

(2014) 08 KAR CK 0127

In the Karnataka High Court

Case No : Writ Petition Nos. 3342-3346/2014 (CS RES) and Writ Petition Nos. 3347-3348/2014 (CS RES)

Basavalingaiah

APPELLANT

Vs

The Assistant Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 27, 27(1), 27(2), 27(2)(a), 27(3)

Citation : (2014) 08 KAR CK 0127

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

Bench : Single Bench

Advocate : Jai Prakash Reddy M., Advocate for the Appellant; S. Susheela, AGA, D.K. Sriramappa, S. Prakash Shetty, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—In these writ petitions, petitioners are calling in question the order dated 13.11.2013 passed by the Assistant Registrar of Co-operative Societies, Ramanagaram Sub Division, Ramanagaram, ordering disqualification of petitioners as Directors/members of Managing Committee of third respondent-Society, confirmed in appeal by the second respondent-Deputy Registrar of Co-operative Societies, Ramanagaram District, Ramanagaram vide his order dated 20.1.2014.

2. Facts briefly stated are that:

Petitioners herein have been elected as Directors of the third respondent-Society in an election held on 1.9.2013. The meeting of elected members of the Board of Directors was convened to elect the office bearers on 10.9.2013. Office bearers were elected. Thereafter, on the same day, meeting of the Board of Directors was convened on 18.9.2013 at 11 am for certain purposes including for consideration of revocation of suspension of the Chief Executive Officer of the Society and also for the purpose of convening Annual General Body Meeting. On 18.9.2013, the

Board took a decision to revoke the suspension of the Chief Executive Officer of the Society-Sri Ramachandraiah by a majority. As regards convening the Annual General Body Meeting, all the members of the Managing Committee unanimously agreed to convene Special General Body Meeting. Subsequently, on 20.9.2013 itself, a special meeting of the board of directors was convened and in the said meeting, question of convening the Special General Body was discussed and it was resolved based on the opinion expressed by the Supervisor/ex-officio Director of Society that the General Body meeting could not be convened as there was a legal hurdle and that permission of Deputy Registrar of Co-operative Societies in this regard was required to be obtained. A resolution was passed to seek permission of the Deputy Registrar of Co-operative Societies to convene the General Body meeting. This is evident from Annexure C" resolution produced along with the writ petition.

3. Thereafter, a show cause notice was issued to the petitioners u/s 27(2)(a) of the Karnataka Co-operative Societies Act, 1959 (for short "the Act") calling upon them to show cause why action should not be taken to disqualify them as per Section 27(2)(a) of the Act. This was replied.

4. The Assistant Registrar of Co-operative Societies held an inquiry and passed Annexure "H"-order disqualifying all the petitioners from continuing as Directors and from being elected as such Directors for the next five years. As can be seen from the order (Annexure "H") passed by the Assistant Registrar of Cooperative Societies, reasons assigned for disqualifying the petitioners are extraneous and alien to what has been stated in Section 27(2) of the Act for which show cause notice was issued. The Assistant Registrar has gone about finding the Directors guilty of omissions and commissions in discharging duties in the matter of revocation of suspension of Sri Ramachandraiah and reinstating him as Chief Executive Officer of the Society by replacing the arrangement that was made by the erstwhile administrator, who had appointed one D.M. Mukundraj to discharge the duties of the Chief Executive Officer on temporary basis. The Assistant Registrar finds fault with the Managing Committee in not co-operating in the enquiry initiated u/s 64 against the Society. This allegation apparently is with regard to the affairs of the previous managing committee of the society. There is also a reference made in the order with regard to non convening the meeting of general body on or before 25th September of the year. Based on all these grounds, the Assistant Registrar found the petitioners guilty of several violations and ordered for their disqualification.

5. The appellate authority having re-considered the matter finds that the Assistant Registrar was not justified in mixing up the issues which were not the subject matter of the show cause notice. The appellate authority entertains the matter, goes into the merits of the matter and records a finding that there was no justification for the petitioners in not convening the special general body meeting on or before 25.9.2013 and confirms the order of disqualification. It is in this background, petitioners are before this Court.

6. I have heard the learned Counsel appearing for all the parties.

7. The relevant provision under which the petitioners have been proceeded against is Section 27 of the Act. In fact Section 27 deals with Annual General Meeting. Section 27(1) mandates that "Every co-operative society shall convene a general meeting of its members once in a year before [twenty-fifth day of September] for the purpose of:-.....". Sub clause (2) of Section 27 lays down that if default is made in calling a general body meeting as provided under sub-section (1) of Section 27, then the registrar shall by order disqualify the persons, in case of an office bearer or member of the board whose duty it was to call such meeting and who without reasonable excuse failed to call such meeting, disqualify him for being elected as and for being an office bearer or member of the board for such period not exceeding five years. Sub clause (3) of Section 27 enacts that if default is made in calling a general meeting in accordance with the provisions of sub-section (1), the Registrar or any other person authorized by him in this behalf shall, without prejudice to the provisions of subsection (2) convene the general meeting for the purpose of sub section (1).

8. It is thus clear from the above provisions that annual general meeting has to be called by the Society once in a year before 25th September. The annual general meeting is called for the purpose of consideration of annual report presented by the board; consideration of latest available audit report and the report of the board thereon etc., as can be found from sub clauses (a) to (o) of Section 27(1). If annual general meeting is not called on or before 25th September of the year, then the office bearer or member of the board who has failed in his duty to call such meeting and who had no reasonable excuse to offer as to why they failed to call for such meeting shall be disqualified by an order passed in this regard by the Registrar. There is also a provision made enabling the Registrar to convene general body meeting in case the Society failed to convene the meeting before 25th September.

9. In the instant case, all the members of Managing Committee have been disqualified holding that they have violated Section 27(1) of the Act. The Assistant Registrar, as already pointed out, has proceeded more on the basis of other allegations regarding revoking of the suspension of Sri Ramachandraiah and reinstating him as Executive Officer by the new board by replacing the arrangement made by the administrator who was in office earlier. Therefore, the order passed by the Assistant Registrar; which finds fault with the Directors on a host of allegations not confining itself to the show cause notice issued cannot be sustained. It is for this reason, the Deputy Registrar has found fault with this order. Having found fault with the said order, it was appropriate for the Deputy Registrar to set aside the order as totally irrelevant matters had been taken into consideration. The Deputy Registrar has gone into the violation of Section 27(1) of the Act and the disqualification attached u/s 27(2) of the Act.

10. Even in examining the same, the Deputy Registrar has failed to consider all the relevant materials in as much as the fact that the board came into existence

only on 10.9.2013 and the elections of the office bearers was held on 10.9.2013 and that they had hardly 15 days time left, calculated upto 25th September 2013; to convene the general body. Indeed, the Board decided to convene the general body meeting, as is apparent from the resolution of the general body held on 18.9.2013 vide Annexure "C". However, as the Manager/Supervisor/Ex-officio Director of the board had raised an objection stating that the general body meeting could not be held in terms of provisions of the Act, the matter was again discussed in a special meeting of the board convened on 21.9.2013, wherein it was decided to seek permission of the Deputy Registrar for convening the meeting.

11. As can be seen from the mandate prescribed u/s 27(1), the meeting has to be held before 25th September. If the same is not held, as per Section 27(3) the meeting shall be convened by the Registrar. Therefore, this indirectly suggests that if the meeting were to be held after 25th September, the Board may not be entitled to convene the meeting as if the Deputy Registrar, who has to convene such a meeting. However it is unnecessary to go into this question because the same has not been taken into consideration by the Deputy Registrar. Sufficient to observe that having regard to the short span of time available for the newly elected body to call the meeting and having regard to the objections raised by the Supervisor/Ex-Officio Director to convene the meeting contending that it was not permissible in law, the Deputy Registrar ought to have applied his mind to the said facts before passing the order confirming the disqualification of the petitioners. The Deputy Registrar, therefore, erred in not taking note of the said relevant factors Hence, order passed by him is vitiated.

12. The facts as narrated above would clearly disclose that the Board of Directors had sufficient cause in not convening the meeting before 25th September. The penalty of disqualification of Directors being serious, one can be imposed only by recording a finding that the Directors had no reasonable excuse for not convening the general body meeting. In the instant case, it is clear that there was very little time available for the Directors to convene a special general body meeting by giving 15 days notice to all the members of the Society. Even if they had decided to call a special general body meeting, they were required to give 10 days prior notice to all the members. The same could not be done on 18th September when it was in principle decided to convene the meeting. Because, even if 10 days notice had been given to the members, the General Body Meeting could have been convened only on 28th of September which would have been beyond the last date statutorily fixed as 25th September. It is for this reason, the Ex-officio Director-cum-Supervisor raised an objection and this is how the Directors thought it fit to secure permission of the Deputy Registrar to convene the meeting. It cannot, therefore, be said that action of the Directors was in violation of the mandate prescribed u/s 27(1) without there being any justifiable reason. Therefore, as both the authorities have not taken into consideration these vital aspects the orders impugned suffer from patent illegality. There were justifiable reasons for the petitioners in not convening the

meeting before 25th September 2013.

13. Writ petitions are accordingly allowed. The impugned orders are set aside. This order will not come in the way of the authorities pursuing other proceedings initiated and pending with regard to other irregularities and illegalities said to have been committed.