(1988) 08 KAR CK 0033

In the Karnataka High Court

Case No : W.P. No. 18267/1987

Shambu Shetty T. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 02-08-1988

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 53A

Citation : (1988) 2 KarLJ 342

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantharaj Urs, J.-Petitioner has questioned the legality of the nominations of respondents 4 to 6 to the Board of Directors or Committee of Management of the South Canara District Central Co-operative Bank Ltd., (hereinafter referred to as the Bank), respondent No. 3, made by the first respondent-State of Karnataka.

2. Briefly stated the case made out for the relief of quashing the nominations in question is as follows:

Election to the Committee of Management of the Board of Directors of the Bank was held on 27-11-1987 and 13 members were elected; of them 8 members belong to Congress (I) Party, while 4 members belong to Janata Party and one member belongs to Bharateeya Janata Party. The Secretary of the Bank issued notice of first meeting to elect the President of the Bank on 30-11-1987 fixing 11-12-1987 as the date of the meeting. By a notification dated 5-12-1987 respondents 4, 5 and 6 were nominated by the first respondent-State of Karnataka in purported exercise of its power under Section 53A of the Karnataka Co-operative Societies Act (hereinafter referred to as the ''Act''). It is alleged that the Government had initially nominated three persons prior to 22-6-1985 and one more person on 22-6-1985. It is therefore contended that the Government having nominated three more by the notification impugned has exceeded the number of nominations which it is legally permitted to make though one nomination had since been cancelled In other words six nominations have been made which are operative and the contention is having regard to the strength of the Committee of Management it is in excess of the powers conferred by Section 53A of the Act and in any event the exercise of power of the State Government under Section 53A is colourable exercise of power and mala fide, not for the purpose of furthering the objects of the Act and the power conferred on the Government, but only to take control of the Bank with political motives in connivance or at the behest of respondent No. 2 Sri Ekanthaiah, Minister for Co-operation in the Government of Karnataka.

3. This Court issued emergent notice regarding Rule on 10-12-1987 and the operation of the impugned notification i.e., Annexure-A, the notification dated 5-12-1987 nominating respondents 4 to 6 was stayed till 14-12-1987. On 14-12-1987 the interim order was clarified by this Court and respondents 4 to 6 were specifically prevented from participating in the election of the President of the Board of Directors of the third respondent-Bank. Since then the respondents have entered appearance and filed their statement of objections and the matter has been heard today.

4. The facts stated are not in dispute except that on behalf of the State and the second respondent it is contended that the power has been exercised legitimately and for furthering the object of the Act as well as for the purpose for which the power is conferred on the Government under Section 53A of the Act; that there is no mala fide exercise of power; that the Government cannot be restrained from making nominations of persons at different points of time and that it will be open to the Government to make some nominations at a given point of time and some more nominations at any subsequent point of time as long as the limit imposed by the statute, is not exceeded.

5. A separate affidavit of Sri Ekanthaiah, Hon''ble Minister for Co-operative is also filed. He has denied the specific allegations made against him that he has in any way acted mala fide or with undue haste or that the Government was influenced by him in the exercise of power under Section 53A in order to take control of the third respondent-Bank for political reasons.

6. It is in the light of these rival contentions, this Court has to examine the validity of the nominations made as per Annexure-A by notification dated 5-12-1987 with reference to the provisions of the Act.

7. Mr. B.V. Acharya, learned Counsel for the petitioner, contended that the sequence of events clearly demonstrated that the nominations were made in mala fide exercise of the power and this Court should infer it despite the denial by respondents 1 and 2. For this purpose he has relied upon an earlier decision of this Court in the case of Jagadish Patil v. The State of Karnataka and others (AIR 1979 Karnataka P. 4). In the said decision this Court examined the validity of nominations made under Section 53A in certain circumstances which are not exactly identical with the undisputed facts of this case. While doing so, it was observed as follows:

"An action of the Government even though within its power, if actuated by mala fides established either by direct or circumstantial evidence, is liable to be struck down under Art. 226 of the Constitution. Secondly in examining the plea of mala fides, the Court must necessarily have regard to the object of the statute conferring power and whether the power conferred has been exercised for the purposes and the object of the statute or for any other purpose. Both these principles are firmly established in Pratap Singh''s case (AIR 1964 S.C. 72).

On these observations, it is contended that that decision on all fours is applicable to the facts of the present case, that there was nomination of 4 persons earlier i.e., before 22-6-1985 in exercise of the powers under Section 53A and therefore there was no sudden need to make fresh nominations as per the impugned notification dated 5-12-1987 except in view of the result of the elections held on 27-11-1987, in which only four of the members elected belong to the Janata Party and apprehending that a member of the Congress (I) would get elected to the office of the President, and in the light of the notice issued by the Secretary tor the first meeting to elect the President on 11-12-1987, the impugned notification has been made with the object of securing majority of votes for another candidate to be proposed or put up by the Janatha Party, which is the party in power in the State exercising the executive functions of the Government. In other words the thrust of the argument is not merely the proximity of the events i.e., the election, results of the election, calling of the meeting, but also the object of exercise of power was not to further the objects underlying Section 53A i.e., to safeguard the investments of the State, but to tilt the balance of voting power at the first meeting.

8. The Court''s attention was specially drawn to the decision of the Supreme Court in the case of State of Punjab and Another v. Gurdial Singh and others (AIR 1980 S.C. 319), wherein the Supreme Court observed as to what constituted mala fides.

It was observed by the Supreme Court that:

"If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous consideration, good or bad, but irrelevant to the entrustment."

Therefore, Mr. Acharya contends that the power exercised suffers from legal mala fides and therefore the nomination is liable to be struck down.

9. He further supported that argument by drawing attention to the fact that the Government did not consider it necessary to make any more nominations after 22-6-1985 till the election results in November, 1987 were announced with reference to the Committee of Management and it is only after the notice of the first meeting was issued that the impugned nominations have taken place though such nominated members would not even get adequate notice of clear 7 days

contemplated under Rule 14(a) of the Karnataka Co-operative Societies Rules in regard to election of Committee Members, In other words, the sudden desire to protect its investment stemmed not from Section 53A, but from the fact of the election being held to the office of the President, scheduled for 11-12-1987.

10. In Jagadish Patil''s case the facts were slightly different. The election of the Committee of Management took place on 16-7-1978 and 11 members were elected. On 18-7-1978 Secretary of the Society issued a notice to the elected members as also 5 others who had been nominated in exercise of the power under Section 53A of the Act as far back as 27-12-1975 to the earlier Committee of Management. That act of issuance of notice to the nominated members was challenged in a Writ Petition in this Court and on 24-7-1978 rule was issued and stay was granted by this Court. On 25 7-1978 the Government made fresh nominations apparently on account of the stay granted by this Court and possibly also on account of the impression that the earlier nominations had become void by virtue of the fresh election held to the Committee of Management. It was in that circumstance that this Court having regard to the fact that the allegations of the petitioner had not been denied by the concerned Minister came to the conclusion that there was mala fide exercise of power which was given expression to in the form of observations which I have extracted earlier.

11. The question is whether the same set of facts exist in this case also. Indeed, Mr. Acharya has not challenged the nominations made by the Government prior to 5-12-1987. It is only the nominations made on 5-12-1987 which are challenged in this Writ Petition. Whether the nominations of three persons earlier is invalid or not is not a question which falls for determination in this Writ Petition In fact he has derived strength from that.

12. He contended that when those nominations were adequately protecting the Government''s investment there was no need to make fresh nominations unless it was with the motive attributed, that is, to capture the office of the President.

13. Having regard to the totality of circumstances, despite the denial by the Hon''ble Minister it is not unlikely that what prompted the Government to make the nominations on 5-12-1987 was not so much the interests of the Government which required protection in the management of the Co-operative Bank in question but only with a view to tilt the balance of voting power in the first meeting proposed for the election of the President. This conclusion becomes inescapable if regard is had to the sequence of events.

14. There is yet another point which was noticed only during the course of the arguments addressed by the Counsel appearing for parties. The bye-laws of the Bank provide in Bye-law No. 20(a) for the Board of Directors, which shall consist of eight representatives elected from Co-operative Societies from each of the eight taluks in the District; one representative from Co-operative Marketing and Processing Societies in the District; one representative from Consumers Co-operative Societies in the District; one representative from Urban Co-operative

Banks, Non-Agricultural Credit Co-operative Societies and Non-Agricultural Credit Co-operative Rural Banks in the District; one representative from Milk Producers Co-operative Societies/Labour Co-operative Societies/and other Miscellaneous types of Co-operative Societies including Farming Co-operative Societies in the District; and one representative from Industrial Co operative Societies including Weavers'' Co-operative Societies in the District. These are covered by clauses (1) to (6). Bye-law 20(a), Clause (7) to (9) provide for ex-officio members of the Committee. They are the Managing Director of the Bank (Clause-7), Deputy Registrar of Co-operative Societies of the District and the Project Director of the District Rural Development Society as Government nominees (Clause-8) and one nominee of the Karnataka State Co-operative Apex Bank (Clause-9). Therefore, while representatives under Clauses (1) to (6) are the elected members, 13 in number, the other 4 members are by virtue of the nomination, by the bank and by virtue of the office held by those nominated under Clauses 7 to 9 What is peculiar about clause (8.) is the Project Director of the District Rural Development Society as a post as on today or as on 27-11-1987 had stood abolished. In other words, on the relevant date the Government nominee as per the bye-law under clause (8) could only be one and not two as originally contemplated.

15. If a particular office does not exist then none can be nominated as a person holding that office and therefore in computing the strength of the Board of Directors as on 27-11-1987 or as on 11-12-1987 the date of the meeting for the election of the President the strength of the Committee of Management could not have been 17 but only 16. If that is so, power of the State Government to make nominations under Sec. 53A of the Act is limited to make nominations upto 1/3rd of the total strength of the Committee of Management of the particular Co-operative Institution to which the nominations are made. If regard is had to the nominations made prior to 5-12-1987 numbering three, nominations made by notification impugned of another three would make a total nomination of six which can only be 1/3rd if the total strength is 18 and not if it is 16. If it was a larger fraction then it would have enured to the benefit of the Government to make a full member as a nominee. That is to say if the strength was really 17 then 1/3rd of it would be 5 and 2/5ths which would be less than 1/2, then the number of members nominated would be five and not six.

16. The impugned order, that is, nominations of three for the reasons I have pointed out, having regard to the abolition of the post of Project Director of the District Rural Development Society, unless the bye-law is amended or the post is recreated, the strength of the Board can only be 16 and not 17 and therefore even on that ground nomination of three more members becomes void and impermissible. As the Court cannot decide as to which one of the three should suffer the axe it is safer and proper to quash the nominations of all the three leaving it to the Government to make fresh nominations if called for according to their desire and in proper exercise of its powers under Sec. 53A of the Act.

17. In terms above, this Writ Petition is allowed. Rule will accordingly issue. The nominations made as at Annexure-A is quashed. But, in the circumstances of the case there will be no order as to costs.

Writ petition allowed.