(2011) 09 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 24138 of 2011

Dr. M.N. Venkatararmu APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 12
Karnataka Co-operative Societies Act, 1959 — Section 29 G

Citation : (2011) 09 KAR CK 0022

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Laskhminarayana, Shri. M.R.C. Ravi, for Respodent Nos. 6 and 7 and Mr. Subbarao, for the Appellant; Sundaraswamy Ramdas, Advocate for Respodent No. 5, Shri . Ashok Haranahalli, Advocate General for Respodent Nos. 1 and 3, M/s. Sundaraswamy and Ramdas, Advocates for Respodent No. 2 and Shri M.R.C. Ravi, Advocate for Respodent Nos. 5 and 4, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of together as identical issues arise for consideration.

2. In order to address the petitions it is necessary to take note of the following:

The Karnataka Co-operative Milk Producers'' Federation Limited (Hereinafter referred to as the ''KMF'', for brevity) a respondent in both these petitions, is a Co-operative Society incorporated under the Kamataka Co-operative Societies Act. 1959 (Hereinafter referred to as the ''KCS Act'' for brevity). The KMF has framed Bye-laws for itself. The General Body of members is the supreme authority, subject to the KCS Act, Rule-thereunder and the Bye-laws. The management of the affairs of KMF is vested in the Board of Directors.

Under the Bye-laws, an Expert panel is constituted, this consists of the Chairman of KMF as its Chairman. the Principal Secretary to Government, Animal

Husbandry Department, a representative of the National Dairy Development Board, and the Managing Director of KMF, as its members. Its functions, inter alia, are to recommend to the Board the administrative structure of KMF, its staff requirements, qualification, experience and pay scales of its employees. It is responsible for selection of candidates for promotional posts in the cadre of Joint Director and above except the Managing Director. When it considers the selection and recruitment of the Managing Director it consists of only the first three members mentioned above, excluding the Managing Director.

The service conditions of the employees of KMF are governed by the Cadre and Recruitment Rules (Hereinatter referred to as the ''C & R Rules, for brevity) and Subsidiary Rules, framed by the Board of Directors.

It is relevant to note, for the purposes of considering these petitions, that the Bye-laws did prescribe certain technical and professional qualifications for appointment to the post of Managing Director. As on 23-9-2004, there was an amendment to the Bye-laws deleting the technical and professional qualification.

The petitioner in the first of these petitions, Dr M.N. Venkatramu (Hereinafter referred to as ''MNV'', for brevity) is presently said to be working as Director (HR & Training), Central Training Institute, KMF. He is said to have functioned as the In-Charge Managing Director of KMF from 14-8-2009 to 28-4-2010, when the regular Managing Director was on leave. He had handed over charge thereafter to one A.S. Premnath (Hereinafter referred to as ''ASP, for brevity). It is MNV''s case that as per the Seniority list in the cadre of Functional Directors, prepared by the Managing Director, as on 16-12-2006.. he was ranked at Serial no. 5 and in the later Seniority list of 8-4-2011. he is ranked at Serial no. 1. It is his further case that the post of Managing Director has to be filled up by Selection. The C&R Rules provides for Recruitment to the post as follows:

SI. No.

Cadre

Method of Recruitment

Minimum Qualification and Experience

1

Managing Director (Rs. 37406-67000+10000) corresponding grade pay (Central Scale)

Appointment by selecting officers through open recruitment/selection from among the senior officers of the Federation in the cadre of Functional Directors. (Pay Scale Rs. 24450-31.800)

This shall not apply in case of Managing Director, whose services are lent on foreign services terms to the Federation

Recruitment

Must possess a post Graduate Degree in Dairy Technology/ Food Technology/ Animal Husbandry/Veterinary Science/Dairy Engineering. General Graduates with MBA (Marketing) would also be eligible.

Must have put in not. less than 15 years of managerial experience of which 5 years should be in a senior management cadre in a large-scale business concern/ Public Sector Undertakings/

Government concerns.

Recruitment by internal Selection:-

By selection from among the Senior Officers of KMF in the cadre of Functional Directors/Managing Directors of A Grade Milk Unions in the scale of Rs. 24450-31800 and who shall possess a Degree in Dairy Technology/ Animal Husbandry and Veterinary Sciences/Engineering/Agriculture/Food Technology and must have served as Managing Director for not less than 3 years in any milk Union of the Federation and must have served a minimum of three years in the cadre of Functional Director,

Appointment by recruitment or by internal selection or by deputation shall be decided by the EPC/Board.

3. It is further stated that Clause 16 (iv) has been inserted in the C& K Rules, by amendment as per Notification dated 9-2-2007. the same reads as follows:

Relax the period, specified therein prescribed for selection in the rules of recruitment specially made in respect of Senior Scale of posts like Managing Director of KMF. Functional Director Cadre and Additional Director Cadre posts if suitable candidates are not available.

It is the accusation of MNV that the above clause was inserted with the sinister and singular motive of accommodating I.R. Ramalinge Gowda (Hereinafter referred, to as "Gowda'', for brevity), who is the petitioner in the second of the above petitions. Gowda is said to be a B.Sc, Degree holder.

It is the complaint of MNV that he was given to understand that the regular process of selection to the post would be initiated and that his handing over charge to ASP was only a temporary arrangement- With the passing months his suspicion of being denied his due has been confirmed. To compound the injury. as ASP was proceeding abroad on an official tour, there was a move to hand over charge to the junior most person in the seniority list. MNV had challenged the said action by way of a writ petition before this court in WP 16692/2011, the same however has been rendered infructuous. as that, order of posting is no longer operative.

It is also MNV''s case that even Gowda is junior to him. but he has been given the post of Managing Director. KMF. which carries a higher pay than MNV''s - hence he has challenged the same by way of a Writ petition in WP 19340 /2009, which is pending consideration before this court.

It is contended that the Managing Director. KMF. had convened a meeting of the Expert Panel Committee on 24-6-2011 to consider the amendment of the C&R Rules, whereby it was proposed to create an additional post equivalent to that of Managing Director carrying the Central Government pay scale, while prescribing a Post-Graduate qualification for the post, only with a view to accommodate ASP. who is a post- graduate, as the Managing Director. This having been carried out and duly approved by the Board of Directors. It is that which is under challenge in the present petition by MNV.

4. In the second of these petitions filed by Gowda, it is his case that he was selected to the post of Managing Director and was appointed as on 30-4-2007. It is his case that as per the Order of appointment he is entitled to the pay scales extended to Officers of the IAS cadre in the super time scale, as revised from time to time. The order of appointment specifically stipulate:: that he cannot be transferred elsewhere, nor could his post be changed. It is stated that KMF intended to divest him of his duties and sought to transfer him as the Chairman and Managing Director of Dernpo Dairy Industries Limited, Asangi, Bagalkot District, this was promptly challenged in a writ petition before this court in WP 20015/2010 and this court has granted an interim order restraining the transfer.

It is contended that there was yet another attempt to reduce his salary and to restrain him from performing his duties, which was the subject matter of another writ petition in WP 12052/2011, where in this court had granted an interim order restraining the respondents from doing the above. There was also an attempt to reduce his seniority, which is the subject matter of a writ petition in WP 19075/2011 which is pending consideration before this court.

It is Gowda''s further complaint that an effort was made to divest him of his duties and responsibilities by the concerted actions of ASP and the other authorities, by redesignating the post of the petitioner, in violation of the order of his appointment and in violation of Section 29G of the KCS Act. It is his case that he was on medical leave from 14-8-2008 to 30-8-2009 and on his return to duty, he found that his duties were being exercised by MNV. as the in-charge Managing Director. There after the position was taken over by ASP. It is alleged that ASP was instrumental in giving cause for the several writ petitions being filed by the petitioner, which are referred to hereinabove. The creation of an additional post in the cadre of Managing Director and to designate the same as Managing Director/Chief Executive Officer and the redesignation of the existing post of Managing Director as Managing Director (Projects and Administration) is sought to be questioned in the present petition.

5. The learned Senior Advocate, Shri Subba Rao, appearing for the learned counsel for Gowda, would contend that Gowda is the Chief Executive officer, who is designated as the Managing Director. His appointment is governed, not only by the provisions of the KCS Act and Rules but also by the provisions of the Bye-laws, he cannot therefore be removed or divested of his portfolio without the concurrence of the Government of India and the NDDB. in terms of Bye-law no.

26.3. The Government of India and NDDB have declined to grant permission.

It is further sought to be pointed out that the following sequence of events would indicate the mala fides on the part of all concerned who have acted in concert, with the singular mission of sidelining and divesting the petitioner of his position. ASP had convened the Expert Panel Committee on 24-6-201 i, which decided to recommend the creation of the additional post of Managing Director / Chief Executive Officer. The same was promptly approved by the Board of Directors on 25-6-2011 and the Chairman had addressed the Registrar of Co-operative Societies by a communication dated 27-6-2011, seeking approval of the recommendation. The Registrar had sought a clarification from KMF, which was clarified on the very same day by the Incharge Managing Director to his advantage, on 27-6-2011 itself. The Registrar has granted approval on 2-7-2011 Shri Subba Rao contends that the Registrar could not have done so in view of Rule 14 E (8) and (9), respectively. The Board Resolution had been communicated to its members on 1-7-2011. The State Government, in (sic), has passed an order dated 2-7-2011, by which ASP has been, appointed as the Managing Director and the petitioner has been removed from the post.

It is also pointed out the above action is without the approval of the Government of India and the NDDB which was necessary, in terms of Bye - law 26.3.

It is pointed out that the entire action of the respondents is patently illegal and has been carried out to circumvent the orders of this court granted in favour of the petitioner.

6. The learned counsel for MNV would contend that not only was the creation of an additional post of Managing Director bad in law the appointment of both ASP and Gowda are bad in law, as Gowda was said to be junior to MNV. Further, Gowda who is embroiled in several acts of misappropriation is rightly kept out of office and that there are proceedings pending against him. It is pointed out that as per the Bye-laws of the KMF, only one post of Managing Director is envisaged. Even Section 29G of the KCS Act contemplates a sole Managing Director or Chief Executive Officer. Therefore, the blatant creation of a post of Managing Director, who is vested with the powers that were exercised by the existing Managing Director, in the absence of a provision for increase of the cadre strength, is without authority of law. The learned counsel would contend that without the amendment of the Bye-laws as contemplated, the Board of Directors, notwithstanding the recommendation of the Expert Panel Committee, by themselves could not create a post. It would be wholly without jurisdiction, It is also contended that in the appointment of a Managing Director, the Managing Director cannot be a part of the Expert Panel Committee and the Expert Panel Committee which consisted of the Principal Secretary to Government. Animal Husbandry Department and a representative of the National Dairy Development Board, being conspicuously absent, a unilateral decision of vested interest is clearly illegal and patently mala fide. The approval of the Registrar of Co-operative Societies or the State Government to such creation of posts does not

validate the same. Section 29G of the KCS Act, which again contemplates a single Managing Director for a society, affords the power of appointment of such officer in the absence of the Rules providing for the same in respect of assisted society. In the instant case on hand, since the Rules provide for procedure for the appointment or removal of a Managing Director, the question of the Registrar of Co-operative Societies or the Government exercising its. power is redundant.

7. The learned Senior Advocate Shri S. Ramadass appearing for the counsel for KMF, would contend that in so far as Gowda is concerned he was selected and promoted as additional Director on 23-9-2004 and thereafter as Functional Director on 30-10-2006. even before completion of the requisite five years as Additional Director. That promotion has been questioned by one Sudhakar, an Additional director, in a writ petition in WP 15007/2006. It is alleged that Gowda was the favourite of the erstwhile Chairman of the Board of Directors and it was at his behest that it was possible for Gowda to achieve such a meteoric rise, when even the C&R Rules stood amended to accommodate him inspite of lack of qualifications. He had secured three promotions in a span of just about 2 years and 7 months. With the change in guard, pursuant to the change in the political Government, certain senior members of the Board of Directors were emboldened to raise objections regarding the appointment of Gowda as the Managing Director, which was the reason for the matter having been considered by the Expert panel, the said body in turn felt the need for the opinion of an outside expert and the matter had been referred to one C.N. Parashivamunhy, Additional Registrar of Co-operative Societies, who had submitted a report, recommending among other things the need for prescription of technical and other.qualifications for the post of Managing Director, and the role of the Expert Panel in eliminating senior-eligible candidates on the basis of appraisal of performance. The Board of Directors acting on the said Report resolved to hold an enquiry about the selection process and to rectify the defects brought to light.

It is further stated that in the regular Audit Report for the year 2008-2009 of KMF. it was noticed that Gowda had committed grave financial and administrative irregularities causing losses to the organization. In the mean while the Director, Cooperative Audit, bad ordered for re-verification of the audited accounts of KMF for the years 2001-02 to 2007-08. There was also a re-verification of the accounts for the year 2008-09 ordered by the Board of Directors. The Auditors had brought to light.

grave financial and administrative irregularities. In respect of which KMF has initiated proceedings against Gowda. In the meanwhile, the Registrar of Co-operative Societies has also initiated an enquiry against Gowda. It was in that background that the Board thought it prudent to keep Gowda away from office, in the interest of the Organization. The decision of the Board having been conveyed to Gowda - he had proceeded on medical leave from 13-8-2009 to 31-8-2009, while handing over charge to MNV. By a resolution dated 12-9-2009 MNV was posted as officiating Managing Director, he was working in that capacity till 28-4-2010. Thereafter ASP was posted as the officiating Managing Director.

It is contended that the need was felt for a regular Managing Director with appropriate professional and technical qualifications as specified by the NDDB. and keeping in view the growing scale of operations of KMF. This was recommended by the Expert Panel as per resolution dated 24-6-2011. The Board of Directors approved the proposal of creating an. additional post of Managing Director (Chief Executive Officer) while re-designating the existing post of Managing Director as Managing Director (Projects and Training)and to amend the, C&R Rules to give effect to the same. It was subsequently communicated to the Registrar of Co-operative Societies, who had also approved the same. It is further stated that such approval was not contemplated either under the Act or the Bye-laws, as the amendment of the C&R Rules was within the domain of the Board of Directors.

It is further contended that the assertion as to the changes not having been approved by the NDDB, is misleading. On the other hand, the said body has welcomed the same since it is as per the Model bye-laws approved by the NDDB.

The non-participation of the member of NDDB either in the Expert Panel or the Board of Directors'' meeting was at the option of the said representative. The proceedings, however, are not vitiated on account of such absence.

It is also contended that in so far as the appointment of ASP as the Managing Director is a conscious decision having regard to his superior qualifications and proven track record during his service of 35 years with the organization. His appointment has been duly approved by the Government.

8. The learned Advocate General Shri Ashok Harnahalli. would contend on behalf of the State that in matters pertaining to amendment of Service Rules as also the creation of posts is a matter of policy left to the discretion of the Board of Directors of KMF. The Bye-laws empower the Board of Directors to take such action for certain posts. In so far as the creation of the new post of Managing Director- Chief Executive Officer and the appointment of ASP to the said post was placed before the State Government for its approval. The State in turn, has addressed the overall circumstances and the massive growth of KMF requiring such a post and has accorded its approval.

It is pointed out that the Board of Directors having demarcated the powers, functions and duties of the Managing Director (CEO) as also that of Managing director - Projects and Training, there is no infirmity in the appointment which required the Government to hold that such appointment is not in accordance with the law.

9. In the light of the above, the primary point for consideration is whether on a conjoint reading of the Bye-laws of the KMF, the C&R Rules, the subsidiary Rules and the KCS Act and Rules, it can be said that the Board of Directors, on the recommendation of the Expert Panel Committee could create the post of

Managing Director (Chief Executive Officer) and redesignate the erstwhile Managing Director''s post as Managing Director (Projects and. Administration).

The petitioners in these two petitions namely, MNV and Gowda cannot be said to have an identical interest. Insofar as MNV is concerned, he is questioning the action of the management, as according to him, his seniority and eligibility has been overlooked in selecting and appointing ASP as the Managing Director (Chief Executive Officer) and on the further ground that even Gowda is not competent to hold the post even if the action of the respondents is set: at naught, as he is more senior to Gowda. Whereas it is Gowda''s case that creation of such a parallel post and divesting of his powers is wholly without jurisdiction and outside the purview of the Bye-laws and the Rules. As it is well-settled that the respondent -KMF is an instrumentality of the State for purposes of Article 12 of the Constitution of India and the present proceedings being in the nature of certiorari, no matter the varying degree of interest, that the petitioners possess n questioning the action of the respondents, the entire proceedings are thrown open to he addressed by this court. The Bye-laws would indicate, at Clause 2.9, that a "Managing Director" means the Managing Director of the Federation appointed by the Board of Directors of the Federation in consultation with the National Dairy Development Board. The Bye-laws do not indicate that there can be more than one Managing Director. It does not. also refer to a Chief Executive Officer. Therefore, it could be safely said that a Managing Director as contemplated under the Bye-laws is indeed the Chief Executive Officer. The Bye-laws also provide for extensive powers conferred on the Managing Director at. Clause-29 of the Bye-laws,. Significantly, it also provides at 29.2.19, that the Managing Director shall be authorized to delegate any of his powers to any Senior Officer of the Federation. The C&R Rules also contemplate a sole Managing Director on the pay-scale of Rs. 18400-22400. The method of recruitment is by selection and appointment from amongst the Senior Officers of the Federation in the cadre of Functional Directors in the pay-scale of Rs. 12800-16720. Even u/s 29G, what is contemplated is the appointment or removal of a Chief Executive to a Co-operative Society. Therefore, the nomenclature adopted under the Bye-laws of KME of ""Managing Director" is apparently to be construed as being with reference to a Chief Executive Officer. While the Bye-laws do confer the power on the Board of Directors to frame the C&R Pines which would also include the power to amend those Rules. The creation of a parallel post of Managing Director, KMF. in variance with. Clause-29 of the Bye-laws is clearly without jurisdiction. Assuming that there is merit in the case put-forward on behalf of the KMF, to the effect that the scale of operations of KMF have reached such proportions that it would be necessary to delegate various functions to other officers, who shall "be vested with parallel powers alongwith the Managing Director, it was necessary that there be appropriate amendments to the Bye-laws and the Rules of the Society and amendment of the Bye-laws is possible only at a General Body Meeting of the Members of the Society. Hence, on the face of it, this court is of the opinion that the manner in which a post of Managing Director (Chief Executive Officer) has been created and the manner in which the Managing Director''s post held by Gowda has been. redesignated as the Managing Director (Projects and Training), is apparently without authority of law and wholly without jurisdiction. The fact that the same has been approved by the Registrar of Co-operative Societies as well as the State Government does not validate the same. It is further evident that such a desperate measure has been engineered by the Board of Directors, which is even candidly stated in the course of pleadings that Gowda was promoted by the erstwhile Chairman of the KMF, notwithstanding that he did not possess any qualifications for the post and had been virtually "kicked upstairs" in a brazen manner, overlooking other more qualified officers and since the orders of promotion granted in favour of Gowda had remained unquestioned and the order of his appointment as Managing Director also having been made watertight, the repeated attempts on the part of the Board of Directors to destabilize and dislodge Gowda, which has been successively thwarted by him by approaching this Court in several pending writ petitions. The above sequence of events are sought to be justified and the appointment now made of ASP is sought to be protected in the light of the fact that there are serious allegations against Gowda, which render him unstated to continue to act as the Chief Executive Officer, would render the entire proceedings transparently irregular. The same cannot be sustained. However, it is inexplicable that the Board of Directors, who are vested with the power to place an errant: official under suspension and. to take further action, have resorted to dubious means in which the entire action has been taken to create a parallel, post of a Managing Director, which is clearly violative of the Bye-laws as well as the Rules.

In that light of the matter, the petitions stand allowed. The order at Annexure-E to WP 24B8/2011, which is also the impugned order at Annexure-D to WP 24259/2011, is hereby quashed. Consequential actions taken by the respondents also stand quashed.

