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Court : Karnataka

Decided On : Aug-25-1994

Reported in : ILR1994KAR2703

Judge : S.B. Majmudar, C.J. and ;Tirath S. Thakur, J.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 2, 2(1), 2A(4), 2A(5), 72, 73, 74 and 75

Appeal No. : W.A. Nos. 1638 to 1640 of 1994

Appellant : Geetha

Respondent : Thimmaiah

Advocate for Def. : A.M. Farooq, Government Adv., ;R. Chandranna, ;N. Ramachandra and ;N.B. Nijalingappa, Advs.

Advocate for Pet/Ap. : B.T. Parthasarathy

Disposition : Appeal dismissed

Judgement :

S.B. Majmudar, C.J.

1. In these Appeals a short question is on the anvil for consideration. It is as to who is the appellate authority so far as the order of Liquidator exercising powers

under Section 74 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act') is concerned. Under Section 73 of the Act the Registrar of Co-operative Societies has got the power to appoint Liquidator. Addl. Director of industries and Commerce & Ex-Officio Addl. Registrar (Industries) acting as Registrar under Section 73 has appointed the Liquidator in the present case. That Liquidator has passed the order in exercise of powers under Section 74. The said order is brought in challenge before the Addl. Director of Industries & Commerce & Ex-Officio Addl. Registrar (Industries). Submission is the said officer is not entitled to act as appellate authority against the Liquidator's order as per Section 106(1)(k) read with Sub-section 2 (b) of the said Section, and therefore the appellate proceedings are without jurisdiction. Raising this contention the Writ Petitions were filed by present appellants which came up for consideration before the learned Single Judge. The learned Single Judge, on considering all the relevant provisions of the Act, came to the conclusion that the appeals as filed are perfectly competent and, therefore, there is no reason to interfere with the decision of the Addl. Director who had earlier held on preliminary point that he had jurisdiction to decide the appeals. It is thereafter that the appellants Writ petitioners have filed these Appeals challenging the said Decision of the learned Single Judge.

2. Learned Counsel for the appellant vehemently contended that even though the Liquidator was appointed by the same authority before whom the appeal is filed and even though the appointment was made under Section 73 as acting Registrar, so far as the appellate jurisdiction is concerned the same is governed by Section 106 and the Registrar would not for the purposes of appeal be the Immediate superior' to the Liquidator. Section 106 of the Act provides for appeals to the other authorities. Clause (k) of sub-section 1 to Section 106 lays down that, subject to the provisions of Section 108A, an appeal shall lie under this Section against any order made by the Liquidator of a co-operative Society in exercise of the powers conferred on him by Section 74, other than a determination under Clause (f) of Sub-section (2) of that Section. Sub-section (2) of Section 106 lays down the authority to whom the appeal lies. It reads:

'(2) An appeal against any act, decision or order under subsection (1) shall be made within sixty days from the date of the act, decision or order -

(a) if the act, decision or order was made by the Registrar, to the State Government,

(b) if the act, decision or order was made by any other officer, to that officer's immediate superior officer.'

3. The. short question is as to who is the immediate Superior of the Liquidator. So far as this question is concerned, the answer is provided by Section 74 of the Act, which has clearly laid down that Liquidator shall have power subject to control of the Registrar to do the various acts and discharge the function as laid down by the Sub-section (2) of Section 74. On this aspect there is no dispute but the learned Counsel for appellant submits that to have control over the function of the Liquidator in exercise of his powers is something different from being immediate superior for the purpose of hearing so far as his orders are concerned. To highlight this aspect he invited our attention to Section 2A Sub-section (4) which lays down that:

'All Officers and persons employed in the administration of this Act, except relating to audit, shall be subject to the superintendence, direction and control of the State Government, and the Registrar, and the Officer or Officers, to whom each Officer appointed under this Act, shall be subordinate shall be determined by the State Government'.

He submitted that unless the State Government has exercised powers under Section 2A(4) of the Act, to designate the Additional Director of Industries and Commerce and Ex-Officio Additional Registrar in Karnataka, Bangalore as Appellate Authority to the Liquidator, Section 106(2)(b) would not get attracted to clothe the said Additional Director of Industries and Commerce and Ex-Officio Additional Registrar, with Appellate powers against the order of the Liquidator. Now it has to be kept in view that Section 2(i) defines Registrar to mean a person under the Act and includes Additional Registrar of Co-operative Societies amongst others. It cannot be disputed that Section 74, when it refers to the term 'Registrar', would also include Additional Registrar. It is also not in dispute that Ex-Officio Additional Registrar of Industrial Co-operatives, who is also the Additional Director of Industries and Commerce in exercise of his powers as the Registrar under the

Act has appointed the Liquidator in question whose order is sought to be subjected to appeal. Therefore, by operation of Sections 73 and 74 he can be said to be the Officer under whose control and supervision the Liquidator acts. If that is so, it can be said that Legislature itself has ear-marked this Officer, to be the Officer to whom the Liquidator is subordinate.

4. It is true that on record of this case, no separate Notification under Section 2A(4) of the Act is produced to indicate that the State also indicated the said Officer to be the superior to the Liquidator. But in our view Sub-section (4) of Section 2A is a general provision, which would be required to be applied in cases where the statutory provisions by themselves are silent in connection with such sub-ordination. So far as Liquidator is concerned, his superior Officer to whom he is subordinate is clearly indicated by the Legislature itself and there would remain no occasion for the Statement Government to exercise powers under Section 2A(4) of the Act, in that connection. It may also be kept in view that this very Officer namely Additional Director of Industries & Commerce and Ex-Officio Registrar of Industrial Co-operatives is designated to be an Officer under Section 2A(5) of the Act, by the State Government to exercise powers under Sections 72, 73 and 74 amongst others. In that connection, our attention was invited to the Notification issued by the State Government in the year 1983 wherein it has been stated that in exercise of the powers conferred by Sub-section (5) of Section 2A of the K.C.S. Act, 1959 and in partial modification of Government Notifications mentioned thereto, the Government of Karnataka thereby conferred on the category of Officers specified in column 2 of the Table thereof the powers of Registrar of Co-operative Societies, under the Sections of the said Act and Rules of the Karnataka Co-operative Societies Rules 1960, specified in the corresponding entries in column 4 in respect of the Co-operative Societies in column 3 thereof. When we turn to Table annexed to the Notification we find at Sl.No. 3 Additional Director of Industries and Commerce and Ex-Officio Additional Registrar, of Industrial Co-operatives, to be an Officer who is entrusted with the powers of the Registrar of Co-operative Societies under the Act and Rules, so far as Sections 72, 73 and 74 are concerned amongst other and that power can be exercised by him in connection with All Handloom Weavers Co-operative Societies, Powerloom Co-operative Societies, Khadi & Village Industries Co-

operative Societies, Artisans Co-operative Societies, Beedi Workers Co-operative Societies, Handicrafts Co-operative Societies & Coir Co-operative Societies, whose area of operation extends to a Taluk.

5. It is not in dispute between the parties that the Liquidator appointed by the said Officer is in connection with the affairs of the Co-operative Society indicated as one of the Societies mentioned in the said Notification. For such a Society the Additional Director Industries & Commerce and Ex.Officio Addl. Registrar of Industrial Co-operatives can exercise powers under Sections 72, 73 and 74 and in exercise of that power he has already appointed the Liquidator whose order is sought to be challenged in Appeal. Therefore, for such a Liquidator, as per Section 74(2) of the Act, the said Additional Director, Industries and Commerce and Ex.Officio Addl. Registrar of Industrial Co-operatives, Bangalore would be the immediate superior officer under whose control the Liquidator functions, as this is the statutory Scheme.

6. As we have discussed earlier, there would be no occasion for the State to exercise powers under Section 2A(4) and to issue further Notification, as Legislature itself has expressed its will by the aforesaid statutory Scheme. Under these circumstances, it must be held that the appeal filed against the order of the Liquidator before the said Officer namely the Addl.Director of Industries & Commerce & Ex-Officio Addl.Registrar of Industrial Co-operatives, Bangalore was maintainable and was rightly so held to be maintainable, by the said Officer. Accordingly, the learned Single Judge, who also took the same view cannot be said to have committed any error in endorsing the view of the said appellate Authority. The decision rendered by the appellate Authority on preliminary issue therefore cannot be said to be erroneous from any angle. Consequently, these Appeals fail and they are dismissed.

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