the Act, period of the Special Officer has been extended with effect from 1-7-2012 till 30-9-2038 or the date on which the elections are held whichever is earlier. It is further stated in the order that the modification/relaxation made to Section 31(1) shall be in force till 30-9-2038 and after the expiry of the said period, the provisions of Section 31(1) shall be applicable as it stood prior to the modification.

4. It is necessary to notice that on 23-9-2013, the Commissioner, Co-operative Election Commission has issued the impugned order directing appointment of Returning Officer to hold election to the 5th respondent-society by referring to the provisions contained under Sections 39-A(1) and 39-AA(2). It is in this background, petitioners have approached this Court challenging the order passed by the Commissioner, Co-operative Election Commission.

5. It is contended by the learned Senior Counsel Sri Ashok Haranahalli that the Co-operative Election Commission has no power or jurisdiction to hold election when the elections are not at all due. He draws the attention of the Court to Sections 39-A(3) and 39-AA(2) to contend that in the instant case elections are not due.

6. It is his next contention that amendment to the Act by way of insertion of Sections 39-A and 39-AA was made on 11-2-2013 whereas Annexure-B order appointing Special Officer exercising power u/s 121 of the Act was passed on 15-11-2012. Therefore, no retrospective operation can be given to the amendment and hence, the Commissioner, Co-operative Election Commission was not justified in appointing the Returning Officer to conduct election to the 5th respondent-society. He has relied on the judgment in the case of The Land

Acquisition Officer-cum-DSWO, Andhra Pradesh Vs. B.V. Reddy and Sons, , to contend that retrospectivity cannot be given to a provision unless such an intention is explicitly clear in law.

7. It is his next contention that in view of the language used in Annexure-B order, particularly, its preamble, it was clear that Special Officer has been appointed till the year 2038 by relaxing Section 31(1) exercising power u/s 121 of the Act. So long as this order is not withdrawn, question of holding any election does not arise. He urges that even if this order is void, being opposed to either the constitutional provisions contained in the Ninety-seventh Amendment to the Constitution of India or in the light of Sections 39-A and 39-AA introduced to the Act, unless the said order of the Government is challenged and declared void or illegal, it binds the parties. In this regard he relies on the judgment of the Apex Court in the case of Pune Municipal Corporation Vs. State of Maharashtra and Others, .

8. Sri M. Keshav Reddy, learned Counsel for the Co-operative Election Commission, contends that the State Government could not have resorted to Section 121 of the Act for appointing an administrator for such a long period. He relies on Article 243-ZK of the Constitution of India introduced by the Ninety-seventh Amendment to the Constitution with effect from 15-2-2012 in this regard which mandates that election of a Board shall be conducted before the expiry of the term of the Board so as to ensure that newly elected members of the Board assume office immediately on the expiry of the term of office of the members of the outgoing Board. He also refers to Article 243-ZL to contend that no Board shall be superseded or kept under suspension for a period exceeding six months, except in certain circumstances, as provided therein.

9. Attention of the Court is also invited to Article 243-ZT which states that any provision of law relating to Co-operative Societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011 which is inconsistent with the provisions of Part IX-B as inserted by the amendment shall continue to be in force until amended or repealed by a competent Legislature or other Competent Authority or until the expiration of one year from such commencement whichever is less.

10. Learned Additional Government Advocate also submits by referring to the Ninety-seventh Amendment to the Constitution that the Constitution of India has laid emphasis on the democratic control of the societies as is evident from Article 243-ZI. He also points out by referring to Article 243-ZK that the non obstante clause used therein makes it mandatory that election of a board shall be conducted before the expiry of the term of a Board.

11. Sri. Santhosh S. Nagarale, learned Counsel appearing for the impleading applicant contends that lease of the Sugar Factory is executed based on Government direction issued u/s 30-B of the Act. This direction has been upheld in the judgment rendered by this Court in the case of Sri Ramu Solanke, Sri

Amar Vasanthrao Patil and Sri Vivek Vasantha Rao Patil Vs. State of Karnataka and Others, , wherein it is held that even if election is held, the Board cannot meddle with the terms of the lease and the transactions covered in the conditions of the lease. He urges that if elections are held, it will not, in any manner, affect the interest of the petitioners.

12. Having heard the learned Counsel for all the parties, the only question that falls for consideration is:

Whether the action of the Commissioner, Co-operative Election Commission in appointing a Returning Officer to conduct election to the 5th respondent-Society is legally tenable?

13. It is not in dispute that petitioners in W.P. Nos. 45822 to 45836 of 2013 are the members of the 5th respondent-society. The 5th respondent-society is governed by the provisions of the Act. By the Constitution (Ninety-seventh Amendment) Act, 2011, Part IX-B has been introduced in the Constitution which pertains to Co-operative Societies. Articles 243-ZH to 243-ZT are inserted by this amendment. Clause (1) of Article 243-ZK mandates that election of a Board (Board of a Co-operative Society) shall be conducted before the expiry of the term of the Board. As per clause (2) of Article 243-ZK, power shall be vested in an authority or a body to be provided" for by the Legislature of a State to conduct elections to a Co-operative Society. Article 243-ZT provides that the existing laws in force relating to Co-operative Societies which are inconsistent with the provisions of Part IX-B shall continue to operate and be in force until amended or repealed by the Competent Legislature or other Competent Authority or until the expiration of one year from such commencement whichever is less. The intention is clear that the Legislature of the State may make amendments in tune with the mandate of the constitutional provisions contained in Part IX-B by amending or repealing the existing laws within a period of one year or else upon the expiry of one year, the said laws, to the extent they are inconsistent with Part IX-B shall cease to have any effect.

14. It is in the light of these provisions of the Constitution, the State Legislature has made amendments to the Karnataka Co-operative Societies Act, 1959. Sections 39-A and 39-AA are inserted by Act No. 3 of 2013 with effect from 11-2-2013. The conduct of elections to the members of the Board and to the office bearers of a Co-operative Society is vested in the control of the Co-operative Election Commission. It has superintendence over such elections. Election to the Board and election of the office bearers of a Co-operative Society are to be held within a fixed time frame as is clear from sub-section (3) of Section 39-A of the Act.

15. It has to be further noticed that the intention expressed in the constitutional amendment is incorporated by the State Legislature by carrying out amendment to the Karnataka Co-operative Societies Act, 1959 which is also evident from Section 30. Section 30 is substituted by Act No. 3 of 2013 which has come into

effect from 11-2-2013. It reads as under:

30. Supersession or suspension of the board.--(1) Notwithstanding anything contained in any law for the time being in force, no board of a Co-operative Society shall be superseded or kept under suspension for a period exceeding six months:

Provided that in case of co-operative society carrying on the business of banking, the provision of this clause, shall have effect as if for the words "six months", the words "one year" had been substituted.

16. Sub-section (2) to Section 30 provides for supersession or suspension of the board and for appointment of an administrator to manage the affairs of the Society for such period not exceeding six months on the grounds specified therein. The first proviso to sub-section (2) provides that the board of any co-operative society shall not be superseded or kept under suspension where there is no Government share holding or loan or financial assistance or any guarantee by the Government.

17. Sub-section (4) of Section 30 further provides that in case of supersession of a board, the administrator shall, before the expiry of his term of office, arrange for the conduct of elections and constitution of a new board in accordance with this Act, the rules and the bye-laws of the co-operative society and hand over management to the elected board.

18. It is thus evident that keeping in mind the provisions of Ninety-seventh Amendment to the Constitution, the State Legislature has made several amendments incorporating the intent and purpose expressed in the constitutional amendment. As per the amendment now brought about to the Act, the Board shall not be superseded or kept under suspension for a period exceeding six months and if the Co-operative Society is not having any Government shareholding or loan or financial assistance or any guarantee by the Government, then the Board of such society shall not be superseded or kept under suspension. It is not the case of the petitioners that there is any Government contribution or loan advanced to the 5th respondent-society. Therefore, as per the amendment, the Board of the Society cannot be superseded.

19. The only question now raised is whether, the amendment brought about is applicable to the facts of the present case. Learned Senior Counsel Sri Ashok Haranahalli contends that the order passed by the State Government vide Annexure-B appointing the Special Officer for the 5th respondent-society by relaxing the provisions of Section 30(1), in exercise of the powers conferred u/s 121 of the Act was passed on 15-11-2012, whereas amendment to Section 30 and insertion of Sections 39-A and 39-AA was made on 11-2-2013. Therefore, he contends that there cannot be any retrospective operation given to Section 30 as substituted or to Sections 39-A and 39-AA of the Act.

20. First of all, as can be seen from Annexure-B - Government Order, there is

quite a lot of confusion in understanding the tenor and intent of the Government Order. Preamble to this Government Order, no doubt, states that action was initiated to continue the term of the Special Officer till 30-9-2038 i.e., the date of expiry of the duration of lease. However, the operative portion of the Government Order makes it clear that the term of the Special Officer was ordered to be extended with effect from 1-7-2012 till 30-9-2038 or until elections were held, whichever was earlier. It is, therefore, evident that the State Government is also not clear whether the term of the Special Officer was extended only till the date of election of the new board or it was extended till 30-9-2038.

21. It is necessary to notice that at the time Annexure-B - Government Order was issued on 15-11-2012, amendment to the Constitution had come into force from 15-2-2012. Section 121 of the Act confers power on the State Government to exempt any co-operative society or any class of societies from any of the provisions of the Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order by issuing a general or special order published in the Official Gazette in that regard.

22. As adverted to above, by Article 243-ZT inserted on 15-2-2012, it was mandated that provisions which were inconsistent with the intention expressed in other Articles such as Articles 243-ZK and 243-ZL shall cease to operate with effect from the expiry of one year unless amended earlier by the State Legislature to be in conformity with the constitutional requirement. That being so, the mandate was that provision regarding the requirement to hold elections to the members of the board of a co-operative society before the expiry of their term and that the board of a society cannot be superseded for a period more than six months had to be put in place within one year from 15-2-2012. The State Legislature was required to carry out amendment in tune with the amendment of the constitution and any provision inconsistent with the mandate of the Constitution would automatically cease to exist. In the wake of this, it cannot be expected that the State Government would act directly contrary to the mandate of the Constitution by resorting to the power conferred u/s 121 to keep the board of the 5th respondent under suspension for a period of 26 years and continue the Special Officer during the said period contrary to the intent expressed in the constitutional amendment.

23. The action of the State also cannot be perceived and understood to have such an effect because the State Legislature itself, within a period of one year from the date the Constitutional amendment came into force, has taken steps to amend the provisions of the Act to bring them in conformity with the constitutional amendment. It abhors one's conscience and reasoning to hold that while the State Legislature acted in conformity with the constitutional amendment, the Government, in exercise of the powers conferred u/s 121 acted directly contrary to the intention expressed in the constitutional amendment by

keeping the board of the 5th respondent-society under suspension for 26 years. It is in this context only we have to understand the tenor of the order passed by the Government on 15-11-2012 vide Annexure-B. If this is kept in mind, the expression used in Annexure-B order stating "the term of the Special Officer is extended till 30-9-2038 or until the elections to the board of the society is held, whichever is earlier", can only mean that the State Government has extended the term of the Special Officer only till the elections are held to the board of the 5th respondent-society. Even otherwise, the effect of Article 243-ZT would be that any existing law which is inconsistent with Part IX-B of the Constitution would cease to exist to the extent of inconsistency. Hence, what the legislature cannot do in contravention of the constitutional provision, the Government cannot be permitted to do exercising the legislative powers delegated to it by virtue of Section 121. In other words, when the Legislature ceased to have any such power with effect from the expiry of one year from 15-2-2012, the date on which the, 97th Amendment of Constitution was introduced, the State Government cannot be expected to exercise such power. Nor, the power already exercised by the Government in exercise of the delegated legislative powers can continue to operate though inconsistent to the Constitutional mandate.

24. Even if the order - Annexure-B is not couched in clear and unambiguous language and there is room for construing the same in the manner suggested by the Counsel for the petitioners, this Court has to understand it in its proper perspective, keeping in mind the constitutional amendment, the subsequent amendment brought by the State Legislature to the Act and the democratic interest of the members of the 5th respondent-Society.

25. In addition, it has to be stated that petitioners in W.P. Nos. 45822 to 45836 of 2013 are the members of the 5th respondent-society. By conducting election, their rights are not going to be affected. In fact, they will be permitted to participate in the democratic process and elect their representative. Merely because the Board is elected to manage the affairs of the society, it will not have any right to interfere with the terms of the lease. The lessee who has taken possession of the factory and is managing the crushing activity and business transaction has not come to the Court. It is not aggrieved by the appointment of the Returning Officer to conduct elections. Therefore, it is understandable how the petitioners can make any grievance with regard to the appointment of the Returning Officer or for the= proposed elections to be conducted. Hence, I am of the view that these, writ petitions do not have any merit and the same are liable to be dismissed.

26. In W.P. No. 51303 of 2013, petitioner-M/s. NSL Sugars. Limited is challenging the order dated 23-9-2013 passed by the 2nd respondent-Commissioner, Co-operative Election Commission vide Annexure-F thereby appointing a Returning Officer to conduct elections to respondent 6-Sahakari Sakkare Karkhane Niyamit Co-operative Society, Alland Taluk, Gulbarga District.

27. It is the lessee who has challenged the appointment of the Returning Officer

and the proposed action to hold elections in this case. In all other respects, the facts and circumstances of this case are similar to the facts and circumstances of the case in W.P. Nos. 45822 to 45836 of 2013. Therefore, the reasons assigned above are applicable to this case also. In fact, there is no such Government order issued by the State Government extending the term of the Special Officer as is done in the facts of W.P. Nos. 45822 to 45836 of 2013. Therefore, to that extent the arguments available to the writ petitioners in W.P. Nos. 45822 to 45836 of 2013 are not available to the writ petitioner in W.P. No. 51303 of 2013. Therefore, there is no merit in these writ petitions also. In the result and for the foregoing, these writ petitions, being devoid of merits, are dismissed.