
(1999) 06 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No's. 12642 of 1999 connected with Writ Petition No. 14199 of 1999

B.V. Munegowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-06-1999

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 132 (2), 30, 39 A (2)

Citation : (1999) ILR (Kar) 3956 : (2000) 2 KarLJ 135

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri D.S. Hosmath and Sri K.N. Subba Reddy, for the Appellant; Sri R.I. D'sa, Government Advocate and Sri K.K. Vasanth, for the Respondent

Judgement

1. The above two writ petitions are interconnected. The first writ petition was filed by the former Board of Directors to challenge the order dated 27-3-1999 passed by the Additional Registrar of Co-operative Societies (C and M) superseding their society known as Horticultural Producers Co-operative Marketing and Processing Society Limited, popularly known as "HOPCOMS". Whereas the second writ petition was filed by some of the shareholders of the said society for issue of a writ in the nature of mandamus directing the respondents in that writ petition to conduct the election on 23-5-1999.

2. For the purpose of convenience the petitioners in the first petition are referred to as the petitioners-Former Board of Directors (in brief referred to as "petitioners-Directors") whereas the petitioners in the second writ petition are referred to as the petitioners-shareholders.

3. The respondents in both the writ petitions are not common, besides they are differentially placed in the order in the matter of arraying them as parties therein and therefore they are referred as the respondent-State, respondent-Registrar, respondent-Additional Registrar, respondent-Administrator, respondent-Horticultural Producers Co-operative Society Marketing and Processing Society

Limited in brief "HOPCOMS" etc. The parties hereto are represented as hereunder.

4. The petitioner-Directors are represented by Sri D.S. Hosmath. The petitioner-shareholders are represented by Sri Vivek S. Reddy. The respondent-State, respondent-Registrar, respondent-Additional Registrar are represented by the learned Government Advocate Sri D'Sa, the respondent-HOPCOMS and the respondent-Administrator are represented by learned Counsel Sri K.K. Vasanth.

5. The facts of the cases in brief are as hereunder: That, the HOPCOMS is a registered society under Co-operative Societies Act, 1959 (in brief the "Act") and it is functioning since the year 1959. Originally, the area of operation extended to Bangalore Urban, Bangalore Rural, Kolar, Tumkur, Mandya and Mysore Districts and whereas with effect from 14-1-1999 the area of operation came to be restricted to Bangalore Urban, Bangalore Rural, Kolar Districts alone. The aims and objectives of the HOPCOMS is for promotion and encouragement for the growth of horticultural crops and to promote the demands for horticultural crops and for marketing the same. It has three classes of members. They are Class A, B and C and in all it has got a total membership of 9,935. That the petitioner-Directors were the elected Board of Directors for the three co-operative years to end on 31-3-1999. In preparation of the election for the next co-operative year HOPCOMS had passed resolutions to hold the general body at the first instance on 21-3-1999 and in pursuance of that they also got a Returning Officer appointed, that thereafter there was some strike by the officials of the HOPCOMS and because of that the election proposed to be held on the above date could not be held. It is thereafter, the petitioners-Directors passed a second resolution on 1-3-1999 to hold the general body on 23-5-1999. Earlier to that there came a notification dated 15-2-1999 issued by the respondent-State copy at Annexure-B to the second writ petition, whereby the State had directed that all the elections due to be held by 31-3-1999 be held on or before 31-5-1999 and that notification came to be issued by the State in exercise of its powers u/s 132(2) of the Act, to get over certain difficulties with passing of the Act 25 of 1998, whereby it got incorporated Chapter 5-A to the Act. That, subsequently, on 27-3-1999, the HOPCOMS came to be superseded by the respondent-Additional Registrar of Co-operative Societies by issuing an order u/s 30 of the Act dated 27-3-1999 copy at Annexure-G to the second writ petition. That, with the passing of that order the respondent-Administrator took over the charge of the HOPCOMS right on that day i.e., 27-3-1999.

6. The petitioners-Directors having been aggrieved with the said order of supersession challenged the same before this Court in filing the first writ petition. Whereas the petitioners-shareholders have filed the second writ petition with the main prayer that the respondent-State and its Authorities including the respondent-Administrator be directed to hold the general body on 23-5-1999 in tune with the resolution that the petitioners-Directors had passed on 1-3-1999 and in the alternative for issue of a direction to the said respondents to conduct the election forthwith.

7. To set out the prayer in both the writ petitions they read as hereunder:-

"In the first writ petition.-

(a) Issue a writ in the nature of certiorari or any other appropriate writ, order or direction quashing the order Annexure-F dated 27-3-1999 in No. PRS 111 PMC 27 of 1996-97 passed by respondent 4.

In the second writ petition.-

(a) Issue a writ in the nature of mandamus directing the respondents to conduct the election on 23-5-1999 to the Board of Management of the third respondent-society on 23-5-1999 in accordance with the resolution of the Board of Management of the Society dated 1-3-1999 and in accordance with the provisions of Karnataka Co-operative Societies Act.

(b) Issue a writ in the nature of mandamus or a direction directing the respondent-Administrator and respondent 4-Returning Officer to forthwith conduct the election to the Board of Management of the third respondent-Society".

8. I feel it appropriate to take up the second writ petition first and the first writ petition at the second for the simple reason that the first writ petition of the petitioners-Directors in substance had rendered itself as fructuous as in the Administrator took charge of the organisation right on 27-3-1999 with issuance of the order of supersession and as such got into the shoes of the petitioners-Directors. Now, I come to the second writ petition.

9. On a simple reading of the facts pleaded and the grounds urged in the second writ petition, the case of the petitioners-shareholders is that the respondent-Administrator had entered the shoes of the elected body of the petitioners-Directors and as such it was his duty to give effect to the resolution passed by the petitioners-Directors on 1-3-1999 copy at Annexure-E to the writ petition to hold the general body and the election on 23-5-1999, that the respondent-Administrator proposed to hold election only in the month of July and August 1999 and the same was in utter disregard of the above resolution passed by the petitioners-Directors and that he could not do so as he was bound by the resolution of the elected body. It was also contended in the second writ petition that the respondent-Administrator had to perform the functions of the petitioners"-Board u/s 30(2) of the Act. It was also alleged in the writ petition that the respondent-Administrator was delaying the very process of holding the election deliberately.

10. The respondent-Administrator and the respondent-HOPCOMS have filed detailed common objection statement on 11-5-1999 and in filing the same they have stated that the supersession was for a good reason that there were mismanagements of the HOPCOMS and it is for that reason show-cause notice was issued setting out the detailed charges as against the petitioners-Directors. It was further contended therein that as per Bye-law No. 17 of the HOPCOMS, no

members shall be eligible to vote in the election or to contest in the election unless he had supplied Horticultural Produce to the value at least of Rs. 5,000/- for the previous co-operative year and that identification of the members eligible to vote in the election could not be done inasmuch as the HOPCOMS did not maintain the personal ledgers of the members properly, completed the entries in the pass books and maintained other documents well and furthermore, it was also stated therein that with effect from 14-1-1999 the area of operation got reduced from 8 districts to 3 districts and as such, clarification had to be sought from the respondent-State and also the respondent-Registrar as to the actual number of members to be identified as eligible voters to participate in the election. The respondent-HOPCOMS and the respondent-Administrator have also pleaded difficulties in holding the election immediately since there was no progress in preparation of the voters list, as the respondent-Administrator had taken charge only on 27-3-1999 and that apart, himself and his officers have also to attend the Public Accounts Committee, to brief and in connection with the enquiry on the mismanagement of the HOPCOMS by the petitioners-Directors. It was also contended by them that the petitioners-Shareholders were guilty of suppression of facts. For the said reasons mainly, they prayed that the petition filed by the petitioners-shareholders be dismissed.

11. The learned Counsel appearing for the petitioners-shareholders Sri Vivek Reddy had taken me through the backdrop of the case and the grounds urged in the writ petition. At the outset he found fault with the very appointment of the respondent-Administrator, for according to him it was not at all necessary for such a recourse to the respondent-Additional Registrar particularly when, at the first instance the Board of Management petitioners-Directors had taken steps as early as in January 1999 for holding the general body as well as the election well within 15 days earlier to the expiry of their term of office. He had pointedly drawn my attention to the act of the respondent-Additional Registrar that just 3 days earlier to the closure of the term of office of the petitioners-Directors, he had passed orders superseding HOPCOMS. According to him it was with mala fides the order of supersession had been passed by him. It was also argued by him that the supersession had come on with the change of the Minister in charge of the Horticultural portfolio. The main argument of Sri Reddy is that the respondent-Administrator since came to be appointed in the place of the original petitioners-Directors, he was bound by the resolution dated 1-3-1999 copy at Annexure-E to the writ petition, whereby they had resolved to hold the election on 23-5-1999. While falling back upon sub-section (2) of Section 30 of the Act, it was argued by him that the appointment of the Administrator shall be subject to the control of the Registrar and that he shall exercise all and any of the functions of the Committee of management or of any office bearers of the Society and it is in this sense it is his further submission that the respondent-Administrator in the case in hand, has to sincerely carry out the resolutions of the Board of Directors of the HOPCOMS. According to him, duty was cast on the respondent-Administrator to give effect to the above resolution to hold the election on

23-5-1999 and while drawing my attention to the detailed objections statement filed by respondent-HOPCOMS and the respondent-Administrator, Sri Reddy argued that it is clear therefrom that the respondent-Administrator had totally failed to do his part of the duty under sub-section (2) of Section 30. While referring to sub-section (2) of Section 30 it was also argued by him that it was only the outer limit of six months that was set out for the purpose of holding the election as the initial appointment of the respondent-Administrator had to be for a period of six months. In support of that argument of his, Sri Reddy had also referred to what is provided for in sub-section (2) of Section 39-A of the Act. While taking me through the said provision, it was pointed out by him that in the absence of the Committee, since superseded in the case in hand, the respondent-Administrator had to conduct the general body and the election within 15 days before the date of expiry of the term of office of the committee. To elaborate his argument on that point, it was also submitted by him that the original term of office of the committee was upto 31-3-1999 and with the issuance of the notification dated 15-2-1999, the term of office of the Board of Directors automatically got extended till 31-5-1999 and it is in that sense he further submitted that in the ordinary course of event the respondent-Administrator would have held the election on or before 16-5-1999.

12. Sri Reddy had also argued that in filing a detailed objection statement, in no part thereof the respondent-Administrator had given out his mind as to by what date and as to by what time he would be in a position to hold the general body and the election. According to him, the respondent-Administrator would have done so in filing the objection statement bearing in mind that his term of office is only for a period of six months and that at the earliest opportunity the representative body of the HOPCOMS has to be constituted by him as per Section 39-A(2) and further as directed in the very order of appointment appointing him as an Administrator.

13. There is yet another limb in the argument of Mr. Reddy, the same is with reference to sub-section (2) of Section 39A vis-a-vis provision in sub-section (3) of Section 30 of the Act. According to him, the first provision is a special provision having overriding effect and precedence to the general provision in sub-section (3) of Section 30 of the Act. It is so, for according to him, in sub-section (2) of Section 39A the definite period is set, whereas in sub-section (3) of Section 30, it is generally stated that he had to hold the election before the term of his office. In support of that part of argument of his, Sri Reddy had also cited before me the following decisions:-

1. Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

2. Sultana Begum Vs. Prem Chand Jain, .

14. In summing up the arguments, Sri Reddy had also reminded this Court that it is farmers-shareholders who are before this Court and that it is elected body of

the HOPCOMS which has to run the administration and that the appointment of the respondent-Administrator is only a stop-gap arrangement only to function for the period of term of his office and further, more importantly to hold the election as per the provisions of the Act.

15. The learned Government Advocate Sri D'Sa countered the argument on the other side that the appointment of respondent-Administrator was the make of the petitioners-Directors since it is they who had mismanaged the HOPCOMS necessitating such an appointment. At the threshold, he had also pointed out that there is no special provision as such under sub-section (2) of Section 39-A which over-rides the provision in sub-section (3) of Section 30 of the Act. According to Sri D'Sa, sub-section (3) of Section 30 makes it abundantly clear that an Administrator appointed has to constitute the new committee of HOPCOMS after holding the election in accordance with the Act but before the expiry of his term of office. It was also pointed out by him that in the instant case in hand, the respondent-Administrator was appointed for a period of six months and since he had taken charge only on 27-3-1999 and that his term of office comes to a close only on 26-9-1999 and in that way, it is totally impermissible for the petitioners-shareholders to resort to the instant writ petition to seek a direction to him by this Court to hold the election forthwith. It was also argued by him that if sub-section (3) of Section 30 is read along with sub-section (2) of Section 39-A, it is clear that the former has got more to do with the Administrator, whereas the latter has got more to do with the managing committee holding office. In furtherance of his argument in this context, it was also argued by him that when the term of office of the Board of Directors had come to a close with the supersession of the very society, application of sub-section (2) to Section 39-A is not at all available. He had also added that when the Administrator had not committed any error whatsoever, there is no reason for this Court to give any direction as prayed for in the instant writ petition, more so, when the term of office has got long way to go, to end on 26-9-1999 by which term, the respondent-Administrator has to set right the HOPCOMS and further to hold the election. Therefore, he prayed that the instant writ petition be dismissed.

16. On the other side, the learned Counsel appearing for the respondent-HOPCOMS and the respondent-Administrator Sri K.K. Vasanth while drawing my attention to the notification dated 15-12-1999, copy at Annexure-B to the writ petition, whereby the State had extended the time to hold the election upto 31-5-1999, submitted that, in no part thereof the State had extended the term of office of the Board of Management of the HOPCOMS and all that came to be passed was only to extend the time upto 31-5-1999 to hold the election which was otherwise had to be held 15 days earlier to 31-3-1999. Hence, according to him it is totally untenable on the part of the other side to state that the term of office of the Board of Management stood extended upto 31-5-1999.

17. Sri Vasanth while taking me through the paras 4 and 5 of the objection

statement filed by him submitted that, it was too early for the respondent-Administrator to set a date for holding election, as the administrator had just set his feet and he is yet to take stock of the things. He had also pointed out that there are good number of anomalies in the books of accounts as well as other records mentioned in the HOPCOMS and in the present situation, the respondent-Administrator in which he is placed, it is difficult for him to say even as to what is the actual number of eligible voters to be listed in the voters' list, as per Bye-law No. 17 wherein it is provided that, no member shall be eligible to vote unless he supplied horticultural produce to a value at least of Rs. 5,000/-for the previous co-operative year. However, he submitted that it is the intention of the respondent-Administrator to hold the general body as well as the election as expeditiously as possible after setting things right and further by getting the voters list prepared in consonance with Bye-law No. 17. He had also argued that the resolution dated 1-3-1999 passed by the Board of Directors was not in consonance with law, because they had to complete the whole process of the general body and the election 15 days earlier to the date of expiry of the term of their office on 31-3-1999. According to him, there is no substance in the instant writ petition. He therefore prayed that the same be dismissed.

18. Now in the light of the above arguments and the counter arguments advanced, the points that arise for my consideration are.-

(1) Whether the respondent-Administrator is bound to hold the election by resolution dated 1-3-1999 passed by the Board of Directors copy at Annexure-E to the writ petition? And

(2) Whether the respondent-Administrator be directed to hold the election forthwith as prayed for?

I take up these two points here below together for convenience. I add right here that, my answers to the above points are on the negative.

19. Before proceeding further, I feel it appropriate to quote the provision referable to the administrator in the matter of his functioning as well as holding the election in Section 28B, Section 30 and Section 39-A of the Act. The same read as hereunder.-

"28-B. Committee to arrange for Election:

(1) The committee shall make arrangement for election of members of the next committee in accordance with the Act, rules and the bye-laws.

(2) The members of the committee who have failed to make arrangements for election within the time limit specified in Section 39-A, shall be deemed to have vacated their office on the last day of the time limit so specified and such members shall not be eligible for election as members of the committee for a period of five years from the date of expiry of their term.

(3) The Administrator who shall assume charge under sub-section (5) of Section

28-A shall, as early as possible but within a period of six months arrange for the constitution of a new committee of the society in accordance with the Act, rules and the bye-laws.

Section 30. Supersession of Committee:

(1) If, in the opinion of the Registrar:-

(a) the committee of a co-operative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members or is otherwise not functioning properly, or

(b) a co-operative society is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the State Government or the Registrar,

the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the said committee, and appoint an administrator to manage the affairs of the society for such period not exceeding six months as may be specified by the Registrar. The Registrar may for the reasons to be recorded in writing extend the period of such appointment for a further period of six months.

(2) The administrator so appointed shall, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the committee or of any office bearer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(3) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act, the rules and the bye-laws of the co-operative society.

(4) Before taking any action under sub-section (1) in respect of a co-operative society the Registrar shall consult the financial banks to which it is indebted.

(5) Notwithstanding anything contained in this Act, the Registrar shall, in the case of a co-operative bank, if so required in writing by the Reserve Bank of India in public interest or for preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the co-operative bank, by order in writing, remove the committee of that co-operative bank and appoint an administrator to manage the affairs of the co-operative bank for such period as may, from time to time, be specified by the Reserve Bank of India".

"Section 39-A. Conduct of Elections:

1. Every general election of members of the committee other than the members of the first committee of a co-operative society after its registration or any casual vacancy shall be held subject to the superintendence, direction and control of the

Registrar.

2. Every general election of members of the committee shall be held within fifteen days before the date of expiry of the term of office of the committee. The date of such general election shall be fixed by the committee or in the absence of the committee by the Administrator or Special Officer.

3. Subject to the provisions of the Act, the election of members of the committee shall be held by secret ballot, in accordance with such rules as may be prescribed".

20. In sub-section (3) of Section 28-B there is a direction to the Administrator to hold the election as early as possible but within a period of six months, whereas in sub-section (3) of Section 30 it is provided therein that he shall arrange for constitution of a new committee after holding the election in accordance with the Act before expiry of his term of office, furthermore in sub-section (2) of Section 39-A, there is a direction to the Administrator to fix a date.

21. If we read the above provisions in the matter of holding of election by the Administrator, it is clear therefrom that the Administrator has to hold the election in consonance with the Act as early as possible but within the outer limit of six months; that is to say that he has to hold the election before the term of his office. To me it appears that the provisions with regard to the constitution of the committee by holding the election by the Administrator have to be harmoniously read, for the same has to be workable. This in fact was the line of argument of the learned Government Advocate too. If we see the whole scheme of the appointment of the Administrator in the matter of holding of the election, it is clear that his appointment is only a stop-gap arrangement for the purpose of setting right the mal-administration for which reason he came to be so appointed and further for constitution of a new committee by holding an election in the general body. Therefore, it is difficult for me to accept the argument of Mr. Reddy that the provision in sub-section (2) of Section 39A is a special provision not to be read into sub-section (3) of Section 30 or for that matter sub-section (3) of Section 28B.

22. Before I take up the matters for argument of the learned Counsel appearing for the parties before me, I have carefully gone through the pleadings of the parties. In doing that exercise one thing that I have observed is that, the petitioners-shareholders were anxious for getting the election held as early as possible, quite possible that my reading may be in between the lines. But that itself cannot be a reason for directing the respondent-Administrator to hold the election forthwith as prayed for by the petitioners-shareholders. Admittedly, in the instant case as I see there is mismanagement by the petitioners-Directors and it is because of that the respondent-Administrator came to be appointed and he was directed to set right the HOPCOMS and further to hold the election and that exercise obviously requires time particularly when the HOPCOMS did not maintain personal ledgers of the members, the pass books and other records to

assist the Administrator to find out the actual number of eligible voters etc., well. Particularly, as I further see, the respondent-Administrator has to do the head count and that he had to do based on the records. In paras 4 and 5 the respondent-HOPCOMS and the respondent-Administrator had clearly set out the situation in which he is presently placed in the matter of holding the election. On going through the same, I was equally frightened to put it in a mild way particularly the state of affairs of the HOPCOMS. It is also pleaded by the respondent-Administrator that the respondent-HOPCOMS, the respondent-Administrator and his senior officers have also to attend the enquiry pending before the PAC in the matter of irregularities in good number committed by the petitioners-Directors from a distance, I seen that the respondent-Administrator has got voluminous work to do before holding the election in question. That being the position, it is difficult for me to endorse the prayer in the petition. But I should not forget for a mention that a duty is cast on the respondent-Administrator to hold the election after getting the things set right. No wonder in filing the detailed objection statement the respondent-Administrator had not set out the time frame for holding such an election. As I see that cannot be without valid reason for one can clearly make out while reading the list of charges as against petitioners-Directors and paras 4 and 5 of the objections statement, the height of mismanagement and sorry state of affairs of the HOPCOMS.

23. Sri Reddy had cited before me the above noted two decisions in para 12 supra. Having gone through the same, I do not think they have got any application as the set of facts and circumstances in the reported cases are totally different from the set of facts and circumstances in the case in hand. I do not find the relevance either. Therefore, I do not choose to advert to any of the decisions Sri Reddy had cited before me.

24. Now, I come to the first writ petition. The said writ petition is tiled with the prayer that the order of supersession dated 27-3-1999 has to be quashed. I do not think the said prayer is of any consequence in view of the changed circumstances that on very day of supersession, the respondent-Administrator came to the scene as he had taken charge of HOPCOMS. As a matter of fact, in one of the grounds the petitioners-Directors had pleaded that their committee had not made over charge to him and that they still continue to be in office. I do not think it is true fact and that being so in my considered view the said writ petition had rendered itself infructuous and as such no relief to the petitioners-Directors can be granted in this writ petition.

In the result, I pass the following:

Both the writ petitions stand dismissed but with a direction to the respondent-Administrator that the respondent-Administrator shall hold the general body and the election as expeditiously as possible, preferably before the present term of office expires, of course, the said direction is subject to the condition that the alleged maladministration of the HOPCOMS are set right by him by then and that he will be in a position to draw the list of voters with reference to the records

available with him; a Senior Officer he is, I do not think that will be an uphill task for him. Let him do the job assigned in right earnest and with all sincerity of purpose.