

(1999) 04 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 14782 of 1998

Bilal Educatin Society

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Karnataka Societies Registration Act, 1960 — Section 2 (e), 25

Citation : (1999) 3 KarLJ 529

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri K. Gopal Hegde for Sri Ajoy Kumar Patil, for the Appellant; Sri B. Veerappa, High Court Government Pleader, Sri S.G. Bhat and Sri G.V. Shantharaju, for the Respondent

Judgement

1. Bilal Education Society, for the sake of brevity referred to as "Society1 is registered under the provisions of Karnataka Societies Registration Act, 1960 (hereinafter referred to as "Act"). The purpose and object of the Society is reflected in the Society's Articles and Memorandum of Association. The primary object of the Society seems to be, to impart education to the members of the minority community of Bidar District. Petitioner-Society is now managing a primary school and a B.Ed. College for women at Bidar. It appears, primary school managed and controlled by the Society is recognised and receiving salary grants from the State Government under Grant-in-Aid Code and B.Ed. College for women is affiliated to the University of Gulbarga. From its inception in the year 1981, it is alleged that the Society is managed and controlled by father and son combination by the contesting respondents. At this stage, it is suffice to observe that there seems to be rival groups fighting a bitter war to wrest control of the management of the Society. One group is headed by Sri Mohammed Bismilla, who claims to be the President and his son Sri Zafrulla, as the Secretary of the Society. The leadership of the other group is captained by Sri Shaik Chand, the fourth respondent herein.

2. To comply with the legal requirements of the Societies Registration Act, it appears, Sri Zafrulla as a Secretary of the petitioner-Society had filed audited accounts and submitted Books of Accounts and list of office bearers of the Society for the period 1984-85 to 1994-95 to the Registrar of the Societies, Bidar, for acceptance and approval of the same. The Registrar of Societies, in turn by his endorsement dated 21-6-1995 had accepted the books of accounts and approved the list of office bearers of the Society. In the mid December 1995, a tussle seems to have cropped up among the members of the Executive Committee. It appears, four out of seven executive members had taken courage to file a complaint to the Registrar of Societies, Bidar, against father and son combination. This resulted in ousting of these members by the Society by its resolution dated 3-1-1996. This necessitated Mr. Zafrulla's group to file a fresh list of office bearers for approval before the Registrar of Societies. The other group headed by Sri Shaik Chand also filed its list of office bearers and requested the Registrar to recognise its group. The Registrar in turn, to hold an enquiry into the constitution, working and financial conditions of the Society had issued a show-cause notice dated 16-3-1996 exercising its powers u/s 25 of the Act and by yet another enquiry notice dated 24-5-1996 had fixed the date of hearing/enquiry as 17-6-1996.

3. Aggrieved by these turn of events, petitioner-Society under the leadership of Zafrulla had approached this Court in W.P. No. 17083 of 1996 and had also obtained an interim order staying all the proceedings before the Registrar of Societies, Bidar. Encouraged by the temporary success, the Society filed one more writ petition in Writ Petition No. 32902 of 1997 inter alia requesting this Court to direct the Registrar of the Societies to accept and approve the list of office bearers submitted on 17-1-1996. This Court by its order dated 16-12-1997 disposed off the petition and was further pleased to direct the Registrar of Societies, Bidar, to dispose off the claims of the rival groups in accordance with law and after affording a reasonable opportunity of hearing to both the parties within 30 days from the date of receipt of the certified copy of the Court's order.

4. Pursuant to the directions issued by this Court, the Registrar of Societies, who was holding additional charge by virtue of the orders passed by Inspector General of Registration in Karnataka, issued notice of enquiry to both the parties directing them to appear before him on 11-4-1998. Since the parties failed to respond to the notice of enquiry, the Registrar issued a telegram to both the parties informing the date of enquiry as 24-4-1998. It appears, father and son combination filed a representation seeking postponement of the proceeding to produce documentary evidence to substantiate their case and claim in the Office of the Registrar of Societies, Bidar. It is their complaint before this Court that no enquiry was held on that day since third respondent-Registrar cancelled his visit to Bidar because of his pre-occupation as a Registrar of Societies, Gulbarga. It is their further grievance before this Court that the third respondent-Registrar without holding any enquiry and without even intimating the parties about the proceedings, has passed the impugned order dated 30-4-1998 resolving the

dispute in favour of fourth respondent and his group. It is his action and the order which are called in question by father and son combination on the ground that the same is arbitrary, unfair, unjust and in gross violation of principles of natural justice.

5. The contesting respondents have filed their detailed statement of objections in support of their case and claim and also in resisting the reliefs sought for by the petitioner.

6. Some grievances have been made by Sri Gopal Hegde, learned Counsel for the petitioner touching upon the illegalities in the conduct of the proceedings by the Registrar of Societies, who was holding the post only as additional charge because permanent incumbent was not available for other reasons, such as that:

(i) impugned order is one without jurisdiction and contrary to Section 25 of the Act;

(ii) proceedings are initiated by incompetent authority;

(iii) there is non-application of mind by the third respondent while framing the impugned order;

(iv) order is made in gross violation of principles of natural justice;

7. However, in my opinion, it is not necessary to go into merits of the said grievances, since I am of the view that one of the objections taken by the learned Counsel for petitioner to the impugned order viz., that the third respondent, who was holding the post of Registrar of Societies, Bidar only as additional charge having been so assigned with the work by Inspector General of Registration in Karnataka, could not have performed the duties and functions of the Registrar under the Act.

8. The undisputed facts relating to the said grievance of the petitioner are that, by an official memorandum dated 11-5-1998, the Inspector General of Registration in Karnataka has placed Registrar of Societies, Gulbarga, in additional charge of the current duties of the vacant post of Registrar of Societies, Bidar. It is this Registrar of Societies, Bidar, who is placed in additional charge has passed the impugned order, by exercising powers u/s 25 of Societies Registration Act. The question that requires to be considered and decided is whether the Registrar of Societies, Gulbarga, who was only placed on additional charge of Registrar of Societies, Bidar, could have passed the impugned order dated 30-4-1998. To answer this legal issue, it is necessary to notice the definition of "Registrar" in the Act itself. The definition clause in the Act defines the expression "Registrar". It is as under:

"Section 2(e).--"Registrar" means such officer as the State Government may, by notification, appoint to perform the duties and functions of the Registrar under this Act, in such area as may be specified in the notification and where no such officer is appointed, the Inspector General of Registration in Karnataka".

9. An analysis of the aforesaid provision indicates that Registrar is an officer notified by the State Government to perform the functions and duties of the Registrar under the Act for the notified area. If such appointment is not made by the State Government, then it is the Inspector General of Registration in Karnataka will perform the duties and functions of the Registrar under the Act. It is now well-settled principle that the legislative intention is to understand the terms and concepts appearing in a statute in the way in which they have been defined in the statute. If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. One of the fundamental rule of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such cases declare the intention of legislature. Keeping in view, this well-settled legal principles, let me briefly notice the fact situation. In the instant case, the officer, who has passed the impugned order dated 30-4-1998 is not the Registrar notified for the specified area by the State Government, Therefore, that officer cannot perform the duties and functions of the Registrar under the Act. In view of that, he could not have passed the order u/s 25 of the Act, resolving the dispute between the rival groups by holding an enquiry into the constitution, working and financial conditions of the registered petitioner-Society. To come to this conclusion, I have derived support from the observations made by a bench of this Court in *E.E. Gupta v State of Mysore*¹. In the said decision, the Court was pleased to observe:

"In our opinion, an appointment to a post, whether acting or permanent imports the actual holding of that post by the appointee whether permanently or for a stated period. This flows directly from the normal meaning which one attaches to the word "appoint". On the other hand, "to be in charge of the duties of a post" merely means to discharge or perform those duties without necessarily holding the particular post to which the additional duties appertain. The person so put in additional charge of other duties already holds a post to which he had been formerly appointed. The imposition of new duties upon such an officer already appointed to a post does not, as pointed out in *George W. Evans v United States* , constitutes fresh appointment of that officer. This result stands to reason, because the duties of an office or post may vary from time to time without making any distinction or difference to the post itself. If the additional duties do not change the character of the post or convert it into a new post, the result cannot be different for reason only of the fact that the additional duties imposed are such as do not normally appertain to that post, for exigencies of administration may require the imposition temporarily or for a short period upon an officer of certain duties which do not normally appertain to his office. So long as he continues to hold the office to which he had been originally appointed, the imposition of additional duties cannot therefore amount to either a fresh appointment of the officer or the appointment of the officer to another post".

10. This legal principle was reiterated in a subsequent decision by this Court in the case of *M. Maridev (M. Mariyappa) v State of Mysore and Others* and the

Court was pleased to observe:

"Officiating appointments and incharge arrangements are well understood terms in civil service. When an officer is appointed to officiate in a higher appointment, he is invested with the powers of the higher post, but when he is placed incharge of the current duties of vacant post in a higher appointment, whether in addition to his own or independently, he cannot exercise any of the statutory powers of the office, he can merely perform the day-to-day duties only".

11. In another decision, this Court in the case of Gurunath Dcvareddy Veerareddy v K.S.R.T.C., the Court Was pleased to observe:

"It is settled law that a statutory administrative power has to be exercised by a person who is appointed to the concerned post on a regular basis. A person, who is placed in independent charge or in charge of a post can only discharge the routine duties and cannot exercise the statutory powers".

12. The other decision, which is very nearer to the facts and circumstances of the present case is the case of Shambalingaiah Rachappa v Returning Officer for Elections to City Municipal Council, Bijapur and Others. The matter was under Karnataka Municipalities (Election of Councillors) Rules, 1977. In the said case, the Divisional Commissioner of Belgaum appointed the Assistant Commissioner of Bijapur, Revenue Division, as the Returning Officer under Rule 4 of the Rules. The Assistant Commissioner of Bijapur Sub-Division prepared the calendar of events and intended to issue it on 21-5-1979 but he went on casual leave on 12-5-1979 and continued to be on leave till 3-6-1979. On 12-5-1979, the Deputy Commissioner of Bijapur District placed the Headquarters Assistant to Deputy Commissioner, in temporary charge of the Bijapur Revenue Sub-Division. On 27-5-1979 he orally directed respondent who was in charge of the Revenue Sub-Division, Bijapur, to publish the calendar of events. In pursuance of the said direction respondent 2 published the calendar of events on 29-5-1979. Thereafter, the Deputy Commissioner of Bijapur addressed a communication to the Divisional Commissioner on 27-5-1979 informing him that the incharge Assistant Commissioner was not competent to discharge the statutory functions under the rules and therefore, he requested the Divisional Commissioner to request the State Government to appoint the incharge Assistant Commissioner of Bijapur Revenue Sub-Division w.e.f. 14-5-1979. The Divisional Commissioner on receipt of this communication addressed a letter to the State Government for the appointment of respondent 2 as the Assistant Commissioner of Bijapur, Revenue Sub-Division. On receipt of this communication, the State Government passed the notification (Ex. N) dated 6-6-1979 appointing respondent 2 as the officiating Assistant Commissioner of Bijapur Revenue Sub-Division retrospectively from 14-5-1979. The notification Ex. N. reads thus:

"Sri G.A. Hippargi, K.A.S. Class I (Junior Scale) Officer doing duty as Headquarters Assistant to Deputy Commissioner, Bijapur, is appointed concurrently to officiate as Assistant Commissioner, Bijapur Sub-Division w.e.f.

14-5-1979 till he is relieved by Sri B.V. Nanjundappa.

By order and in the name of the Governor of Karnataka".

Respondent 2 proceeded to conduct the elections, the polling of which was held on 1-7-1979 and the results were announced. In the election, the petitioner was one of the candidates. Respondents 3 to 37 were also candidates. Respondent 2 declared respondents 3 to 37 as elected. The petitioner was an unsuccessful candidate. He had come up before this Court seeking for a writ of quo warranto on the ground that respondents 3 to 37 are usurpers as their election was no election in the eye of law. This Court after a detailed discussion and after noticing the earlier decision in E.E. Gupta's case, Marideu's case and Gurunath Devareddy's case, was pleased to observe as under:

"11. In the instant case, respondent 2 was not appointed to officiate as the Assistant Commissioner of Bijapur Revenue Sub-Division by the State Government. He was placed in temporary charge by the Deputy Commissioner. In view of the ruling in E.E. Gupta's case and also in view of the other decisions cited above, respondent 2 being not appointed by the Divisional Commissioner under Rule 4 of the Rules, as Returning Officer, his action in publishing the calendar of events and in holding the election is without jurisdiction, as he was not competent to exercise the statutory functions. This aspect of the matter is also clear from the communication sent by the Deputy Commissioner, Bijapur, to the Divisional Commissioner, Belgaum, in which the Deputy Commissioner has felt at the time of sending the communication that respondent 2 was not competent to perform the statutory functions. Therefore, the communication was sent to the Divisional Commissioner by the Deputy Commissioner to request the State Government to appoint respondent 2 to officiate concurrently as the Assistant Commissioner of Bijapur Revenue Sub-Division. Therefore, I am clearly of the opinion that respondent 2 who was placed in temporary charge of the Bijapur Revenue Sub-Division, was not competent to exercise the statutory functions under the rules. Hence, the election held by him is without jurisdiction and void".

13. The learned Counsels for the contesting respondents in their submission contended that the third respondent, who was holding the post of Registrar on additional charge by virtue of the orders made by Inspector General of Registration in Karnataka, could exercise his powers u/s 25 of Societies Registration Act, It is difficult to accept this submission in view of the language employed in the statute and in view of the earlier precedents of this Court. In that view of the matter, the impugned order suffers from inherent defect and the same requires to be set aside.

14. The result therefore, is the impugned order made by the third respondent dated 30-4-1998 is set aside since it suffers from inherent defect. Consequently, a direction is issued to the Regular Registrar of Societies, Bidar, to pass appropriate orders in accordance with law as directed by this Court in W.P. No.

32902 of 1997 as expeditiously as possible and at any rate within two months from the date of receipt of this Court's order. All the other contentions of both the parties are left open. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.