

(1985) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 15522 of 1984

Gajanan Shivappa Hegde

APPELLANT

Vs

Nelemav Group Seva Sahakari Sangha

RESPONDENT

Date of Decision : 22-02-1985

Acts Referred:

Karnataka Cooperative Societies Rules, 1960 — Rule 14 (b) (2), 14 (b) (3), 70

Citation : (1985) ILR (Kar) 3685

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : Chaitanya Hegde, for the Appellant; S.R. Hegde Hudlamane, for R-8 to 12, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.

1.The petitioner has presented this Petition praying for quashing the order of the Karnataka Appellate Tribunal setting aside the order of the Assistant Registrar of Co-operative Societies made in a dispute raised u/s 70 of the Karnataka Co operative Societies Act, 1959, ("the Act for short").

2. The facts of the case, in brief, are as follows :

The 1st respondent is a Co-operative Society functioning under the Act. Annual General Meeting of the Members of the Society for the calendar year 1980-83 was scheduled to be held on 25-8-1983. One of the agenda for the meeting was the election of 9 members for the Managing Committee. The Assistant Agricultural Officer had been nominated by the Society to be the Returning Officer. He issued Calendar of events on 14-7-1983, copy of which is produced at Annexure-B. According to the calendar of events, last date and time for receipt of nomination papers was 18-8-1983, 5.00 P.M. The calendar of events also stated that the authority to receive the nomination papers and also notice of withdrawals of candidature had been given to the Secretary of the Society. As

many as 22 nomination papers were received in connection with the election. One of the nomination papers was rejected. Out of the 21 nominations which remained, 12 were withdrawn. The petitioner's was one of them. As only 9 candidates remained in the field they were declared elected as uncontested. Thereafter, the petitioner raised a dispute u/s 70 of the Act outstanding the legality of the election. The main grounds on which the election was challenged were :

(i) One of the nomination papers, namely, of the 5th Respondent was received by the Secretary after 5-00 P.M. on 18-8-1983, and, therefore, the election was illegal;

(ii) As many as 5 nomination papers had been received by the Returning Officer who had no authority to receive the nomination papers, as that power had already been entrusted to the Secretary.

3. The Assistant Registrar recorded a finding that illegalities as alleged by the petitioner had been committed and, therefore, made an order setting aside the election. Aggrieved by the said order, the elected candidates preferred an appeal before the Karnataka Appellate Tribunal. By its order dated 30-4-1984 (Annexure-A), the Tribunal allowed the appeal and set aside the order made by the Assistant Registrar. Aggrieved by the said order, the petitioner has presented this petition.

4. The Learned Counsel for the petitioner urged the following contentions : -

(i) The Tribunal was not justified in allowing the appeal solely on the ground that the result of the election had not been materially affected without going into the merits of the case ;

(ii) As the Returning Officer had authorised the Secretary to receive the nomination papers, the receipt of 5 nomination papers by him was without authority of law and, therefore, the election of Respondents 11 and 12 who were among the said 5 persons was invalid; and

(iii) The nomination papers of the 5th Respondent had been accepted by the Secretary after the last date and time and, therefore, his election was also invalid.

5. The Tribunal has proceeded on the basis that even if the acceptance of the nomination papers was not proper, the result of the election could not be held to be materially affected for the reason that all other 12 candidates in the field had withdrawn from the contest. It is not the case of petitioner that any one of the elected persons was disqualified from being chosen a member of the Managing Committee. Therefore, the Tribunal was right in proceeding on the basis that no prejudice was caused to the petitioner as he had withdrawn his nomination paper.

6. The Learned Counsel for the petitioner, however, strenuously contended that this was not a case of mere irregularity in accepting the nomination papers, but it was a case in which as many as 5 nomination papers had been received by a person who had no authority to accept the nomination papers at all and, further,

the nomination of the 5th respondent had been received after the last date and time and, therefore, it was a case of clear illegal acceptance of the nomination papers.

7. It is seen from the order of the Arbitrator that the Secretary of the Society, who had been empowered by the Returning Officer to receive the nomination papers, was examined as a witness by the petitioner himself and in the course of his deposition he had clearly stated that he had received 17 nomination papers within time. In the face of the said statement, the petitioner cannot contend that one of the nomination papers had been received after the last date and time.

8. As far as the acceptance of 5 other nomination papers are concerned, the question for consideration is whether the Returning Officer after authorising the Secretary to receive the nomination papers, lost the power to receive the nomination papers. The said question stands answered by Rule 14(b) of the Karnataka Co-operative Societies Rules, ("the Rules" for short). According to that Rule in respect of certain classes of Societies, the Registrar is empowered to appoint an Officer of the Government as a Returning Officer. In the present case admittedly the Assistant Agricultural Officer had been appointed as a Returning Officer. The Learned Counsel for the petitioner, however, submitted that the said Officer had been nominated by the Society itself under Rule 14(a)(2) of the Rules. There is no material to indicate that the appointment of the Returning Officer had been made by the Committee. If the appointment had been made by the Committee under Rule 14(a)(2) of the Rules, as stated for the petitioner, then the nomination papers could be received either by the Secretary of the Society or by the Officer so nominated. The very fact that the Returning Officer had empowered the Secretary to receive the nomination papers gives the clearest indication that in the present case, the Returning Officer had been nominated under Rule 14(b) of the Rules. Rule 14(b)(2) of the Rules provides that the Returning Officer so appointed shall conduct the election and for that purpose he shall exercise all the powers and perform all the duties of the Committee of Management. Rule 14(b)(3) of the Rules empowers the Returning Officer to take the assistance of any other person. In the present case, for the purpose of receiving the nomination papers and also for receiving the notice of withdrawals, the Returning Officer had taken the assistance of the Secretary. By authorising the Secretary to receive the nomination papers, the Returning Officer did not deprive himself of the power to receive nomination papers. Therefore, the contention of the petitioner that receipt of 5 nomination papers by the Returning Officer was illegal, is untenable.

9. Resultant position is, 5 nomination papers had been received by the Returning Officer and 17 other nomination papers had been received by the Secretary, within the time and date fixed for the purpose. The contentions urged for the petitioner are untenable.

10. In the result, I make the following :

ORDER

(i) Petition is dismissed.

(ii) No costs.