

Sri K Eregowda Vs. The State of Karnataka

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Court : Karnataka

Decided On : Oct-22-2019

Judge : CHIEF JUSTICE AND S R.KRISHNA KUMAR

Appeal No. : WA 2366/2019

Appellant : Sri K Eregowda

Respondent : The State of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF OCTOBER, 2019

PRESENT

THE HONBLE MR.ABHAY S. OKA, CHIEF JUSTICE AND THE HONBLE MR. JUSTICE S.R.KRISHNA KUMAR WRIT APPEAL Nos. 2366 OF2019& 2464 OF2019(CS-RES)

BETWEEN :

SRI K.EREGOWDA S/O KENCHEGOWDA AGED ABOUT50YEARS RESIDING AT HOSURU VILLAGE HAMPAPURA HOBLI571125 H.D. KOTE TALUK MYSURU DISTRICT. (BY SHRI JAYAKUMAR S. PATIL, SR.COUNSEL APPEARING FOR SHRI ANAND K, ADVOCATE)

AND:

... APPELLANT

THE STATE OF KARNATAKA DEPARTMENT OF CO-OPERATIVE SOCIETIES VIDHANA SOUDHA DR.B.R.AMBEDKAR VEEDHI BENGALURU560001. REPRESENTED BY ITS SECRETARY. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES MYSURU DISTRICT MYSURU571001. THE ASSISTANT REGISTRAR CO-OPERATIVE SOCIETIES HUNSUR SUB-DIVISION HUNSUR571105.

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HOSURU MILK PRODUCERS CO-OPERATIVE SOCIETY LTD., HOSURU, H.D.KOTE TALUK MYSURU DISTRICT571115 REPRESENTED BY ITS SECRETARY. SRI.BOREGOWDA AGED AOBUT61YEARS S/O LATE PAPEGOWDA MEMBER MILK PRODUCERS CO-OPERATIVE SOCIETY LTD BETTADABEEDU571114 H.D.KOTE TALUK MYSURU DISTRICT. SRI TEJASVI S/O LATE V H GOWDA AGED ABOUT50YEARS DIRECTOR R/AT

... RESPONDENT

S (BY SHRI I.THARANATH POOJARY, AGA FOR R-1 TO R-3 SHRI MURALI N, ADVOCATE FOR R-4 SHRI UMESH B.N, ADVOCATE FOR R-5 SHRI PROF.RAVI VERMA KUMAR SR.COUNSEL APPEARING FOR SHRI K.C.SHANTHAKUMAR, ADVOCATE FOR R-6) --- THESE WRIT APPEALS ARE FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED 13.06.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT IN W.P.Nos. 54384- 385/2017(CS-RES) AND ALLOW THE WRIT PETITIONS AS PRAYED FOR IN THE SAID WRIT PETITION BY ALLOWING THIS WRIT APPEAL AND ETC., THESE APPEALS COMING ON FOR ORDERS THIS DAY, CHIEF JUSTICE DELIVERED THE FOLLOWING:

JUDGMENT By order dated 08th August 2019, the parties were put to notice that the appeals will be disposed of finally.

2. With a view to appreciate the controversy involved in the appeals, a brief reference to the facts of the case will be necessary.

3. In this appeal, we are concerned with the fourth respondent Society. The appellant contested the election of the Managing Committee of the fourth respondent, which was held on 02nd September 2013 and was elected as a Director of the Managing Committee. An application was made before the Assistant Registrar of Co-operative Societies invoking Section 29-C of the Karnataka Co- operative Societies Act, 1959 (for short the said Act of 1959). In the application, it was contended that the appellant obtained a membership of the fourth respondent Society on 01st October 2012 and he got himself elected as a Director on 02nd September 2013. It was submitted in the said application that the appellant was disentitled to contest the election in view of clause (a-iii) of sub-section(2) of Section 20 of the said Act of 1959, in as much as, he

contested the election on the date on which he had not completed twelve months of membership of the fourth respondent from the date on which he obtained the membership of the fourth respondents Society.

4. An order was passed by the Assistant Registrar on 31st July 2017 holding that the appellant got elected in violation of clause (a-iii) of sub-section (2) of Section 20 and therefore, he has incurred disqualification under clause(b) of sub-section(8) of Section 29-C of the said Act of 1959. The said order was subjected to an appeal by the appellant. By order dated 27th November 2017, the appeal was dismissed.

5. In the writ petition filed by the appellant before the learned Single Judge, the challenge was to the said order dated 31st July 2017 as well as to the order dismissing the appeal which was passed on 27th November 2017. The learned Single Judge by the impugned order, rejected the writ petition.

6. The learned Senior counsel appearing for the appellant submitted that the disqualification prescribed by sub-section (8) of Section 29-C is not at all attracted. The said disqualification is applicable when an Act covered by

sub-section (8) is done after a member of a Board of Co- operative Society assumes office and in the present case, the disqualification alleged is under clause (a-iii) of sub- section (2) of Section 20. He placed reliance on a decision of the Division Bench of this Court in the case of Govindappa alias Gopalappa vs. Somashekar Ishwarappa Akalawadi and others(ILR1979KAR27. He submitted that as held in the said judgment, Section 29-C will apply when the acts are done after a member of the board gets selected.

7. The learned Senior Counsel appearing for the sixth respondent supported the impugned order by pointing out that after the aforesaid decision, Section 70 of the said Act of 1959 has undergone amendment and therefore, in a case like this nature, Section 70 was not available. He invited our attention to clause (a-iii) of

sub-section (2) of Section 20 and submitted that when the appellant contested the election, he was not a member of the fourth respondent Society for a period of twelve months. He submitted that as the appellant acted in contravention of the provisions of the said Act of 1959, clause (b) of sub-section(8) of Section 29-C was squarely applicable.

8. The learned counsel appearing for the fifth respondent submitted that he has no grievance against the appellant. The learned AGA supported the impugned order by pointing out that there is an admitted violation.

9. We have given careful consideration to the submissions.

10. At this stage, the learned Senior counsel appearing for the sixth respondent relies upon clause(h) of sub-section(1) of Section 29-C. He submitted that in view of the said clause, the appellant was not eligible for being elected. He submitted that the appellate authority has sustained the order of Assistant Registrar on this ground.

11. It will be necessary to advert to Section 29-C, which reads thus:-

"29. C. Disqualification for membership of the [board]..- (1) No person shall be eligible for being elected or appointed or continued as a member of the board of any co-operative society], if - a) he is in default to that society or any other co-operative society in respect of any dues from him as borrower;]. (b) he is interested directly or indirectly in any contract made with such co-operative society or in the sale or purchase made by such co- operative society privately or in auction or in

any contract or transaction of the co-operative society (other than investment and borrowing) involving financial interests in that contract, sale, purchase or transaction; (c) [he carries]. on a business of the kind carried on by such co-operative society or by a co- operative society of which such co-operative society is a member; (d) he is employed as legal practitioner on behalf of such co-operative society or accepts employment as legal practitioner against such co-operative society; (e) he is a paid employee [other than the Chief Executive]. of such co-operative society or of its financing bank; (f) he is a near relation of a paid employee of such co-operative society. [Explanation.For the purpose of [this clause near relation means, (i) husband, wife and unmarried daughter; (ii) father, mother, undivided son, undivided brother and unmarried sister; and (iii) such other relations as may be prescribed to be a near relation. (g) he was a paid employee of a co-operative society and was dismissed, removed or compulsorily retired from service of a co-operative society; (h) he is disqualified to be a member of the society or to vote as such member; (i) he has been convicted for an offence punishable under section 153A or section 171E or section 171F or sub-section (2) or sub-section (3) of section 505 of the Penal Code, 1860 (Central Act 45 of 1860) or under

section 39J or clause (b) of sub-section (2) of section 39K of this Act, unless a period of six years has elapsed from the date of such conviction; (j) he has been convicted by a Court in India for any offence and sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed from the date of his release; (k) he is found guilty of corrupt practice within the meaning of section 39-C unless a period of six years has elapsed from the date on which he was found guilty; (l) he has failed to remit to any co-operative society any amount (other than a loan) retained by him in contravention of the provisions of this Act, rules or bye- laws; (m) he is a representative of a co-operative society which is in default to a financing bank or to any co- operative society in respect of any dues by the co- operative society which he represents, for a continuous period of one year: Provided that the disqualification under this clause for being continued as a member of the committee shall apply to a co-operative society which has defaulted in payment of an amount exceeding thirty percent of such dues; (n) he was a member of the board which failed to make arrangement for election within the time limit specified in section 39A.]. (o) *****

(p) he has absented himself for three consecutive meetings of the board of such society, without leave of absence]. (2) No person including a person elected by a co-operative society as a member of a board of another co-operative society of which such co-operative society is a member shall be a [President or

Chairperson, Vice- President or Vice-Chairperson or other office bearer]. of more than two co-operative societies. (3) If the board of a co-operative society fails,- (a) to assist the co-operative Election Commission for conducting elections as per Section 39- A and Section 29-F; or (b) to call the annual general meeting under Section 27 or special general meeting when required under Section 28; or (c) to present the audited accounts and annual report in the annual general meeting. every member of such defaulting board shall be disqualified for being elected or appointed or continued as a member of the board of the society for a period of five years from the date of the order of disqualification.]. (4) Nothing in sub-section (2) shall apply, (i) to any person who is appointed by the State Government or the Registrar as the President or Chairperson, Vice-President or the Vice-Chairperson; or (ii) to any person who is merely a member of the board (5) In the case of co-operative marketing societies, consumers co-operative societies and such class or classes of co-operative societies as may be specified by the State Government, by notification in the

official Gazette, no member shall be eligible for being appointed or elected as a member of the committee of such co-operative society if he does not fulfill the minimum qualifications relating to his transactions with the co-operative society upto such monetary limits as may be specified from time to time in such notification. (6) There shall be no representative of individual members on the committees of a District Central Co- operative Bank or an Apex Co-operative Bank or such other classes of co-operative banks as may be prescribed. (7) Any question as to whether a member of the committee was or has become subject to any of the disqualifications mentioned in this section shall be decided by the Registrar after giving the person concerned a reasonable opportunity of being heard. [(8) If any member of a committee of a co- operative society during the term of his office, (a) becomes subject to any disqualifications specified in sub-sections (1), (2) and (5); or (b) has acted or has been acting fraudulently or with gross negligence or in contravention of the provisions of this Act, the rules or the bye-laws of the co-operative society or without the sanction of the committee of the co-operative society where such sanction is necessary or contrary to the resolution of the co-operative society or its committee or in any way prejudicial to the interest of the co-operative society; or (c) has acted or has been acting persistently against the directions or orders issued under this Act, rules or bye-laws; or (d) is not discharging his duties satisfactorily;

the Registrar may either on a report made to him or otherwise, by order remove such member, and in cases falling under clauses (a), (b), (c) and (d) of this sub- section disqualify him from holding any office in the co-operative society for such period not exceeding five years, as may be specified in such order: Provided that no order shall be made under this sub-section unless a reasonable opportunity of being heard, is given to the person against whom the order is to be made. (9) A copy of the order made under sub-section (8) shall be communicated to the member and the co- operative society concerned. (10) No director of a co-operative society shall be eligible for being elected or appointed or continued as a delegate of another society, if he suffers from any disqualification mentioned in sub-section(1). The provisions of sub-section (8) shall, mutatis mutandis, apply. (11) No member of a co-operative society shall be eligible for being elected or appointed or continued as a representative, if he suffers from any disqualification mentioned in sub-section(1) other than clauses (m) and (n) thereof. The provisions of sub-section (8) shall, mutatis mutandis, apply. (Underline supplied) 12. Sub-section (1) of Section 29-C lays down Disqualification for membership of the board. Clause (h) thereof lays down that no person shall be eligible for being

elected or appointed or continued as a member of the board, if he is disqualified to be a member of the society or to vote as such member. Sub-sections (2) to (6) are not applicable. The order of Assistant Registrar is specifically passed under sub-section (8) of Section 29-C. Under sub-section(8), in the cases falling under clauses (a) (b) (c) and (d), the Registrar has power to disqualify a member of the Board from holding any office in the co-operative society for such period not exceeding five years. As far as sub-section(8) is concerned, on its plain reading, it becomes applicable, if any member of a board or a co-operative society during the term of his office, becomes subject to any disqualification as specified in sub-sections (1), (2) and (5) or commits acts to which clauses (b) to (d) of sub-section (8) are applicable. Thus, on its plain reading, sub-section (8) is applicable when either disqualification is incurred or acts covered by clauses (b) to (d) thereof are committed

by the member of a board during the term of his office. Thus, sub-section (8) cannot apply to the acts committed or disqualification incurred prior to election of a member.

13. In the present case, even going by the allegations made against the appellant, he has not incurred any disqualification under sub-sections (1), (2) and (5) of Section 29-C and he has not committed any acts, which are covered by clauses (b) to (d) of sub-section (8) during the term of his office as a Director of the fourth respondent. That is not even the allegation made in the application made before the Assistant Registrar. Therefore, sub-section (8) has no application at all. Sub-section (8) will not apply to the disqualification incurred prior to the term of office of a member of a board of co-operative society commences. It will apply to the disqualification incurred and the acts done during the term of any member of a board of the co-operative society. The allegation against the appellant is that in view of clause (a-iii) of sub-section(2) of Section 20, he was disqualified to vote as he had not completed one year from the date of grant of membership of the fourth respondent.

14. Going by the impugned order of the Assistant Registrar, he has disqualified the appellant by exercising the power under sub-section (8) of Section 29-C of the said Act of 1959.

15. The election dispute challenging the election of the appellant is pending. On a plain reading of sub-section (8) of Section 29-C, per se, there is no power to disqualify a person who attracts any of the sub-clauses in sub-section(1) before the election. If the appellant was allegedly disqualified to contest the election to the post of a member of the board of the fourth respondent Society, the issue of disqualification will have to be decided in the election dispute. The action under sub-section (8) of Section 29-C can be taken of disqualifying a member of the board, provided, the disqualification under clause (h) of sub-section (1) of Section 29-C is incurred after he becomes a member of the Board.

16. Therefore, the order passed under sub-section (8) of Section 29-C by the Assistant Registrar could not have been supported in appeal by relying upon clause(h) of sub- section (1) of Section 29-C of the said Act of 1959.

17. Now coming to the impugned order, in paragraph- 4, the learned Single Judge has observed that an election dispute under Section 70 of the said Act of 1959 is pending and the appellant can pursue the said proceedings and demonstrate that his membership was well within the time and the order of disqualification is without basis. With

greatest respect to the learned Single Judge, this view may not be correct. The appellant is not entitled to raise the issue of illegality of the order of disqualification passed by the Assistant Registrar in a dispute under Section 70, in which, the validity of his election is under challenge. The appellant has not filed the said dispute and he is a respondent therein.

18. In the circumstances, the appeal must succeed and the order passed by the Assistant Registrar will have to be set aside. While we doing so, we must clarify that all the issues in the election dispute filed for challenging the election of the appellant will remain open including the applicability of the clause (h) of sub-section(1) of Section 29- C of the said Act of 1959.

19. Subject to what is observed above, we pass the following order:-

"(i) The impugned order dated 13th June 2019 is hereby set aside and W.P.No.54384-385/2017 is allowed in terms of prayer clauses (i) and (ii), which reads thus:-

"(i) Issue a writ of certiorari or any other writ or order as the case may be to quash the impugned the 2nd order dated:

27. 11.2017 passed by

respondent in Appeal No.DRM/Dispute/C7/Appeal/19/2017-18 at Annexure-Y. (ii) Issue a writ of certiorari or any other writ or order as the case may be to quash the impugned the 3rd order dated:

31. 07.2017 passed by respondent in No.29-C Case No.Sa Ni 43/DIS/1/2015-16 at Annexure- O and dismiss the complaint filed by the 5th respondent at Annexure-K.; (ii) We make it clear that we have has made any adjudication on the merits of the pending dispute under Section 70 of the said Act of 1959, in which, election of the appellant is under a challenge. (iii) The concerned authority before which the dispute is pending is free to decide the same on its own merits, without being influenced by what is held in the judgment and order. (iv) The writ appeal is allowed in the above terms. (v) There is no order as to costs. Sd/- CHIEF JUSTICE Sd/- JUDGE Srl.

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