

(2014) 06 KAR CK 0158

In the Karnataka High Court

Case No : Writ Petition Nos. 105475-10548 1/2014 (CS-EL/M)

Yallappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Constitution of India, 1950 — Article 243ZH

Karnataka Co-operative Societies Act, 1959 — Section 106, 28A

Citation : (2014) 4 KarLJ 449 : (2014) 4 KCCR 3409

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

Bench : Single Bench

Advocate : F.V. Patil, Advocate for the Appellant; Keshavareddy, AGA for Respondents 1, 3, 4, 6 and 8, Sri. Hemanthkumar L. Havargi, Advocate for R.2, Sri K.L. Patil, Advocate for R.5 and R.9 and Sri M.C. Kotturshettar, Advocate for R.7, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.N. Venugopala Gowda, J.—Petitioners are the directors of Dharwad, Haveri, Gadag, Uttar Kannada districts Milk Union, Dharwad. Their grievance in these writ petitions is against bye-law of 14.2(c), 14.2(d), 14.2(e) and 14.2(f) of the 5th respondent union, providing for representation in the Board, to the Joint Registrar of Co-operative Societies, Belgaum Division, Karnataka Milk Federation, Department of Animal Husbandry and the National Dairy Development Board. Petitioners have sought for a declaration to strike down the said bye-laws on the ground that the same are ultra-vires of Section 28A of the Karnataka Co-operative Societies Act, 1959 ("the Act" for short) and also Article 243ZH of the Constitution of India. Petitioners have sought quashing of Annexure-A to the extent of including the names of the aforesaid representatives i.e., respondents 6 to 9 herein, as directors of 5th respondent union, enabling them to cast their votes in the election of the president of the 5th respondent, scheduled to be held on 6.6.2014.

2. At the threshold, learned Advocates appearing for the respondents raised a preliminary objection with regard to maintainability of these writ petitions, on the ground that in view of remedy of appeal u/s 106 of the Act being available, without exhausting the same, the petitioners cannot maintain the writ petitions, i.e., as against the impugned bye-law and the consequential action.

3. Sri F.V. Patil, learned Advocate for the petitioners submitted that though the statute provides for an appeal as against the amended bye-law, these writ petitions were filed on account of grave urgency, as the election is scheduled to be held on 6.6.2014 to the post of President of 5th society. He further submitted that the matter involves question of vital importance and hence the writ petitions may be entertained and appropriate orders passed. He did address arguments on the merit of the writ petitions. However, I do not deem it appropriate to record the contentions urged for consideration by Sri F.V. Patil, in the view the order which I propose to pass.

4. Since the impugned bye-laws can be questioned in an appeal before the Statutory Authority as provided u/s 106 of the Act, I decline to entertain these writ petitions and direct the petitioners to avail the said statutory remedy, by leaving open all contentions raised in these writ petitions for consideration and decision by the Statutory Authority in the first instance or at a later point of time, by this Court, if necessary.

5. At this stage Sri K.L. Patil, learned Advocate, on instructions of the Managing Director of 5th respondent society, present in the Court, submitted that the election scheduled to be held on 6.6.2014 will not be held and it has been decided to postpone the same to 10.6.2014. Submission of the learned Advocate is recorded. The Managing Director of 5th respondent, shall ensure that the scheduled election is postponed as stated to 10.6.2014. This arrangement is being made by keeping in view the exigency which has arisen in this case.

In the result, writ petitions are disposed of by reserving liberty to the petitioners to question the impugned amendments effected to the bye-law of 5th respondent society, vide Annexure-B, in an appeal u/s 106 of the Act. If the appeal is filed on 6.6.2014, accompanied by an application seeking interim orders, the statutory authority-Registrar of Co-operative Societies in Karnataka is directed to hear the application for grant of interim relief and pass orders on the same day i.e., on the date the appeal accompanied by the application for stay is filed or on the following day at any event, on or before 7.6.2014. The copy of order passed be made available to both sides, without any delay.

A copy of this order be made available to Sri F.V. Patil, learned Advocate for the petitioners, Sri Keshavareddy, learned AGA and to Sri K.L. Patil, learned Advocate for respondents 5 and 9.

No costs.