

(2007) 10 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 16060 of 2007

Ronald Jerome D'Souza

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 29 C, 29 C (1) (a)

Citation : (2007) ILR (Kar) 5286 : (2008) 2 KarLJ 271 : (2007) 4 KCCR 2751

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.M. Krishna Bhat, for the Appellant; G. Chandrashekaraiah, AGA, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, questioning the legality and validity of the impugned order/notice (as claimed by petitioner) dated 28th September 2007 bearing No. UBC/4/77/ (disqualification)/ 2007-08 passed/issued by second respondent herein, has presented the instant writ petition.

2. The only grievance of petitioner in the instant writ petition is that, petitioner is one of the elected Directors of the Managing Committee of the Akshaya Co-operative Credit Society Limited, Karwar, Uttara Kannada District ("Society" for short). When petitioner was so discharging his duties as elected Director of the said Society, to the shock and surprise of petitioner, the impugned order cum notice dated 28th September 2007 vide Annexure A came to be issued without issuing notice to the petitioner and without giving reasonable opportunity of hearing to the petitioner to meet the allegations made against the petitioner. Therefore, it is the case of petitioner that, the second respondent has proceeded to issue the impugned order cum notice, which is one without jurisdiction for the reason that, the same is issued on the basis of the alleged report submitted by third respondent. Therefore, being aggrieved by the impugned notice issued by second respondent, invoking its power u/s 29-C(1)(a) of the Karnataka Co-

operative Societies Act, 1959, as referred above, petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.

3. The principal submission canvassed by learned Counsel appearing for petitioner is that, the second respondent has no jurisdiction as such to hold that, petitioner has been disqualified for being continued as member of the Committee of Management of the said Society without following the procedure known to law in as much as the petitioner was not given an opportunity of hearing and therefore, the action of second respondent is opposed to principles of natural justice. Further, it is pleaded that, the assertion made by second respondent in the impugned notice that, petitioner suffered disqualification under different heads of Accounts and on different dates and that, He has borrowed and has not paid back the loan etc. and hence, it became difficult is absolutely incorrect for the reason that, the second respondent has not supplied to the petitioner all the required particulars of the information as required under law. Therefore, the contents of the notice are extremely bald and as vague as it could be. Further, it is canvassed that, petitioner has not been issued with any notice or reminders from the said Society nor from the Deputy Registrar of Co-operative Societies, Karwar at any point of time earlier to the alleged report of the third respondent referred in the impugned notice. Therefore, learned Counsel appearing for petitioner submitted that, the impugned notice issued by second respondent vide Annexure A is liable to be set aside at the threshold itself as the same is one without jurisdiction. Further, he vehemently submitted that, when the law itself states that, the disqualification to continue as Member of the Society in question is a very serious matter and the second respondent has no power to remove the petitioner from the Membership of the Board of Management of the said Society unless the petitioner incurs disqualification to continue as Member, he is entitled to continue as Member of the Committee of Management of the Society in question. This being the law, the impugned order passed by second respondent is liable to be quashed at the threshold itself. To substantiate the said proposition and the subject matter involved in the instant writ petition, learned Counsel for petitioner placed reliance on the judgment of this Court reported in Channabasappa Vs. State of Karnataka and Another, and also taken me through the relevant provision of Section 29-C(1) (a) of the Karnataka Cooperative Societies Act, 1959 ("Act" for brevity) and submitted that, the statute has not provided any power to the second respondent to issue the impugned notice cum order, disqualifying the petitioner without affording opportunity. Therefore, taking into consideration, the grounds urged by petitioner, as referred above, the impugned notice cum order issued/passed by second respondent is liable to be set aside.

4. Per contra, learned Additional Government Advocate appearing for respondents, inter alia, contended and submitted that, the impugned notice issued by second respondent by invoking Section 29-C(1)(a) of the Act is purely on the basis of the report submitted by third respondent. It is crystal clear from

the contents and preamble of the notice that, as per the report submitted by third respondent, the petitioner who is one of the Directors of the Akshaya Co-operative Credit Society Limited, Karwar has drawn amounts under different heads/accounts and has failed to repay the said amounts well within the time and therefore, he has been issued with the show cause notice, calling upon him to comply with the mandatory requirement of Section 29-C of the Act. Further, he submitted that, the impugned notice cum order, as contended by petitioner is only a show cause notice issued to petitioner, affording an opportunity and calling upon him to file the objections, if any, in writing and appear before the second respondent on 15th October 2007 at 11.00 A.M. failing which, appropriate decision will be taken in accordance with law. Therefore, he submitted that, the second respondent has not committed any error or illegality in issuing the impugned notice nor petitioner has made out any good grounds to entertain the instant writ petition and hence, the prayer sought for by petitioner is liable to be rejected at the threshold itself.

5. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents.

6. After careful perusal of the impugned notice dated 28th September 2007 issued by second respondent vide Annexure A, it is crystal clear that, the said notice has been issued solely on the basis of the report submitted by third respondent dated 7th September 2007 bearing No. DRN/D/complaint application /2007-08 and it has been specifically referred that, as per the report of the said authority, petitioner has obtained loan under different heads/Accounts and thereafter, has failed to repay the said loan within the time and consequently, has become a defaulter. Therefore, the second respondent, exercising the power conferred upon the said authority under the statute u/s 29-C(1)(a) of Karnataka Co-operative Societies Act, has rightly issued the impugned notice calling upon the petitioner to show cause as to why petitioner should not be disqualified and membership should not be cancelled. Further, an opportunity has been afforded by the said authority by issuing the impugned notice, mentioning that, if he has to say anything in the matter, he is entitled to give his reply in writing and to be present before the said authority on 15th October 2007 at 11.00 A.M. to substantiate his stand. Further, it is stated that, if petitioner fails to reply and be present before the said authority, it will be presumed and accepted that, he does not have any defence as such and appropriate proceedings will be initiated as per the mandatory provisions of the Act. Therefore, from a plain reading of the impugned notice issued by second respondent, it can easily be concluded that, it is only a show cause notice, calling upon the petitioner to put forth his case regarding the contents of the report submitted by third respondent in due compliance with the statutory provisions of the Act, as referred above and to show cause as to why he should not be disqualified from the Directorship of the Committee of Management of the said Society. There is no disqualification order as such passed by the competent authority and before passing such an order, petitioner has been issued with the

impugned show cause notice calling upon him to have his say in the matter regarding disqualification. Therefore, the impugned notice vide Annexure A is not a disqualification order itself as futilely contended by learned Counsel for petitioner. Therefore, the said submission of the learned Counsel for petitioner falls to dust in view of the specific reference made in the impugned notice to the effect that, petitioner having obtained loan and not paid the same, has become defaulter and as such has become ineligible to continue as Director of the said Society or member of Committee of Management of any other Cooperative Society of the State and called upon the petitioner to have his say in the matter and be present on 15th October 2007. Before appearing before the said authority and putting forth his case, petitioner has rushed to this Court stating that, petitioner has been disqualified from the membership of the Committee of Management of the said Society. Therefore, petitioner is not entitled to assail the correctness of the impugned notice by invoking the extra ordinary jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution of India. Petitioner cannot maintain the writ petition against the show cause notice issued calling upon him to show cause as to why he should not be disqualified. Anyway, it is very much open for petitioner to take such defence and urge all the grounds urged in the petition by way of reply to the said notice and substantiate his case before the second respondent. It is settled proposition of law laid down in catena of judgments that, interference in notice issued by the jurisdictional competent authority exercising its power under the statute is not justifiable nor I find any such good grounds to entertain the instant writ petition. Hence, the writ petition filed by petitioner is liable to be dismissed on this ground alone.

7. So far as the reliance placed by learned Counsel for petitioner, as referred supra is concerned, it is seen that, the ratio of law laid down in the said case is, the person nominated as member does not hold office during pleasure of State Government which has nominated him, but is entitled to hold office till expiry of term specified in the order of nomination, unless he incurs disqualification to continue as member and that State Government has no power to arbitrarily remove nominated member. In the instant case on hand, the decision of disqualification of petitioner is yet to be taken by the competent authority after reply, if any, filed by petitioner and his appearance on 15th October 2007 and the impugned notice vide Annexure A is only a show cause notice calling upon the petitioner as to why he should not be disqualified and to reply to the same and be present on some specific date. Therefore, the reliance placed by learned Counsel for petitioner, is of no assistance to him in the instant writ petition nor the principle of law laid down in the said decision can be made applicable to the facts of the case on hand.

8. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is liable to be dismissed. Accordingly, it is dismissed, reserving liberty to petitioner to redress his grievance before the appropriate competent authority, as envisaged under the relevant provisions of the Karnataka Cooperative Societies Act and Rules, if he is so advised or if it is

required. Ordered accordingly.

9. Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents within three weeks from today.