
(1989) 07 KAR CK 0024
In the Karnataka High Court
Case No : W.P. No. 8053/1989

Basavareddy Ranga Reddy Yavagal and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 27-07-1989

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29

Citation : (1989) 3 KarLJ 591

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-This Petition coming-up for preliminary hearing after notice to the first-respondent is disposed of by the following order.

2. Mr. M. R. Achar, learned Additional Government Advocate, has been heard for respondents.

3. Petitioners were all members of the Committee of Management, which may be referred to as the first committee nominated by the State Government by its order dated 25-2-1987 as at Annexure-D to the writ petition. The second-respondent-Mala Prabha Co-operative Oil Mills Ltd., Nargund, District-Dharwar, is a Co-operative Society incorporated under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act"). Apparently, it was incorporated on 10-2-1987 as evidenced by Annexure-A the certificate of Registration issued by the Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum. The Act does not make any specific provision as to how the first Committee of management of the Governing Body or the Board of Management may assume Office barring the reference made in Section 26 of the Act in respect to where the final authority in a Co-operative Society vests under the Act. It would be useful to set-out Section 26(1) together with its Proviso, to understand the problem arising in this writ petition.

"Final authority in a Co-operative Society.

(1) Subject to the provisions of this Act, the Rules and the Bye-laws, the final

authority of a co-operative society shall vest in the general body of members:

Provided that nothing contained in this sub-section shall affect the exercise by a committee or any officer of a registered co-operative society of any power conferred on such committee or such officer by this Act or the Rules or the Bye-laws."

The proviso, as extracted above, clearly provides that notwithstanding the ultimate authority being the general body which may be the members of the Co-operative Society, the committee or any Officer of a registered co-operative society or any power conferred on such committee or such officer by the Act or the Rules or the Bye-laws framed thereunder shall not be affected. The Act itself provides for Bye-laws being made by each co-operative society. Section 28(A) of the Act provides that the Management of a Co-operative Society shall vest in a committee constituted in accordance with this Act, the Rules and the Bye-laws of the Society. Now it is common knowledge and falls to common sense that when a Co-operative Society is newly incorporated it cannot straightaway call a general meeting at which an election may be held to constitute a Committee of Management. But one of the pre-requisite qualification for incorporation under the Act is, the Society seeking incorporation must have a set of Bye-laws. Therefore, the Bye-laws with which a Co-operative Society is incorporated shall govern the constitution of the first committee of management if it is specifically provided therein as spelt out in Section 28(A) of the Act.

4. In the instant case, Bye-law No. 37 of the Bye-laws of the second-respondent Malaprabha Co-operative Oil Mills Ltd., provides as follows:

"However notwithstanding anything contained in these bye-laws the first Board of Management after registration of the society shall be nominated by the Government of Karnataka for a period of three years. Thereafter election shall take place as per the provisions of the K.C.S. Act, 1959 and K.C.S. Rules 1960 and the Bye-laws."

The use of the non-obstinate clause in the Bye-law clearly compels the Court to understand that it overrides or prevails over all other bye-laws. A power is conferred on the Government to nominate the first committee of Management for a period of 3 years. Significantly, it further provides that thereafter, meaning thereby after 3 years, election shall take place as per the provisions of the Act or the Rules or the Bye-laws.

5. It is in accordance with that bye-law as is clear from Annexure-D that the Government nominated 18 persons including the petitioners as members of the first-committee of management, but subject to the reservation that they shall hold office of the first committee of management until further orders. While the power was exercised in terms of Bye-law No. 37 of the Bye-laws, it was not exercised in accordance with the meaning and intent of that Bye-law. None questioned that order on any ground. It is not disputed that the persons who were nominated acted as the committee of Management. Petitioners are

aggrieved by Annexure-F which is yet another order of the Government dated 31-3-1989 by which it purports to cancel all nominations made in terms of Sections 28 and 53A of the Act which applies to all classes of Co-operative Societies nominated thereunder and includes the second-respondent Co-operative Oil Mills Ltd., There is an addendum to the order under Annexure-G, which evidences an amendment to the order at Annexure-F by which persons nominated in accordance with Bye-laws of the Co-operative Society will also be covered by the order. Therefore, the petitioners, being aggrieved by a combined reading of Annexure-F and G, have questioned the authority of the Government to pass the order in respect of their Co-operative Oil Mills Ltd. and prayed for quashing of the same as being without the authority of law.

6. No statement of objections has been filed in this writ petition. But the learned Additional Government Advocate, Mr. M.R. Achar had no hesitation to depend upon the records and he did not seriously dispute the facts as stated. On one point he was not clear and that it whether the Government is a member of the Second respondent-Co-operative Institution or not. I do not think that would make any difference to. The correct position in law in so far as the impugned orders are concerned and therefore, the Court may ignore that aspect.

7. It is contended by Sri H.B. Datar, learned Senior Counsel, for the petitioners, that once the power conferred on the Government is exercised by the Government under Bye-law No. 37, the Government becomes functus officio and cannot exercise the same power again and again as it pleases. It is, therefore, further contended by him that while originally the true intention of the Government was to annul the nominations made by them under Section 29 and 53A of the Act. It is by the addendum that as an after thought it included the nominations made under the Bye-laws of a co-operative Society. In this connection he has specifically drawn the attention of the Court to the fact that the Bye-laws vary from one co-operative Society to another co-operative Society. It is pointed out by him that where there is some investment by the Government or Government is a Member, the bye-laws of certain co-operatives do permit nomination to be made by the Government as defined of members to the Committee of the Management of such co-operative societies which are different from bye-law No. 37 of the second-respondent Co-operative Society which provides for the nomination of the first-committee of management. In contradistinction to this, there are two forms of nomination under Co-operative Societies Act. Section 29 specifically provides the circumstances in which the State Government may nominate. Similarly Section 53-A of the Act provides for nomination of members of the Committee by the State Government in specified cases notwithstanding what is contained in Section 29 of the Act. In other words, power may be exercised by the Government by nominating the first committee of the management not under the provisions of the Act or the Rules framed but in terms of Bye-law of a society. Even members of such committees of management if the bye-law enables the Government to do so. But the Government may in the cases/classes covered by Sections 29 and 53A exercise

the statutory authority to make nominations and that distinction between the two types of power exercised must be noticed by the Court. If the power is exercised under the authority of the statute then that power includes within it, the doctrine of pleasure and the Government may change its nominations if circumstances warrant. But in the case of nominations of the first-committee of Management for a specified period as provided in Bye-law 37 of the second-respondent Co-operative Oil Mills Ltd., it is impossible to import the doctrine of pleasure theory in as much as it becomes impracticable and the provisions of the Act would be rendered nugatory and even the objects of the Act defeated if that is conceded to the State Government. This is the real thrust of the argument of Sri H.B. Datar, learned Senior Counsel.

8. Mr. M.R. Achar, learned Additional Government Advocate,"on the other hand, contends that the petitioners are trying to enforce their rights under bye-law which is no law at all as held by the Supreme Court and followed by this Court in *Fakiraiah Channamallaiah Hiremath v Savanur Taluk Primary Co-operative Land Development Bank and others*, 1975(1) Kar. L.J. P. 255. Indeed in the aforesaid decision it has been clearly laid down by this Court that bye-law of a co-operative society is not a law having any statutory force. Citing from the decision of the Supreme Court in *Co-operative Central Bank v Additional Industrial Tribunal*, A.I.R. 1970 S.C. P. 245, it is said a bye-law of a co-operative society to be something akin to the Articles of Association of a company incorporated under the Companies Act which has only the force of creating mutual obligation among members and binding them to the bye-laws which may not be enforced as having an authority of law. It is not possible to quarrel with that the principles laid down by this Court and the Supreme Court. But the facts of that case are not applicable to the facts of the petitioners case in this writ petition. The petitioners are not asserting their right to remain in the office in accordance with the terms made in Annexure-D, the order which nominated them as the members of the first committee of management until further orders of the Government. They have questioned the authority of the State Government to pass orders as at Annexure-F read with Annexure-G cancelling the nominations made by the Government in exercise of its power under Sections 29 and 53A as also nomination made under the Bye-laws. It is possible that the ruling in *Fakiraiah Channamallaiah Hiremath's* case will have application if it is a case of nomination made by the Government in term of a Bye-law of a co-operative Society a member or members on the committee of management who shall represent the interest of the Government if it has any. It certainly will apply to nominations under Sections 29 and 53A. The first committee of the management nomination of which is required out of necessity by some one cannot be subjected to the doctrine of pleasure. In such case, as rightly pointed out by Sri H.B. Datar, learned Senior Counsel, a co-operative society ceases to operate within the framework of the Act, the Rules and the Bye-laws of that society if Government were to nominate the first committee of the management as frequently as it decides.

9. Mr. Achar, on the other hand, contended that the Government while passing the order at Annexure-D on 25-1-1987 itself reserved the right to cancel the nomination if need be and therefore it cannot be said that the Government did not have authority to pass the order under Annexure-F read with Annexure-G. Undoubtedly, such a reservation was indeed made by the Government. If such reservation lacks power or competence this Court should ignore such reservation. I have earlier set-out Bye-law No. 37 of the Co-operative Oil Mills Ltd. The language plainly understood makes impermissible for the Government to limit the Office to the first-committee of management to less than 3 years or to enhance it to more than 3 years unless gross violence is made to the language of the Bye-law No. 37. Therefore, this Court is bound to ignore the reservation made by the Government in regard to the committee of management as per Annexure-D for an indefinite period during the pleasure of the Government and subject to further orders.

10. It is true the Government is not bound to exercise its power if it is not a member or even if it is a member when power is conferred on it. This Court certainly cannot by a mandamus direct the Government to exercise that power conferred on it by the bye-law as it is not statutory duty. But in the interest of co-operative movement, the wisdom of administration must prevail over the technicalities and Co-operative Oil Mills Limited must function in an orderly fashion and therefore the power of the Government to make a nomination of the first-committee of the management is a concession made by the Society. It is under a moral obligation to exercise that power and it should not claim anything more than that moral obligation when it does exercise that power.

11. Viewed thus the order at Annexure-F read with Annexure-G is clearly unsustainable in law and it exceeds the power conferred on the State Government by the provisions of the Bye-law.

12. Accordingly, in so far as it applies to Second-respondent-Malaprabha Co-operative Oil Mills Ltd., and the petitioners vis-avis, the impugned orders at Annexures-F and G are quashed. In the circumstances, there will be no order as to costs.

13. Rule will accordingly issue and be made absolute.

Writ petition allowed.