
(1988) 07 KAR CK 0027
In the Karnataka High Court
Case No : W.P. Nos. 9954-9955/1988

S. Shivarudrappa and Another

APPELLANT

Vs

Member Common Cadre Committee and M.D., Bellary District-
central Co-op. Bank Ltd. and Others

RESPONDENT

Date of Decision : 07-07-1988

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 128A

Citation : (1988) 3 KarLJ 597

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In both these petitions, the petitioners have prayed for a declaration that Section 128-A of the Karnataka Co-operative Societies Act as introduced by Act No.5/1984 is unconstitutional and have sought for a consequential relief to the effect that the Common Cadre Committee for Bellary District constituted under that Section was without authority of law and is invalid. They have also prayed for striking down Regulation 29 of the regulations framed under Section 128A of the Karnataka Co-operative Societies Act, 1959 (in short the Act) on the ground that it was violative of Article 14 of the Constitution and for quashing the disciplinary proceedings pending against them.

2. The petitioner in W.P.No.9954 of 1988 is the Secretary of Vyavasaya Seva Sahakara Sangha Niyamitha, Chittawadagi, Hospet Taluk and the petitioner in W.P.No.9955 of 1988 is the Secretary of Vyavasaya Seva Sahakara Sangha Niyamitha, Alabur, Hagaribommanahalli Taluk, Bellary District. In respect of both these persons, 1st respondent, the Common Cadre Committee has instituted the disciplinary proceedings, which are still pending.

3. Section 128A of the Act introduced by Act No.5/1964 reads:

"128A. Constitution of a common cadre- (1) Notwithstanding anything contained in this Act, the rules or the bye-laws, where the Registrar, in the interest of the co-operative movement, considers that the creation of a common cadre of employees for any class of co-operative societies is necessary, he shall authorise

one or more federal societies to which such class of co-operative societies is affiliated to exercise the power or appointment, transfer and disciplinary action in respect of such categories of employees of that class of co-operative societies as may be specified by him and make such regulations as may be necessary for carrying out the said purpose. Where such federal society is so authorised by the Registrar, the affiliated co-operative societies shall not have powers to deal with such categories of employees except to the extent the regulation may permit.

(2) The Registrar shall have power to require the affiliated co-operative societies to make contribution of such sum every year towards expenditure, as the federal society is likely to incur or has incurred for the purpose. If any co-operative society fails to pay the said sum to such authority as may be specified by the Registrar and within the time fixed by him, the Registrar may on the application of the authority, and after such enquiry as he may consider necessary make an order requiring the co-operative society to pay the amount, and every such order shall be enforceable against the co-operative society as if it were an award under Section 71."

4. The contention of the petitioners is that the provision is liable to be struck down on the ground that it suffers from the Vice of delegation of essential Legislative function. It is also the contention of the petitioners that as under Section 129(2)(o) of the Act, the power to make rules is conferred on the State Government for regulating recruitment and conditions of service of employees of the Co-operative Societies, there was no justification for creation of a parallel authority for regulating the recruitment and conditions of service of certain categories of employees alone under Section 128A of the Act and by conferring the power to frame regulations on the Registrar of Co-operative Societies.

5. Sri Gurumath, learned Counsel for the petitioners strenuously contended that Section 128A of the Act contained no guidelines at all and consequently, it was a clear case of conferment of unguided power on the delegated authority and also amounts to excessive delegations or abdication of essential Legislative function. In support of the above contention, the learned Counsel relied on the judgment of the Supreme Court in *Harakchand Ratanchand Banthia and Others v Union of India and Others* (A.I.R. 1970 S.C. 1453). In particular, he referred to the portion of the judgment in which the Supreme Court held that Section 5(2)(b) of the Gold (Control) Act was invalid. The relevant portion of the judgment reads:

"It is manifest upon a review of all these provisions that the power conferred upon the Administrator under Section 5(2)(b) is legislative in character and extremely wide."

6. If Section 128A could be said to suffer from the infirmities pointed by the Supreme Court in respect of Section 5(2)(b) of the Gold (Control) Act, the contention of the learned Counsel for the petitioners would have been unexceptionable. But a plain reading of Section 128A at once shows that it has got sufficient guidelines. Firstly, the provision is applicable only to a special class

of co-operative societies. Secondly, it is only applicable to such class of co-operative societies which are affiliated to one federal society. Thirdly, the Registrar is required to consider that in the interest of co-operative movement framing of regulation covering certain specified categories of employees of such societies is necessary. It is only when these conditions are satisfied the Registrar has to name the federal society concerned as Common Cadre Committee, and thereafter regulations are required to be framed for regulating the conduct and discipline of the specified categories of employees. The Section extracted above was substituted in place of the existing Section 128A which provided for constituting a common cadre authority for similar purpose. The constitutional validity of the said provision has been the subject matter of challenge before this Court in *Primary co-operative Land Development Bank Ltd. v State of Karnataka* (I.L.R. 1986 Kar. 42). The Division Bench rejected the contention and upheld the validity of the said provision.

7. By the time the aforesaid decision was rendered new Section 128A had already come into force. Regarding the constitutional validity of the new Section, the Division Bench observed thus:

"In these petitions the petitioners have not challenged the validity of Section 128A substituted by the Ordinance and reenacted by the 1984 Act. We must, therefore, presume that petitioners had challenged its validity, then the same had to be held as valid for the very reasons on which we have upheld Section 128A as valid."

8. The learned Counsel for the petitioners submitted that as new Section 128A was not the subject matter of challenge in those petitions, the above observations were only obiter and not binding. The learned counsel for the petitioners is right in saying that the decision is only an obiter and therefore, it is not binding. But after considering the contention advanced by the Learned Counsel, I respectfully agree with the view expressed therein. I am also of the view that for the very reasons which constituted the basis to uphold the old Section 128A the new Section also has to be upheld.

9. The learned Counsel submitted that the provisions for not laying the regulations before the Legislative was fatal to the validity of Section 128A. I find no substance in the contention. It is for the Legislature in its wisdom to decide as to whether any subordinate legislation required to be made under any enactment should be laid before the Legislature or not. Even when provision for laying has been made it is settled law that it is not a mandatory provision. Therefore, the mere absence of a provision for not laying regulations framed by the Registrar under Section 128A before the Legislature is not a ground to strike down the provision of Section 128A of the Act.

10. The next contention of the petitioners is that the constitution of common cadre committee itself is illegal. The constitution is only a consequence of Section 128A. Once Section 128A is held to be constitutionally valid, it follows that the

constitution of the committee also has to be declared as valid.

11. The third contention of the petitioners is that Regulation 29 was arbitrary and violative of Article 14 of the Constitution. It reads:

"Disciplinary authority; The Managing Committee of the Primary Society in which the Secretary is working may impose any of the minor penalties. Major penalties may be imposed by the Committee. When the employee is not working in any Primary Society for reasons of leave etc., the committee will be the Authority to impose any penalty."

Under the above Regulation in respect of the Secretary of the Societies to which Section 128A applies, the Managing Committee of the Society concerned is given the power to impose minor penalty. The power to impose major penalty on the Secretary is conferred on the Committee i.e., Common Cadre Committee constituted under Section 128A of the Act. In certain cases where a Secretary concerned or the employee is not actually working in any primary society the power to take disciplinary proceedings is conferred on the Common Cadre Committee. I fail to see as to Regulation 29 can be regarded as suffering from any infirmity. The very object and purpose of Section 128A, as is clearly discernible from the scheme of the provision, is to create a central authority for regulating disciplinary control over the persons holding a few important posts such as those of Secretaries. The Legislature has considered that a higher authority was necessary for exercising disciplinary control over such officers. Regulation 29 is in accord with the scheme and purpose of Section 128A of the Act. Therefore, there is no substance in the said contention also.

12. The last contention of the petitioners was about the legality of the disciplinary proceedings instituted against them. This challenge is premature. If and when final orders are passed against the petitioners in the disciplinary proceedings they have to resort to appropriate remedies against such orders. The same answer applies regarding the contention raised by the petitioners relying on Section 69 of the Act and also the contention that the regulations could not be deemed to have come into force for want of sufficient publication which is a question of fact. These contentions are left open.

13. In the result, I make the following order:

Both the petitions are rejected leaving only such of the contentions open, as indicated in this order.