(1980) 09 KAR CK 0029

In the Karnataka High Court

Case No : WP. 1851/80

Primary Co-op. Land Development Bank Ltd. APPELLANT

Vs

Returning Officer. RESPONDENT

Date of Decision : 25-09-1980

Acts Referred:
Karnataka Co-operative Societies Act, 1959 — Section 27(1)

Citation : (1981) 1 KarLJ 373

Hon'ble Judges : N. R. Kudoor, J

Judgement

1. The petitioners in this writ petition under Art. 226 of the Constitution of India have sought for a writ of mandamus or any other appropriate writ directing the respondent to cancel the calender of events Annexure-A and to prepare a fresh calender of events for holding the election on 29-10-1980.

2. The Managing Committee of the first petitioner Bank consists of 12 elected directors. As per the Bye-laws of the Bank 1/3rd of the elected Directors shall have to retire at the end of every year. Accordingly, four Directors including the second petitioner, who is the present President of the Bank were to retire and in their place new Directors were to be elected at the general body meeting proposed to be held on 29-9-1980 as per the decision taken by the Board of Directors on 23-7-1980. The respondent was appointed as the Returning Officer to conduct the election. In pursuance of the decision taken by the Board of Directors, the respondent prepared the calender of events as per Annexure-A and sent it to the first petitioner for taking further action in the matter. In the meanwhile, the Bank had planned to hold its Golden Jubilee function on 21-9-1980 and the chief guest was to be the Governor of Karnataka However the Bank was informed that the date 21-9-1980 would not be convenient for the chief guest and that it would be possible for the Governor to be the chief guest if the function were to be held in the 3rd week of October. The Board of Directors therefore also decided to postpone the general body meeting fixed to be held on 29-9-80 and resolved to hold it on 29-10-1980. They passed a resolution in that behalf on 11-9-1980 (Annexure-''B'') and published the same on the notice board

of the Bank The Bank applied to the concerned authority for extension of the period for holding the general body meeting as required under the proviso to sub-sec. (1) of S. 27 of the Karnataka Co-operative Societies Act, 1959 (for short the Act). The Bank intimated the respondent also of the resolution and requested him to prepare a fresh calender of events to be consistent with the changed date of the meeting of the general body and of the election by a letter dated 15-9-1980. There was no response from the respondent. Therefore, the Bank sent another letter dated 20-9-1980 intimating him of the change of the date of the general body meeting and requested the respondent to cancel the calender of events already issued (Annexure-A) and to prepare a fresh one so as tobe consistent with the new date fixed for the general body meeting and the election as the Bank had decided to postpone the general body meeting to be convened on 29-9-1980. There was no favourable response from the respondent. He was proceeding to hold the election as per Annexure-A. The petitioners did not take any follow up action in the matter of conducting the election in pursuance of the calender of events Annexure-A. Hence the election cannot be held on 29-9-1980. On these grounds, the petitioners filed this writ petition for the reliefs stated earlier.

3. Sri K.I. Bhatta, learned counsel for the petitioners contends that the Board of Directors resolved to postpone the general meeting to be held on 29-9-1980 to 29-10-1980 in view of the postponement of the celebration of the Golden Jubilee function fixed on 21-9-1980 due to unavoidable circumstances and in that view, did not take any follow up action in pursuance of the calender of events prepared and sent by the respondent for holding the election at the general meeting on 29-9-1980 as resolved by the Board earlier. That being so, he maintained that the election as scheduled in the calender of events Annexure-A cannot be held on 29-9-1980 and as such, the petitioners are entitled to the relief sought for.

4. At this stage, the only question that arises for consideration will be whether there are sufficient grounds to issue a rule nisi.

5. S. 27 of the Act lays down that a general meeting of Co-operative Society shall be held once in a year, within a period of three months after the date fixed for making up its accounts for the year under the rules or byelaws for the time being in force for the purposes enumerated under Clauses (a) to (d) of sub-sec. (1) of S. 27, among which clause (b) stipulates holding of the election if any, in the prescribed manner, of the members of the committee other than the nominated members. Proviso to sub-sec. (1) lays down that the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding six months. Sub-sec. (2) provides for the action to be taken in case default is made in calling a general meeting in accordance with the provisions of sub-section (1).

6. In compliance with the provisions of the Act, the Board of Directors of the Bank had resolved on 23-7-1980 to hold the general body meeting and also the election, to fill up the vacancy of the retiring members of the managing

committee on 29-9-1980. The date for holding the general body meeting and also the election was notified to the respondent, who was the Returning Officer of the first petitioner-Bank to conduct the election. The respondent in his turn prepared the calender of events as per Annexure-A well in time and forwarded the same to the Bank for taking follow up action in the matter. However it is obvious from the averments made in para 7 of the writ petition that the first petitioner bank did not take any follow up action regarding the holding of the election on receipt of the calender of events from the respondent as scheduled therein, taking shelter under another decision of the Board of Directors dated 11-9-1980 to postpone the Annual General meeting. It is further clear that the only ground that probably induced the Board of Directors including the 2nd petitioner, who is the President of the Bank, to postpone the general meeting and also the election fixed on 29-9-1980, was the postponement of the Golden Jubilee Celebrations of the Bank which was proposed to be held on 21-9-1980 to the 3rd week of October, 1980. That, that was the only reason that must have prompted them to hold the general meeting and also the election beyond the time fixed under S. 27(1) of the Act is obvious from the circumstances of the case. The words employed in sub-section (1) of S. 27 regarding the convening of the annual general meeting are mandatory in character and it fixes the period of convening such a meeting within three months after the date fixed for making up of its accounts for the year under the rules or bye-laws for the time being in force, unless the Registrar extends the period for holding such a meeting by general or special order by a period not exceeding six months.

7. It is not in dispute that as perthe bye-laws of the Bank for the time being in force, the date for making up of its accounts is 30th of June of each year. In that view the decision taken by the Bank to hold the general meeting and also the election for filling up the vacant seats in the Managing Committee due to the retirement of four directors including the 2nd petitioner on 29-9-1980 was within the time allowed under sub-sec. (1) of S. 27 of the Act and if, for any reason, the Bank cannot hold the general meeting on the said date and thought of postponing the same beyond the time allowed under sub-section (1), it should obtain an order from the Registrar extending the period for holding such meeting and then fix the date for holding the general meeting within the extended period and request the respondent to act in accordance with the decision taken by the Bank. No doubt the petitioners have alleged that they had applied to the Registrar for extension of the period but had not obtained any order before requesting the respondent to cancel the calender of events issued by him and to prepare a fresh calender of events in its place so as to hold the election on 29-10-1980. The Bank has no authority under law to take an unilateral decision without obtaining an order from the Registrar for holding the general meeting of the Bank beyond the time allowed under sub-section (1) of S. 27. If they do so, the same would be in violation of the provisions of the Act. That being so, the step taken by the respondent in issuing the calender of events as per Annexure-A to hold the election on 29-9-1980 in pursuance of the earlier decision taken by

the Bank was in accordance with Rule 14(b) by virtue of his appointment as the Returning-Officer of the Bank by the Registrar. So there is no ground to quash the calender of events Annexure-A.

8. Now turning to the second part of the prayer to direct the respondent to prepare a fresh calender of events for holding the election on 29-10-1980 on the ground that the Managing Committee resolved to postpone the holding of the general meeting to 29-10-1980, the same is clearly untenable, since the decision taken by the Bank to hold the general meeting on 29-10-1980, which would be beyond the period allowed under sub-sec. (1) of S. 27, had no legal sanction as the Bank did not obtain an order from the Registrar to extend the period for holding such a meeting as required under the proviso to sub-section (1) of S. 27. As a matter of fact, there was no necessity or need for postponing the general meeting as fixed earlier which was within the stipulated time under law although the Golden Jubilee function of the Bank was postponed to the third week of October 1980. I see absolutely no rationale in the decision taken by the Board of Directors to postpone the General Meeting to a date beyond the time allowed by law without obtaining the extension of the period for holding such a meeting from the Registrar. The only ground appears to me is to facilitate the retiring directors including the 2nd petitioner who is the President of the Bank to be in office at the time of celebrating the Golden Jubilee function. Otherwise, I see no other connection between the holding of the annual general meeting and the celebration of the golden jubilee function. If the Bank did not take the follow up action to hold the general meeting and the conduct of the election on 29-9-1980, it was its own making and on that ground the petitioners cannot seek any relief from this Court. If default is made in calling the general meeting in accordance with the provisions of sub-sec. (1) of S. 27, it was for the Registrar to take appropriate action as stipulated in sub-sec. (2). However, the petitioners in my view, are not entitled to seek a direction at the hands of this court to the respondent to prepare a fresh calender of events for holding the election on 29-10-1980.

9. For the reasons stated above, I see no useful purpose will be served by issuing a rule. Accordingly the writ petition is dismissed.