

(1994) 09 KAR CK 0039
In the Karnataka High Court
Case No : W.A. No. 1954 of 1994

Basavaraj

APPELLANT

Vs

Kajjari Vyavasaya Seva Sahakara Sangha Ltd.

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 14 A, 14 A (2)

Citation : (1994) ILR (Kar) 2709 : (1995) 1 KarLJ 44

Hon'ble Judges : S.B. Majmudar, C.J.; Tirath S. Thakur, J

Bench : Division Bench

Advocate : Patil and Patil, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—There is no substance in this Writ Appeal. The appellant who was respondent-5 in the Writ Petition was inducted as President of the Managing Committee of a reconstituted Co-operative Society on amalgamation of two Societies. He was inducted pursuant to the order dated 21-4-1994 - Annexure-E to the Writ Petition. That order is passed by the Joint Registrar of Co-operative Societies, Belgaum Sub-Division, Belgaum. It appears to have been passed in purported exercise of powers u/s 14-A of the Karnataka Co-operative Societies Act, 1959 (for short "the Act"). This order was challenged in Writ Petition by respondent-1 - Co-operative Society. The challenge was mounted on various grounds. One contention was that the Managing Committee's term was for three years, and it was constituted on 30th March 1991. By virtue of an order issued u/s 14-A of the Act, the erstwhile Societies were required to be amalgamated. The said provision reads as under:

"14-A. Power to direct amalgamation, division and re-organization in public interest - (1) Notwithstanding anything contained in this Act or the rules made thereunder and the bye laws of the co-operative Societies concerned, where the Registrar is satisfied that is essential in public interest or in the interest of co-operative movement for the purpose of securing the proper management of any

co-operative society that any two or more co-operative societies should be amalgamated to form a single co-operative society or any co-operative society should be divided or any co-operative society should be recognised, then the Registrar shall order the amalgamation, division or recognition of such co-operative Societies."

As per Sub-section (2) of Section 14-A of the Act, the order passed u/s 14-A of the Act could provide amongst others, the composition, strength, names and the terms of office of the Members (including the Chairman) of the first Committee. In exercise of that power the Joint Registrar had constituted the Committee of Members and also nominated President with effect from 30-3-1991 and the term of the said Managing Committee including the Chairman was three years as per Clause (ii) of the order Annexure-A. This order is not in challenge. But pursuant to that order the term of the office of the Managing Committee including all its Members got exhausted on 30-3-1994. Thereafter it appears that the Joint Registrar of Co-operative Societies purporting to exercise powers u/s 14-A of the Act passed the impugned order by which he continued all seven members of the Managing Committee but changed the head, namely, the President. The existing President was replaced by the appellant.

2. It was contended that such an order is not contemplated by Section 14-A at all. It was also submitted that even assuming that the Joint Registrar could have exercised that power even after the tenure of the first Committee constituted by him u/s 14-A of the Act was over, till the fresh elections of the Managing Committee were held by the members of the newly formed amalgamated Co-operative Society, the old Managing Committee could legally continue. That the impugned order was passed by the Joint Registrar not at his own instance but only at the behest of one local M.L.A. Mr. K.G. Koliwad as mentioned in the order itself and therefore, it is not the order passed by the Joint Registrar in exercise of his own powers and so it shows complete non-application of mind and is passed for extraneous reasons not contemplated by Section 14-A of the Act. Both these contentions were accepted by the learned Single Judge and the appointment of appellant as new President of this Managing Committee by the Notification dated 21-4-1994 issued by the Joint Registrar of Co-operative Societies, second respondent in the Writ Petition was set aside.

3. The appellant who naturally got aggrieved by the said order has contended in this Appeal that the Joint Registrar of Co-operative Societies in exercise of his powers u/s 14-A of the Act, could cut short the tenure of the Chairman of the Managing Committee constituted by him initially. This contention has to be stated to be rejected. As noted earlier when two Societies were amalgamated and a new amalgamated Society i.e., present respondent-1 came into existence u/s 14-A(2) of the Act, the Joint Registrar nominated the Members of the first Managing committee including the Chairman. That was already done by the order dated 26-3-1991 Annexure-A to the Writ Petition. Clause (11) of that order lays down that the term of office of the Members of the said Committee shall be three years

but the Joint Registrar of Co-operative Societies having jurisdiction may at any time, limit the term of any Member (including the Chairman) to a shorter period and nominate another person in his place. We fail to appreciate how this clause can apply on the facts of this case. As noted earlier the tenure of the first Managing Committee constituted u/s 14-A of the Act was three years from 30-3-1991 and it ended on 30-3-1994. Along with it the full term of the Chairman was also over. Thereafter there remained no occasion for cutting short the tenure of any one for any period anterior to 30-3-1994. The impugned order is dated 21-4-1994. By that order the existing Chairman was sought to be replaced by the appellant. For exercising that power, Clause (11) was out of picture. It must therefore be held that when this order was passed the Joint Registrar was not clothed with any further power u/s 14-A of the Act, to monitor the constitution or re-constitution or reshuffling of the first Managing Committee which could have been constituted by him in exercise of powers u/s 14-A(ii) of the Act. That power got exhausted the moment the first Committee was constituted and its term expired by efflux of time. Thereafter it was for the Members of the Society in the Annual General Body Meeting to elect and re-constitute the Managing Committee. It would be the second Managing Committee which would be consisting of elected members. That has never happened. We are told that this is because there is a ban imposed by the State Government for holding any elections to Managing Committee of societies upto 31 -12-1994. Be that as it may. There is no power u/s 14-A(2) of the Act, to constitute a second Managing Committee after the first Managing Committee's term got exhausted on expiry of the period of three years. It may be noted that in such an eventuality under Rule 13 Sub-rule (3) of the Rules, the election of the Members of the Committee has to be held on or before the date specified in the Bye-laws on the expiry of the term of the office of the Members. There is a Proviso to Rule 13 which provides that the Committee whose term of office is deemed to so expire, shall continue in office till the new Committee is elected and shall thereafter hand over charge of the office to the new Committee.

4. Thus, after the expiry of the term of the first Managing Committee on 30-3-1994 the same old Committee along with its Chairman could have continued till the newly elected Committee displaced the entire Committee including the office bearers and the Chairman. But that eventuality has still not happened. Under these circumstances because of the thrust of the provisions of Rule 13(3) Proviso of the Rules, the old Committee and the Chairman were entitled to continue in office till the aforesaid eventuality happened. In the meantime the Joint Registrar could not have interposed and cut short the effect of statutory provisions at a stage when Section 14-A(2) of the Act, was not available to him. Consequently, the Decision of the learned Single Judge rendered in this connection is absolutely unassailable and cannot be found fault with.

5. But, there is a second infirmity in the impugned order (Annexure-E) which has also rightly been pointed and highlighted by the learned Single Judge. The order

at Annexure-A, even assuming, could have been passed by the Joint Registrar in re-exercise of powers u/s 14-A of the Act and on a further assumption as if he was freshly appointing the Committee once again under that provision, is in substance not passed in such exercise of power u/s 14-A. Such a power could have been exercised u/s 14-A of the Act only if the Registrar is satisfied that it is essential in public interest or in the interest of co-operative movement or for the purpose of securing the proper Management of any co-operative society to pass such an order. None of these three eventualities have happened for displacing the Chairman of the first Committee, which has continued on account of the thrust of the above statutory Rule 13. The impugned order makes a very interesting reading, it is therefore required to be noted in extenso. It reads:

"PREAMBLE

The Deputy Registrar of Co-operative Societies of Dharwad, as per the order made at reference No. 1, has re-constituted the members of the Kajjari Vyavasaya Seva Sangha Ltd., Tq. Ranebennur by nominating 11 members. Now the Special Officer, Co-operative Department, Bangalore, vide as per the letter referred to at Ref.No. 2, has directed to issue an order of nominations as per the request made by Sri K.G. Koliwad, M.LA."

The order portion says that in view of the Preamble, the Joint Registrar of Co-operative Societies, Belgaum, while exercising power u/s 14-E of the Bye-laws has modified the order and has nominated the following Members. It is clear therefore, that the request made by Sri. K.G. Koliwad, MLA, which was brought to the notice of the Joint Registrar, via Special Officer, Co-operative Department, Bangalore, has been the sole basis for the exercise of power by the Joint Registrar, and that only has resulted in the impugned order.

6. The Joint Registrar, nowhere says that he himself is satisfied that there is need to exercise that power and to replace the President, even assuming that he has such power u/s 14-A of the Act. Therefore, in substance this is an order passed on the satisfaction of the M.L.A. and not on the satisfaction of the Joint Registrar who is a statutory authority. By any standards, such an exercise, which is totally arbitrary and dehors the provisions of law, cannot be sustained.

7. It is submitted by the learned Counsel for the appellant that M.L.A. is not a party to this proceeding. May be so and even assuming that the M.L.A. bonafide might have made such a recommendation, such a recommendation should not have been made the sole basis of the order which has to be passed as per the guidelines found in Section 14-A of the Act and not dehors them. Therefore, the order Annexure-E is also ultra vires the provisions of Section 14-A of the Act, even assuming that Section 14-A of the Act applies to the present case. It was passed for extraneous reasons totally uncalled for and unsustainable in law. When we have, assumed that the MLA., had not recommended with any malafide motive, it is not necessary to join MLA., as party respondent Question is whether the exercise of power by the Joint Registrar solely on account of such request

and not independently being satisfied on his own about the requirement for passing such an order u/s 14-A of the Act can at all be sustained. For deciding this question, presence of M.L.A. is not necessary.

8. It was then lastly contended by the learned Counsel for the appellant that the Writ Petition was not maintainable by the Co-operative Society as no such Resolution was passed to file such Writ Petition. Nothing was pointed out on this aspect before the learned Single Judge. Under the circumstances, it is not open to the appellant to contend for the first time in appeal by raising such a new question of fact.

9. It was then submitted that though the Writ Petition was filed by the Society, the learned Single Judge has proceeded on the basis as if the existing President who is said to be displaced by the appellant has filed the Petition. To say the least this argument cannot be countenanced. When the Society has filed the Petition challenging the replacement of its President by appellant who was respondent-5 in the Petition and when all relevant facts are pointed before the learned Judge it could not be said that the challenge was misplaced or unauthorised. It has to be kept in view that appointment to a public office purporting to be made in exercise of statutory power is brought in challenge. It could have been brought in challenge by any one seeking a Writ of Quo Warranto. If the Society itself has felt aggrieved and has filed Writ Petition it cannot be said that the Writ Petition was not maintainable by the Society. For these reasons, there is no substance in this Appeal and it is accordingly dismissed.

10. After the Judgment was dictated, before it could be signed, learned Counsel for the appellant submitted that he was instructed not to press this Appeal. Accordingly, this Appeal will stand dismissed as not pressed.