

B.D. Manjunath and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Oct-29-2004

Reported in : ILR2005KAR927; 2005(3)KarLJ483

Judge : N.K. Patil, J.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 39A(4) and 121;
Karnataka Co-operative Societies Rules

Appeal No. : W.P. No. 35501/2004 etc.

Appellant : B.D. Manjunath and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : B.T. Parathasarathi, Adv. General A/W ;N. Basavarajaiah,
HCGP for R1 and R2, ;K.N. Prakash and ;A.N. Venugopala Gowda, Advs. and
;B.B. Ballary Associates and ;Mandanna Associates for R3 and ;H.K. Shet

Advocate for Pet/Ap. : K.M. Nataraj, Adv., ;Jayakumar S. Patil Associates, ;N.R.
Krishnappa and ;Vishnu D. Bhat, Advs.

Disposition : Petition allowed

Judgement :

ORDER

N.K. Patil, J.

1. In all these cases, since common questions of fact and law are involved and these petitioners have sought for common reliefs, these petitions have been clubbed together and a common order has been passed.

2. In Writ Petition No. 35501 of 2004, the petitioner has sought to declare that, the postponement of the election to the Board of Management of the 3rd respondent-Bank scheduled to be held as per the calendar of events, vide Annexure-A, dated 10.8.2004, as illegal and without jurisdiction and also to direct the respondents to proceed with the election process as per the calendar of events from the stage, at which, it is interrupted by publication vide Annexure C dated 4-9-2004.

3. The petitioner is claiming to be the member of the 3rd respondent-bank and he is eligible to contest in the election. The term of the office of the members of the Board of Management of the 3rd respondent-bank has come to an end. To elect the New Board of Directors by way of election, the 2nd respondent had issued the calendar of events on 10.8.2004. As per the calendar of events, the voters list has been published on 27.8.2004 and the last date for filing the nominations was on 4.9.2004. The petitioner intending to contest the election from general seat has filed his nomination vide Annexure B. Be that as it may, to shock and surprise of the petitioner, the 2nd respondent has issued a publication, postponing the election by referring a Government Order, vide Annexure-C. The copy of the Government order referred in Annexure-C, is produced at Annexure-D. Further, the petitioner contended that, the election process has already been commenced and he has already filed his nomination on the date fixed in the calendar of events and all the preparation are made for the election. Apart from the petitioner, many candidates have filed their nominations to contest the election. Be that as it may, in view of postponement of elections on the basis of the Government Notification vide Annexure-C and D referred above, the petitioner felt necessitated to present this Writ Petition seeking the reliefs as stated supra.

4. In Writ Petition No. 35853 of 2004, the petitioner is assailing the correctness of the Notification vide Annexure-D dated 1.9.2004 in No. CMW.37:CLM:2004(P) issued by the 1st respondent, in so far as, it pertains to the Urban Co-operative

Banks such as 3rd respondent. Further, the petitioner sought to direct the 2nd respondent to forthwith hold the election to the Committee of the 3rd respondent-bank, in pursuance of the calendar of events vide Annexure-A dated 27.7.2004 bearing No. nil, issued by the 2nd respondent, by rescheduling the dates from the stage from where it was interrupted.

5. The case of the petitioner is that, the 3rd respondent is the Co-operative Bank. The term of the office of the committee of the 3rd respondent-bank came to an end by 31.3.2004. In pursuance of the Government Order dated 20th February 2004 issued by exercising power under Section 39A r/w 121 of the Co-operative Societies Act, the election was postponed for six months and exempted the existing committee from the operation of the provision of Section 28A(4) and 28B of the Act, and continued the existing committee, though the term had expired, in view of the election to the Assembly and Parliament were declared to be held in the month of April and May 2004. After expiry of the said period and in pursuance of the Government order, the 2nd respondent has been appointed as a Returning Officer. The calendar of events was issued on 27.7.2004 fixing the date of election on 12.9.2004. The voters list was published on 27.8.2004 and the events of election has already started. The petitioner has filed the nomination paper on 3.9.2004 vide Annexure-B. At that stage, the Returning Officer has issued a communication stating that, the committee of the 3rd respondent-bank has passed a resolution to postpone the election as per the Government Notification dated 1.9.2004 and in view of that, the election scheduled to be held on 12.9.2004 has been postponed. The 2nd respondent, instead of completing the election process which has already been set in motion, had issued a communication by placing reliance on the Government Notification dated 1.9.2004. The said Government Notification dated 1.9.2004 is not at all applicable to the facts and circumstances of the 3rd respondent-bank. Therefore, petitioner felt necessitated to present instant Writ Petition . seeking the reliefs as stated supra.

7. In Writ Petition Nos. 36040-41 of 2004, the petitioners are assailing the correctness of the Notification issued by the 1st respondent dated 1.9.2004 bearing No. CMW:37:CLM:2004(P), published in the Karnataka Gazette dated 3.9.2004 vide AnnexureD, so far it relates to 2nd respondent-bank. Further they

sought for a mandamus, directing the respondents 2 and 3 to complete the elections as per the calendar of events dated 12.8.2004 by fixing the reasonable time vide Annexure-C.

8. These petitioners are claiming to be the members of the 2nd respondent-bank and they are intending to contest the election to the said-bank. The term of the Managing Committee of the 2nd respondent- bank expired on 31.3.2004. In view of the General election to the Assembly and the Parliament, the election to the 2nd respondent-bank -Managing Committee was postponed for six months. After expiry of the said six months, the jurisdictional Registrar has appointed the Returning Officer at the request of the 2nd respondent- bank to conduct the elections. Accordingly, the Returning Officer has issued the calendar of events on 12.8.2004. For preparing the election, the Textile Co-operative Bank Limited, the 2nd respondent herein has already spent huge sum of money. The postponement of elections at the behest of the Returning Officer is one without jurisdiction. The refusal to conduct the elections, in spite of giving representation by the petitioners and others is not justifiable. Therefore, the petitioners felt necessitated to present these Writ Petitions, seeking appropriate reliefs, as stated above.

9. In Writ Petition No. 36238 of 2004, the petitioner is assailing the correctness of the Notification vide Annexure-D dated 1.9.2004 issued by the 1st respondent, in so far as, it pertains to the Employees' Credit Cooperative Society, the 3rd respondent herein. Further, the petitioner has sought for a mandamus, directing the 2nd respondent to forthwith hold the election to the committee of the 3rd respondent -society, in pursuance of the calendar of events dated 25.8.2004 issued by the 2nd respondent, if necessary by rescheduling the date of election.

10. The petitioner is claiming to be the member of the Ranebennur Taluk Primary School Teachers' Credit Co-operative Society, the 3rd respondent herein. He was earlier the director of the 3rd respondent-society and resigned from the said office. The term of the committee of the 3rd respondent-society expired on 31.3.2004. The Government has issued a Notification dated 20th February. 2004 postponing the election to all the Co- operative societies in the State, on the ground that the election to the Assembly and Parliament are scheduled to be held during the said

period. Further, it has been clarified that the election process should be completed on or before 30th September 2004. Accordingly, after completion of the said period, the 3rd respondent -society has passed a resolution on 25.8.2004 requesting the authorities to hold election on 26.9.2004. The 2nd respondent has been appointed as a Returning Officer and the Calendar of events has been issued on 25.8.2004 fixing the date of election on 26.9.2004. The last date for filing the nomination paper was fixed on 19.9.2004. The provisional list of voters has been published and all arrangements for holding election has been made and calendar of events were dispatched to the members and served on the members by Muddam. The petitioner and other members have made arrangements to contest the election. At that stage, they have received an endorsement dated 10.9.2004 stating that, the elections are postponed in view of the Government Notification dated 1 .9.2004. Therefore, the petitioner felt necessitated to present this Writ Petition, seeking the reliefs as stated supra.

11. In Writ Petition No. 36523 of 2004, the petitioners are assailing the correctness of the Notification vide Annexure-D dated 1.9.2004 issued by the 1st respondent, in so far as it pertains to the Employees Housing Co-operative Society, the 3rd respondent herein. Further, the petitioners sought for a direction, directing the 2nd respondent to forthwith to hold election to the committee of the 3rd respondent - society.

12. The petitioners are claiming to be the members of the ITI Employees Housing Co-operative Society- the 3rd respondent herein. The term of the committee of the 3rd respondent-society has been expired on 31.3.2004. In fact, the Joint Registrar, by an order dated 6.2.2004 had appointed the Returning Officer to conduct elections. At that stage, the 1st respondent has issued a Notification dated 20th February 2004, postponing the election to all the Co-operative Societies and also continuing the existing committees, with a direction to hold the election on or before 30th September 2004. The committee whose term has been expired is continued in the office. The Committee has passed a resolution dated 24.8.2004 to hold election on 25.9.2004. In pursuance of the said resolution, the provisional list of voters as required under Rule 14(1) of the Rules has been published, vide Annexure-A. In the said notice, the 3rd respondent- society has referred that, the

election is proposed to be held on 25.9.2004. The 2nd respondent has prepared the calendar of events and forwarded the same to the 3rd respondent-society, and the same were not dispatched. On the other hand, the 3rd respondent-society has issued a Circular dated 3.9.2004 Annexure-B, stating that, in view of the Government Notification dated 1.9.2004, the elections are postponed and the existing committee will continue in the office till the election is held on or before 31st March 2005. Further, it is the case of the petitioners that, some of the members have made a representation dated 2.9.2004, requesting that the election may be held as per the date mentioned in the provisional list. In view of the postponement of the election, the petitioners felt necessitated to present this Writ Petition, seeking the reliefs, as stated supra.

14. In Writ Petition No. 36880 of 2004, the petitioner is assailing the correctness of the Notification vide Annexure-E dated 1.9.2004 issued by the 1st respondent, in so far as, it pertains to the 3rd respondent and also the endorsement dated 7.9.2004 issued by the 2nd respondent to the 3rd respondent-Union, in pursuance of the Notification dated 1.9.2004. Further, the petitioner has sought for a direction, directing the 2nd respondent to forthwith hold the election to the committee of the 3rd respondent -Union, in pursuance of the calendar of events dated 23.8.2004, vide Annexure-A issued by the 2nd respondent, if necessary, by rescheduling the dates from the stage at which the election process was interrupted.

15. The petitioner is claiming to be a member of the 3rd respondent-Union. The 3rd respondent -Union is purely a Cooperative Education Institution, The sole purpose and object of the 3rd respondent-Union is the development of Co-operative movement, spreading the message of co-operation in various parts of the District and conducting classes about Co-operative Act and Rules. The term of the committee of the 3rd respondent- Union has expired on 31.3.2004. The 1st respondent has issued a Notification dated 20th February 2004, postponing the elections to the all the Co-operative Societies of the State, in view of the election to the Assembly and Parliament were scheduled to be held during the said period. Further, it is also directed to hold election on or before 30th September 2004. Accordingly, all the necessary action are initiated by the 3rd respondent -Union to hold election as per the schedule, by spending huge amount. The Managing

committee of the 3rd respondent-Union, in its meeting on 30th July 2004 has passed a resolution and requested the 2nd respondent- the Returning Officer to hold elections on 14.9.2004. The 2nd respondent, has published the calendar of events on 23.8.2004. As per the calendar of events, the provisional list of voters was published on 14.8.2004 and the eligible list of voters was published on 29.8.2004; 6th September 2004, is the last date for filing the nominations. 8th September 2004 is the scheduled date for scrutiny and the last date for withdrawal of the nomination was on 9.9.2004. Accordingly, the petitioner has filed his nomination on 6.9.2004 and he has a bright chance of getting elected as unopposed as Director of the 3rd respondent -Union. When the election process has been commenced in strict compliance of the mandatory provisions of the Act and the calendar of events has been issued, at that stage, the 2nd respondent has issued an endorsement dated 7.9.2004 to the 3rd respondent-Union, informing the latter that, the process of election in the 3rd respondent-Union is postponed with immediate effect, in view of the Government Notification dated 1.9.2004. The endorsement dated 7.9.2004 issued by the 2nd respondent to the 3rd respondent - union is produced vide Annexure-C. Therefore, the petitioner felt necessitated to present this Writ Petition, seeking the reliefs, as stated supra.

16. In Writ Petition No. 36036 of 2004, the petitioners are assailing the correctness of the Notification vide Annexure-B dated 1.9.2004 issued by the 1st respondent, in so far as, it pertains to the Employees Credit Co-operative Society, the 3rd respondent herein. Further, the petitioners have sought for a direction, directing the 2nd respondent to forthwith hold the election to the committee of the 3rd respondent - society, in pursuance of the calendar of events dated 19.8.2004 issued by the 2nd respondent, by rescheduling the dates from the stage from where it was interrupted.

17. These petitioners are claiming to be the members of the 3rd respondent-The Karnataka Circle Postal Co-operative Credit Society. The term of office of the committee of the 3rd respondent society expired on 31.3.2004. The Government has issued a Notification dated 20th February 2004 under Section 39A and 121 of the Act, postponing the election to all the Co-operative Societies and continuing the existing committees in the office, due to the elections scheduled to be held to

the Assembly and Parliament during the said period and also directed that the elections to all the Co-operative Societies should be held on or before 30th September 2004. The 2nd respondent has been appointed as the Returning Officer for conducting the election. The Returning Officer has issued the calendar of events on 19.8.2004. After publication of the list of voters, the last date for filing the nomination was fixed on 8.9.2004. Notice of the General Body meeting and the calendar of events has already been issued to the members. The 3rd respondent-union has spent huge sum of money for the purpose of holding the election and the General Body Meeting. In view of the Notification/order dated 1.9.2004 issued by the Government, the election to all the Co- operative Societies, except Milk Producers Societies and the corresponding Federal/ Apex Societies are postponed and also directed to hold elections on or before 31st March 2005. On the clarification sought by the 3rd respondent -society, the 2nd respondent has issued an endorsement stating that, in view of the Notification, the election scheduled to be held on 19.9.2004 has been postponed, vide Annexure-C. Therefore, the petitioners felt necessitated to present this Writ Petition.

18. In these cases, some of the petitioners have already filed their nominations in pursuance of the calendar of events issued by the respective Returning Officers. Some of the petitioners claiming to be the members of the respective Banks/Societies/Unions are contending that, already the respective Banks/Societies/Unions have taken a decision to hold elections in pursuance of the Notification issued by the Government earlier stating that, the election process should be completed on or before 30th September 2004. At this stage, it is shock and surprise to the petitioners to know about the postponement of elections, in pursuance of the subsequent Notification/order issued by the Government on 1 .9.2004. These petitioners are contending that, the said Notification issued by the Government is not at all applicable to the Banks/Societies Unions, where the decision has already been taken for conducting the elections, voters list has been published and the calendar of events has already been issued and the election process is set in motion. The Government has got no power to postpone the election unilaterally, without calling for the reports from the respective Banks/Societies/Unions of these petitioners. The endorsements issued by the respective Returning Officers on the basis of the Government Notification is

without any jurisdiction. The Notification/order dated 1 9.2004 issued by the Government is not at all applicable to the facts and circumstances of these petitioners Banks /Societies/Unions Therefore, they felt necessitated to present these Writ Petitions, seeking the reliefs as stated supra.

19. The principal submission canvassed by the learned Senior Counsel Sri Jayakumar S. Patil, Sri K.M.Nataraj, Sri Vishnu D. Bhat and Sri Kriahnappa is that, the decision taken by the Government to postpone the elections is arbitrary, illegal and without jurisdiction. Further they have vehemently submitted that, the election process has already been commenced by issuing the calendar of events and in some of the cases the candidates have already filed their nomination papers and made preparations for elections. Under these circumstances, the postponement of the election is impermissible under law. The election process once commenced cannot be disturbed. Section 39A(4) read with Section 121 of the Co-operative Societies Act, cannot be invoked to postpone the elections in respect of the Societies to which, the calendar of events has already been issued, the decision has been taken by the Managing Committee to conduct the elections and the Returning Officer has been appointed. The clarification given to the earlier order passed by the Government is not at all applicable to the these petitioners. Therefore, the decision taken by the Government to postpone the election is in the result of total nonapplication of mind and the Government has arbitrarily postponed the elections, which has resulted in mis-carriage of justice. There are no changed circumstances for taking a decision to postpone the election from the circumstances prevailed at the time of issuing the calendar of events.

20. Further, learned Senior Counsel appearing for the petitioners- Sri Jayakumar S. Patil has submitted that, in the earlier Notification /order issued by the Government, it has been unequivocally stated that, elections are not postponed in respect of the Societies where the calendar of events has been issued. It is specifically referred about the Agricultural Credit Societies, the difficulty faced by such societies in effecting the recovery because of the severe drought end therefore, the elections in respect of these Credit Cooperative Societies and other Societies where the Agricultural Societies are the members has been postponed. But, in the present Clarification Notification issued by the Government on 1

.9.2004, though the entire contents of the Notification is referred to Primary Agricultural Credit Societies and their corresponding Federal and Apex Societies such as, TAPCMS of which PACS are members, but, in the operative portion of the said Notification; it is stated that, 'Elections in respect of all the Co-operative Societies has been postponed irrespective of the fact where the election process is already set in motion.' Therefore, he submitted that, the competent authority has no authority under law to postpone the elections to all the Co-operative Societies, particularly, where the calendar of events has already been issued, the decision has been taken for conducting the election and the election process is set in motion. This is nothing but a clear case of abuse of power inasmuch as, power under Section 121 of the Act, cannot be utilised for reviving or giving life to a committees whose term had already expired. Further the power under Section 121 of the Act, cannot be exercised in total derogation of the scheme of the Act, thereby legislative mandate is nullified. The competent authority in effect has sought to legislate by resorting to Section 121 of the Act, which is not permissible. Further, the competent authority has not taken into consideration that, already respective Banks/Societies/Unions have spent huge amount, which belongs to the members for conducting the elections. In some of the petitions, the petitioners have filed their nomination papers. By the discriminatory order passed by the competent authority, not only the rights of the members, such as, the petitioners are affected, but even the Societies are put to financial loss. There may be a justification for the Government for postponing the elections in respect of the Agricultural Credit Societies and the corresponding Federal and Apex Societies, because of the specific reason of drought and their inability to effect recoveries. The body of the order clearly shows that, decision is taken for postponing the elections to TAPCMS of which PACS are members as the said TAPCMS and the corresponding Federal Societies were not included in the earlier Notification. But, stealthily, in the operative portion of the order, it is mentioned that: 'Elections to all the Cooperative Societies except Milk Producers' Societies are postponed' which is a clear indication of abuse of power and non-application of mind and contrary to the mandatory provisions of the Cooperative Societies Act and Rules. Therefore, the learned Counsel appearing for the petitioners submitted that the postponing of the elections in respect of these petitioners/Banks/Societies/Unions are liable to be

set aside and appropriate directions may be issued to the concerned Returning Officers to proceed with the election process by rescheduling the date of elections and from the stage from where it was interrupted.

21. To substantiate their submissions, the learned Counsel for the petitioners have placed reliance on the following judgments reported in COMMISSIONER OF POLICE, BOMBAY v. GORDHANDAS BHANJI, : [1952]1SCR135 ; THE STATE OF KARNATAKA and Ors. v. GUNJAHALLI NAGAPPA and Ors., : [1976]1SCR57 ; DIGVIJAYA MOTE v. UNION OF INDIA and Ors.; : (1993)4SCC175 ; K. CHANNAIAH and Ors. v. STATE OF KARNATAKA and Ors. ILR 2000 Kar 2572 and submitted that, the well settled principles of law laid down by the Apex Court and this Court in the above cases are amply applicable to the facts and circumstances of these cases. Further, he submitted that, the Supreme Court and this Court time and again have held that: 'once the election process is set in motion, neither the Courts nor the Government has got power to postpone the elections.' Therefore they submitted that, at any stretch the Notification dated 1 9.2004 issued by the Government postponing the elections is not at all applicable to the facts and circumstances of the petitioners' case. Hence the same may be held as unjust, arbitrary and capricious.

22. Per contra, the learned Advocate General, appearing for the competent authority- the State of Karnataka represented by its Secretary Department of Co-operation, interalia contended and substantiated that, the postponement of elections by the competent authority is due to the natural economic conditions and also taking into consideration the over all administrative factors as there is persistent drought in the State since 2 to 3 years. Further he submitted that, the competent authority has taken a conscious decision, by issuing the Notification dated 1.9.2004, after going into grass root and ground reality of the drought and economic conditions of the public in general, particularly, the members of the Banks/Societies/Union. No error or illegality as such has been committed by the authority. Further, he submitted that Section 39A(4) is illustrative and not exhaustive and the decision taken is in the interest of the public in general. These petitioners have got no fundamental right and they have got only statutory right and they cannot assail the policy decision taken by the Government, having regard

to the economic conditions affected to the Banking, Housing and Co- operative Sectors.

23. Further he vehemently submitted that, under Section 121 of the Co-operative Societies Act, the Government has got the general power and by exercising said general power, the competent authority has postponed the elections. The said decision is taken as a policy decision in the interest of public in general. No mala fides or any other factors are taken into consideration, as contended by the learned Counsel for the petitioners. The Government has got every right to postpone the elections, if there is any economical conditions affected due to the drought prevailing in the State and the postponement of election is only for another four months and before the completion of the said period, the elections should be conducted on or before 30th March 2005. It will in no way affect the interest of the petitioners. The only few Banks/Societies/union who have vested interest i.e. these petitioners have come-up before this Court and this Court cannot entertain these Writ Petitions by exercising extra ordinary jurisdiction under Article 226 of the Constitution of India. Therefore, the writ petitions filed by the petitioners are liable to be dismissed.

24. To substantiate his submissions, he placed heavy reliance on the following judgments reported in EBRAHIM SULAIMAN SAID v. M.C. MOHAMMED and Anr., : [1980]1SCR1148 ; SHIVASHARANAPPA VEERABHADRAPPA, KOLAR and Ors. v. ASSISTANT COMMISSIONER AND RETURNING OFFICER, BIDAR and Ors., ILR 1978 KAR SERIES PAGE 231; G. VENKATA NAIDU v. BELLARY CENTRAL CO- OPERATIVE STORES LIMITED and Ors., 1967(2) M L J 256, CHANNAPPA v. SECRETARY TO GOVERNMENT OF KARNATAKA, CO- OPERATION DEPARTMENT and Ors., 1992(3) KLJ 462 and submitted that the validity of Section 121 of the Co-operative Societies Act, has been upheld by the Constitution Bench of this Court and followed by the Division Bench and Single Judge of this Court in the cases as referred above. Therefore, the question of interference by this Court, at this stage, is not justifiable. Nor the petitioners have made out any goad grounds to entertain these Writ Petitions.

25. Further, some of the Advocates appearing for respondents Banks/Societies/Union, inter alia submitted that, it is a fact that respective Banks/Societies/Unions have spent huge sum of money for conducting the elections and the calendar events has been issued. In some of the cases draft calendar of events has been prepared and it is not yet issued and published and no money, as such has been spent for conducting the elections. However, they have not disputed about the decision taken by the respective Banks/Societies/Unions.

26. I have heard the learned Senior Counsel and other learned Counsel appearing for the petitioners, the learned Advocate General appearing for the competent authority and the learned Counsel appearing for the respective Banks/Societies/Unions.

27. After careful evaluation of the materials available on record threadbare and after considering the rival contentions of the respective Counsel appearing for the parties, the points that arises for consideration are as follows:

(i) Whether the postponement of elections to the Banks/ Societies/Unions where the election process had already commenced is sustainable in law?

(ii) Whether the impugned Notification/order dated 1.9.2004 issued by the Government is applicable to the petitioners-Banks/ Societies/Union?

Re: Point no .(1) and (2):

28. The undisputed facts of the case are that:

In pursuance of the Government Notification/order dated 20th February 2004, elections to all the Co- operative Societies in the State had postponed in view of the election to the Assembly and Parliament scheduled to be held in April and May 2004. Further it was directed to complete the elections to all the Co-operative Societies on or before 30th September 2004. It is not in dispute that, in theses cases the respective Banks/Societies/Unions took a decision by way of passing resolutions to hold the elections on or before 30th September 2004, the calendar of events has been issued and nomination papers have been filed by some of the

members to contest the election to be held on or before 30th September 2004 as stated Supra. Be that as it may, the Government has issued one more Notification/order dated 20th August 2004 stating that; 'the election is not postponed in respect Of the Societies where the calendar Of events has been issued.' In the said Notification, it is specifically referred to the Agricultural Credit Cooperative Societies and the difficulties encountered by such societies in effecting the recovery because of the drought situation and the elections in respect of Agricultural Credit Co-operative Societies and other societies where the Agricultural Credit Societies are the members are postponed. The preamble of the Notification and the reasons mentioned in the Notification order dated 1.9.2004 refer to Primary Agricultural Credit Co-operative Societies and the corresponding Federal and Apex Societies, such as, TAPCMS. But, in the operative portion of the said Notification, it is stated that 'election in respect of all the Co-operative Societies is postponed, irrespective of the fact, whether election process is already set in motion'. The learned Counsel for the petitioners has taken me through the impugned Notification/order issued by the Government dated 1.9.2004 and submitted that, by way of clarification the Government has issued said Notification by clarifying that: 'only the postponement of election to the Primary Agricultural Cooperative Societies has been mentioned in the Notification/order dated 20.8.2004 and failed to mention about the corresponding Federal and Apex Societies, such as, TAPCMS'. Further he submitted that, it is not coming forth in the said Notification that, for what reasons the election to all other Societies has been postponed, except stating that ' and also to mention that the election is not postponed in respect of the societies where the calendar of events has been issued'. But, in the Government Notification dated 20th August 2004, it has been unequivocally stated that 'the elections are not postponed in respect of the societies wherever the calendar of events has been issued and where there is an order from any Courts'. Further it is significant to note that, in so far as Milk Producers' Co-operative Societies are concerned, it is stated that 'the elections have not been postponed'. If the submission of the learned Advocate General appearing for the competent authority that, having regard to the economic conditions affected to the Banking, Housing, Industrial and Co-operative Sectors and others, they have postponed the elections is taken into consideration, the said

contentions is very much applicable to the Milk Producers Co-operative Societies also. If there is drought condition prevailing in the State for three years, and by invoking Section 39A(4) of the Act, the election has been postponed for the Primary Agricultural Societies and if once the economic condition is affected due to drought, the same situation is applicable to the Milk Producers Co-operative Societies also. Therefore, in my considered view, the Government cannot take a decision on the basis of pick and chose method, without conducting any enquiry, without calling for the reports from the respective Societies existing in the State and without collecting the data about the economic conditions of the respective Banks/Societies/Unions, and issuing a Notification under the guise of clarification to the Notification dated 20th August 2004, making applicable to all the Societies, such as, Banking Housing, Industrial and Co-operative Sectors, that too, by invoking Section 121 of the Co-operative Societies Act, is not justifiable and it is not in strict compliance of the mandatory provisions of the Cooperative Societies Act and Rules, Time and again, the Apex Court and this Court have laid down a well settled principles of law that 'once the election process is commenced, the question of postponement of election is not permissible'. In the instant case also, after taking into consideration the status of the respective parties, it shows beyond reasonable doubt that, in majority of the cases, already election process is set in motion, the voters list had published, nomination papers has been filed and at that stage, the respective Returning Officers, after taking into consideration the clarification issued by the Government, have issued endorsements postponing the election and the same is not at all permissible, in view of the settled position of law, laid down by the Supreme Court and this court. There is no justification for the Government to invoke Section 39A(4) r/w 121 of the Cooperative Societies Act, to postpone the election in respect of the Societies to which calendar of events had already issued. The impugned Notification dated 1 .9.2004 is just a clarification issued by the Government to the Notification dated 20th August 2004, for non mentioning of 'corresponding Federal and Apex Societies, such as, TAPCMS, ' But without any basis or justification in the body of the Notification it is mentioned as and in the operative portion it is mentioned that: Further, it is worthwhile to mention that, the Government Notification dated 20th August 2004 and the impugned Notification dated 1 .9.2004 should be read together and they cannot be read

between the lines and interpreting it to their stand is not permissible, because in unequivocal terms, it has been specifically mentioned in the Notification dated 20th August 2004 that, 'the elections is not postponed in respect of the societies where the calendar of events has already been issued and where there is an orders from the Court'. But the clarification is issued by the Government to the Notification dated 20th August 2004 through a Notification dated 1.9.2004, by substituting the words The said clarification is in no way coming within the parameter of the reason given in the preamble of the Notification/ order, issued for postponement of the elections, that too, by exercising power under Section 39A(4) r/w 121 of the Co-operative Societies Act. As per Section 39A(4), the Government has got the power to postpone the elections only in cases, if there is any drought, flood, fire etc. The Government has got further power under Section 121 of the Act, to take a decision in respect of Societies, if it is just and proper. As rightly pointed out by the learned Counsel appearing for the petitioners, it is clear that the petitioners are not assailing or disputing the power envisaged by the statute to the Government under Section 39A(4) and Section 121 of the Co-operative Societies Act. Further, the Government has not taken into consideration that, huge sum of money had already spent by the respective Banks/Societies/Unions to make arrangement for holding elections and in sum of the Banks/ Societies/unions, calendar of events had issued and as per the calendar of events election process has been set in motion. When the election process has been set in motion, neither the Court nor the Government has got the power to interfere with the process of election which has been set in motion, as held by the Apex Court as early as in the year 1952 in the case of N.P. PONNUSWAMI v. THE RETURNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALEM DISTRICT and Ors. , AIR (39) 1952 64 that: 'the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it'. By following the well settled principles of law laid down by the Constitution Bench of the Supreme Court in N.K. PONNUSWAMI's case, the Supreme Court in the case of STATE OF KARNATAKA and Ors. v. GUNJAHALLI NAGAPPA and Ors., AIR (39) 1952 64 has held that:

'The State Government was, therefore, in any view of the matter, not entitled to make any impugned order under Rule 75 on the ground that the divisional lists of

voters were defective and the election held on the basis of such lists of voters would not be in accordance with the provisions of the Act. What the State Government did by making the impugned order was to interfere with the election process which was going on in accordance with law and that was clearly not permissible on any interpretation of Rule 75'. (Emphasis supplied by me)

29. There is some substance in the submission made by the learned Counsel for the petitioners that, similar matter has come up for consideration before this Court in the case of K. CHANNAIAH and Ors. v. STATE OF KARNATAKA and Ors. (Supra 4) , wherein it is held that

'The direction is given by the impugned Notifications clearly violate the provisions of the Act. Postponement of elections. without any power under the statute cannot be resorted to by mere directions under Section 30B. I have already stated that it is not permissible to postpone elections as the law clearly contemplates that elections should be held before the expiry of the period of the committee There is no power under the Act to enable the Registrar or the Government to postpone the election. I have referred to all the relevant Sections which deal with the mandate of the statute not to postpone the elections. Therefore, it is not known how directions can be given by the Government under Section 30B to postpone the elections. The judgment referred to by the learned Advocate General which upheld the directions given to the banks not to go on for further appointments of staff was clearly within the purview of Section 30B and was in public interest However, in this case, there is no public interest involved in postponing the election contrary to the statutory provisions of the Act.'

We now come to the next question. The vexed question is whether once the calendar of events is in force and the election comes to a grinding halt because of interruption and when the interruption is lifted, whether the election should continue under the same calendar of events or under the fresh calendar of events.

Further, it is held that:

'The pronouncements of the Courts clearly indicate that whenever the election is interrupted by an interim order of the Court and finally the petition is dismissed the

election must proceed from the stage at which it was interrupted. This in my opinion is the correct position of law.'

The ratio of the law laid down by the Supreme Court and this Court as referred to above has the direct bearing on the facts and circumstances of the instant cases also.

30. In the instant case, it is not in dispute that the election process has already been commenced and some of the members have filed their nominations to the respective Banks/Societies/ Unions and except in three cases, already decision has been taken and draft calendar of events has been kept ready and after spending huge sum of money for the preparations has been done and in the pursuance of the Notification issued by the Government on 20th August 2004, the election process should be completed on or before 30th September 2004. In the Notification dated 20th August 2004, in crystal clear manner, it has been clarified by the Government that: 'the election is not postponed in respect of the Societies where the calendar-of events has already been issued' in the Clarification Notification issued by the Government on 1.9.2004, without mentioning any reasons the elections to other Banks/Societies/ Unions are postponed, contrary to the object and reasons mentioned in the preamble of the earlier Notification. Therefore, in my considered view, at any stretch, the impugned Notification dated 1.9.2004 cannot be made applicable to the Societies where the election process has already been commenced and set in motion, in view of the clear mandatory provisions of the Co-operative Societies Act and Rules and also in view of the well settled law laid down by the Apex Court and this Court in hosts of judgment referred above.

31. Further, it is significant to note that, it is not the case of the respondents in their statement of objections that, they have collected the data and information by way of report from the respective Societies throughout the State and found that there is total natural economical conditions prevailing over, except improving and making submissions during the course of the arguments, which cannot be accepted, as rightly pointed out, by the learned counsel for the petitioners and also in view of the well settled principles of law laid down by the Supreme Court in the case of

COMMISSIONER OF POLICE BOMBAY v. GORDHANDAS BHANJ (Supra), wherein, at Para No. 9 it is held as follows:(Supra)

'An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear mat public orders, publicly made, in exercise of a statutory authority, cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do Public orders made by public authorities are meant to have public effect and are intended to affect the action and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

32. The learned Advocate General except making an oral statement has not produced any materials to substantiate his case. Hence, the same cannot be accepted. Further, I am of the opinion that, in view of the well settled principles of law laid down by the Apex Court and this Court, as referred above, the said principles of law equally applies with respect to interruption of election in the middle of the calendar of events by an order of the Government. If the Government or any other authority passes an order postponing the election after the issuance of the calendar of events and if that order is without authority of law then again the election process shall take off from where it was interrupted by the order passed without authority of law. In other words, if an authority postpones the elections after calendar of events was in force and if it is ultimately found that the Authority had no power in law to postpone the elections, the answer is that one must revert to the original calendar of events from the stage from where it was interrupted. All the pronouncement of Courts lead to one irresistible conclusion that when once the election process has commenced it must continue in accordance with the calendar of events. If the election process is interrupted by an impugned Notification/communication/ endorsement by the Government and ultimately, if it is found that such interruption was not called for then the election process shall continue in accordance with the calendar of events originally announced and shall take off from the time when the process was interrupted by rescheduling the dates for conducting the elections.

33. Further, it is worthwhile to refer the well settled principles of law laid down by the Supreme Court in the case of DIGVIJAYA MOTE v. UNION OF INDIA and Ors.(Supra) the Supreme Court has extracted the observations made by Mathew, J in the in the case of INDIRA NEHRU GANDHI v. RAJ NARAIN , 1975 SUPP. SCC 1 as follows:

'In the opinion of some of the judges constituting the majority in Bharati case Rule of Law is a basic structure of the Constitution apart from democracy.

The rule of law postulates the pervasiveness of the spirit of law throughout the whole range of government in the sense of excluding arbitrary official action in any sphere.'

Further, the Hon'ble Supreme Court stating that this is well established and does not need further case law confirmation has extracted the observations made by Chandrachud, J. in the case of VIRENDRA v. STATE OF PUNJAB, : [1958]1SCR308 which reads as follows:

But the electorate lives in the hope that a sacred power wilt not so flagrantly be abused and the moving finger of history warns of the consequences that inevitably flow when absolute power has corrupted absolutely. The fear of perversion is no test of power"

At page 307 it is stated: (SCC P 438.Para 61)

'Nobody will deny that the Election Commissioner in our democratic scheme is a central figure and a high functionary. Discretion vested in him will ordinarily be used wisely, not rashly, although to echo Lord Camden, wide discretion is fraught with tyrannical potential even in high personages absent legal norms and institutional checks and relaxation of legal canalisation on generous 'VIP' assumptions may boomerang. Natural justice is one such check on exercise of power.'

The ratio of the observations made by the Supreme Court in para No. 12 after referring the observations made by Mathew, J and Chandrachud, J, is directly applicable to the facts and circumstances of these cases. In the instant cases also,

it is crystal clear that, in the Notification dated 20th August 2004 it has been unequivocally clarified that 'wherever the election process has been commenced and where there is an order or direction of the Courts the said Notification is not at all applicable'. Subsequently, in the clarification Notification issued by the Government on 1 ,9.2004, the sentence 'wherever election process has been commenced, elections should be proceeded with' has been deleted. However, it has been mentioned that 'wherever there is a court order or direction, the election should be proceeded with'. But, the object and reasons mentioned in the preamble of the Notification is in no way applicable to the instant cases. Therefore, in my considered view, there is no good grounds or justification to sustain the Notification dated 1.9.2004 and it is not applicable to the petitioners - Banks/Societies/Unions.

34. Regarding the reliance placed by the learned Advocate General appearing for the competent authority on the judgments of the Supreme Court and this Court as referred above, there is no dispute with regard to the law laid down by the Supreme Court and this Court But, in those cases, the validity of Section 121 of the Co- operative Societies Act, has been assailed. But in the instant cases the petitioners have not assailed the validity of Section 121 of the Act, nor they are disputing the power of the Government. Therefore, I am of the view that, the reliance placed by the learned Advocate General has no bearing on the facts and circumstances of these cases.

35. Having regard to the facts and circumstances of the case and taking into consideration the factual and legal aspect of the matter as stated supra, I do not find any justification to sustain the Notification dated 1.9.2004 and the impugned communications issued by the respective Returning Officers, so far as it relates to these petitioners.

36. For the foregoing reasons, these Writ Petition s filed by the petitioners are allowed. It is hereby declared that the impugned Notification/order dated 1.9.2004 bearing No. CMW:37:CLM:2004(P) is not at all applicable to these petitioners Banks/Societies/Unions are concerned, i.e. wherever the calendar of events has been issued and election process is set in motion. Further, the respective

Returning Officers, the respondents in these petitions are hereby directed to proceed with the election process as per the calendar of events and from the stage at which it was interrupted, by rescheduling the date of election, to conduct the election and declare the results, in accordance with the mandatory provisions of the Co-operative Societies Act and Rules.

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