

(2000) 08 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No. 23508 of 2000 (CS.ELE)

B.L.G. Dayanand

APPELLANT

Vs

The Managing Director, Chitradurga DCC Bank And Another

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 28 A, 28 A (3), 28 A (4)
Karnataka General Clauses Act, 1899 — Section 6, 6 A

Citation : (2000) ILR (Kar) 3865 : (2001) 3 KarLJ 308 : (2000) 4 KCCR 2524

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil and Sri Dayanand S. Patil, for the Appellant;
Sri G.A. Anthony Cruze and Sri Mahesh R. Uppin, for the Respondent

Judgement

Kumar Rajaratnam, J.—The writ petition is taken up with the consent of parties.

2. The short but interesting question before the Court is whether a person who is elected as a member of the Committee of Management of the Co-operative Society prior to the amendment and subsequently elected after the amendment as the President of the Co-operative Society shall hold office as President for one year or two and a half years.

3. The Karnataka Co-operative Societies Act, before the amendment was to the effect that the tenure of the Committee of Management shall be 3 years and the tenure of the office of the President was 1 year. By Karnataka Act 25 of 1998 which came into effect on 15-8-1998, the statutory term of the Committee of Management was enhanced from 3 years to 5 years. Equally, the statutory term of the President was enhanced from 1 year to 2 1/2 years.

4. In this case, the election to the committee of Management of the 2nd respondent-Bank was held on 29-6-1998. The amended Act came into force on 15-8-1998. The petitioner was elected as President on 16-7-1999.

5. Therefore the question that arises for consideration was whether the petitioner

who was elected to the Committee prior to the amendment and elected as President after the amendment should enjoy a tenure of office as President for 2 1/2 years or whether his tenure is limited to 1 year.

6. To understand the relevant provisions of the Act, prior to the amendment, it is necessary to refer to Section 28-A(3) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act").

Section 28-A(3) of the Act reads as follows:

"Notwithstanding anything contained in this Act, the rules and the bye-laws of any Co-operative Society, the term of office of the Committee of a Co-operative Society shall be three co-operative years and the elections shall be held for the entire committee other than the nominated members".

7. According to Section 28-A, sub-section (3), the period of the Committee shall be 3 co-operative years.

8. Section 28-A(4) of the Act reads as follows:

"The members of the committee shall, every year, elect from among themselves the officers of the Co-operative Society, the election for the office-bearers shall be by ballot".

9. According to Section 28-A(4) the officers of the Co-operative Society shall be elected every year.

10. Accordingly, prior to the amendment the position was that the term of office of the Committee was 3 co-operative years and the term of the office-bearers was for 1 year.

11. The amended Act-25 of 1998 came into force on 15-8-1998. For the sake of brevity the Court has dealt with only the relevant sub-sections which deal with this vexed question.

12. Section 28-A of the amended Act extends the statutory period from 3 years to 5 years.

13. Section 28-A, sub-section (4) reads as follows:

"28-A(4) Subject to the provisions of Sections 29A and 39A, the term of office of the members of the Committee shall be five co-operative years and they shall be deemed to have vacated office as such members of the Committee on the date of completion of the said term:

Provided that if an election to the committee of any Co-operative Society had already been held in accordance with the bye-laws of such society, prior to the commencement of the Karnataka Co-operative Societies (Amendment) Act, 1997, the term of office of the Committee of such Co-operative Society shall be three years including the co-operative year in which such election was held".

(emphasis supplied)

14. The proviso to sub-section (4) of Section 28-A clearly states that if a committee is elected in accordance with the bye-laws prior to the amendments, the statutory term of the committee shall be 3 years and not 5 years. There is no difficulty about this.

15. The crunch comes when the amended section deals with the election of President, Chairman, Vice-President or Vice-Chairman.

16. Section 29F extends the tenure of the President, Vice-president, Chairman or Vice-Chairman or other office-bearers from 1 year to 2 1/2 years.

17. Section 29-F of the amended Act reads as follows:

"29-F. Election of President, Chairperson, Vice-President or Vice-Chairperson etc.--(1) Every Co-operative Society shall have a President or Chairperson, Vice-President or Vice-Chairperson and such other office-bearers elected in accordance with the provisions of this Act, rules or bye-laws.

(2) The President or Chairperson shall preside over meetings and the committee of the Society and its sub-committee as well as general meeting of the Society.

(3) In the event of vacancy in the office of President or Chairperson by resignation, death or removal or otherwise, the Vice-President or Vice-Chairperson shall perform the duties of the President or Chairperson as the case may be, until a member is duly elected as President or Chairperson.

(4) The Chief Executive shall within fifteen days from the date of constitution or deemed constitution of the committee after a general election and immediately before the expiry of the term of office of the President or Chairperson, Vice-President or Vice-Chairperson convene a meeting in the prescribed manner of all the elected members of the committee for the purpose of electing President or Chairperson, Vice-President or Vice-Chairperson and such other office-bearers as are required to be elected under the bye-laws of the Co-operative Society. One of the elected members who is not a candidate for the election of president or Chairperson, Vice-President or Vice-Chairperson shall be chosen to preside over such meeting:

Provided that the members of the first committee elected in the first general meeting held after the registration of a Co-operative Society shall elect the President or Chairperson, Vice-President or Vice-Chairperson and other office-bearers in such manner as may be prescribed.

(5) Save as otherwise provided under this Act, the President or Vice-President, Chairperson or Vice-Chairperson or other office bearers shall hold office for a term of two and half years.

(emphasis supplied)

(6) The Chief Executive shall as and when there is a casual vacancy in the office

of the President, or Chairperson, Vice-President or Vice-Chairperson or other office-bearers convene a meeting of the elected members of the Committee for the purpose of filling up the casual vacancy and the provisions of sub-section (4) shall mutatis mutandis apply.

(7) The Chief Executive shall within three days from the date of the meeting, forward to the Registrar a copy of the notice convening the meeting and also a copy of the proceedings of the meeting.

(8) If the Chief Executive fails to convene the meeting in accordance with sub-sections (4) and (6), the Registrar or any person authorised by him to do so shall convene a meeting for the purposes specified in the said sub-sections".

18. Lamentably the proviso that has been introduced as u/s 28-A(4) in the amended section with respect to the committee elected prior to the amendment such a corresponding proviso does not find a place in Section 29-F of the amended Act with respect to the election of the President or other office-bearers.

19. Then does that mean that if a Committee is elected prior to the amendment that is before 15-8-1998 (the date when the amendment came into force) and subsequently office-bearers are elected after 15-8-1998, that office-bearer should continue in office for a statutory period of 2 1/2 years notwithstanding the fact that the life of the committee itself is for 3 years?

20. In this case as stated earlier, the committee of the Bank was elected prior to the amendment but the President was elected subsequent to the amendment.

21. If a similar proviso as was found u/s 28-A, sub-section (4) was also found u/s 29-F(5) then there would have been no difficulty in holding without much ado that the term of the President shall also be one year.

22. Since there is no saving clause with respect to the tenure of the office-bearers u/s 29F, a lot of controversy has been created because of this juxtaposition of a committee being constituted prior to the amendment and a President being elected after the amendment.

23. Mr. Jayakumar S. Patil, the learned Counsel for the petitioner, vehemently submitted that since the petitioner was elected after the amendment came into force, the petitioner has a statutory right to remain in office for a period of 2 1/2 years from the date of his election notwithstanding the fact that the term of the committee is for only three years.

24. The learned Counsel for the petitioner also submitted that it is not the job of the Courts to insert words in the amended statute by reading down Section 29F, sub-section (5) from 2 1/2 years to 1 year.

25. It was submitted that the Legislature in its wisdom has held that the tenure of the President elected after the amendment shall be 2 1/2 years no less no more even if tenure of the committee is only for three years.

26. The learned Counsel for the petitioner relied on a judgment of the Supreme Court in *P.K. Unni Vs. Nirmala Industries and others* [OVERRULED], . The Supreme Court held on a correct construction of Rule 92(2) of Order XXI of the CPC, leads to only one conclusion that the time for making a deposit under Rule 89 of Order XXI is 30 days and Article 127 of the Limitation Act, 1963 for making an application under Rule 89 has no relevance to the prescribed time for making the deposit.

27. In dealing with this, the Supreme Court held that the words of the statutes being clear, explicit and unambiguous, there is no scope to have recourse to external aid for their construction.

28. However, the Supreme Court at paragraph 14 of the judgment held that a Court can of course adopt a construction which will carry out the obvious intention of the legislature. It would be of advantage to read paragraph 14 of the judgment which is extracted as follows:

"14. The Court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, . Assuming there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. "No case can be found to authorise any Court to alter a word so as to produce a *casus omissus*; Per Lord Halsbury, *Mersey Docks v Henderson*, we cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there"; *Crawford v Spooner* .

Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course adopt a construction which will carry out the obvious intention of the legislature. In doing so "a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases".: Per Denning, L.J. as he then was, *Seaford Court Estates v Asker*. See the observation of Sarkar, J.(in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, .

(emphasis supplied)

29. Mr. Jayakumar S. Patil, then relied on a Full Bench judgment of this Court in *T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others*, . The Full Bench of the Court held that the definition of a co-operative year u/s 28-A(3) could not also be incorporated with respect to members of the committee without further explanation. In other words, u/s 28-A(3), the term of the Co-operative Society was to be 3 co-operative years. The co-operative year under the Act means as it then was a year ending with 30th of June.

30. u/s 28-A(4), the members of the committee shall elect by ballot the office-

bearers every year.

31. The question that arose before the Division Bench under *R. Rangaiah v Managing Director, Tumkur Co-operative Milk Producers Societies Union Limited, Tumkur and Others*, was whether the word under sub-section (3) of Section 28-A which speaks of co-operative years shall be incorporated in the Section 28-A(4) to mean that every year shall mean co-operative year and not a year reckoned according to the British calendar year.

32. The Division Bench on an "harmonious" construction held that every year should be interpreted as co-operative year and not as every year in a British calendar.

33. The Full Bench in *T.B. Guddalli's case*, *supra*, held that the law laid down by the Division Bench is not the correct law and further held that the office of the President is for 12 calendar months reckoned according to the British calendar from the date of such election as required u/s 28-A(4) and not the co-operative year.

34. Placing reliance on the Full Bench judgment of this Court, the learned Counsel for the petitioner submitted that it is not permissible to incorporate the proviso u/s 29-A(4) which deals with the committee before the amended Act and insert it in Section 29(5) by reducing the statutory tenure of the President from 2 1/2 years to 1 year. He submitted that the effect would be to revive a repealed Section 28-A(4), which speaks of the statutory tenure being every year. In other words, it was submitted strenuously that the lacuna in the legislation cannot be set right by an interpretation of which though harmonious is contrary to Section 29F, sub-section (5).

35. According to the learned Counsel for the petitioner since the election for the office of the President was held after the amendment, the statutory tenure of office gets automatically extended from 1 year to 2 1/2 years, notwithstanding that the term of the committee (since the committee was elected prior to the amendment) being 3 co-operative years.

36. Such a proposition of law at first blush appears to be attractive.

37. However, on further examination it cannot stand the test of a reasonable interpretation of these statutes.

38. Craies on Statute Law, 7th Edition at page 112 was of the opinion that Courts must give effect to the intention of the statute and not otherwise. The Courts must on such occasions narrow the effect of a repealing section in order to give full effect to the intention of the Act, The learned author was of the opinion as follows:

"The Courts have sometimes felt constrained to narrow the effect of a repealing section in order to give full effect to the intention of the Act containing it, Section 33 of a local Act of 1877 (the Metropolitan Street Improvements Act 1877,

incorporating the Lands Clauses Consolidation Acts, 1845, 1860 and 1869) provided for the purchase of lands for the accommodation of the working classes likely to be displaced by certain metropolitan improvements. Section 3 of a subsequent local Act of 1882 provided that the provisions of Section 33 should cease to be in force with respect to certain lands mentioned, and that in relation thereto the earlier Act should be read as though Section 33 were not contained therein. In *Wigram v Fryer*, North, J., held that the legislature plainly intended that buildings for the housing of the working classes should be erected; and that, to give effect to this intention, the Court must imply that the later Act conferred upon, or preserved to, the authority the powers expressly conferred by the repealed Section of the Act of 1877, and he said: "It is a very lamentable way of legislating that one should be driven to get at the meaning of these Acts by removing difficulties (as far as can be done) by construction rather than the intention of the legislature should be clearly expressed upon the fact of the Act".

(emphasis supplied)

39. The Karnataka General Clauses Act, 1899, deals with the effect of repeal. Section 6 of the Karnataka General Clauses Act reads as follows:

"6. Effect of repeal.--Where this Act or (any Mysore Act or Karnataka Act) made after commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed".

(emphasis supplied)

Section 6A of the Karnataka General Clauses Act reads as follows:

"6-A. Repeal of Act making textual amendment in an Act.--Where (any Mysore Act or Karnataka Act) made after the commencement of this Act repeals any enactment by which the text of any Act was amended by the express omission,

insertion or substitution of any matter, then, unless different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal".

40. The effect of Sections 6 and 6A is that when a particular Act or Section is repealed, it shall not affect any obligation or liability incurred under any section so repealed. In other words, when it is conceded that the election for the committee is only for 3 co-operative years, it cannot by any stretch of imagination be held that the President shall have a statutory tenure of 2 1/2 years. The genesis of the committee was prior to the amendment, the Committee had a statutory tenure of 3 years. It is this very committee which elects the President. If the committee itself is for 3 years then there is an obligation or a liability accruing to the petitioner which will narrow the effect of the repealing section in order to give full effect to the intention of the Act.

41. In this context, it would be useful to reiterate Section 29-F(5) which reads as follows:

"29-F(5) Save as otherwise provided under this Act, the President or Vice-President, Chairperson or Vice-Chairperson or other office bearers shall hold office for a term of two and half years".

(emphasis supplied)

What is the meaning of the word "Save as otherwise provided under this Act"? The legislature in its wisdom has provided for the saving clause amongst the other things to be read along with Section 28-A(4). Proviso to Section 28-A(4) reads as follows:

"Provided that if an election to the committee of any Co-operative Society had already been held in accordance with the bye-laws of such society, prior to the commencement of the Karnataka Co-operative Societies (Amendment) Act, 1997, the term of office of the committee of such Co-operative Society shall be three years including the co-operative year in which such election was held".

(emphasis supplied)

42. The proviso clearly stipulates that if a committee of a Co-operative Society is elected prior to the amendment, that is prior to 15-8-1998 then the office of the committee of the Co-operative Society shall be 3 years and not 5 years.

43. It is this proviso that is saved amongst the other things in Section 29-F(5). If that is so, the power of the committee springs from the proviso which restricts the term of the committee to 3 years. Consequently that committee which is confined to 3 years cannot elect a President extending the statutory tenure from 1 year to 2 1/2 years.

44. After all, the power of the Committee elected prior to the amendment and continuing in office after the amendment is confined to a statutory tenure of 3 years. So, that Committee cannot be expected to elect a President for a term of

2 1/2 years. The power of the Committee to elect its President springs from the proviso to Section 28-A(4). That committee cannot be considered as a Committee elected after the amendment, in view of the proviso to Section 28-A(4). If that is the legal position the election of the President from that Committee cannot be for a period more than a year. The very genesis of the power of the Committee to elect the President is under the said proviso. The said proviso clearly stipulates that the tenure of the Committee shall be 3 years. If the committee has a statutory tenure of 3 years, that Committee cannot elect the President with a statutory tenure of 2 1/2 years. This is why it has become the lamentable duty for Courts to narrow the effect of repealing section in order to give full effect to the intention of the Act. Otherwise, the true intention of the Legislature cannot be understood in its proper perspective. It becomes necessary to read the whole Act and not in bits and pieces, if one is to give the full effect to the intention of the Act.

45. In *Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others*, , the Supreme Court held that Parliament is not expected to use unnecessary expression and make pointless legislation. The Supreme Court at paragraph 9 pronounced as follows:

"9. In considering the rival submissions of the learned Counsels and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees Which preceded the Bill and reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the said to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation, nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a

conclusive reason why every case falling literally within them should be governed by that statute, and the context of any Act may well indicate that wide or general words should be given a restrictive meaning" (See Halsbury, 4th Edition, Volume 44, page 874)".

(emphasis supplied)

46. No legislation must be made to look absurd, If there is a genuine lacuna in drafting them, a proper meaning should be given to the Act read as a whole and iron out the creases.

47. In this case, the words "Save as otherwise" provided under this Act really indicates that the term of the President must be read along with the proviso to Section 28-A, sub-section (4). If that is read together harmoniously there cannot be any difficulty in understanding the intention of the legislature. The intention of the legislature is unambiguous. If a committee is elected prior to the amendment, the tenure of the committee shall be 3 years and no more. Equally, the tenure of the President shall be 1 year and no more.

48. The learned Counsel for the respondents, Mr. Veerabhadrappe, supported the proposal that the tenure is 1 year by relying on the following judgments:

1. Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, ;
2. Pirthwinath Chowdhry Vs. State of Uttar Pradesh, ;
3. M. Ramappa and Others v City Municipal Council, Bellary and Others;
4. Virendra Kapur Vs. University of Jodhpur and Others, .

49. Placing reliance on the above judgments, he submitted that the intention of the legislature should be read as a whole and where necessary the legislation should be read harmoniously.

50. Mr. Veerabhadrappe, also placed reliance on a judgment of this Court in Annarao Devarao Patil Vs. State of Karnataka and Others, . This Court dealt with the slightly different proposition of law and held in passing, that in case where the statutory tenure of the committee is 3 years, the office of the President should be for 1 year.

51. If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some details which is of great importance, the Courts are at liberty to infer that the statute by implication empowers that detail to be carried out.

52. In Cookson v Lee, Lord Cranworth L.C. held as follows:

"We must take it (the Act) as we find it and one very natural question is whether if it does not in terms do so, it does not do it by implication -- Whether we must not infer from the powers given, the legislature considered that they had given the power which is contended for, or whether, directing something to be done,

they must not be considered by necessary implication to have empowered that to be done which was necessary in order to accomplish the ultimate object".

It is only in these rare circumstances, the Courts have sometimes felt constrained to narrow the effect of a repealing section in order to give full effect to the intention of the Act containing it.

53. I see no difficulty in holding that it was the intention of the statute that the tenure of the President shall be for one year where the tenure of the committee is confined to three years.

54. Accordingly the claim of the petitioner that he is entitled to continue as President for a tenure of 2 1/2 years is unsustainable in law.

55. There is no merit in the writ petition. The writ petition is accordingly dismissed.

Kumar Rajaratnam, J.:

25-8-2000

After the judgment was pronounced Mr. Jayakumar S. Patil, learned Counsel for the petitioner submitted that he intends to prefer an appeal and sought leave of this Court to stay the effect of the judgment.

56. The judgment shall stand stayed for a period of two weeks.