(1998) 06 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No. 31304 of 1997

P.S. Veerendra Prasad and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 04-06-1998

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 30 (1), 30 A, 30 A (1-A)

Citation : (1998) ILR (Kar) 2629 : (1998) 5 KarLJ 473

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri M.R. Rajagopal, for the Appellant; Sri B.Veerappa, High Court Government Pleader and Sri T.H. Narayana, for the Respondent

Judgement

1. The petitioners are directors of the 5th respondent-society. In this writ petition, the petitioners challenge the legality and correctness of the order passed by the 1st respondent u/s 30A of the Karnataka Co-operative Societies Act (for short ''the Act''). The action of the 1st respondent, according to the petitioners, is wholly unnecessary, arbitrary and unwarranted. The power by the 1st respondent has been exercised not in accordance with law. The 1st petitioner is the president and the other petitioners are the members of the managing committee. There was an election to the members of the managing committee on 22-9-1996 for a period of three years which will come to an end in 1999. The proceedings were initiated to supersede the society u/s 30A of the Act. The Joint Registrar of Co-operative Societies-the third respondent herein recommended that the Government may initiate action u/s 30A of the Act. In other words, on a perusal of the allegations made in the report by the 3rd respondent, the 2nd respondent stated that initiation of action can be done u/s 30(1) of the Act but not u/s 30A.

2. Curiously the Government without considering the opinion of the Additional Registrar-2nd respondent herein that action can be initiated u/s 30(1) resorted to the extreme measure of passing the impugned order exercising powers u/s

30A of the Act.

3. The learned Counsel for the petitioners, Mr. Rajagopal strenuously submitted that the 2nd respondent-the Additional Registrar of Co-operative Societies has clearly given an opinion that action need not be initiated under the emergency powers of Section 30A and ends of justice will be met if action is initiated u/s 30(1) of the Act. When such an opinion was given by concerned officer like the Additional Registrar after perusing the allegations it was submitted that it is not known what compelled the Government to pass an order u/s 30A of the Act.

4. The learned Counsel for the petitioners relied on a Division Bench judgment of this Court in Machado H.L. and Others v Government of Karnataka and Others, wherein this Court has held that on a perusal of the charges in the said case every one of them read individually or cumulatively indicate that these matters could have been dealt leisurely and elaborately u/s 30(1) of the Act and not u/s 30A of the Act. The Court further held that any action to be taken u/s 30A of the Act must be for compelling reasons and for expeditious action and the normal rule is that action should be u/s 30(1) and the exception should be u/s 30A of the Act.

5. The learned Counsel for the petitioners also relied on an unreported judgment of this Court in W.P. No. 20449 of 1997, DD: 16-3-1998. Recent unreported judgment of the Division Bench of this Court was also relied on by the learned Counsel for the petitioners in W.A. No. 6514 of 1997, DD: 30-12-1997.

The Division Bench of this Court gave the following guidelines.-

"(a)The State Government may either on the basis of the report made to it by Registrar, or otherwise, it is satisfied that any co-operative society is not functioning in accordance with rules, Act or by its bye-law or any order, direction or circular issued by the State Government or Registrar, it has got power to appoint a Special Officer for the period not exceeding one year.

(b)In view of Section 30-A(1-A) it is not necessary for the State Government to give any co-operative society or persons likely to be affected by such order an opportunity of making representation.

(c)Before exercising the power, Government must be satisfied means it requires an application of mind either on the report submitted by Registrar or other substantive materials made available to it and what are the relevant circumstances prompted the Government to invoke Section 30A to be indicated and recorded in the order.

(d)Failure to indicate and record the basis for satisfaction and materials for forming satisfaction is not indicated and extract being allegations that such charge is, these cannot by itself amount to satisfaction. If the Government is satisfied on the basis of materials arrive at such conclusion, and satisfied in about the conditions sine qua non u/s 30A existed, it may exercise the power. Allegations itself is not suffice as a basis for required satisfaction.

(e) In case of a report to be submitted by Registrar recommending the Government to invoke power u/s 30A, that report, must be preceded by subjective satisfaction based on consideration of relevant materials to satisfy the requirements of Section 30A of the Act, as a measure of imminent and urgent u/s 30A of the Act. It means report of the registrar factly in compliance with fair play and natural justice by giving opportunity of hearing to Co-operative Society in respect of facts and materials which is to form the basis of such report.

(f)On composite reading of Sections 30(1) and 30-A(1-A), only interpretation possible is the registrar to follow the procedure u/s 30(1) of the Act before submitting the report. What was dispensed u/s 30-A(1-A) is an opportunity of being heard, at the later stage, i.e., at the stage of passing order by the Government u/s 30A of the Act. Though other interpretation is possible, but it rendered Section 30(1) nugatory and ineffective one and it may also provide room for authorities to exercise power on their sweet will or arbitrarily, without any specific rhyme or reason or urgent circumstances in taking recourse to Section 30A of the Act and authorities may ignore or may purposefully and intentionally may not follow Section 30 which leading to exercise the power arbitrarily discrimination which may render Section 30A ultra vires".

In the light of these decisions, the learned Counsel for the petitioners took me through the impugned order.

(1) The alleged irregularity was that the petitioners did not extend better marketing facilities for the farmers of the taluk of their agricultural produce.

(2) No action was initiated by the managing committee to initiate proceedings for recovery as suggested by the auditor between 1988-89 to 1995-96.

(3) Out of the reserved fund certain sums had been appropriated by the society for its day-to-day business which was in violation of Section 58 of the Act since no approval was obtained.

(4) Certain funds were set aside for building fund and the other was used for the business of the Society which is in violation of the rules.

(5) Recruitment of certain employees were contrary to Rule 17.

(6) A number of farmers who wanted to be members were not made members.

(7) There was no verification of the moveables and immovables for the period of 1995-96.

(8) There was unblock amendments.

(9) The society retained more than the permissible limit as cash.

(9-A) There was no rule for fixing the limit of the cash balance that can be retained for the petrol bunk to run its business.

(10) No book was maintained for the telephone calls utilised by the society.

(11) The managing committee has not forwarded the compliance report on the audit report.

(12) No log book was maintained with respect to the lorries maintained and owned by the society.

(13) The petrol bunk run by the society was although running well and more profit could have been made.

(14) The managing committee failed to attest the cash balance.

(15) The transport expenses were expensive.

(16) There were no bye-laws to regulate loans pertaining to the stock of the society.

5-A. On the basis of the above allegations the Government exercising powers u/s 30A of the Act superseded the managing committee by an order dated 25-10-1997.

6. On a perusal of the impugned order it appears that the alleged irregularities were just typed out and there appears to he no application of mind by the first respondent whether action should be taken u/s 30(1) or 30A of the Act. As stated earlier, the pronouncements of this Court are to the effect that unless for compelling reasons the normal course would be an action u/s 30(1) of the Act. What the compelling circumstances are and what prompted the Government to take such steps which required immediate action is not forthcoming in the impugned order. On the contrary, the second respondent-the Additional Registrar has stated that action need be taken u/s 30(1) and not u/s 30A. There is no material in the impugned order to show that the recommendation of the Additional Registrar to initiate action u/s 30(1) was not correct. None of the guidelines stipulated by the pronouncements of this Court have been complied with. What has happened in the impugned order is that there has been a mere recital of the irregularities followed by the order of the Government exercising powers u/s 30A. This certainly is not what is expected when action is invoked u/s 30A of the Act. Nobody could have had any grievance against the Government if an action was taken u/s 30(1) of the Act. The only grievance of the petitioners is that action u/s 30A has been invoked for extraneous reasons.

7. At this stage, it is necessary to state that certain allegations of mala fide was made against the sixth respondent, who is the minister for regulated marketing committee. The learned Counsel for the petitioners Mr. Rajagopal fairly submitted that in view of the legal pronouncements laid down by this Court it may not be necessary to go into the question of mala fide by the sixth respondent. In that view of the matter, the first respondent has filed an affidavit withdrawing the allegations of mala fide. That would suffice for the purpose of this case as I find that it is not necessary in the facts and circumstances of the case to go into the question of mala fide.

8. The learned Counsel for the State Mr. Veerappa submitted that each case was based on the nature of the irregularities and therefore no hard and fast rule can be stated with regard to exercising emergency powers u/s 30A. He submitted that as long as there was subjective satisfaction of the Government that action has to be taken u/s 30A, that would be sufficient in the light of the alleged irregularities.

9. The learned Counsel for the respondent-State Mr. Veerappa has relied on a Judgment of this Court in R.V. Patil Vs. State of Karnataka, , wherein the Division Bench of this Court has pronounced that Section 30A vests power for the State Government to appoint a Special Officer in place of the committee of the management. Condition precedent for exercise of power is the satisfaction arrived at by the Government that the co-operative society is not functioning in accordance with the provisions of Act or Rules made thereunder. In other words, the power is exercised to see whether the co-operative society functions in accordance with the provisions of the Act, Rules or any other valid and binding mandates.

10. The learned Counsel for the State relied on the above judgment to support the proposition that once the Government has satisfied itself in exercising powers u/s 30A, the subjective satisfaction of the Government would be sufficient to uphold the order. Since the learned Counsel for the respondent-State relied on the Division Bench judgment of this Court in Patil''s case, supra, this Court was pleased to call for the records in the writ petition and perused the impugned order. In the impugned order the reasons given are clear and does not suffer from any ambiguity. I extract the paragraphs in the impugned order i.e., Paragraphs 8, 9, 12, 18 and 19 for the sake of convenience.

"8. Whereas it has come to the notice of Government that there has been considerable delay on the part of the committee of management of the mill in implementing the project within the scheduled time.

9. Whereas it has come to the notice of the Government that the committee of management of the mill is not abiding by the decisions taken by PIC and the technical advice given by the project consultants and whereas they have been consulted a particular machinery supplier who is an interested party.

12. Whereas it has come to the notice of the Government that the committee of management has not fully implemented even the reconfirmed decisions of the Project Implementation Committee (PIC) set up by Government insofar as acceptance of tenders for supply of plant and machinery are concerned and some members of committee of management have visited some of manufactures and held consultations with them after the tenders were opened and before the orders were placed in violation of tender conditions, which tender conditions were approved by all concerned including the Government.

18. Whereas in the above circumstances, Government is satisfied that the present committee of management is not functioning in accordance with the

provisions of Karnataka Co-operative Societies Act, 1959 and unless and are not abiding by the decisions and directions of project implementation Committee appointed by the Government and their continuation would delay the project and adversely affect the interests of the members, the financing institutions and the Government who have largely contributed to share capital and has also guaranteed the loan.

19. And whereas immediate steps are necessary and any delay may result in calling of fresh tenders apart from delaying the completion of the project".

It is very clear from the order passed that the Government has taken pains to explain the reason for invoking powers u/s 30A of the Act.

11. The said judgment of this Court in Patil''s case, supra, does not in any way assist the Government. On the contrary, from the paragraphs extracted above it is apparent on the face of the order that there is a clear application of mind of the Government in invoking powers u/s 30A.

12. In that view of the matter and for the above said reasons I pass the following order.-

(i) The order passed by the 1st respondent dated 25-10-1997 at Annexure-M is set aside.

(ii) Respondents shall hand back charge to the committee of management that existed immediately prior to the supersession within a period of two weeks from the date of receipt of the copy of this order.

(iii) This order will not preclude the respondents from taking action, if necessary, u/s 30(1) of the Act in accordance with law.

(iv) The allegations made against the 6th respondent stand withdrawn by the petitioners and the writ petition as against 6th respondent stands dismissed.

(v) There will be no order as to costs.

