

(1991) 10 KAR CK 0030
In the Karnataka High Court
Case No : W.P. No. 18060/1991

Karnataka Co-operative Consumers Federation and Its Units"
Employees Welfare Union, Bangalore

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-10-1991

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29(1)

Citation : (1991) 3 KarLJ 12

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

1. The petitioner-Karnataka Co-operative Consumers Federation and its Units" Employees Welfare Union feels aggrieved by a notification issued by the State of Karnataka (Respondent No. 1) dated 24-7-1991 (vide Annexure-D) nominating three more persons, namely, S.G. Srinivasa, V.S. Paramashivaiah and Y.V. Jogannavar-respondents-5, 6 and 7 herein, to be the nominees (sic) on the Board of Directors-respondent-2-Karnataka Co-operative Consumers Federation Limited with immediate effect fixing their tenure of office as three years from the date of notification. It transpires that earlier in the year 1986 the State of Karnataka had issued a notification earlier as per Annexure-A purporting to act under Bye-law No. 26(3) of respondent-2-Society nominating one Sri H. Hanumappa along with the Registrar of Co-operative Societies and the Additional Registrar of Co-operative Societies, Government of Karnataka, Bangalore to be on the Board of Directors of respondent-2-Society. Later, by yet another notification dated 6-5-1988 (Annexure-B) the Government acting under Section 53-A of the Karnataka Co-operative Societies Act, 1959 (for short "the Act") read with Bye-law No. 26(3) of respondent-2-Society substituted Additional Registrar of Co-operative Societies, Bangalore by the Deputy Secretary to Government, Co-operation Department who was inducted on the Board of Management of respondent-2 in the place of the Additional Registrar of Co-operative Societies nominated under Annexure-A. Again under Annexure-C dated 31-3-1989, the Government, claiming to act under Sections 29 and 53-A of the Act cancelled the

nomination of the non-official members on the Board of Directors of Societies like respondent No. 2 with immediate effect with the result the nomination of Sri H. Hanumappa under Annexure-A was annulled.

2. When matters were drifting in this fashion, Government issued notification at Annexure-D dated 24-7-1991 under which it nominated respondents-5, 6 and 7 as its nominees and this was done under Section 29(1) of the Act. It is this notification which is impugned in this writ petition. For the sake of (sic) it requires to be excerpted: The ground on which the notification Annexure-D is sought to be assailed on the basis of non-availability of the power in Government to make such nominations acting under Section 29 of the Act, because it is said, Government having already acted under the bye-laws of the Society and having nominated two ex-officio members-Deputy Secretary and Registrar of Co-operative Societies could not thereafter go back and make further nominations under Section 29 of the Act.

3. It is strongly urged by Sri H. Billappa, who appears in support of this writ petition that in a case like this power of nomination under the bye-laws is co-equal to and identical with the power of nomination exercisable under Section 29 of the Act. It is said that Government cannot exercise that power twice, once under the bye-law and again under Section 29 of the Act. It is argued that power exercisable under the bye-laws being the same as available under Section 29 of the Act, Government cannot resort to both sources for packing the Board of Directors of a Co-operative Society with its own nominees as that would result in hiking the strength of the nominees by more than one third of the total strength of the executive committee of the Society, a step made impermissible under Section 29 of the Act, itself. It is pointed out that there being already two persons as Government nominees under Annexure-A, the nomination of three more persons under Annexure-D would bring the total number of nominations to five is clearly illegal and in excess the power of the Government for which reason I am asked to strike down the notification Annexure-D.

4. Mr. Billappa, relied strongly on the decision of this Court in the case of Naganna Gowda N.G. & Another v State of Karnataka & Others, 1987(2) Kar. L.J. 389. It is a decision my brother Rama Jois, J. wherein His Lordship held that power under Sections 29 and 53-A of the Act being mutually exclusive was not cumulative and though Section 53-A of the Act was incorporated as an independent Section, in truth and substance it was in the nature of a proviso to Section 29 of the Act. It was further held that Government could exercise its right to nominate members on the Managing Committee of a Society either under Section 29 or under Section 53-A of the Act, but not under both. It was also pointed out that bye-law 21(1) of the Society provided for nomination of three persons by Government and that was the maximum number whom Government could nominate under Section 29 of the Act, it was held that nominations made by the Government under the bye-laws must therefore be regarded as having been done under Section 29 of the Act because bye-law

21(1) therefore provided for nomination of 3 persons by Government and that power of nomination available under Section 29 of the Act was actually built into the bye-laws. The Government could not after opting to nominate such person as its nominee as required by the bye-law, could not thereafter proceed to make further nominations either under Section 29 or 53-A of the Act.

5. Mr. Billappa, points out that in the instant case bye-law 31 of the 2nd respondent-Society also provided for three nominees of the State Government to sit on the Board of the Society. The said bye-law No. 31 of respondent-2 reads:

"31. Management:

1. Subject to the provisions of the Act, the Rules and the Bye-laws the Management of the affairs of the Federation shall vest in a Board. The Board shall consist of 12 Directors as under:

a) 6 Directors elected from among the eligible member societies.

b) The Managing Director of the Federation as Ex-officio Director.

c) 3 Nominees of the State Government, out of which two are:

i) Registrar of Co-operative Societies in Karnataka;

ii) Deputy Secretary to Government, Co-operative Department."

Depending on the above bye-law, argument built is that in so far as the bye-law itself providing for nomination of three persons by the State Government must be taken to reflect Section 29 itself and not to de hors the same. Counsel maintains that in such a case there could not be two sets of nomination one under the bye-law and another under Section 29 of the Act. The format of this bye-law referred to supra is sought to be made use of to bring the instant case within the four corners of the decision of Rama Jois, J., in Naganna Gowda's case. Strong as the argument appears to be and might have sounded different had it not been for a Bench decision of this Court in the case of C.E. Krishnegowda v State of Karnataka, 1991(2) Kar. L.J. 273: ILR 1991 Karnataka 2218. In that case it was held:

"Section 29(1) categorically lays down as to when the power is exercisable i.e., where the State had contributed to the share capital or assisted indirectly the functions, control etc., which are set out at clauses (a) to (d). In categorical terms the Section says:"shall notwithstanding anything contained in this Act or the Rules or the Bye-laws of the co-operative society."Therefore this clause obviously means it shall have overriding effect. The Government have the right to nominate as its representatives not more than three persons..... Even otherwise, this power is an independent one and no bye-law can whittle down or mitigate against the rigour of Section 29(1) of the Act. It is equally well settled that a bye-law is nothing more than a concession. Therefore, it is one thing to say that the statutory power is exercisable by the Government; it is another thing to say that the power is traceable to the bye-laws. Therefore, the

contention that the power of nomination under Section 29(1) of the Act must be circumscribed by bye-law is not correct...Merely because the Government has power to nominate, the majority in the election will get upset is no reason to hold to the contrary. Such a consideration is not germane to the issue." In the context Their Lordships had the occasion to consider the decision of Rama Jois, J., in Naganna Gowda's case. Their Lordships distinguished that decision pointing out that anything done under the bye-law was different and distinct from what the Government could do in exercise of its statutory powers under Section 29 of the Act.

6. Para-5 of the Judgment deals with Naganna Gowda's case and Their Lordships observe:

".....Therefore, bye-law 21(1) provided for nomination of three persons by the Government. It was the maximum number for nomination by the Government under Section 29 of the Act. Therefore, though the notification dated 22-2-1984 refers to bye-law 21(1) of the bye-laws of the Society, it must also be regarded as having been issued under Section 29 of the Act, for bye-law 21(1) itself to the extent it provided for nomination of 3 members by the Government, was incorporated for the purpose of making it to conform to Section 29 of the Act. The contention of the Government that it had the right to nominate three persons under bye-law 21(1), three persons under Section 29 and five persons under Section 53-A of the Act, is patently untenable."

Their Lordships then went ahead and considered the decision of Malimath, J., as His Lordship then was in *B.M.Rudriah v Government of Karnataka*, 1977(1) Karnataka Law Journal Short Note 85 and expressed their agreement with the dictum of Malimath, J., who was also of the view that Section 29(1) permitted the State Government to nominate three members on the Board of Directors notwithstanding the fact that it may have the effect of hiking the strength of the Board of Directors of the Society in excess of the limits permitted by the bye-laws of the Society. Therein His Lordship said thus:

"Having regard to the width of the language employed in sub-section (1) of Section 29 it cannot be said that the State Government cannot exercise its power of nomination without, in the first instance, taking steps to get the bye-laws fixing the number of members to the Board of Directors suitably amended. *B.M. Rudriah v Government of Karnataka*, W.P. No. 280/1977, dated 10-1-1977."

By hind sight it does appear to me that in the context of this case there is no occasion at all to rely on the dictum in Naganna Gowda's case, because whatever reservation one may have about that decision the conclusion that the bye-law in that case having provided for exercise of power of nomination directly relatable to Section 29 of the Act and the choice also being limited to three persons it was obvious that the nominees of the Government who sat on the Board of that Society, whether they did so because Government took power to make the nomination under the bye-laws of that Society or whether it was under

Section 29 of the Act was immaterial because the bye-law per se provided for making nominations only under Section 29 of the Act.

7. Mr. Veerabhadrappe, learned counsel appearing for the contesting respondents provided me with a copy of the bye-law that came up for consideration in Naganna Gowda's case, clause (b) of bye-law VIII being relevant reads thus:

"b) Three nominees of the Government, i.e., 1) The Managing Director (2) The Joint Registrar of Co-operative Societies, and (3) The Joint Director of Agriculture to be nominated by the Government under Section 29(1)(d) of the K.C.S. Act, 1959." A reading of the bye-law supra makes it clear that the nominees of the Government although inducted under the bye-law, the same was treated as done in exercise of power under Section 29(1)(d) of the Act. Bye-law, however, made it clear that the three persons came into the Board of the Society via Section 29 and not through any other channel. If that be the fact situation, Government could not thereafter insist on exercising their power of nomination under Section 29 or Section 53-A of the Act. That in fact was the view taken by Rama Jois, J., with whom I concur. That power under Sections 29 and 53-A being mutually exclusive in that if power is exercised under one source it cannot be duplicated by drawing on the other source. In other words power once exercised would leave the Government completely defunct in the matter of making nominations under the Act and such being the situation the power of Government to make nomination having been exhausted when satisfying the requirement of the bye-law, Government could not have thereafter taken power from any other source to exercise a power which it did not clearly have and which power was wholly unavailable at that juncture. On that conclusion the decision of Rama Jois, J., was clearly unexceptionable but such a situation does not arise herein. Government had not bartered away or agreed to shortening of its power of nomination by agreeing to nominate three persons on the Board of respondent-2-Society, under the bye-law. That was precisely the point decided by the Bench in C.E. Krishnegowda's case, wherein it was pointed out that power of inducting somebody on the Board with a view to satisfy the bye-law, was different from the empirical power exercised by Government of inducting some nominees of its choice under Section 29 of the Act since that power became available only under certain circumstances particularly when it was funding the Society in a large way in augmenting its share value. It is said there is no dispute about it that Government had invested Rupees 65 lakhs by way of share capital in the 2nd respondent-Society and consequently could not be denied the power of nominating three persons under Section 29 of the Act, although acting under the bye-laws it had nominated two persons. As held in the decision Krishnegowda v State of Karnataka (supra) power under Section 29 of the Act was available to Government notwithstanding the fact anything done thereby did result in enhancing the strength of the Board above the number fixed under the bye-law. Therefore, in nominating some more persons no illegality was committed so long as it was done in exercise of power of Section 29 of the Act. The notification Annexure-D is thus immune from attack against its validity on the ground that

power under Section 29 became unavailable in the facts and circumstances of the case. In the said notification reference made to taking power under Section 53-A is of no consequence and immaterial is the argument of Sri Veerabhadrappe. He urges nomination referred to under bye-law 31 adverting to the Secretary and Joint Registrar must be regarded as if they were appointed under the bye-law itself, although certainly has force in it and the justifying argument based thereon, suggesting of making of room for Government to exercise power under Section 29 does not really arise under the present context. That argument left open for consideration on some other occasion. The only point raised, argued and considered as afore aid therefore fails and the writ petition has to be and is thus rejected. No costs.

Sri M. Jagannath, learned Government Advocate, is permitted to file his memo of appearance for respondents-1, 3 and 4 within four weeks. Sri Veerabhadrappe, learned counsel is permitted to file power for respondent-7 in the office.