

(1984) 08 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 2844 of 1984

Bore Gowda

APPELLANT

Vs

Asst. Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Co-operative Societies Act, 1959 — Section 29 C, 29 C (1) (f), 70

Citation : (1985) ILR (Kar) 260

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : C.M. Desai, for the Appellant; Somayaji, G.P. for R-1 and 2, Shivaraj Patil, for R-3 and H.K. Vasudeva Reddy, for R-5, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—In this Petition under Articles 226 and 227 of the Constitution, the Petitioner has sought for quashing the order dated 28th January, 1984, bearing No. AR32 C. MKT. 208/83-84 (Annexure-B), passed by the Assistant Registrar of Co-operative Societies, Tumkur (first respondent) and also the order dated 7th February 1984, passed in Appeal No. 43/83-84, by the Deputy Registrar of Cooperative Societies Tumkur (respondent No. 2) (Annexure-C).

2. The Petitioner was elected as a Director of the fourth respondent Society on 18-9-1983. Pursuant to his election as a Director, he was also elected as the President of the 4th Respondent Society. In addition to this the Petitioner on the basis that he was a Director and the President of the 4th Respondent Society, was also elected as a Director and the President of the 3rd Respondent. The Tumkur Cooperative Milk Producers Societies Union Ltd , Tumkur. In the 4th Respondent-Society, at the time when the Petitioner was elected as a Director the son of the Petitioner was working as the Secretary. In view of the election of the Petitioner as the Director of the Society, the son of the Petitioner tendered his resignation on 19-9-1983 and it was accepted on 24-9-1983 ; but before he

tendered his resignation, a Petition was filed before the first Respondent on 12-9-1983 u/s 29C(I)(f) of the Karnataka Cooperative Societies Act 1959 (hereinafter referred to as the "Act") stating that the son of the Petitioner was working as the Secretary of the fourth Respondent society, therefore the Petitioner was and is disqualified to hold the office of Directorship in the same Society. On that complaint, notice was issued on 22-9-1983. The Petitioner appeared in person and put forth his contentions orally.

3. The first Respondent came to the conclusion that the son being the near relation of the Petitioner and he being in the service of the fourth Respondent-Society at the time when the Petitioner was elected as a Director the Petitioner was disqualified to be elected as a Director as such the election of the Petitioner as a Director was abinitio void being opposed to Section 29C(I)(f) of the Act; that acceptance of the resignation of the son of the Petitioner on 24-9-1983 to the post of the Secretary of the 4th Respondent. Society could not cure disqualification of the Petitioner as he was elected to the Board of Management earlier to the date, the resignation was tendered and further the resignation was accepted subsequent to issue of notice u/s 29C of the Act. Accordingly, 1st Respondent, by the impugned order dated 28-1-1984 (Annexure B) under Section 126A(I)(a) and (d) read with Section 29C(I)(f) of the Act Removed the Petitioner from the Presidentship and Directorship of the 4th Respondent Society and disqualified him from being elected or continued as a Director of the fourth Respondent-Society for a period of 2 years. As a consequence thereof it was further held that he was also not entitled to be elected, nominated and continued in the management of any of the Cooperative Institutions during the aforesaid period. This order has been confirmed in the Appeal preferred before the second Respondent.

4. It is also necessary to mention on the further development that has taken place in the case subsequent to the filing of the Writ Petition, Even though an interim order was passed On 14-2-1984 staying the holding of election to the vacancy caused in the office of the President of the 3rd Respondent-Union as a result of removing the Petitioner from the Directorship and Presidentship of the 3rd Respondent-union by the impugned orders ; the election had taken place and the 5th Respondent had been elected as the President of the 3rd Respondent Union in place of the Petitioner. Similarly an election to the office of the Presidentship of the fourth Respondent-Society also had taken place on 14-2-1984 itself, and the 6th Respondent had been elected as the Presidentship of the fourth Respondent-Society in place of the Petitioner. Consequently the Petitioner has been allowed to amend the Petition by the order dated 16-3-1984. Thus, the elections of Respondents 5 & 6 as Presidents of Respondents 3 and 4 Union and Society respectively are sought to be quashed.

5. Sri C.M. Desai, Learned Counsel appearing for the Petitioner has put forth 5 contentions, which are as follows :

1. The first Respondent had no jurisdiction to disqualify the Petitioner from the

Directorship of the third Respondent-union as the area of operation of the 3rd Respondent-union extended beyond a Taluk whereas the jurisdiction of the 1st Respondent was confined to the societies whose areas of operation did not extend beyond a Taluk.

2. The disqualification alleged against the Petitioner was subsisting at the time when he filed, the nomination paper and was elected as a Director of the 4th Respondent-Society ; and his election was not challenged u/s 70 of the Act. As such the disqualification in question being the one that existed at the time of the election it was not open to the first Respondent to consider the same in a proceeding u/s 29C read with Section 126A of the Act.

3. That at any rate on the date when the show cause notice was served on the Petitioner i.e. on 25-9-1983, the son of the Petitioner had already resigned from the post of the Secretary of the 4th Respondent Society as his resignation had been accepted on 24-9-1983, itself, therefore, there was no disqualification subsisting either on the date of service of the notice or on the date the order was passed by the first Respondent, therefore the order was illegal.

4. That the son of the Petitioner was divided, therefore, he being in service did not attract Clause (f) of sub-section (1) of Section 29C of the Act. In other words the contention is that it is only when the undivided son is in service as per the explanation thereof Section 29C(1)(f) is attracted as it is only the undivided son who is considered to be a near relation and not the divided son.

5. That the elections of Respondent Nos. 5 and 6 as residents of Respondents 3 and 4 Union & Society respectively have taken place in the vacancy caused due to the removal of the Petitioner from those offices pursuant to the impugned orders ; therefore , if the Petitioner succeeds in the Petition it is necessary to quash these elections of Respondents 5 and 6.

Contention No. 1 :

6. it is not in dispute that the area of operation of the fourth Respondent Society does not extend beyond the territorial limits of Kunigal Taluk. The Petitioner has been removed from the Presidentship and Directorship of the 4th Respondent-Society and he has also been disqualified from being elected, continued and nominated to the management of the 4th Respondent-Society, and other cooperative institutions for a period of two years. The jurisdiction enjoyed by the first Respondent, it is also not in dispute, is in respect of the co-operative societies whose areas of operation do not extend beyond the limits of a taluka. Thus, it is clear that the 1st Respondent was competent to exercise power u/s 29C read with Section 126A of the Act. to disqualify and to remove the Directors of the 4th respondent-Society. The further disqualification and removal from the Board of Management of the 3rd Respondent union-in the instant case-was only consequential to the primary disqualification suffered by the Petitioner in the 4th Respondent-society. It was only on the election of the Petitioner as a Director and the President of the 4th Respondent-society, he had been elected as a

Director and the President of the 3rd Respondent union. Therefore, once the petitioner was removed from Directorship of the Primary Co-operative Society i.e., 4th Respondent-society, the Directorship of the Petitioner the 3rd Respondent-union which was dependant on the first one had to cease automatically. As such, it was only a consequence and not the cause by itself so as to form a basis for the exercise of power. Therefore, the consequence cannot be made the determining factor for the exercise of jurisdiction u/s 29C read with Section 126A of the Act, by the Assistant Registrar of Co-operative Societies in respect of the co-operative societies whose areas of operation do not extend beyond a Taluk. Hence, the first contention cannot be accepted. It is accordingly answered in the negative and against the Petitioner.

Contention No. 2 :

7. It is not in dispute that the son of the Petitioner was serving as a Secretary of the 4th Respondent-society even on the date the Petitioner filed his nomination paper to contest the election to the office of the Director of the 4th Respondent-society; and was elected as such. No objection was raised with regard to the disqualification with which he was alleged to be suffering. No dispute was also filed u/s 70 of the Act, challenging the validity of the election of the Petitioner as a Director of the 4th Respondent-society. On these undisputed facts, the point that arises for consideration is as to whether the disqualification that existed at the time of the election, can it be made a ground for a proceeding u/s 29C of the Act or it can be gone into only in a dispute raised u/s 70 of the Act. This point is no more Res Integra. A Division Bench of this Court, in the case of Govindappa - v.- Somashekhar Ishwarappa & Ors 1979(1) K. L. J. 124 while considering a case involving similar facts, has held that in respect of the disqualification which existed at the time of the election, the only remedy is to challenge the election in a dispute raised u/s 70 of the Act, and Section 29C(7) of the Act which empowers the Registrar to decide as to whether a member of the Committee was or has become subject to any of the disqualifications mentioned in Section 29C of the Act, applies only to cases where a member has incurred a disqualification subsequent to the election. It has also been further held therein that the language of sub-section(7) of Section 29C of the Act, also suggests that it cannot refer to the disqualification of a candidate before the election. It provides that it shall apply to a member of a committee, who was or has become subject to any disqualification. A person becomes a member only after he is duly elected. As such, sub-section (7) of Section 29C of the Act applies only to a post election disqualification. In the instant case also, the disqualification alleged against the petitioner existed before, and at the time of the election. Hence, it could have been raised only in a dispute raised u/s 70 of the Act. There is still one more aspect to be considered. In the instant case, power u/s 126A of the Act, is also exercised. Apparently it is a wrong exercise of power. Section 126A of the Act, is not applicable to a disqualification which a member of a cooperative society suffered before he became a member of the committee of management. It applies to a disqualification to which a member of a committee becomes subject

to it and not to a disqualification which existed before a member of a society became a member of a committee of management. This is apparent from the very opening words of the Section itself. It opens with the words "If any member of a committee of cooperative society during the term of his office." The "committee" means, the governing body of a Cooperative Society by whatever name called, to which the management of the affairs of the society is entrusted (See : Section 2(b)). So, Section 126A of the Act, is also not applicable to the present case. Thus neither Section 29C(l)(f) and (7) nor Section 126A of the Act, is attracted to the present case. The only remedy available was to raise a dispute u/s 70 of the Act, which had not been done. The authority entitled to exercise jurisdiction u/s 70 of the Act, is different. A dispute raised u/s 70 of the Act, no doubt may be decided by the Assistant Registrar of Co-operative Societies, exercising the powers of the Registrar or he may refer it to an Arbitrator or transfer it for disposal to any person who has been invested by the State Government with powers in that behalf. In the instant case, though the case is filed within thirty days and it is decided by the Assistant Registrar of Co-operative Societies; still it is neither possible nor permissible to treat it as a dispute raised u/s 70 of the Act, because, the appellate forum differs. As against the award passed in a dispute raised u/s 70 of the Act, an appeal lies to the Tribunal u/s 105 of the Act. Sri Somayaji, Learned Government Pleader, has placed reliance on a Full Bench decision of the High Court of Bombay, reported in Dattatraya Narhar Pitale Vs. Prabhakar Dinkar Gokhale and Another, This decision is not applicable to the present case, having regard to the wordings contained in Sections 29C and 126A of the Act. For the reasons stated above, the 2nd contention is answered in favour of the Petitioner and it is held that the impugned orders - Annexures "B" and "C" are without jurisdiction.

Contention No, 3 :

8. The 3rd contention of the Petitioner is that as on the date of service of the show-cause notice, the son of the Petitioner had resigned; therefore Respondent No. 1 had no jurisdiction to proceed further in the matter inasmuch as on the acceptance of the resignation of the son of the Petitioner. the disqualification ceased to exist. In support of this contention, Sri C.M. Desai, Learned Counsel for the Petitioner, has relied upon a Division Bench decision of this Court, in Joint Registrar of Cooperative Societies -v.- B.C. Venkataswamy. W.A. No. 1274 of-1979 In that case, even before the initiation of the proceeding, the arrears were paid and on the date the proceeding was initiated, there were no arrears and no disqualification was subsisting This Court, came to the conclusion that in such a case the proceeding ought not to have been initiated u/s 29C(l)(a) and Section 126A of the Act, because there was no disqualification subsisting. It is not possible to apply the said decision to the facts of the present case. In the instant Case, as it is already pointed out, the Petition was filed on 12-9-1983 and even the show-cause notice was issued on 22-9-1983 before the resignation of the son of the Petitioner was accepted. Thus, the proceeding was initiated before the resignation was accepted. It is also pertinent to note that once a person

suffers a disqualification and a proceeding is initiated, the fact that the said disqualification ceases to exist subsequently does not, and it cannot be held to, affect the proceeding. If it is held that by reason of that, the pending proceeding gets affected, in that event the very object of the law will be defeated. If a person has suffered a disqualification at the relevant point of time, the consequences flowing out of such a disqualification shall have to be determined if it is raised in an appropriate proceeding irrespective of the fact as to whether such a disqualification has, subsequent to the relevant point of time ceased to exist or not to illustrate the point - suppose, "A" was a candidate at the election to the membership of a committee. He, being a defaulter to a cooperative society, was suffering from a disqualification falling u/s 29C(I)(a) of the Act. Inspire of this, A's nomination paper was accepted and he was elected. On being elected, he paid up the arrears the very next day of his election and ceased to be a defaulter ; but a dispute was raised in time u/s 70 of the Act, challenging A's election on the ground that he was a defaulter at the relevant point of time ; therefore, he was disqualified for being chosen a member of the committee. Can the dispute be dismissed on the ground that before the dispute was raised, "A" had ceased to be a defaulter having cleared off the arrears? I do not think it is possible to do so. Similarly, even when a member of a committee becomes subject to a disqualification, he is disqualified to continue as a member of the committee, and the subsequent development such as payment of arrears, near relative ceasing to be in service, cannot be held to have the effect of taking away the consequences that have to follow out of a disqualification suffered by a member of a co-operative society or a member of a committee. Merely because a disqualification ceases to continue, the penalty he has to pay for the disqualification suffered by him cannot be made inapplicable. Any other view will defeat the very object and the efficacy of law. This aspect of the matter was also not required to be considered in the aforesaid case by the Division Bench, because it did not arise there. Hence, in my view, the decision of the Division Bench in the aforesaid case must; be held to confine to the facts of that case. Accordingly, the 3rd contention is answered in the negative and against the Petitioner.

Contention No. 4 :

9. The Petitioner has neither filed an objection before the 1st Respondent in writing nor it is apparent from the order of the 4th Respondent that the son of the Petitioner had ceased to be a member of the joint family. It is clear that no such contention had been urged before any of the authorities below. However, it is submitted that in the Memorandum of Appeal preferred before the 2nd Respondent, such a contention was raised; but from the order of the 2nd Respondent, it is apparent that no such contention had been advanced. However, in the Writ Petition, the Petitioner has stated that this contention was urged before both the authorities .The Petitioner being a Hindu, he is governed by Hindu Law. The normal state of every Hindu family is joint. Under Hindu Law, the legal presumption is that every such family is joint in food, worship and estate

and it continues to be joint unless the contrary is proved. Such presumption of union is the greatest in the case of father and sons. Therefore, unless the Petitioner produces evidence to show that there is a division between him and his son, it is not possible to hold on the basis of a mere self-serving assertion that the son of the Petitioner at the relevant point of time was divided. Therefore, the contention of the Petitioner that his son who was the Secretary of the 4th Respondent-society at the relevant point of time was divided, cannot be accepted. Accordingly, the 4th contention is held against the Petitioner.

Contention No. 5 :

10. The last contention relates to the relief to which the Petitioner is entitled to, if the impugned orders are quashed. Having regard to the conclusion reached by me on the 2nd contention, the Petitioner is entitled to succeed. The impugned orders are liable to be quashed. It is during the pendency of the Writ Petition the elections to the vacancies caused due to the removal of the Petitioner from the offices of the Directorship and Presidentship of the 4th Respondent-society and also the Presidentship of the 3rd Respondent-union, as a result of the impugned orders, have taken place and Respondents 5 and 6 have been elected to fill in those vacancies as Presidents of Respondents 3 and 4. They are required to yield up their offices to the Petitioner on the quashing of the impugned orders; because as a result thereof, the Petitioner stands relegated to the positions which he was enjoying on the date of passing of the impugned order -Annexure "B", consequently, those offices stand restored to the Petitioner and as such, Respondents 5 and 6 cease to have authority to continue to hold those offices. They were elected in the vacancies. The continuation, or the period, of those vacancies dependent on, and till, the existence of the impugned orders and not beyond that. However, Learned Counsel for the 5th Respondent, submits that the Petitioner having failed to challenge the election of the 5th Respondent u/s 70 of the Act, he is not entitled to seek the relief in this proceeding. The contention cannot be accepted. As it is pointed out above, Respondents 5 and 6 were elected to the vacancies caused under the circumstances stated above. Hence, they are not entitled to continue once the impugned orders are quashed. It was not necessary to challenge their elections u/s 70 of the Act, as they were elected to fill in the vacancies which were to continue as long as the impugned orders held the field or the term of their offices expired, whichever was earlier. Thus, Contention No. 5 is answered in favour of the Petitioner.

11. For the reasons stated above, this Writ Petition is allowed. The impugned order dated 28th January, 1984, bearing No. AR 32. C.M.K.T. 208/83-84 (Annexure-B) passed by the Assistant Registrar of Cooperative Societies, Tumkur (1st Respondent) and also the order dated 7th February, 1984 passed in Appeal No. 43/83-84 by the Deputy Registrar of Cooperative Societies, Tumkur(2nd Respondent) (Annexure-C), are hereby quashed. The election of the 5th Respondent to the office of the Presidentship of the 3rd Respondent-union and that of the 6th Respondent, as President of the 4th Respondent-society as per

Annexure-E and F, are hereby quashed, and the Respondents 5 and 6 are not entitled to continue in those offices. It is further held that the Petitioner is entitled to continue as a Director and the President of the 4th Respondent-society and as the President of the 3rd Respondent-union, which positions he held on the date of passing the impugned order-Annexure "B" till the expiry of the term of those offices or till such time as the law permits and subject to the provisions of the Act and the Rules and Bye-laws governing those offices.