

(1983) 03 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 3281 of 1983

Babu Rao and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-03-1983

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 1984 Kar 79

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : B. Thilaka Hegde, for the Appellant; Jayakumar S. Patil and R.G. Devadhar, High Court Govt. Pleader, for the Respondent

Judgement

1. Heard. Rule issued.

In this petition filed under Article 226 of the Constitution, the petitioners have applied for a writ of certiorari challenging Annex. C, the notification dated 2-2-1983 bearing No. RDC 16 COF 83 issued by the State Government (1st respondent herein) reconstituting the Board of Management of the Society -- Sri Halasiddanath Sahakarl Sakfiar Karkhana Ltd., Nipani (hereinafter referred to as the society) and for a writ of mandamus directed against the 1st respondent preventing it from interfering with the management of the society by the board of directors appointed on 26-8-1982 under Annexure B, the notification dated 26-8-1982 bearing No. RDC 95 COF 82.

2. The petitioners are members of the Society. The 1st petitioner was also one of the members of the Board of Directors (referred to hereinafter as the Committee) constituted under Annex. B.

3. The Society is registered under Karnataka Co-operative Societies Act. 1959 (the Act). It has come into being having as its object "to encourage proper development of Agricultural Industries amongst members on co-operative lines by introducing modern methods of agriculture and by promotion of principles and

the methods of co-operation and joint farming methods so as to secure best advantage of modern large scale agricultural production to the owner or tenant cultivators of land". The Society proposes to establish a Sugar Factory at Nipani in Belgaum District. It has secured the licence for that purpose and civil works to establish the factory are in progress. The authorised share capital of the Society is Rs. 3 crores 50 lakhs. Out of that rupees 1 crore will have to be raised by producers (Sugarcane growers.) by selling 10,000 shares of Rs. 1,000/- each; Rs. 2 Crores will have to be contributed by the State, Government by obtaining 20,000 redeemable preferential shares of Rs. 1,000/- each; and the rest will have to be raised by non-growing members and by some financial institutions in the manner and as provided in the bye-laws of the Society.

4. The Society lids four classes of members- (A) to (D). The producer members are in "A" Class, Co-operative institutions in "B" class, the State Government in "C" Class, and non-growing members in "D" class.

5. As stated above the State Government is also a member of this Society (Bye-law No. V).

6. Two bye-laws are relevant for our purpose, Since both are numbered as 21, to avoid confusion I will refer to the first byelaw No. 21 as No. 21 (A) and the second bye-law No. 21 as 21 (B). They read as follows:

(1st bye-law No. 21)

"21 (A) (1). The Board of Directors shall consist of fifteen Directors as under :

(a) Nine members to be elected by Grower Members admitted under Bye-law No. 5 (a).

(b) One member to be elected by member admitted under bye-law No.5 (b).

(c) Three nominees of the Government including the Managing Director to be nominated by Government.

(d) One member to be elected by members admitted under bye-law No..5 (d).

(e) The representative of Central Financing Agency.

In addition to 15 directors mentioned in Bye4aw No. 21 (1), the Industrial Finance Corporation of India shall have a right to appoint and remove from time to time two nominees on the Board of Directors of the Society, such nominees being non-rotating and not liable to hold any share qualification during the time during which the Society has borrowed funds from the Corporation. The Life Insurance Corporation shall have a right to appoint and remove from time to time one nominee on the Board of Management of the Society."

"21 (B) (i) Not with standing anything contained in the other bye-laws if the Society, the First Board of Directors including the Chairman and Vice-Chairman, shall be nominated by the State Government. The Nominated Board shall function for such period as may be indicated by the State Government from time

to time provided that the total term of the nominated Board would be for a period not exceeding 5 (five) years

from the date the factory of the Society goes into production.

Provided also that the State Government will have the powers to change any or all the Directors including the Chairman and Vice-Chairman of the Board at any time and also to fill up vacancies that may arise from time to time for any reason whatsoever... .. "

Bye-law 21 (B) (i) enables the State Government to nominate the First Board of Directors including its Chairman and Vice-Chairman. That bye-law provides that the total term of the nominated board should not exceed five years from the date the factory of the Society goes into production. As provided in the Proviso to this bye-law the State Government has the powers to change any or all the Directors including the Chairman and Vice-Chairman of the Board at any time and further empowers it to fill up the vacancies that may arise from time to time for any reason whatsoever. It was under the main bye-law, No. 21 (B) (i) the State Government had nominated the Board of Directors as per Annex. B.

7. Exercising its power under the Proviso to bye-law 21 (B) (i) the 1st respondent, the State Government, has issued the notification (Annexure C) dated 2-2-1983 "in super session of the orders issued in Notification No. RCD 95 COF 82 dated 26-8-1982 (Annexure B)" nominating a new board in place of Annexure B (sic). The members of the new Board are respondents 3 to 11 herein. As can be seen from Annexure B the 1st petitioner herein was one of the Directors of the Board constituted. on 26-8-1982.

8. Annexure C is attacked on many grounds, The learned Counsel for the petitioners argued that the 1st respondent in issuing Annexure C (i) had acted arbitrarily and with a mala fide intention; (ii) could not have exercised the power of reconstituting the Board whole-sale having once exercised that power under the bye-law in question; (iii) had also exceeded its powers in completely replacing the old board in this fashion quite contrary to the very guidelines contained in bye-law 21 (A); and (iv) Annexure, C is also bad consisting, as it does, only officials and no representative of the growers at all.

9. The learned Counsel for the 12th respondent, while supporting the impugned notification, argued that there has been no contravention of any bye-law; that the State Government had absolute powers to reconstitute the Board; that it - had so done in the best interest of the Society, and having regard to . the investments it has now and proposes to make; that what the State Government has done cannot at all be characterised as either arbitrary or mala fide; and besides this the petitioners, relying as they do on the bye-law of a co-operative society. and trying to enforce the same in this petition, cannot invoke Art. 226 of the Constitution for the purpose and, therefore, he argues, they have to fail.

10. The learned Government pleader, who also supported the impugned

notification. denied the allegations made in the petition by the petitioner that the 1st respondent had issued the notification with a mala fide intention or ulterior motive. What has been done, he argues, was in the best interest of all concerned including the growers.

11. Let me first deal with the contention of the learned Counsel for the respondents that the petitioners claiming as they do reliefs against a co-operative society and one of its members the State of Karnataka, and on the basis of the bye-laws of the said sock", cannot take recourse to Article 226 of the Constitution. In support of their contention they rely on (i) Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, (ii) Fakiraiah Channamallaiah Hiremath v. Savanur Taluka Primary Co-op. Land Development Bank (1975) 1 Kar LJ 255; (iii) Khoday Brewing Distilling Industries Pvt. Ltd. v. State of Karnataka (1981) 2 Kar LJ 533 : AIR 1982 (Kant) 96 and (iv) Gurappa. v. South Central Railway Employees Consumers Co-op. Society Ltd. (1983) 1 Kar LJ 106. They argue that a co-operative society is not a State within the meaning of Article 12 of the Constitution; that the impugned notification, though issued by the State Government, is not issued by it as such but as a member of co-operative society exercising its powers under a bye-law of that society; and the bye-laws of a society have no statutory force and hence unenforceable under Article 226 of the Constitution of India.

In Co-operative Central Bank's case, the Supreme Court has observed as follows at Para 10 .

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make, The bye-law that are contemplated by the Act can be merely time which govern the internal management, business or administration of a society. They may be binding between the, persons affected by them, but they do not have the force of a statute, The bye-laws that can be framed by a society under that Act are similar in nature to the Articles of Association of a company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law."

In Fakiraiah's case this Court has observed that the bye-laws framed under the Act have no statutory force and therefore their contravention. cannot form the basis of a Petition under Article 226 of the Constitution.

In Khoday Brewing Distilling Industries case this Court has observed that "a Cooperative . Society does not fall within the term "State" in Article 12 of the Constitution and therefore no writ can be issued under Article 226 of the

Constitution against it". It is further observed that "even if Government is a share-holder, a co-operative society does not become a Government department and would not be "State within Article 12 of the Constitution".

In Gurappa's case challenge made to a bye-law of a society was not countenanced on the ground that a bye-law of a Society was not "law" within Article 13 of the Constitution.

12. But we have to examine in the light of the facts of this cast whether the ratio enunciated in those cases has any application here. A careful reading of the averments made in the petition will show that no relief has been sought for against the society. Neither its acts nor omissions are called in question. No enforcement of any bye-law as such of the Society is sought for. What is under challenge is the act of the State which act it purports to have done as a member of this society under an enabling bye-law conferring powers on it the member of the society to so act in a given situation. Counsel for the petitioners states that the State may be a member of the society and might have acted as such member under a byelaw of that society in issuing the impugned notification, but nevertheless that act of the State being its administrative act is amenable to the writ jurisdiction of this Court and in the exercise of that power if it is established that it had acted either in a mala we manner or arbitrarily its action can be quashed. There is considerable force in this submission.

13. A welfare State like ours assumes many roles and performs many functions. Broadly speaking the functions of the State may be classified " legislative, administrative at executive, judicial, and Ministerial. The administrative role of a modern State has different dimensions to it it has to maintain law and order, watch over the enemies at the borders" establish diplomatic relations with them and so on. In addition to those functions normally carried on by an administration, a welfare State like ours takes up an active role in the general welfare and progress of its people, envisaging their ad round progress in spheres political, economic, and social - and undertakes many measures in those areas. Encouraging co-operation amongst its citizens is one such. As observed by this Court in C. Krishnappa Shetty v. The State of Karnataka ILR (1961) Kar 18 this is in order to promote thrift, self-help and mutual aid among the people. And this cannot be achieved, as stated them in unless the inner working and administration of the society is run on democratic lines. The various co-operative societies Acts in this country have been, enacted with the above aim and object. Apart from merely administering this law the State, in some cases, directly participates in the working of societies. In the instant cast the State Govt. have not merely helped in forming this Society but have also acquired membership in it. In the share capital of the Society, as stated above, its contribution is considerable. To safeguard its finances and to see that the industries sponsored by the Society are well established and run smoothly power is retained by the State for nominating the first Board of Directors. That is ensured by the bye-laws of the Society referred to above. There are other bye-laws which also enable the

Statue. Government to retain sufficient control especially during the period when its share capital and the loans raised on its guarantee continue unredeemed. The bye-laws envisage the appointment of a Managing Director by the executive committee. But bye-law No. 31 (a) enables the State Government, "so long as the share capital contributed and the loans raised on its guarantee continue unredeemed to appoint a person as Managing Director from among the members of the Society and to fix his remuneration and other allowances.

13-A. All that the State does in a case like this cannot be characterised as its badness activity or in furtherance of its contractual obligations; These are its administrative functions and done with the above aim and object the aim and object being establishment of an industry in the interest of the welfare of a people (producers of sugarcane). Promoting, at the same time self-help and mutual aid amongst them and gradually allowing them to run the industry on co-operative lines. Its contribution of finance is not primarily to earn profit but with the aforesaid lofty objective. It has undertaken all that in furtherance of its welfare activities. In order to perform these functions effectively it has acquired membership in the Society retaining as it does these powers under the bye-laws. Its participation in the affairs of this Society and whatever it does, may be exercising Its Powers under the bye-laws, and, according to those bye-laws forms part of its administrative function.

14. If that is so, does not its action, in reconstituting the committee of this Society, amenable for challenge under Article 226 of the Constitution of India? I am inclined to agree with the learned Counsel for the petitioners that it can be called in question. The bye-law may not be enforceable. They may not have any statutory force. But, do they not provide guidelines for the State in the matter of making nominations to or re-nominating the Board of Directors or the committee of this Society? The State should not be heard to say that it is not bound by the bye-laws or guidelines of the society of which it is very much a member and under which it purports to exercise its administrative powers. It has solemnly accepted those guidelines, has subjected itself to them, and the other members - the citizens of the State - on this assurance, having acquired membership of the society, are partaking in its (society's) activities. If its action is in violation of such bye-laws, though the bye-laws have no statutory powers, actions taken by the State, can be called in question by those interested in the affairs of the society.

15. As observed by the Supreme Court in *Maru Ram and Others Vs. Union of India (UOI) and Others*, it is the pride of our constitutional order that all power, whatever its source, must in its exercise anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power". Thus it cannot be said "as contended by, the learned Counsel for the respondents, that the notification, Annex. C, cannot, in the circumstances, be called in question in this Court under Article 226 of the Constitution. And, having said so a word of caution" is also necessary. Not every

act of the State, in Performing its functions under the bye-laws of the society either in its financial interest or in its (society"s) day-to-day administration can be called in question. Having regard to the exigencies of the circumstances the State may change its policy in these matters. But, action taken on a change of policy making it known to all concerned that it had in fact changed its policy is one thing, but, without, doing so, acting contrary to its own guidelines is another. It is such action that can be questioned. Annexure C reads thus: