

(2010) 09 KAR CK 0162

In the Karnataka High Court

Case No : Writ Petition No"s. 25816 to 25818 of 2010

S. Prakash and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2 (a-1), 29 (1)

Citation : (2011) 2 KarLJ 181

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy and H.N. Shashidhara, for the Appellant;
Sriyuths M. Keshava Reddy, A.G.A., T.S. Mahantesh and Jayakumar S. Patil,
Jayakumar S. Patil and Associates, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—In these cases, the Petitioners have challenged the order at Annexure-D, dated 11-8-2010 issued by the 1st Respondent whereby Respondents 4 to 6 were nominated to the Managing Committee of the Kolar District Co-operative Union Limited, Kolar and for a declaration that the election of Respondents 7 and 8 as the Adhyaksha and the Upadhyaksha of the 3rd Respondent as illegal.

2. The Petitioners are the members of the Kolar District Co-operative Union Limited-the 3rd Respondent herein. The total number of members of the Managing Committee of the 3rd Respondent is twenty-one. Seventeen of them are elected directly and four are the ex officio members. The election to the Committee of Management of the 3rd Respondent was held on 29-7-2010. It is contended that after declaration of the results, the Chief Executive Officer issued a notice dated 5-8-2010 for election of the Adhyaksha and the Upadhyaksha for the first two and half years. The Government of Karnataka by Notification No. CEO 106 CNS 2010, dated 11-8-2010 has nominated Respondents 4 to 6 to the Managing Committee of the 3rd Respondent. It is further contended that the

Joint Registrar of Co-operative Societies, Bangalore, had passed an ex parte order dated 11-8-2010, at the instance of one of the defeated candidates restraining the 3rd Petitioner from participating in the election of the Adhyaksha and the Upadhyaksha scheduled on 12-8-2010. The other elected members were not aware of the nomination of Respondents 4 to 6 and the restraint order. They have submitted their nominations to contest the election of the Adhyaksha and the Upadhyaksha on 12-8-2010. They came to know the nomination of three members only on 12-8-2010. The Chairperson adjourned the meeting commenced at 12.30 a.m. because of the chaos and commotion and left the premises along with the Petitioners. Thereafter, 13 members of the Managing Committee including the 3 nominated members and 3 ex officio members continued the meeting and elected Respondents 7 and 8 as the Adhyaksha and the Upadhyaksha for the first two and half years. It is further contended that the Government has not financially assisted the 3rd Respondent at any point of time. For the last 50 years, the Government has not made the nomination to the Managing Committee of the 3rd Respondent. Out of the 17 elected members, 14 members are opposed to Bharatiya Janatha Party and 3 members are the supporters of Bharatiya Janatha Party. The supporters of Bharatiya Janatha Party created chaos in the meeting to enable Respondents 7 and 8 to become the Adhyaksha and the Upadhyaksha.

3. The 1st Respondent has filed the objections contending that the 3rd Respondent is an assisted society. The Zilla Panchayat, Kolar, had granted a sum of Rs. 1,00,000/- to the 3rd Respondent for the construction of the Sahakari Bhavana. During the year 1996, the Zilla Panchayat had again granted a sum of Rs. 3,00,000/- to the 3rd Respondent for completion of the construction of the Sahakari Bhavana. Thus, the Zilla Panchayat had granted a total sum of Rs. 4,00,000/- to the 3rd Respondent. It is further contended that as per Article 12 of the Constitution of India, the State includes Government and Legislature of each State and all the local or other authorities. The expression local authority" includes a panchayath or other bodies coming within the definition of local authority. Thus, the 3rd Respondent is an assisted society as defined u/s 2(a-1) of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act"). The nomination made by the Government to the 3rd Respondent is just and proper.

4. Sri D.N. Nanjunda Reddy, learned Senior Counsel, appearing for the Petitioners submits that the 3rd Respondent is not an assisted society in accordance with Section 2(a-1) of the Act. Therefore, the State Government cannot nominate members to the committee of management of the 3rd Respondent. It is further argued that the definition of the "assisted society" has been amended with effect from 3-11-2009. In place of the word "Government", the words "Government or State" has been substituted with effect from 3-11-2009. The grant made by the Zilla Panchayat as per Annexures-R1 to R3 are dated 20-4-1993, 31-3-1994 and 30-3-1996 respectively. The grant made by the Zilla Panchayat from 1994-96 cannot be taken into account for holding the 3rd Respondent as an assisted society in the year 2010. The Zilla Panchayat was

not included in the definition of the "Assisted society" when the grant was made. It is further submitted that the Petitioners are confining these writ petitions for challenging the order at Annexure-D nominating Respondents 4 to 6 to the Managing Committee of the 3rd Respondent. They may be permitted to avail the alternative remedy to challenge the election of Respondents 7 and 8 as the Adhyaksha and the Upadhyaksha of the 3rd Respondent before the Competent Authority.

5. On the other hand, Sri Jayakumar S. Patil, learned Senior Counsel appearing for Respondents 4 to 8 submits that the 3rd Respondent was granted an assistance of Rs. 1,00,000/- as per Annexures-R1 and R2 and another sum of Rs. 3,00,000/- as per Annexure-R3. The Zilla Panchayat is a deemed State under Article 12 of the Constitution. The State Government had given grant to the Zilla Panchayat for different purposes and the Zilla Panchayat, in turn, has assisted the 3rd Respondent out of the funds allocated by the State Government. Therefore, it cannot be said that the 3rd Respondent is not an assisted society. Sri M. Keshava Reddy, learned Additional Government Advocate appearing for Respondents 1 and 2 submits that the 3rd Respondent is an assisted society having received the grant of Rs. 4,00,000/- from the Zilla Panchayat.

6. Having regard to the contentions urged, the question for consideration is whether the nomination of Respondents 4 to 6 made by the State Government to the Managing Committee of Respondent 3 is valid?

7. The State Government has nominated Respondents 4 to 6 to the committee of management of the 3rd Respondent u/s 29(1) of the Act. Section 29(1) of the Act is as under:

29. Nominees of Government on the committee of an assisted co-operative society.--(1) The State Government may nominate not more than three persons as its representatives on the committee of any assisted society of whom one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a woman.

8. Section 2(a-1) of the Act defines the expression "assisted society". Before the amendment, an assisted society was defined as under:

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

By Act No. 6 of 2010, which has come into force with effect from 3-11-2009, the word "Government" has been substituted by the words "Government or State". The definition of the expression "Assisted Society with effect from 3-11-2009 is as under:

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.

9. This Court in *H. Raveendra and Ors. v. State of Karnataka and Ors.* (in W.P. No. 6796 of 2007, disposed on 5-11-2007) was considering the validity of the nomination of its representatives by the State Government to the Managing Committee of a society prior to the amendment of Section 2(a-1) of the Act. In the said case, the Zilla Panchayat had granted a sum of Rs. 30,000/- to the Society towards building fund. This Court held that the assistance from the Zilla Panchayat would not make it a grant from the Government and it is not the case of the Government that it had granted a sum of Rs. 30,000/- by way of loan for the construction of the building. Therefore, the society in question is not an assisted society. The State Government has no power to nominate its representatives to the society. It appears that the said decision is the main reason for amending the definition of the expression "Assisted Society".

10. Section 29(1) of the Act authorises the State Government to nominate its representatives on the committee of any society. The word "Government" referred to in the definition of "assisted society" is the "State Government" exercising administrative or executive authority. It does not include local or other authorities. That is why the word "State" has been included in the definition, which in the context includes not only the State Government but also the local authorities as well as other authorities, which include the "instrumentalities" or "agencies" of the State or bodies or institutions, which discharge public functions of the Governmental character. A local authority is a representative body, which includes a Zilla Panchayat. It is an institution of local self-Government in the rural area. If a Co-operative Society receives assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest from the State, local authorities such as Zilla Panchayat or other authorities after the amendment of Section 2(a-1) by Act No. 6 of 2010 with effect from 3-11-2009, it can be treated as an "assisted society". However, the nomination should be made within a reasonable time from the date of providing the assistance.

11. In the instant case, the Zilla Panchayat had given the grant of Rs. 3,00,000/- in the years 1994 and 1996, which is clear from Annexures-R1 to R3. During the said period, the word "State" was not a part of the definition of the expression "Assisted Society". It is not the case of the Respondents that the 3rd Respondent has received the assistance from the Zilla Panchayat after the amendment of Section 2(a-1). The assistance received by the Society some time in the past cannot be taken into account for treating it as an assisted society. The nomination u/s 29(1) of the Act should have been made within a reasonable period from the date of receipt of the assistance. Since time is not stipulated in the statute, the power to nominate the members should be exercised within a reasonable time from the date of rendering assistance. It is relevant to note here that while defining the expression "assisted society", present perfect tense has been used, which clearly indicates that the assistance must have been received in the immediate past and not at any time in the past. The cardinal rule of construction of statute is to read the statute literally, that is, by giving to the words their ordinary, natural and grammatical meaning unless that leads to some

absurdity or the words are susceptible of another meaning. In the instant case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction. A Division Bench of this Court in Ganapathy Seetharam Bhat Vs. State of Karnataka, has taken a similar view, which is as under.

Admittedly, in the instant case, the State Government ceased to be a shareholder because the subscription made to the share capital has been returned. It cannot be considered that the State Government continues to be a member or it can be deemed to be a member only because at some time past the State Government had subscribed to the share capital.

(emphasis supplied)

12. In the light of the above discussion, I am of the view that the nomination made by the State Government as per the order at Annexure-D, dated 11-8-2010 is without authority of law. The writ petitions are accordingly allowed and the order at Annexure-D, dated 11-8-2010 is hereby quashed. Liberty is reserved to the Petitioners to challenge the validity of the election of Respondents 7 and 8 as the Adhyaksha and the Upadhyaksha of the 3rd Respondent before the Competent Authority in accordance with law. No costs.