

(2003) 10 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 24186 of 2003

Magundappa and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Co-operative Societies Act, 1959 — Section 2 (a-1), 29

Citation : (2003) ILR (Kar) 4613 : (2004) 1 KarLJ 423 : (2003) 4 KCCR 361 SN

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Ashok R. Kalyanashetty, for the Appellant; Keshava Reddy, HC GP, for the Respondent

Final Decision : Allowed

Judgement

Bhakthavatsala, J.—The petitioners who are Chairman and Secretary of "Yenne Beeja Belegarara Sahakari Sangha, Niyamita, Kendur", are before this Court under Articles 226 and 227 of the Constitution of India, praying for quashing the Notification dated 05.04.2003 bearing No. NA.E.06.NA.MA.NI-2003 on the file of 1st Respondent at Annexure "H", nominating the Respondents 3 to 5 to the 2nd Petitioner/Society.

2. The Respondent Nos. 1 and 2 are represented by Sri M.Keshava Reddy, learned Govt. Pleader. Respondents 3 to 5 are represented by Sri F.V. Patil.

3. The learned Counsels for the parties submitted arguments for final disposal.

4. In this petition, the Society has challenged the Government nominating Respondents 3 to 5 u/s 29 of the Co-operative Societies Act, to the Petitioner/Society as Directors.

5. It is the case of the petitioner/Society that it has not received any share capital or loan or grant or guarantee for repayment of loan or interest from the Government and therefore, it is not an "Assisted Society" within the definition of

Section 2(a-1) of the "Karnataka Co-operative Societies" Act (in short "the Act"). However, during the year 1980-90, the erstwhile Zilla Parishat, Bijapur, came out with a special scheme, viz., "Vishesh Ghatak Yojane", under which, it released certain amounts in favour of SC/ST persons to enable them to become share holders members of certain societies such as Co-operative Sugar Factory/Yenne Beeja Belegarara Sahakari Sangha/Societies etc. Under the said scheme, the then Deputy Registrar of Co-operative Societies, Bijapur, issued an order dated 27.11.1989 as per Annexure "F" and also released a sum of Rs. 4,766-25 to be paid and on behalf of 92 persons nominated in the list accompanied with the said order to enable them to become members/share holders of the Society. Likewise, similar order was issued releasing another sum of Rs. 5,233-75, to enable another 108 SC/ST persons to become share holders/members of the petitioner/Society. Thus, in all, a sum of Rs. 10,000/- was released and utilised for 200 SC/ST persons to become share-holders/ members of the Society under the above said scheme. It is the case of the petitioner/Society that such payment made by the erstwhile Zilla Parishat, Belgaum on behalf of 200 SC/ST persons, cannot be considered an assistance in the form of Share Capital from the Government and therefore, the petitioner/Society is not an "Assisted Society". Hence, the learned Counsel for the Society contended that the Annexure-"H" issued by the Government nominating Respondents 3 to 5 is illegal.

6. For the purpose of disposal of this case, it is necessary to refer to the definition of Assisted Society u/s 2(a-1) and 29 of the Act.

Section 2(a-1) in relation to Assisted Society reads as under:

"Assisted Society" means a co-operative society which has received the Government assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest."

Section 29 of the Act reads as under:

"29. Nominees of Government of the committee of an assisted co-operative society: (1) The State Government may nominate not more than three persons as its representatives on the committee of any assisted society of whom one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a woman.

(2) The persons so nominated shall not have the right to become office bearers of primary Co-operative Societies and any other class or classes of Co operative Societies as may be specified by the State Government from time to time.

(3) The person nominated as a member of a Cooperative Society under Sub-section (1) shall hold office as such member during the pleasure of the State Government.

(4) Where an officer of Government is nominated under Sub-section (1), such officer may, if unable to be present himself at any meeting of the committee, depute a subordinate officer to the meeting as his representative and such

subordinate officer shall be deemed to be a person nominated as a representative of the State Government for the purpose of such meeting."

7. No doubt, u/s 29(1) of the Act, the Govt., may nominate, not more than three persons, as its representative on the Committee of any Assisted Society of whom one shall be a person belonging to the Scheduled Caste or Scheduled Tribe and one shall be a woman. In the instant case, the erstwhile Zilla Parishat, Bijapur, has released a sum of Rs. 4,766-25 and subsequently, a sum of Rs. 5,233-75, so as to facilitate 200 SC/ST persons to become members of the petitioner/Society. Such an assistance rendered to the particular Community people cannot be described as an assistance given by the Govt., in the form of share Capital or loan etc., to petitioner/Society.

8. Therefore, in my considered opinion, the petitioner/Society is not an "Assisted Society" within the definition of Section 2(a-1). Therefore the Govt., exercising its power to nominate Respondents 3 to 5 u/s 29 of the Act, is not sustainable in the eye of law.

9. Therefore, I pass the following order:

The petition is allowed and the Notification dated 05.04.2003 bearing No. NA.E.06.NA.MA.NI-2003 at Annexure "H" on the file of the 1st Respondent, nominating Respondents 3 to 5 as members to the" petitioner / Society, is quashed. No costs.

Learned Govt. Pleader is permitted to file memo of appearance within four weeks.