

(1978) 10 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 8398 of 1978

Jagadish Patil

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-10-1978

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29 C, 30 A, 53 A, 55

Citation : AIR 1979 Kar 4 : (1981) 1 KarLJ 443

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Judgement

1. Admittedly the petitioner is a member and an elected Director of the Gulbarga District Co-operative Central Bank Ltd., Gulbarga (hereinafter referred to as "the Society") constituted and functioning under the Karnataka Co-operative Societies Act of 1959 (hereinafter referred to as "the Act"). He also claims to have been elected as the President of the Society on 26-7-1978.

2. In exercise of the powers conferred by S. 53-A of the Act, Government in its Notification No. RDC 187 CLS 78 dated 25-7-1978 has nominated respondents Nos. 4 to 8 as its nominees on the Board of Directors of the Society, the validity of which is challenged by the petitioner (1) as vitiated by mala fides (2) that respondent No. 7 was ineligible to be nominated as a Director as his daughter is working as a clerk in the Society; and (3) that respondent No. 8 being a defaulter to the Society was ineligible to be nominated as a Director of the Society.

3. On 18-5-1976 a show cause notice was issued to the Committee of Management of the Society under S. 30 of the Act proposing to supersede the Committee of Management for the various omissions and commissions specified in the show cause notice. But even before the Authority could pursue and conclude the proceedings initiated under S. 30 of the Act, on 28-7-1976 Government issued a notification under S. 30-A of the Act appointing the Special Officer for a period of two years, as a result of which the Committee of

Management vacated their office on the same day. On 27-8-1976 the petitioner challenged the Notification issued by the Government under S. 30-A before this Court in Writ Petition No. 7517 of 1976 and sought for stay of the operation of the said Notification. On 19-10-1976 this Court issued rule nisi and ordered notice on the prayer made by the petitioner for stay which was not granted for the reason that the Special Officer had taken charge of the Society and was functioning. On 2-6-1978, Writ Petn. No. 7517 of 1976 came up for hearing before me on which day a Memo was filed by Government inter alia stating that steps had been taken for holding election to the Committee of Management and had over the charge. On a consideration of the Memo filed by Government and all other factors while holding that the Notification impugned in the Writ Petition was illegal, I dismissed Writ Petn. No. 7517 of 1976.

4. On 16-7-1978 elections to the Committee of Management were held in which the petitioner and 11 others were elected. On 18-7-1978 the Secretary of the Society issued a notice to the elected members as also five other members, viz., Sriyuths Subhash Patil, Maruti Male, Narasingh Rao, Iqbal Ahmed and Narasingh Jadav, who had been nominated by the Government under S. 53-A in its notification No. RDC 368 CCB 75 dated 27-12-1975 on the previous Committee of Management fixing 16-7-1978 for electing the Chairman of the Society and for transacting certain other business with which we are not concerned. On 24-7-1978 the petitioner challenged the action of the secretary in so far as it directed the issue of notices to the aforesaid five persons in Writ Petition No. 8167 of 1978 and sought for a interim order restraining the nominees of the Government from participating and casting their votes in the election scheduled to be held on 26-7-1978 for the office of the chairman of the Society. On the same day, this court issued rule nisi and also granted the interim prayer sought by the petitioner and thus prevented the aforesaid five persons from participating in the election.

5. It is the case of the petitioner that the nomination of respondents Nos. 4 to 8 made by the Government on 25-7-1978 is actuated by mala fides and is not intended to achieve the purposes and object of the Act. The petitioner has averred that he is a member of the Janata Party. He has also asserted that Government is keen on not permitting the petitioner and the other members of the Janata Party to function and manage the affairs of the Society. In justification of his plea of mala fides, the petitioner has asserted that one Sri Jarnappa, Personal Assistant to Sri G. Devendrappa, Minister for Animal Husbandry and Dairy Development, was deputed to personally deliver copies of the notification dated 25-7-1978 to three of the nominees viz., Shivalinga Reddy, Dr. G. Subbaiah and Shivaraya Master-respondents Nos. 4, 5 and 7 respectively-enabling them to participate in the election, scheduled to be held on 28-7-1978.

6. Lastly, the petitioner has averred that he has been elected as the Chairman of the Society on 26-7-1978 and has therefore contended that the action taken by the Secretary to adjourn the meeting and elect a new Chairman on 28-7-1978

besides being not true is also illegal. I will state the necessary facts of this aspect in some detail at a later stage.

7. Very surprisingly respondents Nos. 1 and 2 have been content to argue the case by producing the records of the Secretariat without filing their returns denying any of the allegations made by the petitioner. From the records produced (vide file No. RDC 187 CLS 78 of the Karnataka Government Secretariat), the following facts emerge:-

On 12-7-1978 Sri G. Devendrappa, Minister for Animal Husbandry and Dairy Development sent a Minute to the Minister of State for Co-operation suggesting the nomination of Sriyuths Shivaraya Master, Dr. G. Subbaiah, Md. Mawalan Patel, Amruth Ankalgi and Mallanna Halgeri, as Directors of the Society. In the Minute he also stated that the persons suggested by him are not defaulters to any Society. On 13-7-1978 Sri Veershetty Kushnoor, Minister of State for Co-operation minuted as under on the Minute of the Minister for Animal Husbandry and Dairy Development:-

"Commissioner Please take immediate action for nominating these persons as Directors of Bank because the first Board is going to meet to elect President within 10 days. So take urgent action."

In pursuance of the Minute of the Minister for Co-operation, a letter was addressed on 19-7-1978 to the Joint Registrar of Co-operative Societies (Credit), Bangalore, which was also copied to the Deputy Registrar of Co-operative Societies, Gulbarga, asking them to furnish the Bio-data of the five persons proposed for nomination and certain other details. While the Government was awaiting the receipt of the bio-data and other details called for on 19-7-1978, the Minister for Animal Husbandry and Dairy Development on 24-7-1978 submitted another Minute, suggesting the nomination of the five persons mentioned in that Minute. It is seen from the Minutes dated 12-7-1978 and 24-7-1978 three names are common and in the place of Md. Mawalan Patel and Mallanna Halgeri, Shivalinga Reddy and Chandra Shetty were suggested. In the said Minute it is also stated that the five persons are not defaulters. On the same day the Minister of State for Co-operation accepted the suggestion of the Minister for Animal Husbandry and Dairy Development and submitted the file to the Chief Minister who approved the same on 25-7-1978. Evidently after the approval accorded by the Chief Minister a notification of the same date was issued and the matter was communicated to the Secretary of the Society by telegram. In the telegram, there is a direction to the Secretary to allow the nominated members to attend and participate in the election scheduled to be held on 26-7-1978 to the office of the Chairman of the Society. As to the development that took place on receipt of telegram by the Secretary will be stated and dealt by me at a later stage.

8. In I. A. No. 1 filed by respondent No. 3 for vacating the interim order of stay issued by this Court on 28-7-1978, he has justified the action of the

Government. He has asserted that the petitioner is not a member of the Janata Party, but is a member of the Congress Party (Reddy Group) and is the Secretary of the District Congress Committee and the Karnataka Pradesh Congress Committee. A separate statement of objections is also filed by respondent No. 3 justifying the action of the Government. In a separate statement of objections respondents Nos. 4 to 8 have also asserted the very facts asserted by respondent N. 3 in I. A. No. 1.

9. Sri Murlidhar Rao, learned counsel for the petitioner strenuously contended that the nomination of respondents Nos. 4 to 8 by Government is actuated by political and collateral considerations and is vitiated by mala fides and therefore the impugned notification is liable to be quashed. Sri Murlidhar Rao maintained that the facts noticed earlier coupled with all other circumstances lead to the inescapable conclusion that the action of the Government is vitiated by mala fides. In support of his contention Sri Murlidhar Rao strongly relied on the ruling of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, . Sri Venkatachalaiah, learned High Court Government Pleader, appearing for respondents Nos. 1 and 2 and Sri V. H. Ron, learned counsel for respondents Nos. 3 to 8 refuted the contention of Sri Murlidhar Rao and urged that the action of the Government is bona fide.

10. Sri Murlidhar Rao did not rightly dispute the power of the Government to nominate five persons on the Board of Directors of the Society under S. 53-A of the Act.

11. An action of the Government even though within its power, if actuated by mala fides established either by direct or circumstantial evidence, is liable to be struck down under Art. 226 of the Constitution. Secondly in examining the plea of mala fides, the Court must necessarily have regard to the object of the statute conferring power and whether the power conferred has been exercised for the purposes and the object of the statute or for any other purpose. Both these principles are firmly established in *S. Pratap Singh Vs. The State of Punjab*, .

12. In 1976 the Authority that issued a notice under S. 30 of the Act did not pursue the same to its logical conclusion, for reasons best known to it. But all of a sudden Government on 28-7-1976 appointed a Special Officer under S. 30-A and thus immobilized the elected body from functioning. When Writ Petition No. 7517 of 1976 filed by the petitioner came up for hearing before this Court, though Government had the power to extend the term of the Special Officer, did not extend its term and undertook to hold elections and hand over the charge of the Society to the elected body. It is not in dispute that Sri G. Devendrappa, Minister for Animal Husbandry and Dairy Development, who has played a significant role in the nominations of respondents Nos. 4 to 8, hailed from Gulbarga District. At every stage there appears to be a move by the petitioner and others to have the control of the Society by the same is being checked or countered by Government exercising the extensive powers conferred on it by one or the other provisions of law. On 24-7-1978 this Court issued rule nisi in Writ

Petition No. 8167 of 1978 and issued an interim order preventing the previous nominees of the Government from participating in the election of the chairman of the Society scheduled to be held on 26-7-1978. On 19-7-1978 Government had called for the Bio-data of five persons mentioned in the Minute Dated 12-7-1978 of Sri G. Devendrappa and certain other particulars from the Joint Registrar and Deputy Registrar and a reply from those officers had not been received by the Government even on 24-7-1978. Without waiting for the reports Sri G. Devendrappa sends another Minute on 24-7-1978 to the Minister for Co-operation suggesting the names of respondents 4 to 8 which is approved by him on the same day and by the Chief Minister on the next day. Immediately thereafter a notification is issued and the same is conveyed by a telegram with a specific direction to the Secretary of the Society to permit its nominees to attend the meeting and participate in the elections. At this stage, it is useful to notice the object of S. 53-A of the Act. Section 53-A empowers the Government to nominate one-third of the total number of members of the Committee of a Co-operative Society where the State Government has subscribed to the share capital of a Co-operative Society to the extent of not less than (I) fifty per cent of the total share capital ; or (ii) five lakhs of rupees. The object of S. 53-A is to see that the Government nominees fully participate in the deliberations and the functioning of the Society and safeguard the public funds that are invested in a Co-operative Society. Government should make nominations only to achieve the object and cannot make nominations for any other object though the choice of the person exclusively vests in it. In making the nominations of respondents Nos. 4 to 8 in post-haste, Government appears to have lost sight of the object and purposes of S. 53-A of the Act. Apart from these facts which are all telling, Government has not even denied the allegations of mala fides attributed by the petitioner. Sri Jarnappa, P. A. to the Minister for Animal Husbandry and Dairy Development, has not filed any counter denying the allegations made against him. Even respondents Nos. 4 to 8 do not specifically deny the allegation of the petitioner against Sri Jarnappa. Lastly respondents Nos. 4 to 8 do not dispute that the petitioner is a member of a rival political party if not a member of a Janata Party as claimed by him. At every stage the petitioner has been fighting every move of the Government and of the authorities to control the Society. On an examination of all these facts and circumstances, I am of the opinion that the petitioner has satisfactorily established that the action of the Government in nominating respondents Nos. 4 to 8 under S. 53-A of the Act is vitiated by mala fides.

13. Sri Murlidhar Rao next contended that respondents Nos. 7 and 8 suffered the disqualifications specified against them and therefore they were not eligible to be nominated as Directors of the Society. Elaborating his contention Sri Murlidhar Rao maintained that S. 29-C is attracted to a case of nomination under S. 53-A and therefore respondents Nos. 7 and 8 were not eligible to be appointed and cannot continue as Directors of the Society. Sri Ron refuted the contention of Sri Murlidhar Rao and urged that on a proper construction of Ss. 29-C, 53-A and 55

of the Act the nomination of respondents Nos. 7 and 8 was legal. Before examining the legal contention, it is useful to record a finding as to whether respondents 7 and 8 suffer from any of the disqualifications under the Act.

14. According to the petitioner one Smt. Indira, an unmarried daughter of respondent No. 7, is working as a clerk in the Society and therefore he is disqualified to be nominated as a Director of the Society. The assertion of the petitioner that Smt. Indira, an unmarried daughter of respondent No. 7 is working in the Society is not disputed by respondent No. 3 or by respondent No. 7. Under clause (f) of sub-s. (1) of S. 29-C, a near relation which includes the father of a paid employee of a Society is ineligible for being elected, appointed or continued as a member of the Committee of Management of a Co-operative Society and thus respondent No. 7 is ineligible to be elected or appointed as a member of the Board of Directors.

15. The case of the petitioner against respondent No. 8 is that he is a member of the Chincholi Taluk Primary Co-operative Land Development Bank Limited, Chincholi, District Gulbarga and he has not cleared the loans due to that Society as on the date of his nomination. In support of his case, the petitioner has produced a certificate called "due certificate" issued by the Chincholi Society (Exhibit "H"). In their additional statement of objections respondents Nos. 4 to 8 have denied this assertion of the petitioner and contend that 50 per cent of the amount borrowed for sinking the well has been recommended for remission, which has not been finally sanctioned by the competent authority so far. So long as the remission recommended by the authorities is not sanctioned and the loan is not written off, the claim of respondent No. 8 that he is not a defaulter as certified by the Chincholi Taluk Primary Co-operative Land Development Bank Ltd., (hereinafter referred to as "the Bank") cannot be accepted. Even otherwise, I have no reason to reject the certificate issued by the Administrator of the Bank. I therefore hold that respondent No. 8 is a defaulter to the Bank and was therefore not eligible for being elected or appointed to the Board of Directors of the Society.

16. Sir Ron strenuously contended that it is open to the Government to nominate any person under S. 53-A whatever may be his disqualification under S. 29-C and that is clear from S. 55 of the Act. Sri Ron maintained that S. 55 of the Act in clear and unambiguous terms excludes the operation of S. 29-C of the Act. Sri Murlidhar Rao countered the argument of Sri Ron and urged that S. 29-C is not excluded in making nominations under S. 53-A of the Act. In order to appreciate the contention of Sri Ron, it is useful to read S. 55 of the Act and ascertain its true import. S. 55 reads thus:--

"55 Provisions of this Chapter to override other laws. The provisions of Ss. 42 to 54 of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force."

Sections 42 to 54 occurring under Chapter VI "State Aid to Co-operative

Societies" provide for State participation of Apex Co-operative Societies and matters incidental thereto. S. 55 provides that the provisions made in Ss. 42 to 54 of Chapter VI "State Aid to Co-operative Societies" will prevail notwithstanding any inconsistency in the Act or in any other law in force. S. 55 does not appear to exclude all other provisions made in the Act in particular the provisions made in the Act in particular the provisions relating to the disqualifications for being elected or appointed as a Director of a Society. By giving effect to S. 29-C no inconsistency or conflict whatsoever would arise in the Government making nominations under S. 53-A of the Act. On the other hand to accept the argument of Sri Ron and exclude S. 29-C, the legislative intent of prohibiting disqualified members to be on the Board of Directors would be defeated and the same is not in accord with the well-recognized canons of interpretation of statutes. The word "appointed" occurring in S. 29-C and the word "nominated" occurring in S. 53-A have one and the same meaning. In my opinion, there is no merit in the contention of Sri Ron that S. 29-C is excluded in making nominations under S. 53-A of the Act. I am therefore of the opinion that the nominations of respondents 7 and 8, even if bona fide, were impermissible and illegal.

17. Sri Murlidhar Rao lastly contended that the petitioner has been elected as the Chairman on 26-7-1978 and that in any event the action of the Secretary in postponing the elections scheduled to be held on 26-7-1978 and the meeting, if any, held on 28-7-1978 is unauthorised and illegal. Sri Ron refuted this contention and urged that the meeting scheduled on 26-7-1978 was not at all a matter of fact held and therefore a meeting to elect a Chairman has necessarily to be held in accordance with law.

18. On the question as to whether a meeting to elect the Chairman as scheduled on 26-7-1978 was actually held on that day or not, there is conflicting versions between the petitioner and respondents Nos. 4 and 8. Even the material that is produced by either of the parties in support of their respective cases is such that it is not possible for me to record a finding in favour of any one of the parties. I therefore, do not propose to elaborately notice the respective assertions of the petitioner and respondents Nos. 4 to 8 and the conflicting material produced by them in support of their respective cases. In my opinion, it would be safer to proceed on the material No. 3. The telegram dated 25-7-1978 is stated to have been received by the Secretary on 26-7-1978 at 9-15 A.M. and there is an endorsement to that effect on the original telegram. In the telegram there is a specific direction that the nominated members should be allowed to participate in the election of the Chairman scheduled to be held on 26-7-1978. The meeting was scheduled to commence at 11 A.M. on the same day. The Secretary found that it was not possible to issue meeting notices to the newly nominated persons and hold elections on the same day at 11 A.M. He therefore sought the advice of the legal adviser of the Society who advised the Secretary to adjourn the meeting and give an opportunity which appears to have been accepted by the Secretary and action has been taken thereto. I am, therefore, inclined to hold

that a meeting did not take place on 26-7-1978. But the question is whether the Secretary was competent to adjourn the meeting and the meeting, if any, held on 28-7-1978 is a valid meeting. It is settled law that elections to any office can not be normally postponed unless the law itself in express terms authorises such an officer on any of the circumstances mentioned in such a law itself. Sri Ron is unable to point out that the Act and the Rules made thereunder authorise the Secretary to postpone the elections much less hold the elections on 28-7-1978 under the Chairmanship of the Deputy Commissioner. In this view, I have to necessarily hold that the action of the Secretary in postponing the elections and the meeting, if any, held on 28-7-1978 under the Chairmanship of the Deputy Commissioner is invalid. In the circumstances that have developed there is no other alternative for this Court but to direct the Secretary to call for a meeting with all expedition to elect a Chairman excluding respondents Nos. 4 to 8.

19. In the light of my above discussion, I quash the notification no. RDC 187 CLS 78, dated 25-7-1978, 15-7-1978 of the Government of Karnataka (Exhibit "A") and the proceedings of the postponed meeting of the Board of Directors of the District Central Co-operative Bank Ltd.; Gulbarga, held on 28-7-1978 (Exhibit "J") and direct its Secretary to call for a meeting to elect a Chairman to the said Society in accordance with law and in the light of the observations made in this order with all expedition.

20. Rule made absolute.

21. Petitioner is entitled to his cost from respondents Nos. 1 and 2. Advocate's fee Rs. 250/-.

22. Let a copy of this order be communicated to respondents Nos. 1 to 3 within 10 days from today.

23. Order accordingly.