

(1985) 02 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No's. 7732 and 7733 of 1984

Krishna Bhat

APPELLANT

Vs

Deputy Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 126 A, 17, 29, 29 C (7)

Citation : (1987) ILR (Kar) 702 : (1985) 1 KarLJ 326

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : B.M. Krishna Bhat, for the Appellant; Somayaji, HCGP, U.L. Narayana Rao and N.S. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—The petitioners who were members of the Managing Committee of the Ainekkidu Subrahmanya Seva Sahakari Bank Ltd., a co-operative society functioning under the provisions of the Karnataka Co-operative Societies Act, 1959 ("the Act" for short) have sought for the issue of a writ of mandamus directing Respondents 1 to 4 to give effect to the order of the Deputy Registrar of Co-operative Societies, Mangalore, dated 4-1-1984 in which he directed that the petitioners should be reinstated as members of the Managing Committee of the society.

2. The facts and circumstances of the case are as follows: Ainekkidu Subrahmanya Seva Sahakari Bank, Ltd., is a society functioning under the provisions of the Act. In the election to the Board of Directors of the Bank held on 28-8-1983, the two petitioners were among others who were elected as Directors of the Bank. On 25-10-1983 a notice was issued to the petitioners vide Annexure-C in which they were informed that as they had failed to attend three consecutive meetings of the Board of Directors, they had ceased to be the Directors of the Bank in view of Bye-law 9 (4) of the Bye laws of the Bank. According to the Bank, three meetings were held on 15-9-1983, 29-9-1983 and

5-10-1983 and the petitioners failed to attend any of those meetings. According to the petitioners they had not received the meeting notices at all in respect of the said three meetings. In the circumstances they presented a petition before the Assistant Registrar of Co-operative Societies. He made an order on 29-11-1983 on their petition, a copy of which is marked as Annexure-D. In the said order he directed that the Bank should give opportunity to the two petitioners to submit their explanation for not attending the three meeting consecutively. After the order of the Assistant Registrar, a show-cause notice dated 5-12-1983 was issued to the petitioners and once again an order was made on 16-12-1983 by the Board of Directors of the Bank to the effect that the petitioners ceased to be the Directors of the Bank, vide Annexure-F. Thereafter the petitioners presented a petition before the Deputy Registrar against the aforesaid order. On the laid petition, the Deputy Registrar made the order dated 4-1-1984 (Annexure - G), In the said order he directed the Secretary of the Bank to issue meeting notice to the petitioners and that no notice need be sent to the two persons, who were co-opted as members in the place of the petitioners, who are respondents 12 and 13. The grievance of the petitioners is that the order of the Deputy Registrar has not been implemented by respondents 4 to 11.

3 The question that arises for consideration is whether the petitioners are entitled to the issue of a writ of mandamus as sought for in the petitions. The stand taken on behalf of the respondents, however, is that the order passed by the Deputy Registrar was without the authority of law and consequently it created no right which could be enforced by means of Writ Petition. Along with the statement of objection, the respondents-4 to 11 have also produced an order of the Joint Registrar made on their appeal. The appeal was rejected on the ground that the order of the Deputy Registrar was not made under any provisions of the Act.

4. There is no dispute that according to Bye-law 9(4) of the Bye laws of the Bank, a member of the Board of Directors ceases to be such member if he fails to attend three consecutive meetings. The averments made by the petitioners is that they were unaware of the holding of the three meetings for the reason that they had not received any notice of the meetings. As against this, the averments of contesting respondents is that the petitioners were served with the notice of the meetings but they failed to attend the meetings and thereupon their membership of the Managing Committee ceased ; The question whether the petitioners ceased to be the Directors of the Bank depends upon a decision on the above controversy.

But the real question which arises for consideration is whether the Assistant Registrar or the Deputy Registrar had the power under any of the provisions of the Act to decide as to whether the decision of the Managing Committee of the Bank was correct, on a representation made by the petitioners. Learned Counsel for the petitioner relied on Section 29-C(7) of the Act. It reads -

"29-C. DISQUALIFICATION FOR A MEMBERSHIP OF THE COMMITTEE.

** ** 5. Any question as to whether a member of the committee was or has become subject to any of the disqualifications mentioned in this Section shall be decided by the Registrar after giving the person concerned a reasonable opportunity of being heard." In my opinion, the said provision has no application to the present case, it deals with the question of a disqualification incurred by a member of a committee to continue as member of the Managing Committee. Learned Counsel for the petitioners also relied on Section 126-A of the Act. That Section again deals with the question of removal of a member of Managing Committee of a society on the ground of any of the disqualifications specified in Section 29 or on grounds of misconduct specified under Clauses (b), (c) and (d) of Section 126-A of the Act.

6. The removal of a person from membership of the Managing Committee of a society consequent on his being subject to any of the disqualifications or committing any of the misconducts set out in the relevant provisions of the Act or Rules framed thereunder, is entirely a different topic, and has nothing to do with a member who is otherwise qualified to be member of the Managing Committee, ceasing to be member consequent on his remaining absent for three consecutive meetings as provided in the bye-laws. Just as a member of a Managing Committee cannot be said to become disqualified for being a member of the Managing Committee consequent on his resignation though he ceases to be its member, a person who ceases to be a member of the Managing Committee consequent on his not attending the meetings of the Managing Committee, cannot be said to have suffered from any of the disqualifications.

7. If under any of the provisions of the Act power had been conferred on the Deputy Registrar that as and when any question arises as to whether the membership of a person of a Managing Committee becomes vacant consequent on his remaining absent for three consecutive meetings, he had the power to decide the said question, then any order passed in exercise of such power would be a statutory order and would constitute the basis for enforcing the rights. There is no other provision which confers such power. The only course open to a person against whom there is a decision by the concerned Managing Committee that his seat has become vacant consequent on his not attending three consecutive meetings would be to raise a dispute u/s 70 of the Act. When a proper dispute is raised, it would be obligatory to the Registrar or Arbitrator nominated by the Registrar to record, evidence and decide as to whether the decision of the Managing Committee was justified.

8. Learned Counsel for the petitioners was also unable to show any provisions in the Act which conferred any general controlling power or to any other statutory power directing them to act in conformity with the Rules or Bye-laws.

9. For the reasons aforesaid, I make the following order-

(i) Rule discharged.

(ii) The Writ Petitions dismissed but without prejudice to the right of the

petitioners to raise a dispute u/s 70 of the Karnataka Co-operative Societies Act, 1959.