

(1994) 06 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 3517 of 1994 connected with Writ Petns. No's. 4245 and 8066 of 1994 and Writ Appeals No's. 580, 581, 708 and 709 of 1994

C.M. Udasi

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29, 53 A

Citation : AIR 1995 Kar 1 : (1994) ILR (Kar) 1971 : (1994) 3 KarLJ 5

Hon'ble Judges : S.B. Majmudar, C.J.; S. Rajendra Babu, J.; N.D.V. Bhat, J

Bench : Full Bench

Advocate : H.B. Datar, F.V. Patil and L.T. Mantagani, for the Appellant; B.V. Acharya, General and B.J. Somayaji, Government Advocate, B.Narasimha Murthy and Jayakumar S. Patil, for the Respondent

Judgement

Rajendra Babu, J.—These three writ petitions have been filed principally for the relief of directing the respondent No. 1 not to make nominations of official and non-official members to the Managing Committee of respondent No. 2 - - "Karnataka Sahakari Sakkare Karkhane" in excess of 1/3 of total number of members under Sections 29 and 53A of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the "Act") and Bye-laws No. 24(I)(c) of the Karnataka Sahakan Sakkare Karkhane Niyamita, Haveri, Dharwad District, in excess of six members. The other reliefs sought for in the writ petitions are consequential.

2. The 2nd respondent is a co-operative society registered under the Act in the year 1973 and had started production of sugar in the year 1983. The State Government, in exercise of its powers under the provisions of the Act, was making nominations from 1973 till 1991. The petitioners contend that respondents have an obligation to hold elections to the committee of management of respondent-2 Karkhane immediately on the expiry of 5 years from the production of sugar in terms of bye-law 24(2) of the bye-laws

governing the Karkhane; that the said elections were not held though production of sugar was commenced in the year 1983 itself.

3. That on 13-11-1991 calendar of events were issued fixing the date of election as 12-12-1991, that the same was postponed from time to time till May, 1992 and even thereafter no elections were held. In those circumstances, W. P. No. 33395/92 was filed before this Court and this Court directed that elections to the committee of management of respondent-2 Karkhane should be completed before the end of January, 1994.

4. Another writ petition in W.P. No. 37/94 was filed seeking postponing of the elections to be held in January, 1994 on the ground that the crushing season would come in the way of holding the elections. However, no interim order was granted by this Court in the said writ petition. In the circumstances, there was no option but to hold the elections on or before the end of January, 1994 and accordingly elections were held on 30-1-1994.

5. The committee of management of respondent-2 karkhane consists of 12 members elected by the producer shareholders, 3 members elected by non-producers individual members, 3 members elected as representatives of the co-operative societies and 3 nominees of Government. Elections were sought to be held for the 18 posts excluding Government nominees on 30-1-1994. Petitioners or first petitioner in each of these writ petitions set-up candidates belonging to their/his party Janata Dal while respondents 3 and 4 also set-up candidates on behalf of their party Congress-1. When the process of election was in progress, it is stated that the petitioners supported one independent candidate who contested from Dharwar. Counting of votes was completed on 30-1-1994 and the results were also announced. Out of 18 seats to the managing committee, 15 members belonging to petitioners' group were elected under the leadership of petitioners and only 3 candidates were elected from Congress--I party. In this background it is alleged that respondents 3 and 4 were bent upon to see that the control of respondent 2 karkhane was held by them and their party and that petitioners should not get elected as Chairman and Vice-Chairman of the karkhane; that the nominations were proposed to be made u/s 53A of the Act and under Bye-law 24(1)(c) of the Bye-laws of the Karkhane of 8 members under the notification dated 7-3-1994, but respondents 3 and 4 have prevailed upon the Government to nominate 5 Directors u/s 53A of the Act and 3 Directors under Bye-law 24(1)(c) of the Bye-laws so as to tilt the balance and these nominations are being done with the mala fide intention of capturing the posts of Chairman and Vice-Chairman not intended to safeguard the interests of the Government. It is alleged that the exercise of power of nomination is not bona fide since the object is different from the one for which the power is entrusted and exercised having been guided by extraneous considerations and the said motives are irrelevant to the entrustment of the power.

6. Although allegations of mala fides are in the petitions, at the time of hearing no arguments were addressed on this aspect of the matter. The petitioners

confined their arguments only to the power and competence of the Government to make nominations under Sections 29 and 53A of the Act and under Bye-law 24(1)(c) of the bye-laws. It is Urged on behalf of the petitioners that it is not open made to the respondents to make nominations both under the bye-laws and under Sections 29 as also 53A of the Act.

7. In order to appreciate the contentions advanced on behalf of the respective parties, it is necessary to refer to the provisions of the Act and the bye-laws. Bye-laws are framed by the 2nd respondent karkhane. Bye-law 24(1) reads as follows:

"24(1) The Board of Directors shall be consisted as under:

- (a) Twelve members elected by the producer-share holders.
- (b) Three members elected; by non-producers individual members and three members elected as representatives of the cooperative societies.
- (c) Three nominees of the Government including the Managing Director to be nominated by the Government.
- (d). The representative of Central Financing Agency.
- (e) In addition to 22 Directors as mentioned above the Industrial Finance Corporation of India. Industrial Development Bank of India and Industrial Credit and Investment Corporation of India shall have right to appoint and remove from time to time one nominee from each institutions on the Board of Directors of the Society and such nominees being non-rotating and not liable to hold any share during the time during which the society has borrowed funds from the Industrial Finance Corporation, Industrial Development Bank of India and Industrial Credit and Investment Corporation of India.
- (f) The nominees of the State shall have a right to appeal to Government against the decision of the Board which is likely to be prejudicial to the interest of Government and/or of the Industrial Finance Corporation of India and the decision so given by the Government shall be binding on the Board.
- (g) The Board shall not act on any such resolution passed in any meeting of the Board of Directors to which the Government nominee has expressed his opposition and in respect of which he has declared his intention to appeal to Government until such time as the decision of Government is received thereon."

8. Section 29 of the Act provides for nominees of the Government on the committee of a co-operative society where the Government has:

- (1) subscribed to the share capital of the co-operative society;
- (2) assisted indirectly in the formation or augmentation of the share capital of the cooperative society as provided in chapter VI;
- (3) guaranteed the repayment of principal and payment of interest on

debentures issued by a co-operative society or

(4) guaranteed the repayment of principal and payment of interest on loans and advances to a co-operative society.

In these circumstances, the State Government or any authority specified by it in that behalf shall, notwithstanding anything contained in the Act or the rules or the bye-laws, 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 1/3 of the total number of members of the committee of the co-operative society, whichever is less.

9. u/s 53A of the Act, notwithstanding anything contained in Section 29, where the State Government has subscribed to the share capital of a co-operative society not less than 50% of the share capital or Rs. 5 lakhs, it shall have the right to nominate as its representative 1 / 3 of the total number of members of the committee of the co-operative society.

10. On behalf of the petitioners it is contended that the State Government cannot make nominations both under Sections 29 and 55A of the Act and also under the bye-laws. The maximum number of candidates who could be nominated by the State Government shall not exceed the limit prescribed u/s 53A of the Act excluding the nominations u/s 29 of the Act or under the bye-laws.

11. On behalf of respondents it is contended that in these cases though it is permissible for the Government to make nominations both u/s 53A and also u/s 29 of the Act, it may not be necessary to consider that aspect of the matter and the nominations made herein may be confined only to the limit prescribed u/s 53A of the Act. It is submitted that the nominations under the bye-laws is traceable to different sources of power whereas the nominations are made u/s 53A of the Act. Even in the absence of reference of provisions u/s 53A or Section 29 of the Act while issuing impugned notification it was permissible for the Government to make nominations under the bye-laws. In the event the bye-laws provide for nominations, they do not control or override the provisions of the Act, for it becomes clear if we read Section 29 of the Act itself wherein there is a non-obstinate clause over-riding the effect of bye-laws. Even otherwise, it is submitted that the Act prevails over the bye-laws, bye-laws being subordinate or delegated legislation. It is also submitted that the power u/s 53A of the Act is independent of the bye laws and therefore nominations can be made both u/s 53A of the Act and the bye-laws.

12. The difficulty in this case arise on account of certain observations made by this Court in W.P. No. 10889/88 (Sri. Konkodi Padmanabha v. The Secretary and Commissioner. Government of Karnataka). In that case the power u/s 53A of the Act was exercised nominating certain members and thereafter once again the Government nominated three more Directors as the Board of Directors of the Society. The contention advanced therein, as in the present case, is that the number of members on the Board could not exceed 1/3 of the total number of

members whereas the bye-laws provide for 15 Directors and therefore only 5 Directors could have been nominated but whereas 8 Directors have been nominated. On behalf of the State it was urged that u/s 53A of the Act the Government has power to nominate 1/3 of the Directors and it was permissible to nominate 5 members in addition to the total number of members who could be nominated under the bye-law. This Court took the view that Sections 29 and 53A of the Act are mutually exclusive and the powers under Sections 29 and 53A could not be exercised simultaneously and Section 53A of the Act should be read as a proviso to Section 29 of the Act and in the circumstances set forth in Section 29 if nominations are made, no nominations can be made u/s 29 of the Act and the bye-laws merely provide for nominations to be made only in terms of Section 29 of the Act. Consequently, it was not permissible for the State to have made any nominations in excess of the number of members reflected in the bye-laws. This Court took the view that the contention advanced on behalf of the learned Advocate Genera] was contrary to the bye-laws. If the number of Board of Directors was 18, it could not exceed the maximum provided under the bye-law and therefore nominations in excess of the limit prescribed under bye-law could not be made by the State. Since the nominations would be in contravention of the bye-laws of the society, the power u/s 53A of the Act must be interpreted as to make nominations only up to an extent of 1/3 of total number of Board of Directors but not exceeding the total limit prescribed therein. It was also observed that in pursuance of Section 29 of the Act, bye-laws have been framed and bye-laws provide for nominations and subsequently Section 53A was introduced in the Act and therefore, when the bye-laws had not been amended in conformity with Section 53A of the Act reducing the number of other members or by increasing the total number of Board of Directors, it was not permissible to make nominations in excess of the limit prescribed. This Court, however, noticed that the provisions of the Act must prevail and the bye-law must yield to the provisions of the Act. It was pointed out that even though the society failed to amend the bye-laws after the introduction of Section 53A in the Act, the Registrar himself should have exercised the power to amend the bye-laws and unless the bye-laws are amended, no nominations could have been made by the State in excess of the limit prescribed. Proceeding on that basis, it was held that the notification in that case was bad in making the nominations in excess of the limit prescribed under the bye-laws.

13. In *C. E. Krishnegowda v. State of Karnataka* ILR (1991) Kant 2218 a Division Bench of this Court came to a diametrically opposite view after distinguishing the decision in the case of *Konkodi Padmanabha*. It was noticed that the Government have the right to nominate as its representatives under the bye-laws and that power is independent of the power u/s 53A of the Act. The power u/s 29 or Section 53A of the Act are independent of the powers under the bye-laws, the bye-laws being only an agreement amongst the members of a society, it can never prevail over the Act. In view of the non obstante clause in Section 29, this Court took the view that it has an overriding effect. On that basis the Court came

to the conclusion that the State, irrespective of the bye-laws, can make nominations.

14. The well-settled legal position is that when, the Act provides for certain situations to be covered, irrespective of whether the bye-laws cover the situations or not, it is certainly open to the State to exercise its power conferred upon it under the Act. This Court in Jagdish Patil v. State of Karnataka (W.A. No. 562/78, D.D. 12-4-1979) has held that Section 53A of the Act is virtually proviso to Section 29 of the Act. This view was reaffirmed in Konkodi Padmanabha's case and the two Division Benches have consistently taken the view that the two provisions are mutually exclusive.

14A. In respect of the Societies falling u/s 29(1)(a), (b) and (c) of the Act the State Government has power to nominate as its representatives to the extent of 1/3 of the total number of members of the Managing Committee of the Society or 3 members, whichever is less. In respect of a Society which falls u/s 53A of the Act, the State Government can exceed that number prescribed by Section 29 of the Act and nominate 1/3 of the total number of members of the committee of management. The powers available u/s 29 and Section 53A of the Act are mutually exclusive and not cumulative and the power in both sections cannot be simultaneously exercised. The power can be exercised either u/s 29 or Section 53A of the Act. Following the decision in W. A. No. 562/78, this Court again reiterated that though Section 53A is incorporated as a separate section, in truth and substance it is in the nature of a proviso to Section 29 of the Act, On this legal position respondents did not join issue.

15. The only question that arises for consideration, therefore, in these cases is whether nominations can be made by the Government both under the bye-laws and also u/s 53A of the Act?

16. Section 53A of the Act Is a statutory power exercisable under the Act and it certainly prevails over any bye-law that may be framed. Merely because bye-laws have to be framed in conformity with the Act, it does not mean that the same would control or whittle down the powers exercisable under the statute. Even in the absence of any power for nomination under the Act, if the bye-laws themselves provide for nominations, there can be no question of nominations being traced to the Act even though made under the bye-laws. Unless the bye-laws themselves provide that nominations could be made as provided under anyone of the provisions of the Act and the by law itself is traceable to the Act under which nomination is made, there is no question of reading the bye-laws as controlling provisions of the Act. In such an event when the bye-laws do not refer to any provisions of the Act but merely make a provision for nomination, the State Government can exercise the powers u/s 53A of the Act independent of the bye-laws since the Act prevails over the bye-laws.

17. The difficulty noticed in Konkdo Padmanabha's case, in our view, really does not arise for consideration. With great respect we must state that the Act

controls bye-laws and not vice versa. Bye-laws are merely delegated legislation or subordinate legislation and can never override the Act. Whatever may be the number that may be fixed under the bye-laws, that number cannot circumscribe the number of nominations to be made in exercise of the powers under the Act. In that view of the matter, with respect, we disagree with the view that the nominations by the Government u/s 53A of the Act should be only to the extent of 1/3 of total number of Directors and such nomination is not in addition to the nominations provided under bye-law but excluding the nominations contained in bye-law, and further, the nominations could not be and should not have the effect of increasing the number of Board of Directors as fixed by the bye-laws. On the other hand, we have come to the conclusion that it is permissible for the Government to make nominations to the extent of 1/3 of Board of Directors and such nominations are in addition to the nominations provided in the bye-laws unless the bye-laws themselves are traceable to any provisions of the Act, namely Section 29 or Section 53A of the Act. Further, the nominations could exceed the number of members on the Board of Directors fixed in the bye-laws.

18. Consequently, we hold that the State has power, as set forth above and we overrule the decision of this Court in Konkodi Padmanabha's case to the extent indicated above.

19. It is brought to our notice by the petitioners that the State Government has made nominations to the extent of 8 members whereas the total number that could be taken note of as provided u/s 53A of the Act is the total number fixed in bye-law No. 24 of the bye-laws. Clause (e) of Bye-law No. 24(1) makes it clear that there can be 22 Directors and in addition, there can be directors to be nominated by the Industrial Finance Corporation of India, Industrial Development Bank of India and Industrial Credit and Investment Corporation. Thus, the total number of Directors can go up to 25.

20. It is brought to our notice that the 2nd respondent karkhane has fully discharged its liabilities to the financial institutions and Central financial agencies referred to in clauses (a) to (d) of bye-law 24(1) and therefore the State Government cannot make nominations in excess of 7. On this factual position there is no dispute.

21. Nomination to the extent of 7 Directors u/s 53A will be in addition to the nomination of 3 Directors under the bye-laws, as per Notification dated 7-3-1994 (Annexure-G). Thus, the total number of nominated Directors both u/s 53A and the Bye-laws would be 10 and not 11. Since the State Government has made nominations to the extent of 8 and not to the extent of 7, the notification issued by the Government is bad to that extent. Accordingly, Annexure-G will stand confirmed and Annexure-F will stand modified.

22. We leave it to the option of the Government to delete one of the nominated Directors from the impugned notification so as to bring it in conformity to what is stated above. Until such time, the interim order granted by this Court shall be in

force.

23. Writ Petitions are partly allowed as stated above.

24. In view of the order made by us on the main petitions, the interim orders and the Appeals thereon do not survive any longer and the interim orders shall stand dissolved subject to what is stated above.

25. Writ Appeals, therefore, stand disposed of accordingly.

26. Order accordingly.