
(1985) 11 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 17437 of 1985

Ankappa

APPELLANT

Vs

Tahsildar and Returning Officer

RESPONDENT

Date of Decision : 08-11-1985

Acts Referred:

Karnataka Cooperative Societies Rules, 1960 — Rule 14, 14 (B) (2), 14A, 14B

Citation : (1985) 11 KAR CK 0006

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : M. Shivappa, for the Appellant;

Final Decision : Dismissed

Judgement

K. A Swami, J.—In this petition under Article 226 of the Constitution, the petitioner has sought for quashing the Publication dated 25th October, 1985 bearing No Elec. C.R. 10/85-86 issued by the first respondent as per Annexure-D proposing to hold poll to elect three Directors, to the Board of Directors of the 2nd respondent society from "B" Class members on the 10th of November, 1985 from 8 a.m. to 3 p.m. The petitioner has also sought for a direction to the first respondent to issue a fresh calendar of events to hold election to the Board of Directors of the 2nd respondent-society from "B" Class members constituency in accordance with Rule 14 of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as the "Rules").

2. The petitioner is one of the contesting candidates from "B" Class members constituency. The first respondent is appointed as Returning Officer for the purpose of holding election to the Board of Directors of the 2nd respondent-society. The first respondent had issued the calendar of events on 23-8-1985 proposing to hold election to the Board of Directors of the 2nd respondent-society for the year 1985-86, 1986-87 and 1987-88 as per Annexure-A. The election was scheduled to take place on 29th September, 1985. In the meanwhile, Writ Petition No. 15213 of 1985 came to be filed in this Court

challenging the calendar of events. This Court granted an interim order on 27th September, 1985 staying the election from Class "B" members constituency. As a result thereof, election from "B" Class members constituency did not take place on 29-9-1985. Whereas, election from "A" Class members constituency took place as it was not stayed. However, on 10th October, 1985, this Court vacated the interim order. The order dated 10-10-1985 which is produced as Annexure-C reads thus :

"That the respondent No. 2 is hereby directed to hold the election to the 3 seats from the "B" class members before convening the meeting of the Committee of Management of the T.A.P.C.M. Society Ltd., Maddur, for election to the post of President.

Further the interim stay dated 27-9-1985 granted by this Court in the above Writ Petition be and the same is hereby vacated."

3. Pursuant to the direction issued by this Court by the aforesaid order on 10th October, 1985 and consequent upon vacating the interim order passed on 27-9-1985, the first respondent has now issued the aforesaid publication as per Annexure-D notifying that he will hold the poll on 10-11-85 as it was at the stage of poll, the election process was interrupted by the interim order of this Court dated 27-9-1985. It is the validity of this publication that is challenged in this petition.

4. Shri M. Shivappa, learned Counsel for the petitioner has advanced three contentions : (i) that the first respondent has no competence to fix a date for election inasmuch as according to learned Counsel, it is for the Board of Directors of the 2nd respondent-society to fix the date for holding the election and the 1st respondent has to hold the election on the date fixed by the Board of Directors; (ii) that the calendar of events issued as per Annexure-A has spent out; therefore, fresh calendar of events from the beginning ought to have been issued and as no such calendar of events is issued and only the date for poll is fixed, the impugned publication is, invalid in law; (iii) that all the "B" Class members of the society have not been served with the notice of the meeting which is scheduled to be held on the 10th November, 1985 and as a result thereof, the contesting candidate i.e., the petitioner and similarly situated other candidates are put to great disadvantage.

5. It appears to me that it is not possible to accept the contentions. The 2nd respondent-society is a co-operative society to which undisputedly, Rule 14(B) of the Rules, is applicable. It is because of this, the Registrar of Co-operative Societies has appointed the Returning Officer. When once the society is governed by Rule 14(B) of the Rules, it is clear from Clause (2) of Rule 14(B) of the Rules, that the Returning Officer appointed by the Registrar, for the purpose of holding election is entitled to exercise all the powers and perform all the duties of the Committee of Management (in the instant case, the Board of Directors) and of the General Body as per Rule 14(A) of the Rules. Clause (3) of Rule 14(B) of

Rules, further makes it clear that the Committee of Management and every officer of the concerned co-operative society are bound to tender every assistance in the matter of conducting election to the Committee of Management and make available every record that may be required for this purpose. Learned Counsel lays more stress on the words ""such Returning Officer shall hold and conduct the elections in the manner prescribed under sub-rule (A) of this Rule." This does not mean that the Committee of Management alone is entitled to fix the date for holding the election. It only means that the Returning Officer, while exercising the powers and performing the duties of the Committee of Management for the purpose of holding the election, has to follow the procedure prescribed under sub-rule (A) of Rule 14 of the Rules. If the Committee of Management has to fix the date and the Returning Officer has to conduct the election on the date fixed by the Committee of Management, a situation may arise that the Committee of Management may not fix a date for holding the election. In such an event, the Returning Officer will not be able to discharge his functions. Such an interpretation is not only opposed to all Rules of interpretation but is also opposed to the provisions contained in Clauses (2) and (3) of Rule 14(B) of the Rules. Clause (3) or Rule 14(B) fortifies this position it specifically provides that the Committee of Management shall be duty bound to render every assistance to the Returning Officer in conducting election. That being so, the Returning Officer is competent to fix the date for election. In the instant case the Board of Directors are in law duty bound to render, all assistance to the Returning Officer for the purpose of conducting-election on the date fixed by him. Therefore, it is not possible to hold that the first respondent has acted without the authority of law in fixing a date for poll. In the, case of K. Saptasagare Vs. Assistant Commissioner, Chikodi Sub-Division, Raibag and Others, the question as to who is competent to fix the date for election to the Committee of Management of the society to which Rule 14(B) of the Rules is attracted did not arise for consideration. In that case, the question as to whether the Returning Officer had the power to admit the members and then include their names in the voters list and then to issue a calendar of events, was considered. It was held that the Returning Officer did not have power to admit members and then include their names in the voters list. It was further held that a proper understanding of Rule 14(B)(2) of the Rules, was to restrict the powers of the Returning Officer to such details in conducting election after issuing calendar of events and not in respect of the powers of the Committee of Management or General Body antecedent to the issue of calendar of events. Therefore, the said decision is of no assistance to the petitioner. Accordingly, the first contention is negatived.

6. The second contention cannot also be accepted. After the calendar of events was issued as per Annexure-A, all most all the events mentioned therein had taken place except the poll because this Court, on 27-9-1985 granted an interim order staying the election to the Board of Directors, of the "B" Class members. Therefore on the date When the interim order was passed, nominations were

received and the scrutiny had taken place, withdrawal had taken place and a list of contesting candidates had also been published. Therefore, only the poll was to take place. As the poll did not take place because of the Interim Order, it was only to that extent the calendar of events became infructuous. That does not mean that all those events which had taken place according to the calendar of events produced as Annexure-A also became infructuous. Therefore, it is not possible to accept the contention and hold that the fresh calendar of events ought to have been issued on the ground that the events that have taken place under the previous calendar of events have ceased to exist. Now, the first respondent has rightly fixed the date for poll. The contention can also be negated on examining it from other point of view also. Whenever this Court interferes by an Interim Order with the process of election and subsequently the interim order is vacated, it is from the stage at which the interference takes place, by reason of Interim Order, the concerned authority has to continue the election process and not from the beginning. Of course, if no event has taken place according to the calendar of events, then a fresh calendar of events has to be issued. That is not the case here, in as much as all the events upto the date of poll have taken place. Therefore, the 2nd contention also is negated

7. In this case, it is also not necessary to decide the third contention, as it requires elaborate evidence in order to find out whether the first respondent has notified the "B" Class members of the society and as to whether the publication in whatsoever manner is done by the 1st respondent, is sufficient or not in the eye of law. This can be gone into in detail in an appropriate proceeding if at all the petitioner feels aggrieved after the election. Therefore, I decline to go into the 3rd contention.

8. For the reasons stated above, this Writ Petition fails and the same is dismissed.