

(1999) 11 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 33346 of 1999

Mirajuddin Patel

APPELLANT

Vs

Commissioner for Cane Development-Cum-Director of Sugar
and Additional Registrar of Co-operative Societies and others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 28 A (6), 29 F (4), 29 F (6), 70

Citation : (2000) ILR (Kar) 1351 : (2001) 3 KarLJ 187

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri M.N.

Ramanjaneyagowda, A.G.A., Sri Shantesh Gureddy, Sri D.N. Nanjunda Reddy and
M/s. Aaren Associates, for the Respondent

Judgement

1. The petitioner presently functioning as the President of the Bidar Sahakari Sakkare Karkhane Limited, Hallikhed, Bidar, henceforth referred to as "the Sugar Factory" in brief, filed the instant writ petition with a main prayer that he be declared as the duly elected President of the Sugar Factory and that he is entitled to hold the said post for a statutory period of 2 1/2 years from 11-6-1999 and further for quashing of notification dated 21-8-1999 passed by the Government cancelling his nomination to the Sugar Factory as its Committee member, copy at Annexure-D to writ petition and further for quashing of communication dated 10-9-1999 by the respondent 1 the Additional Registrar of Co-operative Societies and the Commissioner for Cane Development, addressed to the respondent 3, copy as at Annexure-F to writ petition, clarifying that the election be held for the Office of the President of the Sugar Factory as a vacancy had arisen in the said Office and also the meeting notice dated 15-9-1999 issued by the Managing Director of the respondent 3-Sugar Factory, fixing the date of election to the Office of the President, copy as at Annexure-H to writ petition.

2. For better appreciation of the points involved and further as I chose to dispose

of this writ petition on a short point without going into the details of the case and the merit, I feel it appropriate to set out the facts of the case. In brief, they are as follows:

That the petitioner was nominated as one of the Directors to the respondent 3-Sugar Factory by the respondent 4-State in exercise of the powers vested in it under Bye-law No. 23-C of the respondent 3-Sugar Factory. As per the said provision in the bye-law, Government had powers to nominate 3 members to the Committee of the respondent 3-Sugar Factory and accordingly on 9-6-1999 respondent 4 had nominated the petitioner to the Board of Directors of the respondent 3. To the luck of the petitioner, Karnataka Ordinance No. 4 of 1999 amending the provisions in Sections 28-A(6), 29-F(4) and 29-F(6) of the Co-operative Societies Act came to be promulgated on 6-5-1999 enabling the nominated members as that of the petitioners herein to contest in the election of the office-bearers of the Societies. It is thus, the petitioner herein had contested to the Office of the President of the respondent 3-Sugar Factory on 11-6-1999 and he had duly been elected to the said Office for a statutory period of 2 1/2 years u/s 29-F(5) of the Act. That in the meantime, by issue of a further notification dated 21-8-1999, copy at Annexure-D to writ petition, the respondent 4 had withdrawn the nomination of the petitioner. However on 23-8-1999, the petitioner also tendered resignation for the said nominated post. The petitioner was nominated earlier to the Board of Directors of the respondent 3-Sugar Factory to represent the D.C.C. Bank, Gulbarga, the financing agency of the Sugar Factory and that came to be made on 16-6-1999 as per Bye-law No. 23-D of the Bye-laws of the Sugar Factory, copy as at Annexure-C to writ petition.

3. The case of the petitioner before this Court was that, he being the duly elected President on 11-6-1999 for the statutory term of 2 1/2 years when the Ordinance No. 4 of 1999 had the force of law and that with his further nomination by the D.C.C. Bank, there was no impediment in law for his continuance as the duly elected President and therefore, according to the petitioner, there was no vacancy in the Office of the President of the respondent 3-Sugar Factory and as such, the question of filling up of the vacancy of the Office of the President did not arise at all. It was also the case of the petitioner that the petitioner did not suffer any disqualification as enumerated u/s 29-C of the Act and further that his election as President on 11-6-1999 had also not been challenged by way of election petition or dispute u/s 70 of the Co-operative Societies Act by anybody.

4. The crux of their contention among others was that the petitioner having been nominated by the Government under Bye-law No. 23-C by order dated 9-6-1999 had ceased to be so with effect from 21-8-1999 since his nomination came to be withdrawn from that date by the notification, copy at Annexure-D to writ petition and as such, the petitioner having lost that nominated post could not continue either as the nominated member of the respondent 3 or for the matter, continue to hold the Office of the President which he held in view of the pre-qualification

of nominated Directorship, that there was vacancy in the Office of the President as on 21-8-1999, the day on which Annexure-D came to be issued by the Government, that in law, the petitioner could not have been nominated by the D.C.C. Bank, the financing agency of the respondent 3 on 16-8-1999 under Bye-law No. 23-D of the Bye-laws of the respondent 3 when he was already a nominated member with his nomination by the Government on 9-6-1999, in view of the proviso below Section 28-A(2)(iii) of the Act.

4-A. I do not think it is necessary for me to dwell at length any of the contentions raised by the contending parties before me; the reason being that the whole case of the petitioner hinges around the validity of his election as President of the respondent 3-Sugar Factory on 11-6-1999 upon his nomination to the Committee of Management of the respondent 3 under Bye-law No. 23-C of the Bye-laws of the respondent 3 by the respondent 4-Government by its notification dated 9-6-1999. According to me, that clinches the whole issue of vacancy or on vacancy in the Office of the President of the respondent 3.

5. I now take up that issue here below;

It was forcefully argued before me by the learned Counsel Sri Patil, I should say ably, that Ordinance No. 4 of 1999 was holding the field at the relevant point of time of the election as the President of the respondent 3-Sugar Factory. Sri Patil submitted that with the amendment of the provisions in Sections 28-A(6), 29-F(4) and 29-F(6), a nominated member as that of the petitioner herein had right not only to participate in the election of the office-bearers of the Society, but also he had right to contest for the Office of the office bearers of the Society and it is thus, the petitioner herein had got himself duly elected as the President of the respondent 3-Society Sri Patil in this context had also cited before me a reported decision of the Supreme Court in State of Orissa Vs. Bhupendra Kumar Bose, , wherein the Supreme Court in substance held that the Ordinance issued by the Governor under Article 213(1) of the Constitution has got force of law during the period of its life. Of course, none can quarrel with that proposition of law laid down by the Apex Court, so argued by the learned Counsel for the contesting respondent 4-Sri Shantaraj too, while addressing his side of the argument on behalf of his party, the respondents 6 and 7.

6. It may be a bombshell for the petitioner's case, but I should state here that in Basanagouda Vs. State of Karnataka and Others, , I have held that the Ordinance No. 4 of 1999 under which the petitioner herein claimed his election as valid, as bad and untenable in law. In paras 20 to 25 of the common judgment in the above writ petitions, I have observed as hereunder:

"20. Now if we read the impugned Ordinance and sub-section (2) of Section 29 of the Act as above, it is clear that in issuance of the ordinance in question it is only Section 28-A(6), Section 29-F(4) and Section 29-F(6) of the Act stood amended, while sub-section (2) of Section 29 of the Act stands unamended. Therefore, I find every force in the argument of Sri Reddy that the ordinance in

question amending Sections 28-A(6), 29-F(4) and (6) of the Act was in contravention of the provision of Section 28(2) of the Act and as such the same is bad in law.

21. I think this is a *casus omissus*, for a draftsman had forgotten to provide for amending the corresponding sub-section (2) of Section 29 of the Act and the same had gone totally unnoticed till the impugned Ordinance No. 4 of 1999 came to be promulgated on 6-5-1999. The Courts always try to construct the words so as to give them sensible construction and prevent his failure. But in the instant case in hand, I do not think, the Court can help to wriggle out of the anomalous situation with certain parts of provisions of the Act came to be amended enabling the nominated members participate in the election to the Committee of the Society, when the other part of the Act remained unamended to restrain, the nominated members from participating in such an election as observed by me by endorsing the argument of the learned Counsel for the petitioner in the second and third writ petitions, Sri Vasudeva Reddy.

22. Therefore, there is inconsistency between the two sets of provisions in the matter of participation of the nominated members in the election of the Office of the office-bearers of the Society. To be precise, such an inconsistency arises if one provision is given effect to resulting in giving no effect to the other provisions, for when Section 29(2) of the Act prohibits participation of the nominated members in the election to the office bearers of the Society, Sections 28-A(6), 29-F(4) and (6) provided for quite the contrary. Hence, we have got a glaring and unfortunate hiatus.

23. In almost in similar situation, when Uttar Pradesh Act 1 of 1933 whereby Section 71 of the Uttar Pradesh District Boards Act, 1922 came to be amended, the corresponding Section 90 of the said Act remained unamended, leading to inconsistency in the Act, the Supreme Court in the case of *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, , observed as follows:

"It was unfortunate that when the legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon. No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the legislature. But it is certainly not the duty of the Court to stretch the word used by the legislature to fill in gaps or omissions in the provisions of an Act".

24. In my considered view the very same situation is now before me as the corresponding Section 29(2) of the Act remained unamended in conformity with the amended Sections 28-A(6), 29-F(4) and (6) of the Act under the ordinance hereunder impugned and as such the ratio of the above decision of the Apex Court has got total application to the case before me.

25. For the aforesaid reasons, I hold that the impugned ordinance under challenge contravenes the provision in Section 29(2) of the Co-operative

Societies Act and hence bad and cannot sustain in law".

7. If the case of the petitioner was that he was duly elected as the President of the respondent 3-Sugar Factory under the amended provisions in Sections 28-A(6), 29-F(4) and 29-F(6) of the Act in the Ordinance No. 4 of 1999 enabling him to contest for the election of the President to the respondent 3-Sugar Factory and if I have already held the said ordinance as bad and unsustainable in law as above, it is obvious that the very election of the petitioner as President on 11-6-1999 has to be held bad since as per law as it stood then, the nominated member as that of the petitioner had no right to contest in the election to the Office of the office-bearers of the Society, for Sections 28-A(6), 29(2), 29-F(4) and 29-F(6) of the Act read as follows:

28-A(6): "The elected members of the Committee shall elect from among themselves the office bearers of the Co-operative Society. The election of the office bearers shall be by secret ballot".

29(2): "The persons so nominated shall not have the right to become office bearers of the Society".

29-F(4): "The Chief Executive shall within fifteen days from the date of constitution or deemed constitution of the committee after a general election and immediately before the expiry of the term of office of the President or Chairperson, Vice-President or Vice-Chairperson convene a meeting in the prescribed manner of all the elected members of the committee for the purpose of electing President or Chairperson, Vice-President or Vice-Chairperson and such other office bearers as are required to be elected under the bye-laws of the Co-operative Society. One of the elected members who is not a candidate for the election of President or Chairperson, Vice-President or Vice-Chairperson shall be chosen to preside over such meeting:

Provided that the members of the first committee elected in the first general meeting held after the registration of a Co-operative Society shall elect the President or Chairperson, Vice-President or Vice-Chairperson and other office bearers in such manner as may be prescribed".

29-F(6): The Chief Executive shall as and when there is a casual vacancy in the office of the President or Chairperson, Vice-President or Vice-Chairperson or other office bearers convene a meeting of the elected members of the committee for the purpose of filling up the casual vacancy and the provisions of sub-section (4) shall mutatis mutandis apply".

8. Let apart, from 21-8-1999, his nomination to the respondent 3-Sugar Factory came to be withdrawn by the respondent 4 by issuance of a further notification dated 21-8-1999, copy at Annexure-D to writ petition.

9. In this context, I should not miss to add here that in holding as above, I did note that the petitioner herein was not nominated to the Committee of the respondent 3-Society u/s 29(2) of the Act, but by exercising the powers by the

Government under Bye-law No. 23-C of the Bye-laws of the respondent 3. But, that in my considered view did not lead the petitioner anywhere since Sections 28-A(6), 29-F(4) and 29-F(6) of the Act which held the field in the matter of right to contest to the Office of the office bearers of the Society by the nominated members, made no difference in the two kinds of nominations made by the Government to the Committee of Management of the Society, one u/s 29(2) of the Act and another under the bye-law of the Society.

10. Then there arises a sub-issue as to whether the nomination made by the non-party D.C.C. Bank, Gulbarga, the financing agency of the respondent 3-Sugar Factory was in consonance with the provisions of the Act or not. I answer that issue in the negative, for it is an admitted fact that as on the date of his nomination to the respondent 3 by the financing Bank i.e., the D.C.C. Bank, Gulbarga was on 16-8-1999 by its resolution, copy as at Annexure-C to writ petition, the petitioner was already holding the Office of the nominated Directorship of the respondent 3-Sugar Factory as per the notification issued by the respondent 4-Government, copy as at Annexure-D, dated 9-6-1999 to writ petition. That is obvious, for the said nomination made by the respondent 4 was withdrawn only on 21-8-1999.

11. From the above set of facts, it is crystal-clear that the relevant point of time from 16-8-1999 (the day on which he was nominated by the D.C.C. Bank) to 21-8-1999 (the day on which the respondent 4 withdrew the nomination of the petitioner from the Board of Directors of the respondent 3-Bank), the petitioner was functioning as a nominated Director, one made by the respondent 4-Government and another made by the non-party D.C.C. Bank, Gulbarga. I do not think that was permissible under the proviso below Section 28(2)(iii) of the Co-operative Societies Act, for in the said proviso it is made abundantly clear that a member shall not represent more than one constituency in the Committee of the Society.

12. In that view of the matter, I am also of the considered view that, even the nomination of the petitioner made by the non-party D.C.C. Bank in passing the resolution on 16-8-1999, copy at Annexure-C to writ petition was totally illegal, inasmuch as the same was made in contravention of the proviso to Section 28-A(2)(iii) of the Act.

13. In the result, I do not find any merit in the instant writ petition. It is therefore obvious that this writ petition has to fail and is liable to be dismissed. I order accordingly.

14. In the peculiar facts and circumstances of the case, I do not propose to order as to cost in the petition.