

(2000) 09 KAR CK 0041
In the Karnataka High Court
Case No : Writ Appeal No. 5410 of 1999

Shivaputrappa

APPELLANT

Vs

Subhash Joshi and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Multi-State Co-operative Societies Act, 1984 — Section 35, 48, 74

Citation : (2000) ILR (Kar) 3829 : (2001) 2 KarLJ 115

Hon'ble Judges : Tirath Singh Thakur, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : Sri R.N. Narasimha Murthy, for Sri Subhash B. Adi, for the Appellant;
Sri K. Sreedhar for M/s. Vagdevi Associates, Sri M.V. Shamanna, Government
Advocate, Sri Kaleemulla Shariff, for the Respondent

Judgement

1. This appeal is directed against an order passed by a learned Single Judge of this Court, whereby W.P. No. 6252 of 1999 filed by the respondent-Sri Subhas Joshi has been allowed, the impugned orders and calendar of events quashed and a direction issued to the Returning Officer to declare the respondent duly elected to the Committee of management of the 3rd respondent-Society.

2. Hiranyakeshi Sahakari Sakkare Karkhane Niyamit is a Co-operative Society registered under the provisions of Multi-State Societies Act, 1984. The appellant and respondent 1 are members of the said Society, which is managed by a committee comprising eleven persons, ten out of whom are from out of Category-A members while the eleventh is elected by Category-B members of the Society. Elections to the Committee were scheduled to be held in December 1998, in which connection the Assistant Commissioner was appointed as the Returning Officer, who in turn published a calendar of events inter alia fixing the dates for filing and withdrawal of nomination papers, poll and declaration of result. In response to the said notice, as many as 1,557 nominations were filed by candidates against the ten vacancies available for Category-A members. In contrast, the solitary vacancy for Category-B members evoked response only

from two members. Upon scrutiny of the nomination papers received by the Returning Officer, as many as 1,492 were found to be in order for the ten vacancies in Category-A. Insofar as Category-B was concerned, upon withdrawal of the nomination by Sri J.G. Patil, Sri Subhas Joshi was the only candidate left in the fray. The Returning Officer however felt that it was not feasible to complete the election process within the time available to him on account of an unusually large number of candidates, remaining in the fray for Category-A vacancies. He accordingly passed an order on 13th of December, 1988, postponing indefinitely and until further orders the conduct of the election. Aggrieved by the said order, 55 members of the society approached the Central Registrar of Co-operative Societies seeking his intervention and supersession of the society u/s 48 of the Multi-State Co-operative Societies Act. This application was after consideration rejected by the Central Registrar with the direction that the election process initiated by the Returning Officer shall be completed within a period of two months. An appeal against the said order was filed before the Secretary, Department of Agriculture and Co-operation, Government of India u/s 74 of the Act aforementioned. The appeal inter alia contained a prayer for declaring the respondent-Sri Subhas Joshi duly elected as a member of the Managing Committee of the Society. The Appellate Authority did not however find favour with the grievance in the appeal and accordingly dismissed the same. Instead of proceeding with the election and completing the same within the time frame fixed by the Central Registrar, the Returning Officer appears to have once again expressed difficulty in conducting the election on account of the large number of candidates remaining in the fray and requested the Registrar, Co-operative Societies of Karnataka to take up the matter with the Central Registrar. It was at this stage that an order dated 20th of April, 1999 was passed by the Central Registrar directing the Returning Officer to conduct the election afresh from the stage of filing of the nomination passes and to complete the said process before 30th of June, 1999. In the meantime, the respondent-Sri Subhas Joshi had filed W.P. No. 6252 of 1999 in this Court for a mandamus directing the Returning Officer to declare the petitioner as elected as a member of the Managing Committee against the solitary vacancy in Category-B. Upon the issue of directions dated 20th of April, 1999 by the Central Registrar, the Petitioner made an application for permission to urge additional grounds challenging the calendar of events issued by the Returning Officer pursuant to the said directions insofar as the same invited fresh nomination papers against the vacancy for Category-B members. An application seeking stay of the election was also filed but disallowed by the Single Judge. The writ petitioner also appears to have filed his nomination papers in pursuance to the fresh calendar of events on 14th of June, 1999, which was withdrawn by him shortly thereafter on 18th of June, 1999. The appellant had also filed his nominations in response to the said calendar of events, on the basis whereof an election was scheduled to be held on 23rd of June, 1999 for both Categories-A and E members. The writ petition filed by respondent 1 however was heard and allowed on the very same day with a declaration that the petitioner stood elected on the basis of the calendar of

events issued earlier. The learned Single Judge was of the view that order dated 20th of April, 1999 issued by the Central Registrar was in total negation of the earlier order issued by him and upheld by the Appellate Authority in appeal. The Returning Officer had, in the face of the said orders, no option, but to take the election process already started with the issue of the earlier calendar of events to its logical conclusion. The second calendar of events inviting fresh nomination papers insofar as B-category shareholders were concerned was accordingly quashed and the petitioner declared to have been duly elected to the committee of management.

3. Appearing for the appellant, Mr. Narasimha Murthy made but one submission in support of the appeal. He contended that even when the direction issued by the Central Registrar did not strictly speaking have any sanction of law in the light of the earlier order made by him and upheld by the Appellate Authority, yet the respondent-Sri Subhas Joshi having acquiesced in the process initiated with the issue of fresh calendar of events was estopped from either assailing its validity or seeking any relief in the extraordinary writ jurisdiction of this Court. We find it difficult to subscribe to that view. We say so for three precise reasons. Firstly because, the doctrine of estoppel or acquiescence as the same is often described, can have no application to situations, where the action complained of is ultra vires or void ab initio. No amount of consent or acquiescence of a party can in such cases infuse life or legitimacy into orders, which are otherwise incompetent or void. The expression "Acquiescence" which supplies the very foundation for the plea of estoppel envisages cases and situations, where the person seeking redress from the Court refrains from objecting to the violating of his rights even when such violation was being committed within his knowledge. It follows that cases where rights are infringed without the person concerned knowing that the same are vested in him, a complaint against any such violation cannot be shut out on the ground of estoppel or acquiescence. Halsbury's Laws of England describes the expression "Acquiescence" thus in Volume 1 of Fourth Edition.-

"The term is, however, properly used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed; a person so standing by cannot afterwards be heard to complain of the act".

4. There is ample authority for the proposition that no arrangement between the parties can prevent either of them from questioning the validity of an action on the ground of ultra vires or on the ground that the action was otherwise void nor can any kind of estoppel give to a Tribunal a jurisdiction wider than it otherwise possesses. The present is indeed one such case, where the first order made by the Central Registrar covered the field and was even upheld by the Appellate Authority leaving no option for the Returning Officer except to take the process

initiated with the calendar of events to its logical conclusion. The subsequent directions issued by the Central Registrar in the nature of a clarification were not only without the authority of law, but in obvious conflict with the directions issued earlier, which had attained finality.

5. Mr. Narasimha Murthy feebly argued that Section 35 of the Act could perhaps provide the source of power under which the impugned directions issued by the Central Registrar could possibly find a justification. The submission was not pursued for long and in our opinion rightly so. Section 35 inter alia declares that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections of the members of the board of the notified Multi-State Co-operative Societies or class of Multi-State Co-operative Societies notified shall vest in such Returning Officers as may be appointed by the Central Registrar in this behalf. The provision does not go further to empower the Central Registrar to issue directions to the Returning Officers as regards the mode and manner of conducting such elections. In the absence of an enabling provision vesting the Central Registrar with any such authority, it is difficult to see how the Registrar could arrogate to himself the power to issue direction, which would interfere with the exercise of the powers vested in the Returning Officers. The direction issued by the Central Registrar for resuming the election process from the stage of filing of the nomination papers was therefore clearly ultra vires of the provisions of the Act hence void ab initio. The half hearted participation of the petitioner-respondent 1 herein in the said process could not therefore estoppel him from questioning the validity of the directions or the action taken in pursuance thereof.

6. Secondly because, the order passed by the Returning Officer indefinitely postponing the election was entirely based on the fact that an unusually large number of contesting candidates had remained in the fray. Even in the second reference made by the Returning Officer, the difficulties in conducting the election within the time frame given by the Central Registrar related only to Group-A members. At no stage was any difficulty expressed by the Returning Officer in regard to the vacancy available to Group-B members. Assuming therefore that there was any justification for re-starting the process from the stage of filing of nomination papers, the same would logically apply only to the seats, against which Group-A members were electing the managing committee members. There was and could be no justification for a direction to resume the election process even for the solitary Group-B seat from the stage of filing of nomination papers. Inasmuch as the Returning Officer had understood the directions issued by the Central Registrar to mean that the process should be re-started from the stage of receiving nomination papers even for Group-B members, he committed a palpable error, which required to be corrected. The argument that the election process being one composite process, the Returning Officer could not have split up the same, has not impressed us. Just because election in regard to Group-A members was affected by any irregularity or a difficulty, which delayed the completion of the process, could not have a

cascading effect on the elections for Group-B members. The election to the two categories being independent, the result of the irregularity in one could not affect the other even when the election process was composite.

7. Thirdly because, the petitioner having questioned the validity of the second calendar of events issued by the Returning Officer by way of an amendment and even sought stay of the election process cannot be said to have acquiesced either in the issue of the calendar or participated in the election process without demur. It is not a case where a party participates in the election process even when the same is vitiated by any error of law or procedure, takes a chance for a favourable verdict and turns round to question the verdict when the same goes against it. It is a case, where the affected party has questioned the validity of the order in a writ petition and refrained from participating in the process initiated under the said order, no matter a step in the direction of participation had been taken, but hastily withdrawn shortly thereafter. The act of filing the nomination paper, which was withdrawn before an election could be conducted does not therefore constitute an act of acquiescence sufficient to estop the petitioner from pursuing the remedy against the impugned order.

8. In the result, this writ appeal fails and is hereby dismissed, but in the circumstances without any orders as to costs.