

(2016) 05 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 19162 of 2016 (CS-RES) connected with Writ Petition No. 20594 of 2016 (CS-RES)

R. Sridhar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-05-2016

Acts Referred:

Citation : (2016) 4 KantLJ 382

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Sri Ashok Haranahalli, Senior Advocate for Sri K. Raghupathy, Advocate, Sri Jayakumar S. Patil, Senior Advocate for Sri Varan Jayakumar Patil, Advocate, for the Appellant; Smt. Pramodhini Kishan, Government Pleader, Sri M.R.C. Ravi, Advocate, Sri Jayakuma

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of by this common order.

2. In the writ petition in W.P. No. 19162 of 2016, the facts stated are as follows. The petitioner was said to be working earlier in the cadre of Joint Registrar of Co-operative Societies and was the Secretary, Karnataka State Warehousing Corporation, Bangalore. He was then said to have been promoted to the cadre of Additional Registrar of Co-operative Societies. He was then said to have been deputed to the Kolar-Chickballapur District Co-operative Milk Producers' Union Limited, the fifth respondent herein as the Managing Director, by an order dated 5-3-2016. He was said to have been accordingly relieved from his earlier post of Secretary, Karnataka State Warehousing Corporation, as on 8-3-2016. He is then said to have reported for duty as the Managing Director of the fifth respondent on the same day and is said to have assumed charge.

Though the petitioner had reported for duty as aforesaid, it is alleged that one

Dr. G.T. Gopal, the seventh respondent herein, in suppression of the fact that the petitioner had reported for duty, is said to have approached this Court by way of a writ petition in W.P. Nos. 13002 and 13003 of 2016, challenging the order dated 5-3-2016, insofar as the petitioner was concerned. It is stated that this Court had passed an interim order dated 11-3-2016, staying the operation of (he order dated 5-3-2016).

Thereafter, the fourth respondent is said to have withdrawn the deputation of the seventh respondent by an order dated 16-3-2016. Thereafter, the seventh respondent was said to have been relieved from the post of Managing Director by the fifth respondent-Union, as on 16-3-2016. On so being relieved, the seventh respondent is said to have reported to the parent department, as on 17-3-2016.

3. It is contended that the fifth respondent is an assisted society, as defined under Section 2 of the Karnataka Co-operative Societies Act, 1959, (hereinafter referred to as the "KCS Act", for brevity). In this regard, it is stated that the allotment of 15 acres of land in its favour by the State Government, is a case in point. It is also stated that an amount of Rs. 400 lakh was released in favour of the fifth respondent for the establishment of a Milk Processing Unit at Chickballapur, in the year 2011. It is also stated that a sum of Rs. 1200 lakh was released in the year 2012 for the establishment of a Mega Dairy at Chickballapur.

The receipt of funds in aid of the fifth respondent from the State Government is said to be reflected in the annual reports of the fifth respondent for the year 2014-15. It is also stated that the State Government, the second respondent had nominated a representative to the fifth respondent in terms of Section 28-A of the KCS Act.

It is stated that Section 29-G of the KCS Act provides for the appointment of the Chief Executive. The said provision, it is stated, defines the mode and manner in which the Chief Executive is to be appointed to the fifth respondent-Union. And that the fourth respondent has in violation of Section 29-G of the Act, had, by an order dated 1-4-2016, deputed the sixth respondent to the fifth respondent, though the fourth respondent lacked the jurisdiction for such deputation. Hence the writ petition.

4. The learned Senior Advocate Sri Ashok Harnahalli, appearing for the Counsel for the petitioner, would contend that the petitioner had reported as the Managing Director of the fifth respondent, as on 8-3-2016 itself. And that it is only thereafter an interim order, staying the operation of the order of deputation of the petitioner came to be passed. The petitioner had already been relieved from his earlier post and now on account of the interim order dated 11-3-2016, he is neither able to discharge his duties as the Managing Director of the fifth respondent, nor can he go back to his earlier post. Further, the earlier order dated 5-3-2016, by the third respondent, deputing the petitioner to the fifth respondent neither having been cancelled nor recalled, the action of the fourth respondent in passing the order dated 14-2016 is unjustified and illegal.

It is further contended that Section 29-G of the KCS Act provides for the appointment of a Chief Executive and that it is the State Government or the Registrar who are empowered in making such appointments. The said provision does not empower the fourth respondent to make any such appointment. Therefore, the appointment made by the fourth respondent is illegal and without jurisdiction and is liable to be quashed.

The petitioner's appointment as the Managing Director of the fifth respondent, having been challenged before this Court in a writ petition in W.P. Nos. 13002 and 13003 of 2016 and even during the pendency of the said petition, the fourth respondent having chosen to pass the order dated 1-4-2016, without seeking the permission of this Court, is an affront to this Court and grossly mischievous.

It is emphasised that the fifth respondent being an assisted society, it is only the State Government that could appoint the Chief Executive, Officer of the said Society.

5. The State Government has filed its statement of objections supporting the case of the petitioner.

6. In the Statement of objections on behalf of respondent 6, it is asserted that the said respondent has been appointed as the Managing Director of the fifth respondent-Union, based on his experience of managing various milk unions across the State of Karnataka. Details are furnished of the several milk unions with which he was associated since the year 1984 to date.

It is stated that the Government of Karnataka and the Indian Dairy Development Board Corporation had entered into an agreement, as on 5-6-1982, whereby the Government had undertaken to fulfil several conditions, one of which was that the Government would grant complete freedom in the creation of positions and recruitment of personnel to carry out the several projects pertaining to milk production. This was to be overseen by a Committee consisting of a nominee of the State Government, a nominee of the NDDB and the Managing Director of the Federation.

Insofar as the claim of the petitioner that the fifth respondent was an assisted society was concerned, on the ground that the State Government has allotted 15 acres of land to respondent 5 to establish a mega dairy, is concerned, it is pointed out that in terms of a memorandum of understanding dated 18-3-1989, between the state Government and the NDDB, it was assured that the State Government would provide land wherever required for the project, apart from assisting in procuring supply of electricity, water and other facilities by the State. Therefore, by virtue of land having been provided to establish a mega dairy, the fifth respondent cannot be considered as an "assisted society".

It is further contended that the Kolar Milk Union has entered into an agreement dated 21-8-2014, with the NDDB, that in consideration of the NDDB providing financial assistance from time to time subject to certain conditions, one of which

is that the appointment of the Chief Executive Officer of Union would be in consultation with the NDDB. By virtue of this condition not being complied with, the very relationship of the fifth respondent with the NDDB, is in jeopardy. This, it is stated, is evident from; letter dated 9-3-2016, received from NDDB by the fifth respondent expressing its discontent on a Chief Executive Officer being appointed without consulting it.

7. Respondents 4 and 5 have filed statement of objections to contend that in the State of Karnataka there exists a three tier structure of milk co-operative societies headed by the Karnataka Co-operative Milk Producers Federation Limited, the Co-operative Milk Unions, at the District Level and the Primary Milk Co-operative Societies at the village level. This was in keeping with the structure chosen by Dr. V. Kurien, who was instrumental in ushering in a revolution in the country insofar as dairy farming and milk production is concerned. This has been labelled the "White Revolution". In the State of Karnataka, the model conceived by Dr. Kurien, is being implemented since the year 1974. Commencing with a project called "Operation Flood-I", followed by "Operation Flood-II" in the year 1981 and Operation Flood-III", in the year 1989. In this regard it is stated that the implementation of the policies governing the projects, is by tacit agreements arrived at between the State Government, the National Dairy Development Board and the Karnataka Milk Federation, the apex body, in the State of Karnataka.

It is stated that the State Government itself has laid down the framework for successful implementation of various projects. It is specifically emphasised that the Co-operative sector would be provided adequate autonomy in its functioning. And that it was always evident that the common Cadre of officers in the KMF (above the scale of Rs. 3170-4191) would continue and officers would be posted on deputation to the Union. The State Government had committed itself to comply with the conditions specified by not only the NDDB but also the World Bank, the EEC and other funding agencies for the release of grants and loans. And that it is in this context that the NDDB has taken exception to the appointment of non-technical person as the Managing Director of the fifth respondent as per letters dated 2-3-2016 and 8-3-2016, addressed to the Chief Minister of Karnataka, seeking his intervention.

It is pointed out that the petitioner was the Joint Registrar Co-operative Societies and is functioning as the Director, Karnataka Warehousing Corporation and has no previous experience of managing a major milk union. Such appointment by the first respondent amounts to interference in the internal functioning of the respondent 5-society, the said respondents accordingly seek dismissal of the petition.

8. The connected writ petition in W.P. No. 20594 of 2016 is filed by the present Managing Director appointed by the Karnataka Milk Federation, as on 1-4-2016. The said petitioner and Federation are arrayed as respondents 6 and 4, respectively, in the first of these petitions.

The grounds raised in the writ petition are virtually the objections raised by them in the first of these petitions.

9. Having heard the learned Senior Advocates Sri Ashok Harnahalli, appearing for the Counsel for the petitioner in the first of these petitions and Sri Jayakumar S. Patil, appearing for the Counsel for the petitioner in the second of these petitions and Sri Ramachandran appearing for the KMF in these petitions, in the facts and circumstances of the case, it is held as follows.

For the sake of convenience, the parties are referred to by their ranking as found in the first of these petitions, in the next following paragraphs.

The fifth respondent is a registered co-operative society. The controversy is as to the appointment of the Chief Executive Officer of the said Society. The first of these petitions is filed by the person appointed or deputed by the State Government as the Managing Director or the CEO of the fifth respondent and the second petition is filed by the person appointed as such by the KMF.

It is not in dispute that the fifth respondent is a "District Co-operative Milk Union", and in terms of a Notification No. CO 226 CLM 2014, dated 6-6-2015, issued by the State Government, the Chief Executive Officer of such a union is to be made by deputation of an officer not below the rank of Joint Director from the KMF. If this prescription is applied, it would appear that the deputation by the State Government, of the petitioner, as the CEO of the fifth respondent is not in consonance with the same, whereas the deputation of the sixth respondent by the fourth respondent as the CEO of the fifth respondent is in order.

However, it is sought to be contended by the petitioner, and duly supported by the State Government, to the effect that the fifth respondent is an "assisted society", as defined under Section 2(a-1-1) of the KCS Act.

An assisted society? under the said definition is as follows:

"2. (a-1-1) "Assisted Society" means a co-operative society which has received the Government or State assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest."

And that in terms of Section 29-G of the KCS Act, in the case of an assisted society, it is the State Government or the Registrar who shall have the power to appoint or remove a CEO.

Reliance is placed on circumstances stated herein above to assert that the fifth respondent has received financial and other assistance to come within the scope of the definition of an assisted society. And the added circumstance that there was a nominee of the Government as a member of the Board of management of the said society, which was in terms of Section 28-A of the KCS Act, and the same was by virtue of the fifth respondent being treated as an assisted society.

10. It is therefore to be seen whether the fifth respondent can be construed as an assisted society under the provisions of the KCS Act, in letter and spirit.

It is seen that in the year 2011, a sum of Rs. 4 crore has been granted by the State Government, to the fifth respondent for the establishment of a Milk Processing Unit. Thereafter, an amount of Rs. 12 crore has been granted by the State Government to the said respondent, for establishing a Mega Dairy, in the year 2012. The State Government has also transferred an extent of 15 acres of land in Chikkaballapur District for the purpose of establishing a Mega Dairy. Further, in the financial years 2013-2014 and 2014-2015, a total amount of Rs. 20.09 Crore and Rs. 20.17 Crore, respectively, had been granted by the State Government for the Infrastructural development of the Union.

The question is whether the above support provided by the State Government would enable it to exercise such overriding power to appoint the CEO of the Union, inconsistent with the manner as specifically prescribed under a notification of the State Government itself, referred to herein above.

It is on record that the annual turnover of the fifth respondent-Union is in excess of Rs. 1000 Crore as on date. The assistance provided by the State Government, to the said respondent, in any given year does not seem to have exceeded 3 to 5% of its annual turnover. The State Government does not claim to have any share capital in the fifth respondent. It cannot therefore be said that the funding by the State Government is of such a substantial quantum as would be necessary for the very existence of a body; or that the very functioning of the institution so funded would be at stake, but for such assistance. (See *Thalappalam Service Co-operative Bank Limited v. State of Kerala*, (2013) 16 SCC 82).

It is only if the grant provided by the State Government is of such magnitude that an institution is able to run its day-to-day affairs and that without such grant or assistance, the very existence of the institution is at stake, that it would fall within the bracket of an assisted society and by extension be an arm of the State over which the State Government could exercise such pervasive control as to have an overarching domination of appointing the CEO of the institution, wresting such power otherwise conferred on a body such as the KMF, as in the present case on hand, which incidentally, is a body which is held to be an instrumentality of State under Article 12 of the Constitution of India. (See: *WA No. 2012 of 1989*, decided on 22-10-1993, *K.V. Panduranga Rao v. KDDC*, (FB))

The State Government can appoint a Government representative as the Managing Director of a Co-operative Society under Section 29-G(1) of the KCS Act, only if there is a society assisted by the State Government in a substantial measure. The State Government does not have a share capital, nor has the State Government made any budgetary grants to the fifth respondent. Financial aid provided to improve infrastructure and provision of land, are not grants in the nature of budgetary allocation and the fifth respondent cannot be called an assisted society defined under the KCS Act.

If the expression "grant", employed in the definition of an "assisted society", under the KCS Act is to be given an interpretation, whereby any single grant

made by the State Government in a given financial year, irrespective of the degree of support such "grant" would actually assist the Society, it would lead to a situation where the State Gov eminent could, by virtue of an insignificant "grant", claim a right to exercise power, overriding the power which may have been conferred on some other body or authority, as in the present case on hand. And such power could then be exercised for an indefinite period of time. This would run counter to the Constitutional mandate under Article 43-B of the Constitution of India, imposing a duty on the State to promote the voluntary formation, autonomous functioning, democratic control and professional management of Co-operative Societies.

The deputation of the petitioner as the Managing Director of the fifth respondent is contrary to Article 243-ZI of the Constitution of India, which] again mandates that Co-operative Societies must function democratically and must have an autonomous functioning structure. Incidentally, the fifth respondent does not answer to the definition of a State or an instrumentality of State.

11. In the light of the above discussion, the writ petition in W.P. No. 19162 of 2016 is dismissed and the writ petition in W.P. No. 20594 of 2016 is allowed in part, as there is no warrant to strike down Section 29-G(1)(i) as being unconstitutional, as prayed for at item (ii) of the prayer. The grievance of the petitioner, in this petition, is adequately addressed, in the fifth respondent having been declared as not answering to the definition of an "assisted society" under the KCS Act, in the present circumstances.