

(2003) 09 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 29148-29220 of 2003

K.M. Manjunatha and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) ILR (Kar) 4590

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A. Nagarajappa, for the Appellant; Kehsava Reddy, HCGP for R1 and 3 and Madhusudan R. Naik, for R2, for the Respondent

Final Decision : Allowed

Judgement

Patil, J.—Though these writ petitions are listed in orders list, with consent of the learned counsel appearing for the petitioners and respondents, the matter is taken up for hearing. The said writ petitions are heard on 09.09.2003 and 10.09.2003.

2. In these cases, the petitioners, assailing the legality and validity of the order dated 02.02.2002 vide Annexure "G" issued by respondent No. 1 u/s 30B of the Karnataka Co-op. Societies Act, 1959 and Annexure "N" issued by Respondent No. 3 dated 10.01.2003 and also the order passed by Respondent No. 2 dated 09.04.2002 vide Annexure "K" and further sought a direction directing Respondents No. 1 & 2 to follow the order vide Annexure "C" and "D" dated 22.06.2001 and 07.08.2001 respectively.

3. The grievance of these petitioners is that, earlier they had filed Writ Petitions before this Court in writ petitions No. 48389 -48455/01 and connected matter. Those writ petitions have come up on 26.02.2002. After hearing both sides, the writ petitions filed by the petitioners were allowed and stand disposed of directing Respondent No. 2 herein to hear the petitioners and give an opportunity

to them and persuade the same on merits of the case without being influenced by the resolution passed by Respondent No. 2 in General Body and decide the same. The decision taken by Respondent No. 2 earlier, dated 4/6.12.2001 has been quashed. After remand, Respondent No. 2 herein has issued notice to these petitioners. In pursuance of the said notices, these petitioners have filed objections. After considering their objections, Respondent No. 2 has passed the impugned order Annexure "K" dated 09.04.2002 holding that the petitioners are not entitled for skipping scale. Immediately these petitioners have given representation to Respondent No. 3. The said representation has been rejected. Being aggrieved by the impugned order, as stated supra, these petitioners have presented these writ petitions.

4. The principle submission canvassed by the learned Counsel for the petitioners is that, Respondent No. 2, herein has proceeded and passed an order in disobedience of the directions issued by this Court. This Court has specifically directed Respondent No. 2 to hear the petitioners and give an opportunity to them and pass the order strictly in accordance with law, without being influenced by the resolution passed in the General Body. The said specific directions issued by this Court is not complied with. Secondly he contended that in pursuance of the notice issued by Respondent No. 2, these petitioners have filed objections in batch-wise. The said objections have not been considered in accordance with law. Thirdly, he submitted that there is no hearing as such, has been given to these petitioners. If Respondent No. 2 has given hearing, in pursuance of the order vide Annexure "C", they are entitled for skipping scale and the same was provided by other Societies also. Further he submitted that Respondent No. 2, inspite of specific directions issued by this Court has proceeded to pass the order without giving any reasons/findings and rejected the request of the petitioners for entitlement of skipping scale, as per Annexure "C". Except stating "for the reasons in their objections, cannot be accepted nor they are entitled for consideration". This is the only reason that has been given and there is no finding as such has been given by Respondent No. 2 inspite of specific directions issued by this Court. Therefore, he submitted that the impugned order passed by Respondent No. 2 vide Annexure "K" is liable to be set-aside. Further, he fairly submitted that so far as prayer-(a) is concerned, the same is not pressed at this stage. If once the opportunity is given and directions are not complied, liberty may be reserved if required to assail Annexure "G", the order passed u/s 30B of the Act.

5. Further to substantiate his submissions regarding preliminary objections by the learned Counsel for the respondents regarding maintainability of the writ petitions, he submits that it is not open for the learned Counsel for the respondent at this stage to raise such objection, when they conceded for issuing directions in the hands of this Court in the earlier course of litigation in Writ Petitions No. 48389-48455/01 and connected matter dated 26.02.2002. Regarding maintainability of the writ petitions is concerned, he placed reliance on the judgement of the Full Bench of this Court reported in the case of K.V.

PANDURANGA RAO v. KARNATAKA DAIRY DEVELOPMENT CORPORATION, BANGALORE AND ORS. 1994 (1) KarLJ 149 and also on the judgment of the APEX COURT in the case of Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others, The Full Bench of this Court has held that the Karnataka Dairy Development Corporation, Bangalore, will come within Article 12 of the Constitution of India holding that the said Development Corporation is instrumentality of the State coming within the definition of the State. In this case, Respondent No. 2 is the Milk Union comes under the Karnataka Dairy Development Corporation. Therefore, the writ petitions filed by petitioners are maintainable. Regarding alternative remedy, he submitted that the petitioners have come up by way of filing writ petitions. He is quick to point out that, when the specific directions have not been complied with, the question of availing alternative remedy is not barred for the petitioners. He brought to the notice of the Court that because of non-compliance of the said specific directions, objections raised by the learned Counsel for the respondents is not sustainable.

6. Per-contra, the learned Counsel for Respondent No. 2, inter-alia, contended and submitted that the impugned order is passed by Respondent No. 2 vide Annexure "K", he submitted that in obedience of the directions issued by this Court, Show Cause Notice was issued to the petitioners calling for objections. Objections were filed in batch-wise and they were placed before the Authority. The Authority has conducted enquiry under strict provisions of Act. The proceedings disclose that each and every objections filed by the petitioners have been extracted in the proceedings dated 11.03.2002 vide Annexure-"R.2" and Annexure-"R.3", it is clearly mentioned that objections were filed by the petitioners, same was considered and discussed in detail. In column No. 2 and Column No. 3, it is stated that their request has been rejected on the ground that they are not entitled. And further he is quick to point out that the impugned order passed by Respondent No. 2 vide Annexure "K" has been considered and discussed in page-3 of the impugned order and reasons have been assigned-Item No. 1 to 8 and further it is clarified that the petitioners are not entitled for skipping scale on the ground that the Government has directed to consider the same vide Annexure "G". The same is read in totality and not piece-wise. There has been a mistake creped in the earlier case and the benefit has been given to the petitioners and the same has been rectified keeping in view the byelaws of the society. No error as such has been committed.

7. Further, he vehemently submitted that the question of giving personal hearing does not aires on the ground that the objections filed by these petitioners have been considered in detail, the reasoning and findings are given for each and every objections in the proceedings vide Annexure-"R.3" along with statement of objections and submitted that the petitioners without availing alternative remedy available to them have come up with these writ petitions after lapse of more than one year. The impugned order is as early as 09.04.2002 and taking into consideration the financial difficulty faced by these petitioners a monthly 24 instalments to adjust the pay-scale has been given and already such order has

been implemented for more than 14 months. This fact has been suppressed by the petitioners. Regarding the direction issued by this Court to hear the petitioners and give an opportunity to them, in the instant case, he is quick to point out that the objections have been considered in detail and after affording opportunity, a considered order has been passed. The submission of the learned Counsel for the petitioners that no personal hearing has been given, has got no substances. To substantiate, he placed reliance on the judgment of the Apex Court in the case of *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, and also on the law laid down by the Apex Court in para-8 of the said judgment and submitted that, the concept of natural justice cannot be put into a straitjacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case.

8. In the instant case, Respondent No. 2 has given consideration to the stand taken by these petitioners. The question of giving personal hearing does not arise because, after affording sufficient opportunity, the matter has been decided. Further, he placed reliance on another judgment in the case of *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, He placed reliance on para-20 of the law laid down by the Apex Court and submitted that, Respondent No. 2 has given sufficient opportunity to the petitioners, considered their objections and came to the conclusion that they are not entitled. A mistaken benefit has been given to the petitioners. The same has been rectified as per the bye-laws of the Society. Having regard to the financial position of the Union, he submitted that the petitioners have not made out any good ground to interfere with the well considered order passed by Respondent No. 2-Union. He submitted that the writ petitions filed by the petitioners are liable to be rejected.

9. The learned Government Pleader appearing for Respondent Nos. 1 and 3, inter-alia, contended and prayed that, as per Annexure "C" is concerned, the Government has clarified subject to the financial position and bye-laws, they can consider. But, in the instant case, instead of considering the purport of the directions issued by the Government, an alternative is given to the petitioners. The same is not permissible i.e., skipping pay scale, which they are not entitled. Therefore, he submitted that the said decision has been clarified and produced the Xerox of the scheme "Union". He is quick to point out that these petitioners in the scale of Rs. 2500-2830, selected time scale pay is Rs. 2600-4350. They have jumped from Rs. 2-775-4950 to Rs. 3000-5450 Skipping Scale No. 2. It is not permissible. Therefore, the Respondent No. 1 was compelled to pass order u/s 30B vide Annexure "G". No illegality or irregularity has been committed.

10. After hearing the learned Counsel for the petitioners and the learned Government Pleader appearing for the State at considerable length of time and after evaluating the entire material available on record and the contentions urged by the respective Counsel, the questions that arise for consideration in this case

are;

1. Whether the direction issued by this Court in W.Ps. No. 48389-48455/01 and connected matter dated 26.02.2002 (K.K. Rajanna and Ors. v. Sri Bettaswamy Gowda and Ors.) is complied with?

2. Whether Respondent has considered the objections filed by the petitioners in accordance with law?

3. Whether Respondent No. 2 has given sufficient opportunity of hearing to the petitioners?

11. After careful perusal of the impugned order passed by Respondent No. 2 vide Annexure "K", it is manifest on the basis of record that Respondent No. 2 has committed an error in passing the said order, without compliance of the specific directions issued by this Court. It is worthwhile to extract the specific directions issued by this Court in its order dated 26.02.2002 in W.Ps No. 48389-48455/01, which is as follows:

"Having heard the learned Counsel appearing for the parties, I am of the view that the impugned order Annexure-F is liable to be quashed on the short ground that the said order came to be passed in disregard to the principles of natural justice by not giving an opportunity to the petitioners. It cannot be disputed that the impugned order results in civil consequence inasmuch as if the impugned order is given effect to, it takes away the monetary benefits already given to the petitioners. Under these circumstances, the minimum that was required by the first respondent was to hear the petitioners and given an opportunity to them. Admittedly the same has not been done. Merely because the General Body has passed a resolution, it would not confer any rights to take away the benefits given to the petitioners without hearing the petitioners."

12. This Court by its order dated 26.02.2002 has specifically directed Respondent No. 2 to hear the petitioners and give an opportunity to them without being influenced by the resolution passed by the General Body and decide the case on merits. After careful perusal of the impugned order-Annexure "K", in my considered view, I do not find the compliance of the directions issued by this Court.

13. During the course of the submissions, I have put question to the learned Counsel for the respondent to see the order sheet and show, whether any hearing has been given to the petitioners before passing the impugned order. He was unable to point out. The learned Counsel for Respondent No. 2 submitted that hearing, as such, has been given. Further, it reveals from Annexure "R.3" - proceedings dated 06.04.2002 that, objections by Respondent No. 2 along with objections of the petitioners, are discussed and made a chart and prepared Columns Nos. 1, 2, 3 & 4 in the Chart. In Column No. 1, the objections filed by the petitioners is mentioned. In Column No. 2 objections filed by these petitioners has been narrated in nutshell. Column No. 3 discloses that they have

not accepted objections raised by the petitioners regarding factual facts of the case. Column No. 4 is column for giving the findings for not accepting. But after careful perusal of Annexure-"R.3", it is only mentioned, "the objections raised are not maintainable. Hence rejected".

14. In my considered view, time and again, the Apex Court and this Court, have given a considered view to give reasons and findings for rejecting the plea taken by the parties. In the instant case, it is not coming from the proceedings of Respondent No. 2 dated 06.04.2002. Except stating "their objections is not justified and it is rejected". That is not the compliance of the mandatory provisions of the Co-operative Society and Rules and the directions issued by this Court. Therefore, the impugned order passed by Respondent No. 2 is liable to be set-aside for non-compliance of the specific directions issued by this Court.

15. The learned Counsel for the respondents contended that, in view of the judgment laid down by the Apex Court supra, there is no mandatory provision as such to give personal hearing to each and every person and that is not the requirement of law. The requirement of law is, whether the Authorities have considered their objections, applied their mind and given reasons. In the circumstances of the case, sufficient opportunity has been given to the petitioners. Notice has been issued. Objections have been received, considered, analysed and reasonings have been given, They have not accepted. So far as the findings is concerned, the same is not complied. The Apex Court has held that, it should be taken and read in totality as to, whether the principle of natural justice is not only the ground for interference by this Court. The said submission made by the learned Counsel for the respondents has got no substance.

16. In my view, after hearing the Counsel appearing for the petitioners, the learned Counsel for Respondent No. 2 - Union, in the light of specific directions issued by this Court, Respondent No. 2 was to hear the petitioners and give an opportunity to them. Having regard to the facts and circumstances of the case, this Court has given specific directions, the respondent has considered objections, analyzed the objections, but not accepted. Regarding consideration of the well settled law laid down by the Apex Court as referred above, there is no force in the contention of the learned Counsel. The ratio of law laid down is no way concerned to the facts and circumstances of the case and it is entirely different from the cases on hand.

17. In the case on hand, there is a specific directions issued by this Court. It is not disputed. There is no hearing as such given to the petitioners. If heard, their case would have been different and whether they are entitled for skipping scale under Government Order Annexure "C" or not, should be decided. Therefore, I do not find any justification to sustain the order passed by the respondent. Hence, it requires to be set-aside.

18. Regarding alternative remedy and the writ petitions filed by the petitioners is not maintainable, the objections raised by the learned Counsel appearing for

Respondent No. 2, he vehemently submitted that the petitioners without exhausting their right by filing Appeal before the competent Authority as provided under relevant rules, have straight away come up before this Court and filed these writ petitions. The Court cannot entertain these Writ Petitions and issue direction under Article 226 of the Constitution of India. The said submission has got no substance having regard to facts and circumstances of cases and it is liable to be rejected.

19. This Court has disposed of a batch of writ petitions giving specific direction to Respondent No. 2 to consider the matter, after affording sufficient opportunity and decide the same on merits of the case. In view of the non-compliance of the directions issued by this Court, the petitioners have brought to the notice of this Court and filed these writ petitions. Therefore, having regard to the facts and circumstances of the case, taking into consideration the totality of the case, I do not find any justification for consideration of objections raised by the learned Counsel appearing for Respondent No. 2 and it cannot be sustain the impugned order passed by Respondent No. 2.

20. Accordingly, the writ petitions are allowed. Order dated 09.04.2002 vide Annexure "K" passed by Respondent No. 2 is hereby set-aside and the matter is remitted to Respondent No. 2 for consideration afresh with the following directions.

1. Respondent No. 2 is directed to comply with the directions issued by this Court dated 26.02.2002 in W.Ps No. 48389-48455/ 2001 and connected matter (K.K. Rajanna v. Bettaswamy Gowda and Anr.) and decide the same in strict compliance of the directions issued by this Court as expeditiously as possible within one month from the date of receipt of this order.

2. Respondent No. 2 herein is directed to proceed with the matter from the stage of hearing the petitioners and give reasoning/findings for non-considering the case.

3. Respondent No. 2 herein is directed to decide the matter strictly on merits of the case without being influenced by the resolution passed by the General Body and the order passed by the Government u/s 30B of the Co-operative Societies Act dated 02.02.2002.

For the foregoing reasons, these Writ Petitions are disposed of. All contentions of both the parties are left open.

Government Pleader to file his Memo of Appearance within four weeks.