

(1990) 04 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 20693 of 1986

B. Madappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-04-1990

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 26

Citation : (1990) ILR (Kar) 1785

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : Kadidal Manjappa, for the Appellant; H.K. Kantharaj, HCGP for R-1, R-2 and R-5, B.C. Prabhakar, for R-3 and Mohammed Saifulla, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—By consent of the learned Counsel appearing for the parties, the Writ Petition is taken up for final hearing.

2. This Writ Petition is directed against the order dated 18-3-1986 in case No. DSK/LQD/398/85-86 passed by the Director of Sugar and Additional Registrar of Co-operative Societies, Bangalore, who is respondent-2 herein and also against the order of the State of Karnataka represented by its Secretary to Government, Co-operation Department, Bangalore, which is respondent-1 herein accepting the offer of respondent-4 for lease/sale of Mahadeswara Sahakara Sakkare Karkane Limited, Kollegal.

3. The petitioners are the residents of Mullur Village, Kollegal Taluk, Mysore District. They are sugar-cane growers. They are share holders of Mahadeswara Sahakara Sakkare Karkane Limited, Kollegal, and they are aggrieved on account of the winding up of the Society and the sale of the factory to respondent No. 4.

4. Briefly set out the following are the essential facts:

Respondent-3 which is Mahadeswara Sahakara Sakkare Karkane Limited, Kollegal (for short "the Society") is a Co-operative Society registered in 1963 under the Karnataka Co-operative Societies Act, 1959 (for short "the Act"). The Society was promoted by the farmers belonging to the Taluks of Kollegal, Yelandur, T. Narasipur, Gundlupet, Chamarajanagar, Nanjangud and Malavalli. The Society was founded with the object of establishing a sugar factory in the co-operative sector in Kollegal Taluk which is recognised to be an industrially backward area. On 30-5-1973, a licence was granted by the Central Government permitting the establishment of a sugar factory at Kunthur, the estimated cost of the entire project being Rs. 419 lakhs. The petitioners are the Members of the Society and they assert that they are preferring this Writ Petition not only in their own interest as aggrieved share holders, but also in the interest of the public.

5. On the establishment of the factory, the Management of the Society was vested in a Board of Directors nominated by the Government of Karnataka and obviously the majority of the Directors were Government Officers. On 13-4-1973, the control and management of the Society was taken over by the Government of Karnataka u/s 54 of the Act. The Divisional Commissioner of Mysore Division was appointed as Chairman of the Board of Directors and the Deputy Commissioner of Mysore "District was appointed as Vice Chairman. Besides the said persons, the Board of Directors consisted of the Special Deputy Commissioner, Mysore District; Joint Director of Co-operative Societies, Mysore Division; Joint Director of Agriculture, Mysore Division; Superintending Engineer, Mysore Circle; Deputy Registrar of Co-operative Societies; Mysore District; Deputy Director of Agriculture, Mysore District; Executive Engineer, P.W.D., Chamarajanagar; Joint Director of Small Scale industries, Bangalore; Secretary and Director of Small Farmers Development Board and the Managing Director. The Managing Director invariably was a Government Officer deputed by the State Government from time to time. The other Directors nominated by the Government were non-officials.

6. As on 30-6-1974, there were 2881 Members in the Society inclusive of the State Government. Among these 2881 Members, 2434 were sugarcane growers, 43 were non-growers, 189 were Co-operative Societies and 214 were Taluk Boards and Village Panchayats besides the State Government. The share capital invested by the Members including the State Government was Rs. 46,53,395/- upto 30-6-1974. Out of this investment, the contribution of the State Government was Rs. 30,08,000/-. As on that date, the share capital was Rs. 1,57,35,904/- and out of this the State Government invested Rs. 1,22,50,000/-. The remaining amount was the share capital invested by other Members. As on 30-9-1979, there were 8241 grower members, 195 non-grower members, 200 Co-operative Societies and 214 Village Panchayats and Taluk Boards apart from the State Government.

7. In 1972, the erection of the plant and machinery was launched. According to the petitioners, on account of mis-management, gross negligence, corruption

and unwarranted payment of huge amount of money to certain concerns towards alleged supervision of erection of machinery and civil works, the cost of the project which was originally fixed as Rs. 419 lakhs proliferated to Rs. 490 lakhs. Thus there was an escalation of Rs. 71 lakhs over the estimated cost of the project. It is stated that the Board of Directors were very liberal in borrowing loans from financing agencies without exercising necessary precautions to monitor the expenditure of the borrowed money. The trial run of the factory for crushing sugarcane was taken up on 26-2-1976. During 1975-76, the total quantity of sugarcane crushed was 4247.52 metric tons and the production of sugar was in the order of 2050 quintals. In 1976-77, 91952.28 metric tons of sugarcane was crushed with the production of 8025 quintals of sugar. In 1977-78, 209043.32 metric tons of sugarcane was crushed and 203483 quintals of sugar was produced and in 1978-79, 182295 quintals of sugar was produced with the crushing of sugarcane of 188237.04 metric tons. There was a sudden noticeable decline in the year 1979-80 with considerable drop in the quantity of sugarcane crushed and sugar produced. The petitioners rely upon a statement containing particulars regarding the quantity of sugarcane crushed and sugar produced right from 1975-76 to 1982-83 vide Annexure-A.

8. According to the petitioners, the sudden downfall in the quantity of sugarcane crushed and sugar manufactured is attributable to the fault of the Board of Directors on account of their serious omissions and commissions resulting in heavy losses. It is, therefore, stated that the Society was unable to pay the heavy arrears payable to the growers for sugarcane supplied by them. It is also stated that the factory authorities did not enter into any agreement with the sugarcane growers to regulate the supply of sugarcane to the factory and still worse, the factory authorities were not sending lorries in time for transport of sugarcane from the fields to the factory to the chagrin of the farmers. The farmers, according to the petitioners, promoted the Society with great hopes, but the same were disillusioned by the attitude of the Board of Directors and by their style of functioning. Even though the total irrigated area available for cultivation of sugar-cane was about 1,45,927 acres, the farmers could not take the risk of growing sugarcane for fear that the factory may not purchase the sugarcane grown by them and pay the price for the same.

9. The last General Body Meeting of the Society was held on 23-3-1980 and, thereafter, the Board of Directors did not convene any General Body Meeting at all which, according to the petitioners, was on account of the inability of the Board of Directors to face the wrath of the share holders, in 1984, the Board of Directors feigned the convening of General Body Meeting on 22-4-1984. In fact, meeting notices were sent to share holders inviting them to the General Body Meeting scheduled to be held on 22-4-1984. However, the Board of Directors did not hold the meeting at all. The meeting notice is Annexure-B.

10. It appears that there were complaints galore by the share holders and the general public in regard to the mismanagement and serious lapses including

allegations of corruption against the authorities of the factory. In response to these complaints, the Director of Sugar and Additional Registrar of Co-operative Societies directed the Joint Registrar of Co-operative Societies, Mysore Division to enquire into the serious allegations levelled against the Board of Directors. The Joint Registrar, after holding an enquiry, purports to have submitted a report to the Director of Sugar on 15-9-1980 to the effect that there did exist serious irregularities in the working of the factory. On receipt of the report, the Director of Sugar, in his order dated 15-10-1980, directed a regular enquiry as contemplated u/s 64 of the Act and the said order is Annexure-C, authorising the Joint Registrar of Co-operative Societies, Mysore Division, for the purpose of enquiry. Thereafter, by order dated 5-5-1982, the Director of Sugar authorised the Deputy Registrar of Co-operative Societies (E & I Cell) Headquarters, Bangalore, to conduct the enquiry in accordance with the provisions of Section 64 of the Act, a copy of which is Annexure-D. After holding an enquiry, a report was submitted by the Deputy Registrar of Co-operative Societies to the Director of Sugar on 7-5-1984. The copies of the report and the letter accompanying the report are Annexure "E" and "E1" respectively. Subsequently, the Director of Sugar passed an order on 24-10-1985 in accordance with the provisions of Section 68 of the Act which is Annexure-F.

11. Then followed a show cause notice dated 28-2-1986 issued u/s 72 of the Act by the Director of Sugar of the Chairman and Managing Director of the factory calling upon them to show cause why the factory should not be liquidated u/s 72 of the Act and a copy of the notice is Annexure-G. On receipt of the said notice, the Board of Directors, according to the petitioners, very submissively passed an unanimous resolution on 3-3-1986 within about 5 days from the date of receipt of the show cause notice, resolving that the Government may proceed in pursuance of the show cause notice to liquidate the factory in the interest of the share holders, financing institutions and the State Government. A copy of the said resolution is Annexure-H and the covering letter of the Managing Director accompanying the resolution written on 7-3-1986 is Annexure-H1. Soon after the receipt of the said resolution, the Director of Sugar, in exercise of his powers u/s 72(1) of the Act, passed an order on 18-3-1986 ordering the winding up of the affairs of the Society appointing the Managing Director of the Society as the liquidator under the provisions of Section 73(1) of the Act. The said order was published in Karnataka Gazette on 24-4-1986 and it is Annexure-J. According to the petitioners, documents support the fact that by 1983-84, the Society had sustained a loss of Rs. 9.8 crores and the borrowal was in the region of Rs. 5 crores. Significant is the mention of the fact by the petitioners that ever since 1980, the Board of Directors did not convene any General Body Meeting of the share holders. Even earlier it is stated that the General Body Meetings were convened once in two or three years and the Board of Directors did not give a clear picture of the financial position of the Society and the share holders were not taken into confidence before the drastic decision to wind up the Society was taken. It is stated that the share holders were in no way responsible or liable for

the heavy loss sustained by the Society and the loans borrowed by the Society.

12. It is emphasised by the petitioners that even before the Director of Sugar passed an order on 18-3-1986 winding up the Society, the Government had taken a pre-emptive decision a year earlier in 1985 itself inviting tenders for lease or sale of the sugar factory and, according to the petitioners the act was a pre-meditated one. It is pointed out by the petitioners that the tenders were invited without describing the relevant particulars of the sugar factories and by issue of a cryptic and informal advertisement which reads thus:

"Offers are invited from financially sound parties for outright sale/lease of two sugar factories in Karnataka. Interested parties are requested to apply to P.O. Box No. 185, Bangalore-560 052 giving their full details,"

13. The above advertisement was carried in Financial Express, Bombay, on 22-6-1985; in Hindu on 19-6-1985; in Deccan Herald on 17-6-1985 and in Indian Express on 16-6-1985. However, the advertisement was not released to any Kannada newspaper, nor was it sent to other sugar factories such as Sankeshwar Cooperative Sugar Factory and Pandavapura Co-operative Sugar Factory. Moreover, the relevant particulars relating to the sugar factories proposed to be sold or leased were not described in the advertisement at all. It is stated by the petitioners that, as a result, both inside the State and outside the State people were not aware of the proposal to lease or sell Mahadeswara Sahakara Sakkare Karkane Limited except some interested persons who had access to the concerned authorities.

14. It appears that in response to the aforesaid advertisement, there were 6 offers including the offer of respondent-4 herein which is M/s Khoday Distilleries Limited, Bangalore. It appears that two persons withdrew their offers and only the four remaining offers were considered at a meeting in the chamber of the Secretary to Government, Co-operative Department, on 8-10-1985. It seems the meeting was attended by the Director of Sugar and other 5 Officers of the Government and it is also learnt that at this meeting, respondent-4 submitted its revised offer, revising its earlier offer. It is understood that in the meeting after considering the four offers including the revised offer of respondents, recommendation was forwarded to the State Government. A copy of the proceedings of the meeting held on 8-10-1985 is Annexure-K. It is specifically pointed out by the petitioners that in Annexure-K it is manifest that long before the Society was wound up by respondent-2 under Annexure-J, respondent-1 had already made up its mind to sell away the factory to respondent-4. The petitioners reliably understand that after respondent-2 passed the order of winding up the Society and appointed a liquidator, respondent-1 accepted the offer of respondent-4 and directed the sale of the factory to respondent-4. It is also alleged that respondent-1 made a recommendation to the Central Government to transfer the licence to respondent-4 and that respondent-4 had visited the factory several times and had also levelled up the ground in front of the factory with the help of the bulldozers which, according to the petitioners,

strongly indicate the fact that there was a Government Order in favour of respondent-4. It appears that the petitioners made every efforts to secure a copy of the Government Order directing the sale of the factory to respondent-4, but could not secure the same since it was a guarded secret in the hands of concerned officials in the Secretariat, according to the petitioners.

15. The petitioners' grievance is that the enquiry conducted u/s 64 of the Act and the order of respondent-2 passed on 18-3-1986 are contrary to law and in violation of Rules of natural justice. Aggrieved by the enquiry and subsequent order of respondent-2 under Annexure-J, the petitioners preferred an appeal to the Karnataka Appellate Tribunal in Appeal No. 286 of 1986. Holding that the appeal is not maintainable in law, the said Tribunal dismissed the appeal on 23-10-1986, a copy of which is Annexure-L. The appeal was dismissed solely on the ground that no appeal lies to the Tribunal against an order passed by the Additional Registrar of Co-operative Societies liquidating the Society giving liberty to the petitioners to approach the proper forum. In these circumstances, the petitioners have approached this Court invoking the Writ Jurisdiction.

16. In the statement of objections filed on behalf of respondents-1, 2 and 5, it is stated that inspite of earnest efforts of the Management supported by the assistance of the State Government, the factory could not be made viable for the following reasons among which the important ones are as follows:

- (i) Drought conditions prevailing in Kollegal area which resulted in low production of sugar-cane;
- (ii) The pricing policy regarding sugar-cane which made the farmers to switch over to other crops like mulberry, paddy and groundnut etc.;
- (iii) Existence of Khandasari Units in the area which also consumes the sugarcane raised in this area.

It is also stated that the order of liquidation was an inevitable step made on 18-3-1986 under the provisions of the Act. The said order was challenged by the Union and workmen in Writ Petition Nos. 6741 to 6831 and 7249 of 1986 which came to be dismissed. It is stated that the petitioners have once again challenged the order of liquidation dated 18-3-1986 passed by the Director of Sugar and Additional Registrar of Cooperative Societies, in the capacity of share holders and that their interests are affected by the order of liquidation and also by the subsequent sale of property to respondent-4. The contention is that the legality of the liquidation is not open to challenge once again by the petitioners in view of the decision given by this Court in the said Writ Petitions. It is argued that the petitioners have no locus standi to challenge the sale of the factory in favour of respondent-4 and that the sale was in accordance with the prescribed procedure under the law. In substance it is contended that the necessary procedure as prescribed under the law was adhered to in the matter of calling for quotations and the decision to sell to respondent-4 at the price quoted. It is denied that there was any Government Order instructing the sale in favour of

respondent-4; but it is stated that there was only a letter addressed to the Director of Sugar with a copy to the liquidator to the effect that the Government has no objection to sell the properties to respondent-4 at the price quoted and that there was no undue favour conferred upon respondent-4. It is stated that in regard to Gouribidanur Sahakara Sakkare Karkane, the value of the said factory was assessed at Rs. 4.5 crores inclusive of the distillery whereas in the absence of a distillery the Mahadeswara Sahakara Sakkare Karkane being offered the purchase price of Rs. 4.59 crores was considered to be very reasonable. It is argued that the loss per day sustained by the factory was to the tune of Rs. 35,000/- and that the liquidator protected the interest of the share holders by taking quick and timely action in disposing of the properties of the factory. It is stated that according to the records, the share held by the Government was in the order of Rs. 126 lakhs and the share held by the rest was to the tune of Rs. 40 lakhs. It is contended that some informal discussions that could have been held would not render the sale invalid. According to these respondents, the offer of respondent-4 was most reasonable and the liquidator accepted the offer in consultation with the financial institutions and the Government. It is categorically maintained that it is not necessary to convene the General Body Meeting for approving the liquidation and that it is sufficient if the Board of Directors approve the proposal for liquidation in accordance with Section 72 of the Act and further that the liquidator has full powers to dispose of the properties after his appointment as liquidator. It is submitted that the Board of Directors of the factory prior to liquidation had approved all the proposals regarding liquidation and also regarding the sale of the properties to respondent-4 at the rate quoted by respondent-4 which is Rs. 5.49 crores and, therefore, there was no need to call for fresh quotations by the liquidator. The additional factor, according to these respondents, is that the liquidator had sought and obtained the concurrence of the financial institutions in order to sell the factory to respondent-4 at the quoted price. It is, therefore, submitted that there is no merit in the contentions of the petitioners.

17. In substance, the contentions of respondent No. 4 in the statement of objections filed are that the petitioners have no focus standi for the reason that they have not established that they are either share holders or that they are persons who could institute public interest litigation. That the Writ Petition is liable to be dismissed for laches. It is alleged that the Writ Petition is mala fide and is filed just to mislead the Court and that the available alternative remedies have not been exhausted by the petitioners. It is also contended that in so far as respondent-4 is concerned, the Writ Petition is infructuous since the sale deed had been registered and possession of the land and building with plant and machinery had been handed over to respondent-4 as on the date of filing of the Writ Petition. It is stated that the respondent has paid heavy amounts towards sale consideration and also for restoration of the machinery and its replacement in view of damaged condition of plant and machinery at the time of delivery apart from heavy investment towards payment of advances to the sugarcane

growers for supply of sugarcane. It is further stated that the respondent has absorbed almost all the former workers of the factory.

18. It is submitted that respondent-3 obtained industrial licence in 1972 and secured a loan of Rs. 80 lakhs from I.D.B.I., Rs. 55 lakhs from I.F.C.I., another loan of Rs. 65 lakhs from L.I.C. and Rs. 35 lakhs from I.C.I.C.I. with the Government of Karnataka as the guarantor and the Government of Karnataka had granted loan to respondent-3 which had remained unpaid. It is also stated that in terms of the mortgage executed for securing repayment of loans, the I.D.B.I. and other institutions had the right to sell the factory and that the lending institutions insisted upon repayment of the loan. It is further submitted that the Karkane had a meeting with the financial institutions and the said institutions agreed to give up the major chunk of the interest claimed and agreed to freeze loan of Rs. 335 lakhs, if payment was made. It is submitted that in view of the powers of the lending institutions to independently sell and in view of the grant of their concurrence for sale, the transaction of sale cannot be questioned. It is also stated that in addition to repayment of loan, this respondent has also made substantial payment to the liquidator and by virtue of the sale has been in peaceful possession and enjoyment of the property purchased and that the Writ Petition has been filed after registration and delivery of possession to this respondent and hence the Writ Petition is infructuous. It is further stated that the petitioners kept quiet from 1979 without filing an appeal against the appointment of the liquidator before the Government and it is only after the transaction was concluded the Writ Petition has been filed and, therefore, any challenge to the appointment of liquidator at this stage is redundant. Finally, it is stated that the balance of convenience is in favour of respondent-4 and for dismissal of the Writ Petition and that the ratio of the decision in Writ Petition Nos. 6741 to 6831, 6896, 6897 and 7249 of 1988 is attracted to the facts of this case against the petitioners and that there is no merit in the Writ Petition.

19. The following are the points which arise for consideration:-

(1) Whether the impugned order dated 18-3-1986 passed by the Director of Sugar and Additional Registrar of Co-operative Societies, Bangalore, published in Karnataka Gazette dated 24-4-1986, deserves to be quashed on the ground that it was premeditated, unwarranted by law and lacks bonafides;

(2) Whether the order of the State of Karnataka accepting the offer of respondent-4 for lease/ sale of Mahadeswara Sahakara Sakkare Karkhane Limited, Kollegal, is unsustainable.

20. It is clear from the material on record that as far back as 1985 an advertisement was notified in news papers inviting tenders for lease or sale of the sugar factory. It was on 18-3-1986 that a decision was taken and communicated u/s 72(1) of the Act winding up the affairs of the Society and appointing the Managing Director of the Society as liquidator u/s 73(1) of the

Act. This order was notified in the Official Gazette on 24-4-1986. On 13-8-1986, the Government passed an order accepting the offer of respondent-4 and, on 9-10-1986, an agreement of sale was executed to respondent-4 for a consideration of Rs. 5.49 crores. It is thus evident that even before the impugned order of winding up and liquidation was passed, decision to sell or lease out the factory as notified in the news papers aforementioned, had already been taken. On 3-10-1985, which is prior to the impugned order, a meeting was held in the chambers of the Secretary, Co-operative Department, to consider the tenders offered. In the resolution passed at the meeting on 8-10-1985, it was observed that for the sale of the factory it may be necessary to obtain the approval of the general body. However, no General Body Meeting was convened at all. Thereafter, on 24-10-1985, an order u/s 68 of the Act was passed by the Director of Sugar calling upon the Management to remedy the defects pointed out in the report. This was followed up by a show cause notice to the Chairman/ Managing Director of the Society dated 28-2-1986 calling upon them to show cause as to why the Society should not be liquidated u/s 72 of the Act. On 3-3-1986, the Board of Directors accepted the show cause notice and recommended for winding up and liquidation. It is on receipt of this resolution, the impugned order for winding up and appointment of liquidator was passed on 18-3-1986. All these events show that not only the Government had already made up its mind in connivance with the Board of Directors who are its nominees and who are also predominant in strength in the Board to lease or sell the Karkhane along with the lands and that the impugned order of winding up and liquidation was only subsequent to such a decision paving the way for the culmination of the ultimate sale of the Karkhane and lands to respondent-4. It is not denied that the share capital as on 30-9-1979 was Rs. 1,57,35,904/- and out of this, the State Government had invested Rs. 1,22,50,000/- and the remaining amount was a share capital invested by the other members. As on 30-9-1979, there were 8241 grower members, 195 non-grower members, 200 Co-operative Societies and 214 Village Panchayats and Taluk Boards. It is an admitted fact that no General Body Meeting was convened to consider the feasibility of leasing or selling away the factory and the lands. There is no explanation offered as to why the general body was not taken into confidence before deciding upon the lease or sale of the factory and the lands. The general body is supposed to enjoy virtual sovereignty within the institution and even though the Board of Directors constitute the Management to look after the day to day affairs of Management, I do not think it is legally permissible for the Board of Directors to circumvent the general body and to take an unilateral decision to sell the factory and the lands. On such a vital issue, if the general body is not consulted, it would amount to subversion and negation of managerial and administrative system. Similarly, the Board of Directors was not justified in not consulting the general body before recommending the winding up of the Society. In either case, the will of the general body should have been ascertained by the Board. The Board of Directors in such matters is subject to the discipline and control of the general body and without a resolution empowering the sale of the factory and the lands, passed by

the general body, in my opinion, the Board of Management has acted arbitrarily in deciding upon the sale of the factory and the lands and in proceeding to advertise to that effect inviting offers for purchase. The procedure adopted is an inverted procedure of putting the cart before the horse. It cannot be justified by the contention that though the Notification of sale of the factory and lands was made before the impugned order was passed winding up the Society and appointing the liquidator, the liquidator exercised his powers statutorily for the sale of the factory and lands. It is stated that on 9-10-1986 an agreement of sale was executed for a consideration of 5.49 crores of rupees to respondent-4 by the liquidator. By a mere execution of the agreement on 9-10-1986, the inherent defect and breach of law by taking the decision to sell even before the order of winding up and appointment of liquidator was made, cannot be reconciled either with reasonableness or fairness. The fact that the Notification inviting offers for purchase of the factory and the lands was published in the newspapers even before the Director of Sugar passed an order u/s 68 of the Act directing the Karkhane to remedy the defects, is a clear indication of want of bona fides and substantiates the allegation that all the notices and correspondence subsequent to 22-6-1985 are mere eye-wash. The real question is not whether the liquidator was free to enter into an agreement of sale as he did on 9-10-1986; but the question is whether the decision to sell was supported by the general body before the Impugned order was passed. The action of the Board of Directors in consenting to the winding up of the factory and appointment of a liquidator without making any effort to rectify the defects is not above suspicion. An allegation was made by the learned Counsel appearing for the petitioners that the Government took a decision to call for tenders in 1985 and this was within the knowledge of the Board of Directors and it is only at the hint thrown by the Government that the Board of Directors notified the sale by advertisement in news papers. The said letter is not made available to the Court by the respondents and it is difficult to disbelieve the allegation made by the learned Counsel appearing for the petitioners in this regard.

21. In Bye-law No. 17(3), it is provided that the general meeting shall transact the business of considering the audit memorandum and audit rectification report from the Board and any other communication from the Registrar. It is thus seen that the right to consider the audit memorandum and audit rectification report from the Board and any other communication from the Registrar was denied to the general body at a general meeting to be convened in accordance with the Bye-laws. This is a material irregularity for which no explanation is forthcoming from the respondents. In these circumstances, it has to be held that the impugned order and the execution of an agreement of sale with respondent-4 is neither valid nor legal and the impugned order dated 18-3-1986 is violative of the spirit and letter of law. In my opinion, the power vested in the authority under Sections 72(1) and 73(1) of the Act has been improperly used.

22. The conduct of the Board falls short of the standards of both reasonableness and fairness. Indifference to the General Body is indifference to the test of

accountability and accountability is the quintessence of any democratic process. The Board does not enjoy unfettered discretion. It is not autonomous nor is it intended to be so. It is not only answerable to the General Body but also to the Executive Committee. The Board is dominated by bureaucrats nominated by the Government. Hence they are expected to observe greater sense of accountability to the share-holders and members. The Board is not meant to be a pawn in a proxy game. Neither the intendment of the legislature nor the scheme of the Act permits it. "Ceasar's wife must be above suspicion," especially because we are concerned with the Rule of Law and not with the Rule of Men. It appears to me that in the whole game, the strategy was to sell the factory and the lands to the person intended and to work out the format later. The events arranged to achieve the object are too transparent to lend legitimacy to the sell-out.

The stated object of the society is to encourage proper development of agricultural industries among others on co-operative lines by introducing improved methods of agriculture and promotion of principles of co-operative and joint farming methods, with a view to secure the advantages of modern large-scale agricultural production to the owners or tenant cultivators of land and for that purpose. If for any valid reason, the factory and the lands are proposed to be sold, such a proposal requires to be considered by the Executive Committee and the General Body and not merely by the Board of Directors since the very existence of the Society and its fate is to be decided besides the legitimate interests of the members, share-holders and the cultivators in the back-drop of the avowed aims and objects of the Society. If the sale is decided to be effected after due deliberation and consideration, it could only be in the course of winding up and appointment of a liquidator and not earlier. According to Bye-law 2(viii):-

"To sell or otherwise dispose of the whole or any part of or parts of its business, assets and/or undertakings including its factory buildings, machinery and lands for the benefit of the Society or in the course of the winding up of the Society."

On the question whether or not the sale enures to the benefit of the Society, the members, shareholders, and the General Body of the Society do have a legitimate say and the power and discretion does not solely and exclusively vest with the Board of Directors. It is possible to reach the finding in the circumstances of the case that by avoiding consultation with the General Body, the Board of Directors has failed to meet the requirements of both openness and accountability. The Board of Directors is not the sole arbiter of the larger interests of the Society and it cannot relegate the General Body to inconsequential obscurity by side-lining it contrary to the aims and objects of the Society. The Board of Directors has exercised power arbitrarily, the Bye-laws have been Ignored and the aims and objects of the Society have been disregarded.

According to Section 26 of the Act, subject to the provision of the Act, the Rules and Bye-laws, the final authority of a Co-operative Society shall vest in the General Body of Members.

23. What transpired subsequent to the execution of the agreement of sale cannot alter the course of law. Whatever the legal consequences which flow from the findings given, are binding on the respondents.

24. At the time of arguments, the locus standi of the petitioners to maintain the Writ Petition was not seriously contested. There is no valid reason for holding that the Writ Petition is not maintainable. The petitioners had preferred an appeal against the impugned order before the Karnataka Appellate Tribunal which rejected the appeal on the ground that the appeal is not maintainable and the appeal was dismissed with liberty to the appellants to approach proper forum. The order of the Tribunal was passed on 23-10-1986 and the petitioners approached this Court on 28-11-1986. There is no justification for holding that the Writ Petition is barred by laches.

25. Though the learned Government Pleader appearing for respondents-1, 2 and 5 has stated that the order of liquidation was challenged by the Union and Workmen in Writ Petition Nos. 6741 to 6831 and 7249 of 1986 and the Writ Petitions were dismissed on 23-2-1987, the present petitioners are not parties to those proceedings and secondly the points for consideration which have arisen in this Writ Petition are different from the points considered in the aforesaid Writ Petitions. Hence, the decision rendered in those cases has no bearing on the instant case which is filed by members of the Society.

26. For the above reasons. Rule is issued and made absolute. The Writ Petition is allowed. The impugned order under Annexure-J dated 18-3-1986 and the order of respondent-1 in accepting the offer of respondent-4 for lease/sale of the Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal, are quashed.

27. In the circumstances of the case, there will be no order as to costs.