

(2008) 01 KAR CK 0062
In the Karnataka High Court
Case No : Writ Petition No. 12835 of 2007

Sri Ramu Solanke and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 30 B

Citation : (2008) ILR (Kar) 606 : (2008) 2 KCCR 838

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : E.R. Indrakumar, for M.V. Seshachala, for the Appellant; Udaya Holla, General for R1 to 3 and 6, S.R. Hedge Hudlamane, for R4 and 5 and S.S. Halalli, for R7 to 10, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioners have challenged the validity of the notification at Annexure "E" dated 19.7.2007 issued by respondent Nos. 3 and 4 whereby tenders have been invited for lease of Raibag Sahakari Sakkare Karkhane Niyamitha, Raibag, Belgaum District, under lease, rehabilitated, operate and transfer (for short "LROT") basis for a period of 30 (thirty) years starting from the year 2007-08 to 2036-37. The petitioners have also challenged the proceedings of the State Government at Annexure "G" dated 5.8.2006 whereby the State Government has decided to revive the aforesaid sugar factory by way of lease on the model of Srirama Sahakari Sakkare Karkhane Limited and the Government Order at Annexure "H" dated 16.1.2007 deciding to lease the aforesaid sugar factory for a period of 30 years on LROT basis.

2. The petitioners are the shareholders and members of the 4th respondent-Raibag Sahakari Sakkare Karkhane Niyamitha, Raibag, Belgaum District, ("for short "society"). The said society is registered under the Karnataka Co-operative Societies Act, 1957 (for short "the Act"). The society is carrying on the activities

of manufacture of sugar. The society purchases sugarcane from its members and also from farmers in the surrounding villages for the purpose of manufacture of sugar. The society commenced its activity of production of sugar in the year 1978 with an installed capacity of 1250 TDC. The society took up an expansion programme by increasing the crushing capacity of sugarcane from 1250 TDC to 2500 TDC. It is the case of the petitioners that for the purpose of increasing the crushing capacity, the society had availed financial assistance of Rs. 9.85 crores from NCDC and Rs. 7.45 crores from Sugar Development Fund from the Government of India. There was an inordinate delay in release of the fund from the Sugar Development Fund, which resulted in diversion of fund borrowed from the DCC Bank for expansion programme. During the same time, the turbine alteration failed resulting delay in crushing of sugarcane. Therefore, the society faced financial problems as a result of which the State Government appointed Managing Director to the sugar factory. It is further contended that the Managing Director misappropriated the funds of the society. An enquiry was conducted in this regard. In the enquiry, it was found that the Managing Director has misappropriated the funds. Therefore, the society approached the State Government to put the factory back on rails and help the farmers for whose benefit the society came into existence. The State Government by its order dated 1.3.2000 gave a guarantee for a sum of Rs. 71 crores for the finance to be given by the Apex Bank and Belgaum District Co-operative Bank Limited. By another Government Order dated 4.6.2001 superseding the earlier Government Order dated 1.3.2000, the Government stood guarantee for payment of pledged loan of Rs. 41.50 crores availed earlier by the society and as per the said Government Order, tripartite agreement was entered into between the society, DCC bank and the Deputy Commissioner, and thereafter, the Deputy Commissioner was to operate the accounts of the society. It is contended that the arbitrary action of the Deputy Commissioner made the DCC Bank not to accept the Government guarantee. Due to the inaction on the part of the Deputy Commissioner, spare parts were not purchased and crushing of sugarcane did not take place. The labour force remained idle and the sugarcane growers could not harvest their crops. The society in anticipation of the proposed tripartite agreement undertook large-scale repairs of machinery and placed orders for new parts and equipments. In view of the failure to enter into tripartite agreement, all the orders for supply of spares and new equipments were cancelled and the society suffered further losses. A legal notice was issued to the Deputy Commissioner calling upon him to forbear from interfering with the affairs of the society. Finally, a writ petition was filed before this Court in W.P.No. 3847/2002 seeking direction to the Deputy Commissioner to transfer the accounts of the factory to the management of the society. An interim order was passed in the said case on 9.9.2002 directing the Deputy Commissioner to make payment of all the pending bills and necessary payment to cane growers. In this background, the State Government convened a meeting presided over by the Minister for Sugar and Co-operative Societies. A decision was taken in the said meeting to immediately return the factory to the management with all accounts. The Executive Board

reconditioned the plant and started manufacture of commercial sugar during the month of April/May, 2003. Since the society did not have a working capital, it sought for pledge loan from the DCC Bank. The DCC Bank refused to grant any loan. Therefore, crushing became extremely difficult. At this juncture, the Government appointed an Administrator to the society. According to the petitioners, the Administrator also misappropriated the funds of the society. At this stage, the State Government decided to put up the sugar factory for sale by way of public auction, which was challenged in appeal No. CMW.4.CAP.2006. During the pendency of the appeal, the State Government decided to revive the society and tender process initiated to sell the sugar factory came to be cancelled. It is the case of the petitioners that without taking into account the interest of the farmers, shareholders, cane growers, who are the beneficiaries, the State Government has unilaterally decided to lease out the sugar factory under LROT basis. Petitioners have called in question the said action of the State Government in this writ petition.

3. The respondent Nos. 1 to 3 and 6 have filed their statement of objections and additional objections. It is contended that Raibag Co-operative Sugar Factory Limited was registered during the year 1968-69. The sugarcane growing areas falling within 46 villages in and around Raibag are reserved for this factory. The sugarcane requirement of this factory is around 4.5 to 5 lakh metric tons. Over ten thousand farmers, who grow sugarcane supply their entire output of sugarcane to the said factory. It is further contended that over 50,000 to 60,000 persons depend upon the sugar factory in question for their livelihood. It is the case of the respondents that the factory has not paid arrears of cane price to the farmers right from the year 1998-99 onwards. The arrears of price payable to the farmers by the factory is over Rs. 16.25 crores. The factory has also not paid dues to its employees/workers, financial institutions, State Government and others. The factory was closed from the year 2001-02 due to financial distress. The total liabilities of the factory are in excess of Rs. 15057 lakhs. The details of the dues are as under:

Rs. in lakhs.

1. Cane price arrears to farmers

1625.09

2. Salaries, PF, leave encashment, etc due to workers/employees.

786.46

3. Taxes, dues, supplies dues to others -

1209.22

4. Loans due to State and Central Governments including interest

3292.82

5. Dues to Financial Institutions and Banks

7906.57

6. Deposits refundable to farmers, etc-

236.84

It is further contended that the factory has sustained accumulated losses aggregating to over Rs. 9892 lakhs and cash loss of Rs. 6169 lakhs as on 31.3.2005. In view of the overwhelming losses sustained by the factory and its inability to pay the dues to the farmers, workers, financial institutions and the State Government, an order was passed by the Commissioner for Cane Development and Director of Sugars, Bangalore, on 24.1.2004 for liquidating the Co-operative society in question. The liquidator initiated proceedings for sale of the sugar factory in question. The same came to be challenged before this Court in W.P.No. 27273/2005. It is further contended that most of the sugar factories in the State of Karnataka have sustained losses and have accumulated losses, which run into crores of rupees. The losses of these cooperative societies have gone on increasing. It is under these circumstances the State Cabinet took a decision to revive those sugar Co-operative societies, which are defunct or not working to be leased on long term basis as the only methodology of reviving the same as it was impossible for the Government to pump in any more funds. It is further contended that leasing of sugar factories would result in the Co-operative societies continuing to exist and the assets being available to the said societies. The State Government took a decision to revive the Co-operative society in question by leasing out its factory by inviting tenders on the same lines as was done in respect of Pandavapura Co-operative Sugar Factory, Sri Srirama Sugar Factory, Sri Dhanalakshmi Sugar Factory. The State Government took a decision on 14.12.2006 to revive the society in question by leasing out its factory on long term basis and accordingly, the Government order was issued. The shareholders of the society had challenged the liquidation order passed by the Commissioner for Cane Development and Director of Sugars by filing an appeal before the State Government u/s 106 of the Act. In view of the decision of the State Government as per the Government Order dated 26.6.2006, the appeal was disposed of as having become infructuous. It is further contended that the bye-laws of the society which have been approved by the Registrar of Co-operative Societies way back in the year 1968-69 empowers the society to sell or otherwise dispose of the whole or any part of its business or assets or undertakings including its factory, buildings, machinery and lands in the interest of the society. It is further contended that quashing of the impugned order would result in continuance of the status quo as on date, viz., the continued closure of the factory and non-payment of enormous dues to the farmers, workers and employees, financial institutions and the State Government and public interest would not be served by granting the reliefs sought for by the petitioners. It is contended that there is no other methodology by which the factory could be revived. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the

factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the Co-operative movement is restored. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. The National Bank for Agricultural and Rural Development (NABARD), a Government of India Organization, which funds the cooperative societies and agricultural sector also recommends under the package for leasing of factories under restructuring of cooperative sugar factories. The leasing of the factory would result in a win-win situation.

3.1. Respondent Nos. 4 and 5 in their statement of objections have contended that the sugar factory was registered on 9.2.1978 under the provisions of the Karnataka Co-operative Societies Act, 1959, with an installed capacity of 1250 TDC, it was later expanded to 2500 TDC. The management of the 4th respondent society did not make payment to the sugarcane growers towards purchase of sugarcane within 14 days from the date of procurement as per the provisions of Sugarcane (Control) Order, 1966. The management has defaulted in payment of the purchase price to the sugarcane growers to a tune of Rs. 1625.09 lakhs, the details of which are as under:

1998-1999

Rs. 578.00 lakhs

1999-2000

Rs. 379.93 lakhs

2000-2001

Rs. 671.16 lakhs

Rs. 1625.09 lakhs

The other liabilities of the 4th respondent society are as under:

A.

Wages for Labours

11.72

B.

LIC Subscription dues of Labours

1.27

C.

P.F. dues

1.52

D.

Professional Tax

0.58

E.

Purchase Tax due to Government

288.00

F.

SDF Loan due to Central Government

783.00

G.

Pledge loan of sugar due to Belgaum District, Central Co.Op.Bank Ltd.

4150.00

H.

OTS due to Government

1164.00

I.

Deposits due

636.00

J.

Other liabilities (interest on Bank Loan and etc.)

3901.96

K.

Total liabilities

11053.49

It is further contended that the society has also defaulted in repayment of loan of Rs. 4150 lakhs borrowed from DCC Bank on pledge of sugar and the interest outstanding is Rs. 3901.96 lakhs. In the aforesaid circumstances, the third respondent passed an order of liquidation u/s 72(2) of the Act on 24.1.2004. The said order came to be challenged by the petitioners herein before the State Government u/s 106 of the Act in appeal No. CMW.4.CAP.2006 and sought for an interim order in the said appeal. Since they failed to obtain an interim order, they

approached this Court by filing a writ petition in No. 27273/2005. In the said writ petition, this Court directed the competent authority to consider the prayer of the petitioner with regard to interim order. Thereafter, the competent authority heard the appeal. In view of the Government Order dated 26.6.2006, the appeal became infructuous. Thereafter, the Government has taken a decision to lease out the factory as per the pattern of Pandavapura Sahakari Sakkare Karkhane, Mandya. It is further contended that with a view to rehabilitate the factory of the fourth respondent, Government has thought it fit to lease the same. In a meeting convened on 5.8.2006 under the Chairmanship of the first respondent, the representatives of the employees/workers union of the factories and also the Officers and President of DCC Bank have participated and after a detailed discussion, it was unanimously agreed to revive the factory of the 4th respondent by way of leasing out on the models of Sriram Sahakari Sakkere Karkhane Limited for the benefit of all the shareholders.

3.2. Respondent Nos. 7 to 10 have also filed their objections seeking to justify the action of the State Government to lease out the factory of the 4th respondent society.

4. I have heard Sri E.R. Indrakumar, learned Senior Counsel appearing for the petitioners and Sri Udaya Holla, learned Advocate General appearing for respondent Nos. 1 to 3 & 6, Sri S.R. Hegde Hudlamane, learned Counsel appearing for respondent Nos. 4 and 5 and Sri S.S. Halalli, learned Counsel appearing for respondent Nos. 7 to 10.

5. Sri Indrakumar, learned Senior Counsel appearing for the petitioners has mainly raised two contentions. The first contention is that the State Government has usurped the powers conferred on the general body of the society while taking a decision to lease the sugar factory of the society. Second contention is that the order at Annexure "H" is totally without jurisdiction. Elaborating on the first contention, he submits that the unilateral action of the State Government is not in the interest of the members of the society. No general body meeting of the members of the society has been convened. The State Government has no jurisdiction to take a decision without any recommendation from the general body or the board of the society. Relying on the decision of the Apex Court in the case of Daman Singh and Others Vs. State of Punjab and Others, he submits that a Co-operative society has the status of a body corporate having perpetual succession and a common seal with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. A Co-operative society is a Corporation as commonly understood. Promotion of Co-operative movement is one of the directive principles of the state policy. Placing reliance on the decision of the Apex Court in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, , he submits that the Co-operative Societies Act is a welfare legislation. The policy and guidelines are discernible from the preamble of the Act which proclaims that the law has been passed to

facilitate the formation and working of the Co-operative societies, for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production. He has also relied on the decision of the Apex Court in the case of S.M. Mahendru and Company and Others Vs. State of Tamil Nadu and Another, , wherein it has been held that the object of every Co-operative society is to promote economic interest of its members by following cooperative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies where sky is the limit so far as their desire to earn profits is concerned. He also relied on a decision of this Court in the case of B. Madappa Vs. State of Karnataka, , wherein this Court has held that the General Body of a Co-operative Society enjoys sovereignty within the institution and even though the Board of Directors constitute the management to look after the day today affairs of management, it is not legally permissible for the Board of Directors to circumvent the General Body and to take a unilateral decision.

On the second contention, learned Senior Counsel submits that Section 30B of the Act does not empower the State Government to issue an order, which is opposed to the other provisions of the Act. It is submitted that the order issued is not in public interest and also not in the interest of the implementation of Co-operative and other development programme. In this connection, he has relied on a Division Bench decision of this Court in the case of Telecom Employees Co-operative Housing Society Ltd. Vs. Scheduled Castes, Scheduled Tribes, Minority Communities and Backward Classes Improvement Centre, He has drawn my attention to paragraph 28 of the judgment wherein it has been held that the Government cannot issue any direction to the BDA in disregard of the statutory provisions of the Bangalore Development Authority Act.

6. On the other hand, learned Advocate General appearing for respondent Nos. 1 to 3 and 6 contended that the sugarcane areas falling within 46 villages in and around Raibag are reserved for the factory in question. Over ten thousand farmers, who grow sugarcane supply their entire output of sugarcane to the said factory. It is further contended that over 50,000 to 60,000 persons depend upon the sugar factory for their livelihood. The factory has not paid cane price to the farmers right from the year 1998-99 onwards. The total price payable to the farmers by the factory is over Rs. 16.25 crores. It has also not paid dues to its employees/workers, financial institutions, State Government and others. The factory was closed from the year 2001-02 due to financial distress. The total liabilities of the factory are in excess of Rs. 15057 lakhs. The factory has sustained accumulated losses aggregating to over Rs. 9892 lakhs and cash loss of Rs. 6169 lakhs as on 31.3.2005. In view of the overwhelming losses sustained by the factory and its inability to pay its dues to the farmers, workers, financial institutions and the State Government, an order was passed by the Commissioner for Cane Development and Director of Sugars, Bangalore, on 24.1.2004 for liquidating the cooperative society in question. It is further argued that majority of the sugar factories have sustained losses and have accumulated

losses which run into crores of rupees. It is under these circumstances that the Cabinet took a decision to revive those sugar cooperative societies, which are defunct or not working to be leased on long term basis as the only methodology of reviving the same, as it was impossible for the Government to pump in any more funds. It is further contended that leasing of sugar factories would result in the cooperative societies continuing to exist and the assets being available to the said societies. There is no other methodology by which the society could be revived. Some of the shareholders of the society had challenged the liquidation order passed by the Commissioner for Cane Development and Director of Sugars by filing an appeal before the State Government u/s 106 of the Act. In view of the decision of the State Government as per the Government Order dated 26.6.2006, the appeal was disposed of as having become infructuous and a direction was issued to initiate action in terms of the Government Order dated 26.6.2006. The learned Advocate General further submits that the bye-laws of the society which have been approved by the Registrar of Co-operative Societies way back in the year 1968-69 empowers the society to sell or otherwise dispose of the whole or any part of its business or assets or undertakings including its factory, buildings, machinery and lands in the interest of the society. The petitioners had no grievance when the factory was closed in the year 2001-2002. The lease that is proposed is to lease out the factory for a period of thirty years on "as is where is" basis. The lessee is required to invest a minimum of Rs. 100 crores in the factory and increase the crushing capacity as well as establish co-generation as well as the distillery and ethanol unit. After the lease period is over, the entire assets including those that have been set up at the cost of the lessee would revert back to the society. The society and its members as well as farmers, employees of the society and financial institutions and the State Government would be benefited from such an arrangement. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the Co-operative movement is restored. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. The National Bank for Agricultural and Rural Development (NABARD), a Government of India Organization, which funds the Co-operative societies and agricultural sector also recommends under the package for leasing of factories under restructuring of Co-operative sugar factories. The leasing of the factory would result in a win-win situation. Learned Advocate General further submits that there is no prohibition to issue the impugned notification by the State Government u/s 30B of the Act. It is further submitted that this Court should not exercise its discretionary power to annul the decision taken by the State Government in public interest. He prays for dismissal of the writ petition.

7. Learned Counsel appearing for the other respondents have adopted the

arguments of the learned Advocate General.

8. I have carefully considered the arguments of the learned Counsel made at the bar and perused the materials placed on record.

9. It is not in dispute that the sugar factory of the 4th respondent-society has sustained heavy losses. It has failed to pay the cane price to the farmers right from 1998-1999 onwards. The factory has also not paid dues to its employees/workers, financial institutions, State Government and others. Material on record clearly establishes that the total liabilities of the factory is in excess of Rs. 15057 lakhs. The accumulated losses are aggregating over Rs. 9292 lakhs and the cash loss of Rs. 6169 lakhs. The factory was closed from the year 2001 -2002 due to financial distress. The factory was liquidated by an order passed by the Commissioner of Cane Development and Director of Sugars, Bangalore, on 24.1.2004. The said order was challenged by Sri K.A. Kulkarni and M.B. Hugar u/s 106 of the Act before the Secretary to the Government, Co-operation Department, Government of Karnataka. During the pendency of the appeal, the Government took a decision by an order dated 26.6.2006 proposing to lease the sugar factory. In view of the said order of the State Government dated 26.6.2006, the aforesaid appeal was disposed of on 28.6.2006 as having become infructuous. The appellate authority directed the Commissioner, Sugarcane Development and Director of Sugar to initiate necessary action as per the directions of the Government in its order dated 26.6.2006. This order has become final. In terms of the said order, the State Government has taken steps to lease the sugarcane factory. The proceedings of the State Government as per Annexure "G" dated 5.8.2006 gives the details of the deliberations held by the State Government before taking action to lease the sugar factory. The participants in the meeting have unanimously agreed to revive the sugar factory by way of leasing out the factory on the models of Srirama Sahakara Sakkare Karkhane Limited for the benefit of all the shareholders and also to enhance the economic development of the area. Thereafter, Annexure "H" order was passed by the State Government to lease the sugar factory. Thereafter, a notification has been issued as per Annexure "E" dated 19.7.2007 calling for tenders for leasing out the sugar factory under lease, rehabilitated, operate and transfer basis for a period of 30 (thirty) years starting from the year 2007-08 to 2036-37.

10. It is clear from the Government Order dated 16.1.2007 (Annexure "H") that the proposal to lease out the factory is for a period of 30 years on "as is where is" basis. The lessee is required to invest a minimum of Rs. 100 crores in the factory and increase the crushing capacity as well as establish co-generation as well as the distillery and ethanol unit. After the lease period is over, the entire assets including those that have been set up at the cost of the lessee would revert back to the society. It is also clear that if the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out

of the lease rentals and get the entire assets into their hands after the lease period is over. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. This arrangement will benefit the society and its members as well as the farmers, employees of the society and the financial institutions of the State Government. It is thus clear that the impugned order has been passed by the State Government in the interest of the society and also keeping in view the public interest.

11. The first question for consideration is whether such an order made in the interest of the farmers, members of the society and its employees and also in the interest of financial institutions can be interfered with in exercise of the power under Article 226 of the Constitution of India?

12. The Apex Court in the case of *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, , has held that a writ of certiorari is discretionary; it is not issued merely because it is lawful to do so.

In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , the Apex Court has held:

The State, its corporations and agencies of the Government are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

(underlining is by me)

13. From the aforesaid decisions, it is clear that though the decision of the State and its instrumentalities are not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The Court must exercise its discretionary power with great caution and should exercise it in furtherance of public interest and not merely on the making out of a legal point. A writ of certiorari is discretionary. It is not issued merely because it is lawful to do. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. It is only when public interest requires interference, the Court should intervene. It is clear from the undisputed facts that the leasing of the factory on lease, rehabilitated, operate and transfer

scheme is in the interest of the farmers, workers and employees, financial institutions and the State Government and also in public interest. The State Government has taken a decision keeping in view the larger public interest in mind. Having regard to the facts and circumstances of the case, the decision taken by the State Government to lease the sugar factory on LROT basis is just and proper.

14. Now let me consider the two contentions urged on behalf of the petitioners.

The Co-operative Societies Act is a welfare legislation. The object of every Co-operative society is to promote economic interest of its members by following cooperative principles when the profit motive will be restricted to a reasonable level unlike other commercial bodies as held in S.M. MAHENDRU's case (supra). A cooperative society has the status of a body corporate having perpetual succession and a common seal.

15. The Karnataka Co-operative Societies Act, 1959, has been enacted to consolidate and amend the Co-operative Societies in the State of Karnataka. Section 9 of the Act states that the registration of a cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Chapter IV of the Act provides for the management of cooperative societies. Section 26 of the Act states that subject to the provisions of the Act, the rules and the bye-laws, the final authority of a Co-operative society shall vest in a general body of members. Sub-section (4) of Section 26 of the Act states that the exercise of any power by the representative general body shall be subject to such restrictions and conditions as may be prescribed by the rules or by the bye-laws. Thus, it is clear that the final authority of a cooperative society vest in the general body of members subject to the provisions of the Act, the rules and the bye-laws and the exercise of any power by the representative general body is always subject to the restrictions and conditions contained by the rules or by the bye-laws.

16. Bye-law No. 27 of the society lays down the duties and powers of the board of directors. Bye-law No. 27(9)(d) empowers the general body to approve sale or lease of the lands and other movable and immovable property (if not required) belonging to the society. Thus, the general body has power to approve the sale or lease of the lands and other properties belonging to the society.

17. Section 30B of the Act inserted by Act No. 13/2000, which has come into effect w.e.f. 26.2.2000 lays down the power of the State Government to give direction to the society in public interest. It is as under:

30-B: Powers to give direction in public interest. (1) Where the State Government is satisfied that in public interest and for the purpose of securing proper implementation of Co-operative and other development programmes approved or undertaken by the State Government or for specially safeguarding

the interest of the members belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes and ensuring reservation to persons belonging to such Castes, Tribes or Classes in the services under the Co-operative Societies, it is necessary to issue directions to any class of Cooperative Societies generally or to any Co-operative Society or Co-operative Societies in particular, it may issue directions from time to time and all such Co-operative Societies or the Co-operative Society concerned shall be bound to comply with such directions.

18. Section 30B of the Act empowers the State Government to give directions to any class of Co-operative Societies generally or to any Co-operative Society or Societies in particular if it is satisfied that in public interest and for the purpose of securing proper implementation of cooperative and other development programmes approved and undertaken by the State Government and all such cooperative societies or the Co-operative societies concerned shall be bound to comply with such directions. The direction issued by the State Government as per Annexure "H" is in public interest, and in the interest of Co-operative society. It has been issued for the purpose of securing proper implementation of cooperative and for the development of the Co-operative Society. As has been stated above, the Co-operative society has sustained heavy losses and it is unable to pay its dues to the farmers, workers, financial institutions and the State Government. The Co-operative society was closed from the year 2001-2002 due to financial distress. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the Co-operative movement will also be restored. The lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. Therefore, there is no merit in the contention of the learned Counsel for the petitioner that the impugned orders are without jurisdiction.

19. It is no doubt true that the final authority of a Co-operative society vests in the general body of members subject to the provisions of the Act, the rules and the bye-laws. The exercise of any power by the representative general body is subject to the restrictions and conditions as may be prescribed by the rules or by the bye-laws. The bye-laws empower the general body to lease the property in question. If the power is vested with the general body to lease the property, the same power is also vested with the State Government to give directions u/s 30B of the Act in public interest and also for securing implementation of cooperative and other development programmes approved or undertaken by the State Government. Vesting of final authority of the Co-operative society in the general body of members is subject to the provisions of the Act as provided in Section 26 of the Act. Therefore, even if the general body of the Co-operative society has not passed resolution to lease the sugar factory, the same can be done by the State Government in public interest and for the purpose of securing proper

implementation of the Co-operative and other development programmes approved or undertaken by the State Government. The proposal to lease the sugar factory is a development programme undertaken by the State Government keeping in view the state of affairs of the sugar factory in question and the society is bound to comply with the direction issued u/s 30B of the Act. This Court in the case of *The Karnataka Sahakari Sakkare Karkhane Niyamita and Anr. v. The State of Karnataka and Ors.* in W.P.No. 577/2006 (CS) disposed of on 24.2.2006 has upheld a similar Government Order issued u/s 30B of the Act. In the case of *Sri Somappa v. The State of Karnataka* in W.P.No. 10372/2007 (GM-RES) disposed of on 5.10.2007, this Court has followed the decision of this Court in *The Karnataka Sahakari Sakkare Karkhane Niyamita's* case (supra).

20. Now let me consider the decisions relied on by the learned Counsel for the petitioners. In the case of *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, , while upholding Section 60 of the *Madras Co-operative Societies Act, 1932*, the Apex Court has held that the Co-operative Societies Act is a welfare legislation. In *S.M. Mahendru and Company and Others Vs. State of Tamil Nadu and Another*, , the Apex Court has held that the object of every Co-operative society is to promote economic interest of its members by following Co-operative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies. In *Daman Singh and Others Vs. State of Punjab and Others*, , the Apex Court has held that a cooperative society is a Corporation as commonly understood. There cannot be any dispute with regard to the principles laid down by the Apex Court in the aforesaid decisions. In the present case, the question for consideration is the validity of the decision of the Government to lease the sugar factory of the 4th respondent society which has been done in public interest in general and in the interest of members of the society in particular. Therefore, the aforesaid decisions have no application to the facts of this case. In *B. Madappa Vs. State of Karnataka*, , this Court has held that the General Body of a Cooperative Society enjoys sovereignty within the institution and even though the Board of Directors constitute the management to look after the day today affairs of management, it is not legally permissible for the Board of Directors to circumvent the General Body and to take a unilateral decision. The Court was not considering the scope of Section 30B of the Co-operative Societies Act, 1959. Therefore, this decision does not advance the case of the petitioners. In *Telecom Employees Co-operative Housing Society Ltd. Vs. Scheduled Castes, Scheduled Tribes, Minority Communities and Backward Classes Improvement Centre*, , a Division Bench of this Court was considering the power of the Government to issue directions to make bulk allotment u/s 65 of the *Bangalore Development Authority Act*. The language employed in Section 30B of the *Karnataka Co-operative Societies Act*, which is under consideration in this writ petition is not in pari materia with Section 65 of the *Bangalore Development Authority Act*. Therefore, this decision also will not assist the petitioners.

21. I do not find any error in the impugned orders. In the result, writ petition

fails and it is accordingly dismissed. No costs.