(1990) 08 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No''s. 3487, 3853 and 3978 of 1989

H.N. Ramesh — APPELLANT

Vs

Primary Co-operative Agriculture and Rural Development Bank Ltd. — RESPONDENT

Date of Decision : 29-08-1990

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2 (g), 27 (1), 28, 28 A (4)

Citation : (1991) ILR (Kar) 24 : (1990) 2 KarLJ 479

Hon'ble Judges : Rama Jois, J;Mirdhe, J

Bench : Division Bench

Advocate : A.V. Gangadharappa, B.B. Mandappa, B.V. Ramamurthy, for R.B. Deshpande, for the Appellant; N. Devadas, Government Advocate, B.H. Patil, S.G. Bhat, K.T. Mohan and Somanatha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In all these Writ Petitions referred to Division Bench u/s 9 of the Karnataka High Court Act, the following question of law arises for consideration:

Whether the obligation to hold election to the offices of President and Vice President of a Co-operative Society functioning under the provisions of the Karnataka Co-operative Societies Act 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government in exercise of its power u/s 28 of the Act?

2. For the purpose of answering the above question, it is necessary and also sufficient to set out the facts in one of the cases. Therefore, we proceed to set out the facts in W.P. No. 3487 of 1989: Primary Co-operative Agriculture and Rural Development Bank Limited, Arsikere, is a Co-operative Society established and functioning under the provisions of the Karnataka Cooperative Societies Act, 1959 (''the Act'' for short). A General Body Meeting of the Society was held on

30th October 1985. In the said Meeting, election to the Committee of Management of the Society called the Board of Directors, was held. The petitioner and others were elected as Members of the Board of Directors (''the Board'' for short). The first Meeting of the Board was held on 10-11-1985. Section 28-A(4) of the Act requires that there shall be an election of Officers of the Society every year. The word ''Officer'' is defined u/s 2(g) of the Act which means the President and Vice President also. In the first meeting of the Board held on 10-11-1985, two members of the Board were elected as President and Vice President. In view of Section 28-A(4) after one year there was again election of the President and Vice President for one more year. In the third year again, there was an election on 30-9-1987 at which the petitioner was elected as the President and another as Vice President. By the end of the said co-operative year, a General Body Meeting was convened, inter alia, to elect fresh Board of Directors. At this stage, the State Government issued a Notification on 17-12-1988 postponing the election to the Managing Committees of all the Co-operative Societies in the State. The operative portion of the Notification reads:

"Now, therefore in exercise of the powers conferred by proviso to Sub-section (1) of Section 27 of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) as modified in Government Order No. CMW 160 LCM 88 dated 15th December 1988 and published in Karnataka Gazette (Extraordinary) dated 15th December 1988 in Part IV-20(ii), the Government of Karnataka hereby postpone the election to the committees of management of all Co-operative Societies scheduled to be held in December 1988 and subsequently upto 30th April 1989 with immediate effect. The calendar of events, if any, issued already in this regard stands cancelled. However, the annual general meeting of all co-operative institutions shall be held as per the provisions of the Karnataka Co-operative Societies Act, 1959."

As a result, the Board which was elected at the General Body Meeting held on 30-10-1987 was continuing. It is common ground that there have been subsequent Notifications issued from time to time under which the election of the Managing Committee of Co-operative Societies functioning, under the Act have been postponed. Consequently, the Managing Committee elected earlier continued in office. During this period, a meeting of the Managing Committee was called on 18-2-1989 in terms of Section 28-A(4) of the Act. At the election, respondents 3 and 4 were elected as President and Vice President of the first respondent-Society. Questioning the legality of the said election, the petitioner in W.P. No. 3487 of 1989 presented the said petition contending that when the term of the Managing Committee elected for three years u/s 27 of the Act gets extended on account of postponment of election effected by the exercise of the power of the State Government u/s 27 of the Act, the President and Vice President, who were holding office on the date of such notification continues to hold their respective office until the election of a new Committee of Management of the Society and during that period there can be no fresh election of a President and Vice President in terms of Sub-section (4) of Section 28A of the

Act.

3. The other Writ Petitions have been presented under similar circumstances raising similar contentions.

4. As against the above contention, it is the contention of all the persons who have been elected as President and Vice President during the extended term of the Managing Committee that the mandate of Section 28-A(4) that the Committee of Management must elect President and Vice President every year and there is nothing in the provisions of the Act to restrict the operation of Section 28-A(4) only for a period of three years and not for the extended period.

5. In order to appreciate the question for consideration, we shall in the first instance refer to the relevant provisions of the Act. Under the scheme of the Act, the management of a Co-operative Society rests in a Committee of Management, elected by the General Body of the Society, by whatever name it is called. This is evident from the definition of the word ''committee''. Section 2(b) of the Act reads:-

"''Committee'' means the governing body of a Co-operative Society, by whatever name called, to which the management of the affairs of the society is entrusted."

Section 27 of the Act provides that a General Body Meeting of a Co-operative Society shall be held once a year, inter alia, for the purpose of approving the programme of the activities of the Society prepared by the committee for the ensuing year and for purpose of election of the Members of the Committee other than the nominated members. Section 28A of the Act provides that the management of a Co-operative Society shall vest in a Committee constituted in accordance with the Act. According to Sub-section (3) of Section 28A of the Act, the term of office of a committee elected at a General Body Meeting is three years. Sub-section (4) of Section 28A reads:

"Management of Co-operative Societies vest in the committee: (1) the management of a Cooperative Society shall vest in a committee constituted in accordance with this Act, the Rules and the Bye-laws of such society. The committee shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon it by this Act, the Rules and the Bye-laws.

XXX XXX XXX

(4) The members of the committee shall, every year, elect from among themselves the officers of the Co-operative Society, The election for the office bearers shall be by ballot."

(Underlined by us)

The above Sub-section requires that the members of the committee elected at a General Body Meeting shall every year elect from among themselves the Officers of the Co-operative Society. There is no doubt that the Bye-laws of the Society with which we are concerned provide for an election of a President and Vice President. Therefore, under Sub-section (4) of Section 28A of the Act, it is obligatory for the Board/Committee of Management to elect the President and Vice President every year. From this it follows the terms of office of President and Vice President is one year.

6. As stated earlier, in view of Sub-section (3) of Section 28A read with Section 27 of the Act, it is obligatory for every Co-operative Society to elect a Managing Committee, every three years, at the General Body Meeting. But under the proviso inserted below Section 27, the State Government is empowered to postpone the holding of Annual General Meeting of a Cooperative Society functioning under the Act. Once such a power is exercised under Rule 13 of the Rules framed under the Act, the Managing Committee once elected continues in office until the election of a new Committee. Therefore, the effect of postponing the Annual General Body Meeting in relation to election to the Managing Committee of a Society read with Rule 13 of the Karnataka Co-operative Societies Rules, is the Committee of Management whose term is about to expire or has already expired continues in office until the election is held. To this extent, there is no controversy.

7. The question, however, raised by the Petitioners in these Petitions is, during the extended term of office of the Members of the Managing Committee of a Society consequent on the postponing of election, Sub-section (4) of Section 28A has no application and therefore there can be no election for the office of the President and Vice President every year during the extended period. Such a question has been raised because in each of the cases, during the extended period of office of the Managing Committee, meeting of the concerned Managing Committee was convened, at which a President and a Vice President were elected.

8. Sri A.V. Gangadharappa, the learned Counsel for the petitioner, contended that Sub-section (4) of Section 28A gets attracted only during the normal period of term of office of three years of a Managing Committee of a Society as prescribed u/s 28-A(3) of the Act and the said sub-section has no application to the extended term of office of the Managing Committee of the Society brought about consequent on the postponing of the elections by issue of a Notification by the State Government under the proviso to Section 27 of the Act. In support of this contention, the learned Counsel relied on the Judgment rendered by Bopanna, J, in the case of C. Channabasappa Vs. Davangere Primary Co-operative Agriculture and Rural Development Bank Ltd., and another, The said decision does support the contention urged by Sri A.V. Gangadharappa.

9. These petitions have been referred to Division Bench u/s 9 of the Karnataka High Court by Chandrakantaraja Urs, J, expressing doubt about the correctness of the view taken by Bopanna, J, in the case of Channabasappa. It is seen from the Judgment in the case of Channabasappa, in support of the contention that during the extended term of the Managing Committee also it was obligatory for the Managing Committee to hold election to the office of President and Vice

President in view of Section 28-A(4) of the Act, reliance was placed on an earlier Division Bench decision in H.S. Prakash and Another Vs. State of Karnataka and Others, That case arose under the provisions of the Karnataka Municipalities Act, 1964. Under the scheme of the said Act, after election of Councillors to any particular Municipal Council at a general election, the Councillors are required to elect a President and Vice President at the first meeting of the Councillors. Section 42(11) of the Act provides for limiting the term of office of President and Vice President for two years by an order made by the Government with the consent of the Municipality. In the case of Prakash such an order had been made. In the said case, the question which arose for consideration was whether during the period when the term of the Municipal Council got extended due to the postponing of the election to the Municipal Council, was there any obligation to hold election to the President and Vice President every two years as provided in Section 42(11) of that Act. The Division Bench held that Section 42(11) applies even during the extended term of Councillor and therefore holding of the election to the office of the President and Vice President even during the extended period of the Council every two years was mandatory. The learned Judge distinguished the said decision on the ground that the provisions of the Municipalities Act and the provisions of the Co-operative Societies Act were not similarly worded and held that Sub-section (4) of Section 28A applied only for the normal term of office of the Managing Committee which is three years in view of Section 28-A(3) of the Act.

10. Sri Somanatha Reddy, the learned Counsel for the respondents, submitted that the ratio of the decision in the case of H.S. Prakash, and also the decision in the case of Seetharama Reddy v. The Election Officer 1966 (2) KARLJ 236 in which, two Division Benches of this Court had taken the view that even during the extended term of office of Municipal Councils, it was obligatory to hold election to the office of the President and Vice President in view of the limiting of the term of offices of persons elected to these for two years by an order made by the Government with the consent of the Municipal Council u/s 42(11) of the Municipalities Act 1964 applies on all fours to the interpretation of Section 28-A(4) of the Co-operative Societies Act. He also submitted that except that this is a case of election of President and Vice President of a Society and those were cases of election to the office of President and Vice President of Municipal Councils, there could be no difference in principle.

11. After giving our careful thought and respectful consideration to the views expressed by Bopanna, J, and the two Division Bench decisions in the case of Prakash and Seetharama Reddy we are of the view that the ratio of the two Division Bench decisions applies on all fours to these cases also, for, the purport of the provisions of Section 42(11) of the Municipalities Act and Section 28-A(4) of the Co-operative Societies Act, is one and the same, namely, limiting the term of office of President and Vice President, which necessitates the periodical election to these offices. As can be seen from Section 18of the Municipalities Act, though the term of office of Municipal Councillors elected at a general election is

four years, it could be extended by the Government. Section 42(11) of that Act prescribes that the term of office of President and Vice President elected by a Municipal Council, could be limited to two years, by an order made by the State Government with the consent of the Municipal Council concerned. Once such an order is made, there has to be election of President and Vice President every two years. It is immaterial whether the term of office of the Municipal Council is the normal period of four years for which it was elected or is continuing because of the extension of its term by an order u/s 18 of the Act. The same reasoning holds good for Section 28-A(4) of the Act, for, it expressly provides that the members of the Committee shall elect from among themselves, the Officers of the Co-operative Society every year. The definition of the word ''Officer'' in Section 2(g) of the Act includes President and Vice President. Therefore, in view of Sub-section (4) of Section 28-A of the Act, it is obligatory for the Managing Committee to hold elections to the President and Vice President every year. Neither this sub-section nor any other provisions of the Act give an indication that the obligation to hold election for the office of the President and Vice President applies only during the normal term of office prescribed u/s 28-A(3) of the Act, which is three years and not during the extended term of office brought about by the postponment of election by an action of the Government u/s 27 of the Act. In our opinion, in the absence of any such restriction incorporated in the Act itself, no such limitation can be read into Section 28-A(4) of the Act. There is nothing in Rule 13 of the Rules also to take a view to the contrary. All that the proviso to Rule 13(3) provides is that whenever election required to be held for the Committee of a Society is not held in due time, until a new committee is elected, the old Committee continues in office. This Rule in fact. lends support to the contention urged by Sri Somanatha Reddy. If the mandate of Sub-section (4) of Section 28-A is that there shall be an election of President and Vice President every year, it must be so whether the term of office of the Members of the Committee is the normal term of three years as fixed in Section 28-A or the extended term brought about by the postponing of elect ion consequent on the issue of Notification by the State Government under: proviso to Sub-section (1) of Section 27 of the Act read with Rule 13 of the Rules.

12. As stated earlier, in the present case, the first Notification postponing the election was issued on 17-12-1988 and it is more than one and a half year from the said date and the Notifications are being issued extending the term of office and even now there is no certainty when the election is going to be held. In fact, the exercise of power u/s 27 has no effect or bearing at all on the term of office as President and Vice President and it has got to be regulated by Section 28-A(4) only. Therefore, so long as a Managing Committee is in office, it is obligatory for the Committee to hold elections to the office of President and Vice President every year in view of Section 28-A(4) of the Act.

13. For the reasons aforesaid, we overrule the decision rendered in Channabasappa''s case and answer the question set out in the first paragraph as under:

"The obligation to hold election to the offices of President and Vice President of a Cooperative Society functioning under the provisions of the Karnataka Co-operative Societies Act 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28-A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government in exercise of its power u/s 28 of the Act."

14. In the result, we make the following order:

(i) The Writ Petitions are dismissed.

(ii) No costs.

