

(2005) 04 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 10768 of 2005

C. Basavegowda	Vs	APPELLANT
Karnataka State Co-operative Apex Bank Limited and Others		RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 21

Citation : (2005) 3 KCCR 1863

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; A.N. Venugopalagowda, for Respondent 1, H.M. Manjunatha, High Court Government Pleader for Respondents 2 and 4, G.B. Manjunatha, for Respondent 3 and Jayakumar S. Patil Associates for Respondent 5, for the Respondent

Judgement

K. Sreedhar Rao, J.—The petitioner is one of the Directors of the 3rd respondent-Bank, so also the 5th respondent. The provision of Section 21 of the Karnataka Co-operative Societies Act, 1959, relevant for consideration is extracted hereunder:

21. Manner of exercising vote.--(1) Every member, every delegate and every nominee shall exercise his vote in person and not by proxy.

(2) Notwithstanding anything contained in Sub-section (1).--

(a) the committee of a Co-operative Society which is a member of another Co-operative Society may appoint one of its members to vote on its behalf in the affairs of that other Society.

2. It is the case of the petitioner that the committee of the 3rd respondent elected the petitioner to represent in the affairs of the 1st respondent vide Annexure-B, dated 5-3-2005. The petitioner by virtue of Annexure-B would be entitled to vote as a representative of the 3rd respondent in the management of the affairs of the 1st respondent and also would be entitled to contest in the

election of the office-bearers of the first respondent. The petitioner on the basis of Annexure-B submitted his nomination on 7-3-2005 for election to the Managing Committee of the 1st respondent. The calendar of events is issued vide Annexure-A on 21-2-2005.

3. It is the contention of the 5th respondent that the election of the petitioner as a representative of the 3rd respondent vide Annexure-B is a concocted document. No meeting is held hastily some of the directors conniving with the petitioner have fabricated Annexure-B to favour the petitioner. The 5th respondent inter alia raised a dispute before the 4th respondent u/s 70 of the Karnataka Co-operative Societies Act in Case No. 3779 of 2004-05.

4. The 4th respondent passed the impugned order at Annexure-D, dated 9-3-2005 whereunder the resolution made at Annexure-B and its further consequential effects are stayed.

5. The 2nd respondent in view of the order at Annexure-D made an order at Annexure-E, dated 9-3-2005 declaring that the nomination of the petitioner filed for election of the Committee of the Management of the 1st respondent is kept in abeyance subject to the result of the final order in the proceedings at Annexure-D.

6. The petitioner aggrieved by the impugned order at Annexure-D has filed this petition for quashing the order at Annexure-D.

7. It is the contention of the petitioner that the 4th respondent is not the competent adjudicatory authority and has no jurisdiction to decide the dispute relating to the first respondent. Since the order at Annexure-D has effect of affecting the affairs of the 1st respondent, therefore the impugned order is bad in law, made in excess of the jurisdiction.

8. This Court directed service of notice on 5th respondent by hand summons. The hand summons are served on 5th respondent on 21-3-2005. The date of hearing was fixed on 24-3-2005. The 5th respondent entered appearance through his Counsel on 23-3-2005. The cause list of the date did not show the name of the Counsel for the 5th respondent. The filing of the vakalath by the Counsel is not brought to notice of the Court by the registry. This Court passed an interim order staying the impugned order at Annexure-D. The second respondent in view of the interim order of this Court continued with the further proceedings in the election and declared that, the petitioner elected unopposed vide Annexure-R5(a), dated 26-3-2005.

9. The 5th respondent has taken preliminary objection regarding maintainability of the writ petition in view of the provisions contained in Sections 21(2)(a), 28-A(1) and 70(3) which are extracted hereunder for convenient reference. The provision of Section 21 is noted supra in the first para of this order:

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 it by this Act, the rules and the bye-laws.

70. Disputes which may be referred to Registrar for decision.-

(1) xxx xxx(2) xxx xxx (3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a Co-operative Society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

10. The provisions of Section 70(3) excludes the jurisdiction of the Civil Court and confers exclusive jurisdiction in the Registrar of Co-operative Societies for adjudication of any disputes touching the constitution, management or business of the Co-operative Societies between the members inter se, between the member and Society and between the Society and the employees.

11. The autopsy of the provisions of Section 21 indicates two different situations. Firstly, the committee of the Co-operative Society has to appoint its representative for participating in the affairs of any other Society to which it is a member. The second part of the section declares that such representative shall have right to vote on behalf of his Society in the affairs of the other Society.

12. Sri Ashok Haranahalli argued that the entire provision of Section 21 should be read together. The purpose of appointment of the representative should not be disjointed while interpreting the purport and scope of Section 21. The ultimate purpose of electing/appointing a representative is obviously to manage the affairs of the other Society and not for the management of the affairs of the electing Society i.e., the third respondent. Therefore, the issue of election of petitioner as a representative of the third respondent does not pertain to the management of the affairs of the electing Society i.e., the third respondent. As such the 4th respondent is not Competent Authority to adjudicate the dispute.

13. Per contra Sri Jayakumar S. Patil argued that Section 21(2)(a) contemplates two consequences. Firstly, the committee of the third respondent should elect its representative to participate in the affairs of the first respondent. The representative once so appointed will have power of representing the third respondent in the affairs of the first respondent. Therefore, the legality and propriety to the extent of electing/appointing a representative by the election Society is a matter within the scope of the word "management" of the affairs of the Society i.e., 3rd respondent.

14. Sri Jayakumar S. Patil further argued that u/s 70(3) in the case of any dispute of the Co-operative Society, the decision of the Registrar shall be final. Under the provision of Section 70(3) the jurisdictional question either way has to be decided by the Registrar. Without exhausting the remedy u/s 70(3) the writ petition is premature.

15. The petitioner has filed affidavits of 7 of the directors out of 11 to support the petition averments that he has been validly elected by a resolution at Annexure-B.

16. After carefully going through the submissions and the propositions of law the contention that the legality and propriety of the election of a representative by the Society u/s 21(2)(a), pertains to the management and affairs of the electing Society is sound and proper. The purpose of electing a representative is altogether a different and a distinct issue. The manner and procedure of electing a representative by the Society, is an issue, which pertains to the management of the affairs of the electing Society. Therefore, the contention that election of a representative by the Society does not pertain to the management of the affairs of the electing Society is untenable.

17. The submission that the Registrar u/s 70(3) is the statutory authority to rule on its jurisdiction is sound and proper. Without exhausting the remedy u/s 70(3), the writ petition is premature.

18. The petitioner by affidavit has stated that 4th respondent has acted in a biased manner while passing order at Annexure-D. In view of the order at Annexure-D, the election proceedings are forestalled and frozen at the stage of scrutiny. But on the basis of the stay order of this Court the second respondent has declared the petitioner elected unopposed. The declaration of the election of the petitioner is essentially on the basis of the stay order of this Court. Therefore, the election of the petitioner shall be subject to the final result of the proceeding in Case No. 3779 of 2004-05.

19. The contention of the Counsel for the 5th respondent that the election of the petitioner should be set aside in this proceeding is untenable. Since such a course would lead to a state of vacuum. It is not proper that the third respondent-Society should remain unrepresented in the affairs of the first respondent. Therefore, it is made clear that the election of the petitioner vide Annexure-R5A is subject to the result of the proceedings in Case No. 3779 of 2004-05.

20. Some serious allegations are made against 4th respondent. I do not propose to go into the allegations but suffice to say that in view of the facts and submissions made at the bar, it is directed that the Registrar shall try and dispose of the case by himself in accordance with law by end of June 2005. Accordingly, the writ petition is disposed of.