

(1997) 07 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No"s. 38170 to 38191 of 1995

Bittagowdanahalli Milk Producers" Co-operative Society
Limited, District Hassan and Others

APPELLANT

Vs

The Returning Officer and The Assistant Commissioner,
Channarayapatna, District Hassan and Others

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 12, 226

Citation : (1997) ILR (Kar) 2335 : (1998) 2 KarLJ 158

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri Shantesh Gureddi, Sri G.B. Chandre Gowda and Sri Anil V. Kulkarni, for the Respondent

Judgement

1. These writ petitioners (Twenty-two in number) claiming to be members of 2nd respondent-Society called Hemavathi Sahakara Sakkare Niyamita, have sought for quashing the endorsement at Annexure-D, dated October 4, 1995, issued by the Managing Director of R-2 and for a direction to respondents 1 and 2, to permit them to participate in the election to be held on November 5, 1995 to elect the Board of Directors.

2. 2nd respondent-Society is registered and functioning under the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the "Act"). It would appear that its first Board of Directors was constituted by the State Government and no elections were held till about the year 1995. One Shivalinge Gowda therefore filed a writ petition in W.P. No. 14616 of 1995 for a writ of mandamus directing the State of Karnataka, Registrar of Co-operative Societies and three others to hold election to elect its Directors at an early date. This writ petition came to be disposed of on July 14, 1995 (copy of which is at Annexure-E) directing the respondents to hold elections of Directors on or before September 30, 1995 in accordance with the Government Notification No. DSK/

AGM-1/1995-96, dated April 27, 1995. As the things stood thus, it would appear that on September 30, 1995 Government issued another notification superseding earlier notification referred to in the writ petition and directed the co-operative sugar factories to hold election between November 15, 1995 and November 31, 1995. Pursuant to this notification, it would appear that an application was filed before this Court seeking permission to hold election between those two dates and that application came to be rejected on September 20, 1995. It is stated that in view of the rejection of the application, action was initiated to hold election and accordingly calendar of events at Annexure-B, dated September 20, 1995 was issued proposing to hold the election on October 15, 1995. It is further stated that after the process of election commenced pursuant to the calendar of events at Annexure-B, a publication was issued postponing the election to November 5, 1995 in view of law and order problem that existed in the area. Accordingly, another calendar of events dated October 30, 1995 was issued proposing to hold elections on November 5, 1995.

3. Petitioners contend that they made applications for enrolling them as B-class members of 2nd respondent-Society society and in fact they were enrolled as members between September 5, 1995 and September 14, 1995. Therefore, they were entitled to participate in the election proposed to be held on October 15, 1995 and postponed to November 5, 1995. Despite the fact that they were enrolled as members 30 days prior to the date of election, their names were not included in the list of voters and as such made a representation to 2nd respondent-Society. In reply, Managing Director issued an endorsement at Annexure-D, dated October 4, 1995, informing that such of those members who are enrolled before August 30, 1995 alone are included and petitioners having paid the share capital between September 5, 1995 and September 14, 1995, their names are not included in the list. Petitioners have sought for quashing this endorsement.

4. It would be convenient to note that writ petitions were presented in the Court on November 2, 1995 and came up for preliminary hearing on November 3, 1995. An interim order was made on that date directing 1st respondent-Returning Officer to permit the petitioners to vote in the election proposed to be held on November 5, 1995 with a further direction to keep the ballot papers of petitioners separately and not to announce the result until further orders. Both the Counsels submitted at the hearing that the elections were held on November 5, 1995 as scheduled, 93 members other than the petitioners participated in the election, ballot papers of petitioners are kept separately and out of 93, 3rd respondent-R.T. Devegowda has polled 53 and 4th respondent-D.L. Manjunath has polled 39 votes and the results are yet to be declared.

5. Writ petition was presented only against the Returning Officer and the Co-operative Society in question. Respondents 3 and 4 made applications under Order 1, Rule 10 of the CPC read with Article 226 of the Constitution of India for impleading them and those applications being allowed, they are impleaded as

respondents 3 and 4 respectively.

6. The substance of 3rd respondent's case is that petitioners are not enrolled as members of Co-operative Society in question within 30 days prior to the date of election in accordance with the provisions of the Act and Rules and Bye-laws framed thereunder and as such they are not entitled to participate in the election. The Managing Director of the sugar factory who has filed the counter statement on behalf of the Society is not properly authorised, he has filed this statement in collusion with R-4. There is delay in approaching the Court. There is suppression of facts and the Society not being a State or an instrumentality of a State under Article 12 of the Constitution of India, writ petitions are not maintainable. It is further stated that he has reason to believe that Special Officer has decided not to admit any member beyond August 30, 1995 and as such petitioners have not been enrolled as members of the Society in accordance with the provisions contained in the Act, Rules and the Bye-laws. It is further contended that even if petitioners are members as contended, their remedy is only to raise a dispute u/s 70 of the Act since they have alternate remedy, writ petitions are not maintainable.

7. Respondents 2 and 4 almost to toe the line of petitioners. The Managing Director who has sworn to the affidavit accompanying the statement of objections states that petitioners were enrolled as members between September 5, 1995 and September 14, 1995. I may mention here that Annexure-R1 filed by R-4 along with the statement of objections belies the statement of the Managing Director and it reveals that writ petitioners 6, 8, 9, 14 and 19 were not enrolled as members between September 5, 1995 and September 14, 1995.

8. Heard the learned Counsel for petitioners.

9. At the hearing, Counsel for the parties conceded that petitioners (five in number) 6, 8, 9, 14 and 19 are not enrolled as members between September 5, 1995 and September 14, 1995. No election was proposed to be held on September 30, 1995. When the earlier Writ Petition No. 14616 of 1995 came up for hearing on July 14, 1995 notification dated April 27, 1995 or April 6, 1995 was brought to the notice of the Court and accordingly the Court disposed of the writ petition noting that the election be held on or before September 30, 1995. But it is now clear that no action was taken pursuant to the writ petition to hold the election within that date. It is undisputed that the election at the first instance was proposed to be held on October 15, 1995 and that came to be adjourned to November 5, 1995 (Annexure-A and B). In view of Rule 8 of the Karnataka Co-operative Rules, 1960 only such of those members whose membership is beyond 30 days prior to the date of election could participate and not others. In other words, members who have been enrolled within 30 days between the date of election and prior to it, cannot participate in the election. Therefore, petitioners or any other members who are enrolled in accordance with the provisions of the Act, Rules and Bye-laws framed thereunder and if their membership had been there for over 30 days before the date of election, they

could participate and not otherwise.

10. It is argued that there was no payment of share fee by the other petitioners, payment made by way of cheque on behalf of respondents 3, 7, 12, 18 and 19 was encashed only after the date of election and in the case of respondents 5, 16 and 20, the cheques are yet to be encashed and therefore they are not validly enrolled members of the Society. Section 19 of the Act contemplates that only such of those members who have made payment to the Society in respect of membership could exercise the rights of a member and not others. Neither the Rules nor the Bye-law states as to how payment should be made. It appears to be that the Society after it came to be established, first Board of Directors was constituted by the Government in view of the provisions contained in the Bye-law and as the sugar factory established by the society did not commence crushing, elections were not held till about November 5, 1995. Statement of objections filed on behalf of 2nd respondent-Society does not make out whether and on what date petitioners made applications in accordance with Section 16 seeking membership and when those applications came up for consideration before the Board of Directors as required under the Bye-law and who considered those applications. On the other hand, when we read the statement of objections filed on behalf of respondents 3 and 4, it would appear that the Board of Directors constituted by the Government was never in existence at the relevant time, either the Special Officer or the Administrator was in charge of the management of the society. But significantly, none mention as to whether the Administrator or the Special Officer as the case may be did consider their applications and approved that and if so when they were approved. R-4 has annexed Annexure-R1 to his statement of objections and it would reveal that certain members paid the share fee between September 5, 1995 and September 12, 1995 and that came to be approved by the Administrator on September 14, 1995. I have already said that certain petitioners names are not included in this and it is also conceded five of the twenty-two petitioners are not enrolled as members between the two dates. In view of the fact that election was scheduled to be held on October 15, 1995 and postponed to November 5, 1995, such of those who are validly enrolled as members prior to September 14, 1995, would participate in the elections. But in the facts and circumstances of the case, it is clear that the question whether the petitioners were enrolled as members between the two dates, or before September 14, 1995 in accordance with the provisions of the Act, the Rules and the Bye-laws is a disputed question of fact which cannot be gone into in these proceedings. The dispute as such would constitute a dispute u/s 70(2)(c) of the Act. I therefore, find considerable merit in the arguments advanced on behalf of R-3 that the dispute between the members on the one side and the society and others on the other side being in the nature of a dispute falling u/s 70(2)(c), the remedy open to the petitioners is only to approach the Appropriate Authority u/s 70 of the Act and certainly not under Article 226 of the Constitution of India.

11. The other argument advanced on behalf of R-3 is that the general body alone

is empowered to enroll member and there being no material to show that petitioners were enrolled as members of the society by the general body, they are not entitled to maintain the writ petition. In support of the arguments, decision of this Court in *M.L. Nagaraj Vs. State of Karnataka*, is relied on. In view of my finding that petitioners have an alternate remedy and a writ is not maintainable, there may not be any necessity to answer this question, but having allowed the Counsel to address the argument, it would be necessary to consider whether there is merit in the argument. On a close reading of certain provisions in the Act, Rules and the bye-laws, I do not find any merit in the argument that it is the general body and the general body alone has the power to enroll members. Even in Nagaraj's case, *supra*, though the Court holds that the general body meeting is required to consider the applications for members and take a decision, makes an observation that Bye-law 53 of the Institution confer the power on the Board of Directors to dispose of the applications for membership (paragraphs 15 and 18). In Nagaraj's case, *supra*, except referring to Section 26 of the Act, other provisions of the Act or the Rules are not referred. Moreover, it does not say that it is only the general body which has to consider the application and therefore R-3 cannot derive any assistance from the decision in Nagaraj's case, *supra*. In rendering decision in Nagaraj's case, *supra*, Court has relied on the decision of the Supreme Court in *T. Ramegowda Vs. R. Krishnamurthy and others*, . Supreme Court in the facts and circumstances of the case that came up for consideration before it said that the Special Officer whose appointment had been quashed by the High Court and had been asked to hold election had no power to enrol the members. It does not lay down the law that the Special Officer in general has no power to enroll members. It does not even lay down the law that the Managing Committee has no power to enroll members. In that case, Special Officer whose appointment had been quashed by the High Court enrolled as many as 696 members between the date of quashing and the date of election. It directed the managing committee to process those applications and take appropriate decision one way or the other about granting of membership to them. Thus the Supreme Court has not declared that it is only the general body that has the power to enroll members.

12. A harmonious reading of the definition of the expression "committee" contained in Section 2(b), with Sections 16, 28A, 30 and 30A of the Act makes it clear that it is never the intendment or the object of the Act to confer power of enrolling the members only on the general body. The scheme or the object of the Act is such that it provides for the administration of the society or the management of the society as such being managed in certain circumstances either by the Administrator or Special Officer, as the case may be for over a period of a year or two. Section 16 of the Act makes it clear that when an application is made for seeking membership, it shall be considered and those applications shall not be rejected without there being sufficient cause,

Sub-sections (2) and (3) of Section 16 of the Act read thus:

"(2) No Co-operative Society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.

(3) Any person seeking admission as a member of any Co-operative Society shall make an application in writing for admission as a member of such society".

Section 26 of the Act vests the final authority of a Co-operative Society in the general body of members, subject to the provisions of the Act, the Rules and the bye-laws. Section 28A introduced by Act 5 of 1984 contemplates that the management of a Co-operative Society shall vest in a committee constituted in accordance with this Act, Rules and Bye-laws of such society. Section 28A reads thus:

"28-A. Management of Co-operative Societies vest in the Committee.--(1) 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 such society. The committee shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon by it by this Act, the rules and the bye-laws".

13. Section 30 of the Act provides for supersession of the committee by the Registrar in certain circumstances and for appointing an Administrator to manage the affairs of the society for such period not exceeding one year. Sub-section (2) of Section 30 confers powers on the Administrator so appointed subject of course to the control of the Registrar, exercise all or any functions of the committee or of any Officer of the co-operative society. Section 30A of the Act empowers the State Government to appoint a Special Officer on being satisfied on a report by the Registrar that the Co-operative Society is not functioning in accordance with the provisions of the Act. Sub-section (2) of Section 30A contemplates that in such circumstances the members of the committee of a Co-operative Society are deemed to have vacated their office and the Special Officer is deemed to have assumed charge of the affairs of the Co-operative Society. Sub-section (3) of Section 30A empowers the Special Officer to perform all powers and functions of the committee or any Officer of the Co-operative Society, subject of course to the control of the State Government and the Registrar. In the instant case, bye-law of the institution contemplates that the applications seeking membership shall be considered and approved by the Board of Directors. The society in question consists of 4 categories of members viz., A-Class, B-Class, C-Class and D-Class. We are concerned with B-Class members. Bye-law 5(B) states that written application for membership of B-Class be approved by the Board of Directors provided the applicant holds at least one share and he has paid the entrance fee of Rs. 2/- and share fee of Rs. 5/- per share. A glance at Bye-law 5 makes it clear that even in the case of A-Class and D-Class membership, Board of Directors have to consider and take a decision on the applications seeking membership. C-Class consists of only Government and in view of sub-section (8) of Section 16 of the Act, State Government would be deemed to have been

admitted as a member of a Co-operative Society on the date it subscribes to the share capital of the said society. In these circumstances, it is futile to contend that it is only the general body that can enroll members of a Co-operative Society, it depends on the facts and circumstances of each particular case, committee of management or Board of Directors of the co-operative institution as the case may be depending on the provisions contained in the respective bye-law has the power to consider the application for membership and take a decision thereon. In view of the relevant provisions of the Act and the Rules referred to above, there cannot be a declaration of law that it is only the general body which has the power to enroll members of a particular Co-operative Society.

14. The other argument advanced is that the writ petition is not maintainable on the ground of delay and lapses. Endorsement sought to be quashed is Annexure-D, dated October 4, 1995. Calendar of events at Annexure-A is dated October 13, 1995. Election was scheduled to be held on November 5, 1995, but the petitioners approached the Court with these writ petitions on November 2, 1995. But no reasons are assigned as to why they did not approach the Court immediately after the issuance of endorsement at Annexure-D if really they were enrolled as members between September 5, 1995 and September 14, 1995. On the other hand, it is now shown that some of the petitioners viz., petitioners 6, 8, 9, 14 and 15 were not enrolled members during those two dates. Though in fact they contend in the petition that they were enrolled as members prior to September 14, 1995. I therefore find substance in the argument that these writ petitions fail on the ground of delay and laches.

15. The other argument advanced on behalf of R-3 is that the writ petitions are not maintainable against the society. R-1 is the Returning Officer and he is appointed by the Registrar of Cooperative Societies as provided under Rule 14(b) (1) and is required to hold election in accordance with the provisions contained in sub-rule (a) of Rule 14 of the Karnataka Co-operative Societies Rules, 1960. Thus, R-1, Returning Officer in holding the election is acting under the directions of the Registrar of Co-operative Societies and as such there is no substance in the arguments that the writ petitions are not maintainable. Even in the earlier W.P. No. 14616 of 1995 a direction was sought to the Registrar of Co-operative Societies and others to hold election to elect the directors and that writ petition was disposed of directing the respondents to hold the election on or before September 30, 1995 in accordance with the Government Notification, dated April 27, 1995. Learned Counsel for R-3 relied on certain authorities to show that a writ is not maintainable against a Society. In the instant case, direction is sought to a Government Officer acting under orders of another Officer of the Government, made in exercise of the powers under the Karnataka Co-operative Societies Rules, 1960. Therefore, there is no need to refer to those citations. In conclusion, I hold that petitioners having not shown that all of them were enrolled as members of the Society prior to September 14, 1995 and as the petitioners have alternate remedy u/s 70 of the Act and in view of laches, these writ petitions are not maintainable.

16. In the result and for the reasons hereinabove stated, these writ petitions are dismissed. R-2 may proceed and complete the process of election by declaring the results excluding the ballot papers of petitioners kept separately. In the peculiar circumstances of the case, no order as to costs.