

(2014) 12 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition Nos. 49441-49442/2014 (CS)

A.R. Arun

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 12

Citation : (2015) 1 KarLJ 483 : (2015) 4 KCCR 3334

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

Bench : Single Bench

Advocate : K.M. Nataraj, Sr. Counsel for Madhukar M. Deshpande, Advocate for the Appellant; S. Laxminarayana, AGA and Deshraj, Advocate for the Respondent

Judgement

B.S. Patil, J.—Petitioners are the members of the 3rd respondent -Malenadu Areca Marketing Co-operative Society Limited. The 3rd respondent is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act"). Petitioners are aggrieved by the action of the Additional Registrar of Co-operative Societies - 2nd respondent herein in approving and certifying the amendment to the bye-law framed by the 3rd respondent - Society as per Annexure-A only to the extent it amended bye-law No. 20 by restricting the voting rights of the members to elect only the representatives from their particular constituency in the place of earlier bye-law which provided for a right in favour of each member to elect all the representatives regardless of their constituency.

2. Main grievance made by the petitioners is that neither the meeting notice nor the draft of the proposed amendment to bye-law No. 20 has been issued and that there was no deliberations in the meeting with regard to the amendment to the existing provisions contained under bye-law No. 20 which entitled all the members of the Society to cast their vote to elect all the 17 Directors regardless of their constituency, however, the Society illegally passed a resolution amending bye-law No. 20 restricting the right of the members to elect the Directors from

their respective constituency. Without noticing this procedural irregularity, the 2nd respondent has passed the impugned order - Annexure-A approving and certifying the amendment of the bye-law.

3. Sri K.M. Nataraj, learned Senior Counsel appearing for the petitioners contends that as per Rule 6(2) of the Karnataka Cooperative Societies Rules, 1960 (for short, the Rules") which deals with procedure regarding amendment of bye-laws it is laid down that no such resolution proposing to amend the bye-law by the Society shall be valid unless notice of clear 15 days with the text of the existing bye-law, text of the proposed amendment and reasons therefor has been given to the members of the Society in accordance with the bye-laws of the Society. He further contends that as per Rule 6(1) of the Rules, where a Co-operative Society proposes to amend its bye-laws, such resolution shall be supported by two thirds majority of the members present and voting at general meeting of the society. According to him, both these requirements have been violated in the instant case. He points out referring to the resolution produced at Annexure-B passed by the 3rd respondent - Society that there is nothing to show that any deliberations indeed took place with regard to the proposed amendment and there was any voting or that the members unanimously voted for the proposed amendment.

4. Learned counsel for the 3rd respondent - Society fairly submits that there was no notice of the proposed amendment to bye-law No. 20 given to the members, nor was there any voting during discussion. He also points out that if at all the matter has to be reconsidered by the 2nd respondent, it has to be reconsidered in respect of entire matter including as regards rejection of some of the proposed amendments.

5. Learned Additional Government Advocate submits that procedural irregularity committed should have been brought to the notice of the 2nd respondent. None of the members including the petitioners have brought it to the notice of the 2nd respondent therefore, no interference is called for.

6. Heard the learned counsel for the parties. I find that admittedly in the meeting notice, the subject regarding amendment of bye-law No. 20 to restrict the right of the members to elect only the Directors from their constituency and not to elect all the 17 Directors from different constituency as had been provided earlier was not included. It is apparent from the proceedings of the Society resulting in the resolution passed that no voting took place and there was no material to show that this amendment was approved by two thirds majority of the members present and voting at the general meeting.

7. Learned counsel appearing for the 3rd respondent -Society fairly submits that there was no such notice issued to the members regarding the proposed amendment. In such circumstances as provided under Section 12 of the Act, the amendment to be carried out by the Co-operative Society has to be in conformity with the provisions of the Act and the Rules made thereunder. The Rules as can

be seen from Rule 6(2) of the Rules provides that no such resolution amending the bye-law shall be valid unless notice of clear 15 days with the text of the existing bye-law and the proposed amendment and reasons thereof been given to the members of the Society in accordance with bye-laws. In the instant case, Rule 6(2) of the Rules has not been followed. It was incumbent upon the 2nd respondent to satisfy himself regarding the validity of the procedure followed as laid down in the Rules. Even the requirement spelt out in Rule 6(1) of the Rules which states that where a Co-operative Society proposes to amend its bye-laws, such amendment shall be made by a resolution passed by two thirds majority of the members present and voting at general meeting of the Society, has not been followed.

8. The resolution passed by the Society is produced at Annexure-B. It could be made out from the said resolution that no voting has taken place. Therefore, action of the Additional Registrar in approving the amendment to bye-law No. 20 deserves to be interfered with as the same suffers from non-application of mind and no satisfaction has been reached by the 2nd respondent in accordance with the provisions of the Act. Learned Senior Counsel appearing for the petitioners is also justified in bringing to the notice of the Court the judgment of the Apex Court in the case of H. Shankar Alva and Another Vs. The Central Arecanut and Cocoa Marketing and Processing Co-operative Ltd. and Others, to support his contention in this regard.

9. Hence, the writ petitions are allowed. Impugned order -Annexure-A insofar as it purports to approve and certify the amendment to bye-law No. 20. The Society is reserved liberty to move the amendment in accordance with law by following the procedure prescribed under the Act and Rules.