

**(2007) 09 KAR CK 0081**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 14082 of 2007**

Sri Jagadish Patil

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 21-09-2007

**Acts Referred:**

Karnataka Co-operative Societies Act, 1959 — Section 29 (1)

**Citation :** (2007) ILR (Kar) 4266 : (2007) 4 KCCR 307 SN

**Hon'ble Judges :** N.K. Patil, J

**Bench :** Single Bench

**Advocate :** H. Subramanya Jois for Praveen Kumar Raikote, for the Appellant; Udaya Holla, General and R. Kumar, HCGP for R1 and A.S. Mahesh, for R3, 5 and 8, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.K. Patil, J.—Though this matter is posted in orders list, with the consent of learned Counsel appearing for the parties, the matter is taken up for final disposal having regard to the nature of relief sought in the instant writ petition and also in view of the urgency pleaded by the learned senior counsel appearing for petitioner.

2. Petitioner, assailing the correctness of the impugned Notifications dated 3rd September 2007 bearing No. CO.59.CNS 2006 (PART) vide Annexure A and dated 4th September 2007 bearing No. CO.59.CNS 2006 (PART) vide Annexure C, both issued by first respondent - State, has presented the instant writ petition.

3. Petitioner herein claims to be one of the Directors elected as the representative from the D.C.C. Bank, Gulbarga and from the "A" class society. It is the case of petitioner that, the first respondent has issued the impugned Notifications vide Annexures A and C nominating the respondents 3, 5 and 6, by exercising its power under Sub-section (1) of Section 29 of the Karnataka Co-operative Societies Act, 1959, even though, the first respondent has no such

power to nominate respondents 3, 5 and 6 to the second respondent - Bank for the reason that, the second respondent is neither an "assisted society" nor the first respondent is a member of second respondent for nominating or appointing a Director on the Board of second respondent - Bank. Moreover, the first respondent has not invested any share capital in the second respondent - Bank. Therefore, the impugned Notifications issued by first respondent vide Annexures A and C respectively, nominating its own representatives cannot be sustained and that, the power exercised u/s 29 (1) of the Co-operative Societies Act is one without jurisdiction. Therefore, petitioner is constrained to approach this Court by presenting the instant writ petition, seeking quashing of the said Notifications.

4. It is the further case of petitioner that, the impugned exercise of power u/s 29(1) of the Act has been done by first respondent only in view of the ensuing election to the posts of "President" and Vice President" scheduled to be held on 24th September 2007 to the second respondent - Bank. Therefore, the said exercise of power is wholly arbitrary, illegal and unconstitutional. Hence, the impugned Notifications issued by first respondent are liable to be declared as null and void.

5. Learned senior counsel appearing for petitioner vehemently submitted that, the power exercised by Government u/s 29 (1) of the Karnataka Cooperative Societies Act, 1959 (hereinafter called "Act") is one without jurisdiction and that, Government has no power as such to nominate its representatives. To substantiate the said submission, he has taken me through Annexure B and pointed out that, the share capital of the Government is for a tune of Rs. 01,20,90,000/- and that, the said share capital has already been refunded as per the circular of Government dated 20th July 2005 by the second respondent - Bank through the Reserve Bank of India cheque bearing No. 368794 dated 4th January 2006 as referred in Annexure B and therefore, the first respondent is not entitled to exercise its power invoking Section 29(1) of the Act for nominating its representative nor the second respondent - Bank is an "Assisted Society". Further, he placed reliance on the definition of the word "Assisted Society" and submitted that, any Co-operative Society which has received Government assistance in the form of share capital comes under "Assisted Society". Learned senior counsel strenuously submitted that, in the instant case, the share capital received by second respondent from the State Government has already been refunded as early as on 4th January 2006 bearing RBI Cheque No. 368794 and by its communication dated 6th January 2006 bearing No. Share: 8459/2005-2006 vide Annexure B. Further he placed reliance on Section 29(1) of the Act and submitted that, under Sub-section (1) of Section 29, the State Government may nominate not more than three persons as its representatives of the Committee of any Assisted Society of whom one shall be a person belonging to Scheduled Caste or Scheduled Tribes and one shall be a woman. In the instant case, no Scheduled Caste person has been nominated as the representative of the State Government. Therefore, he submitted that, the impugned Notifications issued by first respondent are liable to be set aside as one without jurisdiction.

6. Per contra, learned Advocate General appearing for first respondent, inter alia contended and substantiated the impugned Notifications issued by first respondent stating that, the same are in consonance with the mandatory provisions of the statute as well as Sub-section (1) of Section 29 of the Act and that, no error or illegality as such has been committed by first respondent in exercising the power and nominating respondents 3, 5, and 6 respectively as its representatives to the Committee of the second respondent. Further, he has taken me through the definition of "Assisted Society" and drew my specific attention to its meaning, which says, any Co-operative Society which has received Government assistance in the form of guarantee for repayment of its loan or interest, is an "Assisted Society". To further substantiate the said submission, he placed reliance on Annexure R1 - copy of Block Guarantee Deed, produced along with the statement of objections filed on behalf of first respondent, executed by the competent authority of the first respondent with NABARD to a tune of Rs. 150 crores. Further, the first respondent has executed another Deed of Guarantee with NCDC in respect of sanction of loan assistance towards meeting part of working capital requirements of Co-operative Sugar Mills dated 17th February 2006 vide Annexure R2 produced along with the statement of objections filed on behalf of respondents 3, 5 and 6, standing guarantee for a sum of Rs 100 crores and thereafter, again, the first respondent has stood as guarantee for a sum of Rs. 100 by executing another Deed of Guarantee with the NCDC vide Annexure R5 produced by learned Counsel appearing for respondents 3, 5 and 6.

7. Further, learned Advocate General appearing for first respondent, on instructions from the concerned official who is present before the Court submitted that, as on date, Government has stood guarantee to the second respondent, in all, for a tune of Rs. 850 crores. Therefore, he submitted that, the State Government has every right, jurisdiction and power to nominate its nominees as its representatives to the Committee of second respondent - Bank and that, the act of first respondent is well within the provisions of the statute.

8. Further, in reply to the submission made by learned senior counsel appearing for petitioner that, the nomination of representatives made by first respondent to the Committee of second respondent - Bank is in clear violation of Section 29(1) of the Act, as no Scheduled Caste Person is appointed, learned Advocate General vehemently submitted that, the sixth respondent nominated by first respondent belongs to "Scheduled Caste" and fifth respondent is nominated under "woman" category and therefore, Section 29(1) of the Act has been strictly adhered to. Further, learned Advocate General submitted that, it is not the intention of first respondent to nominate its representatives having regard to the ensuing election to the posts of "President" and Vice President" of the second respondent - Bank but, the only reason is that, the term of the representatives nominated earlier by the State Government is coming to an end and would expire. Therefore, he submitted that, the first respondent, exercising the power as envisaged under the statute, has rightly exercised its power and nominated its representatives

and that, there is no other intention to defeat or contravene the relevant provisions of the Act. Therefore, he submitted at the threshold that, the prayer sought for by petitioner is liable to be rejected on the ground that, the impugned Notifications issued by first respondent are in accordance with law and the provisions of the Act and Rules and Section 29(1) of the Act, in particular.

9. After hearing learned senior counsel appearing for petitioner, learned Advocate General appearing for first respondent, and learned Counsel appearing for respondents 3, 5 and 6 and after careful perusal of the impugned Notifications, relevant provisions of the Cooperative Societies Act and Rules, objections filed on behalf of respondents 1 and respondents 3, 5 and 6 and other relevant material available on file and after considering the rival contentions urged by the parties, the only question that arise for consideration in the instant writ petition is as to:

Whether the impugned Notifications issued by first respondent are sustainable in law?

Having heard learned Counsel appearing for the parties for considerable length of time and after careful evaluation of the relevant material available on file, threadbare, I do not find any error of law much less illegality as such committed by first respondent in issuing the impugned Notifications exercising its power under Sub-section (1) of Section 29 of the Karnataka Cooperative Societies Act. After critical evaluation of the Deeds of Guarantee executed by first respondent with NABARD, NCDC produced as Annexures to the statement of objections filed on behalf of first respondent as well as respondents 3, 5 and 6, it can be seen that, it is a fact that, Government has stood as guarantee with NABARD, NCDC to the tune of Rs. 850 crores to the second respondent - Bank and therefore, Government has got every right, power and jurisdiction to nominate three persons representing State Government as envisaged u/s 29(1) of the Act, where under, it has been specifically stated that, the Government has the power to nominate its representatives to the Committee of an Assisted Co-operative Society, in this context, it is relevant to know what is an "Assisted Society". Section 2 (a-1) defines an "Assisted Society" as "a Co-operative Society which has received the Government assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest". In the instant case, it is undisputed that, Government has stood guarantee by executing Deeds of Guarantee on behalf of second respondent - Bank vide Annexure R1 produced by first respondent along with the statement of objections and Annexure R2 produced by respondents 3, 5 and 6 along with the statement of objections. After careful perusal of the recital of the terms and conditions of the said deeds, it is amply clear that, Government is the guarantee for the second respondent - Bank in respect of loans from NABARD and NCDC. If that is so, in my view, Government has every right to appoint and nominate its own representatives as per Section 29(1) of the Act and that, there is no lacuna in the impugned Notifications issued by first respondent and the same are highly sustainable in law. Therefore, interference by this Court in the impugned Notifications that are

issued in consonance with the relevant provisions of the Act is totally uncalled for nor I find any good grounds to entertain the instant writ petition.

10. So far as the submission made by learned senior counsel appearing for petitioner that, the first respondent has not made the nomination as per Section 29(1) of the Act is concerned, the same cannot be accepted nor it has any legs to stand, as rightly pointed out by learned Advocate General appearing for first respondent for the simple reason that, the fifth respondent nominated is under "woman" category and sixth respondent nominated belongs to Scheduled Caste and third respondent belongs to one of the other categories and that, they have been nominated having regard to their experience in the concerned field.

11. Yet another reason as to why the instant writ petition is liable to be dismissed is, having regard to the conduct of petitioner, in as much as, he being an elected Director, knowing fully well, deliberately and intentionally has suppressed the vital information relevant to the case on hand that, the State Government by entering into several Deeds of Guarantee with NABARD and NCDC has stood as guarantee to the second respondent - Bank to a tune of Rs. 850 crores. Petitioner has wantonly not whispered a word in the entire writ petition regarding this aspect. Therefore, it is well settled principles of law laid down by the Apex Court and this Court that, whenever a party approaches the Court for redressal of his/her grievances, he or she must come with clean hands and state the true facts before the Court. In the instant case, as referred in the preceding paragraph, petitioner has emphatically concealed the material information that was very much within the knowledge of petitioner, being the elected Director of second respondent - Bank that, first respondent has stood as guarantee to second respondent - Bank to quite a huge sum of Rs. 850 crores. Withholding of vital relevant material by litigant is nothing but abuse of the process of Court and the guilty litigant is liable to be thrown out at any stage. Therefore, on the ground of suppression of material information also, the instant writ petition is liable to be rejected.

12. In the light of the facts and circumstances of the case, as stated above, taking into consideration the totality of the case on hand, I do not find any good grounds to entertain the instant writ petition.

13. Having regard to the facts and circumstances of the case, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

14. Sri. A.S. Mahesh, learned Counsel is permitted to file vakalath on behalf of respondents 3, 5 and 6 within three weeks from today.