
(2014) 12 KAR CK 0105
In the Karnataka High Court

Case No : Writ Petition Nos. 19124, 19747-750 and 19751-754/2014 (CS/EL-M)

Krishna N.C.

APPELLANT

Vs

Puttaswamy

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0105

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : H.C. Shivaramu, Advocate for the Appellant; Prasanna Kumar S.Y., V.N. Jagadeesh and G. Chandrashekaraiah, Advocates and S. Laxminarayana, AGA, Advocate for the Respondent

Judgement

B.S. Patil, J.—Sagalapalya Milk Produce Co-operative Society is a society registered under the provisions of the Karnataka Cooperative Societies Act, 1959 (for short, the Act"). Elections to elect the members of the Board of Directors of the said society was held on 17.02.2014. Respondents 1, 5 to 13 unsuccessfully contested the elections. Respondents 2, 3 & 4 are the other members of the society.

2. Respondents 1 to 4 challenged the election by filing Election Petition No. 2/2014 before the Additional Civil Judge & JMFC, Channapatna. An application was filed in IA No. 1 seeking stay of the constitution of the committee by the elected Directors viz., petitioners herein in terms of the results announced on 17.02.2014, till the disposal of the suit. In the application which was supported by the affidavit filed by 1st respondent herein who was the former President of the society and who unsuccessfully contested the election, he contended that voters list was not properly maintained, in as much as, 26 persons were illegally deleted from the voters list apart from the fact that names of respondents 2, 3 & 4 herein were also not found place in the voters list though they were eligible members of the society and although their names were earlier included in the voters list. It was also contended that one of the elected candidates by name

Siddaiah - 6th petitioner herein, has impersonated a dead person of the same name and although 6th petitioner was not the member and could not have contested the election, contested the election and got elected.

3. Aforesaid assertions were strongly refuted by filing objections by the present petitioners.

4. The learned Civil Judge having considered the application, has come to the conclusion that the election petitioners had produced certain receipts relating to payment of membership fee and certified copy of the resolution passed in a meeting which took place on 05.02.2012 to show that names of petitioners 2 to 4 in the election petition was found in the list of voters and names of other 26 persons was not there in the list. Therefore, the learned Civil Judge came to the conclusion that names of petitioners 2 to 4 were left out and so also names of 26 persons had been removed and in addition, Siddaiah, S/o Puttegowda whose name was shown at Sl. No. 84 in the voters list as member of the society did not appear to be genuine by looking at the list of members who had supplied milk to the society for 180 days. Based on these findings, the learned Civil Judge has persuaded himself to pass the impugned order staying the constitution of the executive committee of the elected directors of the society, till the disposal of the election dispute. In this background, present petitioners are before this Court challenging the said interim order.

5. I have heard the learned Counsel for all the parties.

6. Pursuant to the notice issued by this Court, the Deputy Registrar of Co-operative Societies, Bangalore Rural District, who was earlier working as Deputy Registrar of Co-operative Societies, Ramanagara District, with which we are concerned, has filed his affidavit dated 14.07.2014. He has stated in the affidavit that he had formed a team of officers on 05.12.2013 to assist in verifying the voters list of the society. Himself and the Co-operative Development Officer of Channapatna had verified the voters list and the list of members who had supplied milk for 180 days to the society. The lists had been prepared and submitted by the Secretary of the Society. The Secretary was informed to announce the voters list as well as the list of members who had supplied milk for 180 days to the society and thereafter, the list was published in the notice board of the office of the District Election Officer on 18.12.2013. He has further stated that he did not receive any objection from any member of the society and as per the calendar of events issued by the Returning Officer, he has announced the final voters list in the notice board of the office of the District Election Officer on 30.01.2014, and thereafter, as per the calendar of events, election was conducted by the Returning Officer of the society.

7. It is thus prima facie clear from the affidavit filed by the Deputy Registrar of Co-operative Societies that there was a voters list published on 18.12.2013 and no objections were received to the said provisional voters list and therefore, the final list was announced on 30.01.2014.

8. In the light of the serious allegations made by the respondents, Counsel for the respondents was asked whether they had filed any objections to the provisional voters list making grievance against the omission of names of some of the election petitioners and 26 others, Counsel asserts that such representations were indeed given, but respondents have not retained copies of such representations and no acknowledgment has been given by the Secretary of the society for having received such representations. He further urges that the certified copy of the voters list maintained by the Secretary and issued to the respondents which has been produced before the Court at Annexure-R4 discloses that the names of three election petitioners and 26 others were found place as voters, but in the subsequent voters list which has been published later these names have been conspicuously ignored.

9. Counsel for the petitioners disputes the authenticity of the voters list and he submits that there has been collusion between the election petitioners and 14th respondent. He urges that taking advantage of the close relationship, they have created such a document.

10. These questions have to be examined on merits. This Court, in exercise of the writ jurisdiction will not entertain such disputed questions, suffice to observe that the courts have to be slow in interfering with the functioning of the elected representatives.

11. The learned Civil Judge has proceeded on the basis of certain materials drawing inference from the same without evidence having been recorded and without there being any opportunity to pronounce one way or the other on the controversy raised. On the strength of such inference, the constitution of committee of elected directors cannot be stayed. Therefore, in my view, the order passed by the learned Civil Judge suffers from apparent illegality.

12. Learned Counsel for the petitioners has brought to the notice of this Court, the judgment in the case of *S. Nagangoud v. Y. Basi Reddy* - ILR 1969 MYS 734 , wherein it has been held that it was an error to grant injunction against the elected candidate from discharging his functions as such and that normally in election matters, the verdict of the electorate has to be respected and given effect to until it is set aside on any one of the grounds on which law permits it to be set aside. Reliance is also placed on the judgment in the case of *The Delhi Cloth and General Mills Co. Ltd. and Another Vs. Dharam Singh* , to contend that Court should be slow in denying elected representative from discharging his functions as such.

13. Keeping in mind the aforesaid well established principles, I am of the view that the learned Civil Judge was in error in restraining the formation of executive committee of elected Directors and in preventing them from discharging their duties as elected representatives. However, it cannot be lost sight that if gross illegalities are committed in the process of election, they cannot be permitted to carry on managing the affairs of the society delaying the final verdict to be

pronounced till their term expires. Otherwise, the very purpose of providing remedy before the Civil Court to raise election dispute gets frustrated. Hence, I find it just and proper to direct the Court below to expedite the disposal of the case and take all steps to conclude the trial and pronounce the judgment within four months from the date of receipt of a copy of this order. Both parties are directed to cooperate with the Court below in speedy disposal of the case as directed above.

14. Subject to the above observations, this writ petition is allowed. Impugned order at Annexure-G is set aside. Since Annexure-G is set aside, Annexure-K does not have any independent existence to operate. Parties to bear their respective costs.