

(1977) 11 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 9842 of 1977

Shivasharanappa Veerabhadrappe Kolar and Others

APPELLANT

Vs

Assistant Commissioner and Returning Officer, Bidar and
Others

RESPONDENT

Date of Decision : 18-11-1977

Acts Referred:

High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 12, 13
Karnataka Co-operative Societies Act, 1959 — Section 121, 27 (1)

Citation : AIR 1978 Kar 37 : (1978) 2 KarLJ 136

Hon'ble Judges : V.S. Malimath, J;M.K. Srinivasa Iyengar, J;K. Jagannatha
Shetty, J;D.B. Lal, J;C. Honniah, J

Bench : Full Bench

Advocate : Mohandas N. Hegde, for the Appellant;

Judgement

Malimath, J.—The petitioners claim to be the members of the third respondent the Bidar Sahabara Sakkare Karkhane Ltd., Halliked, Bidar. The general meeting of the third respondent was scheduled to take place on 23-9-1977 as per the calendar of events issued on 6-8-1977. On 20-9-1977 the State Government issued a Notification No. RDC 232 COF 77, Exhibit "D" u/s 121 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the Act), applying the provisions of Section 27(1) of the Act with certain modifications in relation to annual general meeting of a Co-operative Sugar Factory of which a Co-operative Agricultural Credit Society is a member for the Co-operative year 1975-76. The said notification provides that the annual general meeting for the year 1975-76 of a Co-operative Sugar Factory of which a Co-operative Agricultural Credit Society is a member shall, if not already held, be held on the date of its annual general meeting for the year 1976-77, The proviso to Sub-section (1) of Section 27 was omitted. It is on the strength of this notification that the annual general meeting of the third respondent, which was to be held on 23-9-1977, was postponed by the Assistant Commissioner and Returning Officer, Bidar by his order dated 22-9-1977 Exhibit "F". The petitioners have challenged Exhibits "D"

and "F" in this writ petition.

2. The only contention urged by Shri Mohandas N. Hegde, learned counsel appearing for the petitioners, is that the notification Exhibit "D" issued u/s 121 of the Act is constitutionally invalid on the ground that it has the effect of modifying the policy and essential character of the Act. The impugned notification Exhibit "D" was issued u/s 121 of the Act, which gives power to the State Government to issue general or special order published in the official Gazette, exempting any Co-operative Society or any class of Societies from any of the provisions of the Act or to direct that such provisions shall apply to such Society or class of Societies with such modifications as may be specified in the order. It is in exercise of this power that the impugned notification Exhibit "D" was issued by the State Government. In *G. Venkata Naidu v. Bellary Central Co-operative Stores Ltd.*, reported in (1967) 2 Mys LJ 256 : (AIR 1967 Mys 203), a Division Bench of this Court has held that Section 121 of the Act is not invalid on the ground of excessive delegation without affording any guidance to the State Government in regard to exercise of the powers conferred by the said section. The Division Bench has further held that delegation of power u/s 121 to modify the provisions of the Act in its application to a Society or a class of Societies would be valid only if such modification does not involve any change of the legislative policy or essential character of the Act. It is relying upon this decision that it was maintained by Shri Mohandas Hegde that the impugned notification Exhibit "D" is invalid on the ground that it modifies the policy and essential character of the Act. It was maintained that the holding of annual general meeting is not a matter relating to details or ancillary or incidental matters.

3. Sub-section (1) of Section 27 of the Act provides that a general meeting of a Cooperative Society shall be held once in a year, within a period of 3 months after the date fixed for making up its accounts for the year under the rules or bye-laws for the time being in force for the purposes of -- (a) approval of the programme of the activities of the society prepared by the committee for the ensuing year; (b) election, if any in the prescribed manner of the members of the committee other than nominated members; (c) consideration of the annual report, the latest available audit report and the disposal of the net profits; and (d) consideration of any other matter which may be brought forward in accordance with the bye-laws. The proviso to Sub-section (1) states that the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding six months. By the impugned Notification Exhibit "D", what is done is to postpone the annual general meeting for the year 1975-76, if the same is not already held, so that it can be held on the date on which the annual general meeting for the year 1976-77 is Scheduled to be held. The only effect of the impugned Notification Exhibit "D" is the postponement of the annual general meeting of the year 1975-76 by about one year, if such meeting has not already been held. The proviso to Sub-section (1) of Section 27 of the Act itself makes it clear that the Registrar has the power of extending the period for holding the meeting under Sub-section (1) of Section 27 of the Act for

a period of six months. By the impugned Notification, the postponement has been made for a period of about one year. I find it difficult to persuade myself to take the view that the matter regarding postponement of the annual general meeting results in change of the legislative policy or the essential character of the Act. What Sub-section (1) of Section 27 of the Act contemplates is the holding of an annual general meeting once in a year to consider the subjects specified in that section. The proviso to the said sub-section empowers the Registrar to extend the period for holding such a meeting by a period not exceeding six months. If the Legislature considered the question of holding an annual general meeting once in a year as a matter of policy or of essential character, it would not have conferred the power on the Registrar to extend the period for holding such a meeting by a period not exceeding six months. The impugned action is taken not by the Registrar but by a higher authority, viz., the State Government in exercise of its powers conferred by Section 121 of the Act. Having regard to the object which the holding of the annual general meeting is to serve, I have no hesitation in taking the view that extending the period of holding the general meeting by about one year does not have the effect of changing the legislative policy or the essential character of the Act.

4. It was contended by Shri Mohandas Hegde that the impugned Notification has been issued only in respect of the third respondent-society which is not permissible u/s 121 of the Act. A bare reading of Section 121 of the Act clearly indicates that a Notification under that section can be issued in respect of any society or class of societies. Besides, the impugned Notification does not read as though it is applicable only to the third respondent-society. The first part of the Notification shows that it is applicable to every co-operative sugar factory of which a co-operative agricultural credit, society is a member. The Notification applies to all the societies that answer the description given in the first part of the impugned Notification.

5. It was next maintained that by the impugned Notification Sub-section (1) of Section 27 having been substituted by another provision, there will be no statutory provision available for holding annual general meeting subsequent to the year 1976-77. It is true that the impugned Notification states that for Sub-section (1) of Section 27 the following shall be substituted viz:--

The Annual General Meeting for the year 1975-76 of a Co-operative Sugar Factory of which a Co-operative Agricultural Credit Society is a Member shall, if not already held, be held on the date of its Annual General Meeting for the year 1976-77."

It further provides that the proviso to Sub-section (1) shall be omitted. It was maintained by Shri. Mohandas Hegde that whereas Sub-section (1) of Section 27 as it originally stood requires the annual general meeting of a society to be held every year, by the substitution of another provision for Sub-section (1) of Section 27 by the impugned Notification, there is now scope for holding annual general meeting in the year 1970-77 in respect of both the years 1975-76 and 1976-77

and that for the subsequent years from 1977-78 onwards there will be no statutory provision available for holding an annual general meeting. This contention would have been well founded if the substitution of Sub-section (1) of Section 27 of the Act was intended to be a permanent substitution obliterating from the statute book the provisions of Sub-section (1) of Section 27 altogether. If only the Notification is read as a whole and with some amount of care, one cannot fail to notice that the impugned Notification has limited application in respect of annual general meeting of the year 1975-76 of the specified class of societies. If such meeting has not already been held, the first part of the Notification in express terms states that Section 27(1) of the Act shall apply with the following modification in relation to an annual general meeting of such societies for the co-operative year 1975-76. It is thereafter that portion of Sub-section (1) to be substituted and the portions sought to be substituted are quoted. It is clear from the Notification that in respect of the specified class of societies Sub-section (1) of Section 27 shall apply with the modifications therein in relation to the annual general meeting of such societies for the co-operative year 1975-76. The provisions of Section 27(1) of the Act remain intact and do govern annual general meeting of the year 1976-77 as also annual general meetings to be conducted for the subsequent years as well. The impugned Notification is analogous to a Notification contemplated by the proviso to Sub-section (1) of Section 27, under which the Registrar is entitled to extend the period of holding annual general meeting for a period of six months. The only difference between the Notification contemplated by the proviso to Sub-section (1) of Section 27 and the impugned Notification issued u/s 121 is that the impugned Notification is issued by the State Government and not by the Registrar and extending the period for holding the annual general meeting is by a period of about one year whereas the Registrar can issue such a Notification extending the period not exceeding six months. If the true nature of the impugned Notification is understood, one will not fail to notice the serious fallacy in the argument pressed on behalf of the petitioners. As the impugned notification is limited in its application to the annual general meeting of the year 1975-76 in respect of the specified class of societies, I repel the contention that the impugned Notification has the effect of permanently substituting Sub-section (1) of Section 27 of the Act in respect of the specified class of societies for all time to come.

6-8. As none of the contentions urged are tenable, this writ petition should be rejected.

C. Honniah, J.

I agree.

D.B. Lal, J.

I agree.

Jagannatha Shetty, J.

9. We regret our inability to agree with the order delivered by our learned brother Malirnath, J.

10. The petitioners have questioned the constitutional validity of the Notification dated 20th September, 1977, issued by the State Government u/s 121 of the Karnataka Co-operative Societies Act, 1959. The Notification reads:

"RURAL DEVELOPMENT AND COOPERATION SECRETARIAT.

Notification No. RDC 232 COF 77 Bangalore, dated 20th September, 1977.

S. O. 2428.- In exercise of the powers conferred by Section 121 of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) and in partial modification of Notification No. RDC 14 CLM 77 dated the 28th May 1977, the Government of Karnataka hereby order that in the case of a Co-operative Sugar Factory of which a Co-operative Agricultural Credit Society is a Member, Section 27 of the said Act, shall apply with the following modifications in relation to Annual General Meeting of such Societies for the co-operative year 1975-76.

(1) In Sub-section (1) of Section 27 for the words "A General Meeting of the Cooperative Society shall be held once in a year within a period of three months after the date fixed for making up its accounts for the year under the rules or bye-laws for the time being in force" the following shall be substituted, namely:--

"The annual General Meeting for the year 1975-76 of a Co-operative Sugar Factory of which a Co-operative Agricultural Credit Society is a Member shall, if not already held, be held on the date of its Annual General Meeting for the year 1976-77."

(2) The proviso to Sub-section (1) shall be omitted.

Sd/- M. V. Lakshminarasimhaiah, Under Secretary to Government Rural Development and Co-operation Dept."

The validity of the above Notification has been assailed on the grounds:

(1) That it has modified the policy and essential character of the Act and 0s such, the exercise of the power was unconstitutional; and (2) That the action of the Government was motivated and mala fide.

11. We are required to consider only the first ground of attack and not called upon to consider the second, as it is open to the petitioner to raise that ground before a learned single Judge of this Court.

Before proceeding further, we must remember that this petition was set down for preliminary hearing and not for final disposal. Rules 12 and 13 of the Writ Proceedings Rules, 1977, provide procedure and govern the scope of the preliminary hearing. Rule 12 provides:

"12. Every writ petition after it has been admitted to register, shall be posted before the appropriate Bench for preliminary hearing:

Provided that when the constitutional validity of any State Law is challenged, it shall be posted before a Bench consisting of not less than five judges." Rule 13 provides :

"13. Upon the hearing:--

(a) the Court if satisfied, shall direct a rule nisi to the respondent calling upon him to show cause why the order sought should not be made, and shall adjourn the hearing for the respondent to appear and for being heard;

Provided that, where the court deems fit, it may, before directing issue of a rule nisi, direct notice to the respondent to show cause why rule nisi should not be issued;

(b) the Court, if satisfied, that there are no grounds to issue rule nisi, shall after recording briefly the reasons dismiss the petition."

Rule 13 provides that if the Court is satisfied, upon hearing, it shall direct a rule nisi to the respondent, and if the Court is satisfied that there are no grounds to issue rule nisi, it may dismiss the petition after briefly recording the reasons. The Court, if it deems fit, instead of rejecting the petition, may issue notice to the respondent to show cause why rule nisi should not be issued. But the rejection of the petition could only be when the Court is satisfied that there are no grounds to issue rule nisi. "The grounds to issue rule nisi" in the context must mean that the contentions raised by the petitioner and the case made out by him, require a return from the respondent.

12. We will now examine whether any such case has been made out by the petitioner.

Under Section 27, it is obligatory for a cooperative Society to hold once in a year a General Meeting within a period of three months after the date fixed for making up its accounts for the year. The Registrar, however, may by general or special order, extend the period for holding such meeting by a period not exceeding six months. Now this provision has been modified and the following provision has been substituted by the impugned Notification :

"The Annual General Meeting for the year 1975-76 of a Co-operative Sugar-Factory of which a Co-operative Agricultural Credit Society is a Member shall, if not already held, be held on the date of its Annual General Meeting for the year 1976-77."

The power of the Registrar to extend the period for holding such meeting, has been taken away by omitting the proviso to Sub-section (1).

13. The validity of the impugned notification cannot be judged by the power conferred on the Registrar to extend the period for holding the General Meeting. The power of the Registrar is only to give time to the Society to hold General Meeting, evidently on sufficient grounds; but the power of the Government is to modify the statutory provisions and apply the same to Co-operative Societies of

its choice. There is a world of difference between these two powers. The Government by the impugned Notification has amended the provisions of Section 27 and substituted in its place an entirely different provision. By the aforesaid substitution, it appears to us, that the original Section 27(1) to the extent set out above, has been wiped out from the statute, and we doubt very much whether what has been removed would revive automatically in future. The substitution normally obliterates the existing provision and in its place the provision substituted will take its place once for all. Whether the case on hand is an exception to this rule has, therefore, to be decided more properly after notice to the other side.

14. In our opinion, a rule nisi should Issue in the case.

Honniah, J.

15. In view of the majority opinion, this writ petition is rejected.

16. Petition rejected.