

(2014) 11 KAR CK 0278

In the Karnataka High Court

Case No : Writ Petition No. 41044/2014 (CS-RES)

Hanumesh N.

APPELLANT

Vs

State Government of Karnataka

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2014) 11 KAR CK 0278

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Ananda B.V. and Sumanth Kumar S. Patil, Advocate for the Appellant; Laxminarayana, AGA and M.R.C. Ravi, Advocate for the Respondent

Judgement

B.S. Patil, J.—A short question that falls for consideration in this writ petition is, whether the resolution passed by the 2nd respondent - Karnataka Co-operative Milk Producers' Federation Limited on 10.07.2014 in resolution No. 2/254 resolving not to post the petitioner herein as Managing Director of any of the District Milk Producers' Union coming under the jurisdiction of the 2nd respondent is sustainable in law.

2. Undisputed facts are:- petitioner was appointed as a Managing Director of the Kolar Chikkaballapur District Milk Union Co-operative Society. He worked there from 18.03.2013 till he was transferred to the cattle field plant, Rajanakunte. A show cause notice was issued on 23.05.2014 making several allegations against the petitioner. Petitioner submitted his reply denying all the allegations. No action was taken based on the show cause notice issued. But, in the meeting dated 10.07.2014 of the 2nd respondent - Federation, one of the representatives of Kolar Chikkaballapur District Milk Union Cooperative Society appears to have raised question of posting an efficient official as Managing Director who would be having the knowledge of the subject regarding milk production and also could ably regulate and control the affairs of the district milk unions as Managing Director. He did not stop there. It was urged that petitioner herein shall not be

posted as Managing Director to any of the District Milk Producers" Union. This suggestion of the member made in the meeting has been approved by the Federation by passing the impugned resolution, thereby resolving not to post him as Managing Director to any of the District Milk Producers" Union.

3. Learned counsel appearing for the petitioner submits that petitioner has put in 34 years of unblemished service. Show cause notice issued to him has been effectively answered. No enquiry has been held and none of the charges are established. However, without following the due procedure and without affording any opportunity of being heard, only at the instance of one of the representatives of the Milk Unions such a resolution was passed which deprives the petitioner of the important opportunity of serving as a Managing Director in any of the District Milk Producers" Union. He also urges that the resolution has the effect of causing stigma on the abilities, capabilities and the character of the petitioner. He, therefore, submits that impugned resolution is illegal and unsustainable.

4. Learned counsel appearing for the 2nd respondent -Federation strongly supports the resolution contending inter alia that it does not affect the service conditions of the petitioner and that petitioner does not have any vested right to be posted as Managing Director to any of the District Milk Producer"s Union. He further points out that the resolution does not amount to a penalty but is only aimed at bringing in efficiency in the administration of the District Milk Producers" Unions. He also urges that that if petitioner feels aggrieved, he is required to avail the remedy under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short the Act") and not to approach this Court by filing writ petition.

5. Having heard the learned counsel for the parties and on careful perusal of the impugned resolution, I find that effect of the impugned resolution is that petitioner is deprived of the opportunity of getting posted as Managing Director of the District Milk Producers" Union.

6. It is not in dispute that petitioner has served as Managing Director of Kolar Chikkaballapur District Milk Union Cooperative Society. It is one of the members sent by the Kolar Chikkaballapur District Milk Union Co-operative Society to the Federation who has raised doubts regarding the competency, efficiency and the nature of activities of the petitioner as Managing Director. It is he who has demanded that petitioner shall not be posted as Managing Director of any of the District Milk Producer"s Union.

7. In the light of the nature of allegations which the member had made, if at all the Federation was inclined to act on the basis of the said allegations to exclude the petitioner from being entrusted with responsibility of heading District Milk Producers" Union as Managing Director, then, the Federation ought to have issued notice to the petitioner regarding such specific allegations and thereafter, by following principles of natural justice could have passed an order. Without resorting to such a procedure, at the instance of one of the members of the

federation, a decision has been taken and a resolution has been passed to exclude the petitioner from being posted to the post of Managing Director of the District Milk Producers' Union. This resolution certainly affects petitioner in his career and it is stigmatic in nature.

8. The contention of learned counsel for the 2nd respondent that it does not in any manner affect the petitioner and his service condition cannot be accepted. Resolution, if allowed to stand, would suspect efficiency, quality and ability of the petitioner. A shadow of doubt would be cast on his competence as he has been held to be incompetent to hold the post of Managing Director of the District Milk Producers Union. Such a resolution which is not preceded by any opportunity of being heard to the petitioner cannot be allowed to stand.

9. Contention urged by the learned counsel for the 2nd respondent that petitioner has to raise a dispute under Section 70 of the Act cannot be accepted, because it is well established that whenever an order is passed without following principles of natural justice, affecting the interest of a person concerned, this Court will not relegate him to the ordeal of availing alternative remedy. This is one of the recognized exceptions for exercising the writ jurisdiction where alternative remedy exists.

10. Hence, this writ petition is allowed. Impugned resolution is set aside.