

(2013) 12 KAR CK 0417

In the Karnataka High Court

Case No : Writ Petition No. 37350 of 2013 (CS-RES)

Sri Domlur Sreenivas Reddy

APPELLANT

Vs

BEML Employees Co-operative Society Ltd.

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0417

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Sri G.K. Hunasikattimath, for the Appellant; A.C. Nanja Reddy, for C/R-1 and Sri Udaya Holla for Sri Vivek Holla, for R-2, for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Patil, J.—Petitioner has filed this writ petition challenging the order dated 20.07.2013 passed by the Additional Registrar of Cooperative Societies (Housing & Miscellaneous), Bangalore (for short:, the Additional Registrar), thereby disqualifying the petitioner from his post as Vice-President & Director of the BEML Employees Co-operative Society Limited, Bangalore (for short, "the Society") - the 2nd respondent herein for a period of five years. Petitioner has also challenged the order dated 12.08.2013 passed by the 3rd respondent - Registrar of Cooperative Societies in Karnataka, Bangalore (for short, "the Registrar), rejecting the application filed seeking interim stay of the order of disqualification passed by the Additional Registrar, pending disposal of the appeal preferred by him in Appeal No. RCS/DAP/D1/06/2013-14. BEML Employees Co-operative Society is a Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act"). Petitioner has been elected as one of the Directors to the Committee of Management on 23.03.2008 for a period of five years. He was discharging his duties as Vice-President of the Board of Management, whereas, one J. Munnagappa was the President of the Society from 14.10.2010.

2. As alleged by the petitioner, J. Munnagappa - President of the Society committed certain illegalities in disposing of two corner sites belonging to the Society and indeed got them disposed of for his benefit by creating benami transactions contrary to Section 28-A(1) of the Act and Bye-law No. 60 of the registered Bye-laws of the Society. Petitioner and other Directors made allegations against the President in this regard by writing him a letter with copies marked to the Registrar and to the Principal Secretary to the Government, Department of Co-operation.

3. A meeting of the Board was convened on 10.06.2013 by the Secretary of the Society. In the said meeting, as alleged by the petitioner, the President - J. Munnagappa wanted to enroll certain outsiders as associate members which was opposed by other Directors, at that time, the President walked out of the meeting. As he did not turn-up for few minutes and was not willing to preside over the meeting even after he returned to the meeting, the Directors elected the petitioner as the Chairperson of the meeting. The Board authorized the petitioner to record the minutes of the meeting. In the said meeting, the Board transacted certain business and also authorized the petitioner to initiate legal action, both civil and criminal against J. Munnagappa - President, for the illegal sale of two corner sites.

4. The Secretary of the Society is said to have given a letter dated 11.06.2013 to the President of the Society stating that he did not record the minutes of the meeting dated 10.06.2013 and that he handed over the Minutes Book to the petitioner - Vice-President of the Society. This letter is produced at Annexure-Q. Thereafter, the President of the Society filed an application u/s 29-C of the Act before the 4th respondent - Additional Registrar. It is alleged by the petitioner that this application was filed to wreck vengeance against the petitioner for the serious allegations made against him of unlawful gains made by disposing of two corner sites of the Society.

5. Petitioner filed objections to the said application contending that the application was not maintainable. The petitioner also brought to the notice of the Additional Registrar that he had tendered resignation to the post of Director vide his resignation letter dated 05.07.2013 which was received by the respondent-Society on 08.07.2013. It is also alleged that all the other six Directors also resigned similarly, except Sri J. Munnagappa, who was the President of the Society. The contention of the petitioner is that the Additional Registrar without providing a fair and reasonable opportunity to the petitioner allowed the application and disqualified the petitioner recording findings that the petitioner had illegally conducted the meeting even when the President was available.

6. The Addl. Registrar has also recorded a finding that the meeting was conducted without quorum in the presence of only six Directors. To record such finding, he has placed reliance on the report submitted by the Co-operative Development Officer, who is said to have visited the premises of the Society 01.07.2013 & 02.07.2013 and submitted his report in writing, after recording the

statement of the staff of the Society including the Secretary. The Addl. Registrar has relied on the statement recorded by the Co-operative Development Officer to come to the conclusion that the meeting dated 11.06.2013 was conducted under the Chairmanship of J. Munnagappa. He has also found that the petitioner herein had taken the Minutes Book from the Secretary and did not give it back to him. He has held that the petitioner has wrongly recorded the proceedings alleging that Munnagappa went out of the meeting asking the members to conduct the meeting themselves. On these grounds, he has concluded that illegalities were committed by the petitioner and therefore, he was liable to be disqualified as per Section 29-C(8)(d) of the Act.

7. Challenging this order, petitioner has filed an appeal before the Registrar u/s 106 of the Act. Along with the appeal, he filed an application seeking stay of the order passed by the Additional Registrar. The Registrar has dismissed the said application holding that the petitioner had forcibly snatched the Minutes Book from the Secretary of the Society and had recorded the proceedings. He has further found that in order to avoid further responsibility, petitioner had submitted his resignation to the post of Vice-President on 08.07.2013 and therefore, as he had not withdrawn his resignation within 15 days from the date of submission of the resignation in terms of Section 29-B of the Act, the resignation stood automatically accepted and therefore, the petitioner ceased to be the Vice-President/Director of the Society, hence, there was no need to grant any interim order staying the operation of the order passed by the Additional Registrar because the petitioner was not entitled to continue as Director of the Society and therefore, his application was liable to be dismissed. In this background, aggrieved by this order and the order passed by the Additional Registrar, the present writ petition is filed.

8. Mr. Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner contends that the Registrar has seriously erred in passing the impugned order rejecting the application filed for stay of the order of the Additional Registrar. He points out that the reasons assigned by the Registrar while rejecting the interim prayer holding that as the petitioner had already submitted his resignation, he was, in any event, not entitled to participate in the meetings of the Board, as Director or Vice-President and therefore, there was no need to grant an interim order, completely overlooks the fact that the order under challenge before him passed by the Additional Registrar disqualified the petitioner for a period of five years which disentitled him from contesting the election scheduled to be held shortly. He relies on the judgment of the Division Bench in W.A. No. 1666/2008 disposed of on 05.11.2008 to contend that when the basic question in the appeal filed u/s 106 of the Act was the legality of the disqualification, in case no interim order was granted staying the disqualification, the same would result in irreparable injury and therefore, in such matters, interim stay deserved to be granted. Reliance is also placed on the decision of a learned Single Judge of this Court in this regard in W.P. 41531/2010 disposed of 28.12.2010.

9. He has also placed reliance on the judgment of the Apex Court in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, . Inviting the attention of the Court to the observations made in paragraph 58 & 59 of this judgment, counsel contends that the Secretary of the Society who has sought for vacating the interim order has no right to maintain such an application. He has also contended that the Registrar has not taken note of the prima facie case made out by the petitioner urging that no fair and reasonable opportunity had been given to the petitioner to lead evidence and that reliance was illegally placed by the Additional Registrar on the report submitted by the Cooperative Development Officer behind the back of the petitioner. He further contends that the Society functions under the supervision of the Board and it is the Board which decided that the petitioner should preside over the meeting and record the minutes and hence, no exception can be taken to the action of the petitioner in recording the minutes of the meeting. He further points out that there is no individual action on the part of the petitioner which could be termed as illegal because, the action taken was collective and therefore, for the action of the Board the petitioner cannot be held liable and proceeded against in terms of Section 29-C of the Act to disqualify him.

10. Mr. Udaya Holla, learned Senior Counsel appearing for respondent No. 1 has strongly supported the order passed by the Registrar. He has particularly contended that the petitioner was guilty of snatching the Minutes Book from the Secretary and conducting the meeting of the Board illegally and therefore, he was guilty of misconduct. Supporting the findings of the Additional Registrar, he has contended that the Registrar has rightly exercised his discretion in refusing to stay the operation of the order passed by the Additional Registrar and that no case is made out before this Court for exercising writ jurisdiction.

11. Mr. Nagabushan, learned counsel appearing for the 2nd respondent submits that there was no quorum in the meeting presided over by the petitioner and therefore, there could not have been any resolution passed, hence, the authorities were right in holding that the petitioner was guilty of acts of omission and commission in conducting the meeting and recording the minutes.

12. Having heard the learned counsel for both parties and on careful perusal of the materials on record, it is apparent that the Registrar has passed the impugned order rejecting the interim prayer on three grounds. The first being, the petitioner as Vice-President of the Society had taken law into his hands in forcibly taking the Minutes Book from the custody of the Secretary of the Society, which was evident from the statement given by the said Secretary. Secondly, that grant of interim order was not necessary in the instant case, as the petitioner, having already submitted his resignation and the said resignation having come into force, he was, in any way, not entitled to participate in the meetings of the Board as Director. Thirdly, that the meeting conducted by the petitioner appeared to be unauthorized as the petitioner as Vice-President was not authorized as per the notice of the meeting to preside over the meeting and

there appeared to be no quorum in the meeting conducted.

13. There is an apparent error committed by the Registrar in holding that grant of interim order was not necessary because of the resignation submitted by the petitioner. On account of the resignation of the petitioner, he ceases to continue as Director, but he does not stand disqualified to be a Director in future. The order passed by the Additional Registrar disqualifies the petitioner for a period of five years. The effect of this order is that he cannot become a Director of the Society for the next five years. Apart from this, it is a stigma attached to the petitioner.

14. Secondly, the Registrar has recorded a finding that the petitioner was guilty of forcibly snatching the Minutes Book from the Secretary of the Society. To come to this conclusion, he has placed reliance on the statement given by the Secretary recorded by the Co-operative Development Officer. The main contention of the petitioner is that the very report of the Co-operative Development Officer and the statement recorded by him were behind the back of the petitioner and the petitioner was not given any opportunity to go through the report or the statements recorded by him and to have his say in the matter. It is, prima facie, clear that the petitioner has not been furnished with a copy of the report of the Co-operative Development Officer and the statement of the Secretary of the Society was not recorded in the presence of the petitioner. Whether this statement can be legally relied upon is a matter that is required to be decided in the appeal. At the stage of consideration of the interim relief, the Registrar ought to have kept this important aspect in mind. In fact, the petitioner draws the attention of the Court to Annexure-Q letter addressed by the Secretary to the President, at an undisputed point of time, wherein he has stated that he handed over the Minutes Book to the Vice-President of the Society, but has not stated that the same was forcibly snatched away by the petitioner. However, this is not a matter to be examined by this Court, at this stage. This is precisely the question, which the Appellate Authority, has to consider while re-examining the matter.

15. It is not appropriate for this Court to pronounce on the legality or correctness of the order passed by the Additional Registrar. Though several contentions are urged stating that the order was passed in a hurried manner, without recording evidence and illegally placing reliance on the report of the Cooperative Development Officer and on the basis of the statements recorded by him behind the back of the petitioner violating the principles of natural justice, the same have to be considered by the Appellate Authority. As a statutory appeal is preferred before the Registrar by the petitioner, he is required to re-examine the matter and pass a considered order.

16. In my considered view, the Registrar has committed an apparent error in rejecting the application for stay of the order impugned before him. The order disqualifying the petitioner visits him with serious consequences. If only the Registrar had applied his mind to the relevant facts and taken note of the facts

and circumstances of the case, he could not have outrightly rejected the prayer for interim stay. This is not a matter where the order of disqualification can be given effect to without considering the statutory appeal presented by the aggrieved petitioner before the Appellate Authority on merits. Sufficient grounds had been made out for grant of interim stay. The rejection of the same by the Registrar is, therefore, unsustainable in law.

17. Reliance placed by the counsel for the petitioner on the judgments of this Court in this connection is apt and appropriate having regard to the facts of the case. In the result, this writ petition is allowed in part. The impugned order dated 12.08.2013 passed by the Registrar-respondent No. 3 herein vide Annexure-B is quashed. There shall be an interim order of stay of Annexure-A order dated 20.07.2013 passed by the Additional Registrar - respondent No. 4 herein till the disposal of the appeal by the Registrar. The Registrar is directed to consider the appeal on merits and pass a reasoned order.