

(1986) 02 KAR CK 0035

In the Karnataka High Court

Case No : W.P. No. 16989/84 c/w W.P. No. 9256/85

Machado H.L. and Others

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 30a

Citation : (1988) 1 KarLJ 172

Hon'ble Judges : R. S. Mahendra, J;K. S. Puttaswamy, J

Judgement

Puttaswamy, J.-As the questions that arise for determination in these cases are common we propose to dispose of them by a common order.

2. At the city of Mangalore, the District Headquarter of Dakshina Kannada District, there is a Co-operative Society called "The Mangalore Catholic Co-operative Bank Ltd., Mangalore" ("MCC Bank") governed by the Karnataka co-operative Societies Act of 1959 (Karnataka Act No. 11 of 1959) ("the Act"). The MCC Bank was established as early as in 1912 under the then co-operative Law in force in the old Madras area and has a membership of 1 3,000 shareholders. The Bank is intended to provide banking facilities to the public in general and in particular, to the Roman catholics of the District. The committee of Management of the Bank consists of 12 elected Directors from among whom a President and a Vice-President are elected. The term of the elected directors is for a period of three years (vide Section 28A of the Act).

3. In the annual general meeting of the MCC Bank held on 18-12-1983, petitioners 1 to 3, 5 & 6 and 8 & 9 in W.P. No. 16989/84 and Shriyuths Eric Vas and Alexander Misquith, who were petitioners 4 and 7 respectively in the said writ petition, but who are now dead, and three others, were elected as the Directors of the said Bank and that Committee of Management was managing its affairs from about that date and onwards.

4. But as a bold from the blue, Government of Karnataka in exercise of the powers conferred by Section 30a of the Act, made an order on 19-10-1984

(Annexure-A) appointing the Deputy Commissioner of the District ("DC") as the Special Officer of the MCC Bank with immediate effect from a period of one year in the first instance. On 20-10-1985, Government has extended the said term for one more year. On 20-10-1984 the DC had displaced the Committee of Management of the MCC Bank and is managing its affairs from that day. In W.P. No. 16984/84, the petitioners have challenged them.

5. At Gokak Town of Belgaum District, there is a co-operative Bank called The Gokak Urban Cooperative Credit Bank Ltd., Gokak (Gokak Bank) also, governed by the Act and the same was established as early as in the year 1906 under the Co-operative Law in force in the erstwhile Bombay area. The Gokak Bank held on 31-2-1984, a new Committee of Management was elected in which petitioners 1 to 7 in W.P. No. 9258/85 and two others were elected to the same, who were managing its affairs from about 1-4-1984. On 12-6-1985 (Annexure-C) Government in exercise of the powers conferred by Section 30A of the Act, has appointed the Assistant Commissioner, Bailhongal Sub-Division (AC) As the special Officer of the said Bank for a period of one year or until further orders whichever is earlier. The AC who has assumed charge on 13-6-1985 displacing the Committee of Management of the Gokak Bank is managing its affairs from that day. In W.P.No. 9256 of 1985, the petitioners have challenged the said order of Government.

6. While the petitioners in W.P. No. 16989 of 1984 have challenged the constitutional validity of Section 30A of the Act in its entirety, the petitioners in W.P. No. 9256 of 1985 have challenged the validity of Section 30A(1-A) of the Act only as violative of Article 14 of the Constitution. But, in the view we propose to take on the validity of the orders, we consider it unnecessary to examine the challenge to the whole of Section 30A or Section 30A(1-A) of the Act. We therefore leave open the same.

7. The petitioners have challenged the orders made by Government against their banks, inter alia, on the grounds (i) that even if all that was stated by Government was true, then also, they would not attract section 30A of the Act (ii) that the orders had been made by Government without application of mind and on irrelevant considerations and (iii) that the orders were actuated by mala fides.

8. In justification of the impugned orders. Government had filed a separate and detailed returns. In W.P. No. 16989 of 1984, Sri R.L. Jalappa, Minister for Co-operation, had filed his affidavit denying the allegations of malafides made against him. The petitioners in this writ petition, in our opinion very rightly, withdraw those allegations against Sri Jalappa and it is unnecessary to set out all the details and therefore they are not set out.

9. Sriyuths B.V. Acharya and N.Y. Hanumanthappa, learned Counsel for the petitioners, strenuously contend that the grounds or allegations made against the respective Societies, even if they were true do not attract Section 30A of the

Act and Government had made the orders without application of the mind to the relevant factors and has committed manifest errors of jurisdiction and illegalities apparent on the face of the record.

10. Sri M.R. Achar, learned Government Advocate, appearing for respondents 1, 2, 3 and 5 in W.P. No. 16989 of 1984 and respondents 1, 2 and 4 in W.P. No. 9256 of 1985 and Sri Mohandas N. Hedge, learned counsel appearing for respondents 6 and 7 in W.P. No. 16989 of 1984, refuting the contentions urged for the petitioners, contend to the contrary.

11. Section 30 of the Act Amended more than once, empowered the "Registrar" as defined in Section 2(a) of the Act, to supersede a committee of management of a society and appoint an administrator in the circumstances set out in that section. Section 30 of the Act has made elaborate provisions for supersession of a committee of management of a society and appointment of an administrator, however, considering the representations to be made thereto by such committee of management.

12. The Karnataka Co-operative societies (Second Amendment) Act, 1976 (Karnataka Act 70 of 1976 ("1976 Act")) replacing an earlier ordinance called the Karnataka Co-operative Societies (Second Amendment) Ordinance (Karnataka Ordinance 15 of 1976) promulgated on 19-7-1976 introduced Section 30A to the Act providing for the replacement of a committee of management of a co-operative society and for the appointment of a "Special Officer" in its place with immediate effect. That Section as amended by the Karnataka Co-operative Societies Act, 1984 (Karnataka Act 5 of 1984) ("1984 Act") read thus:

30A. Appointment of Special Officer:

"(1) Where the State Government, on a report made to it by the Registrar or otherwise, is satisfied that any co-operative Society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any other, direction or circular issued by the State Government or the Registrar, it may, notwithstanding anything in this Act, by order, appoint a Special Officer for such co-operative Society for such period not exceeding two years;

Provided that the State Government may, if it considers necessary, extend the said period of two years by such further period not exceeding one year.

(1A) Before making an order under sub-Section (1), it shall not be necessary for the State Government to give any co-operative society or persons likely to be affected by such order an opportunity of making representation or being heard."

The object with which this Section 30A has been enacted is set out in the Karnataka Co-operative Societies (Second Amendment) Bill 1976 (LA Bill No. 45 of 1976) that ultimately became the 1976 Act in these words:

"In certain cases immediate action for taking over the management of Co-

operative Societies is considered essential. Hence, a new Section 30(A) has been included"

Section 30A is an independent and a special provision conferring power on the designated authority specified therein and cannot be read to overlap or as supplemental or incidental to Section 30 of the Act. Section 30A as set out in the very statement of objects and reasons of the Bill must only be read as conferring a distinct, special and extraordinary power on Government, the highest executive authority, only to achieve the purposes and objects of the Act.

13. When an order is made under Section 30A, the duly elected committee of management or a democratic institution of a co-operative Society stands removed with immediate effect and a Special Officer appointed by Government is inducted and takes over its management. Without any doubt, the power conferred by Section 30A of the Act affects the rights and obligations of the members of a co-operative society in general and its committee of management in particular. What then should be the rule of construction to be applied by Courts is set out by Maxwell on Interpretation of Statutes, Eleventh Edition, in Chapter 10 strict Construction-Section 2-Statutes on Rights or imposing Burdens under the special heading "Encroachment on Rights" in these words:

"Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights."

We must therefore apply the strict rule of construction to the exercise of power under Section 30A of the Act. If we apply that correct Rule of Construction, it is obvious that Government can and must exercise the power under Section 30A of the Act only when immediate and urgent action is called for and not in all and every cases where the affairs of the society can be effectively regulated in any event under Section 30 of the Act. We are of the view that this construction becomes all the more necessary when the right of hearing earlier recognised by this Court in *Jagdish Patil v. State of Karnataka and others* (1981 (1) Karnataka Law Journal, 443) is expressly excluded by Section 30A(1A) of the Act. Bearing these principles, we now proceed to examine the impugned orders.

14. The orders themselves do not say that they have been made to meet an immediate and urgent situation that could not be met and dealt under Section 30 or any other provisions of the Act. But that omissions by itself cannot and does not invalidate them at all. We have therefore very carefully examined the reports made by the Registrar to Government, the notes, minutes and the orders made and issued by Government on the files of the Secretariate very rightly made available by the learned Government Advocate. We find that none of the officers or the concerned Minister had kept before them the imperative necessity to take immediate and urgent action under Section 30A of the Act before them at all. On the other hand, every one of the circumstances or grounds set out against the

societies, accepting all of them as true, which is nothing but a repetition of the reports made by the Registrar, clearly show that all of them related to matters that did not call for an immediate, urgent and precipitate action under Section 30A of the Act. Every one of them read in isolation or cumulatively clearly show that they were all matters that could have been liesurely and elaborately dealt under Section 30 of the Act and not under Section 30A of the Act. Unfortunately, the reports made by the Registrar accepted by Government without a critical examination or the notes and minutes do not also reveal that immediate and precipitate action was called for under Section 30A of the Act. Even placing the most charitable construction suggested by the learned Government Advocate on the reports, notes and minutes, we are constrained to observe that Government had not formed an opinion that immediate, urgent and precipitate action was called for the achieve the purpose and objects of Section 30A of the Act. We also do not find from any of the records placed before us that the affairs of the societies had reached a breakdown in their management and that immediate and urgent intervention of the Government was necessary to put them on rails. We have therefore no hesitation in holding that Government had invoked section 30A of the Act for irrelevant purposes or only for purposes that were relevant to Section 30 of the Act.

16. In *Raja Anand Brahma Shah v. State of Uttar Pradesh and others* (A.I.R. 1967 S.C. 1081), a constitution Bench of the Supreme Court had occasion to examine the satisfaction of Government in pressing the urgency clause under Section 17 of the Land Acquisition Act ("L.A. Act"). In examining that satisfaction of Government, the Court reviewing all the earlier cases, speaking through Ramaswamy, J., expressed thus:

"(8) It is true that the opinion of the State Government which is a condition for the exercise of the power under S. 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government under Section 17(4). The legal position has been explained by the Judicial committee in *King Emperor v. Sibnath Banerjee*, 72 Ind. App. 241, (AIR 1945 PC 156), and by this Court in a recent case-*Jaichand Lal Sethia v. State of West Bengal*, Cri. Appeal No. 110 of 1966, Dt. 27-7-1966, (reported in AIR 1967 SC 483). But even though the power of the State Government has been formulated under Sec. 17(A) of the Act in subsective terms the express of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If, therefore in a case the land under Acquisition is not actually waste or erable land but the State Government has formed the opinion that the provisions of sub-S. (1) of S. 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It following, therefore, that the notification of the State Government under S. 17(4) of the Act directing that the

provisions of S. 5A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in *Estate and Trust Agencies Ltd., v. Singapore Improvement Trust*, 1937 AC 898, (AIR 1937 PC 265), in which a declaration made by the Improvement Trust of Singapore under S. 57 of the Singapore Improvement Ordinance 1927 that the appellants' property was in an insanitary condition and, therefore, liable to be demolished was challenged. Section 57 of the Ordinance stated as follows:

"57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary."

The judicial committee set aside the declaration of the Improvement Trust on two grounds: (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said ordinance and, therefore the declaration was liable to a challenge if the authority stepped beyond those terms and (2) that the ground on which it was made was other than the one set out in the Ordinance. In another case-*Ross Clunis v. Papadopoulos*, 1958-I ILR 546-the appellant challenged an order of collective fine passed under Regulation 3 of the Cyprus Emergency Powers (collective Punishment) Regulations 1955 which provided that if an offence was committed within any area of the colony and the Commissioner "has reason to believe" that all or any of the inhabitants of that area failed to take reasonable steps to prevent it and to render assistance to discover the offender or offenders it would be lawful for the Commissioner with the approval of the Governor to levy a collective fine after holding an inquiry in such manner as he thinks proper subject satisfying himself that the inhabitants of the area had been given an adequate opportunity of understanding the subject matter of the inquiry and making representations thereon. It was contended on behalf of the appellant that the only duty cast on the Commissioner was to satisfy himself of the facts set out in the Regulation, that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. In rejecting the contention the Judicial Committee observed as follows:

"Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a Court might infer either that he did not honestly form that view of that in forming it he could not have applied his mind to the relevant facts".

"In another case-*R.V. Australial Stevedoring Industry Board* (1952) 88 CLR 100 the High Court of Astralia was called upon to review the conduct of a board empowered to cancel the registration or an employer of dock labour if "satisfied" that he was unfit to be registered or had so acted as to interfere with the proper performance of stevedoring work. It was held by the High Court that it was entitled to award prohibition against the board if the board was action

without any evidence to support the facts upon which its jurisdiction depended, or if it was adopting an erroneous test of the employer's liability to cancellation of his registration, or if it appeared likely to go outside the scope of its statutory discretion."

We are clearly of the view that these principles apply to sustain or otherwise of the satisfaction of Government under Section 30A of the Act. When so examined, it is manifest that the orders made by Government are without a genuine satisfaction to the requirements of Section 30A of the Act on relevant considerations and therefore they are liable to be quashed on this short ground without examining all other grounds urged by either side. But, out of deference to the learned Government Advocate, we propose to notice and briefly state our views on those specially urged in W.P. No. 16989 of 1984.

17. Learned Government Advocate contends that this is a fit case in which this court should decline to exercise its extraordinary jurisdiction on the ground that the management of the Society had published a manipulated balance sheet for the year 1979-80 in a paper called "Rakhno" elaborated in para-9 of the return filed by Government.

18. In the order made, Government had not adverted to and relied on the same. When that is so, we consider it improper to permit the respondents to rely and decide on the same. We, therefore, decline to examine this contention urged by learned Government Advocate with considerable vehemence.

19. Learned Government Advocate lastly contends that Government was ready and willing to hold elections and put the societies on rails and therefore this court should decline to exercise its extraordinary jurisdiction.

20. We are of the view that having regard to the unexpired term of the Committee of Managements of the Ranks, we should not accede to this submission of the learned Government Advocate. We, therefore, reject this contention of the Government Advocate.

21. After taking charge of the MCC Bank, the Special Officer had appointed one Sri H. Narayana Hegde, an Assistant Registrar of Co-operative Societies, as its full time secretary from 1-3-1985. When we indicated our preference for continuance of the appointment of Sri Narayana Hegde, Sri Acharya, in our opinion very rightly and fairly, submits that the management of the society will continue his services till the elections to the new committee of management are held and inducted provided Government does not withdraw his services. We place this submission of Sri Acharya on record which makes it unnecessary for us to issue any special direction for the continuance of Sri Narayana Hedge.

22. On the foregoing discussion, it follows that we must quash the impugned orders and issue directions to the Special Officers appointed by Government to hand over the managements of the respective societies to the respective committees of managements that were functioning prior to Government made its

orders.

23. In the light of our above discussion, we make the following orders and directions:

(i) We quash the orders impugned in these writ petitions.

(ii) We direct the Special Officers, that is, respondent-5 in W.P. No. 16989 of 1984 and respondent-2 in W.P. No. 9256 of 1985, to hand over charge of the respective co-operative Societies to the Committees of Management that were functioning prior to Government made the orders impugned and quashed with all such expedition as is possible in the circumstances of the cases and in any event within seven days from the date of receipt of the order of this court.

24. Writ petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

25. Let this order be communicated to Government and the Special Officers within seven days from this day. Let a copy of this order be also furnished to the learned Government Advocate within the same time.