

(1983) 10 KAR CK 0018
In the Karnataka High Court
Case No : W.P. No. 18122 of 1983

M.R. Gadha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-10-1983

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 30

Citation : (1984) 1 KarLJ 262

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. The petitioner was a Director and President of the Karnataka Industrial Co-operative Bank, Ltd., Bangalore, He is aggrieved by the appointment of a Special Officer under S. 30A of the Karnataka Co-operative Societies Act. 1959 (hereinafter referred to as "the Act") by an order of the State Government dt, 7-10-83. That order is at Annexure-K to the petition.

2. The relief sought for in this petition is for quashing of the said order inter-alia contending that (i) the order is passed in violation of the rules of natural justice, (ii) that the State Government had no jurisdiction to exercise its power under S. 30A of the Act inasmuch as none of the ingredients mentioned in that section formed part of the charges on the basis of which the order came to be made, (iii) that the order is mala-fide inasmuch as the Directors of the Co-operative Bank in question belonged to another political party than the present Government in Karnataka and (iv) that the order is vitiated as the Government had made up its mind even before the procedure of affording full of opportunity to the petitioner had been completed.

3. I have carefully gone through the material to which my attention has been drawn by the learned counsel for the petitioner Sri A. Jagannatha Shetty. I have also heard his arguments and I am satisfied that the four grounds above raised do not merit further consideration of this Court and my reasons are as follows:

4. The argument that rules of natural justice have been violated is founded on the fact that the Directors of the Co-operative Bank in question were notified of

the personal hearing through the Secretary of the Co-operative Bank on the 7th itself while the hearing itself was also on the 7th. My attention was drawn to the communication of the under Secretary in the Co-operation Department of the Government Secretariat issued on 3-10-83 informing the Secretary of the Bank that the Minister for Co-operation had fixed for an oral hearing in regard to the show cause notice dt. 13-5-1983 at the time indicated therein, directing the Secretary of the Co-operative Bank in question to serve copies of the notice on all the Directors. It is not stated whether that communication was received on the 3rd itself or on a subsequent date. However, the averment is that the petitioner received it on the 7th morning and therefore could not make adequate arrangements to address arguments in support of the representation made by the Directors of the Co-operative Bank earlier having regard to the fact that 6th of October 1983 was a public Holiday.

5. I do not see merit in this contention for the reasons that a show cause notice was issued in the middle of May 1983 is not disputed. That a representation by the Directors of the Co-operative Bank was made in that behalf to the Government against passing an order under S. 30A of the Act also is not disputed. Nothing in the language of S. 30A of the Act leads one to draw inference that an oral hearing is a must to comply with the requirement of the rules of natural justice. In fact, in the past, the State Government was in the habit of passing orders under S. 30A of the Act without even issuing show cause notice. When that came to be challenged in this Court in the case of Jagadish Patil v. State of Karnataka, ((1981) 1 Kar. L.J. 443), this Court, after examining some of the decided cases of the Supreme Court, came to the conclusion that the appointment of a Special Officer by an order under S. 30A of the Act resulted in the loss of office of the elected Directors and therefore, in that circumstance the Directors were entitled to notice before an order which visited civil consequences upon them came to be passed. In other words, the Court read into S. 30-A of the Act the rules of natural justice which was not specifically provided by the Legislature.

6. What would satisfy the rules of natural justice would vary from case to case having regard to the varying circumstances of each case. In some cases, mere opportunity to make a representation has been held to be more than adequate and also has been held to satisfy the requirement of rules of natural justice. It is only when the Legislature specifically provides by use of words like "Hearing" or "oral Hearing" that the right to be heard personally would alone satisfy the requirement of the rules of natural justice or requirement of the law itself if it is so stated in the statute itself see *Union of India v. Jyothi Prakash* (AIR 1971 SC 1093). If the order passed can be sustained only on the basis of the representation made de hors the oral hearing given by the minister, the mere fact that in so far as the petitioner was concerned that he was served with a notice only on the morning of 7th, in my opinion, does not vitiate the order when there was no compulsion for the oral hearing itself. To plead that there was no adequate time to submit effective oral arguments before the Minister is to

confess certain amount of indifference in the matter of show cause notice issued as far back as on 13-5-1983. If the petitioner was serious about the representation he had made, he should have taken all precautions to be ready to present oral arguments if he was called upon to do so. In this view of the matter, I do not think this Court should read much more into S. 30-A of the Act than what has been read into S. 30 of the Act, which also provides for a representation being made by the affected persons before an order of supercession is made by the Registrar of Co-operative Societies (See *Navalgund TAPCMS v. State of Karnataka* 1978(1) KLJ 127).

7. Supporting the second contention, Sri Shetty, learned Counsel for the petitioner has drawn my attention to the show cause notice and the charges contained therein. It is his argument that it is only when the Committee of Management has acted illegally, or is not functioning in accordance with the provisions of the Act or the Rules made thereunder or its Bye-laws, or any order, direction or circular issued by the State Government or the Registrar that the Government can proceed to pass an order under S. 30A of the Act and not otherwise.

8. A Look at the show cause notice which is at Annexure-A to the petition indicates that as many as 11 charges were levelled against the Co-operative Bank in question. To take a few, reference may be made to the charges-(1) over extended advance position, (2) unsound lending policies, (7) unauthorised overdrawals/discounting of cheques, (8) very poor recovery performance and the last (11) is the observation of the Reserve Bank that the Directors of the Bank in question were not working in the interest of the Bank, as irregularities pointed out by it were entirely on the influence exercised by the Directors on the Bank's staff in the head office as well as in the branch offices.

9. From a reading of the explanation offered by the Directors of the Co-operative Bank, which is at Annexure-C to the petition, it is clear that the petitioner as well as his former colleagues did understand the implication of each of the charges and submitted their explanation in detail in writing. That interference with the day-to-day functioning of the Bank by the Directors was in violation of the provisions of the Act as well as the Bye-laws of the Bank cannot be disputed. The object of S. 30A of the Act is to set-right the mal functioning of a co-operative institution when the State Government is of the opinion that it may be done so only by the appointment of a Special Officer. If the object sought to be achieved is kept in mind, then a very liberal construction of power to be exercised by the State Government becomes necessary. The words used therein cannot be read down so unreasonably as to restrict the power of the Government though it may involve the removal from office of the Directors as a consequence of the appointment of the Special Officer. This view of the Court should lean in favour of the policy underlying the Act and not to the individual well-being of the Directors of the Bank. Therefore, there is no substance in the contention that the State Government had no jurisdiction or the necessary ingredients to pass an order

under S. 30A of the Act.

10. The next ground that the impugned order is vitiated by mala fides, is liable to be rejected on the sole ground that the pleadings in that behalf are hopelessly inadequate. Except the bald assertion that the Directors belong to a particular political party while the Government is of a different political party, there is no allegation in detail of any enmity or disposition of any person in the Government which was the motivation for the impugned order. The law is well settled now that on vague and general allegations of mala fides the Courts will not take even the trouble of calling upon the other side to deny them. After-all the mere allegation that the Government belongs to another party cannot be met by any one in the Government. Such allegations must be specific so that the specific person involved will have the opportunity to deny the same. In the instant case, though there is no allegation made against the Minister for Co-operation (2nd respondent), he is nevertheless made a party in his personal capacity. In fact, it was contended having regard to the grammatical expression employed in the impugned order that the order in question was not passed by the Minister at all. But there is no allegation that the Minister had any enmity towards the Directors of the Co-operative Bank

In question. Therefore, this contention also must fail.

11. The last contention that the Government had made up its mind even before it decided to give a oral hearing and therefore the entire exercise of power was an empty formality resulting in the victimisation of the Directors of the Bank is based on the publication of news items in two news papers, the cuttings of which are at Annexures-D and E to the petition. All that the news items indicate is, the Government had taken certain action and proposed to take-over the Bank in question under S. 30A of the Act. From that it cannot be inferred that the item of news published is the expression of the Government's mind in regard to the take-over. It appears to be a mere news item given by the staff reporter in one case and in another case the source of the news is not disclosed. Therefore, one must presume that it was in the normal course of reporting news, and no more. In fact, the second item at Annexure-E does not even show anything about any order being made except that the action was being taken in accordance with the recommendations of the Reserve Bank of India. It is apart from being unknown to judicial procedure, also not reasonable to draw inference on the basis of the news in the newspaper that the Government had made-up its mind even before 3-10-1983. The impugned order is a detailed order issued in the name of the Governor and must be presumed to have been validly made till it is proved that it suffers from any irregularity or illegality which calls for interference.

12. For the above reasons, I do not think this is a case in which this Court should interfere under Art. 226 as no case is made out.

13. Therefore, the petition is dismissed at the stage of preliminary hearing.

14. I must State that this case was posted before the learned Vacation Judge

during the last vacation. He directed the counsel for the petitioner to furnish the copies of this petition to the Government Advocate and directed to post the petition on 20th of this month. He however granted interim stay of the operation of the impugned order till 20-10- 1983. On 21-10-1983 when the matter came up before me, by consent of parties I adjourned the case to this date and continued the stay till today, having regard to the submission made by the learned Advocate General that though the Special Officer had taken charge even before the communication of the stay order issued during the vacation, nevertheless he had advised him not to give effect to the impugned order till this matter was disposed of. It is in that circumstance that the present order as above has come to be passed.

Learned Advocate General is permitted to file his memo of appearance within two weeks from to-day.