

(1987) 08 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 10149 and 10150 of 1985

H. Shankar Alva and Another

APPELLANT

Vs

The Central Arecanut and Cocoa Marketing and Processing Co-operative Ltd. and Others

RESPONDENT

Date of Decision : 07-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Cooperative Societies Rules, 1960 — Rule 6, 6 (2)

Multi-State Co-operative Societies Act, 2002 — Section 12, 12 (2)

Citation : AIR 1988 Kar 243 : (1988) 1 KarLJ 152

Hon'ble Judges : R.G. Desai, J

Bench : Single Bench

Advocate : B.V. Charya, for the Appellant; S.G. Sundaraswamy and R.H. Chandangowdar, Government Advocate, for the Respondent

Judgement

1. In these writ petitions, the petitioners who are "C" class members of the Central Arecanut and Cocoa Marketing and Processing Co-operative Society Ltd., (hereinafter referred to as the "Society") have challenged the validity of Resolution No. 10 of the General Body Meeting of the said Society held on 31-1-85 effecting certain amendment bye-law No. 15 of the Society as per Annexure A and the order date 1-3-1985 of the Registrar of Co-operative Societies in Karnataka (Respondent No. 18) approving and registering the said amendments as per Annexure-B.

2. The Society is registered under S. 7 of Karnataka Co-operative Societies Act 1959 (for short the Act') read with S. 4(2) of the Multi Unit Co-operative Societies Act, 1942. The Society is governed by the Act and the Rules framed thereunder and with its bye-laws. The area of its operation extends to the States of Karnataka and Kerala and its, Headquarters is at Mangalore. The object of the Society is to procure arecanut and cocoa, undertake the processing thereof and market the same. The members of the Society consists of five classes as mentioned below:

Class "A": Comprises Agricultural Produce Marketing Societies and Credit Societies.

Class "B": Comprises Co-operative Marketing and Consumer Federations and District Co-operative Central Banks and other Co-operative Banks;

Class "C": Comprises individual growers of Arecanut and /or Cocoa;

Class "D": Comprises State and Central Governments and National Co-operative Development Corporations;

Class "E": Comprises Merchants, Commission Agents, Traders, and others. They are nominal members with no rights of voting or to participate in any meeting.

3. Bye-law No. 15 of the said Society before the impugned amendment read as follows:

"BYE-LAW 15, Board of Directors:

(i) The Management of the Co-operative shall vest in a Board of Directors consisting of the following:

(a) Eight from "A" Class members of whom at least six shall be representatives of Cooperative Marketing Societies, handling Areca;

(b) Two from B class members.

(c) Two from "C" class members.

(d) Four members to be nominated by the State Governments of Karnataka and Kerala at the rate of two each.

(e) Managing Director.

Except representatives of "D" class members and the Managing Directors, all other Directors shall be elected on the basis of equal representation on the Board from each State. The entire General Body shall elect the Directors representing different classes of memberships indicated above.

(Underlining supplied).

4. As on 1-11-1984 the number of members of Class "A" and "B" was 405 and 6 respectively. The number of members under "C" class was 20541 and the number of Members of "D" class was 2.

5. After the impugned amendment of the bye-law effected by the Resolution date 31-1-1985 passed at the Annual General Body Meeting of the first respondent Society as per Annexure-A, the Board consists of 10 members from Class "A" and "B", 2 from "C" class 2 to be nominated by the Term Loan Lending Institutions and 4 to be nominated by the State Governments of Karnataka and Kerala at the rate of 2 each and one Managing Director. So far as 10 members of Classes "A" and "B" are concerned, the change effected is that the Directors

drawn from these two classes are to be elected by the members in: Class "A" and "B" instead of by the entire body of members of the Society. Similarly, two members from class "C" are to be elected by the "C" class members only instead of by the entire body of the members of the Society.

6. By a notice d/- 9-1-1985 as per Annexure-C, the 11th Annual General Body Meeting of the Society was convened on 31-1-85 with a view to transact the items of business specified in it. One of the items of business as specified in item No. 10 in the notice was to consider amendments to byelaws. At pages 38-40 of the Agenda, the proposed amendments were mentioned and the reasons for the amendments were also furnished. Item No. 2 therein pertains to amendment to Bye-law No. 15. A true extract of the same has been produced by the petitioners as per Annexure-D. According to it, two, amendments were proposed to the said bye-law No. 15. The first amendment was for incorporating the words "and Cocoa" after the word "Areca" in Cl. (a) of Bye-law No. 15. The second amendment proposed provided for nomination of two members in the Board by All India Term loan lending institutions by adding new cl. (d) together with note after C1 (c) in bye-law No. 15. On 31-1-1985, the 11th Annual General Body meeting of the Society was held and at its meeting, when the proposed amendment to bye-law No. 15 was taken up for consideration, a further amendment to the proposed amendment was moved, the effect of which was to club class "A" and class "B" members into one category and to take away voting; right of class "C" members to elect classes "A" and "B" members and vice Versa.

7. According to the petitioners, as they had no prior notice of the further amendment to the proposed amendment according to R. 6(2) of the Karnataka Co-operative Societies Rules 1960 (for short the "Rules"), the General Body could not have passed the resolution effecting that amendment.

8. According to bye-law No. 48, any amendment shall not take effect until the same is approved and registered by the Registrar. To the same effect is the provision in S. 12(2) of the Act. Since the resolution was illegal and invalid, the petitioners sent representations to the Registrar (Respondent No. 18) pointing out various illegalities and infirmities on 5-2-1985. The objections sent by petitioner No. 2 was as per the original of Annexure-E. The Registrar (respondent No. 18) instead of considering the said representation and inquiring into the averments made therein, proceeded to pass the impugned order Annexure-B in so far as it relates to Bye-law No. 15. Hence, the petitioners have filed these petitions under Arts. 226 and 227 of the Constitution of India for the following Reliefs:

(a) for quashing Resolution No. 10 as per Annexure-A by issuing a writ of certiorari or any other appropriate writ, order or direction;

(b) for quashing the order of the 18th, respondent as per Annexure-B in so far as it relates to further proposed amendment to Bye-law No. 15 by issuing a writ of certiorari or any other appropriate writ, order or direction.

9. Mr. B.V. Acharya, learned counsel for, the petitioners, did not and in my opinion, rightly, press for prayer No. (a) as the said Co-operative Society does not fall within the term "State" in Art. 12 of the Constitution and is not an instrumentality or agency of the State against which a writ can be issued under Art. 226 of the Constitution since the entire share capital of the said society is not held by the Government and as its administration is not controlled by the Government.

10. The petition is opposed by respondents 1 and 4 by contending inter alia, that the resolution assailed by the petitioners is the one duly passed by the members of the first respondent-Society and the petitioners are bound by the-decision of the General Body; that the petitioners have no legal right to question the said resolution and they cannot certainly do so in writ proceedings, that in granting approval to the resolution, the Registrar has only carried on the duty laid down by the Act; that the impugned resolution is a just one setting right the anomaly in the process of election of Board of Directors and that this is not a fit case for exercising the extraordinary writ jurisdiction of this Court.

11. Thus, the main question that arises for determination in these petitions is whether further amendments are contrary to any provision of the Act or the Rules and the Bye-laws.

12. Mr. B.V. Acharya, learned counsel for the petitioners, urged that further amendment are contrary to S. 12(2) of the, Act, R. 6(2) of the Rules and Bye-law No. 48 of the Society and so the Registrar (respondent -No. 18) erred in approving and registering the said amendment to Bye-law No. 15. In support of his contention he relied upon the decision in *Sadashiv Vrandavandas v. Dayabhai Bhanabhai Patel* ILR (1970) Guj 1105.

13. Mr. S.G. Sundarswamy, learned counsel for the respondents, urged that in spite of the said technical defect in not serving notice of further amendment, this, is not a fit case for exercise of the extraordinary "jurisdiction of this Court under Art. 226 of the Constitution as the petitioners cannot be said to have suffered any irreparable injustice. In support of his contention he relied upon, the decisions in *Seetharamiah Vs. Land Tribunal*, *D.N. Banerji Vs. P.R. Mukherjee* and *Others*, .

14. To appreciate the contentions of the petitioners, it is necessary to refer briefly to" the relevant provisions of the Act, Rules and the Bye-laws. Section 12 of the Act in so far as it is necessary for the purpose of this writ petition reads thus:

"12. Amendment of Bye-laws of a Cooperative Society

(1) No amendment of any bye-law of a cooperative society shall be valid unless such amendment has been registered under this Act.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment -

- (i) is not contrary to the provisions of this Act and the rules;
- (ii) does not conflict with co-operative principles;
- (iii) satisfies the requirements of sound business;
- (iv) will promote the economic interests of the members of the society; and
- (v) is not inconsistent with the principles of social justice; he may register the amendment.

(3) The Registrar shall forward to the society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered."

Section 129 of the Act confers rule making power on the State Government for carrying out the purposes of the Act. The State Government has in exercise of its power made the Rules. Rule 5 of the Rules deals with the subject of Bye-laws sets out the matters in respect of which bye-laws may be made by the Society. Then comes R.6 which deals with the subject of amendment of bye-laws. That Rule in so far as it is material for our purpose reads thus:

6. Procedure Regarding Amendment of Bye-laws -

- (1) Where a co-operative society proposes to amend the bye-laws, no such amendments shall be made save by a resolution passed by a two-thirds majority of the- members present and voting at general meeting of the society;
- (2) No such resolution shall be valid unless notice of the proposed amendment has been given to the members of the Society in accordance with the bye-laws.

The Society in this case has also got its byelaws. bye-law No. 48 is relevant for our purposes. It reads thus:

Bye-law 48:

None of the Bye- laws herein contained shall be altered or rescinded and no bye-laws shall be added except by a vote of a majority consisting of at least 2/3 of the members present at a General Meeting and voting. Clear 15 days notice shall be given for convening the General Body Meeting. The amendment shall not take effect until it has been approved and registered by the Registrar."

15. It is common ground between the parties that no prior notice of the proposal to move further amendment was given to the members of the Society. But, further amendments were moved by way of amendment to the proposed amendment of which admittedly due notice was given. The question is whether in these circumstances, the adoption of the further amendment was in contravention of R. 6 read with Bye-law No. 48. It is clear on a plain reading of sub-rules (1) and (2) of R. 6 that before any, bye-law can be amended by a resolution passed at General Meeting of the Society, notice of the proposed amendment must be given in accordance with by-laws of the Society to the

members of the Society. It is not enough merely to state that the question of amending the bye-laws in general or any particular bye-law will be considered at a General Meeting. Such a statement in the notice cannot be regarded as the one in respect of the proposed amendment. The object of the Rule is that the precise and, specific proposal to amend the bye-laws must be communicated to the members in advance, so that they may have sufficient time to consider the advisability of making such, amendment and to participate effectively in the decision making process of the general meeting. The Rule therefore requires notice of the proposed amendment to be given to the members. The requirement of Bye-law No. 48 in regard to the notice also must be complied with in order that the-notice should be a proper notice within the meaning of the said Rule. According to Bye-law No. 48, 15 days notice shall be given for convening the General Meeting for considering the proposed amendment. Although the petitioners contend. in their petitions that they had no clear 15 days notice, Mr. B.V. Acharya, did not press that ground obviously in view of the submissions made by the respondents in their objection statement. He also did not press the contention. that the resolution was not passed by 2/3rds majority in view of the explanation offered by Mr. Sundaraswamy during the course of hearing. On the plain and natural construction of R. 6 read with Bye-law No. 48, no amendment can be made in the bye-laws of the Society unless due notice setting out the specific amendment proposed to be made was given to the members of the Society at least 15 days prior to the meeting. If this be the correct position, it is difficult to see how the further amendment which sought to class "A" and "B" class members together and to take away the voting right of the "C" class members to elect "A" and "B" class members and vice versa could be adopted without at least 15 days previous notice of such further amendment to the notice. The further amendment was not merely an incidental or ancillary amendment arising out of the proposed amendment. It was in the nature of substantive amendment and no notice of it having been given as required by R. 6 read with bye-law No. 48, it could not be moved or adopted at the General Meeting and its adoption was plainly contrary to R. 6 read with Bye-law No. 48. The said view is fortified by the decision in *Sadashiv Vrandavandas's* case (ILR (1970) Guj 1105) cited above. In that case, their Lordships were considering similar provisions of the Gujarat Co-operative Societies Act under similar circumstances. Notice was given to the members under R. 6 for proposed amendment in the Bye-law. The proposed amendment suggested change in holding of share capital for holding the post of Director and amendment to proposed amendment was allowed to be moved and passed. The District Registrar registered the new amendment for which procedure under the Rule was not followed. It was held that the order of the Registrar registering the amendment under S. 13(3) of the said Act was beyond his jurisdiction as the proposed amendment was contrary to the Act or the Rules and the order of the Registrar was quashed, it was further held that although the order of the District Registrar registering an amendment is, made conclusive its conclusive character cannot exclude scrutiny by the court in the exercise of its extraordinary

jurisdiction under Arts. 226 and 227 of the Constitution.

16. The amendment to the proposed amendment in this case is not of such a nature that any reasonable man could have thought that it would be put forward at the meeting. The amendment also substantially alters the motion. Therefore, it is obvious that no reasonable man would regard it as competent to move in the meeting convened to consider these proposed amendments, which were formal in nature. It is also possible that many members might have remained absent at the General Body meeting thinking that the said amendments were formal in nature, and would not affect their rights. If notice of the further amendment had been given, perhaps many members could have attended the meeting as it would affect their voting rights. From the objects of the Society, as stated in the byelaws, it is clear that the Society is meant for the benefit of mainly "C" class members who are growers of areca and cocoa. The further amendment took away the valuable voting right of about more than 20,000 members of "C" class members. The further amendment has been adopted by the General Body of the Society contrary to R. 6 and the Registrar (respondent No. 18) was clearly in error in approving and registering the same without ascertaining whether due notice is required by R. 6 had been given of the further amendment. Therefore, the order of the Registrar (Respondent 18) suffers from an error of law apparent on the face of the record and it must therefore be quashed and set aside. In this view of the matter, the decisions relied upon by Sri. Sundaraswamy, learned counsel for the respondents, holding that unless there is miscarriage of justice, jurisdiction under Art. 226 of the Constitution should not be exercised, are of no avail to the respondents.

17. In the result, the writ petitions are allowed and the Rule is made absolute by issuing a writ of certiorari quashing and setting aside the order and certificate issued by the Registrar (respondent 18) under S. 12(2) of the Act registering the further amendments to the proposed amendment to bye-law, No. 15. Under the circumstances, I direct the parties to bear their own costs.

18. Petitions allowed.