(2017) 06 KAR CK 0059

In the Karnataka High Court

Case No : 12893 of 2015 (CS-RES)

THE KARNATAKA STATE CO-OP & ORS — APPELLANT

Vs

STATE OF KARNATAKA & ORS — RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

Constitution of India, Article 19(1)(c), Article 43B, Article 243ZI, Article 243ZJ, Article 243ZK, <a href=3998-243ZL>Articl

Citation : (2017) 06 KAR CK 0059

Hon'ble Judges : Ashok B. Hinchigeri

Bench : SINGLE BENCH

Advocate : JAYAKUMAR S. PATIL, MAHAMAD TAHIR.A, A.S.PONNANNA, M.GEETHA, M.KESHAVA REDDY, DAYANAND S. PATIL, ASHOK HARANAHALLI, P.ANAND, SHIVAYOGI B. HALLUR

Final Decision : Disposed

Judgement

1. The disposal of W.P.No.12893/2015 depends on the outcome of W.P.Nos.30273-30276/2016 and 986/2017. I propose to take up W.P.Nos.30273-30276/2016 and 986/2017 first.

2. The petitioners in W.P.Nos.30273-30276/2016, who are ''B'' Class Members of the fourth respondent Karnataka State Cooperative Marketing Federation Limited, have raised the challenge to the order, dated 13.05.2016 (Annexure-K) giving 20 seats for ''A'' Class members (five seats each of four regions - Bengaluru, Mysuru, Belagavi and Kalaburagi) and reserving one seat for the Government nominee.

3. Sri Jayakumar S.Patil, learned Senior Counsel appearing for Sri Mahamad Tahir.A for the petitioners submits that under Section 20 of the Karnataka Co-operative Societies Act, 1959 (''the said Act'' for short), all the members have been given one vote. He submits that the Consumer Co-operative Societies,

Processing Co-operative and Marketing Co-operative Societies other than the Agricultural Co-operative Marketing Societies are the ''B'' Class Members of the fourth respondent Federation. Even when they have not incurred any disqualification, the voting rights are denied to them.

4. The learned Senior Counsel submits that as per Ninetyseventh Amendment to the Constitution of India, the number of directors of a Co-operative Society cannot exceed 21. In the wake of the said constitutional amendment, Section 28A(2)(ii) of the Karnataka Co-operative Societies Act has also prescribed the outer number of the directors of the Board of a federal cooperative society at 21.

5. He submits that the fourth respondent Federation proposed the amendment to its Bye-laws in the matter of reconstituting its Board. It proposed that 20 seats be reserved for ''A'' Class Members and 1 seat for ''B'' Class Members. He submits that the Additional Registrar vide his order, dated 19.01.1995 (Annexure-F) substantially approved the sought amendment but with some modifications. He prescribed the reservation of 19 seats for ''A'' Class Members, 1 seat for ''B'' Class Members and 1 seat for the Government nominee. This order was challenged by the fourth respondent Federation invoking Section 106 of the said Act. The Appellate Authority set aside the order, dated 19.01.2015 passed by the Additional Registrar. The Appellate Authority''s order, dated 27.03.2015 (Annexure-G) fixes 20 seats for ''A'' Class Members and 1 seat for the Government nominee. This order was challenged by some of the petitioners by filing W.P.Nos.14548-551/2015. This Court, by its order, dated 10.06.2015 set aside the Appellate Authority''s order and remanded the matter. The remanded matter was disposed of by the Appellate Authority by its order, dated 13.05.2016 (Annexure-K), reiterating its earlier decision.

6. The learned Senior Counsel submits that the order of the Authority for approving the amendment to the Bye-laws and of the Appellate Authority''s order for seating one Government nominee on the fourth respondent Federations'' Board is unwarranted. He submits that the very reason given by the fourth respondent Federation for proposing the amendment to the Bye-laws is that the fourth respondent Federation is not a Government-assisted Co-operative Society. He submits that the same is forthcoming from the proceedings of the General Body Meeting of the fourth respondent Federation held on 25.09.2014 (Annexure-E).

7. W.P.No.986/2017 is filed by the Karnataka State Cooperative Marketing Federation Limited raising the challenge to the order, dated 15.11.2016 (Annexure-J) passed by the Government of Karnataka in Revision Petition No.CO/22/CAP/2016. The revision authority has passed the order reserving one seat for ''B'' Class Member, 19 seats for ''A'' Class Members and one seat for the Government nominee.

8. Sri Ashok Haranahalli, the learned Senior Counsel appearing for Sri P.Anand for the petitioning Federation submits that the petitioner is not receiving any

assistance from the Government in the form of share capital or loan or grant or guarantee for the repayment of loan or interest. Therefore, it does not fall within the meaning of ''Assisted Society'', as defined in Section 2(a-1-1) of the Karnataka Co-operative Societies Act, 1959. In support of his submissions, he brings to my notice the letter, dated 6.6.2017 addressed to the Additional Registrar of Co-operative Societies. He submits that the said letter makes it clear that the Government has not lent any money, that the Government has no share capital in the petitioner Federation and that the Government has not given any grant to the petitioner. He submits that the Government has entrusted to the petitioner the distribution of fertilizers to the farmers. It is in that context that the Government has stood guarantee for the repayment of loan of Rs.600.00 crores. He submits that the offering of the security by the Government is not for running the business of the petitioner Federation at all. Only because the Government has entrusted its function of distributing the fertilizers, it has stood guarantee for the repayment of the loan.

9. On being asked whether the business of the petitioner Federation would be viable, if the work of distributing fertilizers is withdrawn from the petitioner Federation, he submits that the petitioner has not sought to be a nodal agency and that it has no objection, if the same is withdrawn from it.

10. The learned Senior Counsel submits that the Government is not justified in passing the impugned order. Section 108 of the said Act restrains the Government from passing any order, exercising its power of revision when the appeal is pending under Section 106 of the said Act. But the Government has proceeded to exercise its revision power, as if the pendency of the matter before this Court is of no consequence for the Government. In the fitness of the things, the Government ought to have restrained itself from exercising the revision power. Some parties had challenged the Appellate Authority''s order in W.P.Nos.30273-30276/2016 and persuaded this Court to grant an interim order. On 26.05.2016, this Court granted interim stay of the operation of the order, dated 13.5.2016 passed by the Appellate Authority. On 3.10.2016, it made further interim order as follows: "It is submitted by Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioners that certain members of the petitioners-Societies have challenged the impugned order by filing a revision petitions before the State Government. It is further submitted that efforts are being made to settle the matter between the parties. It is hereby clarified that grant of interim order will not preclude the parties for settlement of the disputes in the revision petitions pending before the State Government."

11. The learned Senior Counsel submits that when the Appellate Authority''s order is stayed by this Court in the writ petitions filed by ''B'' Class members, the Government ought not to have entertained the revision petition, merely because it is filed by a third party Co-operative Society, which is not a party to W.P.Nos.30273-30276/2016.

12. Sri A.S.Ponnanna, the learned Additional Advocate General appearing for the

respondent Nos.1 to 3 in W.P.Nos.30273-276/2016 and 986/2017 submits that the petitioning Marketing Federation is a Government-assisted Society. In support of his submissions, he brings to my notice the extract of the annual report for the year 2015-2016, which shows that the petitioning Federation has availed of the financial assistance of about Rs.186.00 crores from the Government and other sources. The said figure is also reflected in the balance-sheet of the petitioner Marketing Federation for the year 2015- 2016.

13. Nextly, he brings to my notice the Government''s order, dated 23.8.2013 waiving off interest of about Rs.17.00 crores by the Government.

14. He submits that the waiver of interest of about Rs.17.00 crores itself is to be treated as a grant. He submits that the petitioner Marketing Federation cannot approbate or reprobate. Having taken the Government''s assistance, it cannot be permitted to turn around and say that it is not a Governmentassisted Society at all.

15. In the course of rejoinder, Sri Ashok Haranahalli, the learned Senior Counsel appearing on behalf of the petitioner Marketing Federation in W.P.No.986/2017 submits that interestwaiver cannot be equated with the grant. As an incentive to return the principal amount speedily, a portion of the interest may have been waived off, but the same does not mean that the Government has given financial aid to the petitioning Marketing Federation. He submits that the offering of guarantee by the Government for the repayment of loan is not in the context of running its business; it is only in the context of performing the Government''s functions, which would have otherwise been performed by the Government.

16. The Karnataka State Co-operative Election Authority has sought its impleadment in W.P.Nos.30273-30276/2016. Heard Sri M. Keshava Reddy, the learned counsel appearing for the Karnataka State Co-operative Election Authority, the impleading applicant. The said Authority is the fourth respondent in the connected petition - W.P.No.12893/2015. As the said Authority is a proper and necessary party for the adjudication of the issues falling for consideration, I.A.No.2/2016 is allowed. The petitioner''s side is directed to arraign the said party as the respondent No.7.

17. The submissions of the learned counsel have received my thoughtful consideration. The following questions arise for my consideration: (i) Whether the Appellate Authority''s order, dated 13.5.2016 reversing the order of the Authority for approving the amendment to the Bye-laws, which has resulted in the denial of 1 seat to the ''B'' Class Members in the Board of the Marketing Federation, is sustainable?

(ii) Whether the order passed by the Government, in exercise of its revision power conferred by Section 108 of the Act, reserving 19 seats for ''A'' Class members, 1 seat for ''B'' Class member and providing for one Government nominee is upholdable?

18. In Re. Question No.(i): The denial of the opportunity to ''B'' Class Members to participate in the process of electing the Directors of the Marketing Federation by the Appellate Authority has no justifiable basis. Section 20(1) of the said Act, inter alia, states that no member shall have more than one vote in the election to the Board of a Co-operative Society. If it is put in the positive form, what follows from it is that every member shall have one vote. Further, bye-law No.14(1)(c) of the Marketing Federation dealing with the members'' rights and responsibilities reads as follows:

"VERNACULAR MATTER OMITTED"

19. When Section 20(1) of the said Act is read in conjunction with bye-law No.14(1)(c), it becomes clear that every member is entitled to contest in the election to the Board of Directors of the Marketing Federation. No forum including the Appellate Authority can take away the precious political rights conferred by the statute and the bye-laws. On this short ground alone, the impugned Appellate Authority''s order denying the seat to the ''B'' class members is liable to be set aside and accordingly it is set aside. The further proceedings pursuant to the Appellate Authority''s earlier order, dated 19.1.2015 and the second order, dated 13.5.2016 also cannot be operationalised.

20. Noticing the error committed by the Appellate Authority, the Government, in exercise of its revision power, has already earmarked one seat for ''B'' Class Members in its order, dated 15.11.2016. The amendment proposed to the Bye-laws and as approved by the Additional Registrar of Co-operative Societies in the matter of providing one seat to ''B'' Class Members is absolutely upholdable and accordingly it is upheld. The said proceedings/orders providing for one seat to ''B'' class members are restored. The Government has done the right thing by confirming the giving of one seat to ''B'' class members in exercise of its revision powers.

21. In Re. Question No.(ii) I do not propose to examine whether it was open to the Hon''ble Minister to pass the order, dated 15.11.2006 (Annexure- J in W.P.No.986/2017) during the pendency of and in the wake of the interim orders granted in W.P.Nos.30273-30276/2016. I am informed at the bar that the Hon''ble Minister, who has passed the said order is dead. No remarks can be made in any proceedings against a dead person.

22. Besides, the impugned order is substantially justifiable that is, in as much as it pertains to the giving of the seats to ''A class members and ''B'' class members. Further, the interim order made on 3.10.2016 in W.P.Nos.30273-30276/2016 is made on the basis of the submissions made on behalf of the petitioners therein that the efforts are being made to settle the matter between the parties.

23. The only ground on which I find that the order passed by the Government is liable to be interfered with is that it has come to the conclusion that the Marketing Federation is a Government-assisted Society without there being any

clinching materials placed on its record. The Marketing Federation, the Department of Co-operative Societies and any other interested parties have to place the relevant materials on the record of the Government in support of their claim that the Marketing Federation is or is not a Government assisted Society. I quash the impugned order insofar as it provides for one Government nominee on the Board of the Marketing Federation. Its order, as far as one seat to ''B'' class member is concerned, I confirm it. I am remanding the matter to the Government for fresh disposal of the revision petition after affording due opportunities to all the parties for establishing that the Marketing Federation in question is or is not a Government-assisted Society. I make it clear that the issue as to whether ''A'' Class Members are entitled to have 19 seats or 20 seats would depend upon the outcome of the remanded proceedings. If the Government in the remanded proceedings hold that the Marketing Federation is not a Government assisted Society, then ''A'' Class Members will have 20 seats. If the Government returns the finding that the Marketing Federation is indeed a Government-assisted Society, then ''A'' Class Members will have only 19 seats.

24. Because of the confusion regarding the earmarking of seats for ''A'' Class Members, ''B'' class members and the Government nominee, the elections have not taken place to the Board of Directors of the Marketing Federation, although its term has ended two years ago on 31.3.2015.

25. As the elections to the Board of Marketing Federation have not been held and apprehending the taking over of the Management by the Administrator by the operation of law, the Marketing Federation and two of its Directors have filed W.P.No.12893/2015 challenging the validity of the legislative provisions contained in Section 39A(2) and 28A(5) of the said Act. They are also seeking the mandamus to the fourth respondent State Co-operative Election Authority to hold the election to the Board of Directors of the Marketing Federation.

26. Sri Jayakumar S. Patil, the learned Senior Counsel appearing on behalf of Sri Mahamad Tahir.A for the petitioners in W.P.No.12893/2015 submits that the petitioners have been earnest and diligent in pleading for the holding of the election before the expiry of the term of the earlier elected body. In support of his submissions, he brings to my notice the first petitioner''s letter, dated 17.10.2014 (Annexure-A) calling upon the State Co-operative Election Authority to make the arrangements for holding the election. Despite their making every possible endeavour, the elections are not conducted. When the delay in holding the elections is in no way attributable to the petitioners, they cannot be compelled to hand over the reigns of Management to the Administrator, which goes against the spirit of forming the Co-operative Societies enshrined in the Constitution of India.

27. The learned Senior Counsel raises his arguments with reference to Section 39A(2), 28A(5), 29C, 39AA, 28A(4) of the said Act and Articles 19(1)(c), 43B, 243ZI, 243ZK, 243ZL, 243ZJ, 243ZT of the Constitution of India.

28. Sri A.S. Ponnanna, the learned Additional Advocate General resists the submission of Sri Jayakumar S. Patil. He submits that only two grounds are available for invalidating a legislative provision: (a) If it is without legislative competence and (b) if it violates any provision of the Constitution, it can be declared as ultra vires. No third ground is available.

29. He submits that on the completion of the term of five years for which the petitioner Nos.2 and 3 are elected, they have no vested right to demand that they be continued as the Directors of the Board. He submits that by the operation of law, the Administrator comes into play, if the erstwhile elected body has completed its term and if the elections have not taken place to constitute the new body.

30. I am consciously not making elaborate reference to the submissions made in W.P.No.12893/2015. The validity of the legislative provisions in question can be gone into in a more deserving case. The ends of justice would be met in this case by my directing the holding of the elections expeditiously to the Board of Directors of the Marketing Federation.

31. On 27.3.2015, this Court granted interim order as follows: "The existing Board of Directors of petitioner No.1 - Apex Society shall continue in office till the newly elected Board assumes office."

The aforesaid interim order is continued for a period of about two years three months.

32. It is also worthwhile to notice that the term of office of the elected members of the Board of Marketing Federation has also ended about two years three months ago.

33. Only because there is a change in the law prescribing that the maximum number of Directors of any State Cooperative Society should not exceed 21 and because of the prevailing confusion as to whether any seat is to be given to the Government, whether the ''B'' class members are entitled to one seat, etc., the elections are not being held. The ends of justice would be met by my disposing of W.P.No.12893/2015 by directing the State Co-operative Election Authority to hold the elections without any further loss of time.

34. In the result, I pass the following order: (i) The amendment proposed to the Bye-law providing for one seat for ''B'' class members, as approved by the Additional Registrar and as adjudicated by the Government, in exercise of its revision power, is upheld.

(ii) The order, dated 15.11.2016 (Annexure-J) passed by the Government is quashed only insofar as it pertains to the giving of one seat to the Government.

(iii) The matter is remanded to the Revision Authority for the limited purpose of examining and ascertaining as to whether the Marketing Federation is a Government assisted Society.

(iv) All the parties shall appear before the Revision Authority on 19.6.2017 without waiting for any notice from it. The Revision Authority shall take up the matter on day-to-day basis and dispose of the remanded matter within four weeks from 19.6.2017. The parties shall co-operate with the Revision Authority in the expeditious disposal of the remanded matter.

(v) Whether the number of seats reserved for ''A'' class members shall be 19 or 20 depends on the outcome of the remanded proceedings. If the Revision Authority comes to the conclusion that the Marketing Federation in question is a Government-assisted Society, then the number of seats available for ''A'' class members will be 19 only. On the other hand, if the Government returns the finding that the Marketing Federation is not a Government-assisted Society, then the Government is not entitled to have its nominee on the Board of Marketing Federation and consequently the representation for ''A'' Class Members shall be up by one, that is it shall be 20.

(vi) The State Co-operative Election Authority shall start preparing the electoral rolls by appointing the Election Officer, publishing the draft rolls calling for objections and publishing the final list expeditiously. It shall complete the holding of elections to the Board of the Marketing Federation, within 75 days from the date of the issuance of the certified copy of today''s order.

(vii) It shall hold elections to the Board of Marketing Federation keeping 19 seats for ''A'' class members, one seat for ''B'' class members. In which of the four regions, the seats are to be reduced from five to four has to be decided by the State Co-operative Election Authority taking into account the size of the four regions, the strength of the members of four regions or any other applicable and relevant factor. The said Authority shall also be at liberty to consult the Marketing Federation and the cross sections of the co-operative societies. The same shall be accomplished by the said Authority in exercise of the power conferred by Rule 13(3) of the Karnataka Cooperative Societies Rules, 1960.

(viii) If the Revision Authority holds that there is no scope for sending the Government nominee to the Marketing Federation, then the said Authority shall hold election to one seat in that region in which the number was reduced from five to four.

(ix) The interim order granted on 27.3.2015 in W.P.No.12893/2015 is continued for a further period of 75 days.

(x) On the issuance of the notification regarding the calendar of events, all the parties shall adhere to the code of conduct.

35. These petitions are accordingly disposed of. No order as to costs.

36. In view of the disposal of the main matter itself, I.A.No.3/2016 for vacating stay is dismissed as having become unnecessary.