

(2000) 11 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 32600 of 2000

H.R. Patil

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Co-operative Societies Act, 1957 — Section 2 (d-1)
Karnataka General Clauses Act, 1899 — Section 3 (43)

Citation : (2001) 1 KCCR 238

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : H. Billappa Associates, for the Appellant; M. Ramaiah, A.G.A. for Respondent 1, Basavaraj G. Godachi, for Respondent 2 and Shalini Patil, for B.V. Katageri for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Chidananda Ullal, J.—The Petitioner herein being the elected member of committee of management of the Respondent No. 2-Society had challenged herein the meeting notice dated 1.10.2000 issued by the Respondent No. 2, copy as at Annexure-C to writ petition. In issuing the said notice, the Respondent No. 2 had convened the members of the committee of management of the Society for electing the new President for the co-operative years 2000-01 to 2002-2003.

2. This matter had been listed in the orders list. By consent of the parties have taken up the matter for final disposal.

3. The Petitioner herein is represented by the learned Counsel Sri Billappa. The Respondent No. 1-State is represented by the learned Additional Government Advocate Sri M. Ramaiah. The Respondent No. 2 is represented by the learned Counsel Sri Basavaraja G. Gudachi, whereas the Respondent No. 3 is represented by the learned Counsel Smt. Shalini Patil.

4. Before proceeding further, I feel it appropriate to give facts of the case in a

nut shell.

The Petitioner herein was elected as the member of committee of management of the Respondent No. 2-Society on 27.2.1999. Thereafter, on 9.3.1999, he was elected as the President of the Respondent No. 2. According to the Petitioner, his term of office comes to a close on 8.9.2001 by reckoning the term of office of the President as 21/2 years from 9.3.1999 and further that the date has to be reckoned as per British calendar month. Therefore, the Petitioner complained that the Respondent No. 2 had got no reason for the issuance of notice dated 1.10.2000, copy as at Annexure-C to writ petition to convene the committee of management for the purpose of election of the next president for the years 2000-01 to 2002-2003. Therefore, he is before this Court to quash the said notice issued.

5. In this matter, the Respondent No. 3, who had impleaded himself as a party hereto had filed a detailed objection statement opposing the writ petition. As a matter of fact, the instant writ petition has to be decided only on the interpretation of the rule "Co-operative year" as defined u/s 2(d)(1) of the Act.

6. The learned Counsel for the Petitioner Sri Billappa had taken me through the petition averments, the grounds urged therein and further the impugned notice issued by the Respondent No. 2, copy as at Annexure-C to writ petition. According to him, the instant matter is covered by the Full Bench decision of this Court reported in AIR 1994 Kar 66. Hence, he had taken me through the said Full Bench decision of this Court. In the said decision, the Full Bench of this Court held that in the absence of the definition as to the term "year", the term "year" has to be construed as 12 months as per the British calendar and not according to the "co-operative year" as defined under the Act and that the Full Bench so held by placing reliance on Section 3(43) of the Karnataka General Clauses Act.

7. In paras-15 and 16 of the said Judgment, the Full Bench had held as hereunder:

15. It is also not possible to agree with the contention advanced by the learned Counsel for the 3rd Respondent, that as per Sub-section (4) of Section 28A all that the members of the Managing Committee have to do is to elect office bearers at any time during the co-operative year in question. If that would have been the intention of the legislature, Sub-section (4) of Section 28A would have provided that the members of the committee during the year elect from amongst themselves office bearers etc. In the absence of such words in the Sub-section, it is not possible to countenance the said contention. Even otherwise, it is easy to visualise that if such an interpretation is placed on Sub-section (4) of Section 28A, the given elected body of office bearers may continue for even more than 12 months. For example, if the Managing Committee is elected in May 1990, it can have the term of three co-operative years, namely, from 1st April, 1991 to 31st March, 1992 and from 1st April, 1992 to 31st March, 1993. If the office bearers of the co-operative society are elected from amongst the members of the

Managing Committee in June 1990, i.e., in the first co-operative year, then for the second co-operative year which begins on 1st April, 1991 and ends on 31st March, 1992 election of second body of office bearers can be held even in February, 1992 as it would be during that second co-operative year. In that eventuality, the first body of elected office bearers will have a term of office from June 1990 till February, 1992 i.e., for 1 year and 8 months, far more in excess of twelve calendar months. That would be doing violence to the very scope and ambit of Sub-section (4) of Section 28A of the Act. Consequently, it must be held on a correct interpretation of Sub-section (4) of Section 28A of the Act, that the term of office of the elected office bearers of the co-operative Society elected from amongst the members of the Managing Committee would be 12 Calendar months computed as per British calendar. The moment that term is over, fresh elections have to be held of such office bearers and that exercise has to be done at the end of every 12 calendar months subject to the rider that the term of the last elected body of office bearers would in no case extend beyond the life term of the parent body, namely, the Managing Committee itself, and all those elected office bearers will vacate their office on the expiry of the life term of the Managing Committee itself, even though for them 12 calendar months might not have been over from the date on which this last set of elected office bearers got elected from amongst the members of the Managing Committee.

16. It is now time for us to have a close look at the decision of the Division Bench in Rangaiah's case (*supra*). In para-6 of the report, it has been observed that having regard to the object and to give a harmonious interpretation the section has to be read as a whole, otherwise, it will lead to anomalous situation. There cannot be any dispute on this proposition. However, it is difficult to agree with what the Division Bench stated in paragraph-7 of the report. The said paragraph reads as under:

In the instant case election of the committee, which ought to have been held on 30.6.1991, having been postponed by the Government, was held in the middle of the co-operative year on 31.12.1991. Consequently, the election of the President came to be held on 16.1.1992. According to the interpretation sought to be placed upon Section 28A of the Act, the Appellant would continue to hold the office of the President till 15.1.1993, in which event the election to the next President has to be held on or after 16.1.1993. Such situation can be hardly conceived or intended by the provisions of Section 28A of the Act. Having regard to the relevant provisions read with explanation to Sub-sections (3) and (4) of Section 28A of the Co-operative year which can be shorter than one year, the only possible interpretation that can be given to the expression "year" is the co-operative year and not one full year.

On the facts considered by the Division Bench and on the harmonious interpretation of the section as a whole, which the Division Bench decision sought to do, it is difficult to appreciate as to how the Division Bench reached the conclusion that the election of the next President cannot be held on or after

16.1.1993 and that such a situation can be hardly conceived by the express language of Section 28A of the Act. On the contrary, with respect to the Division Bench, it could be seen that such a situation is clearly countenanced by the said provisions. In that case, the Managing Committee was elected in the middle of the co-operative year, i.e., on 31.12.1991. Thus, the first co-operative year for that Managing Committee ended by 31st March, 1992. Thereafter, it had two more co-operative years to go, viz., from April, 1992 to March, 1993 and from 1st April, 1993 to 31st March, 1994. That was the full term of the Managing Committee as per Sub-section (3) of Section 28A of the Act. If during that tenure of the Managing Committee, election of the next President was to be held on or after 16.1.1993, the said President could have functioned up to January, 1994. It is difficult to appreciate how such an eventuality cannot be countenanced by Section 28A of the Act. It is, of course true that the tenure of the last President when elected in January or February, 1994 would have been very short and that it would have ended with 31.3.1994 on which date the term of the Managing Committee itself would have expired. But, that eventuality cannot be avoided due to the conjoint working of Sub-sections (3) and (4) of Section 28A of the Act. It is also, with respect, equally not possible to agree with the observation of the Division Bench in paragraph-7 of the report, that "having regard to explanation to Sub-sections (3) and (4) of Section 28A of the Act, the co-operative year which can be shorter than one year", and that would govern the interpretation to be given to the expression "year" in Sub-section (4) of Section 28A of the Act. The Division Bench was in error in projecting the explanation to Sub-section (3) to Sub-section (4) of Section 28A also. As discussed earlier, that would amount to re-writing the express language of the said explanation. That explanation was meant to reckon the term of Managing Committee and had nothing to do with the term of the office bearers elected from amongst the members of the Managing Committee. That had to be governed by a separate provision like Section 28A(4) of the Act. It must, therefore, be held that the aforesaid view of the Division Bench in Rangaiah's case (supra), does not lay down correct law and the said decision, therefore, has to be overruled by holding that as per Section 28A(4) of the Act, the term of the elected office bearers of a co-operative society including that of the President is 12 calendar months reckoned according to the British calendar, from the date of such election.

7. While taking me through para-16 of the said judgment as above, Sri Billappa had also pointed out that the Full Bench in the decision held that the term of elected office bearers of the co-operative society including the President has to be 12 calendar months reckoned from the date of election. Therefore, he submitted that the impugned notice issued by the Respondent No. 2 hereunder challenge, copy as at Annexure-C to writ petition is liable to be quashed.

8. The learned Counsel for the Respondent No. 3 Smt. Shalini Patil, on the other side, submitted that the Full Bench decision of this Court upon which the learned Counsel for the Petitioner had relied upon has got no application to the instant case on hand for the reason that the term "co-operative year" or "year" came to

be defined as the one commencing from the first day of April by the amended provision in Section 2(d-1) by the amended Act No. 25 of 1998 that came into force with effect from 15.8.1998. She further submitted that since the election of the President of the Respondent No. 2-Society had taken place on 9.3.1999 and the Petitioner had the term of 21/2 years, for the office of the President, the Petitioner's term has to be decided with reference to Section 2(d-1) of the Act. Therefore, she submitted that the instant writ petition does not merit any consideration in the hands of this Court.

9. The learned Additional Government Advocate Sri M. Ramaiah as well as the learned Counsel for the Respondent No. 2 Sri Godachi had adopted the above argument advanced by Smt. Patil.

10. In the light of the above arguments advanced, the sole question that arises for my consideration is whether the term of office of the Petitioner as the President of the Respondent No. 2 Society has to be reckoned from the date of his election on 9.3.1999 as per the above Full Bench decision of this Court cited above or has to be decided with reference to Section 2(d-1) of the Act as amended?

11. In the instant case in hand, it appears to me that the case of the Petitioner has to be decided with reference to Section 2(d-1) of the Act as amended. That I hold by accepting the arguments advanced by the learned Counsel for the Respondent No. 3 Smt. Patil. Admittedly, as per the original provision earlier to amendment Act 25 of 1998 also incorporating the provision Section 2(d-1) of the Act, the term "co-operative year" was only defined, whereas the term "year" was not defined and further whereas u/s 2(d-1) of the Act as amended the term "Co-operative year" as well as the term "year" came to be defined to commence from 1st of April.

Section 2(d-1) of the Act reads as hereunder:

Co-operative year or year means the year commencing from the first day of April.

12. It was in the said circumstances to give a harmonious interpretation to Section 28(a)(4), the Full Bench in the above reported decision had placed reliance on Section 3(43) of the Karnataka General Clauses Act as to the definition of the term "year". As a matter of fact, in para-14 of the Full Bench Decision, the Full Bench had referred to the said situation, for it had been observed therein that it had to be kept in view that the term "year" had not been defined by the Act and hence it had to fall back upon Section 3(43) of the Karnataka General Clauses Act.

13. Now with the introduction of Section 2(d-1) of the Co-operative Societies Act, to define "co-operative year" or "year" as the year commencing from the first day of April, there is no ambiguity whatsoever in that regard; hence it is clear that what ambiguity was originally there in the Act came to be removed, for both the terms "co-operative year" or "year" was defined as the year commencing

from the first day of April or in other words to say that the term "co-operative year" came to be assimilated with the term, "year". If that is so, for the purpose of computing the term of 21/2 years of the Petitioner as the President of the Respondent No. 2 had to be one year ending his term of first year of office i.e., 1998-99 on 21.3.1999, no matter, he had occupied the office of the President of the Respondent No. 2 for 28 days reckoned from 9.3.1999 and the remaining term of office of the Petitioner as the President of the Respondent No. 2 has to be reckoned from 1.4.1999 to 30.9.2000, in all to make it 21/2 years. If the term of office of the President of the Respondent No. 2 held by the Petitioner had to come to a close on 30.9.2000, I don't think that the Petitioner can have any grouse as against the impugned notice issued by the Respondent No. 2 on 1.10.2000, copy as at Annexure-C to writ petition, to elect the next President of the Respondent No. 2 Society for the next term commencing from the year 2000-2001 to 2002-2003.

14. In that view of the matter, I don't find any merit in the instant petition.

15. The writ petition therefore fails and accordingly stands dismissed. In the peculiar facts and circumstances of the case, I don't want to award cost in this writ petition.