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(1994) 07 KAR CK 0001

In the Karnataka High Court

Case No : W.A. No. 1505 of 1994

T.B. Guddahalli — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 121, 28 A (4)
Karnataka Cooperative Societies Rules, 1960 — Rule 3

Citation : (1994) 07 KAR CK 0001

Hon'ble Judges : Tirath Singh Thakur, J;S.B. Majmudar, J

Bench : Division Bench

Advocate : L.G. Havanur and Ravivarma Kumar, for the Appellant; A.M. Farooq, Government Advocate for R-1 and R-2, Jayakumar S. Patil, for R.K. Hatti for R-4, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—This appellant is the original 4th respondent in Writ Petition No. 8041 of 1994. The said Writ Petition was moved by the present 4th respondent, on the ground that the term of Presidentship of the present appellant expired on 1.2.1994 and thereafter extension of his term upto 30.6.1994 resulting from the order of the State of Karnataka in exercise of its powers u/s 121 of the Karnataka Co-operative Societies Act, 1959 (for short, the ''Act'') as per Annexure ''B'', was null and void and inoperative at law. The original Writ petitioner-Rule 4 herein, sought for a direction from the Court that election to the post of President of this Society should be held at the earliest. That Petition came to be disposed of with certain directions by the learned single Judge. One of the directions was that the 2nd and 3rd respondents, viz., the Registrar of Co-operative Societies and the Union of the Co-operative Society viz., Dharwad Co-operative Milk Producers Societies Union Ltd., Dharwad, should hold election to the office of President of Rule 3 within 15 days from the date of receipt of the order. That has brought the sitting President/appellant herein before this Court by way of an Appeal u/s 4 of the Karnataka High Court Act,

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1967.

2. A few relevant facts leading to this proceeding are required to be noted at the outset, in order to appreciate the grievance of the appellant.

3. The election of the President of Rule 3 Union was held on 2.2.1993. In that election the present appellant emerged as successful candidate as such he was elected as President. As per Section 28A(4) of the Act, members of the committee shall every year elect from among themselves the officers of the Co-operative society. Members of the Society therefore had to elect the office bearers including the President every year. A Full Bench of this Court in its Decision in T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others, has held that the term of the President as office bearer of the Managing Committee of the Co-operative Society would be for one calendar year. Consequently, the appellant''s tenure as President pursuant to the election dated 2.2.1993 was to end on 1.2.1994. Therefore, the post of President would have become vacant from 2.2.1994 and fresh election was required to be held for the said post However, the State of Karnataka Rule 1 herein, in exercise of its power u/s 121 of the Act which provides that the State Government may by general or special order publish in the Official Gazette exempt any co-operative society or any class of societies from any of the provisions of the Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order, exempted Rule 3 Society from the provisions of Section 28A(4) of the Act, meaning thereby the" appellant President''s term was extended, the result of which was that there was no need to hold fresh elections for the post of President which had fallen vacant on 2.2.1994. That Notification was to operate upto 30.6.1994. It is this Notification which was brought in challenge in the Writ Petition. Learned Single Judge after hearing the parties, took the view that as the Writ Petition was being disposed of on 29.6.1994 and only one day had remained for the operation of the Notification which extended the term of the appellant-President upto 30.6.1994, the only direction which could be issued is that the second respondent and third respondents viz., Registrar of Co-operative Societies and the Dharwad Co-operative Milk Producers Society should hold election to the office of the President of Rule 3 society within 15 days from the date of receipt of the order as noted hereinabove.

4. Learned Counsel appearing for the appellant-President of the Union original Rule 4 in the Writ Petition has vehemently contended that the direction of the learned single Judge to Rule 2 & 3 to hold fresh elections to the post of President within 15 days from the date of learned Judge''s order is premature for the simple reason that President''s election could be held only after a new Managing Committee is elected, as the present Managing Committee was elected on 31.12.1991. The term of the Managing Committee of Rule 3 Society is governed by Section 28A(3) of the Act which deals with the management of the co-operative societies. Section 28A(3) provides that:

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"Notwithstanding anything contained in this Act, the rules and the bye-laws of any co-operative society, the term of office of the committee of a co-operative society shall be three co-operative years and the elections shall be held for the entire committee other than the nominated members."

The co-operative year is explained under Explanation to Sub-section (3) to Section 28A, it reads as under:

"For the purpose of this section, where elections to a committee have been held in the middle of a co-operative year, for purpose of computing the term of office of the committee, the remaining part of the co-operative year shall be deemed to be a cooperative year."

and so far as the term ''Co-operative Year'' is concerned, Section 2(d-1) lays down that:

"Co-operative year means the year ending with the thirtieth day of June or, in the case of any co-operative society or class of co-operative societies the accounts of which are made up to any other date, with the previous sanction of the Registrar, the year ending with such date."

It is not in dispute between the parties that co-operative year for Rule 3 Society starts from first of April and ends on 31st of March of the next calendar year. Therefore, the term of the Managing Committee of Rule 3 Society which was elected on 31.12.1991 would be for 3 co-operative years as from that date. The first co-operative year for that Society would end on 31.3.1992 in view of the Explanation to Section 28A(3) of the Act. The second co-operative year will be from 1.4.1992 to 31.3.1993 and the third co-operative year will be from 1.4.1993 to 31.3.1994. Accordingly, the Managing Committee''s term expired on 31.3.1994. It is therefore contended by the learned Counsel for the appellant that when the Managing Committee''s term itself has expired, there would be no meaning in directing the old Managing Committee whose term has already expired to undergo the gamut of electing a new President. Instead there should be election first to the Managing Committee and that new Managing Committee can then elect its office bearers including the President. It is therefore contended that directions issued by the learned Single Judge are not contemplated by the scheme of the Act. It was next contended by placing reliance on Rule 13 of the Karnataka Co-operative Societies Rules, 1960 (for short, the Rules) framed under the Act and the Byelaw 19.3 of the Rule 3 Society, that till the election of the new Committee takes place, appellant can validly continue as President of this present Managing Committee whose term will get automatically extended by the combined operation of Rule 13(3) and Byelaw 19.3. On that ground also there is no need for any directions to Rule 2 and 3 to immediately hold fresh ejections for the President of the Society.

5. Learned Government Advocate Sri Farooq appearing for respondent - 1/State submitted that fresh elections to the Managing Committee of Rule 3 Society are contemplated to be held on or before 31.8.1994. However, so far as the election

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to the post of President is concerned, he left it to the Court to pass appropriate orders.

6. Sri Jayakumar S. Patil, learned Counsel of Rule 4, the original Writ petitioner, however vehemently contended that the direction issued by the learned Single Judge is a proper and legal direction which only can be issued under the facts and circumstances and it calls for no interference. According to Mr. Patil, the term of appellant as President has already come to an end on 1.2.1994 as noted earlier and according to him, it was wrongly extended upto 30.6.1994. Consequently, as on date, the appellant cannot stick on to the post of President pursuant to his earlier election and he must face the electorate again, if he so chooses. Mr. Patil submitted that as per Rule 13(3), the Managing Committee''s term may get extended till the new Managing Committee is elected, but that has nothing to do with the term of the President which has already expired. Even the old Managing Committee can re-elect a new President since Rule 13 will not come in the way. So far as the Byelaw 19.3 was concerned, Mr. Patil submitted that what the Byelaw provides is that till the new Chairman or President is elected as per Byelaws, the old President may continue, but that would be to avoid any hiatus, but even that Byelaw does not indicate that fresh election for the post of President should not be held as per the Byelaws. On the contrary, the first part of the Byelaw 19.3 clearly mandates that every year members of the Board, meaning thereby the existing Managing Committee, shall elect the Chairman from amongst the elected members. In this connection, Mr. Patil placed strong reliance on the Decision of a Division Bench of this Court in H.N. Ramesh Vs. Primary Co-operative Agriculture and Rural Development Bank Ltd., which Judgment on this aspect was approved by the Decision of the Full Bench in T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others,

7. Having given our anxious consideration to these rival contentions, we have come to the conclusion that the directions issued by the learned Single Judge to Rule 2 & 3 to hold fresh elections to the post of President within 15 days from the date of his order cannot be found fault with from any angle. As noted earlier, the appellant was elected as President of Rule 3 Society on 2.2.1993. Therefore, his term as President expired by the mid night of 1.2.1994. Full Bench Decision in T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others, supra has also taken the very same view, incidentally in connection with this very Society and this very appellant. Thereafter, it is true that by Notification u/s 121, Rule 1/State exempted the Society from the operation of Section 28A(4) till 30.6.1994. Therefore, appellant''s term as President could be said to have been extended upto 30.6.1994. But thereafter there is no extension by the State beyond 30.6.1994. Consequently, the provisions of Section 28A(4) of the Act would apply atleast from 1.7.1994 as on date. Therefore, the post of President of Rule 3 Society as held by the appellant must be held to have fallen vacant. So far as Rule 13 of the Rules framed under the Act is concerned, it provides as under:

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"13(3) The election of the members of the committee shall be held on or before the date specified in the bye-laws, for the expiry of the term of office of the members. If no such date is specified in the bye laws, the term of office of the members of the committee shall be deemed to have expired at the time of the annual general meeting and the election of the new members shall be held at such annual general meeting:

Provided that the committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over charge of the office to such new committee."

A mere look at this Rule shows that the election of Members of the Committee shall be held on or before the date specified in the Byelaws, for the expiry of the term of office of the Members. That Rule deals with the election of Members of the Committee and has nothing to do with the election of office bearers viz., the President etc. The Proviso to Sub-rule (3) of Rule 1.3 lays down that the Committee whose term of office is deemed to so expire, shall continue in office till the new Committee is elected. Therefore, all that can be said in view of the Proviso to Rule 13(3) is that the old Managing Committee will continue till the new Committee is elected and is ready to take over charge from the old Committee. That may happen in future at any time but that will have no effect on the continuance of the appellant as the President of the Society. In the Division Bench Judgment in H.N. Ramesh v Primary Co-operative Agriculture and Rural Development Bank Ltd., it is held that:

"In view of Sub-section (4) of Section 28A of the Act, it is obligatory for the managing committee to hold elections to the President and Vice President every year. Neither this sub-section nor any other provisions of the Act give an indication that the obligation to hold election for the office of the President and Vice President applies only during the normal terms of office prescribed u/s 28A(3) of the Act, which is three years and not during the extended term of office brought about by the postponement of election by an action of the Government u/s 28A(4) of the Act. There is nothing in Rule 13 of the Rules also to take a view to the contrary. All that the proviso to Rule 13 provides is that whenever election required to be held for the Committee of a Society is not held in due time, until a new Committee is elected, the old Committee continues in office. If the mandate of Sub-section (4) of Section 28A is that there shall be an election of President and Vice President every year, it must be so whether the term of office of the Members of the Committee is the normal term of three years as fixed in Section 28A or the extended term brought about by the postponing of election consequent on the issue of Notification by the State Government under proviso to Sub-section (1) of Section 27 of the Act read with Rule 13 of the Rules."

Learned Counsel for the appellant submitted that the aforesaid Judgment of the Division Bench had taken the said view because the Byelaw with which they were concerned was differently worded as compared to the Byelaw in the present

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case. In that case, Byelaw providing for the election of the President or Vice-President is different. But in the present case; Byelaw 19.3 states that:

"Every year the members of the Board in its first Meeting shall elect the Chairman from amongst the elected members. The Chairman shall continue to hold office till a new Chairman is elected as per the bye-laws."

There was no such provision in the Byelaw with which the Division Bench was concerned in that case. We fail to appreciate how this difference can whittle down the ratio of the Decision of the Division Bench, which ratio as we have noted earlier was approved by the Full Bench, in T.B. Guddalli Vs. Registrar of Co-operative Societies in Karnataka, Bangalore and others, Because of the Byelaw 19.3 as worded in the present case, the appellant can effectively contend that even from 1.7.1994 he is entitled to continue as President of the Society till the new President takes over as per the elections to be held for the post of President under the Byelaw. That is the only effect of further provision in the said Byelaw. Hence the Judgment of the Division Bench squarely gets attracted to the facts of the present case. As the Managing Committee''s term has expired with effect from 1.4.1994 it is deemed to have continued in the office till the new Committee takes over as per Rule 13 Sub-rule(3). All the Members of the Managing Committee will continue to hold office till the new Committee is elected. As far as the election to the post of President is concerned, it has to be held that the President''s post has fallen vacant with effect from 1.7.1994 as seen earlier. Consequently, even the Bye-law 19.3 on which reliance is placed by the learned Counsel for the appellant is of no avail to him for avoiding fresh election to the post of President. We are told that pursuant to the direction of the learned Single Judge, fresh elections to the post of President are fixed tomorrow and the Members of the existing Managing Committee will be the voters. There is no reason as to why the said election can be said to be unauthorised in any manner.

8. The learned Counsel for the appellant lastly submitted that as stated by the learned Counsel for Rule 1 election to the new Managing Committee is in the offing by the end of August, 1994 and the new Managing Committee may then emerge. In our view, that circumstance is totally irrelevant for deciding the present controversy about filling up the post of President by holding fresh elections. It is obvious that on the taking over by the new Managing Committee, the old Managing Committee will go along with, the newly elected President, who may get elected tomorrow, but that is a different consequence which will operate on its own with the advent of new Managing Committee. So far as the elections to the post of President are concerned, no fault could be found with the directions of the learned Single Judge pursuant to which elections are going to be held tomorrow.

9. For all these reasons, therefore, there is no substance in this Writ Appeal. The result is, the Appeal fails and is dismissed. No order as to costs.

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