

Kumar S/O Ankappa and ors. Vs. State of Karnataka, Dept. of Co-operation by Its Secretary and ors.

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Court : Karnataka

Decided On : Oct-24-2008

Reported in : 2009(2)KarLJ438; 2009(2)AIRKarR70; AIR2009NOC1223; 2009(2)KCCR973

Judge : P.D. Dinakaran, C.J. and ;V.G. Sabhahit, J.

Acts : Karnataka Co-Operative Societies Act, 1959 - Sections 28A

Appeal No. : Writ Appeal Nos. 1215 and 1223 of 2008

Appellant : Kumar S/O Ankappa and ors.;shivanna S/O Merilingaiah and ors.

Respondent : State of Karnataka, Dept. of Co-operation by Its Secretary and ors.;state of Karnataka, Dept. of Co-

Advocate for Def. : B. Veerappa, GA for R1, 3 and 4 in Writ Appeal No. 1215 of 2008 and for R1, 2 and 4 in Writ Appeal No. 1223 of 2008, ;S. Prakash Shetty, Adv. for R6 to R9 in Writ Appeal No. 1215 of 2008 and for C/R3

Advocate for Pet/Ap. : Jayakumar S. Patil, Sr. Counsel for M. Jai Prakash Reddy, Adv.

Judgement :

V.G. Sabhahit, J.

1. These two appeals W.A. No. 1215/08 and W.A. No. 1223/08 arises out of and directed against the common order passed by the learned Single Judge of this Court dated 23.07.2008 in W.P. No. 6209/08.

2. The assential facts of the case leading up to these appeals with reference to the rank of the parties in the writ petition are as follows:

W.P. No. 5032/08 was filed seeking for quashing of the order passed by respondents-3 and 4 in Writ Petition and consequent calendar of events published as per Annexure-A to the writ petition. It is the case of the writ petitioner that writ petitioners are the residents of Yarehalli Village and members of the second respondent Yerehalli Milk Producers Co-operative Society. The calendar of events date 13.02.2008, the said election was postponed indefinitely by the same Election Officer on the apprehension that there was law and order situation and likelihood of breach of peace in the area and therbefore the elections were stalled.

3. It is the contention of the petitioners that when once the calendar of events had been published, the Election Officer ought to have completed the election as per the calendar of events and was not justified in postponing the elections indefinitely and where before sought for direction that elections be held as per the calendar of events published from the stage of publication of calendar of events by the Election Officer. In the said writ petition, an application was filed for impleading by persons alleging that the voters list had not been properly prepared and their names had been omitted from the list of members and voters. They were impleaded as respondents-6 to 10. Respondents-3 and 4 resisted the petition contending that the postponement of election was inevitable 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 and on the advice of the local police officers, the elections were postponed indefinitely.

4. In the objection statement filed on behalf of the Assistant Registrar, the 4th respondent, it is averred that 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 to be appointed in terms of Section 28-A of the Karnataka Co-Operative Societies Act, 1959 and on 12.05.2006 the returning officer was appointed and therefore there was no need to issue any writ in the Writ Petition.

5. It was contended on behalf of respondents-6 to 10 who were impleaded in the writ petition on their application, that the Assistant Registrar may be directed to hold enquiry to ensure that their names are included and pending, enquiry holding elections would be to their detriment and therefore elections be held only after proper enquiry and preparation of voters list and fresh calendar of events may be issued thereafter.

6. The learned Single Judge after considering the contentions of the learned Counsel appearing for the parties held that once the calendar of events had been published on 13.02.2008, the same could not have been postponed by the third respondent on the ground of apprehension of law and order problem on the basis of the advice given by the police. The learned Single Judge held that the returning officer is a creature of the statute, that too under the delegated powers under the rules appointed by the Registrar and he cannot deviate from the election process in terms of the order of events or for stalling or postponing the elections and the law and order situation cannot be pleaded to contravene the statutory provisions and it was for him to bring the facts before the higher authorities and to seek for suitable security measures if there was apprehension of any law and order problem. The learned Single Judge further held that postponement of election on the oral advice of a police officer was not sustainable in law and accordingly quashed the order dated 20.03.2008 postponing the elections indefinitely and directed the third respondent to continue the election process from the state at which it had been stopped and to complete the calendar of events except that the interval of time and the schedule should be adhered to as in the earlier calendar of events notified on 13.02.2008 and the third respondent-election officer was directed to perform the function in an objective manner and to conclude the

elections as per the calendar of events which is his duty and not to give scope for further complaints. Accordingly the Writ Petition was allowed.

7. Being aggrieved by the above referred order passed by learned Single Judge dated 23.07.2008, respondents-6 to 10 have preferred W.A. No. 1215/ 08 contending that their contention regarding direction to hold enquiry and to include their names in the voters list and to hold elections only thereafter, had not been considered by the learned Single Judge and direction to complete the election by the learned Single Judge as per the calendar of events published by the third respondent was liable to be modified as sought for by respondents-6 to 10 in the writ petition.

8. W.A. No. 1223/08 is filed by the petitioners-1 to 6 in writ petition contending that the learned Single Judge ought to have considered the prayer of the appellants and allowed the writ petition as prayed for.

9. We have heard the learned Counsel appearing for the appellants in both the writ appeals and the learned Counsel appearing for the respondents and the learned Government Advocate and for the contesting respondents and the learned Government Advocate appearing for the respondents-1, 3 and 4 in W.A. No. 1215/08 and respondents-1, 2 and 4 in W.A. No. 1223/08.

10. The learned Counsel appearing for the appellants in W.A. No. 1213/08 submitted that they had made an application for impleading in the writ petition and contended before the learned Single Judge that their names had been wrongly omitted from the voters list and an enquiry is to be held and their names has to be included in the voters list and only thereafter the elections to be held by the returning officer, They further contended that the learned Single Judge was not justified in ordering the third respondent to hold elections as per the calendar of events published on 13.02.2005 without giving any direction regarding the grievance of the respondents-6 to 10 in the writ petition.

11. Learned Counsel appearing for the appellants in W.A. No. 1233/08 submitted that the learned Single Judge ought to have ordered fresh election to be held and was not justified in directing that the third respondent should hold elections as per the

calendar of events dated 13.03.2008.

12. The learned Government Advocate argued in support of the order passed by the learned Single Judge.

13. We have given careful consideration to the contention of the learned Counsel appearing for the parties and scrutinized the material on record. It is clear from the perusal of the material on record that the third respondent in the writ petition had published calendar of events on 13.02.2008 for holding elections to the managing committee of the second respondent-society and only on the basis of oral advice of the police officer, apprehending that there would be law and order problem, he postponed the elections indefinitely by order dated 20.03.2008 and apart from the said oral advice given by the police officer, there was no ground whatever for postponing the elections when the calendar of events had been published on 13.02.2008. It is well settled that when once the calendar of events had been published the election process should not be postponed and elections cannot be postponed on the ground that there would be law and order problem as per the oral advice by the police.

14. It is well settled as per the principles laid down by the Hon'ble Supreme Court that when an election has been stalled without authority of law after issue of calendar of events, it should be continued from the stage at which it had been stalled. In this behalf reliance is placed on the following judgments by the learned Counsel for the petitioners before the learned Single judge: (1) H.T. Dhananjaya and Ors. v. State of Karnataka and Ors. reported : ILR 1999 KAR4114 , (2) B.D. Manjunath and Ors. v. State of Karnataka and Ors. reported in ILR 2006 Kar 927, (3) T. Muthusami v. Natarajan and Ors. reported in : 1998(97)ELT202(SC) and (4) Anugrah Narain Singh and Anr. v. State of U.P. and Ors. reported in : (1996)6SCC303 .

15. The learned Single Judge had rightly held that apart from oral advice of the local police officer apprehending that there could be law and order problem, there was no other ground whatever to postpone the calendar of events for postponing the elections indefinitely, when the calendar of events had been published on 13.02.2008 and therefore, the order dated 20.03.2008 postponing the election by

the third respondent in the writ appeal and the writ petition cannot at all be sustained.

16. The learned Single Judge was justified in directing that the third respondent shall hold elections as per the calendar of events published from the stage at which it had been postponed, except that the interval of time and the schedule should he adhered to as in the earlier calendar of events notified on 13.02.2008. The direction given by the learned Single Judge to the returning officer, the third respondent, that he shall perform Ma functions in an objective manner and to conclude the elections at per the calendar of events, is justified. If there is any illegality in conducting the elections or in preparation of the voters list, it is always open to the objector to challenge the elections and in the absence of any grounds made out for postponing these elections except the oral advice of the police officer, which is unsustainable in law.

17. We are of the view that the order passed by the learned Single Judge is justified and does not suffer from any error or illegality so as to call for interference in these appeals. Accordingly, both the appeals are dismissed.

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