

(1992) 04 KAR CK 0007
In the Karnataka High Court
Case No : W.P. No. 5207 of 1992

L. Krishnegowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-1992

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 53A

Citation : (1992) 2 KarLJ 404

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

1. The petitioners herein are three out of the ten people who were elected to the committee of management of respondent 2-Co-operative Agricultural Rural Development Bank Ltd., in K.P. Nagar Taluk, Mysore District. It would appear just on the eve of the election scheduled to elect the President and Vice-President to that Society, Government stepped into to nominate five persons to the committee of respondent-2 committee and that was by an executive order made on 21-2-1992 (Annexure-C) in exercise of the power vested in the Government under Section 53-A(1) thereof. The nominees inducted into the committee are respondents-3 to 7. The position following the nomination of respondents-3 to 7 was the committee's strength stood augmented and was boosted from 15 to 20. This committee it appears elected respondents-8 and 9 as the President and Vice-President of respondent 2-Bank. But then the three petitioners who take exception to both these steps, namely, nominating of respondents-3 to 7 by the Government and holding (sic) of office bearers, namely, President and Vice-President with the active participation of the five nominees of Government referred to supra. In this writ petition (sic) challenged the nomination of respondents-3 to 7 as members of respondent-2 committee under Annexure-C and inter alia also challenged the election of respondents-8 and 9 as President and Vice-President of the Co-operative Bank in question.

2. The challenge to both these developments rests solely on the capacity of the power of Government to have nominated five persons on to the committee of management of respondent 2-Bank in the purported (sic) power of Government

under Section 53-A(1) of the Karnataka Co-operative Societies Act, 1959 (for short "the Act") as done in Annexure-C.

3. Mr. Chandrasekhar, learned counsel supported (sic) this petition maintains that regard being had to the circumstance that admittedly (sic) the limited power of the Government to nominate persons to the Board of Management, the endeavour of the Government in boosting the strength of the committee from 15 to 20 by inducting five of their own nominees was clearly otiose and without any jurisdiction. Elaborating the same, counsel points out that respondent 2-Co-operative Bank was an institution which had a total share holding of little more than Rs. 9,00,000/- (Rupees nine Lakhs) out of which the share capital contributed by the Government was (sic) Rs. 61,000/-. He maintains that barring the aforesaid contribution by the Government to the Institution, it had otherwise received no (sic) assistance from the State Government at all. He then submitted that in order to qualify for nominating members to the executive committee under Section 53-A of the Act, the Government should have contributed atleast 50% of the share holding of the society or made contribution of atleast five lakhs of rupees, but if it was anything less than the foregoing limits Government would not be entitled to make any nomination in terms enjoined in Section 53-A of the Act. In other words the argument lead is the power of the Government to make a nomination upto 1/3rd of the total strength of the managing committee of the society depends on the enormity or extent of the financial assistance made to the share capital or by way of a direct subvention which should not be less than Rs. 5,00,000/- (Rupees five lakhs). These limits I notice flow from the provision in Section 53-A of the Act, itself. Since it is that provision which stipulated the same it is desirable to excerpt the provision to the extent it is necessary as follows:

"53.A. Nomination of members of committee by State Government in certain cases.-1) Notwithstanding anything contained in Section 29, where the State Government 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 Government 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."

The section is very plain in its purport and presents no problem either in reading or understanding the same. The power of the Government to nominate as its representatives to the extent of 1/3rd of the total number of members of the committee of any co-operative society becomes available and expendable only if it has contributed 50% of the total share capital or a sum of rupees five lakhs. If it has done neither, Government will have to abstain from exercising any power of nomination under that provision. But even so, it has none the less the power to nominate a lesser number acting under Section 29 of the Act, provided it has subscribed to the share capital of co-operative society, or has assisted indirectly in the formation or augmentation of the share capital or has guaranteed the repayment of principal and payment of interest on debentures issued or has

guaranteed the repayment of principal and payment of interest on loans and advances to a Co-operative society, in which event the State Government may on acting on its behalf is empowered to or entitled to nominate as its representative not more than three persons or 1/3rd of the total number of members of the committee of the society whichever is less. In this case basic facts not being in dispute in that the total contribution by the Government to the Society's welfare in terms of money being only Rs. 51,000/- (sic) to the Society towards share capital but the learned Government Advocate also says that he has information indicating that Government had also stood guarantee to the loans contracted by the Society and I shall take his word and proceed on that basis but even then Government could not have made any nomination under Section 53-A of the Act (sic) it could have very well made nominations acting under Section 29(1) of the Act. The limit of financial aid the Society (sic) formation of share capital or lending support by way of guarantor to the loans contracted by the society will not enable the Government to avail the higher limits under Section 53-A of the Act, which could be availed of only if Government either contributes a moiety to the total share capital of the society or contributes rupees five lakhs. As I mentioned earlier regard being had to the financial outlay committed to by Government towards this society being nothing more than Rs. 61,000/- it fell far behind the target figure adumbrated in Section 53-A of the Act. Therefore, it is clear and overwhelmingly evident that this was a case in which Government could not have taken power to nominate five persons acting under Section 53-A of the Act. As stated earlier they could have certainly acted under Section 29 of the Act, but instead they choose to involve a source of power which was not available to them at all. For this reason the nomination of respondents-3 to 7 by order at Annexure-C will have to yield and stand annulled. But by merely quashing the Government order nominating respondents-3 to 7 under Annexure-C will not enable to call it a day because there is the further question of quashing the election of respondents-8 and 9 as President and Vice-President, which will be the fall out of the success of this writ petition has since merited at my hands.

4. Very strangely it is on this facet of the case that attracted and invited a lot of argument. The learned Government Advocate who was followed by barrister Sri H.K. Vasudeva Reddy, appearing for some of the respondents relied strongly on Section 126 of the Act, and that says:

"126. Acts of Co-operative Societies not to be invalidated by certain defects.-No act of a co-operative society or any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in the Institution of the society or the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment."

The section appears to be little befogged and it looks as if there is printer's devil as well in that section (sic) that becomes apparent if we read the words "existence of any defect in the Institution of the society or committee". They convey no meaning or purpose at all. On the other hand it should read as any

defect in the constitution of the society or the committee. Be that as it may. Lord Denning says, if there is any problem in interpreting a statute first thing is you must do is to iron out the wrinkles and undertaking such an operation I shall read Institution as Constitution. But even so whatever be the bar enacted by Section 126 of the Act, enjoining that any act, deed or whatever had been done in virtue of some defect in the constitution of a committee which spills over to any appointment or election of an officer etc., can only have relevance or reference to the powers of a statutory authority or a forum under the Act. The same provision in a way does appear to limit the powers of the authorities and the forums under the Act, but cannot extend to trammel the power of the High Court in the exercise of the jurisdiction under Article 226 of the Constitution. The power of the Court vested in Article 226 of the Constitution transcends and overrides these limits of the law afflicting the sphere of action of the statutory authorities but cannot be extended (sic) bind a Court in exercise of its jurisdiction under Article 226 of the Constitution. I remain unmoved by that argument with the result, regard being had to the fact that respondents-3 to 7 having participated and voted in the elections at which respondents-8 and 9 were elected as President and Vice-President must be held to be vitiated and set at naught.

5. Barrister Sri H.K. Vasudeva Reddy tells me that Section 126 of the Act, is a cure all and it is like the Ganga clause which the Apex Court referred to in the case of B.K. Srinivasan and Another etc. etc. v State of Karnataka and Others, AIR 1987 SC 1059. It may be so but all that I am saying is so far as this Court is concerned there is nothing to be sanctified by that Ganga clause. As I have pointed out, the curing of an illegality leading to its sanctification could be only before the forums under the statute. But that ground has no relevance to the Court's jurisdiction under Article 226 of the Constitution.

6. In the result, writ petition succeeds and is allowed. Rule issued and affirmed. The Government order dated 21-2-1992 passed by respondent-1 (Annexure-C) and the election of respondents-8 and 9 as President and Vice-President as per Annexure-E is quashed. The 2nd respondent-Bank will again go to the polls to elect a new President and Vice-President within four weeks from today, in accordance with law. No costs.

7. Sri Venkatachala, Government Advocate, is permitted to file his memo of appearance in four weeks.