

(1987) 09 KAR CK 0009
In the Karnataka High Court
Case No : W.P. No. 17590/1984

Naganna Gowda N.G. and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29

Citation : (1987) 2 KarLJ 389

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-The two petitioners, the first a Director and the second a Member of Bhadra Sahakara Sakkare Karkhane Niyamitha-a co-operative society registered and functioning under the Karnataka Co-operative Societies Act ("the Act" for short), have presented this writ petition questioning the legality of the order dated 20-10-1984 (Annexure-C) by which five persons were nominated to be Directors on the Board of Management of the said Society under Section 53-A of the Act.

2. The third respondent is a society to which the Government has contributed a share capital and had also assisted in its formation, in addition to providing certain other facilities. Section 29(1) of the Act reads:

"29. NOMINEES OF THE GOVERNMENT ON THE COMMITTEE OF A CO-OPERATIVE SOCIETY-

(1) Where the State Government-

(a) has subscribed to the share capital of a co-operative society, or

(b) has assisted indirectly in the augmentation of the share capital of a co-operative society as provided in Chapter VI, or

(c) has guaranteed the repayment of principal and payment of interest on debentures issued by a co-operative society, or

(d) has guaranteed the repayment of principle and payment of interest on loans

and advances to a co-operative society, the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the co-operative society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121, have the right to nominate as its representatives not more than three persons or one-third of the total number of members of the committee of the co-operative society, whichever is less."

According to the above provision, the Government is entitled to appoint not more than three persons or one-third of the total number of members of the Committee of the Society, whichever is less. According to the bye-laws of the Society, the Board consists of 15 Directors. In conformity with Section 29 of the Act, bye-law 21(1) of the Society provided for nomination of three persons by the Government including the Managing Director. In conformity with the above provision, the notification dated 22-2-1984 (Annexure-A) was issued appointing and nominating the Managing Director and two other members to be the Directors on the Board of Management of the said society. Section 53A of the Act is a special provision, relevant portion of which reads:

"53A. Nomination of members of Committee by State Government in certain cases-

(1) Notwithstanding anything contained in Section 29, where the State Government 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 Government 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."

According to the above provision, the Government has the right to nominate as its representative one-third of the total number of members of the committee of the society, if it had contributed 50 per cent of the total share capital or Rs. 5 lakhs, as the case may be, notwithstanding anything contained in Section 29 of the Act.

3. The Government which had already nominated three persons proceeded to nominate five persons by notification dated 20-10-1984 under Section 53A of the Act. The said notification reads:

"In exercise of the powers conferred under Section 53(A) of the Karnataka Co-operative Societies Act, 1959, and in addition to the nominations made in Notification No. RDC 27 COF 84 dt. 22-2-1984 under bye-law No. 21(1)(b) of the Bye-laws of the Bhadra Sahakari Sakkare Karkhane Niyamit Doddabathi, Davanagere Taluk, Chitradurga District, Government are pleased to nominate the following members as Directors on the Board of Management of the Bhadra Sahakara Sakkare Karkhane Niyamit, Doddabathi, with immediate effect and

until further orders.

1. Sri T. Subbarao, Merchant, B.T. (Pvt.) Ltd., Davanagere.
2. S.V. Chandrashekarappa, Merchant, K.G. Extension, Davanagere.
3. G. Basavanagowda, c/o Mysore Kirloskar, Yantrapur, Harihar.
4. Susheelamma Ajjampur Shettru, w/o A.S. Shivanna, K.B. Extension, Davanagere.
5. S.H. Kadappa, Gandhinagar, Davanagere."

Questioning the legality of the said notification, the petitioners have presented this writ petition.

4. The contention of the petitioners is that the power to nominate three persons or one-third of the total number of members of the committee of the society, whichever is less, under Sec. 29 of the Act and the power to nominate one third of the total number of members of the committee of the society under Section 53-A of the Act even if it is more than three, are mutually exclusive and therefore the Government which had already nominated three persons under Section 29 of the Act could have nominated only two more persons under Section 53-A of the Act, but it had no authority to nominate five persons in addition to three already nominated under Section 29 of the Act.

5. There is no dispute that Section 53-A of the Act applies to the second respondent-society. Therefore, the only question for consideration is whether the right of the Government to nominate one-third of the members of the Managing Committee under Section 53-A of the Act is in addition to the power given to it under Section 29 of the Act or not?

6. The question is not *res integra*. This very question had come up for consideration before this Court in the case of *Kumaraswamy v. State of Karnataka* (1919(1) Kar.L.J. 105). In the said case, after interpreting the provisions of Sections 29 and 53A of the Act it was held that the power under Sections 29 and 53A of the Act were mutually exclusive and not cumulative and that though Section 53-A of the Act was incorporated as an independent Section, in truth and substance it was in the nature of a proviso to Section 29 of the Act. On that view of the matter it was held that the Government could exercise its right to nominate members on the Managing Committee of a society either under Section 29 or under Section 53A of the Act and not under both. Therefore, it is clear that the State Government which had already nominated three persons by notification dated 22-2-1984 (Annexure-A) could have nominated only two more persons in exercise of its power under Section 53A of the Act and not five persons as it did in the notification dated 20-10 1984 (Annexure-C).

7. The learned Advocate General and the learned counsel appearing for the respondents however, tried to distinguish the decision in *Kumaraswamy's* case on the ground that the notification dated 22-2-1984 was made under bye-law 21

(1) of the Bye-laws of the Society and not under Section 29 of the Act. They invited my attention to the contents of the notification in which there was only a reference to Bye-law 21(1) and not Section 29 of the Act. Sri Bannurmah, learned counsel for the petitioners, however, submitted that bye-law 21(1) itself was incorporated in view of Section 29 of the Act and therefore the power under Section 29 and Bye-law 21(1) was not different. In other words, the contention was bye-law 21(1) was only a reflection of Section 29 of the Act. He submitted that in view of the introduction of Section 53A of the Act subsequently, all that the Government could do was to nominate two more persons in addition to three persons already nominated in accordance with Sec. 29 of the Act read with bye-law 21(1) of the bye-laws of the society.

8. It appears to me that the contention urged on behalf of the petitioners is sound. In this behalf, it is necessary to point out that Section 6 of the Act which provides for the making of an application for registration of co-operative societies, requires that the application should be accompanied by three copies of the proposed bye-laws of the co-operative society and Sec. 7 which empowers the Registrar of co-operative societies to register a co-operative society, requires him to ensure that the proposed bye-laws are not contrary to the provisions of the Act and the Rules. Therefore, it was obligatory for the Society to provide in its bye-laws nomination of three members by the Government in conformity with Section 29 of the Act; otherwise the bye-laws would be contrary to the provisions of the Act. Therefore, bye-law 21(1) provided for nomination of three persons by the Government. It was the maximum number for nomination by the Government under Section 29 of the Act. Therefore, though the notification dt. 22-2-1984 refers to bye-law 21(1) of the bye-laws of the society, it must also be regarded as having been issued under Section 29 of the Act, for, bye-law 21(1) itself to the extent it provided for nomination of 3 members by the Government, was incorporated for the purpose of making it to conform to Section 29 of the Act. The contention of the Government that it had the right to nominate three persons under bye-law 21(1), three persons under Section 29 and five persons under Section 53A of the Act, is patently untenable.

9. In the result, I make the following order:

(i) The writ petition is allowed, (ii) The impugned notification issued under Section 53A of the Act dated 20-10-1984 (Annexure-C) is set aside leaving liberty for the Government to nominate only two persons in addition to the persons already nominated by the earlier notification dated 22-2-1984.