

(1999) 03 KAR CK 0035
In the Karnataka High Court
Case No : Writ Appeal No. 65 of 1999

Maharudrappa Sirse

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (1999) 4 KarLJ 346

Hon'ble Judges : K.R. Prasada Rao, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri A. Nagarajappa, Government Advocate and Sri Chidanandayya, for the Respondent

Judgement

1. This appeal is directed against the order passed by the learned Single Judge in Writ Petition No. 27268 of 1998, dated 23-11-1998 directing the Administrator-respondent 3 to hold the elections to the Managing Committee of S.N. Education Society within 3 months from the date of the order and thereafter hand over the administration to the elected body.

2. The appellant, who is a social worker, member and Ex. President of 3rd respondent-Society questioned the appointment of the Administrator-respondent 3 for a period of 6 months from 13-5-1998 before the learned Single Judge in Writ Petition No. 27268 of 1998 under Articles 226 and 227 of the Constitution of India. He alleged that there are 51 life members in the said Society including himself. Though the affairs of the Society were running smoothly, at the instance of one of the members of the Society, who was not elected to the Managing Committee and due to political pressure, an order of appointing an Administrator was passed on 4-10-1996 and charge was taken by him on 5-10-1996. The said appointment was being extended from time to time at the request of the Administrator and he was continued by an order dated 7-5-1997. Subsequently, the period of appointment was further extended by 6 months on 12-11-1997 and

finally for another 6 months by an order dated 13-5-1998 with effect from 5-4-1998. Though the said period has expired by 4-10-1998, no elections were held by him. Appellant, therefore, filed the writ petition seeking for quashing the impugned order dated 13-5-1998 passed by respondent 1 by issue of writ of certiorari and for a direction to respondent not to enrol new members and to hold election by issue of a writ of mandamus. The learned Single Judge disposed of the writ petition giving a direction to 3rd respondent-Administrator to hold the election to the Managing Committee of the Society within 3 months and thereafter to hand over the administration to the elected body. Since the learned Single Judge has not given direction to the respondent 1 not to enrol new members, the petitioner filed the present appeal.

3. We have heard the arguments of the learned Counsel appearing on both sides.

4. Sri Jayakumar S. Patil, learned Counsel for the appellant, contended that in spite of a specific prayer made in the writ petition, the learned Single Judge has not given direction to the Administrator not to enrol any new members and taking advantage of the absence of the said direction, the Administrator is enrolling new members, which is not permissible under law and has not conducted the election to the Managing Committee within a period of 3 months fixed by the learned Single Judge. In support of his contention that an Administrator has no power to enrol new members, he relied upon a decision of the Supreme Court in the case of K. Shantharaj and another Vs. M.L. Nagaraja and others, , wherein it was held that "it is beyond the power of an Administrator appointed in supersession of the Managing Committee, to enrol new members while exercising the powers under the provisions of Sections 30 and 30-A of the Karnataka Co-operative Societies Act, 1959 (Act No. 11 of 1959), he can organise election process in accordance with the Act, Rules and Bye-laws of the Society. In para 5, at page 2926, of the above decision, it is observed as follows:

"It would be clear from the language of these provisions that the Administrator or Special Officer, subject to control of any of the functions of the Society, and in the interest of the Society take such action as is necessary for proper functioning of the Society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the Society".

He also relied upon another decision of the Supreme Court in the case of T. Ramegowda Vs. R. Krishnamurthy and others, , wherein it was held that "enrolment of new members done by the Special Officer while exercising the powers u/s 30-A of the Karnataka Co-operative Societies Act, 1959 is without jurisdiction. In view of the above rulings of the Supreme Court, we agree with the contention of the learned Counsel for the appellant that the 3rd respondent has no power to enrol new members to the Society and that he has to conduct the elections to the Managing Committee of the members as on the rolls by the date 4-10-1996 of his first appointment as an Administrator on supersession of

the then existing Managing Committee. We, therefore, find it necessary to give a direction in this regard to the 3rd respondent-Administrator. Since the period of 3 months fixed, for holding the election to the Managing Committee, by the learned Single Judge in the impugned order has expired, we find it necessary to extend the said period till 6-4-1999.

5. In the result, this appeal is allowed in part. All the steps taken to enrol new members by the 3rd respondent-Administrator are declared as null and void. The direction given to the 3rd respondent-Administrator to hold the election to the Managing Committee of the Society and thereafter to hand-over administration to the elected body by issue of a writ of mandamus, is confirmed. Respondent 3-Administrator is further directed not to enrol any new members and to conduct the election to the Managing Committee of the Society with the members as on the rolls by the date of his initial appointment, on supersession of the then existing Managing Committee i.e., 6-10-1996 in accordance with the provisions of the Act, Rules and Bye-laws of the Society, by 6-4-1999 and to handover administration to the newly elected Managing Committee. No costs.