

(1991) 01 KAR CK 0061
In the Karnataka High Court
Case No : W.P. No. 5516/1984

Sri Chandrasekhara Bharathi

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Karnataka Societies Registration Act, 1960 — Section 27A

Citation : (1991) 2 KarLJ 392

Hon'ble Judges : B. Jagannatha Hegde, J;M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-The petitioner claims to be the elected President of the Navodaya Education Society registered under the Karnataka Societies Registration Act, 1960 (hereinafter referred to as the "Act"). It is alleged that he has been the elected President for a long time; that he was reelected on 1-5-1983 at a General Body Meeting called by the 3rd respondent who was the Secretary at the relevant time. Strangely, the Secretary convened the general meeting but did not attend the general meeting held on 1-5-1983. At that meeting, the petitioner was elected President and one M.S. Maramardhana was elected as Secretary. In accordance with the requirement of Section 13 of the Act, the new Secretary filed the return indicating the names of the new Committee of management or governing body elected at the meeting held on 1-5-1983 presided over by the petitioner Sri Chandrasekhara Bharati Swamigalu. Petitioner has further alleged that on the same day, namely, 1-5-1983 at Tiptur, the former Secretary, namely 3rd respondent-M. Renukarya, a Lecturer of Kalpatharu College of Tiptur also convened a general meeting at which another Managing Committee consisting of 20 members was elected and the said Renukarya was elected as the Secretary. In compliance with the requirement of Section 13 of the Act, on 16-5-1983 he filed a return purporting to be the list of members of the governing body elected at the meeting held on 1-5-1983. The District Registrar appears to have taken both the returns on file. Objecting to the same, the petitioner filed an application stating that the second return should be rejected as it was filed beyond 14 days prescribed under Section 13 of the Act

and for other reasons stated. In view of the controversy involved, the District Registrar-respondent No. 2 gave notice to all parties concerned in proceedings initiated as S.O.C. No. 17/1980-81. After giving adequate opportunities to the parties before him in such proceedings including the petitioner, he first appointed an ad hoc committee consisting of 11 members, which did not exclude the Secretary Renukarya, to be in charge of the affairs of the society and the educational institutions run by it. He, however, having regard to the dismal state of affairs obtaining in the management of the society and the institutions run by it directed that the ad hoc Committee must be in charge till the Government appointed an Administrator for which he was making recommendation in terms of Section 27-A of the Act..

2. Aggrieved by that order, the petitioner has challenged the legality and correctness of the order as at Annexure-D, dated 30-11-1983. Similarly, by another petition, 3rd respondent Renukarya the Secretary who had been reelected at a meeting not presided over by the petitioner on 1-5-1983 held at Tiptur has presented Writ Petition No. 1307/1984 challenging the very same order.

3. The two writ petitions had been clubbed together for being heard. It was submitted on behalf of the Counsel for petitioner in W.P. No. 1307/1984 that he is bed-ridden and unable to attend the. Court and therefore the matter may be adjourned. Having regard to the fact that the petitions are nearly 8 years old and further having regard to the fact that the Government have not passed any order on the recommendation made on the impugned order to supercede the Committee, we propose to dispose of the writ petition filed by the petitioner Chandrasekhara Bharathi Swamigalu after hearing the learned counsel Sri M. Mahabaleshwara Goud. In that view of the matter, we have separated W.P. No. 1307/1984 to be heard independently when the counsel for the petitioner recovers from his illness and is able to appear before this Court.

4. Mr. Mahabaleshwara Goud argued that the petitioner could not have proceeded to hold an enquiry on the application of one person under Section 25 of the Act. We do not think we should accede to that contention because the applicant was the petitioner himself having made an application to enquire into the affairs in regard to the acceptance of a latter return filed beyond time. It will not be open to the petitioner after having participated in the enquiry which followed to contend that the enquiry was without jurisdiction.

5. Even otherwise, a plain reading of Section 27-A of the Act which confers power on the State Government to supercede the Committee of Management of the governing body in three given situations begins with non-obstante clause which is as follows.- "27-A. Appointment of Administrator:-Notwithstanding anything in this Act,- (1)(a) Where any society on account of the pendency of litigation or otherwise has not held or is unable to hold the annual general meeting; or (b) where the term of office of the members of the governing body of a society has expired and a new governing body has not for any reason been constituted; or

(c) where on a report made by the Registrar or otherwise, on enquiry, the State Government considers it necessary in public interest so to do, the State Government may, by order published in the Official Gazette, appoint an Administrator for such society for such period, not exceeding six months, as maybe specific d in the order, to manage the affairs of the society:

Provided that for reasons to be recorded in writing, the State Government may, by like order, extend the said period by any further periods not exceeding six months at a time, so however, subject to the provisions of clause (5), the aggregate period shall not extend beyond (four years);

(2) the expenditure incurred by the State Government towards the salary and allowances of the Administrator shall be paid to the State Government from out of the funds of the society;

(3) on the appointment of the Administrator under clause (1) and during the period of such appointment the governing body of the society shall cease to exercise any powers and perform and discharge any functions or duties conferred or imposed on it by this Act, of its memorandum of association or the rules and regulations or any other law and subject to any directions which the State Government, may from time to time issue, all such functions or duties shall be performed or discharged by the Administrator;

(4) the Administrator shall, before the expiry of the period of his appointment take necessary action to convene the general body meeting of the society and hold elections for the constitution of the governing body;

(5) if the Administrator is not for reasons beyond his control, able to convene the general body meeting or inspite of such meeting being convened, the general body fails to elect the governing body, the Administrator shall forthwith send a report to the State Government, who may pass such orders as are considered necessary, either extend the period of appointment of the Administrator for a further period or if satisfied that public interest so requires, for the dissolution of the society;

[(5-A) the State Government may, if it thinks fit, appoint an Advisory Council to advise and assist the administrator appointed under sub-section (1) in the exercise of the powers and performance and discharge of the duties and functions conferred or imposed on him under this Act. The members of the Advisory Council shall hold office during the pleasure of the State Government.]

(6) where an order of dissolution is passed under clause (5) the assets of the society shall vest in and the liabilities shall devolve on the State Government."

Proviso is amended, which is as follows:

"2. Amendment of Section 27-A-In the proviso to sub-section (1) of Section 27-A of the Karnataka societies Registration Act, 1960 (Karnataka Act 17 of 1960), for the words "extend the said period" the words "extend either prospectively or

retrospectively, the said period "shall be substituted".

If importance is attached to the non-obstante clause with which the section begins, then enquiry under Section 25 would have no meaning. Even if the enquiry held by the 2nd respondent-District Registrar is presumed to be one held under Section 25 about which we have doubt. Section 25 speaks of an enquiry to be initiated in certain circumstances by the Registrar and held by himself or by a person duly authorised by him. There is no material placed before us that the Registrar on his own motion or the application of the majority of the members of the governing body or of not less than one-third of the members of the society initiated an enquiry. Nor it can be said that the Registrar of Societies in Karnataka had suo motu initiated any enquiry which resulted in any order as at Annexure-D passes by the District Registrar. Therefore, the order impugned is not more than a recommendation made by the District Registrar to the Government to appoint an Administrator, in the circumstances stated by him in the impugned order.

6. The term Registrar is defined in Section 2(e) of the Act and is as follows:

"Registrar" means such officer as the State Government may, by notification, appoint to perform the duties and the functions of the Registrar under this Act, in such area as may be specified in the notification, and where no such officer is appointed, the Inspector-General of Registration in Karnataka".

No material is placed by the learned Government Pleader with regard to the Notification pertaining to the delegation of power of the District Registrar to act as Registrar under the Act. Even otherwise, it would not make any difference having regard to the non-obstante clause in Section 27-A. In that view of the matter, petitioner cannot be said to be aggrieved by the recommendation made for appointment of an Administrator, more so when no Administrator has so far been appointed by the State Government.

7. In that view of the matter, we do not think it is a fit case in which we should interfere with Annexure-D, the recommendation made by the District Registrar.

8. Whether that part of the order which constitutes the Ad hoc Committee is valid or invalid, is a matter which should be agitated by the members inter se in appropriate civil proceedings and settle those differences. Mr. Mahabaleshwara Goud submitted that despite the direction in the impugned order that the Bank account should be operated jointly by the petitioner-president and Renukarya, the 3rd respondent-Secretary, the Secretary has been independently operating the account. Even for that remedy is to move the Civil Court for an injunction restraining the Secretary for the breach of the order as long as that order is operative.

9. Subject to the above observation, this writ petition is dismissed.

Post W.P. No. 1307/1984 for hearing two weeks hence with a copy of this order placed in the records of that petition.