(1978) 08 KAR CK 0006

In the Karnataka High Court

Case No : WP. 4567 of 1978

Kumaraswamy APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 04-08-1978

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29

Citation : (1979) 1 KarLJ 105

Hon'ble Judges : Rama Jois, J

Judgement

1. Whether the State Government has the power to nominate its representatives to serve as members of the committee of a co-operative society both under Secs.29 and 53A of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as ''the Act'') is the precise question that arises for consideration in this writ petition.

2. The undisputed facts of this case are as follows: The Pandavapura Sahakare Sakkare Karkhane Ltd., Pandavapura (hereinafter referred to as ''the Society'') is a society registered and functioning under the provisions of the, Act. According to the bye-laws of the Society, the total number of members of the committee of management of the Society is fifteen. Sec.29 of the Act authorises the State Govt. to nominate as its representatives to serve on the committee of management of a co-operative society if in respect of such co-operative society the State Govt. has subscribed share capital or has rendered assistance in any other manner as specified in Sec.29 of the Act. The total number of representatives, who can be nominated by the State Govt. under Sec.29 of the Act is fixed at one-third of the total number of the members of the committee or three persons whichever is less. As the State Govt. has subscribed to the share capital of the society in exercise of the power conferred under Section 29 the State Govt. nominated 3 persons on the committee of management of the Society. Sec.53A of the Act also authorises the State Govt. to nominate its representatives to serve as members of the committee of a co-operative society to the extent of 1/3 of the total number of persons. But this power is exercisable

only in respect of a society to which the State Govt. has subscribed share capital to the extent of not less than 50 per cent of the total share capital or Rs.5 lakhs. There is no dispute that the State Govt. is holding shares to the tune of about Rs.8 lakhs in the Society. Even as the three representatives nominated by the State Govt. are continuing on the committee of management of the Society, the State Govt. by notification d/1-4-78 (Ext.A) nominated 5 persons to serve as representatives of the Govt. on the committee of management of the Society. They are respondents 3 to 7 to this writ petition. The petitioner, who is the Vice-Chairman of the Society, has questioned the legality of the notifiction issued by the State Govt. nominating respondents 3 to 7 as members of the committee of management of the Society, which in the case of the Society is called the Board of Directors, over and above the three representatives already nominated.

3. Sri B.K. Patil, learned Counsel for the petitioner, contended that the State Govt. is empowered to nominate its representatives either under Sec.29 of the Act or under Sec.53A of the Act and cannot nominate its representatives under both the sections, in respect of the same Society.

4. Learned Advocate General appearing for the 1st respondent-State Govt.-on the contrary contended that the State Govt. has the right to nominate its representatives under both the sections viz., 29 and 53A of the Act.

5. In order to appreciate the rival contentions, it is necessary to set out the relevant portions of Secs.29 and 53A of the Act. They read as follows:

"29. Nominees of the Government on the Committee of a Co-operative Society-(1) Where the State, Government- (a) has subscribed to the share capital of a co-operative society, or (b) has assisted indirectly in the formation or augmentation of the Share capital of a co-operative society as provided in Chap.VI, or (c) has guaranteed the re-payment of principal and payment of interest on debentures issued by a co-operative society, or (d) has guaranteed the re-payment of principal and payment of interest on loans and advances to a co-operative society, the State Govt or any authority specified by the State Govt in this behalf shall notwithstanding anything contained in this Act or the rules or the bye-laws of the co-operative society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121, have the right to nominate, as its representatives not more than three persons or one-third of the total number of members of the committee of the co-operative society, whichever is less."

* * * * *

"53A. Nomination of Members of Committee by State Govt in certain cases.-(1) Notwithstanding anything contained in Sec.29, where the State Govt has subscribed to the share capital of a co-operative society to the extent of not less than- (i) fifty per cent of the total share capital, or (ii) five lakhs of rupees, the State Govt shall have the right to nominate as its representatives one-third of the total number of members of the committee of the co-operative society."

Under Sec.29 of the Act the State Govt is empowered to nominate as its representatives on the committee of a co-operative society to the extent of not more than three persons or one-third of the total number of members of the committee of a co-operative society, whichever is less, in respect of the societies to which the State Govt has subscribed to the share capital or has assisted indirectly for the augmentation of the share/capital or has guaranteed the re-payment of the principal and the payment of interest on debentures issued by a society or has guaranteed the re-payment of principal and payment of interest on loans and advances to a co-operative society. The right of the State Govt is restricted to nominate one-third of the total number of members of the committee, but where such number exceeds three, the power of the State Govt is limited to nominate only three persons. Sec.53A of the Act covers cases of societies in respect of which the State Govt has made heavier investments i.e., either it has contributed to the extent of 50 per cent towards the share capital or an amount not less than five lakhs of rupees. In the case of such societies, Sec.53A confers powers on the State Govt to nominate one-third of the total number of members on the committee of management of a co-operative society. The maximum limit of three persons fixed in Sec.29 is not attracted in the case of a society falling under Sec.53A of the Act in view of the non-obstante clause used in the opening part of Sec.53A of the Act.

6. Elaborating the, contention, learned Counsel for the petitioner submitted, that the Society in question undoubtedly falls within the purview of Sec.53A of the Act. Therefore, notwithstanding anything contained in Sec.29 of the Act, the State Govt is empowered to nominate one-third of the total number of members of the Board of Directors of the Society as its representatives. As the total number of members of the Board of Directors of the Society is fifteen, the State Govt has the power under Sec.53A of the Act to nominate a maximum number of five representatives to serve as members of the Board of Directors. This power available to the Govt under Sec. 53A of the Act is in the place of the power under Sec.29 and not in addition. Therefore, the State Govt having already nominated three persons to serve as members of the Board of Directors of the Society, could have nominated only two more persons, in exercise of its power under Section 53A of the Act or it could have nominated five persons under Sec.53A of the Act in supersession of the nomination of three persons already made under Sec.29 of the Act.

7. Learned Advocate General appearing for the State Govt however, controverted the above question. He submitted that in respect of a society for which Sec.29 of the Act is applicable, the maximum number of persons who can be nominated by the State Govt as the, representatives on the committee of management of such society is restricted to one third of the total number of members of the committee of such society or three persons, whichever is less. But in case of a society in, respect of which the State Govt has made heavy financial investment to the extent as indicated in S.53A of the Act, in order to safeguard the finances of the State, the State Govt is given an additional power to nominate five more

persons as its representatives. In other words, according to him, a society, which squarery falls under Sec.29 does not necessarily fall under Sec.53A of the Act, but a society which falls under Section 53A also falls under Section 29 as greater investment of finances of the State includes the lesser investment contemplated under Sec.29 of the Act. He, therefore, maintained that in respect of the society the State Govt has a right-to nominate three persons on the Board of Directors of the society under Sec. 29 of the Act as the total number of members of the Board of Directors is fifteen and the State Govt can also nominate five persons under Sec.53A of the Act. According to him, this is the clear effect of the use of the non-obstante clause in Sec.53A of the Act.

8. Learned Counsel for the petitioner as well as learned Advocate General relied on the same decision of this Court in Mallappa Gowda v. State of Karnataka, (1978) 1 Kar LJ. 361, in support of their respective contentions.

9. In the aforesaid reported case, the facts were these: The petitioner therein was a Director of the Sorab Primary Land Development Co-operative Bank Ltd., Sorab. It is a society registered and functioning under the provisions of the Act. In respect of the said society, as far as the right of the State Govt to nominate its representatives on the committee of its management, was concerned, only Sec.29 was attracted, as the investment made by the State Govt was not to that extent by which the provisions of Sec.53A could be attracted. The State Govt nominated three persons on the Board of Directors as permissible u/Sec.29 of the Act. The petitioner therein challenged the said nomination on the ground that the State Govt could exercise the power of nominating its representatives only when the investment made by the State Govt attracted the provisions of Sec.53A of the Act and Sec.29 of the Act and being repugnant to Sec.53A of the Act, the latter should be given over-riding effect in view of Sec.55 of the Act which gives over-riding effect to Secs.42 to 44 of the Act as against the other provisions in the Act. The said contention was rejected by Malimath, J. holding that Secs.29 & 53A are two independent provisions which operated under different circumstances and there is no inconsistency between the two sections and there was no substance in the contention of the petitioner therein that Sec.55 of the Act gives any overriding effect to Sec.53A of the Act rendering Sec.29(c) of the Act useless. The relevant portion of the said judgment, on which bath the petitioner and respondent-1 relied in support of their respective contenions, reads as follows:

"......It appears, the State Govt. has the power to nominate both under Sec.29 as also under Sec.53A of the Act. Sec.53A appears to cover cases of larger investment by the State Govt whereas Sec. 29 covers cases where the investment by the State Govt is of a smaller magnitude. If there is a higher contribution by the State Govt as provided under Sec.53A of the Act i.e., contribution of 50% of the total share capital or Rs.5 lakhs, the State Govt becomes entitled to nominate as its representative 1/3 of the total number of members of the Committee of the Co-op. Society, and the number of representatives to be nominated is not limited to 3 persons. But under Sec.29 of the Act, the maximum number of persons that can be nominated is three only. It can be even less if one-third of the total number of persons is less than three. It is therefore clear that the scheme of the law empowers the State Govt to nominate a smaller number of persons where the investment by the State Govt is of smaller magnitude under Sec.29 of the Act and that the State Govt becomes entitled to nominate larger number of persons under Sec.53A of the Act where the investment by the State Govt is of a larger magnitude as contemplated by the said section. As the two provisions viz., Secs.29 and 53A are intended to operate under different circumstances, it is not possible to take the view that there is any inconsistency between these two sections of the Act."

The question with which we are concerned in this case, namely, that whether the power available under Sec.53A is in addition to the power available under Sec.29 of the Act did not come up for consideration in the above case. Therefore, there is nothing in the above decision which covers the point which arises for consideration in this case. Learned Advocate General contended that the conclusion reached in the above case to the effect that the two provisions viz., Secs.29 and 53A are intended to operate under different circumstances, clearly supports the contention urged for the 1st respondent. Learned Counsel for the petitioner also relied on the same conclusion and submitted that the said conclusion supports his contention.

10. As already stated, the question with which we are concerned did not arise for consideration in the said case and therefore, the conclusion reached in the said case does not conclusively decide the question for consideration in this case either way. But nevertheless I am of the opinion that the conclusion reached in the aforesaid case supports the contention urged for the petitioner and is not in any way helpful to the contention urged for the 1st respondent.

I shall now proceed to consider the scope of Secs. 29 and 53A of the Act on the basis of the clear wordings of the said sections. Having regard to the wordings of Sec.29 there is no doubt that the State Government nominate its representatives on the committee of a co-operative society to the extent of one-third of the total number of members of the committer subject to a maximum of three persons. But this power is available only in respect of societies to which the Stale Govt has subscribed to the share capital or assisted indirectly in the augmentation of the share capital or has guaranteed the repayment of the principal and payment of interest on debentures issued by the concerned society or hag guaranteed the repayment of principal ana payment of interest on loan and advances made to a co-operative society as specified in sub-clauses (a) to (d) of sub-sec.(1) of Sec.29 of the Act. Sec.53A of the Act, however, provides that notwithstanding anything contained in Sec.29 where the State Govt has subscribed to the share capital of a co-operative society to the extent of not less than 50 per cent of the share capital or five lakhs of rupees, the State Govt shall have the right to nominate as its representatives one-third of the total number of members of the committee of a co-operative society. In the case of a co-operative society, which falls only under Sec.29 and not under Sec.53A of the Act, there is no doubt that the maximum number of nominees of the State Govt. who could be nominated on the committee of management of a society is either one-third of the total number of members of the society or three, whichever is less. But the State Govt is given a right to nominate, more than the maximum number prescribed, in sec.29, in Sec.53A if the State Govt has made heavy investments to the extent specified in Sec.53A ox the Act. if the State Govt has made heavy financial investments to the extent as specified in Sec.53A, it goes without saying that such investment also satisfies the requirement of Sec.29 of the Act as larger investment, certainly includes the smaller investment contemplated under Sec.29 of the Act. In the absence of Sec.53A whatever may-be the extent of financial investment of the State Govt made in respect of a society, the State Govt could not have nominated, more than the maximum number prescribed under Sec.29 of the Act. Therefore what Sec.53A of the Act does is to enlarge the powers of the State Govt to nominate as its representatives 113 of the total No. of members of the committee of management of a co-operative society even if it exceeds the maximum limit of three prescribed in Sec.29, in cases where the State Govt has subscribed to the share capital of a co-operative society to the extent of not less than 50 per cent of the total share capital or five lakhs of rupees. The clear effect of the non-obstante clause used in the opening part of Sec.53A of the Act, namely, notwithstanding anything contained in Sec.29 is that though under Sec.29 the State Govt could nominate only one-third of the total number of members on the committee of management of a co-operative society subject to a maximum of three persons only, the said restriction is not applicable to the case of a society in respect of which the State Govt had made heavier investments and if such investment crosses the figure specified in Sec.53A of the Act. As observed by Malimath, J. in the aforesaid case, the provisions of Secs.29 and 53A operate under different circumstances. In other words to a case to which Sec.29 is attracted, Sec.53A is not attracted and as such that does not come under Sec.53A at all. Similarly to a case to which Sec.53A is attracted, Sec.29 is not applicable for the reason that Sec.53A gives an enlarged power to the State Govt to nominate one-third of the total number of members to the committee of management of such a society over and above the maximum number provided in Sec.29. It is for the State Govt to decide whether it should nominate the maximum number permissible under Sec.53A or any lesser number of members as its representatives. Therefore, there, is no question of invoking the powers under Section 29 of the Act in a case falling under Sec.53A of the Act.

12. I am unable to agree with the contention of the, learned Advocate General that the non-obstante clause used in the opening part of Sec.53A has the effect of conferring a power on the State Govt to nominate one-third of the total number of members on the committee of management of a co-operative society to which Section 53A is attracted in addition to the maximum number who can be nominated under Sec.29 of the Act. As observed earlier, Sec.53A only

enlarges the power of the State Govt in nominating its representatives in respect of societies to which Sec.53A is attracted even exceeding the limits prescribed under Section 29. That is the only effect of the non-obstante clause. The acceptance of the arguments urged for the 1st respondent would amount to the substitution of the words ''in addition to the power'' in place of the words ''notwithstanding anything'' in the opening part of Sec.53A of the Act, which is impermissible.

13. To put it differently, though Sec.53A is incorporated as a separate section, in truth and substance, it is in the nature of a proviso to Sec.29 of the Act, which takes away a society in respect of which the State Govt has made heavier investments to the extent indicated in Section 53A of the Act outside the purview of the main provisions of Sec.29 and engrafts an exception by enlarging the power of the State Govt to nominate more members, i.e., to the extent of one-third of total number of members on the committee of management of such society by exceedding the limit prescribed in Sec.29 of the Act. Therefore, to a co-operative society to which Sec.53A, which provides an exception to Sec.29 like a proviso, is applicable, Sec.29 also cannot apply.

14. In the light of the above discussion, my conclusions are as follows:

(i) In respect of co-operative societies falling within the scope of clauses (a), (b) and (c) of Sec.29(1), the State Govt has the power to nominate as its representatives to the extent of one-third of the total number of members of the committee of management of the concerned society or three persons, whichever is less.

(ii) In respect of a society which falls under Sec.53A of the Act, the State Govt can exceed the number prescribed under Sec.29 and nominate one-third of the total number of members of the committee of management whatever may be that number.

(iii) The power available under Sec.29 and Sec.53A are mutually exclusive and not cumulative.

(iv) In the case of the society concerned in this case, undisputedly Sec.53A of the Act is applicable and as the total number of members of the Board of Directors is fifteen, the State Govt could nominate only five members as its representatives under Sec.53A of the Act and cannot exercise the power under Sec.29 of the Act also and nominate three more persons under Sec.29 of the Act.

(v) The impugned notification by which five persons are nominated on the Board of Directors of the Society, over and above three persons already nominated under Sec.29, is without the authority of law.

(vi) As it is not possible to say as to which of the two persons out of five persons nominated by the impugned notification should continue as representatives of the State Govt on the Board of Directors of the Society the entire notification is liable to be quashed leaving liberty to the State Govt to make fresh nominations subject to a maximum of five persons prescribed under Sec.53A of the Act either in addition to the three persons already nominated or in supersession of their nominations.

15. For the reasons stated above, I make the following order:

(i) Rule is made absolute.

(ii) The impugned notification d/1st April 1978 (Ext.A) is quashed.

(iii) No costs.

