
(2013) 04 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 10739 of 2013 (CS-RES)

Sri Someshwara Farmers Co-operative Spinning Mill Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 106, 12, 12(2)

Citation : (2013) 3 AKR 461 : (2013) ILR (Kar) 2258 : (2013) 5 KarLJ 107 :
(2013) 4 KCCR 2768

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Ashish Krupakar for M/s. Patil and Patil, for the Appellant;
Chandrakanth Ariga, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The petitioner was established in the year 1981, as a Co-operative Society, under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short "the Act"). The primary object of the petitioner is to encourage cotton growers and help them by purchasing their cotton at remunerative price for the Mill. The petitioner has the bye-laws. A resolution was passed in the Annual General Body Meeting of the petitioner held on 24.09.2012 and an amendment proposed to bye-law No. 12 was approved. S. 12 of the Act deals with the amendment of bye-laws of a Co-operative Society. The said provision enables the amendment of bye-laws by a society, in conformity with the provisions of the Act. The approved amendment was submitted on 07.11.2012 in the prescribed format to the 2nd respondent - The Joint Registrar of Co-operative Societies (Textiles). The 2nd respondent issued an endorsement dated 04.02.2013, whereby he has rejected the proposal for amendment of the bye-laws of the petitioner, only on account of a note sent by Sri R. Varthur Prakash, Hon'ble Minister for Textiles. The said endorsement being material, is extracted hereunder. This writ petition has been filed to quash the said

endorsement and to direct the 2nd respondent to register the proposed amendment 12B(a) and for grant of consequential reliefs.

Sri R.L. Patil, learned advocate contended as that: i) S. 12 of the Act deals with the amendment of bye-laws of a Co-operative Society. The amendment was proposed to strengthen the financial capacity of the Mill. A resolution was passed in the Annual General Body Meeting of the petitioner for the period 2011-2012 held on 24.09.2012 in the premises of the Mill at Lakshmeshwar, wherein, the proposed amendment for revising the share amount of "A" class member from Rs. 500/- to Rs. 1,000/- was approved. The resolution having been passed with 2/3rd majority as required under the Act, the same was forwarded in the prescribed format to the 2nd respondent along with prescribed fee.

ii) In view of S. 12(2) of the Act, the 2nd respondent has to apply his mind either to approve or reject the amendment in the light of the guidelines laid down as per Clauses (i) to (v) therein. The 2nd respondent without any application of mind has mechanically rejected the said proposal only on the basis of the external intervention by the Minister for Textiles.

iii) The impugned endorsement does not speak as to why the proposed amendment has been rejected and hence, being not a speaking one and also contrary to the provisions of S. 12 of the Act is liable to be quashed.

2. Sri Chandrakanth Ariga, learned HGGP, on the other hand contended that, since an appeal is provided under S. 106 of the Act against the impugned order, this writ petition is not maintainable. He submitted that the petitioner may be directed to file an appeal before the Additional Registrar of Co-operative Societies.

3. Perused the writ petition record.

4. The controversy in this writ petition relates to the legality and propriety of the 2nd respondent in rejecting the proposal for amendment of bye-laws of the petitioner, by succumbing to the instruction issued by the Minister for Textiles. The impugned endorsement makes it clear that the 2nd respondent rejected the proposal for amendment of bye-laws of the petitioner, only on account of a note sent by the Minister for Textiles. In the factual background, the questions which fall for determination are:-

1. Whether the Minister was entitled to issue any instruction by way of a note for rejection of the proposal for the amendment of bye-laws of a co-operative society?

2. Whether the 2nd respondent has acted arbitrarily and illegally in issuing the endorsement as at Annexure-D?

5. Before dealing with the contentions urged by the learned advocates, it would be appropriate to have a look at S. 12 of the Act. The same reads as follows:

12. Amendment of bye-laws of a co-operative society.- (1) No amendment of any bye-law of a co-operative society shall be valid unless such amendment has been

registered under this Act.

(1-A) Every proposal for such amendment shall be accompanied by such fee as may be prescribed, and different fees may be prescribed for different class or classes of cooperative societies.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment.-

(i) is not contrary to the provisions of this Act and the rules;

(ii) does not conflict with co-operative principles;

(iii) satisfies the requirements of sound business;

(iv) will promote the economic interests of the members of the society; and

(v) is not inconsistent with the principles of social justice; he shall, within a period of three months from the date of receipt of the proposal, register the amendment.

(2-A) If the Registrar is unable to dispose of such application within the period specified in sub-section (1), the amendment of bye-laws shall be deemed to have been registered.

(3) When the Registrar registers an amendment of the bye-laws of a society or where an amendment of the bye-laws is deemed to have been registered, he shall issue to the society a copy of amendment certified by him and such certificate shall be conclusive evidence that the amendment of the bye-law has been duly registered or deemed to be registered, as the case may be.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a co-operative society, he shall communicate the order of refusal, together with the reasons therefor, to the society.

(5) If it appears to the Registrar that any amendment of the bye-laws of a co-operative society is necessary or desirable in the interest of such society or to give effect to the provisions of the Act or rules made thereunder, the Registrar may, by order, call upon the co-operative society, to make the amendment proposed by him in such manner as may be prescribed and within such time as he may specify.

(6) If such amendment is not made by the co-operative society within the time specified in the said order, notwithstanding anything contained in the Act, the Registrar may, after giving the co-operative society an opportunity of being heard, register the said amendment and forward a copy thereof to the co-operative society along with a certificate signed by him which shall be conclusive evidence that the amendment has been duly registered.

6. The case illustrates an unfortunate trend which has now become very common in the governance of the State. The petitioner is a Co-operative Society. In the

Annual General Body Meeting of the petitioner held on 24.09.2012, a resolution was passed for amending the bye-laws. A proposal for amendment was forwarded to the 2nd respondent. S. 12 of the Act does not enable the Minister to issue any direction to the 2nd respondent, a statutory functionary, in the matter of amendment of bye-laws of a Co-operative Society. The act of Hon''ble Minister for Textiles, in sending the note to the 2nd respondent, not to approve the amendment of proposed bye-laws of the petitioner, is without any authority of law and is in violation of the provisions of the Act, which was enacted and was amended from time to time for the purpose of making Co-operative Societies to function without any external interference. The Act has been enacted to consolidate and amend the laws relating to Co-operative Societies in the State of Karnataka. While enacting the Act, Legislature has inter alia taken into account the need for establishing of the Co-operative Societies and their working. Legislature has taken into consideration the reports of various committees and the working groups appointed. Chapter II of the Act contain the provisions relating to registration of Co-operative Societies. The Act is a self-contained code. The Authorities mentioned in Chapter I-A of the Act are statutory authorities and are bound by the provisions of the Act. The Authorities must act within the four corners thereof. The Minister has no role as far as registration and amendment of bye-laws of a Co-operative Society is concerned. The Minister has acted arbitrarily and illegally in sending a note and instructing the 2nd respondent in a matter relating to amendment of bye-laws of the petitioner.

7. In the case of Veerashaiva Vidyavardhaka Sangha Vs. The District Registrar and Others, Revenue Minister had issued a direction to cancel the bye-laws of the petitioner -Sangha. When assailed by way of a writ petition, it was held by this Court that the Deputy Registrar is a statutory authority and he has to act in accordance with the scheme of the Act and the Minister cannot be permitted to issue a direction. Consequently, the impugned action was interfered with.

8. The 2nd respondent being a statutory authority is bound to act strictly in terms of the provisions of the Act and cannot go by any note or instructions of the Minister. While acting as a statutory authority, the 2nd respondent must act having regard to the procedure laid down in the Act and the Rules and not on any note or instruction of the Minister.

9. In this case the Minister has interfered with the statutory function of the 2nd respondent. In view of the provisions contained under S. 12 of the Act, it is only the 2nd respondent, who can examine the proposal with regard to amendment of bye-laws of a Co-operative Society and not otherwise. External intervention with statutory functions is impermissible. In this connection it is relevant to note the ratio of decision in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, wherein the Apex Court has held as follows:-

17. It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that

under R.250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.

(Emphasis supplied by me)

10. In the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, Apex Court has held as follows:-

11. The case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A(1) was not exercised by the DSP at all.

12. Reference may be made in this connection to Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the rules concerned had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

(Emphasis supplied by me)

11. In the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, Apex Court has held as follows:-

11. In the matter of exercise of the power under Rule 6(1) the State Government and the Cane Commissioner are concurrent authorities. Their jurisdiction is co-ordinate. There was some controversy before us whether a Cane Commissioner who had reserved an area for a sugar factory for a particular period can alter, amend, or modify the area reserved in the middle of the period fixed. As seen earlier 208 villages with which we are concerned in this case were reserved for the appellant for two seasons i.e. 1966-67 and 1967-68. The contention was that the Cane Commissioner could not have interfered with that reservation within that period. The High Court has come to the conclusion that the Cane Commissioner who had the power to make the reservation in question must be held to have had the power to alter or modify that reservation. But it is not

necessary for us to pronounce on this question as we are of the opinion that the impugned orders though purported to have been made by the Cane Commissioner were in fact made by the Chief Minister and hence they are invalid. We have earlier seen that the Cane Commissioner was definitely of the view that the reservation made in favour of the appellant should not be disturbed but the Chief Minister did not agree with that view. It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the 5th respondent. In pursuance of that direction, the Cane Commissioner prepared two lists "Ka" and "Kha". Under the orders of the Chief Minister, the villages contained in list "Ka" were allotted to the appellant and in list "Kha" to the 5th respondent. The Cane Commissioner merely carried out the orders of the Chief Minister. It is true that the impugned orders were issued in the name of the Cane Commissioner. He merely obeyed the directions issued to him by the Chief Minister. We are unable to agree with the contention of Shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favour of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone--not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by Clause (6) read with Clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

12. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

(Emphasis supplied by me)

12. Ordinarily, this Court has imposed a restraint in the matter of exercise of jurisdiction under Article 226 of Constitution of India, where the petitioner has an effective, adequate alternative remedy. By catena of decisions, it has been held that the rule which requires exhaustion of an alternative remedy is a rule of discretion rather than rule of law. It has been held by the Apex Court in catena of decisions that availability of alternate remedy does not oust the jurisdiction of the Court with regard to writ of certiorari. In case the order complained against

is alleged to be illegal or invalid as being contrary to law, a writ petition at the instance of aggrieved person can lie and the writ petition cannot be rejected on the ground that an appeal lies to a higher authority, in as much as an appeal in all cases cannot be said to be provided in all situations, keeping aside the distinction between jurisdiction and merits.

13. In this case, the 2nd respondent has issued the impugned endorsement. But a perusal of the endorsement as at Annexure-D shows that the same has been issued on the instruction of the Minister for Textiles. If an appeal would be filed to the Additional Registrar of Co-operative Societies, the Appellate Authority, no purpose would be served, since the Appellate Authority also functions under the Minister. Hence, the contention of learned HCGP has no merit.

14. The impugned endorsement makes it apparent that there is non-application of mind to the facts of the case and the relevant law. The manner in which the power under S. 12 has been exercised by the 2nd respondent shows that he has mechanically issued endorsement by succumbing to the instructions of the Minister for Textiles.

15. In the case of *Anirudhsinhji Karansinhji Jadeja (supra)*, the Apex Court has held that "if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether."

16. In the present case, it is clear that the impugned endorsement was issued on the basis of a note of the Minister for Textiles. The 2nd respondent has not exercised the jurisdiction vested with him by the statute and has not considered the proposal for amendment of the bye-law.

17. It is appropriate to note the ratio of the decision in the case of *The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others*, wherein it has been held as follows:- 26. The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out command having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, ; *Chandrika Jha Vs. State of Bihar and Others*, ; *Tarlochan Dev Sharma Vs. State of Punjab and Others*, and *Manohar Lal v. Ugrasen*, AIR 2010 SC 2210).

27. Similar view has been reiterated by this Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ; Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, and Pancham Chand and Others Vs. State of Himachal Pradesh and Others, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

(Emphasis supplied by me)

Since the 2nd respondent has failed to exercise the jurisdiction vested with him and has failed to consider the proposal in accordance with law, the impugned endorsement being vitiated, the same is unsustainable. In the result, the writ petition is allowed and the impugned endorsement is quashed. The 2nd respondent is directed to consider the proposal for amendment of bye-laws submitted by the petitioner by keeping in view the provisions under S. 12(2) of the Act and the observations made supra and take decision within a period of one month from the date a copy of this order becomes available and communicate the outcome to the petitioner without any delay.

I.A. No. 1/2013 does not survive for consideration. Hence, stands disposed of as such.