

(2014) 01 KAR CK 0275

In the Karnataka High Court

Case No : Writ Appeal Nos. 100076 to 100083 of 2014 (CS-EL/M)

Shankarappa and Others

APPELLANT

Vs

Co-operative Election Commission and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2(d-1), 28A, 28A(4), 29A, 39A

Citation : (2014) 2 AKR 529 : (2014) ILR 2285 : (2014) 2 KarLJ 461 : (2014) 3 KCCR 2693

Hon'ble Judges : N. Kumar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Anoop G. Deshpande, Advocate for the Appellant; Vidyavathi, Additional Government Advocate, Advocate for the Respondent

Judgement

N. Kumar, J.—These writ appeals are filed against the order passed by the learned Single Judge dismissing the writ petitions and holding that the amendment to Section 28A(4) of the Karnataka Co-operative Societies Act, 1959 which came into effect from 11-2-2013 which prescribe the term of office of the members of the committee shall be 5 co-operative years is only prospective in nature and it has no retrospective operation. The appellants are the Board of members of the fourth respondent-society. It is registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short hereinafter referred to as "the Act"). They were declared as elected members of the Board of the 4th respondent in the election held on 12-6-2009. The tenure of the Committee of Co-operative Society as per the provisions of Section 28A(4) prior to amendment was as under:

28-A. (4) Subject to the provisions of Sections 29A and 39A, the term of office of the members of the committee shall be five co-operative years and they shall be deemed to have vacated office as such members of committee on the date of completion of the said term.

The term co-operative year is defined u/s 2(d-1) as under:

2. (d-1) "Co-operative year" means the year commencing from the First day of April.

2. Therefore, the term of the appellants who were elected on 12-6-2009 is to be computed from 1-4-2009 and it comes to an end on 31-3-2014. Sub-section (4) of Section 28A came to be amended by Act No. 3 of 2013 with effect from 11-2-2013 substituting the words "five years from the date of election" in place of "five co-operative years". The word "committee" is also substituted by the word "board". As the term of the committee/board is coming to an end by the end of 31-1-2014, the first respondent has appointed third respondent as the Returning Officer to conduct elections to the Board of 4th respondent-Society. The second respondent has fixed 9-2-2014 as the date of election for all Prathamika Krushi Pattina Sahakara Sanghas of the District.

3. Aggrieved by the said act of the respondents, the appellants preferred a writ petition before this Court contending that their term is not coming to an end on 31-3-2014 but it will end on 11-6-2014 in view of the amendment.

4. The argument was, the amendment is by way of substitution. It is well-settled that this substituted provision would be deemed to be in the statute book on the day the legislation was passed. Therefore, it is retrospective in operation. In that view of the matter, it was contended that the attempt on the part of the authorities to give effect to the said provision as being prospective in nature is illegal and, therefore, they want the entire election process to be quashed. However, the said contention did not find favour with the learned Single Judge. He has held that the amendment is prospective in nature and it will not enure to the benefit of the petitioners-appellants and, therefore, he dismissed the writ petitions. Aggrieved by the said order, the present writ appeals are filed.

5. Learned Counsel for the appellants contended that, the amendment is by way of substitution. Once the amendment is by way of substitution, in law, the substituted provisions are deemed to be on the statute book on the day the statute was passed, i.e., it is retrospective in nature. Appellants are entitled to the benefit of the said provision and, therefore, their term comes to an end only on 11-6-2014 and not on 31-3-2014 as understood by the respondents.

6. We do not find any substance in the said contention. When the Legislature amends the existing provision in a statute by way of substitution, the effect is the substituted provision stands repealed and the amended provision is substituted in the place of the earlier provision in the Act as if the substituted provision is there in the Act from the inception. By express provision or by necessary implication if it is not made clear that the said amendment is prospective in nature, the amended provision comes into effect from the date of the Act. But, it is not an invariable rule. If such an interpretation is given, it leads to repugnancy, inconsistency or absurdity, then the said general rule is not followed. In certain situation, the Court having regard to the purport and object sought to be achieved by the Legislature may construe the word "substitution" as

an amendment having a prospective effect. If the amendment Act expressly states that the substituted provision shall come into force from the date of the amendment coming into force, the said provision is prospective in nature. Then, there is no scope for interpretation whether the said amendment is prospective or retrospective. The Legislature had made its intentions clear by such express words, which is to be followed by the Courts. However, if such an express provision is not there in the amendment, it does not necessarily mean that it has to be retrospective in nature. In order to decide whether such an amendment in the absence of express words is prospective or retrospective in nature, the Court can look into the scheme of the amendment, the object sought to be achieved, the mischief sought to be prevented and then by interpretative process can declare whether the said amendment is prospective or retrospective. On the pretext that it is a case of substitution the effect cannot be given to the substituted provision mechanically from the date of the statute itself.

7. If we look at the case on hand in this background, as the law stood earlier, the section made it clear that the term of the office members of the committee shall be five co-operative years. They wanted an amount of consistency and definiteness about the tenure of office of the elected representative. Therefore, irrespective of the date on which the election took place, the commencement of the tenure and the termination of the tenure was fixed by the statute. Unfortunately, over the years, the elections to these co-operative societies were not conducted in terms of the provisions of the Act. There were inordinate delay in conducting elections. Election processes were challenged, stay orders were obtained and the persons who were elected and who were in office continued to enjoy the benefit of the office and prevented these elections in an orderly manner within the time-limit. Those who were elected could not have a definite tenure of 5 years because of these manipulative practices adopted by the persons who were holding the posts. Therefore, the Act was amended making it mandatory to conduct the elections on due dates and if elections are not conducted, the persons who are holding the post on the date were disqualified from contesting elections. Even thereafter, there was delay in conducting elections by taking advantage of the persons who were in power in the State, thus depriving the elected representatives a definite tenure. It is to address the mischief, the latest amendment is brought in making it very clear that five years tenure is to be computed from the day he is elected and not from the commencement of the co-operative year. If we look into this historical background in which the Act has undergone amendment from time to time, it is clear the object is to give a definite tenure of 5 years to an elected person. On the day the appellants contested the elections and were elected, this was not the law. Therefore, when they were voted to power, it was clear that their tenure would come to an end on 31-3-2014. It was definite. The voter who voted them had no intention of giving them any extended term as sought to be made by way of an amendment today. The power to hold the post does not flow from the statutory provision. It flows from the ballot. The ballot is to be respected. Now,

that the law has been changed, rules of the game has been changed, that has to be necessarily prospective in nature. The Legislature consciously did not expressly state that the amendment is retrospective, because they were aware that the term of office of an elected body cannot be extended retrospectively. Otherwise, it would have effected the vires of the amendment. It is also contrary to the democratic principles and would have gone against the wishes of the voter. What the Legislature did not do as it was improper, there is no obligation on the part of the Courts to do by interpretative process of the provision, the very thing which the Legislature did not want to do. Therefore, when the ballot was exercised, the tenure of the members was definite and the tenure had to come to an end on 31-3-2014. The person who gave them the mandate wanted him to continue in office till 31-3-2004. It is to be respected. Therefore, they should go before the voter and seek for a mandate for five years from the day they are elected. This in substance is the object behind the Act. As the law stood then, these appellants knew when, their term would come to an end. Therefore, they cannot take advantage of the amendment, and seek extension. That right was not thereon the day they entered the office. Therefore, they are not the aggrieved persons and they have no locus standi to challenge the action of the authorities which is in accordance with law. Therefore, we cannot find fault with the approach of the learned Single Judge in declining to entertain the writ petition. Accordingly, the writ appeals are dismissed.