

T. Ramegowda

Vs

R. Krishnamurthy and others

Civil Appeals Nos.3548-3550 of 1992

(M. N. Venkatachaliah, P. B. Sawant, N. P. Singh JJ)

24.07.1992

JUDGMENT

1. We have heard learned counsel on both sides. Special Leave granted.

The appeal is against the judgment and order dated 24th September, 1991 of the Division Bench of the Karnataka High Court in Writ Petitions Nos. 18929-18931 of 1991. The Division Bench withdrew writ petitions to itself passed the judgment under appeal quashing the orders of the Karnataka Appellate Tribunal dated 2nd August, 1991 in Appeal No. 309 of 1991 before it.

2. The controversy relates to the elections to the Committee of Management of a co-operative society called the "Bharat Silk Filature Factory and Industries Co-operative Society Ltd." (Society) Malavalli, Mandya District, which was registered on the 29th of March, 1983. Its first Board of Directors was constituted by the Government.

Appellant, T. Ramegowda, raised a dispute before the Deputy Registrar of Co-operative Societies, (DRCS) Mandya in Arbitration Case No. 1 of 1991 under Section 70 of the Karnataka Co-operative Societies Act, 1959 (Act) seeking a direction to the Special Officer, respondent No. 5 in this appeal, to hold elections to the committee of management on the basis of the voters list existing as on 28th August, 1990 without enrolling further members. The Deputy Registrar by his order dated 3rd June, 1991 dismissed the petition against which appellant brought up an appeal before the Karnataka Appellate Tribunal. The Tribunal allowed the appeal operative part of which is in terms following :

"The appeal is allowed. The order of the lower authority is set aside and respondent No. 1 is hereby directed to hold election within stipulated time on the basis of the voters list existed antecedent to 17-5-91 ."

3. Necessary and material facts leading to the dispute are these :

The Society had resolved to hold elections to the Committee of Management and had issued a calendar of events of 25th August, 1990 and the elections were scheduled for 12th of September, 1990. Pursuant thereto a Voters' List was announced on 28th August, 1990. But the then Managing Director of the Society appears to have decided to postpone the elections. Subsequently on 11th of September, 1990 the Managing Committee was superseded by the Government under Section 30A of the Act and a Special Officer appointed. The order of supersession was challenged by the

appellant and certain other directors of the Society before the Karnataka High Court in Writ Petitions Nos. 19670-19679 of 1990. On 19th March, 1991, the High Court allowed the writ petitions and set aside the order of supersession. The order appointing the Special Officer was also quashed. The Special Officer was directed by the High Court to hold the elections to the committee of management within a period of three months and handover the charge to the newly elected committee.

But the Special Officer instead of holding the elections which obviously elections meant on the basis of the subsisting Voters List as on 19th March, 1990 started taking steps to enrol new members. He claims to have enrolled 696 members this way. It is against this action of the Special Officer that on 31st May, 1991, appellant raised a dispute before the Deputy Registrar of the Co-operative Societies seeking directions to the Special Officer to obey the mandamus issued by the High Court. The DCSR, however, dismissed the dispute even without ordering notice on it to the respondents.

4. Before the Tribunal, appellant contended that the Special Officer, after the judgment of the High Court quashing his appointment, merely continued as an authority specially authorised to conduct the elections in terms of the High Court's order. The Special Officer, it was contended, did not have all the powers under Section 30A which he would otherwise have had inasmuch as he was merely continued for the purpose of conducting the elections. In regard to the scope of his powers referable to the order of the High Court of the 19th March 1991, the Tribunal observed :

"Once his appointment is quashed and he is directed to hold election by a particular date his duties and functions are restricted and therefore he cannot exercise all the functions of a Committee when his appointment is to continue only for a limited purpose even though, however, he may attend to some of the routine work and business of the society, in addition to the specified tasks of holding election. Therefore, at the outset we feel there is no justification for respondent No. 1 to insist that before holding election he shall be permitted to enroll new members and without admitting new members, he cannot hold the election....."

On the question whether the enrollment of 696 members which the Special Officer in the meanwhile had made was valid or not — even assuming the Special Officer had such power — the Tribunal had occasion to comment :

"Even assuming for a moment that he is entitled to enroll new members, in his capacity as Administrator, he is expected to admit the new members, after following the procedure prescribed under Section 16 and Rule 8 by entertaining their applications and admitting the members thirty days prior to the date of Annual General Meeting. He has not followed any of these procedures while admitting the 696 members on 17-5-91 and therefore, the enrollment of members on 17-5-91 and therefore, the enrolment of membership made by him on that day cannot be considered as valid and in accordance with the law."

The Tribunal also cast serious doubt on the very genuine claim of the Special Officer that on 17-5-1991 he could enroll the members.

5. This order of the Tribunal was set aside by the Division Bench of the High Court which thought that the 696 members purported to be enrolled by the Special Officer were entitled to an opportunity

of being heard before the Tribunal. The High Court said:

"We are pained to note that the Karnataka Appellate Tribunal, Bangalore, before directing deletion of 696 members from the list of eligible voters, had not even taken care to see whether they were given notice. Therefore, on the singular ground of violation of principles of natural justice, the order of the Karnataka Appellate Tribunal is set aside. Equally, the order of respondent 2 — Arbitrator is set aside. Now the matter shall go back to respondent 2 — Arbitrator who shall hear both the petitioners and the contesting respondents on merits and orders passed. We make it clear that we have not gone into the merits whether 696 members are entitled to be on the list of eligible voters"

6. We have heard Shri Shanti Bhushan, learned senior counsel. We are of the view that the High Court was in error that the 696 members purportedly enrolled by the Special Officer on 17-5-1991 were entitled to an opportunity of being heard before the Tribunal. The question before the Tribunal was whether the Special Officer was competent to exercise all the powers of a Special Officer under S. 30A of the Act after the High Court had quashed the supersession his own appointment as Special Officer. That order not having been appealed against had become final and binding. The question turned on the interpretation of the order of the High Court. It was clear that the Special Officer did not retain his status as Special Officer under S. 30A of the Act after 19th March, 1991 and his status and authority as such had been denuded by the quashing of his appointment. He was merely continued for a limited purpose. In the particular facts and circumstances of this case the question really was one as to how the earlier order of the High Court in relation to his powers was required to be construed. The Special Officer, obviously without authority, went on enrolling members. To say that all those whom he inducted were entitled to be heard is to test the existence and validity of the power by the consequences of its exercise. This is erroneous.

7. Accordingly this appeal is allowed; the order of the High Court set aside and that of the Karnataka Appellate Tribunal requires to be and is hereby restored.

8. As to the consequential directions to be issued, we must notice subsequent events. In the meanwhile pursuant to the interlocutory directions of the High Court in Writ Petitions Nos. 18929-18931 of 1991 the elections were held as directed by the Tribunal. But soon thereafter the Tribunal's order was quashed. The elections were held without the inclusion in the voters' list of the 696 members enrolled by the Special Officer. That elections must be held to be valid. Pursuant to the orders of this Court the Returning Officer has since completed the counting and has submitted a report showing the 10 members who have secured the first ten places in the election. These members are required to be declared elected. They shall be inducted into the office by the Government and the Special Officer without further delay.

9. There is one other direction which requires also to be issued. Those who claimed to have been enrolled by the Special Officer claim that a deposit collectively of Rupees 76,372.50 had been made by them towards their share of subscriptions. Such amongst them as claim to seek to have their applications for membership considered and who claim to have made subscriptions towards this sum of Rs. 76,327.50 may make fresh applications for membership. One Shri Chandershekar Murthy who was said to be the Chief Promoter and who claims to have collected these subscriptions at his request, is permitted to furnish all such material as may be in his possession to correlate the applications for enrolment to be made by the 696 persons and their alleged earlier deposits. It will be proper for the new managing committee to process these applications and take appropriate

decision one way or the other about the granting of membership to them. This shall be done expeditiously. This we direct them to do within two months from the date of filing of the applications by them.

10. This appeal is disposed of accordingly. No order as to costs. Order accordingly.

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