(1994) 12 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 5414 of 1985

K.P. Shenoy APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 21-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (c)
Karnataka Co-operative Societies Act, 1959 — Section 28 A (2), 29 D

Citation : (1995) ILR (Kar) 510 : (1996) 5 KarLJ 227

Hon'ble Judges : Rajendra Babu, J;Padmaraj, J

Bench : Division Bench

Advocate : K. Subba Rao, for the Appellant; Yoganarasimha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—This Petition is fifed by a member of the Co-operative Society challenging the validity of Section 28A(2) and Section 29(D) of the Karnataka Co-operative Societies Act (''Act'' ''for short). Petitioner contends that the said two provisions are inconsistent with and violative of Article 19(1)(c) of the Constitution as they place unreasonable restrictions on the Fundamental Right of the petitioner to form a society and to manage its affairs which is a concomitant right to form a society; that the impugned provisions interfere with the right of representation in the Committee of Management; that Section 28A of the Act places unreasonable restriction in providing for reservations at a particular percentage of the Board of Directors in favour of members who are Scheduled Caste or Scheduled Tribe or women; that the society is a voluntary organisation of members and such restriction cannot be placed and no law can be enacted placing such restriction; that the restriction placed on the members of the co-operative society that a member of the society cannot continue as an office bearer in the Committee or Management beyond the period of six years unless he steps down from the office for atleast a period of three years is also for a similar reason inconsistent with Article 19(1)(c) of the Constitution. Elaborating this submission, learned Counsel for the petitioner contended that the right to form an association as guaranteed under Article 19(1)(c) includes the right to administer such association which also means that the members of the society will have the freedom to choose the composition of Committee of Management and when such choice is restricted, the law so enacted becomes a restriction and is unreasonable. Therefore, it is submitted that the provisions of law impugned herein are infringement on the right to exercise the right that is guaranteed under Article 19(1)(c) of the Constitution.

2. It is submitted further that, the parent Act had received the assent of the President; that provisions of Sections 28A and 29D have been introduced in the Act by amending the Act by Act 19/76 and Karnataka Act No. 5/1984. It is submitted that, when the parent Act had received the assent of the President, all amendments to the Act must also receive the assent of the President, and in support of this contention, learned Counsel for the petitioner seeks to rely upon the Decisions in Syed Ahmed Aga and Others Vs. The State of Mysore and Others, Ananda Kumar Chakraborty and Another Vs. State of West Bengal and Others, and M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another,

3. It is further contended that the Decision in TIPPANNAPPA v. STATE OF KARNATAKA AND ORS. by which one of the provisions of the Act impugned herein is upheld was a case arising or raised a challenge to the Constitutionality of the provisions under Article 19(1)(g) and not under Article 19(1)(c) and therefore, that Decision has no application to the facts of the case. Learned Counsel for the petitioner referred to the Decisions in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, Asom Rastrabhasa Prachar Samiti and Another Vs. State of Assam and Others, and L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others, to contend that the State cannot enact a law which interferes with the right to form an association or administration thereof.

4. Learned Counsel for the petitioner further submitted that the legislation in question impugned herein is unreasonable restriction and for this purpose relied upon the Decision in State of Madras Vs. V.G. Row, He also maintained that the authorities concerned have not taken note of the distinction between the societies which receive State aid and those which do not receive State aid there are ample provisions under the Act to take care of any situation that may arise where the necessity of the State to step in is available and if those provisions are borne in mind, the present provisions becomes totally unnecessary and if such provisions are enacted, it amounts to unreasonable restriction.

5. We shall now consider the various arguments advanced on behalf of the petitioner. The first argument that the amendments introduced by Act 19/86 and Act 5/87 should have received the assent of the President has no force at all. Under the Constitution there is no provision requiring assent of the President in respect of such provisions. The Co-operative Societies Act which was originally

enacted in the year 1959 repealed several enactments u/s 131 of the Act because the State of Karnataka was formed by merging different territories which were in the States of Bombay, Madras, Coorg, Mysore and Hyderabad. Several enactments in so far as their application to this State were concerned had to be repealed. It is for historical reasons therefore the State obtained the assent of the President for enactment of the law. Once the State was formed and the territories formed part of the State, in the matter of administration of laws, the State had ample powers under the Constitution though falling within the Concurrent List. The law could be enacted in relation to co-operative societies in terms of the provisions arising under the Concurrent List. When there was no impediment to the enactment of the legislation, the question of obtaining the President''s assent would not arise at all. The Decisions relied upon by the learned Counsel for the petitioner specifically refer to provisions of either Article 304B of the Constitution or Article 31 (2) of the Constitution which specifically provides for the assent of the President to become effective. When such provisions are not available in regard to enactment of law pertaining to co-operative movement, we do not think that exercise should have been undergone by the State and therefore, the provisions enacted are bad. Hence, the first contention on behalf of the petitioner is rejected.

6. Now we shall take up the next contention raised by the petitioner''s Counsel that the impugned provisions are in violation of Article 19(1)(c) to form an association or union as such right includes the right to management also. It is no doubt true that Article 19(1)(c) ensures that the citizen has a right to form an association. We assume for purpose of argument that, that right includes the right of management also. In order to regulate activity in relation to formation of association such as a co-operative society the law could be enacted is not in dispute, if that is so, the association itself comes into existence as a creature of Statute. If a citizen can form an association under a Statute, the provision thereto will have to be complied with. When a right arises under the Statute that right is fully regulated by the Statute itself and the Statute itself can prescribe. In KULKARNI v. STATE OF BOMBAY AIR 1964 SC 73, the Supreme Court held that the a right arising under Article 19(1)(c) is the right enjoyed by all citizens to form associations as contrasted with a right which is conferred by a particular Statute to act as member of a body which is the creation of Statute itself.

7. The learned Counsel for the petitioner contended that it would not be appropriate to proceed on the lines on which this Court proceeded in Thippannappa''s case, because the right to form an association itself is a Fundamental Right. In the case on hand what is sought to be done is only what was considered by this Court in Thippannappa''s case which we quote:

"But Section 29D does not, in terms, go so far. Section 29D was incorporated in the Act by Kar. Act No. 39/1976. Previous to that a person could have held office, as an office bearer of a society, for any length of period. Section 29D puts a limitation or a bar on that and prohibits a person from holding any such office beyond the period of six consecutive years at a stretch. If he holds office in one or the other capacity continuously for six years, he must make way for others to any such office. This change has been brought about in the law to prevent powerful persons from entrenching themselves in the office creating in themselves a vested interest therein thereby preventing others, less powerful financially or otherwise, though fully qualified in all other respects, from actively participating in the management of the society concerned. What is it that Section 29D wants to achieve? It wants to prevent the danger referred to above and facilitate others from fully sharing the responsibility of an elective office of a co-operative society so that it helps in furthering co-operation and self help among all sections of the population of a local area."

The said observation graphically brings out the objectives of enacting Section 29D. We entirely agree with the same, with respect,

8. In the light of what has been stated in AIR 1964 SC 73 in Kulkarni''s case by the Supreme Court, if we bear in mind the distinction between an ordinary right to form an association, and the right to form a society under a Statute, we must hold that the right to membership, right to get elected to the Managing Committee or restrictions thereto will all be governed by the Statute itself. If the petitioner is invoking Article 19(1)(c) outside the Statute we quite appreciate his stand. In the present Case, the contention to form association is not independent of the rights arising under the Statute. The society of which the petitioner is member is a creature of the Statute and hence is bound by the provisions thereof. If, as a matter of policy, a restriction is imposed in the Statute to restrict the period of office of a member of Managing Committee, the same would promote the object of enabling others to participate in the management of the society thereby promoting co-operation movement,

9. It is further urged on behalf of the petitioner that when it is open to the petitioner to choose any member to be elected to the Management Committee, a restriction placed by Section 28A to the effect of compulsorily choosing persons from SC and ST and from amongst women would interfere with the right of management. It is well known that SC and ST belong to weaker sections of the society and so are the women. Therefore, there are special provisions made in the Constitution itself to safeguard their interests. Bearing these aspects in mind, if the State has found it fit to make some special provisions in relation thereto, it does not mean that it is interfering with the right of management of the petitioner. When a co-operative society consists of women and also members belonging to SC and ST and if a provision is made to provide them a representation in the management it augurs well for the society and promotes better management. In that view of the matter, we do not think such an act on the part of the State interferes with the right of management of the petitioner. On the other hand, by reason of their participation it would do away with mismanagement or inferior management and the provisions of law impugned herein would promote better management. In that view of the matter, we think

the approach of the petitioner is incorrect. Hence, the second contention is also liable to be rejected. The Decisions referred to by the learned Counsel for the petitioner in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, and L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others, are all cases of societies where the entire management was taken over by the Government itself in relation to that society. That is not the position in the present case at all. The management is not taken over by the Government. On the other hand, the provisions are made for better management as explained by us earlier. In that view, we do not think the learned Counsel can derive any support from the aforesaid Decisions.

10. Learned Counsel for the petitioner drew our attention to Chapter VI of the Karnataka Co-operative Societies Act where when a State aid is provided to the Co-operative Societies, certain provisions are made when representatives of the Government or the financial bodies, institutions are nominated to the Board of Directors. Learned Counsel pointed out that in such cases, it is certainly open to the State to make such provisions. However, it is submitted that to enact provisions in respect of societies where no such State aid is given as to control or restrict the free choice of member in Managing Committee is inappropriate. Chapter VI of the Act is applicable to societies to which financial aid is given and to have a say in the matter of management of the society such nominations are made and we do not think those provisions would derogate the other provisions of the Act. In that view of the matter, Chapter VI has no relevance to the problem on hand.

11. We think there is no substance in the Petition. Petition is therefore liable to be dismissed. Ordered accordingly.

