

(2000) 08 KAR CK 0071
In the Karnataka High Court
Case No : Writ Appeal No. 3461 of 2000

M.R. Maheshwarappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Karnataka Co-operative Societies Act, 1959 — Section 29 (1)

Citation : (2000) 4 KCCR 2423

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : H.K. Vasudev Reddy, for H.N. Shashidhar, for the Appellant; A. Nagarajappa, A.G.A. for Respondent 1, K.M. Nataraj, for Respondent 6 and M.R. Naik, for Respondent 7, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—Heard Mr. H.K. Vasudeva Reddy, learned Counsel for the Appellant at length.

2. By the impugned order, the learned Single Judge has quashed the Government Notification dated 9.6.1999 (Annexure "E") purported to have been issued in exercise of its powers u/s 29(1) of the Karnataka Co-operative Societies Act, 1959 (in short the "Act") as substituted by Karnataka Act 25 of 1998 w.e.f. 15.8.1998, nominating Respondents 3, 4 and 5 as members to the Committee of the Management of Shimoga Co-operative Milk Producers Society's Union Limited (in short the "Society"). Consequently, because of participation of the said three illegally nominated members in the election to the post of President of the Society held on 10.6.1999, the election has also been set at naught.

3. Appellant and Respondent No. 6 were candidates for the post of President of the Society. The 6th Respondent had lost in the election by a margin of two votes. Therefore, he had questioned the Government Notification at Annexure "E" as well as the election by filing writ petition in which the impugned order has

been passed. There is no serious dispute about the fact that the Government had acted without authority and mala fide in issuing the impugned notification at Annexure "E" by nominating Respondents 3, 4 and 5 to the Managing Committee of the Society, since such a power u/s 29(1) of the Act could have been exercised by the State Government only in respect of "Assisted Society", which as per definition u/s 2(ai) of the Act means a Co-operative Society which has received government assistance in the form of share capital from the State Government.

4. Sections 2(ai) and 29(1) of the Act, as amended by Act 25 of 1998 read as under:

Section 2(ai).-"Assisted Society" means the a co-operative society which has received the Government assistance in the form of share capital from the Government.

Section 29. Nominees of Government on the Committee of an assisted Co-operative Society.-(1) The State Government may nominate not more than three persons as its representatives on the committee of any assisted society of whom one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a woman.

5. It is not at all in dispute that the Respondent-society has not received any assistance from the Government in the form of Share Capital. Therefore, government had no authority to nominate any member to the managing committee of the society. Still, it nominated members to participate in the process of election to the post of President. Now, at this point of time, it cannot be ascertained that in whose favour the nominated members had casted their votes. Ex facie they were ineligible to vote in the process of electing President of the Society. In that view of the matter, we agree with the view taken by the learned Single Judge that the Government Notification at Annexure "E" was invalid and who quashed the election as well because of participation of ineligible members, whose votes might have materially affected the entire election.

6. Sri Vasudeva Reddy, learned Counsel for the Appellant, has raised an issue regarding very maintainability of the writ petition on the ground that the Respondent-society is not an instrumentality of the State within the ambit of Article 12 of the Constitution and therefore Article 226 of the Constitution could not have been invoked.

7. In our opinion, the argument advanced has no force for the simple reason that the writ petition is primarily directed against the illegal acts of the State Government and invalidation of the election is merely consequential. No grievance as such was raised against the society. His further submission that a dispute of the nature involved herein could have been raised only before the Election Tribunal, which, in our opinion, also does not hold any water since the election had been materially affected by the ulterior acts of the State Government and writ Petitioners had no alternative remedy than to move this Court to challenge the impugned notification and its consequential effects.

8. For the reasons aforesaid, the writ appeal is dismissed.