
(2003) 11 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No's. 5662 to 5665 of 2002

M. Nataraj and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Societies Registration Act, 1960 — Section 25

Citation : (2004) 1 KarLJ 297 : (2004) 1 KCCR 103 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : A. Nagaraju, for the Appellant; B.P. Puttasiddaiah, High Court Government Pleader for Respondent 1 and 2 and M.R. Narasimha Murthy, for Respondent 3, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Petitioners are members of the 3rd respondent-association, a Society registered under the Karnataka Societies Registration Act, 1960. Petitioners claim that they were the office-bearers in the committee of management that had been elected by the general body in an election that had been held during the year 1997 and were in office, when the term was put to a premature end by the Government appointing an Administrator to look after the affairs of the association in the light of certain allegations levelled against the committee of management that there were manipulation of accounts etc.

2. It appears that the Administrator in due course ensured that fresh elections were held, for electing a new committee and handed over charge to the new committee. The association represented by the Honorary Secretary, who is arrayed as a 3rd respondent is one such office-bearer, elected in the subsequent elections during the regime of the Administrator.

3. It is the version of the petitioners that there were no irregularities committed during their tenure of management in the association and while the learned Counsel for the petitioners submits that the accounts had been duly audited by a

competent auditor, who had certified that things were in order, but at the behest of the rival persons and the subsequent committee, the matter was sought to be reopened and a set of new auditors had been appointed by the succeeding committee to re-examine the accounting procedures that had been followed during the tenure of the petitioners, when they were in the management.

4. It is the case of the 3rd respondent-association that the auditors who had been appointed subsequently had found irregularities and that matter was also brought to the notice of the Registrar, who had passed an order based on such a report that he had received. It is this order dated 1-1-2002 passed by the Registrar purporting to be in exercise of powers u/s 25 of the Karnataka Societies Registration Act, 1960, that is under challenge in this writ petition.

5. Sri Nagaraju, learned Counsel for the petitioners has vehemently contended that the impugned order is bad in law and violation of the provisions of the Karnataka Societies Registration Act, 1960; that it is also bad for being in violation of principles of natural justice; that the order is one passed even without verifying the records properly and even without according proper opportunity to the petitioners to explain their position that it is required to be quashed.

6. The gist of the order passed by the 2nd respondent-District Registrar is as under:

"Exercising the powers conferred on me u/s 25 of the Karnataka Societies Registration Act, 1960, I Mahboob Khan, Registrar of Societies have by order as follows.--

(1) The then managing committee has violated the bye-law in not maintaining proper accounts and failed to submit the same for verification during enquiry.

(2) The then President of association Sri N.C. Sundar Murthy has committed an error thus violating the Section 28 of the bye-law of continuing the general body for the lapses and mismanagement they have committed during their tenure as office-bearers.

(3) The previous office-bearer Mr. N.C. Sundar Murthy, President, Sri M. Nataraj, General Secretary, Sri B.S. Sathyanarayana, Vice-President, Sri Nagaraj, Joint Secretary and Sri P. Krishna, Treasurer and dairy committee Chairman are banned from contesting election of association till they get clear chit from the general body of the association for alleged charges.

The present managing committee is directed to audit the accounts of that period and get ascertain about truthfulness of accounts and take necessary actions in annual general body as per bye-law. They also directed to get the accounts of dairy committee audited and take necessary actions in that regard.

The present managing committee is hereby ordered to proceed with calling the annual general body meeting as per provisions of the bye-law as early as

possible and to submit the accounts thereon".

It is the submission of the learned Counsel for the petitioners that the findings with regard to maintenance of proper accounts are not correct; that the report of the auditors, who had been appointed subsequently by the succeeding committee of management was biased against the petitioners; that the report was tailor made to suit the version of the present office-bearers etc., and the Registrar is in error in merely accepting the report and having given a finding based on the same. Learned Counsel also submits that the portion of the order disqualifying and imposing a ban on the petitioners from contesting elections for electing office-bearers to the association till they get clear chit from the general body of the association is an order which is totally without jurisdiction; that the Registrar can never impose a ban of this nature; he has no power to disqualify a member from contesting elections for the post of office-bearers of the Society; that the impugned order is liable to be quashed.

7. Statement of objections has been filed on behalf of the 3rd respondent-association as well as the State and the District Registrar i.e., the respondents 1 and 2. The impugned action is sought to be defended. Sri Narasimha Murthy, learned Counsel for the 3rd respondent has submitted that the writ petition is not tenable; that the proceedings in the context of management to a private Society is a subject-matter which cannot be examined in a writ petition; that the order passed by the Registrar was at the instance of the members of the Society, who had found that the erstwhile office-bearers had indulged in malpractices and manipulation of accounts; that corrective action had been taken by the Registrar on a complaint and particularly after holding necessary enquiry in this regard, that the report of the auditors appointed by the present committee of management had clearly indicated substantial irregularities indulged by the members of the erstwhile committee and the order having only pointed out these aspects and having directed the petitioners to come before the general body and obtain clearance before seeking to contest in an election for electing office-bearers to the association; that there is nothing wrong in the order and writ petition is liable to be dismissed.

8. Statement of objections filed on behalf of the 2nd respondent also is to this effect; that the 2nd respondent had received complaint against the petitioners from the members of the association; that the order passed by the Registrar is in accordance with the provisions of the Act and the writ petition deserves to be dismissed.

9. Sri Puttasiddaiah, learned High Court Government Pleader has sought to support the order by submitting on the lines indicated in the statement of objections.

10. It is no doubt true that insofar as the affairs of the association is concerned, which is a private body and particularly in the context of elections relating to the management of such an association, this Court will not entertain a writ petition.

But, what is challenged in the writ petition is an order passed by the Registrar in exercise of statutory powers u/s 25 of the Karnataka Societies Registration Act, 1960. The correctness or otherwise of such an order is definitely amenable to judicial review under Articles 226 and 227 of the Constitution of India. Insofar as the findings; that the erstwhile managing committee has violated the bye-laws in not maintaining proper accounts and in not submitting the same for proper verification and enquiry is a finding of fact, which need not be gone into by this Court. So also the finding with regard to the then President of the association. It is open to the petitioners to have recourse in law as is open to them, if they are aggrieved and liberty is reserved to them. However, that part of the order imposing a ban on the petitioners from contesting elections, unless they get a clear chit from the general body of the association is concerned, the same cannot be sustained on the strength of any provisions of the Act, which empowers or enables the Registrar to pass such an order. The Registrar can only place his findings before the general body for consideration and appropriate action but cannot pass orders himself either for disqualifying any member or to impose any ban.

11. At the best, it may be said that a member has incurred certain disqualification in terms of the provisions of the Act or in terms of the bye-laws of the Society. A disqualification of this nature, if so permitted in law should be one, which is imposed on a member in accordance with the provisions of the Act or bye-law, if it is so provided. It cannot be by an order passed by the Registrar, while purporting to look into certain allegations of mismanagement on the part of members of the erstwhile managing committee. Ultimately, it is for the members of the very association, who are the members of the general body to accept or reject a report and to initiate or drop any action in terms of the bye-laws against any erring member. It is for the members, who elect such other members who aspire for being elected to the management of the affairs of the association to look into that and pass a resolution. It is a matter, essentially left to the members of the Society. Even before the general body could take such action, it was not open to the Registrar to impose a ban of this nature, which virtually preempts action by the general body.

12. This portion of the order imposing a ban on the petitioners from contesting elections to the association without getting a clean/clear chit from the general body is not sustainable in law and it is accordingly quashed. The order is left undisturbed in respect of all other aspects and if the petitioners are still aggrieved, to avail of such other remedies as are available to them in law for redressal of such grievance, writ petitions are allowed in part.

Rule issued and made absolute.