(1989) 02 KAR CK 0015

In the Karnataka High Court

Case No : W.Ps. No''s. 18782 of 1988 and 304 of 1989

C. Channabasappa APPELLANT

Vs

Davangere Primary Co-operative Agriculture and Rural Development Bank Ltd., and another RESPONDENT

Date of Decision : 21-02-1989

Acts Referred:
Karnataka Co-operative Societies Act, 1959 — Section 27, 28 A, 28 A (4)

Citation : AIR 1990 Kar 290 : (1989) 2 KarLJ 277

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Advocate : V.H. Ron, for the Appellant; F.V. Patil, Vishwanatha Shetty and Smt. Aileen Nimmy Swamy, High Court Govt. Pleader, for the Respondent

Judgement

1. The petitioner who was elected as the President of the 1st respondent/ Primary Co-operative Agriculture & Rural Development Bank Ltd. (in short the Bank) has questioned the correctness of the notice issued by the Bank dt. 24-12-1988 (produced as Ann-H in the writ petition) as also the order of the Deputy Registrar of Co-operative Societies, Chitradurga, which is produced as Ann. J in the writ petition on the ground that they are violative of the provisions of S. 28A(4) of the Karnataka Cooperative Societies Act, 1959 (in short the Act) read with the proviso to R. 13 of the Karnataka Co-operative Societies Rules, 1960 (in short the Rules). The facts are not in serious controversy, but the application of these facts to the relevant provisions of the Act has caused some difficulty in deciding this matter.

2. The petitioner was elected as the President of the Bank in the year 1987 and his term of office in the ordinary course expired on 30-9-1988. Likewise the term of members of the Committee of Management (in short the Committee) also would expire on 30-9-1988 as they have finished the term of 3 years as provided under S. 28A(3) of the Act. Now under the scheme of S. 28A which was put in the statute book by the Amendment Act No. 5 of 1984 with effect from

9-1-1984, the term of office of the Committee is 3 years and the term of office of the elected President and the Vice-President and other Office bearers is one year. The petitioner, as noticed earlier, was elected as the President of the Bank and his term expired on 30-9-1988. The Annual General Meeting of the Bank has to be held once in a year but within 3 months after the date fixed for making up its accounts for the year under the rules or bye-laws for the time being in force and in that Annual General Meeting the election of the Members of the Committee should have taken place. But under the proviso to S. 27 the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding six months. But, in this case the Registrar did not extend the period for holding the Annual General Meeting of the Bank. But, the State Government by virtue of the amendment made to the notification dt. 8-9-1988, inserted in sub-s. (1) to S. 27 of the Act, by notification dt. 15-12-1988, a further proviso as follows :

"Provided further that every annual general meeting or election to a Co-operative Society, shall be subject to the control and supervision of the Government and it shall be lawful for the Government to issue directions regarding all matters connected with annual general meeting or election including directions for cancellation or postponement of such meeting or election."

The Note appended to the notification dt. 15-12-1988 reads as under :

"The above modification to S. 27 shall remain in force up to 30th April, 1989 and upon its expiry, the provisions of the said S. 27 which were in force prior to the modification by this order shall stand revived but shall not affect the previous operation of the said section as modified by this order."

But for the above notification, the annual general meeting of the Bank would have been held on or before 30-9-1988 and in that meeting there would have been elections for the Committee and also to the posts of President and Vice-President. But pursuant to the second proviso introduced by the notification dt. 15-12-1988 the State Government has now postponed the election to the Committee of all the Co-operative Societies up to 30-4-1989. However, the annual general meeting of the Bank is permitted to be held as per the provisions of S. 27 of the Act.

3. Now the point for consideration is what is the effect of S. 27(1)(b) of the Act, on the provisions of S. 28A(3) of the Act. If the annual general meeting is not postponed but the life of the committee is extended as in this case by the postponement of the elections to the Committee, what will be the effect of such postponement of the election to the Committee on the provision of S. 28A(4) which provides for election of the office bearers of the Committee every year. Mr. Vishwanatha Shetty contends that full effect must be given to S. 28A(4) of the Act irrespective of the period of extension given to the Committee by the impugned notification and the order. According to him, the Bank has to elect anew President and Vice-President even for the truncated period of the term of

the committee, that is to say, for the extended period of 4 months there should be elections to the posts of President and Vice-President. He says that if the election is postponed for 9 months or for 12 months, the life of the Committee is also extended by 9 months or 12 months as the case may be and consequently there shall be fresh elections to the posts of President and Vice-President in terms of S. 28A(4) of the Act. He relied on the decision of this Court rendered under the relevant provisions of the Karnataka Municipalities Act in H.S. Prakash and Another Vs. State of Karnataka and Others, in support of his contention. In that case, the point that arose for consideration was the effect of the notification u/s. 18(1)(a) of the Karnataka Municipalities Act extending the term of councillor beyond four years. U/s. 42(11) of the Act the elected councillors shall elect the President and the Vice-President. But under the provisions of S. 42(11) the term of office of a President or Vice-President ceases on the expiry of the terms of office of the councillor. The first proviso thereto empowers the Government to limit the term of President and Vice-President to two years and the said provision directs, the holding of the election, in such a case, for the office of President and Vice-President every second year. What happened in that case was that the State Government in exercise of its powers u/s. 18 of the Karnataka Municipalities Act extended the term of the Councillors up to 31-12-1987. Respondents 3 and 4 therein were elected as the President and the Vice-President of the Municipal Council on 8-9-1987 and their term of office was for a period of two years. The point for consideration was whether their term of office came to an end on 7-9-1987 (sic) on the expiry of 2 years and whether there should he a fresh election to the elective posts of President and the Vice-President after their term came to an end. In that case the State Government by the impugned notification in exercise of the powers under S. 42(12) of that Act appointed Respondents 3 and 4 therein as the President and the Vice-President of the Municipal Council till 31-12-1987. That notification was challenged in that writ petition. The view taken by me in that writ petition that there should be fresh election to the posts of President and the Vice-President was affirmed by the Division Bench in the above reported decision, Mr. Viswanatha Shetty relies on the very same decision in support of the plea that notwithstanding the truncated period of extension of the life of the Committee, the President and the Vice-President of the Bank should be elected once again after their term expired on 30-9-1988. According to him, S. 28A(4) of the Act does not provide for any exception and whatever may be the reasons for extending the life of the committee by the impugned notification, those reasons would not come to the aid of the petitioner herein for remaining in office till fresh elections to the Committee are held. On the contrary, Mr. Ron, learned counsel for the petitioner, relying on the definition of the word ''Committee'' u/s. 2(b) of the Act and the proviso to S. 27(1) read with the proviso to R. 13(3) submitted that the provisions of S. 28A(4) would be applicable to a case where the life of the Committee is not extended by the postponement of the election as in this case and in the absence of any provision prohibiting the President and the Vice-President to continue beyond the period of one year under the Act and in the circumstances of this case they should be permitted to continue as the President and the Vice-President till a new Committee is elected on the expiry of the period fixed under the impugned notification. According to him, the life of the Committee was extended up to 30-4-1989 by the notification. Till then the petitioner could continue as the President of the Bank notwithstanding the provisions of S. 28A(4) of the Act.

4. That takes me to the scheme of the Act in so far as it relates to the Management of the Co-operative Societies. Chapter IV of the Act deals with Management of Co-operative Societies. The Co-operative Society is managed by a Committee of Management. The Committee is defined as a ''governing body'' of the Co-operative Society, by whatever name called, to which the management of the affairs of the Society is entrusted. As already noticed, S. 27(1) of the Act, the annual general meeting of the Co-operative Society should be held once in a year and in that meeting election to the members of the Managing Committee takes place and after the elections to the Managing Committee, the President and the Vice-President are elected from amongst the members of the Committee. The election to the Managing Committee in the annual general meeting takes place only in case the term of 3 years conies to an end and not earlier. In this case, admittedly its term has come to an end and, therefore, there should be an election to the said Committee in the annual general meeting which had been permitted under the impugned notification. To quote the words of the impugned notification:

"However the annual General Meetings of all Co-operative Institutions shall be held as per the provision of the Karnataka Co-opera-the Societies Act, 1959."

That means to say, annual general meeting under S. 27(1) of the Act is permitted to be held and what is not permitted is the election to the Committee of Management. What is this Committee of Management? Going by the definition of the word ''Committee'' under S. 2(b) of the Act, " ''Committee'' means the governing body of a Co-operative Society, by whatever name called, to which the management of the affairs of the society is entrusted." In other words the Committee of the management means the members elected in the annual general meeting of the society and the persons who are nominated by the Government under the relevant provisions of the Act. But the term of the elective members of the Committee comes to an end on the expiry of the period of 3 years under S. 28A(3) of the Act, but their term is extended by postponing the elections. Under S. 28A(4) of the Act the term of the President is not extended on the ground that he had ceased to hold the office after the period of one year.

5. Mr. Shetty contended that there is no escape from compliance with S. 28A(4) of the Act and accordingly the President having ceased to hold his office on the expiry of one year, a vacuum is created and that must be filled up in the interest of management of the society by holding fresh elections to their posts. Elaborating his contention he submitted that S. 28A(4) of the Act imposes a mandate on the Committee to elect a President and Vice-President the moment they ceased to hold office after the expiry of one year.

6. On these competing contentions, the first point that requires determination is whether the decision of this Court in H.S. Prakash and Another Vs. State of Karnataka and Others, is applicable to the facts of this case. I have already referred to S. 42(11) of the Karnataka Municipalities Act. The language of S. 42(11) of this Act is not similar to the language of S. 28A(4) of the Act. Nor the scheme of Chapter 4 of the Act is similar to the scheme of the Municipalities Act providing for election to the offices of the President and the Vice-President. There is no such Committee of management under the Municipalities Act. Under the Municipalities Act there is an elected body for discharging the statutory obligations under that Act and for that purpose the President and the Vice-President are elected in terms of S. 42(11) of that Act. The Committee of Management of the Co-operative Society is constituted for the purpose of carrying on the business of the co-operative society. Every co-operative society is empowered in terms of its bye-laws of the Society to carry on its business within the framework of the Act and in this case the business of banking and the business of rural development. So, the objects of the two Acts are different; the scheme of management of the co-operative society is different from the scheme of running a local administration under S.42 of the Municipalities Act and, therefore, it is not proper for this Court to adopt the reasoning of the aforesaid decision pertaining to Municipalities for the purpose of considering the scope and intendment of S. 28A(4) of the Act. What is troubling this Court is, in a situation like the one before us, where the annual general meeting is permitted to be held under S. 27(1) of the Act, but only the election to the Committee is postponed by a few months, should there be a change in the office bearers of the committee by election to the posts of the President and the Vice-president under S. 28A(4)? Under S. 28A(3) the members of the Committee of Management shall hold their office for a period of 3 years. Under S. 28A(4) of the Act, the President and the Vice-President as the case may be are elected for a period of one year. What should happen if he continues after the expiry of one year is not provided for in the statute. In the Municipalities Act, subject to the provision of S.42(11), the term of office will be for 2_years and the election should be held every 2nd year. So, there is a positive mandate limiting the period of office to 2 years and there is a direction to hold the election every second year. Therefore, what would be the effect the notification postponing the election to the Committee up to 30-4-1989. The annual general meeting is not postponed. But only the election to the Committee is postponed. If this election had not been postponed, the members of the co-operative society would have elected a new committee of management since their term had come to an end on 30-9-1988 and they in turn would have elected a President in terms of S. 28A(4) of the Act. But. in this case the election is postponed for reasons which appear to me are quite in order and bona fide, since the State Government is contemplating of bringing certain changes in the working of the co-operative societies by making suitable amendments to the Act in the light of the report of Jairaj Committee. So, this is an extraordinary situation created by a policy decision taken by the Government to bring about certain radical changes in the working of the co-operative

socieities in the light of the above said report. Therefore, this Court while construing S. 28A(3) and S. 28A(4) should keep in view whether these provisions should be strictly given effect to, in view of the extraordinary situation created by the policy decision of the Government. In my view. S. 28A(4) comes into operation under the normal state of affairs pertaining to the management of the co-operative societies, that is to say, when annual general meeting has to be held within the time stipulated under S. 27 and in that meeting the election to the Committee takes place and thereafter the members of the committee elect the President and the Vice-President under S. 28A(4) of the Act. This is also clear from the proviso to R. 13of the Rules. Though R. 13 was enacted prior to the amendment to S. 28A of the Act, it does not in any way conflict with the amended provisions and therefore it is still good law and must be given effect to for the purpose of ensuring the continuity in the management of the co-operative societies. Rule 13(3) reads as under:

"The election of the members of the committee shall be held on or before the date specified in the bye-laws, for the expiry of the term of office of the members. If no such date is specified in the bye-laws, the term of office of the members of the Committee shall be deemed to have expired at the time of the annual general meeting and the election of the new members shall be held at such annual general meeting :

Provided that the committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over charge of the office to such new committee."

In this case even without resorting to R. 13(3), the term of the Members of the Committee had come to an end on the expiry of 3 years and, therefore, there should be afresh election for constituting a new Committee. That fresh election now is postponed under the order at Ann. D. If that election is postponed, the proviso to R. 13(3) must be given effect to because the proviso says that the Committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over charge of the office to such new committee. This committee consists of the President and the Vice-President and the other members. Therefore, it is not possible to interpret the word ''committee'' as it appears in the proviso by excluding the office bearers, viz.. President and the Vice-President all because there should be a fresh election for their inclusion in the Committee under S. 28A(4) of the Act. Under R. 13(3) the very same committee chooses to continue in office till it hands over charge of the office to the new committee. Handing over charge" to the new committee means the President and the Vice-President and the other members shall hand over charge to the President and the Vice-President and Members of the new Committee. The members of the Committee do not play an important part in the day-to-day management of the Society but it is the President, Vice-President and other officers namely, Secretary and Treasurer, etc. who manage the day-to-day affairs of the society and it is these office bearers who would be in a position to hand over charge of the affairs of the society to the new committee. In the circumstances, the provisions of S. 28A(4) have to be interpreted taking into consideration the impact of the notification at Ann. D on the working of the Society, on the holding of annual general meeting and on the elections to the Committee after the annual general meeting is held. The Government order, in my view, having permitted the annual general meeting to be held and having postponed the election to the Committee, it should not come in the way of a proper working of the society by throwing out the President and the Vice-President out of office for the truncated period on the ground that they should seek re-election under S. 28A(4) the Act.

7. Mr. Shetty''s contention is that this view will be in violation of S. 28A(4) of the Act, since on the plain term of that subsection there should be an election every year to the Office of the President and the Vice-President. No doubt, in the ordinary course as noticed earlier, there should be an election every year for the posts of President and the Vice-President. But in the changed circumstances, I am of the view that giving effect to the literal meaning of the words as found under S. 28A(4) would be giving a set back to the proper functioning of the co-operative society and such a situation is not contemplated under the Government order at Ann. D.

8. Mr. Shetty has relied on the decision of the Supreme Court in London Rubber Co. Ltd. Vs. Durex Products, , wherein the Supreme Court in para 15 of the judgment observed thus :

"Indeed, it is the duty of the Court to give full effect to the language used by the legislature. It has no power either to give that language a wider or narrower meaning than the literal one, unless the other provisions of the Act compel it to give such other meaning."

That observation does not run counter to the interpretation I have put on S. 28A(4) Of the Act since I have taken into consideration the other provisions in Ss. 28A(3) and 27 of the Act and R. 13 of the Rules in order to come to the conclusion that a literal meaning of S. 28A(4) would be contrary to the intendment of the Government notification and also to the entire scheme of the Act. He also relied on Craies on Statute Law (7th edition). Chapter 5 deals with ''Construction where the Meaning is Plain''. Mr. Shetty invited my attention to the following observation under the heading ''Construction according to intention'' :

"Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

It should be noticed that the learned author has also stated in the same chapter that :

"In 1953 Lord Goddard C.J. said: ''A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered.''".

While interpreting S. 28A(4) I have considered the object of the Act and the purpose for which Ss. 28A(3) and 28A(4) were enacted. Keeping the object and purpose of those sections in mind, I have come to the conclusion that a literal interpretation of S. 28A(4) would be doing violence to S. 27 which provides for annual general meeting to be held and the Scheme under S. 28A(3) which provides election to the Committee of Management once in 3 years and also the scheme of R. 13 of the Rules which provides for handing over charge of affairs of the Society tot the new Committee of Management after the election takes place. In the view I have taken, it is not possible to apply the decision of this Court in H.S. Prakash and Another Vs. State of Karnataka and Others, to the facts of this case. The language of S.41(11) and (12) and the object and scheme of the Karnataka Municipalities Act are different from the language, object and scheme of the Act and, therefore, it would not be proper for this Court to apply the ratio of the case to the facts of this case.

9. Mr. Shetty submitted that in almost all societies in this State, uniformly new President and Vice-President have been elected and the decision taken by this society for electing a new president and Vice President ''would'' be undone. I do hot think that such a situation would arise since the enforcement of the impugned notification against other societies will not be affected by this decision unless some members of those societies choose to challenge the elections already held to the posts of President and Vice President following the decision of this Court and whether they would succeed at this distance of time would be a matter for consideration by this Court.

10. Accordingly, W.P. No. 18782of 1988 is allowed and the impugned order of respondent-2 at Ann J directing fresh election to the post of President is set aside and the election held in violation of the stay order granted by this Court, i.e., the election held on 2-2-1989 to the post of President is set aside. The petitioner shall continue in the office of the President of the Bank till a new Committee is constituted in accordance with the provisions of S. 28A(3) of the Act. No costs.

W. P. No. 304 of 1989 does not survive in view of the order made in W. P. No. 18782 of 1988 and accordingly the same is dismissed as having become infructuous. No costs.

11. Order accordingly.