(1991) 10 KAR CK 0032

In the Karnataka High Court

Case No : W.A. No. 2728 of 1991

Chamansab Madansab Kumbarwadi — APPELLANT

Vs

Roshan — RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29 (1), 41, 43, 44

Citation : (1991) ILR (Kar) 4303 : (1992) 1 KarLJ 462

Hon'ble Judges : Murlidher Rao, J;K.A. Swami, J

Bench : Division Bench

Advocate : S. Vijaya Shankar, for N.S. Shivayogimath, for the Appellant; Santosh Gureddi, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—As a copy of the Judgment was not produced along with the Writ Appeal, we got the records of the petition produced before us and perused the order dated 23-9-1991 passed in Writ Petition No. 11424/1991 against which the Writ Appeal in question is preferred.

2. The appellants were nominated by the State Government in exercise of its power u/s 29(1) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the ''Act'') on 30th April 1991 as Directors of the 7th respondent - The Muslim Co-operative Credit Society Ltd., Talikoti Taluk. The respondents-1 to 6 challenged the validity of the order of the Stale (government in W.P.No. 11424/1991 nominating the appellants. The learned Single Judge has held that the requirements of Section 29(1) of the Act were not satisfied; that the nominations did not fall either under Clause (a), or (c) or (d) of Section 29(1) of the Act.

3. Sri S. Vijaya Shankar, learned Senior Counsel appearing the appellants, has put-forth the following contentions:

That the provisions of Clauses (b) and (d) of Sub-section (1) of Section 29 of the

Act were satisfied; therefore, the State Government was well within its power in nominating the appellants as Directors of the 7th respondent-society; that at any rate the loan advanced to the 7th respondent-society fell u/s 53 of the Act, therefore, the State Government was entitled to nominate on the Committee of the 7th respondent-Society. Section 29(1) of the Act reads thus;

"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 VI, or

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 u/s 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 is contended that the words "augmentation of the share capital of a co-operative society as provided in Chapter VI" occurring in Clause (b) of Section 29(1) of the Act read with Section 53, which also falls under Chapter VI of the Act take into their fold a loan advanced by the Government to a co-operative society; that as in the instant case, undisputedly a loan of Rs. 10,000/- was advanced by the State Government and the said loan had not been fully discharged as on the date of the nomination, the State Government was entitled to make a nomination. It is also contended that the case also falls under Clause (d) of Section 29(1) of the Act because the State Government has guaranteed repayment of the principal and payment of interest on the loan amount advanced in favour of National Bank for Agricultural and Rural Development on behalf of the Apex Bank. Therefore, it falls under Clause (d) of Sub-section (1) of Section 29 of the Act.

4. We are of the view that the contentions are not tenable and as such they cannot be accepted. No doubt Section 53 of the Act falls under Chapter VI of the Act, but it has nothing to do with the share capital of a co-operative society. It relates to other forms of State Aid to a co-operative society. The types of State Aids enumerated in Section 53 of the Act do not fall in Clauses (a) to (d) of Sub-section (1) of Section 29 of the Act. Therefore, the aid which falls u/s 53 of the Act does not enable the State Government to exercise the right to nominate its

representative on the Committee of a co-operative society u/s 29 of the Act.

5. In order to attract Clause (b) of Sub-section (1) of Section 29 of the Act, the State Government must have either assisted indirectly in the formation of a co-operative society as per Section 40 of the Act or it must have augmented the share capital of a co-operative society. Section 41 of the Act provides for Direct Partnership of State Government in co-operative societies by subscribing to the share capital of a co-operative society. Section 42 of the Act provides for indirect partnership of State Government in co-operative societies by providing moneys to a co-operative society for the purchase of shares in other co-operative societies with limited liability. Section 43 of the Act is not attracted because it relates to Principal State Partnership Fund. Section 44 relates to Subsidiary State Partnership Fund, Neither of these Sections is attracted because it is not the case of the appellants that the State Government has either encouraged the co-operative society in question for its formation nor it has subscribed directly to the share capital of a co-operative society. It is also not the case of the appellants that there is indirect partnership of the State Government as contemplated u/s 42 of the Act. There is no case pleaded attracting Sections 43 and 44 of the Act. Section 53 as already pointed out is not attracted as it deals with other forms of State Aid to co-operative societies.

6. Thus it is not possible to hold that merely because a loan is advanced by the State Government long after the formation of the 7th respondent-society, Clause (b) of Sub-section (1) of Section 29 of the Act is attracted as it was not an assistance given indirectly in the formation or augmentation of the share capital of the co-operative society in question.

7. Similarly, there is no material placed by the petitioners to prove that the State Government has guaranteed the repayment of principal and payment of interest on loans and advances to the 7th respondent-society. There is no material placed to show that the Apex Bank had advanced the loan to the 7th respondent-society which in turn was advanced by the National Bank for Agricultural and Rural Development. Therefore, viewed from any angle, it is not possible to hold that Clauses (b) and (d) of Sub-section (1) of Section 29 of the Act are satisfied. Therefore, the conclusion reached by the learned Single Judge that the nominations made by the State Government nominating the appellants as Directors of the 7th respondent co-operative society in the purported exercise of its power u/s 29(1) of the Act is without the authority of law, is well founded. Hence, it does not call for interference.

Accordingly, the Writ Appeal is not admitted and it is dismissed.

