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Shivagouda Vs. the Joint Registrar of Co-operative Societies and Head Quarters Assistant for the Commissioner for Cane Development and Director of Sugar and ors.

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Court : Karnataka

Decided On : Mar-15-2005

Reported in : ILR2005KAR1689; 2005(4)KarLJ82

Judge : Mohan Shantanagoudar, J.

Appeal No. : W.P. No. 10700/2005

Appellant : Shivagouda

Respondent : The Joint Registrar of Co-operative Societies and Head Quarters Assistant for the Commissioner for C

Advocate for Def. : M. Keshavareddy, HCGP for R1 to R3 and ;Jayakumar S. Patil, Sr. Counsel for ;Anil A. Katti, Adv. for R4

Advocate for Pet/Ap. : G. Balakrishna Shastry, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mohan Shantanagoudar, J.

1. By the impugned order dated 9.3.2005 vide Annexure-'A' the Joint Registrar of Co-operative Societies has directed the 2nd respondent herein to prepare final voters list of 'A Class' members by including the members who have paid the share capital of Rs. 2,000/-.

2. It is not in dispute that the respondents 4 to 514 were enrolled as 'A Class' members of the 2nd respondent-sugar Factory by paying share capital of Rs. 2,000/- at the time of commencement of the factory as per the Bye-laws existed then. In the year 2003, the State Government published Model Bye-laws for all the sugar factories in the State, which are to be adopted by the individual sugar factories at their discretion. Respondent No. 2-Sugar Factory in its General Body Meeting held on 30.9.2003, adopted the said Model Bye-laws in their entirety. However, the said Bye-laws came to be registered on 24.12.2003. The relevant portion of the Model Bye-laws is produced at Annexure-'M' to the Writ Petition. But, some of the 'A' Class members (respondents herein) filed Revision Petition before the State Government challenging the registration of Model-Bye-laws. The registration of the Model Bye-laws was stayed by the Government by the order dated 12.2.2004. Consequently, new Bye-laws were not given effect to, and the Bye-laws which were existing earlier to the date of accepting the Model Bye-laws continued to operate. The said Revision Petition was dismissed for default before the State Government on 9.3.2005. It is brought to the notice of the Court by the learned counsel appearing for respondents that an application for restoration is filed before the State Government praying for restoration of the Revision Petition and the matter is still pending consideration.

3. The learned counsel for the petitioner Shri Balakrishna Shastry submits that as per the Model Bye-laws, the sugar cane growers who have paid Rs. 5,000/- towards the share capital only, are entitled to be classified/continued as 'A' Class members and as these respondents 4 to 514 have not paid Rs. 5,000/- towards the share capital, they cannot be classified and continued as 'A' Class members: consequently their names cannot be included in the voters list pertaining to 'A' Class members. Per contra, it is contended by the learned senior counsel Shri

Jayakumar S. Patil appearing on behalf of respondent No. 4 that no where in the Model Bye-laws, it is stated that the existing 'A' Class members who were enrolled as members by paying share capital of Rs. 2,000/- shall be removed from the list of 'A' Class members and are not entitled for the voting rights or any other benefits. He further submits that even assuming that the Model Bye-laws are adopted by the 2nd respondent Sugar Factory, they will operate prospectively and not retrospectively. On these grounds, he submits that the existing 'A' Class category of members as on the date of adoption of model bye-laws cannot be removed from the said list.

4. The respondents 4 to 514 have raised the dispute before the Joint Registrar of Co-operative Societies and prayed for a direction to enroll them and similarly situated persons as 'A Class' members, who have paid the share capital of Rs. 2000/- prior to the amendment of Bye-laws, without insisting the petitioners and other similarly situated persons for depositing the amount as per the amended Bye-laws. The said dispute is raised as back as on 3.1.2004. In the said dispute, the respondents herein filed interim application vide Annexure-'D' to the Writ Petition praying for a direction to the 2nd respondent -Sugar Factory to prepare voters list in accordance with the old Bye-laws by giving voting rights to all the members of the sugar Factory. After hearing, the Joint Registrar of Co-operative Societies has passed the impugned order directing the 2nd respondent Sugar Factory to prepare the final voters list by including the names of the existing 'A Class' share holders who have paid Rs. 2,000/- towards share capital.

5. The Joint Registrar of Co-operative Societies has assigned certain valid reasons for coming to the conclusion. As aforesaid, the State Government had stayed the operation of Model Bye-laws (new Bye-laws) by an order dated 12.2.2004 and the said order of stay was in existence till 9.3.2005. Thereafter, the Revision Petition was dismissed. However, restoration application is filed by the respondents and the same is pending. In effect, the Model Bye-laws were not made applicable to the 2nd respondent-Sugar Factory at least as on the date of issuing the calendar of events. The calendar of events was issued on 9.2.2005. Thus, in all fairness, the voters list should have contained the names of all the existing 'A' Class members who have contributed Rs. 2,000/- towards share

capital.

6. It is not in dispute that the 2nd respondent-Sugar Factory is having about 26,000 'A' Class members. Out of them, only about 6,000 and odd members have paid Rs. 5,000/- towards share capital in pursuance to the amended Bye-laws. The remaining 'A' Class members numbering about more than 19,500 have not paid the difference of share amount; consequently about 75% of the 'A Class' members are left out of voters list. They are being squeezed out and refused the franchise. This act would definitely scuttle the democratic process. Even assuming that the Model Bye-laws are adopted by the Sugar Factory, there is nothing in the said Bye-laws to suggest as to what should happen to the existing 'A' Class members who have paid Rs. 2,000/- towards share capital. Thus prima facie, the enhanced share fee would affect those who would become members subsequent to adoption of model bye-laws. However whether the Model Bye-laws have got prospective or retrospective effect will have to be considered by the Joint Registrar of Co-operative Societies in the pending dispute. Till such time, the existing 'A' Class members who have contributed Rs. 2,000/-towards share capital and who are the original, so to say, founder members of sugar factory, cannot be debarred from participating in the elections.

I may hasten to add here itself that generally the amended/new Bye-laws will have prospective effect unless, specifically indicated therein to the contrary. The vested rights of the members concerned, cannot be divested without the due process of law. There is nothing on record to show prima facie, that sugar factory put these respondents-members on notice that the model bye-laws are adopted with retrospective effect and that therefore they should pay the difference of share amount of Rs. 3,000/- within a specified period. Effect of non-payment of difference of share capital also should have to be notified. Under such circumstances, I do not find any illegality in the order passed by the Joint Registrar of Co-operative Societies. The reasons assigned and the conclusions arrived at by the Joint Registrar of Co-operative Societies cannot be said to be illegal or perverse.

Writ Petition is therefore dismissed.

The observations made during the course of this order, as well as in the impugned order will not influence the Joint Registrar of Co-operative Societies while deciding the dispute on merits.

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