

(2001) 12 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No"s. 41213 and 41214-46215 of 2001

Premalatha

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Co-operative Societies Act, 1959 — Section 29 (3)

Citation : (2002) 1 KCCR 424

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shantesh Gureddi, for the Appellant; N. Devadas, for Caveators and B.V. Muralidhar, High Court Government Advocate in Writ Petition Nos. 46213 of 2001 and Basava Prabhu S. Patil in Writ Petition Nos. 41214-15 of 2001, for the Respondent

Judgement

R. Gururajan, J.—Writ Petition Nos. 41214-215 of 2001 are filed by one Sri Subhash S. Koujalagi and Sri Ramesh L. Jarkiholi, sitting members of the Legislative Assembly challenging Annexure "B", an order dated 24.9.2001.

2. Writ Petition No. 46123 of 2001 is again filed challenging the very same notification by Smt. Premalatha, an ex-Member of Zilla Panchayat. Both the petitions are taken up together by this Court.

3. The first two Petitioners are the sitting members as mentioned earlier and the 3rd Petitioner is the former member of Zilla Panchayat. They say in the petition that they are respected citizens representing certain constituencies in Belgaum District. They say in the petition that taking into consideration the social status and the services rendered by them, the Government in exercise of its power u/s 29(1) of the Act nominated them to the District Central Co-operative Bank Limited, Belgaum, in terms of Annexure "A" on 15.9.2001. According to the petition averments, within 10 days, the State Government cancelled the earlier nominations dated 15.9.2001 in terms of Annexure "B". Annexure "B" is

challenged by the Petitioners in these petitions. Their essential attack is that this endorsement at Annexure "B" suffers from arbitrariness. The very factum of withdrawal within 10 days according to the Petitioner speaks arbitrary exercise of powers. They further say that Annexure "B" is issued without any reasons and therefore the same is bad in law. They also say that Annexure "B" in violation of Wednesbury principles and Doctrine of Proportionality in terms of the Judgment reported in 2001 (2) SCC 386 (Om Kumar and Ors. v. Union of India).

4. The learned Counsels Sri N. Devadas and Sri Shantesh Gureddi contend that Annexure "B" read in the light of the averments would show that it is a clear case of arbitrary exercise of powers. According to the Counsels, this Court has to interfere by way of Judicial Review on the touch stone of Article 14 of the Constitution of India. They strongly rely on a Judgment of this Court reported in Janab Shastry Khaja Hussain Vs. The Karnataka Board of Wakfs and Another, . They also rely upon on the Judgment of Om Kumar and Ors. v. Union of India reported in 2001 (2) SCC 386.

5. After hearing the Counsel, the following order is passed:

The Karnataka Co-operative Societies Act of 1959 (for short the Act) provides for nominations in terms of Section 29 on the Committee of an assisted Co-operative Society. The said Section reads as under:

Nominees of Government on the committee of an assisted co-operative Society. 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.

Section 29(3) earlier read that "the persons nominated under Sub-section (1) shall hold office as members of the committee for such period as the State Government may, by order specify".

Section 29(3) is now amended, in terms of amendment Act 24 of 2000. The amended proviso of Section 29(3) reads as under:

The person nominated as a member of a Co-operative Society under Sub-section (1) shall hold office as such member during the pleasure of the Government.

6. The substituted amendment is very clear that nomination in terms of Section 29 is at the pleasure of the Government. It is a well settled principle of law that pleasure appointments always can be cancelled without notice to the nominees. There is no question of rules of natural justice in these cases of pleasure appointments. This Court in some what identical circumstances in a reported Judgment in 1995 (6) KLJ 95 has considered this very question and has ruled in para 6 reading as under:

It has therefore to be held that the State Government has the power to cancel the nomination of all members who were appointed u/s 29(1) of the Act, as they

hold office during the pleasure of the Government. Once the Petitioner ceased to be Director by virtue of the cancellation of his nomination as Director under the impugned order, he cannot hold the office of the President of the Board of Directors. The very basis on which he was elected as a President goes, with his ceasing to be a Director of the Society.

The writ petition therefore fails and is accordingly dismissed.

7. This Court in the said Judgment has noticed two Judgments of the Apex Court. Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and the Judgment of the Supreme Court in Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, .

8. In the light of the Judgments of this Court, Annexure "B" the cancellation of pleasure appointment cannot said to be in violation of Section 29.

9. However, the Counsels argue that in Annexure "B", there is no reference to Section 29(3). The Counsels complain that when the appointment refers to Section 29(1), the Respondents should have mentioned the section atleast while cancellation. This argument with respect to the Counsels requires to be noticed for rejection. The mere non-mention of Section by itself does not render an order bad in law. The material facts would show that Annexure "B" is issued in terms of Section 29(3). Therefore, the contention of non-mentioning of the section in Annexure "B" does not in any way affect the validity of Annexure "B". The counsel strongly argues that Annexure "B" is nothing but an arbitrary exercise of powers. They say that the Petitioners have some status in the Society and that status is brought down in terms of Annexure "B". I am unable to accept this aspect. The Petitioners knew very well that Annexure "B" is a pleasure appointment. They are also supposed to know that it can be withdrawn at any time at the pleasure of the Government. There is no question of any status being brought down on account of Annexure "B". If the Petitioners are so sensitive, they should have told that are not interested in accepting such pleasure nominations. Having accepted Annexure "A", they have to suffer displeasure, Annexure "B". Therefore, the status argument does not appeal to me.

10. The Counsels, however, refer to a Judgment in Janab Shastry Khaja Hussain Vs. The Karnataka Board of Wakfs and Another, with regard to the Judicial Review in these matters. It is no doubt true that judicial review is permissible. This Court in para 7 has ruled as under:

In the instant case the appointment of the Managing Committee made in exercise of the statutory powers vested in the Board specifically reserved in favour of the appointing authority the power to dissolve the Committee at its pleasure. The cessation of such pleasure was not subject to any restrictions or regulatory controls under the Statute so as to expose the same to the criticism of being in violation of any such restrictions. In the circumstances therefore the Petitioner's grievance against the dissolution of the Committee does not appear to be well founded. I must however hasten to add that the dissolution of a

Committee appointed to hold Office during the pleasure of the Board may not be entirely free from judicial review on the touch stone of Article 14. The exercise of any such power can be examined for the purposes of finding out whether the same is arbitrary or vitiated by such other legal infirmity as may make intervention by the Court necessary. An exercise of power which is actuated by malice or which is otherwise arbitrary would fall foul of Article 14 and would therefore be liable to be set aside. It is well settled that Article 14 strikes at any thing that is arbitrary malafide or otherwise unreasonable. It is not however the case of the Petitioner that the exercise of the power by the Board was arbitrary or malafide so as to be offensive to Article 14 of the Constitution, nor has the Petitioner laid any factual foundation for such a grievance in the Writ Petition. Even Mr. Siddappa did not canvass any such illegality. That apart, the exercise of the power to dissolve, does not appear to have been vitiated by any arbitrariness, considering the fact that the order of dissolution came on account of the factional fight that appears to have started among the members of the Committee thereby frustrating the very purpose behind its constitution. The fact that there were differences among the members comprising the Managing Committee has not been disputed nor is it denied that on account of the said differences the working of the Committee and the interest of the wakf for which it was constituted was not being served in the best possible way. In the circumstances, therefore the charge of arbitrariness would not even otherwise be tenable.

A careful reading of the said para in the Judgment would show that this Court can exercise judicial power only when the order is vitiated by such other legal infirmity such as malice etc. No such malice material is placed in the case on hand. In these circumstances, the Judgment reported in Janab Shastri Khaja Hussain Vs. The Karnataka Board of Wakfs and Another, does not come to the aid of the Petitioners. The Petitioners also rely on another Judgment of the Supreme Court in the case of Om Kumar in particular in paras 26 and 27. That case was admittedly dealing the service law and the punishment. The facts of that case and the grounds in that case are wholly different and it is inapplicable to the facts of this case particularly in the light of Section 29(3), which has been interpreted by this Court in terms of the Judgment of the Supreme Court.

11. In the result, I do not find any grounds to interfere the order at Annexure "B". Both the petitions stand rejected without being admitted.

12. The Petitioners however, apprehend that this order may come in the way of the Government exercising its pleasure again in favour of the Petitioners. It is made clear that this order if passed on the basis of the material placed before this Court in these petitions. This order shall not come in the way of any other order being passed by the Government in exercise of its power u/s 29 of the Act.

13. Ordered accordingly. No costs.