

(1991) 06 KAR CK 0031

In the Karnataka High Court

Case No : W.A. No. 1190/1991 along with W.P. No. 8872/1991

C.E. Krishnegowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-06-1991

Acts Referred:

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

Citation : (1991) 2 KarLJ 273

Hon'ble Judges : S. Mohan, C.J.;N. Y. Hanumanthappa, J

Judgement

S. Mohan, C.J.-The petitioners are elected members of Vyavasaya Seva Sahakara Sangha Limited, Chikkade. The election to the said membership of the Board of Directors took place on 27-2-1991. Nine members were elected. Out of them five belong to Janata Party and four belong to Congress (J). Bye-law 14 of the Bye-laws of the said Society provides that on the Board of Directors there shall be two representatives, one a nominee of the Assistant Registrar-Grama Sevak and the other representing the financial institution. The total strength, therefore, is $9 + 2 = 11$. The Secretary of the Society convened a meeting of these 11 members of the Board of Management on 11-3-1991 for the purpose of electing the President, Vice-President and such other office bearers. Before the meeting could take place, the Government of Karnataka issued a direction in No. CMW 88, MM 91, dated 2-3-1991 extending the time limit for holding the meeting of the Executive Committee and the election of President, Vice-President and other office bearers from the prescribed 30 days to 45 days. The said direction also stated that it shall be in force for a period of 45 days or until such time the Government may decide from the date of its publication. Accordingly, a meeting of Executive Committee was held on 21-3-1991. However, the Government issued a notification in CMW 99 CCB 91, dated 5-3-1991 in exercise of power under Section 29(1) of the Karnataka Co-operative Societies Act (hereinafter referred as the Act) nominating respondents 5, 6 and 7 as members of the Board of Management of the 4th respondent-Society. After receiving the said notification, the Secretary of the Society issued a notice on 1-4-1991 to all the

nominated members fixing the date of meeting as 10-4-1991 for electing the President of the Board of Management. The petitioners aggrieved by the Notification dated 5-3-1991 came forward with this writ petition. In the writ petition, as prayed for, an interim stay was granted. But, ultimately by an order dated 11-4-1991 the stay was vacated. Thus, the writ appeal.

2. When the writ appeal came up for admission, we directed the writ petition itself be decided on merits. That is how the writ petition also is before us. Mr. B.T. Parthasarathy, learned counsel for the petitioners, vehemently urges that already two nominations have taken place to the Board of Management—one representing the Assistant Registrar and the other representing the financial institution. Where therefore the bye-law reflects what is contained under Section 29(1) of the Act that bye-law must be given its full effect. The result would be the two nominations would stand excluded from the purview of Section 29 of the Act. In other words, excluding those two nominations, the power to nominate under Section 29 of the Act should be confined to only one; otherwise, it would render the election itself nugatory and it will silence the voice of democracy. In support of this submission reliance is placed in *Naganna Gowda N.G. & Another v State of Karnataka & Others*, 1987(2) Kar. L.J. 389 and in *Kumaraswamy v State of Karnataka & Others*, 1979(1) Kar. L.J. 105. On the strength of these judgments it is argued, where the powers under Sections 29 and 53-A of the Act are held to be mutually exclusive, if there is a bye-law which reflects what is contained in Section 29(1) that power, though traceable to the bye-law, should be held as one exercisable under Section 29(1). Therefore, no additional nomination was permissible.

3. In opposition to this Mr. Vasudeva Reddy, learned counsel appearing for the nominated members submits that bye-law 14 lays down as to what should be the composition of the Board of Directors. That says from among the small farmers and the marginal farmers four should be elected; from among S.C. & S.T. one shall be elected; and four others to be elected from various other categories. These are the electoral process. However, the Assistant Registrar's representative and the representative of the financial institution who are also to be on the Board of Management, do not come by way of process of election and have nothing to do with the nomination under Section 29 of the Act. Under the said Section the Government is given an independent power to nominate its representatives in order to safeguard its interest, provided if it had contributed to the share capital or fulfils the conditions adumbrated under Section 29(1). The very object of providing a non-obstante clause is to have a power independent of the bye-law. In other words a bye-law cannot whittle down the statutory provision. Besides, a bye-law is merely an agreement having no statutory force. The power is as laid down in *Co-operative Central Bank Ltd. and Others v Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and Others*, AIR 1970 SC 245. The statutory power under Section 29(1) of the Act is to enable the State to have its representative irrespective of what the bye-law might say. Therefore, merely because there are two other nominees, one that of the

Assistant Registrar and other of the financial institution, that does not mean the power under Section 29(1) is circumscribed. 1979(1) Karnataka Law Journal 105 dealt with the question whether Sections 29 and 53-A of the Act are mutually exclusive. Beyond that it has no authority. Again in 1987(2) Karnataka Law Journal 389 what came up for consideration was a similar question. However, the learned Single Judge found that the bye-law in that case namely 21(1) merely reflects what was contained under Section 29. Therefore, the nomination must be presumed to be under Section 29 of the Act. That again does not advance the case of the petitioners.

4. We will now advert to the merits and demerits of the respective contentions. Bye-law 14 of the 4th respondent-Society states that the composition of the Board shall be as under:

- i) Four members are to be elected from among small and marginal farmers;
- ii) One person from among S.C. and S.T;
- iii) Four from other categories;

These are the elected members.

- iv) One representative of the Assistant Registrar (Grama Sevak);
- v) One representative of the financial institution.

These two persons do not come on the Board by way of election.

The two nominations made by the Assistant Registrar and the financial institution as their respective representatives will have nothing to do with the nominations contained under Section 29(1) of the Act. It will be appropriate at this stage to quote Section 29(1) of the Act. It reads as follows:

"29. Nominees of the Government on the Committee of a Co-operative Society- (1) Where the State Government- (a) has subscribed to the share capital of a co-operative society, or (b) has assisted indirectly in the formation or augmentation of the share capital of a co-operative society as provided in Chapter IV, (c) has guaranteed the repayment of principal and payment of interest on debentures issued by a co-operative society, or (d) has guaranteed the repayment of principal and payment of interest on loans and advances to a co-operative society, the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the co-operative society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121, have the right to nominate as its representatives not more than three persons or one-third of the total number of members of the committee of the co-operative society, whichever is less."

It categorically lays down as to when the power is exercisable, i.e., where the State had contributed to the share capital or assisted indirectly the functions,

control etc., which are set out at clauses (a) to (d). In categorical terms the Section says: "shall notwithstanding anything contained in this Act or the rules or the bye-laws of the co-operative society."Therefore, this clause obviously means it shall have overriding effect. The only clarification is that they are subject to any notification issued under Section 54 or 121. We may straightaway say that we are not concerned with such a situation. The Government have the right to nominate as its representatives not more than three persons. It has already been seen that the two nominations viz., one to represent the Assistant Registrar (grama sevak) and the other to represent the financial institution, cannot by any state of imagination be the representatives of the Government under Section 29(1). Even otherwise, as rightly contended by Mr. Vasudeva Reddy this power is an independent one and no bye-law can whittle down or mitigate against the rigour of Section 29(1) of the Act. It is equally well settled that a bye-law is nothing more than a concession. As a matter of fact in AIR 1970 SC 245 in paragraph-10 it has been observed as follows:

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute."

Therefore, it is one thing to say that the statutory power is exercisable by the Government; it is another thing to say that the power is traceable to the bye-laws. Therefore, we hold that the contention of Mr. Parthasarathy, learned counsel for the petitioners that the power of nomination under Section 29(1) of the Act must be circumscribed by bye-law, is not correct.

5. With this we turn to 1987(2) Karnataka Law Journal 389. The learned Single Judge in that case observed as follows:

"It appears to me that the contention urged on behalf of the petitioners is sound. In this behalf, it is necessary to point out that Section 6 of the Act which provides for making of an application for registration of co-operative societies, requires that the application should be accompanied by three copies of the proposed bye-laws of the co-operative society and Section 7 which empowers the Registrar of co-operative societies to register a co-operative society, requires him to ensure that the proposed bye-laws are not contrary to the provisions of the Act and the Rules. Therefore, it was obligatory for the society to provide in its bye-laws nomination of three members by the Government in conformity with Section 29 of the Act; otherwise the bye-laws would be contrary to the provisions of the Act.

Therefore, bye-law 21(1) provided for nomination of three persons by the Government. It was the maximum number for nomination by the Government under Section 29 of the Act. Therefore, though the notification dated 22-2-1984 refers to bye-law 21(1) of the bye-laws of the society, it must also be regarded as having been issued under Section 29 of the Act, for bye-law 21(1) itself to the extent it provided for nomination of 3 members by the Government, was incorporated for the purpose of making it to conform to Section 29 of the Act. The contention of the Government that it had the right to nominate three persons under bye-law 21(1), three persons under Section 29 and five persons under Section 53-A of the Act, is patently untenable."

But, it should be noted that what came up for discussion was the scope of Section 29. But the situation here is entirely different. That does not advance the case of petitioners. Equally 1979(1) Karnataka Law Journal 105 also will not help in deciding the issue.

6. As a matter of fact for the sake of completion we would refer to 1977(1) Karnataka Law Journal 85 Short Notes where Justice Malimath, as he then was, stated as follows:

"85. Kar. Co-operative Societies Act, 1959, Section 29(1). Nomination to Board of Directors:

Malimath, J: Section 29(1) of the Act entitles the State Government to nominate three members on the Board of Directors which will have the effect of increasing the strength of the Board of Directors of the society though it is not permitted by the bye-laws of the society. Having regard to the width of the language employed in sub-section (1) of Section 29 it cannot be said that the State Government cannot exercise its power of nomination without, in the first instance, taking steps to get the bye-laws fixing the number of members to the Board of Directors suitably amended. B.M. Rudriah v Government of Karnataka, W.P. No. 280/1977, dated 10-1-1977."

We are in respectful agreement with this view. Merely because the Government has power to nominate, the majority in the election will get upset is no reason to hold to the contrary. Such a consideration is not germane to the issue.

7. In the result, we dismiss the writ petition. However, there shall be no order as to costs. Any other question relating to nomination could be separately taken in the manner known to law.

8. Consequently, writ appeal also is dismissed.