
(1997) 03 KAR CK 0015

In the Karnataka High Court

Case No : Writ Appeal No's. 1464, 1465 and 1466 of 1994

K. Shantharah

APPELLANT

Vs

M.L. Nagaraj and Others

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Co-operative Societies Act, 1959 — Section 30, 30 A

Citation : (1997) ILR (Kar) 2796

Hon'ble Judges : S.R. Venkatesha Murthy, J;P. Krishnamoorthy, J

Bench : Division Bench

Judgement

P. Krishnamoorthy, J.—These appeals are against the judgment in W.P. No. 16378 of 1992 by four members of a society by name "The Nurserymen Co-operative Society Limited", Lalbagh, Bangalore.

2. W.P. No. 20301 of 1994 is to review the order dated 13-4-1994 passed in M.L. Nagaraj Vs. State of Karnataka, .

3. W.A. (FR) No. 3386 of 1994 is by the State against the order of the learned Single Judge in W.P. No. 16378 of 1992.

4. W.A. Nos. 517 to 519 of 1995 are by four members of the respondent-Society against the judgment of the learned Single Judge in W.P. No. 16378 of 1992 and connected writ petitions.

5. The three writ petitions, out of which these appeals arise, pertain to the affairs of a Co-operative Society called Nurserymen Co-operative Society Limited, Lalbagh, Bangalore, (hereinafter referred to as "the Society") and in these writ petitions, the challenge is against the order of supersession, Election to the Board of Directors and admission of new members to the society.

6. The society in question has got State-wide jurisdiction to promote nursery to safeguard the interest of nurserymen and seeds men and also to promote and

encourage development of horticulture and nursery business in the State. Originally, the members of the Board of Directors was 8 which was enhanced to 12. The election to the Board of Directors was scheduled to be held on 24-12-1991 in the General Body Meeting. While so, a charge-sheet dated 18-11-1991 evidenced by Annexure-C was served on the Board of Directors calling for explanation u/s 30 of the Karnataka Co-operative Societies Act (hereinafter referred to as "the Act"). In that charge memo, there were 23 charges. To that, the Board of Directors submitted an explanation evidence by Annexure-D. Thereafter, by Annexure-E, order dated 23-12-1991, an order was passed u/s 30 of the Act, superseding the Board of Directors and also appointing the Joint Registrar of Co-operative Societies, Bangalore Division, Bangalore, as an Administrator of the said society from the date of issue of this order for a period of one year. The order of supersession is questioned in the writ petition on the ground that the action is arbitrary, illegal and politically motivated, in that it was passed on the previous day of the date of election which was scheduled to be held on 24-12-1991 and it was submitted that the impugned order was passed without application of mind. Though a Revision was filed before the Government, the order was confirmed and it is contended that, in view of the order of supersession, the Directors are prevented from discharging their duties. They have also made allegations that the Administrator is likely to admit persons who do not qualify the requirements and have sought for restraining the Administrator from admitting any new members and also for quashing the order Annexure-E, dated 23-12-1991, superseding the Board of Directors. There is also a prayer of mandamus to hold the General Body Meeting and to hold the election from the stage it was intercepted.

7. Though, originally, by an interim order, supersession was suspended, later by an order dated 20-1-1992, the interim order was vacated.

8. Thereafter, the Administrator enrolled more than 150 persons as members of the society and issued Calendar of events to hold the election. At this stage, Writ Petition No. 40409 of 1993 was filed for quashing calendar of events dated 3-11-1993 and by an interim order, the election was stayed. It was contended in that writ petition that the Administrator deliberately, while the earlier writ petition was pending, enrolled new members against the bye-laws of the society and those persons enrolled by the Administrator have no locus standi to participate in the election.

9. Statement of objections were filed, in which, it was contended that the order of supersession was passed after taking into the entire materials that are available in the case and that no grounds are made out to set aside the same. It was also contended that the Administrator has all the powers of the Board of Directors and that he is entitled to enroll new members and that the pendency of the writ petition will not stand in the way of his exercising power of enrolling new members.

10. After hearing both the sides, learned Judge has held that there is non-

application of mind and that there is want of reasons in passing the impugned order of supersession and that, it cannot be sustained. The learned Judge has also found that the Administrator has admitted members without looking into the question as to whether they are qualified to be enrolled as members. The learned Judge has also held that the election has to be held from the stage it was intercepted by the order of supersession. Ultimately, the learned Single Judge declared the order of supersession, Annexure-E as invalid and further held that the election has to be conducted from the stage it was intercepted at the earliest opportunity. The learned Judge, further held that, the members who are enrolled during the pendency of the writ petition shall not participate in the election and the Administrator shall notify the election with fresh calendar of events and hold the election with the members who were then in existence when W.P. No. 16378 of 1992 was filed. It was further directed that the Board of Directors elected by the General Body shall consider the application of the new members enrolled by the Administrator keeping in view the criteria or the eligibility contemplated under Bye-law 15 and dispose of their application in accordance with the bye-law after due consideration.

11. We heard the learned Counsel appearing for all the parties. It is contended by the appellants that show-cause notice issued to the Board of Directors before an order was passed u/s 30 of the Act. They filed their objections and that it was considered by the Registrar before passing the impugned order. It is contended that this Court cannot sit in appeal over the order passed by the Registrar in proceedings under Article 226 of the Constitution of India, but can only consider the question as to whether there is any irregularity or illegality in the decision making process adopted by the authority. It is also contended that, even if the order of supersession is bad, till the order was set aside by this Court, the Administrator was in de facto management of the society and whatever action taken by him during that period, cannot be invalidated on the ground that his appointment itself was improper and that the de facto doctrine adopted by the Supreme Court in some cases should be applied here and that the members admitted by him shall be deemed to be members of the society entitled to vote in the elections. It is also contended that the Administrator is substituted for the Board of Directors and that he is entitled to perform all the functions which the Board is entitled to do and is accordingly entitled to enroll new members. On the other hand, it is contended by the learned Counsel for the respondents that the order of supersession, Annexure-E gives no reasons. The order is passed on no evidence to prove the irregularities alleged to have been committed by the Board of Directors and that there is complete non-application of mind in passing the impugned order and that it is arbitrary. It is also contended by them that the Administrator appointed u/s 30 of the Act, can only perform day-to-day functions of the society in contrast to a Special Officer appointed u/s 30-A of the Act and that he had no jurisdiction to enroll new members while acting as Administrator of the society. It is their contention that the action of supersession is clearly mala fide and that the intention was only to oust the duly elected body and to stultify

the election which was to take place on the next date of the appointment of the Administrator. On these grounds, the respondents supported the order of the learned Single Judge and contended for the dismissal of the appeal.

12. In the light of the above arguments, the main questions that arise for consideration in this appeal are as:

(i) Whether the learned Single Judge was right in quashing the order of supersession evidenced at Annexure-E passed u/s 30 of the Karnataka Co-operative Societies Act?

(ii) Even if the order of supersession is held to be invalid, whether the action of the Administrator in enrolling new members while he was functioning as such, till the order was set aside can be sustained on the ground that he was in de facto management of the society?

(iii) Whether the Administrator appointed u/s 30 of the Karnataka Co-operative Societies Act has power to enroll new members to the society while he is in Management of the same?

13. We shall consider these questions in seriatim.

Point No. 1: The learned. Single Judge has set aside the order of supersession on the ground that there is non-consideration of the explanation offered by the Board of Management and there is non-application of mind to the explanation offered. It is contended by the learned Counsel for the appellant that a show-cause notice was issued detailing the charges to the Board of Directors and that they filed their objections which were also considered while passing the impugned order. Out of 23 charges framed, the Registrar found only 16 of the charges proved and it is on the basis of the same that he passed an order superseding the committee and appointing an Administrator for a period of one year. It is also contended by him that this Court in a proceeding under Article 226 of the Constitution of India, cannot sit in appeal over the order of Registrar passed u/s 30 but can only consider the question whether has was influenced by any irrelevant matters or whether he has omitted to consider any relevant matters in coming to the conclusion. According to the learned Counsel for the appellant if the order at Annexure-E is tested in that light there is nothing for this Court to interfere as sufficient reasons have been given for the finding that certain charges levelled against them have been proved.

14. But on going through the show-cause notice, explanation and the order passed by the Registrar evidenced by Annexure-E, we are satisfied that the learned Single Judge was right in coming to the conclusion that there was complete non-application of mind and non-consideration of relevant materials in passing the impugned order at Annexure-E. In Annexure-E, a translation of which, was provided by the learned Counsel, it is seen that the charges are mentioned and the reply given by the Board of Directors is also given and thereafter, the decision of the Registrar on each charges are given. On going

through the finding entered by the Registrar, it is seen that it is based on no materials whatsoever. It is based on surmises and proceeds on the basis that certain charges are admitted which are incorrect. We shall give one or two examples to show that there was complete non-application of mind while passing the order at Annexure-E. The first charge is to the effect that, as per sub-rule (9) of the bye-law of the society, the membership fees has been enhanced to Rs. 100/- and that it has not been intimated to 54 members either by notice or through any intimation letter. It is further stated in that charge that as a result, 54 members of the society have become defaulters and the same is in violation of sub-rule (9) of the bye-laws of the society. In the reply submitted by the Board, it is stated that the increase in the share value has been informed to 54 members of the society by means of notice dated 29-9-1991. It is also further made clear by them that the effect of the amendment would affect only future members and that the existing members who have paid the share value of Rs. 10/- are entitled to continue as members of the society and the amendment made is only applicable prospectively. It is further made clear by them that the existing members are not required to pay the enhanced share value and that there is no provision to remove any existing members. After considering this objection, the decision given by the Registrar is to the effect that the members of the Management in their reply have accepted that 54 members have become defaulters. It is also stated:

"They have stated that these 54 members have been informed to pay the enhanced share value as per the amended bye-law by means of notice dated 29-9-1991. But the copy of the notice has not been enclosed along with their reply. Hence the above charge is proved".

From the above finding of the Registrar, it is clear that, he has not taken into account the plea taken by the Board in their reply at all. The specific case of the Board of Directors is to the effect that the amendment, by which, the share value was, increased is not applicable to the existing members and that they are not liable to pay the share value, thereby, they do not become defaulters. That aspect is not considered at all by the Registrar but he has held that the charge is proved by the Board because the copy of the notice informing them to pay enhanced share value has not been enclosed with their reply. It is evident from the above, that there is complete non-application of mind by the Registrar in considering the reply given by the Board of Directors.

15. So also in regard to Charge No. 2, we have to state that it also suffers from the same infirmity. Charge No. 2 is to the effect that in 11 cases, after conducting spot inspection and on the basis of the report of the spot inspection, the 11 applicants are found to be eligible for the membership and even though, the members have recommended for the grant of membership to them, the Committee of Management has not granted the membership and accordingly, the committee has violated the bye-law of the society. The explanation given by the Board of Directors is to the effect that, after the inspection of the Nursery and on

the basis of the report, the applicants are found to be eligible to become members of the society and they were requested to furnish the necessary title deeds by means of notice. It is further stated by them that no reply was received by them with regard to furnishing of title deeds. Therefore, they have not been given the membership. Some of the applicants have produced the title deeds and on verification of the said documents, it was found that they are entitled for the membership of the society. But the case of the Board is that, inspite of written communication made to these applicants who are eligible to become members of the society, they have not received any reply nor have they paid the prescribed share value. It is for these reasons that they were not admitted as Members and that they have further stated that steps will be taken to send the reminders to those eligible applicants to grant membership.

16. The Registrar, in his finding on the charge, answered:

"The members of the Management Committee have admitted the charges in their reply. Hence the above charge is proved".

17. We are unable to understand as to how on a reading of the charge and the reply, it can be said that the charges are admitted. In the reply they have clearly stated that some of the applicants have not furnished the details regarding their eligibility and some of the applicants who had furnished their title deeds did not pay the membership fee in spite of notice being issued to them. The Board also has made it clear by sending reminders to them. In these circumstances, the finding of the Registrar that the charge is admitted, is to say the least, is perverse. There is complete non-consideration of the defence taken by the Directors and the reply given by them has been totally misunderstood.

18. So also Charge No. 12 is to the effect that the Managing Committee in its meeting held on 29-1-1990 has sanctioned a sum of Rs. 150/- to the Secretary towards the expenditure to be incurred for depositing the society amount to Bank. There is no provision under any Act or rules to pay the amount and the decision is illegal. To that, a reply was given that the transaction of the society exceeds Rs. 75 lakhs and payment of an amount of Rs. 150/- is legal and in the circumstances of the case, the Audit has also not objected to this. The Registrar has decided that this charge has been accepted and the expenditure was without proper sanction of the rules. It has to be noted that only a sum of Rs. 150/- was paid to the Secretary, whereas, the transaction of the society exceeds Rs. 75 lakhs. Even if it is proved it is trivial a charge not warranting the supersession u/s 30 of the Act. We have only given certain examples as to how the Registrar came to the conclusion that the Board has violated the rules in certain cases. Likewise, the findings of the Registrar on almost all the charges are in this manner without properly considering the reply given by the Board of Management and by not considering the explanation given by them. The entire finding is based on no material and it is clear that on the available materials, the Registrar could not have come to the conclusion. On going through the allegations, reply and the findings, we are clearly of the opinion that almost all

the findings on the charges entered by the Registrar are without any materials and by non-consideration of the reply given by the Board of Directors in its proper perspective. In that view of the matter, we agree with the learned Single Judge that the order of supersession, Annexure-E is liable to be set aside and accordingly, we confirm the finding of the learned Single Judge.

19. The decision on Point No. 2 would arise only if we answer Point No. 3 in the affirmative. Accordingly, we shall consider Point No. 3 and then revert to Point No. 2.

20. Point No. 3: The question that has to be decided is as to whether an Administrator appointed u/s 30 of the Act is entitled to enroll new members while he is in management of the society. It has to be noted that, at the time of the Administrator's appointment, there were 234 members in the society and he admitted new membership to the extent of 222 members between 5-3-1992 and 23-10-1993 during the pendency of the writ petition. Whether the Administrator has got power to admit new members would depend upon the power given to the Administrator u/s 30 of the Act.

21. While considering the scope of Section 30 of the Act, it is relevant to note the provision u/s 30-A of the Act, by which, in certain circumstances, a Special Officer can be appointed for taking over the management of a Co-operative Society. u/s 30 of the Act, if the Registrar is of the opinion that a committee of a Co-operative Society persistently makes a default or negligent in the performance of the duties or for other reasons mentioned therein, can by an order in writing, remove the committee and appoint an Administrator to manage the affairs of the society. The powers of the Administrator are also mentioned in that section. Section 30-A of the Act provides for the appointment of a Special Officer by the State Government, on a representation made by the Registrar on certain conditions mentioned in that section. It would be relevant to reproduce the provisions contained in Sections 30 and 30-A of the Act for a comparison of the powers of the Administrator and the Special Officer appointed under the respective sections.

"30. Supersession of Committee.-

(1) If, in the opinion of the Registrar-

(a) the committee of a co-operative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly; or

(b) a co-operative society is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the State Government or the Registrar, the Registrar may, after giving the committee an opportunity to state its objections, if any, order in writing remove the said committee, and appoint an Administrator to manage the affairs of the society for

such period, not exceeding one year, as may be specified by the Registrar.

(2) The Administrator so appointed shall, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the committee or of any officer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(3) The Administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act, the rules and the bye-laws of the co-operative society:

Provided that in such an election no member of the committee removed under sub-section (1) shall, notwithstanding anything contained in this Act, the rules or the bye-laws, be eligible for being elected as a member of the committee, for a period of four years from the date of supersession of the committee under the said sub-section:

Provided further that if the committee elected in accordance with this sub-section is also superseded within a period of one year from the date of its election, such supersession may extend to a period not exceeding three years".

"30-A. Appointment of Special Officer.-

(1) Where the State Government on a report made to it by the Registrar or otherwise, is satisfied that any cooperative society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any order, direction circular issued by the State Government or the Registrar, it may, notwithstanding anything in this Act, by order, appoint a Special Officer for such co-operative society for such period not exceeding two years:

Provided that the State Government may, if it considers it necessary extend the said period of two years by such further period not exceeding one year.

(2) xxxxx.

(3) The Special Officer subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society or any Officer of the co-operative society and take all such actions as may be required in the interest of the co-operative society".

22. On a reading of Sections 30 and 30-A of the Act, it is evident that a Special Officer appointed u/s 30-A has wider powers and functions than the Administrator appointed u/s 30.

23. Section 30(b) authorises the Registrar to appoint an Administrator to manage the affairs of the society for such period, not exceeding one year, as may be specified by the Registrar. Section 30(2) of the Act provides that, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the committee or of any Officer of the co-operative society and take such action as he may consider necessary. Sub-

section (3) of Section 30 of the Act provides that, the Administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act the rules and the bye-laws of the co-operative society. Thus, it is evident that the appointment of an Administrator can never exceed a period of one year and he is appointed to manage the affairs of the society. It is also clear that, u/s 30(2), he is entitled to only exercise all or any of the "functions" of the committee or of any Officer of the Co-operative Society. But if we look at Section 30-A, whereby the State Government is empowered to appoint a Special Officer, it is seen that his term of office is normally for two years and power is also vested in the State Government to extend the said period of two years by a further period not exceeding one year. It can thus be seen that a Special Officer can be appointed for a society for a maximum period of 3 years whereas an Administrator can be appointed only for a period of one year. It is also pertinent to note that, u/s 30-A(3) the Special Officer is entitled to perform all the powers and functions of the committee. Thus, there is a difference between the authority of an Administrator and a Special Officer appointed under Sections 30 and 30-A respectively. An Administrator can exercise only the functions of the committee and he is empowered to manage the affairs of the society as could be seen from Section 30(1) and (2), whereas, a Special Officer appointed for a Co-operative Society, can exercise all powers and functions of the committee. An Administrator is appointed to manage the affairs of the society, whereas, a Special Officer is appointed for the Co-operative Society. So also, the Administrator can exercise only the functions of the committee, whereas, it is seen that the Special Officer is empowered to perform all the powers and functions of the society. In other words, while the Administrator is to perform only the functions of the committee, the Special Officer is entitled to perform all the powers and also do the functions of the committee. It is thus seen that the Administrator is empowered only to do the functions of the committee, whereas, all the powers and functions of the committee vested in the Special Officer. So also, the Administrator is appointed only for managing the affairs of the society, whereas, a Special Officer is appointed for a Co-operative Society.

24. Section 28-A of the Act states that the Management of a co-operative society shall vest in a committee constituted in accordance with this Act, the rules and the bye-laws of such society. The section further provides:

"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".

25. Under the above section, the Management of the Board vests in the committee and the committee has to exercise the powers, discharge the duties and perform the functions assigned to it by the Act, rules or the bye-laws. Out of the three categories of authority vested in the committee, viz., power, duties and functions, the Administrator is vested with the authority only to perform the

functions of the society, whereas, the Special Officer is vested with authority to exercise the power and perform the functions of the society. In other words, the Administrator can only perform the functions of the committee but cannot exercise the powers vested in the committee. On a comparative reading of Sections 30 and 30-A and especially taking into account the shorter period of one year provided for an Administrator, we are clearly of the opinion that an Administrator is appointed only to manage the affairs of the society in a routine manner and to conduct the election in accordance with the rules, within a period of one year. We think that he is not entitled to exercise all the powers vested in the committee of a society during his administration.

26. Further question to be considered is as to whether, the admission of new members to a society is a power or function of the committee. Bye-law 15 of the bye-laws of the society gives the authority to the committee to consider the applications for membership. After consideration of the same, the committee is entitled to either allow the application and admit members or can reject the same. In such circumstances, admission of members is not a mere function of the committee but it is a power of the committee to admit the members or not, for, they have to consider the application on merits, take a decision either to admit members or reject their application. By the exercise of that authority, the legal relationship of the applicant vis-a-vis of the society is changed and accordingly, is a "power" and not a mere "function". In Salmond on Jurisprudence -- 12th Edition, it is stated as follows at Page 229:

"A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights," duties, liabilities or other legal relations, either of himself or of other persons".

In Black Law Dictionary, "Power" is defined as follows:

"The right, ability, authority, or faculty of doing something".

"A power is an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given act".

In Black Law Dictionary, "Function" is defined as:

"Function" means to perform, execute, administer.

From the aforesaid definitions, it is clear that there is a difference between the "Power" and "Function" and power is an authority to change the relationship of one person with that of another. In that view of the matter, we are clearly of the view that the admission of new members to a Co-operative Society is power vested in the managing committee and it cannot be said to be a mere function of the society. On a reading of Section 30 of the Act, it is clear that an Administrator is entitled to only perform function of the committee and to manage its affairs and he is not vested with the power of the committee as is the case of a Special Officer appointed u/s 30-A of the Act. If that be so, admission of new members by the Administrator was clearly without authority and the

learned Judge was right in excluding them from taking part in that election.

27. Strong reliance was placed by the learned Counsel for the appellants on a decision of Division Bench of the Kerala High Court in *George v Joint Registrar*, wherein, their Lordships considered the authority of an Administrator appointed u/s 33(2) of the Kerala Co-operative Societies Act. In that decision, their Lordships held that.-

"The Administrator is the de jure committee in power when there is no elected committee. He has thus all the powers of the committee".

Accordingly, he is entitled to enroll new members. But it has to be noted that the wording of Section 33(2) of the Kerala Co-operative Societies Act is slightly different from the wording of Section 30 of the Act. In the Kerala Act, the Administrator has power to exercise all or any of the functions of the committee, whereas, in the Karnataka Act, the Administrator can only exercise all or any of the functions of the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in the Karnataka Act is not considered in the Kerala decision. The difference in the authority vested in an Administrator and a Special Officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division Bench of the Kerala High Court, cannot have any application while determining the comparative authority of an Administrator and a Special Officer appointed under Sections 30 and 30-A of the Karnataka Act respectively. Thus, the above decision has no application to the interpretation of Section 30 of the Act. We accordingly hold that an Administrator appointed u/s 30 of the Act, has no authority to enroll new members and his function is only to manage the routine affairs of the society from day to day. We answer Point No. 3 in favour of the respondents.

28. In the light of the conclusion on Point No. 3, it is unnecessary to consider Point No. 2 and accordingly, we leave open the same.

In view of what is stated above, we confirm the decision of the learned Single Judge and dismiss these appeals. The direction regarding election given by the learned Single Judge shall be carried out by the concerned respondent within two months from the date of receipt of a copy of this judgment.

Parties shall bear their own costs.