

(1983) 04 KAR CK 0013
In the Karnataka High Court
Case No : W.P. 5424/83

Tippannappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(G)
Karnataka Co-operative Societies Act, 1959 — Section 29D

Citation : (1983) 2 KarLJ 269

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. In this petition filed under Arts. 226 and 227 of the Constitution of India, Tippannappa son of Bhimesha of Mahagaon Chitapur Tlq., has applied for a writ of certiorari challenging the order dt. 15.2.1983 of the Dy. Registrar of Co-operative Societies, Gulbarga, 2nd respondent herein, by which he has held that he, Tippannappa, was disqualified from continuing as President of the Primary Land Development Bank Ltd., Chitapur, the 3rd respondent herein (referred to hereinafter as the Society) having completed more than six years in office as provided under S. 29-D of the Karnataka Co-operative Societies Act, 1959 (the Act). The petitioner has also challenged Sec. 29-D of the Act. It is on two grounds: firstly, on the ground that it is violative of Art. 14 of the Constitution, and secondly, that it infringes Art. 19.

2. Section 29-D of the Act reads thus:

"29-D. Disqualification for being President vice-President, Managing Director or Secretary: No person shall be eligible for election or appointment or to continue as President, Vice-President, Managing Director, Treasurer or Secretary of a Co-operative Society for more than six consecutive years:

Provided the persons who have completed or who complete the said period of six years on the date of coming into force of the Karnataka Co-operative Societies (Amendment) Act, 1975, shall be entitled to continue in office until elections are held for the first time after the said data.

Explanation: For purposes of this sub-section, a person who ceases to be a President, Vice-President, Managing Director, Treasurer, or Secretary within twelve months prior to the expiry of the six consecutive years, shall be deemed to have completed the period of six years.

(2) No person who has continued in any one or more of the offices of the President. Vice-President, Managing Director Treasurer or Honorary Secretary or other similar offices by whatever designation known of a co-operative society consecutively for a total period of six years or more shall be eligible for. election or appointment to any of the said offices of such co-operative society until the expiry of six years after he has ceased to hold the last of such offices."

3. The 3rd respondent is a Society formed under the provisions of the Act. It is not in dispute that Tippannappa is. holding the office of the President of the committee since more than six years. If Sec. 29-D is held valid he cannot continue in office having completed six years in office.

4. While examining the ambit and scope of the aforesaid provision, it is proper that we know the aim and object of the Act. And, that is, as can be gathered from the various provisions of the Act (including Sec. 4), to promote, thrift, self-help, and co-operation among the citizens in the area (See the observations of this Court in WP. No. 3281 of 1983 dt. 24.3.1983). A society formed under the Act requires registration. The statute confers powers on a statutory authority (the Registrar) either to permit or refuse registration. S.7 of the Act provides that he may permit registration of a society if he is "satisfied that the applicant complies with the provisions of the Act and the rules; that the objects of the proposed society are in accordance with S. 4; that the aims of the proposed society are not inconsistent with the principles of social justice; that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and that the proposed society complies with the requirements of sound business and a reasonable chance of success".

5. The statute envisages the supervision of the functions of the societies and the control of their affairs by certain authorities constituted to see that they do not deviate in their functions from the aims and objects of the Act. As mentioned above the main object is promotion of co-operation, thrift and self-help among the members of the society. The process of achieving this should not result in social justice being a casualty.

6. While examining the challenge made to S. 29-D we have to keep in view the aforesaid aims and objectives of the law.

7. Also in appreciating the arguments of the learned Counsel for the petitioner that S. 29-D is violative of Art. 19 of the Constitution we may note the nature of the right asserted. Is a right to be a member of a society formed under the Act or to hold any office of such a society a right guaranteed under Art. 19, or is it a right conferred by a statute? True, Art. 19(1)(g) guarantees to every citizen the right to practise any profession, or to carry on any occupation, trade or business

(calling). But, as observed by the learned Author Basu in his "Shorter Constitution of India" (8th Edn.) "Art. 19 refers to what are known as natural or common law rights as distinguished from rights which are created by a statute and must be exercised subject to conditions imposed by it". In support of that view the following observations of the Supreme Court in *Jamuna Prasad v. Lachhi Ram*, AIR 1954 SC 586, on which also reliance is placed by the learned Author may be noted:

"Both these provisions, namely, Ss. 123 (5) and 124(5), were challenged as "ultra vires" Art. 19 (1) (a) of the Constitution. It was contended that Art. 245 (1) prohibits the making of laws which violate the Constitution and that the impugned sections interfere with a citizen's fundamental right to freedom of speech. There is nothing in this contention. These laws do not stop a man from speaking. They merely prescribe conditions which must be observed if he wants to enter Parliament". (Para-5)

There the challenge was to Ss. 123 (5) and 124 (5) of the Representation of the People Act, 1951 which respectively defined the major and minor corrupt practices at elections. The challenge was that they were ultra vires Art. 19 (1) (a) of the Constitution.

As observed by Bose J., who spoke for the Bench (the other learned Judges constituting the Bench were Mahajan C.J., B.K. Mukherjea, S.R. Das and Ghulam Hasan, JJ) "the fundamental rights Chapter has no bearing on a right created by a statute".

8. Thus, as is clear, S. 29-D of the Act does not rob away any right of Tippannappa guaranteed to him under Art. 19 of the Constitution of India.

9. Tippannappa had held an office created by a statute and had got himself elected to that post in accordance with the procedure, and having had the, necessary qualifications, prescribed under that statute. It was not an absolute right, in the sense, of being a common law right or fundamental right envisaged under Art. 19.

10. As observed by the Supreme Court in *Pannalal Birjraj vs. Union of India*, AIR 1957 SC 397. If the statute deals with a right which is not fundamental in character, the statute can take it away but a fundamental right the statute cannot take away" (Para-34).

11. But, S. 29-D does not, in terms, go so far. S. 29-D was incorporated in the Act by Kar. Act No. 39 of 1976. Previous to that a person could/have held office, as an office bearer of a society, for any length of period. S. 29-D puts a limitation or a, bar on that and prohibits a person from holding any such office beyond the period of six consecutive years at a stretch. If he holds office in one or the other capacity continuously for six years, he must make way for others to any such office. This change has been brought about in the law to prevent powerful persons from entrenching themselves in the office creating in themselves a

vested interest therein thereby preventing others, less powerful financially or otherwise, though fully qualified in all other respects, from actively participating in the management of the society concerned. What is it that S. 29-D wants to achieve? It wants to prevent the danger referred to above and facilitate others from fully sharing the responsibility of an elective office of a co-operative society so that it helps in furthering co-operation and self-help among all sections of the population of a local area.

12. Thus, S. 29-D sot merely does not contravene Art. 19 of the Constitution of India, but also is otherwise valid strengthening, as it does, the foundations of the co-operative movement in the State which is the basic objective of this law,

13. While arguing that S. 29-D is violative of Art. 14, what was stated by the Counsel for the petitioner was that the proviso to sub-sec. (1) of S. 29-D makes a hostile discrimination against individuals like his client and therefore bad. That proviso says that persons, who may have completed or who may complete six years term on the date on which Kar. Act No. 39 of 1976 comes into force, shall continue in office until elections are held for the first time after that date. Persons falling in that category were treated thus for the reason that otherwise it would have resulted in dislocation of work in a society. The proviso applied once only and that was until elections to co-operative bodies taking place after the amendment. It is not in dispute that elections to these bodies take place periodically as per the by-laws of a society. The classification made re: the persons falling in the proviso is quite reasonable. It embraces only those holding the office on the date of the commencement of the amendment Act and the Explanation makes it further intelligible and it states that for purposes of that sub-sec. a person ceasing to be, an office-holder within 12 months prior to expiry of the six consecutive years shall be deemed to have completed the period of six years. The object sought to be achieved is also clear and that was to prevent-sudden dislocation of work in co-operative societies. There is no basis in the contention of the Counsel for the petitioner that S. 29-D was violative of Art. 14 of the Constitution.

14. The challenge to Annexure-C was on the ground that that order, having been issued under S. 29-D which itself was unconstitutional, was bad in law. In view of what is stated above, on that ground Annexure-C cannot be challenged.

15. For the reasons aforesaid this is not a fit case for issuing rule. Accordingly, not issuing Rule, petition is dismissed.