

(2014) 03 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 6943 of 2014 (CS-EL/M) connected with Writ Petition Nos. 83 and 10005 of 2014 (CS-EL/M), 10888 of 2014, 12132 to 12135 of 2014 (CS-ELE) and 10963 and 12125 to 12131 of 2014 (CS-EL/M)

Raviraja Hegde

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 243-ZK, 243-ZL, 243-ZT
Karnataka Co-operative Societies Act, 1959 — Section 121, 21(2), 28-A(4), 28-A(5), 28-B

Citation : (2014) 4 KarLJ 115

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Sriyuths K. Chandrashekar Achar, S.K. Acharya and Jayakumar S. Patil, Senior Counsel for Varun Jayakumar Patil, Advocate for the Appellant; Sriyuths A.G. Shivanna, Additional Advocate General, Kiran Kumar T.L., Additional Government Advocate, M. Keshava Reddy, Abhinav R. for Kumar and Kumar, K. Chandrashekar Achar and Dayanand S. Patil, Advocate for the Respondent

Judgement

B.S. Patil, J.—In these writ petitions, common questions of law and facts arise for consideration- Hence, they are clubbed, heard together and are disposed of by this common order. For the sake of convenience, the facts and grounds urged in W.P. No. 10005 of 2014 are referred in this order.

2. 1st petitioner-Milk Producers Societies Union Limited and other petitioners who are the elected Directors of the 1st petitioner-Union are challenging Annexure-H - communication dated 29-1-2014 of the State Government addressed to the Karnataka State Co-operative Election Commission informing that in respect of such of the Managing Committees of the Societies whose term comes to an end by 31-3-2014, elections could be held to elect the new Managing Committee after the expiry of the present term but, until the elections are held, an

Administrator could be appointed to enable him to conduct the elections, and therefore, there was no need to resort to removal of difficulty clause as suggested by the Election Commission.

3. The second relief sought in the writ petition is, for a writ of mandamus directing the respondents to hold that the term of the Board of the 1st petitioner-Union would expire only on 30-6-2014 or in the alternative, direct the respondents to conduct election to the 1st petitioner-Union on or before 31-3-2014. An interim relief is sought to stay the communication -Annexure-H and to prevent the respondents from appointing a Special Officer/Administrator to the 1st petitioner-Union.

4. Undisputed facts are that election to the Managing Committee of the 1st petitioner-Union was required to be held on or before 31-3-2009. But, the State Government in exercise of its power u/s 121 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") issued a notification as per Annexure-N, postponing the elections taking note of the impending Lok Sabha Elections scheduled during April/May 2009. The Government order stated that in exercise of the power under Sections 39-AA(4) and 121 of the Act, and by relaxing the provisions contained in Sections 28-A(4), 28-A(5) and 28-B(2), 29-F(4) and 39-A(2) of the Act, elections scheduled to the petitioner-Union and other similarly placed societies were postponed and re-scheduled to be held in accordance with the time schedule notified in the very Government order. As per the said time schedule, elections to the 1st petitioner-Union which is a federal society was held on 1-7-2009.

5. According to the petitioners, as per unamended provision contained u/s 28-A(4) of the Act, the term of office of the members of the committee was five co-operative years and they shall be deemed to have vacated the office as such members of the committee on the date of completion of the said term, and if elections were to be held in the middle of the co-operative year, the remaining term should be considered as one co-operative year, thereby giving room to hold that the term of the committee of the petitioner would come to an end on 31-3-2014 and elections ought to have been held within 15 days from 31-3-2014. But, Sections 28-A(5) and 39-A of the Act, having been amended by Act No. 6 of 2010 with effect from 30-3-2010, as per the amended provisions, there is a conceptual change brought about.

6. It is urged that in terms of Section 28-A(4) of the Act, the term of office of the members of the Board shall be five years "from the date of election" and they shall be deemed to have vacated office as such members of the Board on the date of completion of the said term. According to the petitioners, the effect of the amendment made to Sections 28-A(4), 39-A(2) and 28-A(5) and also the amendment made to the definition of the term "co-operative year" in Section 2(d-1) as per Act No. 3 of 2013 is that the term of office of the members of the Board shall be five years from the date of election and not from the date of expiry of the co-operative year.

7. In W.P. No. 83 of 2014, election for the board of 2nd respondent-DCC Bank was held during February 2009 for a period of five years commencing on 1-4-2009. Therefore, the term of the Board comes to an end on 31-3-2014. Petitioner has made several representations requesting the respondent-authorities to hold election before the expiry of the term of the Board. In this case, apart from seeking a direction to hold elections on or before 31-3-2014, they have also sought for similar relief as is sought in the connected writ petitions for holding that the term of the Board shall continue till the new Board is constituted by holding elections as per the amended provisions of the Act referred to above.

8. Mr. Jayakumar S. Patil, learned Senior Counsel appearing for the petitioners, taking me through the historical background of various amendments made from time to time to these provisions including the 97th Amendment introduced to the Constitution of India, particularly Articles 243-ZK, 243-ZL and 243-ZT, submits that the amendment introduced by substituting earlier provisions have the effect of providing that the term of office of the petitioners as members of the Managing Committee of the 1st petitioner-Union shall be five years from 1-7-2009, which means that it will expire on 30-6-2014. He, therefore, contends that respondent-authorities cannot appoint an Administrator, thereby interfering with the democratic functioning of the duly elected Managing Committee of the 1st petitioner.

9. In the alternative, he submits that if it were to be held that the term of the Managing Committee of the 1st petitioner-Union expires on 31-3-2014, then a direction may be issued to the respondents to conduct election to the Managing Committee of the 1st petitioner-Union well before the expiry of the said period in terms of the provision u/s 28-B of the Act.

10. The mandate of Section 28-B, no doubt is, that election of a Board shall be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the term of office of the members of the outgoing Board. It is also true that as per Section 98-Q of the Act which is applicable to the societies coming under the co-operative credit structure, as introduced by Act No. 6 of 2010 with effect from 3-11-2009, election to the Managing Committee of the co-operative society shall be conducted before the expiry of the term of the existing committee.

11. However, learned Additional Advocate General Mr. A.G. Shivanna and learned Counsel Mr. Keshava Reddy appearing for the Karnataka State Co-operative Election Committee, places for perusal before the Court, a judgment dated 31-1-2014 passed by a Division Bench of this Court in W.A. Nos. 100076 to 100080 of 2014 (CS-EL/M) (Shankarappa and Others Vs. Co-operative Election Commission and Others,) and connected cases, to contend that question raised in this case is no longer res integra. This Court has already held, in respect of committees of primary societies for which elections were held prior to amendment to Section 28-A(4), that the said amendment has no retrospective

application. It is held in the order referred to above that amendment to Section 28-A(4) introduced by Amendment Act No. 3 of 2013 with effect from 11-2-2013 by substituting the words "five years from the date of election", in place of "five co-operative years", has no application to committees constituted earlier and that the term of such committees will come to an end upon the expiry of "five co-operative years" i.e., on 31-3-2014.

12. In the light of the view taken by the Division Bench, though several contentions are urged, question of examining these contentions does not arise. Consideration of the contention with regard to the mandate of law and the democratic member control that is introduced by way of 97th amendment to the Constitution and also the effect of Articles 243-ZL and 243-ZT would become an academic exercise.

13. Insofar as the alternative relief sought seeking a direction to the respondents to conduct elections to the 1st petitioner-Union on or before 31-3-2014, learned Counsel for the respondents submits that as per the provisions contained in Section 21(2) of the Act, elections to elect a new Board to the secondary Co-operative Societies is under progress and it is the representative of the secondary co-operative society who will participate in the election to elect the member of the Board of federal society. Therefore, only after the election to the secondary society, elections to the new Board of the petitioner-Union will be held. It is also necessary to notice here the provision contained u/s 39-A(2) of the Act, which provides that the electoral process for holding election to the federal society shall commence thirty days after the completion of the elections of the secondary societies.

14. In the light of Article 243-ZK of the Constitution of India and in view of the amendments now brought about by the State Legislature which is in tune with the intention of the 97th Amendment to the Constitution of India, the merit of this stand requires serious consideration. However, having regard to the decision of the Division Bench referred to supra and in the light of the fact that election to the secondary societies is not yet completed, mandamus as sought by the petitioners cannot be granted. Hence, these writ petitions are dismissed.