
(2003) 03 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 22483 of 2002

M.H. Gawali

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 31 (1), 70

Citation : (2003) 3 KarLJ 107 : (2003) 4 KCCR 262 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Subash B. Adi, for the Appellant; M.N. Ramanjaneya Gowda, A.G.A. and A.G., for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Petitioner claims that he is the President of Sri Basaveshwara Urban Co-operative Bank Limited, Ranebennur, Haveri District. The Bank is registered under the provisions of Karnataka Co-operative Societies Act, 1959 ("Act" for short).

2. The expression "Co-operative Bank" finds a place in the dictionary clause of the Act. It means, a Co-operative Society doing the business of banking.

"Co-operative Society" is also defined to mean a society registered or deemed to be registered under the Act.

3. The brief history of the case.--On 11-3-2000, elections were held to elect the managing committee of the aforesaid Co-operative Society for a period of five (5) years commencing from 2001-02, 2002-03, 2003-04 and 2004-05 (co-operative years). In the said elections, ten (10) members were elected for the committee of the management of the Co-operative Society.

4. An unsuccessful candidate in the elections held, had filed a dispute before the Deputy Registrar of Co-operative Societies, Haveri District, Haveri, u/s 70 of the

Act in dispute Nos. 223 and 224/1999-2000.

5. The Deputy Registrar, after hearing the parties to the lis, by his order dated 29-8-2001, was pleased to allow the dispute and was further pleased to set aside the elections that were held to the Co-operative Society on 11-3-2000.

6. Aggrieved by the aforesaid order, petitioner herein and others have filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 764 of 2001. The appeal is dated 4-9-2001. Along with the appeal, an application for interim order is also filed. The said application was posted for consideration and decision before the Appellate Tribunal on 6-9-2001. But on that date, the application could not be heard by the Appellate Tribunal. Therefore, the matter had been adjourned to 7-9-2001.

7. On 7-9-2001, the Appellate Tribunal was pleased to hear the application filed by the petitioner herein and others (appellants before the Appellate Tribunal) and also the contesting private respondents, and thereafter had reserved the matter for orders and accordingly, the matter was adjourned to 12-9-2001.

8. In the meanwhile, the Deputy Registrar of Co-operative Societies, Haveri District, on 6/7-9-2001 frames an order u/s 31(1) of the Act and appoints a Special Officer to manage the affairs of the Co-operative Society. The Special Officer assumes charge on 7-9-2001. Aggrieved by the aforesaid order made by the Deputy Registrar dated 6/7-9-2001, petitioner herein has filed a petition before this Court in W.P. No. 34669 of 2001. This Court while entertaining the writ petition by its order dated 11-9-2001 grants an interim order of stay, staying the orders made by the Deputy Registrar in appointing the Special Officer. That interim order is still in force, but the Special Officer continues to manage the affairs of the society on the pretext that the interim order was passed by this Court after he had assumed the charge. Be that as it may.

9. On 12-9-2001, the Karnataka Appellate Tribunal stays the orders made by the Deputy Registrar of Co-operative Societies in dispute Nos. 223 and 224/1999-2000, dated 29-8-2001. Thereby the order made by the Deputy Registrar is kept in suspended animation.

10. On 25-9-2001, the Deputy Registrar directs the-Special Officer to secure the books of accounts, ledgers, etc., maintained by the Co- operative Society. In turn, the Special Officer addresses a letter dated 26-9-2001 asking the petitioner and others to hand over the books of accounts, ledgers, etc., of the Co-operative Society. Even that letter of the Special Officer was questioned by the petitioner before this Court in W.P. Nos. 37078 and 37079 of 2001. This Court while entertaining the writ petitions grants an interim order of stay on 3-10-2001.

11. By yet another order dated 5-3-2002, the Deputy Registrar exercises his powers u/s 31(1) of the Act and extends the term of appointment of the Special Officer for a further period of six months knowing fully well that his earlier order made on 6/7-9-2001 is stayed by this Court in Writ Petition No. 34669 of 2001,

but without even realising that an order which is stayed by this Court cannot be extended by a subsequent order by a statutory authority. Aggrieved by the said order of the Deputy Registrar, petitioner is before this Court in this writ petition.

12. By an order dated 23-3-2002, the Deputy Registrar passes one more order substituting the Special Officer appointed earlier by another Special Officer and on the same day, he initiates proceedings against the managing committee of the society by exercising his powers u/s 64 of the Act, inter alia alleging certain irregularities said to have been committed by the managing committee of the Co-operative Society. The initiation of those proceedings were again the subject-matter of a petition before this Court in W.P. No. 17328 of 2002. This Court has stayed those proceedings also.

13. During the pendency of this writ petition before this Court since the appointment of Special Officer has come to an end by efflux of time as prescribed under the Act, the Deputy Registrar once again issues one more order extending the term of appointment of the Special Officer for a further period of six months. But the correctness or otherwise of that order is not the subject-matter in this writ petition.

14. On the legal issues involved in this writ petition, Sri Subash B. Adi, learned Counsel appearing for the petitioner submits, that the impugned order passed by the second respondent-Deputy Registrar of Cooperative Societies is ex facie illegal and further submits that the said order is contrary to the provisions of Section 31 of the Act, Therefore, requests this Court to annul the same by issuing an appropriate writ.

15. The learned Advocate General appearing for the respondents would submit that the Deputy Registrar of Co-operative Societies in view of the amendment which has been brought into Section 31 of the Act, can extend the period of appointment of a Special Officer for a period of six months at a time and that appointment also can be extended for a further period of six months. Therefore, the learned Advocate General would submit that there is no illegality whatsoever in the order made by the Deputy Registrar of Co-operative Societies.

16. To appreciate the rival contentions canvassed by the learned Counsels for the parties to the lis, provisions of Section 31 of the Act requires to be noticed. Therefore, it is extracted and it reads as under:

"Section 31. Appointment of Special Officer (by the Registrar).--(1) Where the Registrar is of the opinion that a Co-operative Society is not functioning in accordance with the provisions of the Act, rules or bye-laws on account of the number of members of the committee falling short of the required number to form a quorum due to disqualification, resignation or death or removal of a member or for any other reason, the Registrar may, notwithstanding anything contained in this Act, rules or bye-laws, by order appoint a Special Officer for such Co-operative Society, for such period not exceeding six months. (The Registrar may with the approval of the State Government and for the reasons to

be recorded in writing extend the period of such appointment for a further period of six months at a time and in any case such extension shall not exceed one year in the aggregate.)

(2) Before making an order under Sub-section (1), it shall not be necessary for the Registrar to give any Co-operative Society or person likely to be affected by such order, an opportunity to state its or his objection, if any.

(3) On the issue of the order under Sub-section (1):

(a) the members of the committee of the Co-operative Society, if any, shall vacate and shall be deemed to have vacated their offices; and

(b) the Special Officer shall be deemed to have assumed charge of the affairs of the Co-operative Society.

(4) The Special Officer shall, subject to the control of the Registrar, exercise and perform all the powers and functions of the committee of the Co-operative Society or any office-bearer of the Co-operative Society and take all such actions as may be required in the interest of the Co-operative Society.

(5) The Special Officer shall, before the expiry of his term, arrange for constitution of a new committee for the Co-operative Society in accordance with its bye-laws".

17. Sections 30 and 31 of the Act are special provisions, which would authorise the competent officer under the Act to supersede an elected body of a Co-operative Society and appoint an Administrator/Special Officer to manage the affairs of a Co-operative Society. That can be done only under special circumstances. Some of the circumstances, which could be taken note of by the authority to use this extraordinary power is also indicated broadly in the provisions itself.

Section 31 of the Act authorises the Registrar of a Co-operative Society to appoint a Special Officer under certain special circumstances. The expression "Registrar" is defined in the Act. It means "a person appointed to perform the functions of the Registrar of Co-operative Societies under the Act and includes an Additional Registrar of Co-operative Societies, a Joint Registrar of Co-operative Societies, a Deputy Registrar of Co-operative Societies and an Assistant Registrar of Co-operative Societies appointed to assist the Registrar when exercising all or any of the powers of the Registrar".

Under the Act, the Registrar must form an opinion before appointing a Special Officer to manage the affairs of a Co-operative Society by replacing the elected representatives of the society. That opinion requires to be made on subjective and objective consideration of certain factors namely, that a Co-operative Society is not functioning in accordance with the provisions of the Act, rules or bye-laws on account of the number of members of the managing committee falling short of the required number to form a quorum either due to disqualification,

resignation or death or removal of a member or for any other reason. The expression "for any other reason" is not explained by the Legislature by either introducing a proviso or by providing an explanation in the provision itself. The provision gives a wide, unguided and unbridled powers to the Registrar to take over the affairs of the society by toppling an elected body, elected in the special meeting held by the members of the society. The Constitution provides that citizens have a right to form an association, which includes a right of management also. This right of citizens or members could be superseded by the Registrar only if the affairs of the society is not being carried on by the members of the society in accordance with the provisions of the Co-operative Societies Act, rules or bye-laws or for the other reasons mentioned in the Act itself, but at any rate not on the whims and fancies of the Registrar or to oblige or at the dictation of their political bosses. These provisions requires to be sparingly used by the Competent Authorities under the Act and again not as a routine matter to please their political bosses but only under special and extraordinary circumstances. But, what we hear and see is that Special Officers and Administrators are appointed for reasons that are alien to the object of the Act but primarily to suit the persons, who are in power. The object of the Act is extremely good, but the way it is used, rather misused is unfortunate. Let me again say, be that as it may, for the sole reason, this system will not improve and any amount of criticism is only a cry in the Arabian Deserts.

In Section 31 of the Act, the Legislature consciously uses the expression "notwithstanding anything contained in this Act, rules or bye-laws", the Registrar may by an order appoint a Special Officer for such Cooperative Society for such period not exceeding six months. The expression "notwithstanding anything contained in this Act" came up for interpretation by the Apex Court in the case of Union of India (UOI) and Another Vs. G.M. Kokil and Others, In the said decision, the Court was pleased to observe:

" "Notwithstanding anything contained in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act".

The Court was further pleased to observe:

"A non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions".

18. Therefore, these provisions would have overriding effect on all the other contrary provisions contained in the Act. Therefore, these provisions require to be cautiously and sparingly used by the Registrar of the Co-operative Society. Again this appointment cannot be made permanently. Before the amendment of the Section by Act No. 24 of 2001, the Registrar was authorised to appoint a

Special Officer for such period not exceeding six months.

Sub-section (5) of Section 31 of the Act mandates the Special Officer that before the expiry of his term to arrange for constitution of a new committee for the Co-operative Society in accordance with its bye-laws.

Sub-section (3) of Section 31 of the Act introduces a deeming provision. It says, once an order is made by the Registrar under sub-section (1) of Section 31 of the Act, the members of the committee of the Cooperative Society shall vacate their office and further it shall be deemed to have vacated their office and the Special Officer is deemed to have assumed charge of the Co-operative Society.

19. The Legislature by Act No. 24 of 2001, which has come into effect with effect from 5-9-2001 has inserted a provision, which would authorise the Registrar to extend the period of appointment of a Special Officer for a further period of six months at a time and at any rate not to exceed one year in aggregate. But before doing so, the Registrar is expected to take the approval of the State Government and further he should record reasons in writing to extend the period of such appointment. In the present case, admittedly, the respondents without obtaining prior approval of the State Government and without recording any reasons whatsoever, has extended the period of appointment of the Special Officer made on 6/7-9-2001 by his impugned order dated 5-3-2002. This action of the second respondent-authority is contrary to the statutory provisions. Secondly, the order passed by the Registrar of Co-operative Societies in appointing the Special Officer dated 6/7-9-2001 is stayed by this Court. Under the amended provision, the Registrar may extend the appointment of a Special Officer made earlier for a further period of six months at a time for the reasons recorded by him. in writing. The earlier order made by him is stayed by this Court. The interim order made by this Court is not given effect to only because, by the time the order could be given effect to, the Special Officer had taken over the affairs of the Co-operative Society, but that does not authorise the Registrar to extend an order, which has been stayed by this Court.

20. The appointment that was made on 5-3-2002 extending the term of the Special Officer for a period of six months also comes to an end on 6-9-2002 and thereafter, it appears, there is one more order extending the appointment of a Special Officer for a further period of six months. Even that comes to an end on 6-3-2003. In spite of the expiry of the time prescribed in the order itself, the Special Officer continues to manage the affairs of the Co-operative Society.

21. First and foremost, the impugned order dated 5-3-2002 issued by the second respondent-authority cannot be sustained by this Court, for the reason, that the said order was not preceded by a prior approval of the State Government. A bare perusal of the order would clearly demonstrate that the second respondent-authority without assigning any reasons whatsoever has extended the period of appointment of a Special Officer from 5-3--2002 for a further period of six months. This action of the second respondent-authority is not only arbitrary,

illegal, but also contrary to the statutory provisions. Therefore, the said order cannot be sustained by this Court.

22. The learned Advocate General did make a statement before the Court that the authorities are not in a position to hand over the affairs of the Co-operative Society to any committee members since the elections held for constitution of a new committee has been set aside by an Arbitrator in a dispute filed by one of the defeated candidates. First and foremost, that is not the issue before this Court in this writ petition. As I have already pointed out in the course of this order, what is required to be considered and decided by this Court, is whether the appointment made by the Registrar in extending the period of appointment of a Special Officer for a further period of six months by his order dated 5-3-2002 is justified or not? My answer to the issue is, the said order is contrary to the statutory provisions. Therefore, the same cannot be sustained by this Court. Secondly, the order made by the Arbitrator is stayed by the Tribunal. Therefore, for the present, there are some elected representatives to manage the affairs of the Co-operative Society and those committee members can manage the affairs of the Co-operative Society till the Appellate Tribunal takes a decision one way or the other in the appeal filed by the petitioner and others. Therefore, there is no vacuum as such which prevents the Special Officer to hand over the charge of the affairs of the Co-operative Society.

23. In view of the above, the relief sought for by the petitioner in this writ petition requires to be granted by this Court. Accordingly, the following:

ORDER

I. Writ petition is allowed. Rule made absolute.

II. The impugned order made by the second respondent-authority dated 5-3-2002 is quashed.

III. A direction is issued to the Special Officer to hand over the management of the Co-operative Society to the elected members in the elections held on 11-3-2000 as expeditiously as possible at any rate within a week's time from today. Ordered accordingly.