

Puttaraja and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jul-23-2008

Reported in : 2009(1)KarLJ121; 2008(4)KCCR2424

Judge : D.V. Shylendra Kumar, J.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 28A, 39A(4) and 121; [Constitution of India](#) - Articles 226, 243ZG and 329; Karnataka Co-operative Societies Rules, 1960 - Rule 14 and 14(1)

Appeal No. : Writ Petition No. 5032 of 2008

Appellant : Puttaraja and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Asha M. Kumbargerimath, High Court Government Pleader for Respondents-1, 3 and 4, ;H.M. Dharigond, Adv. for Respondents-2 and 5 and ;Jaiprakash Reddy, Adv. for Respondents-6 to 10

Advocate for Pet/Ap. : S. Prakash Shetty, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. This writ petition by residents of Yarehalli Village who also happen to be the members of the second respondent-Yarehalli Milk Producers Co-operative Societies, Yarehalli is for issue of a writ of mandamus to compel the third respondent-Election Officer and Co-operative Development Officer, Yarehalli Milk Producers Co-operative Societies to continue and to complete the elections for electing the committee of Management to the Society which had been notified in terms of the calendar of events dated 13-2-2008 and which had been postponed indefinitely by the very Election Officer in terms of his order dated 21-3-2008 on the premise that there was a law and order situation, likelihood of breach of peace in the area and therefore the elections were stalled.

2. While the State of Karnataka figures as first respondent, the Society itself figures as second respondent, the Election Officer so appointed by the fourth respondent-Assistant Registrar in exercise of his powers under Rule 14(1) of the Karnataka Co-operative Societies Rules, 1960 as third respondent and the then President of the Co-operative Society one by name Shivaiah as fifth respondent

3. Later on, an application filed by several other persons for impleadment and claiming to be persons who were members earlier but whose names had been omitted from the list of members and voters and who are permitted to be added as respondents are persons who figure as respondents 6 to 10.

4. Notices had been issued to the respondents and respondents are represented by Counsel. Smt. Asha Kumbargerimath, learned Government Pleader appears for respondents 1, 3 and 4 and impleaded respondents figuring as respondents 6 to 10 are represented by Sri Jaiprakash Reddy, learned Counsel.

5. Appearing on behalf of the petitioners, Sri S. Prakash Shetty, learned Counsel would urge that the election process once commenced by issue of calendar of events by the Returning Officer cannot be either stalled or postponed; that the order passed by the Election Officer on 21-3-2008 to postpone the election is an order without jurisdiction and not supported in law; that the order deserves to be quashed and directions issued to the Election Officer to continue the election

process from the stage at which it had been stopped; that a few persons had filed their nominations by then but the last date for filing nominations had not been over and from that stage the election process should be continued and completed in accordance with the time schedule that had been fixed under the earlier calendar of events dated 13-2-2008.

6. Statement of objections had been filed on behalf of respondents 3 and 4 in which it is, inter alia, indicated that it was inevitable for the third respondent to postpone the elections as the developments at the office of the society and in the surrounding locality led to the apprehension that there could be breach of peace, particularly, as there was some scuffle between the rival factions contesting for the election and in the wake of some members complaining that their names do not figure in the voters list etc.

7. The third respondent has stated that the elections were postponed on the advise of the local Police Officers and as the Police Officers were of the view that as the elections to the State Assembly was around the corner it is better to postpone the election for the society etc.

8. In the statement of objections filed on behalf of the fourth respondent-Assistant Registrar, it is indicated that the prayer as sought for by the petitioners cannot be granted; that as the duration of the erstwhile committee of management came to an end and when the election had been postponed with the fresh committee of management being not in place, an Administrator had come to be appointed in terms of Section 28-A of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'); that the Administrator is now in charge of the society on and after 9-4-2008; that the Assistant Registrar has issued an order afresh on 12-5-2008 appointing the very person who was the Returning Officer earlier to act as a Returning Officer and to hold elections (copy produced as Annexure-R2 to the statement of objections); that in the light of such development, there is no need to issue any writ in the writ petition and has prayed for dismissing the writ petition with costs.

9. Smt. Asha Kumbargerimath, learned Government Pleader submits on the lines of the statement of objections and prays for dismissal of the writ petition.

10. Sri Jaiprakash Reddy, learned Counsel for respondents 6 to 10 would submit that these respondents had given a representation to the fourth respondent-Assistant Registrar to hold an enquiry to ensure that their names are included and pending enquiry holding of the elections would be to their detriment and therefore directions be issued to the Assistant Registrar to complete the enquiry and to ensure that the voters list is corrected before the elections are held and it will be appropriate to issue a fresh calendar of events and not to continue the elections from the stage at which it had been stalled under the earlier calendar of events.

11. Sri Prakash Shetty, learned Counsel for the petitioners in support of the submission that when an election has been stalled after issued of calendar of events and without proper authority of law, it should be continued from the stage at which it had been stalled, has placed reliance on the following decisions:

(a) H.T. Dhananjaya and Ors. v. State of Karnataka : ILR 1999 KAR4114 ;

(b) B.D. Manjunath and Ors. v. State of Karnataka and Ors. : ILR 2005 KAR927 ;

(c) S.T. Muthusami v. K. Natarajan and Ors. : [1988]2SCR759 ;

(d) Anugrah Narain Singh and Anr. v. State of Uttar Pradesh and Ors. : (1996)6SCC303 .

12. In the Single Bench decision of this Court in H.T. Dhananjaya's case, this Court did observe that the Returning Officer functioning under the Act has no power or authority to postpone the election sine die and therefore while quashed the order postponing the election and directed the Returning Officer to continue the election from the stage that it had been interrupted and also levied cost of Rs. 500/- on the officer acting without authority of law payable to each of the petitioners.

13. In the case of Single Bench decision of this Court in B.D. Manjunath's case, this Court while examining the powers of the State Government to interfere with the conduct of elections already notified by issue of calendar of events and in exercise of its powers under Section 39-A(4) read with Section 121 of the Act held that these statutory provisions do not empower the State Government to postpone

the elections which are already notified by issue of calendar of events and direction to this effect as issued even by the State Government is bad in law and quashed the same and again directed the elections to be continued from the stage at which it had been interrupted.

14. The observations made by the Supreme Court in S.T. Muthusami's case, particularly, as contained in the paragraph 17 of this judgment wherein the Supreme Court noticed that interference by the High Court with the conduct of the elections to the Panchayat Union i.e., the post of Chairman to the Panchayat Union under the provisions of Tamil Nadu Panchayats Act, 1958 was again bad in law and directed the Returning Officer to proceed with the elections in accordance with law and from the stage at which it had been interrupted by the order passed by the High Court in writ jurisdiction.

15. In Anugrah Narain Singh's case, the Supreme Court again reiterated the constitutional bar on interference with the conduct of elections in a petition under Article 226 of the [Constitution of India](#), particularly, when the election process is on in the light of Article 243-ZG of the [Constitution of India](#) and Article 329 of the [Constitution of India](#) which had come in for interpretation time and again the Supreme Court starting from N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Ors. : [1952]1SCR218 , to hold that the High Court should not interfere with the conduct of elections once calendar of events had been issued.

16. While the provisions of Rule 14 of the Karnataka Co-operative Societies Rules, 1960 provides for appointment of a Returning Officer by the Registrar and also provides for the manner in which the elections are to be conducted, there is no enabling power in favour of a Returning Officer to postpone the election. The Returning Officer is a creature of the statute, that too under the delegated powers under the rules appointed by the Registrar. Such officer cannot assume to himself any powers either for deviating from the election process in terms of the calendar of events or for stalling or postponing the elections. A law and order situation cannot be pleaded for him to contravene the statutory provision and if there is law and order situation it is for him to bring it before the higher authorities and to seek

for suitable security measures.

17. The order dated 20-3-2008 (copy at Annexure-B) of the third respondent-Election Officer in postponing the election, that too on an oral advise of the Police Officers is an action not sustainable in law and is accordingly quashed by issue of a writ of certiorari.

18. The third respondent is directed to continue the election process from the stage at which it had been stopped and to complete within the time as had been notified in the calendar of events dated 13-2-2008 except that the interval of time and the schedule should be adhered to as in the earlier calendar of events notified on 13-2-2008.

19. The third respondent-Returning Officer to notify the date from which the election process will be resumed from the stage at which it had been stopped earlier and such date should be notified to be not later than fifteen days from the date of receipt of a copy of this order. The fresh date shall be duly published at the office of second respondent-society and in any other manner prescribed by rules.

20. The third respondent-Election Officer is impressed to perform his functions in an objective manner and to conclude the election as per the calendar of events which is his duty and not to give scope for further complaints.

21. Writ petition allowed. Rule made absolute.

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