

State of Mysore

Vs

Allum Karibasappa and Others

Civil Appeal No. 971 of 1973

(CJI A. N.Ray, K. K. Mathew JJ )

06.08.1974

JUDGMENT

RAY, C.J. -

1. This is an appeal by special leave from the judgment dated of the High Court of Mysore.
2. The respondent Karibasappa was the President of the Bellary District Co-operative Central Bank Limited, Hospet. He challenged two notifications dated August 11, 1972 issued by the State Government. The notifications were issued in exercise of the powers conferred by Section 54 and 121 of the Mysore Co-operative Act, 1959 hereinafter referred to as the Act.
3. The management and administration of the Bank was conducted by the Committee consisting of the President, the Vice-President, and ten elected members from various constituencies and certain nominees of the State Government. At no time the Government nominated more than three persons as its representatives.
4. The Bank had a share capital of Rs. 75 lakhs. The State Government contributed Rs. 23.8 lakhs. The Reserve Bank of India advanced a loan of Rs. 135 lakhs. The Apex Bank also gave a loan of Rs. 200 lakhs. The State Government guaranteed the repayment of loans to the Reserve Bank of India.
5. The Reserve Bank of "India from time to time inspected the Bank. There was an inspection on October 14, 1971. The report referred to many irregularities and stated that the financial resources of the Bank had improved slightly.
6. The Joint Registrar on August 3, 1972 forwarded the report to the Registrar of Co-operative Societies and suggested action under Section 54 of the Act. In this background the Government issued the impugned notification on August 11, 1972.
7. Broadly stated the notification recited that the State had given Rs. 23.80 lakhs to the Bank and it was necessary in public interest to take powers to exercise control over the conduct of the business of the Bank to safeguard the public funds. The State Government in exercise of the powers conferred by Section 54 of the Act should have the right to nominate as its representatives, fifteen persons on the Board of Management and to appoint one among them as the President, one as the Vice-President and one other as the Managing Director of the Bank. The President, the Vice-President and the Managing Director under the notification should exercise powers and discharge their functions subject to the supervision, direction and control of the State Government. The

notification further stated that Section 29 which conferred power on the State Government subject to any notification under Section 121 to have "the right to nominate as its representatives not more than three persons or one-third of the total number of members of the Committee of the Co-operative Society, whichever is less" would be modified by substituting the words "have the right to nominate as its representatives 15 persons of the Committee of the Co-operative Society of whom one shall be appointed as Managing Director". The notification conferred power on the Managing Director subject to the policy decision of the Board, the right to conduct the business of the Bank and to sanction expenditure on establishment and certain other powers.

8. The second notification nominated fifteen persons to form the Board of Directors of the Bank. The Deputy Commissioner. Bellary was appointed the President of the Bank.

9. The Bank challenged the notifications on three grounds. First, the action of the Government was ultra vires the Act; second, the action was bad in violation of principles of natural justice; third the action was taken because of political rivalry with an evil eye to remove the President from the office.

10. The High Court upheld the first two contentions and set aside the order.

11. Section 54 of the Act provides that Where State aid amounting to not less than two lakhs of rupees is given to any Co-operative Society, the State Government, if it is satisfied that it is necessary in public interest so to do, may by notification in the official gazette take power to exercise such control over the conduct of business of such society as shall suffice in the opinion of the State Government to safeguard the interest of the State.

12. Section 121 enacts that the State Government may, by general or special order published in the official gazette, exempt any co-operative society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order.

13. At this stage, reference may be made to Section 30 of the Act which provides for supersession of Committee. If, in the opinion of the Registrar, the Committee of any Co-operative Society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the Rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or is otherwise not functioning properly, the Registrar may, after giving the Committee an opportunity to state its objections, if any, by order in writing remove the Committee and appoint a new Committee consisting of one or more members of the Society in its place or appoint one or more Administrators who need not be members of the Society. Section 30 further provides that the Registrar can manage the affairs of the Society for such period or periods not exceeding two years. There is also a provision for extension of the period so that the aggregate period does not exceed four years.

14. Section 29 to which reference has already been made provides for the nomination by the Government of persons on the Committee of the Society where the State Government has subscribed to the share capital of a Co-operative Society or guaranteed the repayment of loans. The members nominated by the Government under Section 29 of the Act do not exceed three or one-third of the total number of members of the Committee, whichever is less.

15. Section 54 of the Act indicates that the power thereunder is to be exercised in public interest.

The control over the business of the Society contemplated under Section 54 should be such as is sufficient in the opinion of the State Government to safeguard the interests of the State.

16. In the present case, the impeached orders suffer from two insurmountable infirmities. One is that the entire Committee of Management has been superseded. There is a provision under Section 30 of the Act to supersede the Management. The State Government does not take recourse to the section. Indirectly the State Government has overthrown the Committee of Management including the President and the Vice-President. The President and the Vice-President are officers within the meaning of Section 2(g) of the Act. Section 54 does not confer any power to remove the President and the Vice-President of the Society. Section 54 contemplates exercise of control over the conduct of the business. The word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action. In the guise of exercise control the State has displaced the Committee of Management and substituted its own Committee. The State has indirectly intended to achieve what it is directly prohibited from doing under Section 54 of the Act.

17. The second vice of the notification is that it is in violation of principles of natural justice. Section 30 of the Act contemplates a notice where the State intends to supersede the Management. The Committee has been deprived of their right to manage the affairs of the Society. They have been deprived of the right arbitrarily and in utter defiance of the powers under the statute.

18. The High Court rightly set aside the impeached notifications.

19. For these reasons, the appeal fails and is dismissed. The State will pay costs to the respondents.

</html