

(2014) 01 KAR CK 0282

In the Karnataka High Court

Case No : Writ Petition Nos. 100765-769 and 100802-804 of 2014 (CS)

Shankarappa

APPELLANT

Vs

The Co-operative Election Commission

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2(d)(1), 28A(4), 28-A(4)
Karnataka General Clauses Act, 1899 — Section 6

Citation : (2014) 2 AKR 469

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Anoop G. Deshpande, Advocate for the Appellant; K.S. Patil, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Petitioners have sought for the following relief: a) Issue a writ or order or direction in the nature of writ of certiorari by quashing order dated 10.12.2013 bearing No. (Vernacular matter omitted... Ed.) 382/2014 at Annexure-B passed by the Respondent No. 1.

Heard, the arguments of Shri. Anoop Deshpande, learned counsel appearing for petitioners and Shri. K.S. Patil, learned HCGP appearing for respondents 1 and 2. Notice to R3 and R4 is not issued, since writ petitions are being dismissed at the stage of admission itself for the following reasons. 2. Respondent No. 4 is a Co-operative Society registered under the provisions of Karnataka Co-operative Societies Act, 1959. In the elections held to the Board of Directors of 4th respondent Society on 12.06.2009 petitioners were declared as elected. The tenure of the members of the Committee was five (5) Co-operative years as per the provision of Section 28A(4) of Karnataka Co-operative Societies Act, 1959 (for short "Act"). It is the contention of Shri. Anoop G. Deshpande, learned counsel appearing for petitioners that by virtue of Section 28-A(4) having been amended by Act 3/2013 with effect from 11.02.2013, substituting the words "five

Co-operative years" to the words "five years from the date of election", the term of the petitioners as Board of Directors would come to an end on 12.06.2014, since they were elected on 12.06.2009 and not on 31.03.2013, in as much as the word or the term "five co-operative years" has now been substituted to the words "five years from the date of election". Hence, it is contended that 1st respondent could not have appointed 3rd respondent as Returning Officer to conduct elections to the Board of Directors of 4th respondent-Society by order dated 10.12.2013 Annexure-B, and pursuant to same 2nd respondent could not have fixed the date of election for all "Prathamika Krushi Pattina Sahakara Sangha" as 09.02.2014, as per the calendar of events dated 18.12.2013 Annexure-C. It is their further grievance that 2nd respondent could not have appointed 3rd respondent as the Returning Officer to conduct the elections to the 4th respondent-Society under Annexure-B and same is premature. In support of his submission, he has relied upon the following judgments:

- i) Sha Chunnilal Sohanraj v. T. Gurushantappa reported in 1972 (1) Mysore Law Journal 327.
- ii) B.L.G. Dayanand Vs. The Managing Director, Chitradurga DCC Bank And Another, .
- iii) Sri. Govardhan M. Vs. The State of Karnataka and Others, .

3. As such, he prays for setting aside the impugned notifications. He would draw sustenance from above referred judgments to contend that when a substitution of an enactment takes place, in effect it would mean that existing provision is substituted to that of the new provision or in other words substituted provision is deemed to be in the statute from the day said enactment or Section has come into force i.e., day one itself. As such, relying upon the above judgments, he contends that in the instance case, the words "five Co-operative years" found in Section 28-A(4) having been substituted with "five years from the date of election" would apply or would be applicable to all such Directors or elected representatives from the date when such substitution took place i.e., 11.02.2013 and in view of the fact that term of the Board of Directors elected to 4th respondent-Society namely that of petitioners having not come to an end as on 11.02.2013, i.e., the date on which Act 3/2013 came into force, substituted provision would be applicable and it has to be held that such substituted provision being there in the statute book from day one.

4. Per contra, Shri. K.S. Patil, learned HCGP appearing for the respondents 1 to 3 would contend that when substitution takes place, unless the Amending Act specifically indicates that it is retrospective, it cannot be presumed or implied that such substitution would be retrospective and as such, it has to be necessarily held as prospective. He would also draw the attention of the Court to the notification issued by the State in exercise of its power u/s 1(2) of the Amending Act, appointing the date on which Amendment Act would be coming into force namely from 11.02.2013 and as such, he contends that substituted

provision would be applicable from the appointed date and in view of the same contention of the petitioners should not be accepted. On these grounds, he prays for dismissal of these writ petitions.

5. Having heard the learned advocates appearing for the parties and on perusal of the case papers and after bestowing my careful attention to the rival contentions raised and judgments relied upon, I am of the considered view that it would be necessary to extract the relevant provisions in question namely Section 2(d)(1) and Section 28-A(4) which has been pressed into service and which is the bone of contention in this case.

Section 2(d)(1) Co-operative years means the year commencing from the first day of April.

6. There is no dispute to the fact that in the instant case, petitioners were elected as the Directors to the Board of Director of 4th respondent-Society in the elections held on 12.06.2009. As on the date on which they were elected, their tenure as Members of the Committee were to come to an end at the end of the 5th Co-operative year which was 31.03.2014. As per Section 28A(4) the term of the Board of Director of a Co-operative Society would come to an end at the end of the 5th Co-operative year. In so far as this factual matrix and proposition of law is concerned, there cannot be any dispute.

7. By virtue of amendment having been brought to Section 28-A(4) of the Karnataka Co-operative Societies Act by Amending Act 3/2013 the words "five co-operative years" found in Section 28A(4) came to be substituted to the words "five years from the date of election". It has to be discerned from the substituted Act, as to whether it is prospective or retrospective or in other words whether by virtue of such substitution there is implied repeal of the existing words found in the statute. There is a presumption against repeal by implication, in as much as the reason of this rule is based on the theory that legislature while enacting a law has complete knowledge on the existing laws on the subject matter and when the legislature consciously does not provide for repealing provision, it gives out an intention not to repeal the existing words in the statute. The principle "expressio unius est exclusio alterius" - "the express mention of one person or thing is the exclusion of other principle" would be applicable. The doctrine of implied repeal is based on the theory that legislature which is presumed to know the existing law did not intend to create any confusion by retaining conflicting provisions and, therefore, when the Courts apply the said doctrine, it does no more than give effect to the intention of the legislature by examining the scope and object of the existing words in the statute and the words which have been substituted and comparison of these two.

8. In this background, it is to be examined as to whether words "shall be five co-operative years" substituted with the words "shall be five years from the date of election" is to be construed as though substituted words are deemed to be in the statute from day one or it would come into effect from the date on which the

Amendment Act came into force. At this juncture, itself it would be appropriate to notice the judgments relied upon by the learned counsel appearing for the petitioners and the extent of its applicability to the facts and circumstances of the present case.

9. In the case of *Sha Chunnilal Sohanraj v. T. Gurushantappa* reported in 1972 (1) Mysore Law Journal 327, it has been held by Division Bench as under:--

3. The above principles of canons of construction have been accepted by the Supreme Court in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, . This is what Bose J. has stated in the said decision:

The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all.

No repugnancy or inconsistency between the old and the new sub-sections have been pointed out to us. When the Amending Act has stated that the old sub-section has been substituted by the new sub-section, the inference is that the Legislature intended that the substituted provision should be deemed to have been part of the Act from the very inception. When the proceedings were pending, the amended provision came into force. It is the amended provision that has to be applied and not the old provision which has ceased to exist. Unfortunately both the parties did not bring to the notice of the Court below the amended provision and the Courts below proceeded as if there was no amendment. In these circumstances, the proper course for us to follow is to set aside the orders of the learned District Judge under revision and remit the matter to the Court of the Munsiff at Sagar with a direction to restore the case to its original file and dispose of the same in accordance with law. It is ordered accordingly. No costs.

10. In the case of *B.L.G. Dayanand Vs. The Managing Director, Chitradurga DCC Bank And Another*, , it has been held as follows:--

The Karnataka General Clauses Act, 1899, deals with the effect of repeal. Section 6 of the Karnataka General Clauses Act reads as follows:

6. Effect of repeal. Where this Act or (any Mysore Act or Karnataka Act) made after commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege,

obligation or liability acquired, accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

11. In the case of Sri. Govardhan M. Vs. The State of Karnataka and Others, , it has been held as follows:--

26. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing" or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Substitution thus combines repeal and fresh enactment. The substitution has the effect of just deleting the old rule and making the new rule operative. The process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all. Whenever an amended Act has to be applied subsequent to the date of amendment, the various unamended provisions of the Act have to be read along with the amended provision "as though they are the part of it.

27. It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. When the legislature amends an 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 earlier provision in the earlier Act, as if the substituted provision is there in the earlier act from the inception. By express provision or by implication if it is not made clear that it is prospective in nature the said amended provision comes into effect from the date of the earlier Act. But it is not an invariable Rule. If such an interpretation is given, if it

leads to repugnancy, inconsistency or absurdity, then the said general rule is not followed. In certain situations, 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 the amendment comes into force, the said provision is prospective in nature. Then it is not open to the Court by way of interpretation to give retrospective effect to such provision. Ultimately to decide whether these provisions are prospective or retrospective, it is the intention of the legislature which is the sole guide. If the procedure adopted for amendment is substitution and in the Amended Act it is specifically stated that the substituted provisions come into effect from the date the amended Rules or Act came into force, the intention of the legislature is clear. On the pretext that it is the case of substitution, the effect cannot be given to that substituted provision from the date of the earlier statute. It has to be necessarily from the date the amended rules came into force.

12. There cannot be any dispute with regard to the proposition of law laid down in the above judgments. It has held by the Division Bench in Sri. Govardhan M. Vs. The State of Karnataka and Others, referred to supra has held if the Amendment Act expressly states that the substituted provision shall come into force from the date the amendment comes into force, then said provision is prospective in nature. However, the ultimate endeavour of the Court would be to find out or decide whether said provision is prospective or retrospective and as to the intention of the legislature, which would be the sole guiding factor. It has been held, if the procedure adopted for Amendment is substitution and in the Amended Act, it is specifically stated that the substituted provisions would come into effect from the date of Amended Act came into force the intention of the legislature can be clearly gathered from the very enactment itself namely to be prospective. On the pretext that it is case of substitution, the effect cannot be given to that substituted provision to be from the date on which the earlier Act or Section had come into force. It has to be necessarily held that it is from the date on which the amended provision or Act came into force. If the intention of the legislature is to rectify a mistake, necessarily the same will have retrospective effect and retroactive operation.

13. If under a legislation, a right is vested in an individual and that right is to be taken away by substituted provision then necessarily the substituted law will have to be retrospective and it has to say so and if such law retrospectively takes away a right vested, it cannot be contended that such right should be enforced prospectively. It is a matter of legislative practice to provide while enacting an amending law, with an existing provision that it shall be deleted and a new provision is substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of repeal of the existing provision and also provide for introduction of a new provision. Thus, there cannot be any real distinction between repeal and amendment or substitution in such cases.

14. The golden rule of construction is that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be construed so to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. Provisions which touches a right in existence at the passing of statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Every enactment which takes away vested right acquired under the existing laws, or creates new obligation or attaches a fresh or new disability in respect of past transaction, it shall be presumed to be intended not to have retrospective effect. Every statute is prima facie prospective, unless it is expressly or by necessary implication made to have retrospective operation. Said rule in general is applicable where the object of the statute is to affect vested rights or impair existing obligation. Unless the words in the statute would clearly indicate the intention of the legislature to affect existing rights, it is deemed to be prospective only. Nova constitutio futuris formam imponere debet, non paraeteritis - A new state of law ought to affect the future, not the past. A close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by legislature. Unless intention is manifested by express words or necessary implication, the statute or the section is not to be construed so as to have retrospective operation. Thus, applying the same principle to the facts on hand, when the substituted provision is examined, the Amendment Act would clearly indicate that State while bringing amendment to the Karnataka Co-operative Societies Act by Act 3/2013 has issued a notification specifically appointing the date from which the provision of the Amendment Act would come into force namely 11.02.2013. In that view of the matter, petitioners cannot be heard to contend that words "five years from the date of election" as found in substituted Act is to be construed or to be read to be in operation from the date on which Section 28-A(4) has been in the Act. As such, I am not inclined to accept the contention raised by Shri. Anoop G. Deshpande, learned counsel appearing for the petitioners and same stands rejected.

In the result, I proceed to pass the following.

ORDER

- i) Writ petitions are hereby dismissed.
- ii) Learned HCGP permitted to file memo of appearance within a period of six weeks from today.
- iii) Cost made easy.