

(2003) 09 KAR CK 0093
In the Karnataka High Court
Case No : Writ Petition No. 14521 of 2003

Dinesh Suvarna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

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

Citation : (2004) ILR (Kar) 1094 : (2004) 2 KarLJ 308 : (2003) 4 KCCR 385 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.K. Acharya, for the Appellant; M. Keshavareddy, High Court Government Pleader for Respondents-1 and 2 and Kishore Shetty, for Respondent-3, for the Respondent

Judgement

N.K. Patil, J.—In this petition, the petitioner is questioning the legality and validity of the impugned order dated 15-3-2003 passed by the 2nd respondent in No. AR:38: SAMANYA:CR 54/02-03 (Annexure-E).

2. The only grievance of the petitioner as made out by the learned Counsel for the petitioner in this writ petition is that, when the matter had come up for orders before the 2nd respondent on 15-3-2003, the petitioner has filed an application requesting one more week's time to produce the documents to substantiate his case and also to produce the overdraft renewal order passed by the authorities. But, his request was refused by the 2nd respondent on the ground that along with the application he has not produced any documents. Further, the learned Counsel for the petitioner has pointed out that the Manager of the Bank had appeared before the 2nd respondent, gave evidence and sought for ten days time to produce the order passed by the Competent Authority renewing the overdraft facility provided to the petitioner. Instead of considering the request made on behalf of the petitioner and the Manager of the Bank, the 2nd respondent on the same day has proceeded to pass orders on the ground that in spite of giving sufficient opportunity, the petitioner has not utilized the

same and therefore, he is not entitled for any further adjournment u/s 29-C(I)(a) of the Karnataka Co-operative Societies Act, disqualified the petitioner from the membership and barred him from participating in the election and he could not become a member of the any Bank or Society for a period of three years. Being aggrieved by the impugned order, the petitioner has presented this writ petition.

3. Per contra, the learned Counsel for the 3rd respondent has substantiated the order passed by the 2nd respondent. He has vehemently submitted that the impugned order has been passed by the 2nd respondent after giving sufficient opportunity to the petitioner, who in spite of sufficient opportunity given, has not utilized the same and failed to produce any documents. Further, he has submitted that, when the matter was listed on 15-3-2003 before the 2nd respondent, except making an oral statement that the renewal of the overdraft facility provided to the petitioner is pending adjudication before the Competent Authority he has not produced any documents, therefore, the 2nd respondent has rightly refused an adjournment. Further, he has pointed out that, admittedly an award was passed against the petitioner, he was due the said award amount, he has not repaid the or produced any documents to that effect. Even as on date of the proceedings u/s 29-C(I) was initiated, the petitioner was a defaulter and he is not entitled to continue as the member. Therefore, he has submitted that, the 2nd respondent after taking into consideration all the aspects of the matter has passed the order in strict compliance of the mandatory provisions of the Act. No error or illegality as such was committed by the 2nd respondent, nor the petitioner has made out any grounds to interfere with the same. He has submitted that, the petitioner has got alternative, effective remedy by way of filing an appeal before the Competent Authority as provided under the relevant provisions of the Karnataka Co-operative Societies Act and Rules. The petitioner has not made out any good grounds to exercise the extraordinary jurisdiction of this Court. Hence, he has submitted that the petition is liable to be dismissed.

4. The learned Government Pleader, inter alia contended and substantiated the order passed by the 2nd respondent. He has submitted that the question to be decided by the 2nd respondent is as on the date of initiating the proceedings, whether the petitioner is disqualified or not. But in the instant case, on the materials available on record, it is clear that the petitioner is a defaulter. Therefore, the 2nd respondent has not committed any error.

5. After having heard the learned Counsels for both parties at a considerable length of time, after reassessing the entire materials available on file and the contentions urged by the petitioner, the only question that arises for consideration is: Whether the 2nd respondent is justified in passing the impugned order and the same is in consonance with the relevant provisions of the Karnataka Co-operative Societies Act and Rules.

6. It is not in dispute that on 15-3-2002 when the matter had listed before the 2nd respondent, the petitioner had given a letter in writing requesting one more week's time to produce the documents to show that the overdraft facility

provided to him is renewed by the authorities. The request of the petitioner was refused by the 2nd respondent on the ground that, in spite of giving sufficient opportunity, the petitioner has not produced any documents and he has proceeded with the matter and passed the orders on the same day. After careful perusal of the impugned order dated 15-3-2003 passed by the 2nd respondent as per Annexure-E, it is significant to note that Manager of the Bank has appeared before the authority and gave evidence. He has also orally requested for ten days time to produce the documents regarding the renewal of the overdraft facility provided to the petitioner. In spite of the request made by the petitioner and the Manager of the Bank, the 2nd respondent has passed the order. The said order is not in strict compliance of the mandatory provisions of Section 29-C(I) of the Karnataka Co-operative Societies Act, because, the matter in dispute is pending adjudication and civil consequence will follow and once he is disqualified, the petitioner has the stigma for his entire career. When these matters are involved, the concerned officer is bound to consider the matter in strict compliance of the mandatory provisions of the Act. But, after going through the orders passed by the 2nd respondent and after critical evaluation of the materials it proves beyond all reasonable doubt that the 2nd respondent has not proceeded in accordance with law. When there is a request on behalf of the petitioner and the Manager of the Bank as recorded by the 2nd respondent in the impugned order at page 3 in paragraph 3, he ought to have adjourned the matter for another ten days and passed the same order what he had passed on 15-3-2003, if he is not satisfied or the petitioner produced any documents. Prima facie, this aspect of the matter is overlooked by the 2nd respondent. Therefore, I am of the considered view that, the impugned order passed by the 2nd respondent is not sustainable and it is passed contrary to the mandatory provisions of Section 29-C(I) of the Karnataka Co-operative Societies Act.

7. Having regard to the facts and circumstances of the case as stated above and taking into consideration the factual and legal aspect of the matter as stated supra, I do not find any justification to sustain the order passed by the 2nd respondent and it is liable to be set aside.

8. Accordingly, the writ petition stands disposed of with the following directions:

(i) The writ petition is allowed. The impugned order dated 15-3-2003 in No. AR:38:SAMANYA:CR:54/02-03 (Annexure-E) is hereby set aside. The matter stands remitted back to the 2nd respondent for fresh consideration.

(ii) The 2nd respondent herein is directed to proceed with the matter and decide the same in strict compliance with the mandatory provisions of the Karnataka Co-operative Societies Act, after affording opportunity to the petitioner, as expeditiously as possible, within an outer limit of six months from the date of the receipt of the copy of this order.

The Government Pleader is permitted to file memo of appearance within four weeks from today.