

(1990) 01 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 9661 of 1986

P. Nagaraj

APPELLANT

Vs

Joint Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 126 A, 29 (c), 64, 65

Citation : (1990) ILR (Kar) 858 : (1990) 2 KarLJ 2

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : C. Shivappa, for N.K. Gupta, for the Appellant; A.N. Nimmiswamy, HCGP, for the Respondent

Judgement

Balakrishna, J.—This Writ Petition is directed against the order dated 16-5-1986 under Annexure-L passed by the Joint Registrar of Co-operative Societies, Mysore Division, Mysore, which reads as follows:-

"No. JRM/4/NWS/85-86 Dated: 16-5-1986ORDER

In exercise of the powers vested u/s 126A read with Section 29(c) KCS Act 1959, I, S.T. Honnegowda, Joint Registrar of Co-operative Societies, Mysore Division, Mysore hereby disqualify Sri P. Nagaraj, Ex-President of the Mysore District Central Co-operative Wholesale Stores Ltd., Mysore from serving on the committee of any co-operative institutions or holding any office in any co-operative institutions for a period of 2 years from the date of this order, due to his fraudulent act in the transaction of the nylon zips, pertaining to the Janatha Bazaar, Unit I the Mysore District Central Co-operative Wholesale Stores Ltd., Mysore.

Given under my hand and seal this day the 16th May 1986.

Sd/- Joint Registrar of Co-operative Societies Mysore."

2. The petitioner is stated to be a political worker rendering social service

espousing the cause of the people who are socially and economically backward. It is stated that he belongs to Congress-1 party and he was a Director of Mysore District Central Co-operative Whole-sale Stores Ltd., Mysore for the year 1977-78 and he was the President of the said Society during years 1979-81. He was elected as the Director of the aforesaid Society for the year 1983. In the election for Presidentship, the petitioner was a Congress-I nominee. It is alleged that the second respondent is an active member of the Janatha Party and Minister for Co-operation in the Karnataka State who was politically ill-disposed towards the petitioner. The allegation is that the second respondent was bent upon spoiling the political career of the petitioner. The petitioner is also a Director of Karnataka Co-operative Consumers Federation Ltd., Bangalore and a Director of Mysore District Co-operative Union Ltd., Mysore and a Director of Mysore Cooperative Bank Ltd., Mysore besides being a Corporator of the City of Mysore and an Opposition Leader in the Corporation Council. He is also a Member of Gayathri Educational Society, Mysore and several other institutions.

3. It is alleged that in 1983 the second respondent sent words through one K. Kempeere Gowda, the erstwhile President of the M.D.C.C. Bank Ltd., Mysore to the petitioner to refrain from contesting in the Presidential elections since the second respondent had nominated certain Members and had directed that one nominee representing the Janatha Party was to contest the Presidential election and that the petitioner should disassociate himself with the election and if the petitioner still persisted, the second respondent would take such action that may be necessary to prevent the petitioner from functioning as the President of the Society and that his future career would be in jeopardy. However, it is stated that the petitioner resisted the threats and contested in the election and he was declared elected as a President of the Society in 1983, in spite of the efforts of the second respondent to thwart the election of the petitioner. It is, therefore, stated that the second respondent caused the appointment of a Special Officer for the Society when the petitioner took over charge as the elected President. The petitioner could not take immediate steps to challenge the appointment of the Special Officer since according to him, at that time the tragic assassination of Mrs. Gandhi took place. It is also stated that the said order of appointment of the Special Officer was passed by the second respondent on the evening of 30-10-1984 and on 31-10-1984 was the assassination of the then Prime Minister of India and the petitioner was in grief and could not think of Court action against the appointment of the Special Officer in that predicament.

4. The petitioner who was the President of the Society in 1983, continued to be so upto 1984. With a view to disqualify the petitioner and to ruin his political career, it is stated that the second respondent planned and managed to have the petitioner disqualified. In collusion with one Boregowda and Swamigowda, false case was foisted against the petitioner when the aforesaid persons were the Sales Assistants and were entrusted with the task of selling material which were purchased by the Society. It is also stated that Swamigowda was in-charge of sale of confiscated goods allotted to the Society by the National Consumers Co-

operative Federation Bank and that the petitioner had personally nothing to do with sale or purchase of any articles, persons hostile to the petitioner are alleged to have joined hands in framing a case against the petitioner.

5. The action in question was preceded by show cause notice dated 27-7-1985 issued by the Joint Registrar of Co-operative Societies to the petitioner which was replied by the petitioner on 13-9-1985. Thereafter, notices of hearing were issued to the petitioner and the impugned order came to be passed on 16-5-1986. Incidentally, it is found from the original records produced by the learned Government Pleader appearing for the respondents that on 24-11-1984 a report is purported to have been submitted by the Joint Registrar of Co-operative Societies addressed to the Additional Registrar of Co-operative Societies in regard to an enquiry stated to have been held regarding the sale of confiscated nylon zips. On 16-9-1985, there appears to be an order passed by the Joint Registrar of Cooperative Societies in respect of an enquiry made into the affairs of the Society. Thereafter, a notice dated 19-12-1985 was served on the petitioner and this was issued by the Deputy Registrar of Co-operative Societies in pursuance of which the order No. JRM/6/NWS/85-86 dated 16-9-1985 was passed by the Joint Registrar of Co-operative Societies, Mysore Division, Mysore. Thus, it is seen that two notices were actually served on the petitioner, one by Joint Registrar of Co-operative Societies dated 27-7-1985 and subsequently another notice dated 19-12-1985 issued by the Deputy Registrar of Co-operative Societies (Enquiry & Inspection Cell). Ultimately, it is found that action culminating in the disqualification of the petitioner emanated from the proceedings initiated by issue of show cause notice dated 27-7-1985. In respect of the notice served on the petitioner by the Deputy Registrar of Co-operative Societies dated 19-12-1985, the records do not show whether the enquiry was completed and a report submitted or what was the nature of the incomplete report either. This aspect of the matter appears to be shrouded in mystery. Factually, it is clear that action so taken which is now challenged before this Court, was in the nature of disqualification of the petitioner in purported exercise of the power vested u/s 126A read with Section 29(c) of the Karnataka Co-operative Societies Act 1959 (K.C.S. Act) by the Joint Registrar of Co-operative Societies, Mysore Division, Mysore.

6. The point for consideration is whether the impugned order is in violation of not only the principles of natural justice but also by material irregularity in procedure.

7. I have heard the arguments of the learned Counsel appearing for the petitioner as well as the arguments of the learned Government Pleader. The latter made available the original records for the perusal of the Court and I have gone through the original records. Though no counter has been filed by the respondents, the learned Government Pleader made submission on the basis of the original records available in regard to the contentions urged by the learned Counsel appearing for the petitioner. It is also necessary to mention that as regards the allegations made against the second respondent, the second

respondent has not rebutted the allegations by filing any affidavit. Therefore, the allegations go unrebutted.

8. Annexure-K contains the deposition of one B.M. Purushothama Raju who is the Joint Registrar of Co-operative Societies. There are certain portions of the statement which confirm the fact that steps were not taken to summon the President who is the petitioner herein to give his statement, but it is deposed that orally the petitioner was requested to give a statement. But, the witness does not remember the exact date on which he requested the President to give statement. This Joint Registrar in the course of his cross-examination has stated - "The enquiry conducted by me is not u/s 64 of the K.C.S. Act of 1959. Nor was it an inspection u/s 65. The enquiry conducted is not under any provision of K.C.S. Act or Rules", The same witness has stated in cross-examination - "I have no other documentary evidence to say that the President Sri Nagaraja took delivery of goods excepting the letter which is marked as Ex.M-15." Again in cross-examination, he has stated - "Personally I do not know as to who has taken the delivery of goods at Bangalore and who has sold here at J.B. 1st Unit." The specific allegation against the petitioner is that confiscated nylon zips numbering 104000 were lifted by the petitioner from National Co-operative Consumers Federation, Bangalore, which was allotted to Mysore District Central Co-operative Wholesale Stores Ltd., Mysore, for sale and disposed them of at Bangalore itself unlawfully without bringing them to Mysore and that Sri P. Nagaraj, Ex-President of the said store had arranged to make fictitious bills for sale of entire stock on single day on 5-10-1984 at Janatha Bazaar, Mysore for Rs. 1,84,080/- even though the physical stocks were not received by the employees of the Janatha Bazaar and bogus transport charges of Rs. 300/- had also been claimed and hence transaction amounted to a fictitious one.

9. In Annexure-H which is a case-sheet under the said enquiry drawn up by the Joint Registrar of cooperative Societies, the noting dated 2-5-1986 reads as follows:-

"The Counsel for Sri P. Nagaraj present. The Accountant, Janatha Bazaar, Unit I present. The Counsel for P. Nagaraj filed an additional objection. He has further argued that this proceedings cannot be taken up at this stage as the enquiry u/s 64 of the KCS Act is still under progress and not yet completed and hence prayed to drop this proceedings as highly premature. Hence the arguments of the learned Counsel, objection filed by the Counsel, to drop this proceedings is rejected.

Perused the relevant records and also the report furnished by the JRCS (Enquiry Inspection Cell). It is mentioned in the report that Sri P. Nagaraj, refused to give any statement at the time of enquiry and further stated that necessary action to be taken against Sri P. Nagaraj for fraud committed and for bringing the discredit to the Institution. The Counsel to Sri P. Nagaraj, stated that he was not aware of any such enquiry and he was not summoned to give any statement.

Hence the arguments. Posted for orders to 14-5-1986."

10. From the impugned order what is discernible is peculiarity in the sequence of events and the stages of enquiry ultimately concluding with the disqualification of the petitioner. The Joint Registrar of Co-operative Societies (Enquiry and Inspection Cell), Bangalore, is said to have conducted an enquiry with regard to the complaint of sale of confiscated nylon zips to Mysore District Co-operative Wholesale Stores, Mysore. Thereafter, it is stated that it was mentioned in the enquiry report that necessary action should be taken against the petitioner for the alleged fraud committed by him. Thereafter, to initiate action against the petitioner, it is mentioned in Annexure-L, the office issued show cause notice to the petitioner vide JRM/4/NWS/85-86 dated 27-7-1985 to initiate action under Sections 29C(b) and 126A(1)(b) of the K.C.S. Act for having allegedly acquired disqualification for his fraudulent action in the illegal sale of confiscated nylon zips. When the case was taken up for hearing, the petitioner engaged a Counsel to defend his case and submitted his statement of objections on 13-9-1985 and 21-4-1986 wherein he denied the charges and prayed for dropping of all further proceedings against him. It is also mentioned that the Counsel appearing for the petitioner in the course of his argument on 2-5-1986 prayed for dropping of further proceedings until the enquiry u/s 64 of the K.C.S. Act is completed and reports were submitted.

11. From the records of the Joint Registrar of Co-operative Societies and also from his own order which is assailed before me, it is abundantly clear that an enquiry was ordered u/s 64 of the K.C.S. Act into affairs of the Society. It is also equally clear that the enquiry did not come to an end and no enquiry report is forthcoming from the records admittedly because the enquiry remained incomplete. But, it is seen that the action contemplated, initiated and concluded against the petitioner has its roots in the ordered enquiry. There is sufficient material to show that the enquiry was in progress at the time when the impugned order came into existence. If the basis of the action initiated against the petitioner for disqualification is the report of the Joint Registrar, the compliance of natural justice demand that a copy of the said report should have been furnished to the petitioner so that the petitioner could have taken necessary steps to defend himself against incriminating report of evidence. There is no material on record to show that a copy of the report, whether complete or incomplete, was furnished to the petitioner. This militates against principles of natural justice. Apart from this aspect, the statement made by the Joint Registrar of Cooperative Societies in enquiry No. 1/85-86 under Annexure-K, makes it crystal clear that there is no evidence against the petitioner to come to the conclusion that the petitioner had committed the alleged wrong entailing his disqualification. The most surprising feature in the statement of the Joint Registrar of Co-operative Societies in the course of his deposition, is that no enquiry was conducted by him u/s 64 of the K.C.S. Act and that the enquiry stated to have been held by him is not under any provisions of the K.C.S. Act or Rules. Suffice it to say that there is gross abuse of power and total disregard of

procedural law in the matter of holding an enquiry in regard to the specific allegations of fact against the petitioner. The entire proceeding bristles with contradictions. The records show that there was an order and the order was to the effect that an enquiry should be held u/s 64 of the K.C.S. Act into the affairs of the Society. But according to the Joint Registrar of Cooperative Societies, no enquiry was held by him u/s 64 of the K.C.S. Act. Again, it is stated that an enquiry was in progress u/s 64 of the K.C.S. Act, but the report was incomplete. Finally, we see the version that a show cause notice was issued on 27-7-1985 by the same Joint Registrar of Co-operative Societies to the petitioner threatening to disqualify him. The entire matter appears to be rather fishy. Leaving aside the major task of finding out whether or not there is irregularity in the management and affairs of the Co-operative Society, undue and unexplained importance was given to the question of initiating proceedings against the petitioner and the so called proceedings initiated u/s 29C read with Section 126A of the K.C.S. Act was conducted in posthaste. The action taken against the petitioner seems to be an action taken with animus without awaiting completion of the report that was ordered to be made in pursuance of order JRN/6/MYS/85-86 dated 16-9-1985 issued by the Joint Registrar of Co-operative Societies, Mysore Division, Mysore.

12. Though it may be hardly necessary for me to go into questions of fact ordinarily, when conspicuous and patent jurisdictional errors stare in the face, it is difficult to overlook them.

13. Annexures "M" to "AA" are the photostat copies of additional documents filed by the petitioner. From the documents, it is evident that the Store Keeper of the Janatha Bazaar, Mysore, took delivery of the nylon zips from NCCF on 1-10-1984 at Bangalore vide Annexure-R and relevant entry was made in General Stock Register of the Janatha Bazaar, Mysore, on 5-10-1984. The gap between 1-10-1984 and 5-10-1984 is explained by the learned Counsel appearing for the petitioner that 2nd, 3rd and 4th were Government holidays. Annexure-P contains the relevant entry. These nylon zips were sold at Counter No. 11 at Janatha Bazaar, Mysore, on 5-10-1984. The receipt which is at Annexure-T bears the signatures of both the Salesman and the Departmental Cashier. These documents are material and sufficient to lead me to the conclusion that the nylon zips were not sold at Bangalore on 1-10-1984 and, consequently, the petitioner had absolutely no complicity whatsoever in the disposal of the nylon zips which actually took place at Mysore on 5-10-1984. The documentary evidence speaks for itself and it would be unfair to attribute any stigma to the petitioner in this regard. The impugned order is based on no evidence.

14. It is a settled principle of administrative law that power which is discretionary is abused or misused if relevant considerations are disregarded and irrelevant considerations are taken into account. Even where natural justice does not apply, administrators must act fairly.

More serious the error becomes when findings are reached on no evidence.

Lord Atkinson said in *FOLKESTONE CORPORATION v. BROCKMAN*, 1914 AC 338. that:

"An order made without evidence to support it, is in truth, in my view, made without jurisdiction."

"No evidence" rule supports judicial review and the ancient view to the contrary has become obsolete and it may well be said that immunity to judicial review despite no evidence rule according to modern trends has been despatched to the limbo of history. Such a rule is a new dimension of the principle of ultra virus so that statutes which invest powers of determination will be taken to imply that the determination must be based upon at least some acceptable evidence as otherwise it will be treated as arbitrary, capricious and obviously unauthorised. Equally well settled is the legal principle that powers given for public purpose are as it were, held upon trust, and they embroil themselves with the policy, motives and merits of administrative action.

Lord Denning M.R. observed in *BREEN v. AMALGAMATED ENGINEERING UNION* (1917) 2 QB 175:

"The discretion of a statutory body is never unfettered It is a discretion which is to be exercised according to law. That means at least this the statutory body must be guided by relevant considerations and not by irrelevant . If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by "Padfield v. Minister of Agriculture, Fisheries and Food which is a landmark in modern administrative law."

Fair administrative procedure involves procedural fairness and regularity which are indispensable attributes of liberty. Stringent substantive laws can be endured only if they are fairly and impartially applied.

15. Serious allegations which virtually impute malafides to the second respondent are made in this Writ Petition. But, the second respondent has not chosen to file an affidavit to counter the allegations made against him. If the allegations are true and they have to be presumed to be true in the absence of contradiction by the second respondent, it would lead to the presumption that the conduct impugned to the second respondent would not make him worthy of the office which he was holding at the relevant time. It is not necessary for me to say anything beyond this.

16. For the reasons stated above, I have no hesitation in holding that the impugned order deserves to be quashed and accordingly I allow the Writ Petition and quash the impugned order under Annexure-L.

17. In the normal course, I would not have awarded costs of the Writ Petition against respondents-1 and 2 but for the fact that respondent-1 has committed what could be characterised as abuse of power and the second respondent

holding such a high office has given room for allegations of very serious nature going against him unchallenged. Presumptions are based on un-rebutted facts and vindictiveness has no place in the Rule of Law. Every thing points to undue harassment of the petitioner and the petitioner has suffered agony from 1986 upto the date of disposal of this Writ Petition. In these circumstances, I am constrained to award costs of Rs. 2,500/- payable by the second respondent to the petitioner and an equal amount by the first respondent to the same petitioner. I am not convinced with the submission of the learned Government Pleader that costs should not be imposed on the first respondent since he retired from service and I hold that there is justification to impose costs on the first respondent also matching the costs imposed on the second respondent.

18. If a proper copy application for a certified copy of this order is made by the petitioner, it should be granted forthwith.