

(2001) 12 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 43684 of 2001

Tippanna Bhimappa Kamate and Another	APPELLANT
Vs	
The Chief Executive Manager, APMS Ltd. and Others	RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : (2002) 1 KCCR 670

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Jaykumar S. Patil, for the Appellant; Shantesh Gureddi, for C/R, B.V. Murlidhar, High Court Government Advocate for Respondent 3, F.V. Patil, for Respondents 1 and 2 and Kamate, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—IA III is filed for impleading. The same is allowed. The Petitioner is to implead the applicants as additional Respondents.

2. The two Petitioners by name Sri Kamate and Sri Doog are questioning the correctness of the endorsements dated 24.11.2001 and Annexures-K and L on the following facts.

3. Respondent 2, the Hukeri Taluk Agriculture Produce Marketing Society Limited, (for short Society-R2) is registered under the Karnataka Co-operative Societies Act, 1959. It is a taluk level Co-operative Society. Respondent 4-Belgaum District Central Co-operative Bank Limited, (for short Central Bank) is the financial bank. In terms of the bye-laws Respondent 2 consists of nine members and one representative of the Financing Bank and the Assistant Registrar. Respondent 1 is appointed as Manager/Chief Executive of the Respondent No. 2. The Respondent 4 nominated both the Petitioners on behalf of the Central Bank-Respondent 4. They have been functioning as Directors for the last 2 years. Annual Report Annexure-C and evidences their working as Directors. The Chief Executive Society is statutorily bound to convey a meeting for electing office bearers for

the post of President and Vice-President of the Society. A notice was required to be issued in terms of the Act. Respondent 1 issued a notice dated 17.11.2001 to all the Directors of Respondent 2-Society for electing president and Vice-President in terms of Section 29F read with Rule 14A of the Rules. A copy of the notice issued to one of the director produced at Annexure-E. No notice was served on the Petitioners and on enquiry they came to know that on account of appointment of two persons by Respondent 4 notices have not been issued. Thereafter the Petitioner 2 submitted his resignation in terms of Annexure-F. A copy was handed over to Society. A letter dated 23.11.2001 was also issued with regard to notice to him. At this stage Respondent 1 issued an endorsement stating therein that he has been directed by Respondent 3 not to issue notice to Petitioners. A letter dated 24.11.2001 is filed in terms of Annexure-L. According to petition averments Annexures-K and L have no sanction in law. Petitioner questions these two letters in these petitions.

4. Notice was issued pursuant to which Respondents have filed their statements.

5. The manager of the Society in the affidavit states that the total strength of Society is eleven. The quorum for holding election of President and Vice-President is five. There are already seven elected members. There are already seven elected members in A class, in B class 2 members and one member in Financial institution and one nominee. There is no impediment to call for election notwithstanding the controversy with regard to the Petitioners. He further says that a clarification was sought from the office of the Deputy Registrar with regard to nomination of the Petitioner. He justifies his action. The impleading applicants have filed their statements. They say in the affidavit that the Taluk level Society consists of 11 members in the committee of management. By sending two directors Respondent 4 has acted illegally and contrary to the provisions of the Act. The same was objected to as could be seen in from the audit objections. The same was brought to notice of Respondent 4 on several occasions. Respondent 4 did not cancel the said nomination in terms of the communication dated 19.10.2000, the same was brought to the notice of Respondent 4 by the Deputy Registrar in terms of Annexure-R1. In the absence of inaction on part of Respondent 4, the present endorsement is issued. They want the writ petition to be dismissed.

6. The learned Counsels are heard in the matter. Mr. Jaykumar Patil, learned Counsel appears for the Petitioner. Heard Sri Shantesh Gureddi, and FV Patil for Respondents.

7. On 27.11.2001 this Court stayed the holding of election for a period of one week. Same was extended till 10.12.2001.

8. After hearing the Counsel, the admitted facts reveal that in terms of the Belgaum District Central Co-operative Bank Limited, one representatives is to be made available to the Managing Committee of the Society. Annexure-B filed by the Petitioner also shows that the total number of directors would be eleven out

of which seven are from A class, 2 from B class and one representative from Financing Bank and one from the government. There should be 11 directors. Admitted facts also reveal that the financing bank instead of sending one director have chosen to send two directors. It is also seen from the material on record that the said issue was raised in terms of Annexures-R2 and 3. No action was taken in this regard. It was in these circumstances the other directors brought the same to the notice of Deputy Registrar of Co-operative Society. He addressed a letter dated 15.7.2001 seeking an appropriate reply in terms of Annexure-R1. There was no response from DCC Bank. It was in those circumstances the Deputy Registrar with a view to comply with all legal provisions has chosen to inform the Society that until a proper reply is received and the issue is resolved with regard to the representation of the bank no notice may be sent. However, he has used the word "Thade Hidiyuvante", in the Annexures-L and K is issued.

9. Mr. Jaykumar Patil very strongly contends before me that there is no power to issue any stay by the Deputy Registrar and therefore Annexures-K and L suffer from legal infirmities. In this connection it is pertinent to refer to Section 28A which provides for a Management of Co-operative Societies being vested in the committee. In terms of Section 29A(2) the Taluk Level Society is to consist of 11 members. The distribution of 11 members is in accordance with Annexure-B read with bye-laws of the society. Society has to have a committee in accordance with law. When the provisions read with rules and bye-laws provide for one nomination, it is not legally permissible to have two nominations contrary to the provisions of the Act. It is in those circumstances members have raised this issue as can be seen from Annexures-R2 and 3. Thereafter Society has made a communication to the Registrar. He also addressed a letter to the bank and in the absence of any response, he informed the Respondents not to issue notice to implement the provisions of the Act and to maintain purity in the elections, he thought it fit to inform the society that until the said issue with regard to the nominee of the bank is resolved no notice need be issued. This letter is in the light of the material available on record, is really in aid of Section 28A(2) of the Act. As otherwise there would be 12 members contrary to Section 29A(2). A mere word "Thade" in the letter by itself does not render the order bad in law. After the receipt of the same the society has rightly issued a letter stating that in view of this situation with regard to the right of the Petitioner, no notice need be issued to the Petitioner. These two letters in my view do not suffer from any legal infirmities. On the otherhand these two letters are in aid of and to implement a statutory provision of Section 28A(2) of the Act as otherwise an ineligible Director would be participating in the election. Therefore the argument that these 2 letters are contrary to law cannot be accepted. In the circumstances this argument is rejected.

10. The second argument of Sri Jaykumar Patil is that there is no dispute raised by the bank with regard to the nomination of the Petitioner and that therefore the contesting Respondents cannot have any grievance whatsoever. The nomination by the bank cannot be termed only an inter se dispute between the

financial bank and the society. It is a dispute with regard to the exercise of power by the bank with regard to nomination in terms of the Act read with bye-law. That being so the argument of the Counsel that the Respondents cannot complain with regard to their nomination in the absence of any objection by the bank cannot be accepted. This argument also does not appeal to me.

11. The Counsel for the Petitioner contends that the bank did nominate two persons. According to the Petitioner now the second Petitioner Balappa has chosen to resign from the Directorship. Therefore, there is no dispute as on today. It is also stated that he has submitted resignation on 27.3.2001 and in terms of Section 29(B) he ceases to be a Director immediately or at any rate after 15 days from the date of such date. Therefore, the Counsel says that the dispute is resolved in view of the resignation by Respondent-2. Therefore, the Petitioner states that he has to be issued with a notice in view of the resignation of Petitioner-2. It is no doubt true that Section 29B provides for a resignation by a member of the committee in writing under his hand. It also provides for the resignation being effective on the expiry of 15 days from the date of such delivery. Therefore resignation is permissible in terms of Section 29B. But the facts of this case is not that simple as sought to be made out by the Petitioner. If this argument is accepted then there are chances of a mischief being played by the financing bank in nominating more than one and subsequently the excess member nominated resigning himself after participation. When the very nomination is contrary to the provision of the Act particularly in the light of Section 28A read with bye-laws of the society, the subsequent resignation does not cure the initial ineligibility. When the law on record warrants one appointment, there cannot be two nominees and any subsequent resignation by one nominee to get regularised the earlier two nominations. Such regularisation is not possible in the case on hand. It is for the financial bank to decide with regard to the representation. What is being now done by resignation is to confer a power on a nominee with regard to his being a nominee in terms of bye-laws. Nomination has to be done only by the bank and that power cannot be bartered away as is done in this case. Therefore, the subsequent resignation does not in any way satisfy the legality of nominating two persons contrary to the bye-laws. Petitioner cannot contend that in view of subsequent resignation the Petitioner's nomination has to be accepted as the nominee of financial banks. The appropriate course according to me would be to direct the financial bank to decide this issue in the light of the material facts available on record. Therefore, the subsequent resignation by Petitioner 2 according to me deserves in any way help the Petitioner. Therefore, the argument of subsequent resignation resulting in a right in favour of Petitioner-1 under the Act is equally not acceptable to me. This argument is rejected.

12. In the light of my earlier discussions I deem it proper to hold that the endorsements issued by the Respondents cannot be said to be wholly without jurisdiction. On the otherhand it upholds the purity of nomination. The letter could have been in a better language, but by that itself does not render these

two orders bad in law. Therefore, these two letters/ endorsements are upheld and at the same time a direction is issued to the financing bank to make known its decision with regard to the nominee in terms of bye-laws within 4 weeks from today. The society has to act in accordance with the decision to be taken by the bank in accordance with law.

13. Next question for my consideration is about the elections to be held by the Respondents. In fact there is no prayer as such with regard to the postponing election in the prayer. However, arguments have been advanced with regard to holding of election. Mr. Jaykumar Patil, states that a notice has to be issued to his client enabling him to participate in the election. Per contra the same is opposed by the contesting Respondents. Let me see as to whether the dispute with regard to nomination would result in postponing the election. Elections are to be held in terms of Section 29F of the Act. It provides for election of the President, Chairperson, Vice-President or Vice-Chairperson. It also provide for Constitution of the committee in terms of Section 29F(iv). Manner of convening meeting is provided u/s 29(4)(A). In the light of these provisions, it is clear to me that just because there is a dispute with regard to one Director the entire election to the post of President need not be postponed. So long as the quorum is available, the election can proceed in accordance with law. If the argument of the Petitioner to postpone the election on account of defective nomination is acceptable, then there is every chance of mischief being played in the matter of holding election to postpone election. So long as the Act does not prevent holding of election on account of any dispute with regard to one Director notwithstanding to cover the same cannot be postponed as argued by the Petitioner.

14. In this regard it is necessary to refer to a judgment of this Court reported in SE Narappa and others Vs. Holalkere Taluk Primary Co-operative Agriculture and Rural Development Bank Limited and others, . This Court in somewhat identical circumstances has noticed the judgment of Lord Denning in 1949 (2) KB 481 in Seaford Court Estate Limited v. Asher. After noticing, this Court ruled in para 15 as under:

The Courts must understand the intention of legislation as a whole and the legislation should be read harmoniously. No legislation must made to look absurd and a proper meaning should be given to the Act read as a whole and if necessary to iron out the creases.

15. In another case this Court in S.K. Rama Reddy Vs. The Assistant Registrar of Co-operative Societies, Harapanahalli Sub-Division, Davanagere District and others, considered with regard to the committee. This Court noticed that only four members were elected out of nine and therefore Committee did not stand constituted. This argument was not accepted by this Court in the light of Section 29A(2) of the Act. Since there is a committee already constituted and the quorum is available there cannot be any impediment for holding election.

16. Election process as held by Courts of law cannot be scuttled or throttled on account of some defect somewhere.

17. I direct the Respondents to hold election dehors the dispute with regard to nomination of the Petitioner-1. Election could be held even without notice to the Petitioner in view of the controversy. Till the controversy is resolved Petitioner cannot get any notice in terms of the provisions of the Act.

18. In these circumstances this petition stand dismissed with a direction to borrower bank to make its decision with regard to nominee in terms of bye laws with reference to two Directors within one month from today. Parties are to bear their respective costs.