

(1979) 03 KAR CK 0019

In the Karnataka High Court

Case No : W.P. 1434/77. 28th February 1979

C.S. Mohan

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-03-1979

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2A(5)

Citation : (1979) 2 KarLJ 50

Hon'ble Judges : Swami, J

Judgement

1. By consent of parties, this matter was treated to be in the list for hearing today and was accordingly heard.

2. In this petition, the petitioner who is a member of the 6th respondent-society, has challenged, the order of stay passed by the State Government in ROC 335 COF 78, dated 19-12-1978, staying the operation of the order dated 8-12-1978 of the Director of Sugar and Additional Registrar of Co-operative Societies in Karnataka, Bangalore, in No. DSO/262/COP/78 disqualifying the 3rd and the 4th respondents for being continued on the committee of management of the Gauribidanur Sahakara Sakkare Karkhane Ltd., Gauribidanur. The petitioner has also further prayed for quashing of the proceedings pending before the Government. The contention of the petitioner is that the appeal preferred by the 3rd respondent before the State Government is not maintainable inasmuch as the order passed under S. 29C of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act") is the one passed by the Additional Registrar of Co-operative Societies who is subordinate to the Registrar of Co-operative Societies as per the notification issued by the State Government bearing No. RDC. 30 CLM. 78, dated 5th July 1978, determining the hierarchy of the officers. As per the said notification, the Additional Registrar of Co-operative Societies is subordinate to the Registrar of Co-operative Societies. On the basis of this, Shri H. Subramanya Jois, the learned. Counsel appearing for the petitioner, contended that though S. 29C of the Act provides that the power under the said Section has to be exercised by the Registrar of Cooperative,

Societies but in view of the definition of the word "Registrar" as contained in Section 2 (i) of the Act, which includes the Additional Registrar also and that being so, the Additional Registrar has rightly exercised the powers under Section 29C of the Act, and the Additional Registrar being the subordinate to the Registrar as per the notification referred to above an appeal lies to the Registrar against the order of the Additional Registrar under Section 29C of the Act and not to the State Government; therefore it was contended that the proceedings pending in the form of an appeal before the State Government are not maintainable and as the said proceedings are liable to be quashed, consequently the order of stay granted in such a proceeding is without jurisdiction and the same is also liable to be quashed.

3. In reply to the arguments of Shri Subramanya Jois, it was contended on behalf of the respondent-4 that the power of the Registrar of Co-operative Societies under Section 29C of the Act has been delegated to the Director of Sugar who is also designated as the Additional Registrar of Cooperative Societies; therefore, the Additional Registrar exercised the power of the Registrar and as such, the appeal filed before the, State Government as against the order of the Additional Registrar of Co-operative Societies, was maintainable.

4. The notification No. RDC 24 CLM 78 dated 17th May 1978 reads as follows:

GOVERNMENT OF KARNATAKA

No. RDC 24 CLM 78. Karnataka Govt. Secretariat,
Vidhana Soudha, Bangalore,

Dated: 17th May 1978.

Notification

In exercise of the powers conferred by sub-section (5) of Section 2A (Karnataka, Act 11 of 1959), Government of Karnataka hereby confers the powers of the Registrar of Co-operative Societies under Section 29C and 126A of the Karnataka Co-operative Societies Act, 1959, on the Director of Sugar and Additional Registrar of Co-operative Societies in respect of Co-operative Sugar Factories.

Sd/- A. Parameshwarappa,

Under Secretary to Government,

Rural Development and Co-operative Dept."

5. The word "Registrar" has been defined under Section 2(i) of the Act, as follows:

"Registrar" means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act, and includes an Additional Registrar of Co-operative Societies, a Joint Registrar of Cooperative Societies a Deputy Registrar of Co-operative Societies and a Assistant Registrar of Co-operative

Societies appointed to assist the Registrar when exercising all or any of the powers of the Registrar;"

Thus, it is clear that the definition of the word "Registrar" includes the other officers mentioned therein appointed to assist the Registrar in exercising all or any of the powers of the Registrar. Section 2A of the Act provides that the State Government may appoint any person to be Registrar of the Cooperative Societies and also appoint other officers including the Additional Registrar of Co-operative Societies for the purpose of assisting the Registrar. Sub-Section (4) of Section 2A of the Act specifically provides that the officers and persons employed in the administration of the Act, shall be subject to the superintendence, direction and control of the, State Government and the Registrar, and the officer or officers to whom each officer appointed under the Act, shall be subordinate shall be determined by the State Govt.

6. Proviso to sub-sec. (4) of S. 2A of the Act provides that the; power vested in the State Government and the Registrar under the said sub-section shall not be exercisable so as to interfere with the discretion of any authority in the exercise of quasi-judicial function whether as original or appellate authority.

7. Sub-sec. (5) of S. 2A of the Act empowers the State Government to confer on any person appointed as Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrars of Co-operative Societies of all or any of the powers of the Registrar under the Act. It is in exercise of this power, the power of the Registrar under S. 29(C) of the Act has been conferred upon the Additional Registrar by the notification referred to above. Therefore, it is clear that the notification No. RDC 30 CLM 78 dated 5th July 1978 relied upon by the learned Counsel for the petitioner cannot be of any help to him. By reason of the said notification itself, the, Additional Registrar cannot exercise the power of the Registrar under the Act unless specifically such a power is conferred upon the Additional Registrar by the State Government by issue of a notification under sub-sec. (5) of S. 2A of the Act. Similarly, the definition of the word "Registrar" as provided in S. 2 (i) of the Act also cannot be of any help to the petitioner inasmuch as the said definition only provides that the Registrar includes the Additional Registrar appointed to assist the Registrar when exercising all or any of the powers of the Registrar. It is also clear that by reason of this definition alone, the Additional Registrar cannot exercise the powers of the Registrar and the powers of the Registrar under the Act have to be specifically conferred upon the Additional Registrar and on such conferment of the powers, the Additional Registrar can be said to be the Registrar when he exercises such powers of the Registrar as delegated to him.

8. Thus, in view of the aforesaid delegation, the power exercised by the Additional Registrar of Co-operative Societies under S. 29C of the Act, was that of the Registrar of Co-operative Societies as a delegatee; therefore, the appeal to the State Government as against the said order was competent, in view of S. 106(1) (d-1) of the Act, read with sub-sec. (2) (a) of the said Section which are as follows:

S. 106. Appeals to other authorities:

(1) Subject to the provisions of S. 108A, an appeal shall lie under this Section against,

.....

.....

(d-1) An order of the Registrar under S. 29-C.

.....

(2) An appeal against any act, decision or order under sub-sec. (1) shall be made within sixty days from the date of the act, decision or order.

(a) If the act, decision or order was made by the Registrar, to the State Government."

9. From what has been stated above, it is clear that the contention of Shri Subramanya Jois that the appeal preferred before the State Government was not competent, cannot at all be accepted. Consequently, the impugned order passed by the State Government cannot be interfered with on the aforesaid ground.

10. For the reasons stated above, this writ petition fails and the same is dismissed.

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Bombay Public Trusts Act (29 of 1959), Ss. 19, 79 & 80 - Dispute as to succession to headship of Math - Jurisdiction.

The Bombay Public Trusts Act, 1950 was not intended to interfere with the religious matters of public trusts. Its primary purpose is only to ensure proper administration of trust properties. It is not a self-contained code covering all questions pertaining to public trusts.

The succession to the office of mahant of a math is a religious matter and is regulated by the practices and customs of the particular math.

The matter of such complexity involving religious practices and principles governing succession to a matadhipathi cannot be equated to an ordinary question of mode of succession to the office of a trustee as contemplated under S. 19 of the Act and it falls outside the scope of S. 19.

Hence, the authorities under the Act have no jurisdiction to decide a dispute as to succession to the headship of a math and the mode thereof.