

(1994) 03 KAR CK 0034
In the Karnataka High Court
Case No : W.A. No. 53 of 1994

Shankar Mahadev Sasane

APPELLANT

Vs

Returning Officer

RESPONDENT

Date of Decision : 07-03-1994

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70 A, 70 A (2)

Citation : (1994) ILR (Kar) 1029 : (1994) 2 KarLJ 514

Hon'ble Judges : S.B. Majmudar, C.J; R.G. Vaidyanatha, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, for the Appellant;

Judgement

Vaidyanatha, J

1. This Writ Appeal is filed against the order of the learned single Judge of this Court disposing of the Writ Petition with certain observations. One of the observations made by the learned single Judge was that delay can be condoned even if the Election Dispute is filed after the period of limitation. Being aggrieved by this observation the Writ Petitioners have come up with this Appeal.

2. Learned Counsel for the appellants has questioned the correctness of the observations made by the learned single Judge. It was argued that the observation of the learned single Judge is erroneous. It was submitted that the delay cannot be condoned so far as Election Disputes are concerned.

3. After hearing the learned Counsel for the appellants and after perusing the materials on record and the Law bearing on this point, we find that there is no merit in this Appeal.

4. Section 70-A of the Karnataka Co-operative Societies Act, 1959, (for short "the Act") provides for limitation for ail disputes which are to be filed u/s 70 of the Act. There is no dispute that even an Election Dispute has to be raised as a Reference and it is also covered by Section 70-A of the Act. Section 70-A of the

Act reads as under:

"70-A. Period of limitation.- (1) No dispute u/s 70 shall be entertained unless it is referred to the Registrar within six years from the date of the cause of action:

Provided that a dispute relating to the election of a member, President, Vice-President, Managing Director, Honorary Secretary or other officer of the Committee shall be referred to the Registrar within thirty days from the date of declaration of the result of the election.

2) Notwithstanding anything contained in Sub-section (1), the Registrar may entertain a dispute referred after the period specified in Sub-section (1), if he is satisfied that the person making the reference had sufficient cause for not making the reference within that period,"

It is seen that Section 70-A of the Act, provides period of limitation to all disputes to be raised under the Act, including Election Disputes, Sub-clause (1) provides that disputes may be entertained if they are referred within a period of six years from the date of cause of action. But the Proviso to Sub-section 1 of Section 70-A of the Act says that so far as election disputes are concerned the period of limitation is only 30 days. So far as this there is no dispute.

5. Now we come to Sub-section (2) of Section 70-A of the Act which says that the Registrar may entertain any dispute beyond the period of limitation specified in Sub-section (1), if he is satisfied that there is sufficient cause for the delay. The argument of the learned Counsel for the appellants is that Sub-section (2) refers only to the main part of Sub-section (1) and not to the Proviso of Sub-section (1). We are afraid that such an interpretation is not possible. Sub-section (2) clearly provides for condonation of delay if sufficient cause is shown for all disputes referred to in Sub-section (1) which includes Election Disputes since the Proviso is a part of Sub-section (1). In this connection we may also refer to an earlier Decision wherein respondents-4 and 5 had filed Writ Petition in this Court in W.P.No. 20465/1992 * DD 13.7.1992 - Babu Saheb v. State of Karnataka regarding the same election which is now in dispute and the learned single Judge by his order dated 13.7.1992 took the same view that u/s 70-A(2) of the Act, Registrar has powers to entertain an Election Dispute beyond the period of limitation if sufficient cause is shown.

6. We may also make useful reference to the provisions of the Representation of the People Act. According to Section 81 of the Act an Election Petition has to be filed within 45 days from the date of announcement of result. Then Section 86 of the Representation of People Act provides that the High Court shall dismiss the Election Petition if it does not conform to Section 81 and some other provisions. Hence there is a statutory mandate that if an Election Petition is filed beyond the period of limitation then it shall be dismissed. But we do not have any similar provision in the Co-operative Societies Act. On the other hand Sub-section (2) of Section 70-A of the Act clearly provides for condoning delay regarding all disputes which necessarily includes an Election Dispute. In our view, the learned

single Judge has rightly observed that the Registrar has powers to condone the delay. But the question whether sufficient cause is made out or not is purely a question of fact which has to be decided by the Tribunal and that is how the learned single Judge has left that question open to be decided by the Tribunal.

7. In our view the order of the learned single Judge is perfectly justified and does not call for interference.

8. In the result, the Appeal is rejected at the admission stage.