(1977) 06 KAR CK 0009

In the Karnataka High Court

Case No : WP. 4248 of 1977

Mallappa Gowda M. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 08-06-1977

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29

Citation : (1978) 1 KarLJ 361

Hon'ble Judges : Malimath, J

Judgement

1. Shri B.G. Sridharan, learned Counsel for the petitioner, after submitting arguments for some time, rightly gave up prayer No. II. The said prayer is to declare and strike down Sec. 29(1)(a) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the ''Act'') as invalid as it is inconsistent with Sec. 53A(1) and repugnant to Sec. 55 of the Act. It is now well-settled that a statutory provision of an enactment cannot be struck down on the ground that it is inconsistent with or repugnant to any other provision of the same enactment. Shri Sridharan is therefore, right in giving up the second prayer.

2. The petitioner is a Director of the Sorab Primary Land Development Co-operative Bank Ltd, Sorab. He has challenged in this writ petition the Notification issued by the State Govt. on 9th May 1977, as per Ext.A, nominating three persons on the Board of Directors of the aforesaid Primary Land Development Bank as the nominees of the State Govt. in exercise of the powers vested in them under sub-sec. (1) of Sec. 29 of the Act.

3. Sub-sec. (1) of Sec. 29 of the Act, entitled the State Govt. to nominate as its representatives not more than three persons or 1/3 of the total number of members of the Committee of the Co-operative Society, whichever is less, if any one of the conditions mentioned in sub-clauses (a), (d), (c) or (d) of sub-sec. (1) of Sec. 29 of the Act are satisfied.

4. Shri Sridharan maintained that is this case, the conditions mentioned in sub-clauses (b), (c) and (d) are not satisfied. It was maintained that though the

State Govt. has subscribed to the share capital of the Co-operative Society in question, the same is limited to a sum of Rs. 50,000 as is clear from Ext.B, the certificate issued in this behalf by the Secretary of the Primary Land Development Co-operative Bank Ltd, Sorab. It is clear from the same that the paid-up share capital by ''A'' and ''B'' Class individual members is Rs. 4,46,640 and the total share-capital of the Society is Rs. 4,96,640. Therefore, in view of sub-clause (a) of sub-sec. (1) of Sec. 29 of the Act, the State Govt. can exercise the power of nomination as it has subscribed to the share-capital of the society in question to an extent of Rs. 50,000. The number of persons to be nominated to the society is not more than three or one-third of the total number of members of the Committee of the Co-operative Society whichever is less. Shri Sridharan has no complaint about the number of persons nominated. Shri Sridharan maintained that though prima facie Sec. 29(1) of the Act appears to entitle the State Govt. to nominate three persons on the Board of Directors of the Society in question, the same is legally impermissible having regard to the other provisions of the Act. He invited my attention to the provisions of Section 53A of the Act which has been introduced into the Act by Karnataka Act 39 of 1975. Sub-sec. (1) of Section 53A of the Act provides that notwithstanding anything contained in Sec. 29, where the State Govt. 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 Govt. 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. Shri Sridharan is right in maintaining that the conditions mentioned in this section are not satisfied in this case inasmuch as the State Govt. has not subscribed 50% of the total share capital of the Society nor has it contributed a sum of Rs. 5 lakhs to the said society. Having regard to the provisions of Sec. 53A of the Act, it was maintained that it is only when the conditions mentioned in Sec. 53A of the Act are satisfied that the State Govt. becomes entitled to nominate its members on the Committee. For this purpose, reliance was placed on Sec. 55 of the Principal Act which provides that the provisions of Secs. 42 to 54 of Chapter VI shall have effect notwithstanding anything inconsistent therewith contained in the Act or any other law for the time being in force. Relying on the said provision, it was maintained that as the provisions of Secs. 29(1) and 53A(1) of the Act, cannot be reconciled, Sec. 53A(1) has to prevail over Sec. 29(1) having regard to the provisions of Sec. 55 of the Act. It is not possible to accede to this contention of Sri Sridharan.

5. Sec. 55 was there in the Principal Act long before Sec. 53A was introduced into the Act in 1975. An overriding effect was given in Sec. 55 to Secs. 42 to 54 of the Act. As Sec. 53A was not there when Sec. 55 was enacted, it is impossible to draw an inference that Sec. 53A gets incorporated in Sec. 55 on its being introduced into the Act. Even otherwise, it is not possible to take the view that there is any inconsistency between the provisions of Secs. 29(1) and 53A(1) of the Act. It appears, the State Govt. has the power to nominate both under S. 29

as also under Sec. 53A of the Act. Sec. 53A appears to cover cases of larger investment by the State Govt. whereas Sec. 29 covers cases where the investment by the State Government is of a smaller magnitude. If there is a higher contribution by the State Govt. as provided under Sec. 53A of the Act i.e., contribution of 50 per cent of the total share capital or Rs. 5 lakhs, the State Govt. becomes entitled to nominate as its representative 1/3 of the total number of members of the Committee of the Co-op Society, and the number of representatives to be nominated is not limited to 3 persons. But under Sec. 29 of the Act, the maximum number of persons that can be nominated is three only. It can be even less if 1/3 of the total number of persons is less than three. It is therefore, clear that the scheme of the law empowers the State Govt. to nominate a smaller number of persons where the investment by the State Govt. is of a smaller magnitude under Sec. 29 of the Act and that the State Govt. becomes entitled to nominate larger number of persons under Sec. 53A of the Act where the investment by the State Govt. is of a larger magnitude as contemplated by the said section. As the two provisions viz., Secs. 29 and 53A are intended to operate under different circumstances, it is not possible to take the view that there is any inconsistency between these two sections of the Act. Hence it is impossible to take the view that Sec. 29 overrides Sec. 55 of the Act and that therefore, the State Govt. has no power of making nomination by invoking the provisions of Sec. 29(1) of the Act.

6. For the reasons stated above, this writ petition fails and is rejected.

