

(1999) 11 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No. 29776 of 1998 connected Writ Petition No. 33003 of 1998

Annarao Devarao Patil

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 28 A, 28 A (4), 29 F, 29 F (5)

Citation : (2000) ILR (Kar) 109 : (2000) 4 KarLJ 429 : (2000) 4 KCCR 150 SN

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Smt. Rosa Paramel, High Court Government Pleader, Sri Basavaraj Kareddy and Sri Praveen Kumar Raikote, for the Respondent

Judgement

V.P. Mohan Kumar, J.—An interesting question of law has been raised by the petitioners in these writ petitions. The undisputed facts are that the petitioners herein were selected as President of Co-operative Society at a time when the period of office was three years. The election took place sometime in 1997. Subsequent thereto, the Act was amended by the Government with effect from 15-8-1998. When the amendment was made, there was substantial changes brought about, in that, the period of the committee was enhanced from three years to five years. Section 28-A, sub-section (4) provided in this manner:

"Provided that if an election to the Committee of any Co-operative Society had already been held in accordance with the bye-laws of such society, prior to the commencement of the Karnataka Co-operative Societies (Amendment) Act, 1997, the term of office of the committee of such co-operative society shall be three years including the co-operative year in which such election was held".

2. That is to say, in regard to the committee in office of the Cooperative Society elected prior to 15-8-1998, the status quo was allowed to be retained as it is. The stress placed on the expression the "co-operative year" in the proviso to

Section 28-A(4), was keeping in mind the judgment of this Court in T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others, , wherein this Court ruled that "year" to mean "co-operative year" which commences with the First April every year. Further, Section 29-F-was amended whereby sub-section (5) was introduced providing that any elected President, Vice-President, Chairperson or Vice-Chairperson, shall hold office for a term of two and a half years. According to Mr. Jayakumar Patil, learned Counsel for the petitioner, the direct effect is the enhancement of the term of President, etc., etc., that stood enlarged from one year to two and a half years. It is contended by him that on the amendment of the statute, introduction of sub-section (5) to Section 29-F, exhibited an intention to the contrary, the result was the term automatically stood enlarged to two and a half years.

3. Whereas, Mr. Raikote, learned Counsel for the contesting respondents submits that this enlargement of period is confined to such of those officers elected after coming into force of the amending Act and inducted into office under the amended Act. He submits that an interpretation to the effect that the period of enlargement would be affecting the existing office bearers automatically mean giving retrospective operation to the statute contemplated in this behalf. Learned Government Pleader appearing for the 4th respondent also supports this contention and submits that unless there is an express provision of granting retrospective operation to the statute, it cannot be read into section that all elections held prior to the amending Act would be governed by the new provision.

4. I do not think that the argument of the learned Counsel for the petitioner can be accepted. The statute was explicit when it enlarged the period of the committee in office. It provided that the existing committee in office shall hold the office only for a period of three years. This proviso indicates that the amendment governs only such of those committees elected to hold office after coming into the operation of the amending Act. This intention has been taken care of by the statute itself by enacting the first proviso to Section 28-A, sub-section (4) referred to above, where it is provided that existing committee shall continue to hold office for only three years. In other words, the intention of the statute was that it shall not in any way interfere or affect the existing state of affairs which is allowed to continue. If that be the position, there is no necessity to make a departure in the matter of application of Section 29-F(5) to the existing state of affairs. The President thus elected who was in office as on 15-8-1998 would hold office only for the period for which he was selected. Because the electorate which has elected him has a life of only three years an extension of the period by two and a half years cannot be conceded to the officers elected by them. Besides, the electorate which elected the President and other office bearers, could elect them only for one year. The statute by proviso to Section 28-A(4) restricted their life to the existing period.

5. Mr. Jayakumar Patil, cited certain authorities in the matter of interpretation of statutes. He stresses that when Section 28-A was enacted a proviso was added

to make it clear that the enhanced period for the committee in office is not applicable as far as the existing committees are concerned thereby exhibiting an intention to the contrary by the legislature itself that the status quo should continue in respect of the existing committees. But when Section 29-F(5) was enacted, the statute is silent in regard to its non-application to the existing committees; therefore he contends that the plain intention has to be gathered and hold that the legislation intended to apply to the existing office bearers as well. I am of the view that this reasoning cannot apply. Section 29-F(5) is a new piece of legislation introduced by the amending Act comparable to which none existed before. Whereas provision existed in the earlier statute comparable to Section 28-A(4) stipulating the term of the committee. As such, unless there be any specific provision in this behalf in Section 29-F(5) itself or elsewhere, it is not possible to conclude that it will apply to the existing office bearers as well. The words employed do not admit of a construction in the background of its settings, that it intended to vary the state of affairs. I would advert to the following observations in *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , in this behalf:

"The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction".

Applying this principle, I would hold that the amended Section 29-F(5) does not apply to the existing office bearers holding office as on 15-8-1998.

6. In such an event, by implication, this Court cannot extend the life of the office bearers elected to a period larger than what the electorate itself could not have done. Two and a half years as contemplated u/s 29(4) of the Act is with respect to the electorate in office that has life of five years. Understood in this manner there need not be any confusion.

7. I am of the view that the term of office of President of the society who is in office as on 15-8-1998 is one year and not beyond that. That one year is the co-operative year as understood by view of the decision of this Court referred to, *supra*. In this view of the matter these writ petitions are dismissed.

8. After pronouncement of the order the learned Counsel for the petitioners, Mr. Jayakumar S. Patil, sought for suspension of the order for 20 days. This request is opposed by the learned Counsel for the respondents.

9. In Writ Petition No. 29776 of 1998 the petitioner was elected on 3-9-1997. Assuming for the sake of arguments he is entitled for two and a half years in office, I am afraid he is not entitled to be continued in office now after disposal of this writ petition. "Year" has been defined to mean co-operative year. A co-operative year starts with 1st April and irrespective of the date of assuming of

office, the co-operative year will be completed by the next 31st March. If so, he completed the first co-operative year on 3-3-1998 and the second year on 3-3-1999 and half year on 3-9-1999. As such he has already completed his term by September 1999. In Writ Petition No. 33003 of 1998 the petitioner has been elected in November 1997. Therefore, his first year starts with effect from 1-4-1997 and ends with 31-3-1998, the second year ends with 31-3-1999 and half year ends with by September 1999. If that be so, the two and a half years made mention of in Section 29-F(5) has already been completed. As such there is no scope to grant the request for suspension of the order now passed. The request is declined.