

Channabasappa Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Apr-13-2000

Reported in : ILR2001KAR681; 2001(1)KarLJ542

Judge : G. Patribasavan Goud, J.

Acts : Karnataka Co-Operative Societies Act, 1959 - Sections 29(1)(2), 29-C(7), 53-A, 54 and 121; Karnataka General Clauses Act, 1899 - Sections 21; Karnataka Co-operative Societies (Amendment) Act, 1997; Karnataka Act, 1998 - Sections 24

Appeal No. : Writ Petition No. 5756 of 2000 connected with Writ Petition Nos. 40687 to 40689, 42493 to 42495, 437

Appellant : Channabasappa

Respondent : State of Karnataka and Another

Advocate for Def. : Sri M.N. Ramanjaneya Gowda, Additional Government Adv., ;Sri Mahesh R. Uppin, ;Sri M.R.C. Ravi, Adv.

Advocate for Pet/Ap. : Sri S.M. Byadagi, ;Sri Shantesh Gureddi, ;Ms. Prema Hatti, Adv.

Judgement :

ORDER

1. These petitioners had been nominated to the Committee of various cooperative societies arrayed as respondents in the respective writ petitions, the State Government, one of the respondents, having nominated them in exercise of its power under Section 29(1) of the Karnataka Cooperative Societies Act, 1959 ('Act' for short). In all these proceedings, the petitioners have invariably been nominated by various orders passed in the first week of October, 1999, the order in respect of each of the petitioners specifying that he is appointed for a period of five years or until the term of the Committee expires, whichever is earlier. All these nominations however came to be annulled by the State Government passing orders to that effect in the last week of October, 1999, purportedly in exercise of its power under Section 29(1) of the Act read with Section 21 of the Karnataka General Clauses Act, 1899 ('General Clauses Act' for short). What is of significance is that, the nominations had been made in the first week of October, 1999, by the outgoing Government of one political party, while cancellation was done in the last week of October by the Government of another political party which had just then come into power after the General Elections. It is these orders of cancellation that were passed in the last week of October, 1999, that are impugned in these writ petitions.

2. The petitioners urge that the order of cancellation of nomination is illegal and without any authority of law, that it is actuated by mala fides, the only view being to cancel the nominations done by the previous Government as political vendetta, that the nominated members of the Committee had acquired right to hold office as members of the Committee of the concerned society for the period specified with no power being there for the State Government to take away that right, that the act of nullifying the nominations has been accomplished in violation of the principles of natural justice, inasmuch as, the same is done without affording opportunity of being heard to the petitioners, that the State Government is wrong in invoking the provisions of the General Clauses Act, that the petitioners could not have been removed from the membership of the Committee without recourse to Section 29-C of the Act, that once nomination was made under Section 29 of the Act, the process of nomination stood exhausted, and that the Government had no power under the said provision to cancel the nominations, and that the impugned orders are arbitrary and capricious.

3. The State Government, in the common statement of objections, contended that it is empowered to nominate three persons on the Committee of any assisted society under Section 29 of the Act, that it is empowered to nominate whomsoever it wants to safeguard its interest in the share capital that it has invested in the societies, that the persons so nominated are there at the 'pleasure' of the Government irrespective of term and duration mentioned in the order nominating the said persons, and that it is not necessary for the Government to assign any reason either while making nominations or while revocation of such nomination. The State Government has contended that, whenever and wherever the Government felt it necessary to nominate any person, the earlier nominations can be cancelled and new persons nominated and that it was empowered to add, amend, vary or rescind the Notification under Section 21 of the General Clauses Act. In the rejoinder, the petitioners pointed out that the doctrine of pleasure that the State Government had pleaded in its statement of objections no doubt had been there in Section 29 of the Act as it stood prior to the Amendment Act 25 of 1998, but that after the said amendment, the pleasure doctrine was no longer available, and that the person nominated under Section 29 shall have that term as specified in the order of nomination. It was also pointed that Section 21 of the General Clauses Act cannot be invoked to rescind the order of nomination since the very order/s specified the nominations for a specified period as required by Section 29 of the Act itself.

4. I have heard at length Sri K. Channabasappa, Sri S.M. Byadagi, Sri Shantesh Gureddi and Ms. Prema Hatti for the petitioners, and the learned Advocate-General for the State Government.

5. The Act was extensively amended by the Karnataka Co-operative Societies (Amendment) Act, 1997 (Karnataka Act 25 of 1998) ('Amendment Act' for short), that came into force on 15-9-1998. Prior to the amendment, there were two provisions in the Act that enabled the State Government to make nominations to the Committee of a Co-operative Society of a particular class. They were Sections 29 and 53-A. The said two provisions read thus prior to amendment:

'29. Nominees of the Government on the Committee of a Co-operative Society.--

(1) Where the State Government:

(a) has subscribed to the share capital of a Co-operative Society; or

(b) has assisted indirectly in the formation or augmentation of the share capital of a Co-operative Society as provided in Chapter VI; or

(c) has guaranteed the repayment of principal and payment of interest on debentures issued by a Co-operative Society; or

(d) has guaranteed the repayment of principal and payment of interest on loans and advances to a Co-operative Society, the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the Co-operative Society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121, have the right to nominate as its representatives not more than three persons or one-third of members of the total number of members of the Committee of the Co-operative Society, whichever is less.

(2) A person nominated as a member of a Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as 'nominated member') shall hold office as such member during the pleasure of the State Government.

(3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government, or the specified authority, may by order specify.

(4) Where an officer of the State Government is nominated as a member of a Committee under sub-section (1), such officer may be nominated by virtue of his office, and when any such nomination is made, such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purpose of such meeting'.

'53-A. Nomination of members of Committee by State Government in certain cases.--(1) Notwithstanding anything contained in Section 29, where the State Government has subscribed to the share capital of a Co-operative Society to the extent of not less than.--

(i) fifty per cent of the total share capital; or

(ii) five lakhs of rupees,

the State Government shall have the right to nominate as its representative one-third of the total number of members of the Committee of the Co-operative Society.

(2) A person nominated as a member of Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as nominated member) shall hold office as such member during the pleasure of the State Government.

(3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government may, by order specify.

(4) Where an officer of the State Government is nominated as a member of a Committee under sub-section (1) such officer may be nominated by virtue of his office, and when any such nomination is made, such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purpose of such meeting'.

By the Amendment Act, while Section 53-A of the Act was omitted, so far as Section 29 is concerned, for Section 29 of the principal Act, the Amendment Act substituted Section 29 as follows:

'29. Nominees of Government on the Committee of an assisted Co-operative Society.--(1) The State Government may nominate not more than three persons as

its representatives on the Committee of any assisted society of whom one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a woman.

(2) The persons so nominated shall not have the right to become office bearers of the Society.

(3) The persons nominated under sub-section (1) shall hold office as members of the Committee for such period as the State Government may, by order specify.

(4) Where an officer of Government is nominated under sub-section (1), such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be a person nominated as a representative of the State Government for the purpose of such meeting'.

6. On 25-2-2000, the Governor of Karnataka has promulgated the Karnataka Co-operative Societies (Amendment) Ordinance, 2000 (Karnataka Ordinance 1 of 2000) ('Ordinance' for short), further amending various provisions of the Act. Section 29 of the Act is left untouched. But Section 53-A has come to be inserted, which is as follows:

'53-A. Nomination of members of Committee by State Government in certain cases.--

(1) Notwithstanding anything contained in Section 29, where the State Government has subscribed to the share capital of a Co-operative Society to the extent of not less than.--

(i) fifty per cent of the total share capital; or

(ii) five lakhs of rupees,

the State Government shall have the right to nominate as its representatives one-third of the total number of members of the Committee of the Co-operative Society.

(2) A person nominated as a member of a Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as nominated member) shall hold office as such member during the pleasure of the State Government.

(3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government may, by order specify.

(4) Where an officer of the State Government is nominated as member of a Committee under sub-section (1), such officer may be nominated by virtue of his office, and when any such nomination is made, such officer may if unable to be present himself at any meeting of the Committee depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purposes of such meeting'.

7. Section 21 of the General Clauses Act reads thus:

'21. Power to make to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws.--Where, by any enactment, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to like sanction and conditions (if any), to add, amend, vary or rescind any notifications, orders, rules or bye-laws so issued'.

8. Firstly about the 'doctrine of pleasure'.

It could be seen from the above that Section 29 of the Act, as it stood prior to the Amendment Act, specifically provided that a person nominated as member of the Committee under sub-section (1) of Section 29, shall hold office as such member during the 'pleasure' of the State Government. That was the position in respect of nomination under Section 53-A also. But, after the Amendment Act, while Section 53-A was omitted, Section 29, as substituted by the Amendment Act, pointedly gave up the 'pleasure' clause. The position after the Amendment Act with effect

from 15-9-1998 therefore was that the doctrine of pleasure was consciously denied to the State Government by the Legislature. Even when several amendments were effected in February 2000 by the Ordinance, the said Section 29 was left untouched, but, at the same time, the said Ordinance, inserting Section 53-A, virtually taking the position back to the principal Act stage so far as the said Section 53-A is concerned. That means that, even while providing for the doctrine of pleasure in Section 53-A of the Act by the Ordinance issued on 25-2-2000. and being conscious of the fact that the 'pleasure' clause had been removed by the Amendment Act in Section 29 of the Act, still it was not felt necessary to introduce the doctrine of pleasure into Section 29 of the Act when the said Ordinance was issued.

In view of the above, so far as Section 29 of the Act is concerned, there was 'pleasure' clause prior to Amendment Act, and, after the Amendment Act came into force with effect from 15-9-1998, 'pleasure' clause was no longer available to the State Government in course of exercise of its power under Section 29 of the Act. Even after the ordinance was issued in February 2000, therefore, if we look to Section 29 alone, the State Government cannot seek to have the 'pleasure' clause when it makes nomination under Section 29 of the Act. After the Amendment Act, the position so far as Section 29 is concerned is that the State Government may nominate someone under sub-section (1) of Section 29 of the Act, and such person as per sub-section (3) of Section 29 holds office as member of the Committee for such period as the State Government may, by order specify. It is a different matter if a person is now, i.e., on or after 25-2-2000, is nominated under Section 53-A of the Act, in which event, in respect of such nomination, the State Government could invoke the doctrine of pleasure.

9. In the above background, the contention of the State Government as to its still having 'pleasure' clause under Section 29 of the Act is based on the following submission as made by the learned Advocate General: It is no doubt true that while prior to Amendment Act, the 'pleasure' clause was there in Section 29 of the Act, after the Amendment Act and even after the Ordinance in February 2000, the said clause is not there in Section 29 of the Act. But, there is Section 53-A of the Act, in which the doctrine of pleasure is incorporated. Sections 29 and 53-A are

not to be considered as being independent of each other, but that Section 53-A has to be read as a proviso to Section 29 of the Act. So read, the doctrine of pleasure available in Section 53-A of the Act is as much available in respect of nominations made under Section 29 of the Act also.

Learned Advocate General, in support of the above said submission, has referred to two decisions, both by the learned Single Judge of this Court. His Lordship Mr. Justice M. Rama Jois, J., as he then was: (1) *Kumaraswamy v State of Karnataka and Others* and (2) *Naganna Gowda N.G. and Another v State of Karnataka and Others*. In the latter decision, what had been held in the earlier case of *Kumaraswamy*, supra, was only reiterated. What had arisen therein was as to whether the State Government had the power to nominate as its representatives on the Committee of the Co-operative Society, both under Sections 29 and 53 of the Act. It was answered in the negative with the learned Single Judge holding that though Section 53-A is incorporated as a separate section, in truth and substance, it is in the nature of a proviso to Section 29 of the Act.

The aspect of doctrine of pleasure had not arisen in the said two decisions. Learned Advocate General however would urge that in respect of State Government's power to nominate under Sections 29 and 53-A of the Act, if it can thus be held as above, that Section 53-A should be taken as a proviso to Section 29 of the Act thereby drastically curtailing the number of persons that the State Government can nominate as members of the Committee of a Co-operative Society, then, when it comes to doctrine of pleasure in respect of which such interpretation as above would have the effect of enlarging the power of the State Government, so much so that if Section 53-A is read as a proviso to Section 29 of the Act, the doctrine of pleasure available in Section 53-A could be held equally available in respect of Section 29 also, a different interpretation cannot be placed so as to deprive the State Government of that enlarged power. Learned Advocate General submits that just as for limiting the number of members of the Committee that the State Government can nominate by treating Section 53-A as a proviso to Section 29 of the Act, similarly, even for the purpose of doctrine of pleasure, these two sections must be read in the same way, the result being that even though the 'pleasure' clause is not there in Section 29 of the Act, the said clause being there

in Section 53-A of the Act, those nominated under Section 29(1) of the Act also would be at the 'pleasure' of the State Government. Learned Advocate General then refers to two decisions of Division Bench of this Court, one in respect of the very provision Section 29 of the Act, and the other one in respect of a different statute, but also relating to the pleasure doctrine. First decision that is relied upon which was in respect of the very Section 29 of the Act is Tammanna and Others v State of Karnataka and Others. The Division Bench of this Court negated the contention of the petitioners therein that even in case where the Government acted in exercise of the power of 'pleasure' conferred on it by a statute and revoked the nomination or made a fresh nomination, it should be supported by reasons, as otherwise the act would be arbitrary. After referring to the decision of the Supreme Court in Om Narain Agarwal v Nagar Palika, Shahjahanpur, the Division Bench pointed out that the observations of the Supreme Court therein would show that the nominations to banks, societies or such other institutions are made purely on political considerations, and on the subjective satisfaction of the Government, and that it was not necessary for the Government to give any reasons for such nominations or revocation of nominations. The Division Bench also noticed that with regard to the nomination that was being dealt with, no mala fides had been attributed.

The other decision the learned Advocate General referred to is one by a Division Bench of this Court in S.M. Sadanandaiah v State of Karnataka, with reference to the pleasure doctrine available under the Karnataka Urban Development Authorities Act, 1987. The Division Bench pointed out that where the statute had conferred 'pleasure' on the State Government, the Government's cutting short the tenure of the office of the nominated person would be subject only to the rider that its action should not be shown to be either arbitrary, mala fide or capricious, and that subject to this sole limitation, the Government can cut short the tenure of the office of the nominated member of the Board at its pleasure.

Learned Advocate General, therefore, would submit that the doctrine of pleasure specifically conferred on the State Government by Section 53-A of the Act, in the light of the ratio enunciated in the said two decisions of His Lordship Mr. Justice M. Rama Jois, J., referred to above being available in respect of the nominations

under Section 29(1) of the Act also, the nomination of the petitioners concerned herein as also its revocation being at the pleasure of the Government, and there being nothing but vague mention of revocation being mala fide, arbitrary and capricious, in the light of what the Division Bench has said in Tammanna's case, supra, in respect of the very provision of Section 29, revocation must be held valid as being in exercise of the pleasure clause available to the State Government.

Assuming for a moment that the 'pleasure' clause in Section 53-A of the Act can be extended to the nominations made in Section 29(1) of the Act also, the argument based on this assumption presupposes that, for the purpose of examining the validity of the orders of revocation impugned in these writ petitions, there are available to the Court for reference, both Sections 29 and 53-A of the Act. It is to be remembered that the decision of the Division Bench in Tammanna's case, supra, was delivered in respect of Section 29 of the Act as it stood prior to its amendment by the Amendment Act and in the said Section 29 as it stood prior to amendment, 'pleasure' clause was specifically there. Even when two decisions were rendered by His Lordship Rama Jois, J., as he then was, both Sections 29 and 53-A of the Act were there on the statute concerned. It is only on the said basis of availability of both Sections 29 and 53-A of the Act for reference that the learned Advocate General developed his arguments. As said earlier, assuming for a moment that 'pleasure' clause in Section 53-A can be extended to nominations under Section 29 as urged by the learned Advocate General, the fact however remains that so far as the present cases are concerned, undertaking an exercise to find out as to whether this assumption of the availability of the 'pleasure' clause under Section 53-A of the Act for the purpose of nomination under Section 29(1) also would be purely of academic interest, for the reason that so far as the notifications impugned in these writ petitions are concerned, there existed no provision like Section 53-A at all, and that the impugned notifications have to be examined solely in the background of Section 29 of the Act as it exists after the Amendment Act. We have noticed earlier that the nomination under Section 29(1) of the Act for a period of five years or till the term of the Committee expires had been made in the first week of October, 1999 and the revocation impugned herein was also made in October 1999 but in the last week. During this relevant period of October 1999, in the Act, there was only Section 29. That did not contain

'pleasure' clause. Section 53-A that had been in the Act initially, had been omitted by the Amendment Act with effect from 15-9-1998, and it came to be inserted only by the Ordinance with effect from 25-2-2000. In respect of revocation orders, during the period between 15-9-1998 upto 25-2-2000, no such arguments as advanced by the learned Advocate-General, entirely based on the availability of both Sections 29 and 53-A, can be advanced for the simple reason that during the said period, there remained on the statute concerned, only Section 29, not both Sections 29 and 53-A. Notifications impugned herein relate to the said period between 15-9-1998 and 25-2-2000, they being of October 1999. So far as notifications impugned herein are concerned, what is available for reference is only Section 29 of the Act as it stands after the Amendment Act with effect from 15-9-1998. The said Section 29 does not contain 'pleasure' clause. In fact, as the said Section 29 stood prior to Amendment Act, sub-section (3) thereof not only specified that a nominated member would hold office for such period as may be specified by order, but further stipulated that this shall however be subject to sub-section (2) thereof, and it is under this sub-section (2) that the Legislature conferred on the State Government the 'pleasure' during which the nominated members would hold office. It was subject to this 'pleasure' of the State Government under sub-section (2), that sub-section (3) of Section 29 provided that a nominated member would hold office for such period as specified in the order. When Section 24 of the Amendment Act i.e., the Karnataka Act 25 of 1998, substituted the present Section 29 for Section 29 as it stood in the principal Act, the pleasure doctrine contained in sub-section (2) of old Section 29 of the Act was completely omitted, and sub-section (3) of the substituted Section 29 made it absolutely clear that the persons nominated under sub-section (1) shall hold office as members of the Committee for such period as the State Government may by order specify. Thus, by the Amendment Act, the Legislature expressly took away the 'pleasure' that it had conferred on the State Government in the matter of tenure of the nominated members on the Committee of the Co-operative Society. The Legislature thereby provided, for the tenure of the nominated members, as one specified by the State Government in the order concerned. It was thus a conscious denying of the 'pleasure' to the State Government by the State Legislature as regards the tenure of the nominated members. Such being the position, the State

Government cannot contend that it can still invoke the doctrine of pleasure. This is the position so far as the impugned notifications are concerned, because, while examining the validity of the said notifications, as explained earlier, it is only Section 29 of the Act that is available for reference and not both Sections 29 and 53-A.

10. As seen at the outset, in respect of these petitioners, the period specified as tenure for their membership of the Committees of the concerned societies was five years or until the term of the Committee of the concerned society expires, whichever is earlier. All these nominations with the periods so specified were made in October 1999. When the said nominations were revoked by notifications impugned herein in the last week of October 1999 neither five year period had expired nor had the term of the Committees concerned had come to an end. Even then, the revocation took place. On the face of it, the impugned orders amounted to cutting short the tenure of the petitioners as nominated members, because, otherwise, they were entitled to continue as such members for a period of five years or until the term of the Committee expired, whichever was earlier. As noticed earlier, in the statement of objections, the State Government sought to justify the revocation on two grounds - one was invoking the doctrine of pleasure. Another was taking recourse to Section 21 of the General Clauses Act.

11. Section 21 of the General Clauses Act has already been extracted at the outset. It could be seen therefrom that where, by any enactment, a power to issue notification, order, etc., is conferred, then, that power includes a power to rescind that notification or order also, subject however to the condition that the said power of rescinding needs to be exercised in the like manner and subject to like sanction and conditions if any that the enactment itself provided for. In other words, revocation of nomination made under Section 29(1) of the Act is not to be done independently under Section 21 of the General Clauses Act, but the source of the power is always Section 29 of the Act. That is how the impugned notifications also are issued. Since the doctrine pleasure is not available to the State Government, from the manner in which the State Government revoked the nominations by issuing the notifications under Section 29 of the Act read with Section 21 of the General Clauses Act, the State Government appears to have thought that doing

away with nominations could be done in the same manner as the earlier nomination had been done, namely, by just issuing an order to that effect. It could have been so done in view of Section 21 of the General Clauses Act, had the Act, that is the Co-operative Societies Act, not provided otherwise. In *Lachmi Narain v Union of India*, the Supreme Court observed that Section 21 of the General Clauses Act as pointed out by the Supreme Court in *Gopi Chand v Delhi Administration*, embodies only a rule of construction, and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification. In the *State of Bihar v D.N. Ganguly*, it was held that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the provisions of the statute only where the subject-matter, the context or the effect of such provision are in no way inconsistent with such application. Even otherwise, in *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and Another v State of Karnataka and Others*, the Supreme Court observed that it was one of the fundamental rules of our Constitution set up that every citizen is protected against the exercise of arbitrary authority by the State Government or its officers, and that if there is power to decide and determine to the prejudice of the person, the duty to act judicially is implicit in the exercise of such power, and the rule of natural justice operates in areas not covered by any law validly made. The Supreme Court observed that what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. The Supreme Court held that it is only where there is nothing in the statute to actually prohibit giving of opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem* rule could be imported.

From the principles laid down by the Supreme Court in the above said decisions, two things are clear so far as the present matters are concerned. If there are no other conditions in the Act of which Section 21 of the General Clauses Act speaks of, then, of course, revocation could be done by issuing notification under Section 29 of the Act read with Section 21 of the General Clauses Act. While doing so, however, since the earlier order of nomination specified a particular period for

which nominated members' tenure would last, and since, by the revocation order, if the said tenure is proposed to be cut short, and since in the Act there was nothing to prohibit giving opportunity of being heard to the nominated members concerned in the light of what the Supreme Court said in Scheduled Caste and Weaker Section Welfare Association's case, *supra*, principles of natural justice demanded opportunity of being heard, given to the nominated persons concerned before the revocation order could be passed. Any other argument taking a contrary position would amount to indirectly bringing in the doctrine of pleasure which the State Legislature has denied to the State Government when it substituted the present Section 29 by the Amendment Act. If the pleasure doctrine was not available, and if the revocation still had to be done by the State Government, that could have been done only by complying with the principles of natural justice, as held by the Supreme Court in the said Scheduled Caste and Weaker Section Welfare Association's case, *supra*. But, as will be presently seen, the situation in respect of a nominated member is altogether different, having regard to the other provisions of the Act that I shall presently refer to. Once a member is nominated, the provisions of the Act to be presently referred to make it clear that he is to be treated in a way no different from an elected member, and disqualification would be fastened on the nominated member for continuing as such nominated member only in the manner in which such disqualification can be fastened on an elected member. This is a condition before telling a member that his tenure is cut short. This is the condition available in Section 29-C of the Act. Section 21 of the General Clauses Act speaks of this condition. Therefore, with such condition being available, this is not a case wherein, even after affording opportunity of being heard in the light of the principles enunciated by the Supreme Court in Scheduled Caste and Weaker Section Welfare Association's case, *supra*, that the tenure of a nominated member could be cut short by the State Government. That is because, Section 21 of the General Clauses Act speaks of a condition in the statute concerned, namely, the Co-operative Societies Act herein, and the condition in this regard in my opinion is Section 29-C of the Act. I shall elaborate on this.

12. If we look to the constitution of a Committee of a Co-operative Society in the light of the provisions contained in Chapter IV of the Act, it is evident that while the tenure of an elected member is 5 co-operative years as per Section 28-A(4) of the

Act, the tenure of a nominated member is the one as specified by the State Government in the order as per Section 29(3) of the Act. It could so happen as in the case of the present writ petitioners, that while specifying the period under Section 29, the State Government may specify the same as five years or until the term of the Committee expires, whichever is earlier. In that event, so far as the tenure is concerned, the elected member and the nominated member would be placed on the same footing. The next question is as to otherwise than the period specified expiring in the normal course in respect of a nominated member, and otherwise than by the term of the Committee coming to an end in respect of an elected member, how would the elected member and the nominated one can cease to continue to be as such members. Section 29-B enables the member other than the nominated member, to resign his membership by following the procedure provided therein. Though Section 29-B excludes from its purview a nominated member, I am of the opinion that because the Act is silent as regards the resignation of a nominated member, one who is nominated should be forced to continue to act as a member of the Committee of a Co-operative Society even if, at a particular point of time during his tenure, he decides to quit. In that event, in my opinion, while Section 29-B of the Act should be taken as providing the procedure for an elected member to resign, where a nominated member wants to resign, all he should do is to send his resignation to the authority which nominated him, namely, the State Government. The State Government would then be free to nominate another person in his place.

Even when the term of the Committee has not expired in respect of an elected member or when the period specified under Section 29 of the Act has not expired in the case of nominated member, and where they do not resign during their tenure, the next stage is another set of circumstances when a member of a Committee can be told that from a particular point of time, he shall cease to continue as member of the Committee. This is available in Section 29-C of the Act. It speaks of the circumstances, the existence of which can be said to lead to disqualification of a member of the Committee to continue as such. Of course, majority of them relate to elected members. But there are certain circumstances which can be said to apply both in respect of an elected member and nominated member; for example, under clause (i) of subsection (1) of Section 29-C, where he

has been convicted for certain offences specified therein, and under clause (j) where he has been convicted and sentenced to imprisonment. Sub-section (7) of Section 29-C inter alia provides that if any question arises as to whether a member of the Committee was or has become subject to any of the disqualifications mentioned in the said section, same shall be decided by the Registrar after giving the person concerned reasonable opportunity of being heard. There is then sub-section (8) which speaks of further circumstances calling for disqualification, and which circumstances could be said to apply to both elected and nominated members. Proviso to the said subsection (8) also requires reasonable opportunity of being heard to be given to the person against whom the order fastening the disqualification is to be passed. Disqualification could extend for such period not exceeding five years. This is the machinery that is provided for cutting short the tenure of a member of the Committee of a Co-operative Society, even before his normal tenure ends. It is the application of the provisions contained in this Section 29-C that is the subject-matter of a serious dispute, with the petitioners contending that it applies to both elected and nominated members, while on behalf of the State Government, it is being contended that it could apply only to elected members. I am of the opinion that Section 29-C of the Act applies to both elected and nominated members. Opening part of sub-section (1) of Section 29-C of the Act reads thus:

'29-C. Disqualification for membership of the Committee.--(1) No person shall be eligible for being elected or appointed or continued as a member of the Committee of any Co-operative Society, if-- . . . '

(emphasis supplied)

In the entire scheme of the Act, there is no such category as 'appointed members' of the Committee unless it can be referred to the category of nominated members under Section 29 of the Act, or to Section 53-A if, during the relevant period, Section 53-A was or is in force. If Section 29-C of the Act were to be held applicable only to elected members, then, the word 'appointed' would not have been employed in the said Section 29-C. If the said word is thus employed by the Legislature, it must be taken as having been done with a purpose, namely, that the

person appointed i.e., nominated, would incur disqualification for continuing as such member if his case falls under one or the other of the circumstances specified therein. Of course, even to be appointed in the first instance, the said disqualification could come in the way. For example, if a person has been convicted in the circumstances specified in clause (i) or clause (j) of sub-section (1) of Section 29-C of the Act, there could be no question of the State Government nominating such person under Section 29(1) of the Act for the reason that he would not be eligible for being appointed in view of Section 29-C of the Act. I am therefore of the opinion that both for being elected or appointed in the first instance i.e., at the point of being elected in the case of an elected member, and at the point of being appointed or nominated under Section 29(1) of the Act in the case of nominated member, the person concerned should be free from circumstances enumerated in Section 29-C. Even to continue as such member, elected or nominated, he should be free from the said circumstances. It is only then that they will complete their tenure of 5 co-operative years in the case of elected members and of the period specified in the order of nomination in the case of nominated members, unless they resign in the meantime. If they did not incur disqualification under Section 29-C of the Act, then, there is no way their tenure can be otherwise cut short. Of course, in the case of nominated members, it is the Registrar who is required to pass orders of disqualification under Section 29-C of the Act, whereas nomination would have been made by the State Government under Section 29(1) of the Act. The question raised on behalf of the State Government is as to how a member nominated by the State Government should be found by the Registrar to be disqualified by continuing as such member. That is the scheme of the Act, and that is how the Legislature has provided for. The State Government therefore has to take it that, while it has got the power, while nominating a person under Section 29(1) of the Act, to specify the period for which he would be such a member, it still lies with the Registrar, of course, after providing reasonable opportunity of being heard to the nominated member concerned, to tell that person that he had incurred disqualification and that he would cease to continue to be such member notwithstanding the fact that the authority which had nominated him had specified longer tenure for him. I am thus of the opinion that since, in its application to the category of members of the Committee, the opening part of Section 29-C(I) of the

Act takes in its sweep both elected and nominated persons, the latter having been described by the word 'appointed', and that since there is nothing in Section 29-C of the Act which would make it impossible or impracticable to apply the said provision in respect of a nominated member, Section 29-C must be taken as applicable both to elected and nominated members. It is therefore that it has to be concluded that once the State Government nominates a person under Section 29(1) of the Act and specifies the period of tenure, it is no longer open to it to cut short that tenure by issuing another notification under Section 29 read with Section 21 of the General Clauses Act. That is because Section 21 of the General Clauses Act enables issuance of notification for varying or rescinding the earlier notifications subject to the conditions if any in the statute concerned i.e., in the Co-operative Societies Act. The condition is one to be seen in Section 29-C of the Act. As we have seen, it is not just on incurring of disqualification, but that further, on being afforded reasonable opportunity of being heard also, that a nominated member could be told by the Registrar that his tenure is cut short. Since this is the condition subject to which earlier order of nominating the person for a period of five years or till the term of the Committee expires could be cut short, Section 21 of the General Clauses Act would not come to the aid of the State Government to issue another notification under Section 29 of the Act to revoke nomination made earlier, or in other words, to rescind the earlier order under Section 29(1) of the Act. In that view of the matter, the State Government, in the last week of October 1999, by the orders impugned herein, could not have rescinded the earlier orders of nomination in respect of these writ petitioners made in the first week of October 1999. The ground urged on behalf of the State Government with reference to Section 21 of the General Clauses Act in order to support the legality of the impugned orders, also is thus not available.

13. The State Government thus can neither invoke the doctrine of pleasure nor can it invoke Section 21 of the General Clauses Act for the purpose of rescinding the earlier orders of nominations of the writ petitioners and for passing the impugned orders of revocation. Impugned orders are therefore without any authority of law.

14. Petitions are therefore allowed. Impugned orders are quashed.

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