

## **K.Shantharaj & Anr vs M.L. Nagaraj & Ors on 9 May, 1997**

**Equivalent citations: AIR 1997 SUPREME COURT 2925, 1997 (6) SCC 37, 1997 AIR SCW 2938, 1997 (4) SCALE 379, 1997 (3) SUPREME 204, 1997 (2) UJ (SC) 121, (1997) 5 JT 680 (SC), (1997) 6 SUPREME 204, 1997 (5) JT 680, (1997) ILR (KANT) 2778, (1997) 4 SCALE 379, (1998) 2 KANT LJ 267**

**Bench: K. Ramaswamy, D.P. Wadhwa**

PETITIONER:

K.SHANTHARAJ & ANR.

Vs.

RESPONDENT:

M.L. NAGARAJ & ORS.

DATE OF JUDGMENT: 09/05/1997

BENCH:

K. RAMASWAMY, D.P. WADHWA.

ACT:

HEADNOTE:

JUDGMENT:

**O R D E R** Leave granted.

We have heard learned counsel on both sides. There appeals by special leave arise from the judgment of the Division Bench of the Karnataka High Court, made on March 17, 1997 in Writ Appeal Nos.1464-66/94.

The indisputable facts are that the committee was superseded by the Administrator who has been appointed by the Government to manage the affairs of the Society, pending further action. During the period of the administration, the Administrator had enrolled new members and given schedule of programme for conducting the elections to the Committee. The respondents challenged the order of appointment of the Administrator. The learned single Judge, while setting aside the order of appointment, held that the Administrator has no power to enroll new members; but he could

conduct elections to the Committee of the Society as per the schedule of the programme. That was confirmed by the Division Bench. The material provisions in that behalf are contained in Sections 30 and 30-A of the Karnataka Cooperative Societies Act, 1959 (for short, the 'Act'). They read as under:

"30. Supersession of Committee:

(1) If, in the opinion of the Registrar -

(a) the committee of a 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 interest of the society or its members or is otherwise not functioning properly; or

(b) a co-operative society is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the State Government or the Registrar, the Registrar may, after giving the committee an opportunity to state its objections, if any, order in writing remove the said committee, and appoint an administrator to manage the affairs of the society for such period, not exceeding one year, as may be specified by the Registrar.

(2) The administrator so appointed shall subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of any officer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(3) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act, the rules and the bye laws of the co-operative society;

Provided that in such an election no member of the Committee removed under sub-section (1) shall, notwithstanding anything contained in this Act, the rules or the bye-

laws, be eligible for being elected as a member of the committee, for a period of four years from the date of supersession of the committee under the said sub-section.

Provided that in such an election no member of the Committee elected in accordance with this sub-section is also superseded within a period of one year from the date of its election, such supersession may extend to a period not exceeding three years.

30A Appointment of Special officer:

(1) Where the State Government on a report made to it by the Registrar or otherwise, is satisfied that any cooperative society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any order,

direction circular issued by the State Government or the Registrar it may, notwithstanding anything in this Act, by order, appoint a Special Officer for such co-operative society for such period not exceeding two years:

Provided that the State Government may, if it considers it necessary extend the said period of two years by such further period not exceeding one year.

(3) The Special Officer subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society and take all such actions as may be required in the interest of the co-operative society."

It would be clear from the language of these provisions that the Administrator or special officer, subject to control of any of the functions of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the roles and by necessary implication, he is not vested with power to enrol new members of the Society.

The learned single Judge in his judgment has held thus:

The new members enrolled by the Administrator is without authority of law and in utter disregard to the Bye-laws of the society and they have no right to participate in the election. Since the order of supersession is declared invalid, the election has to be conducted from the stage it was intercepted from the stage it was intercepted at the earliest opportunity. The members who are enrolled during the pendency of the writ petition shall not participate in the election and the Administrator shall notify the election with fresh calendar of events and hold the election with the members who were then in existence when W.P. No. 16378/92 was filed, The General Body or the Board of Directors elected by the General Body shall consider the application of the new members enrolled by the Administrator keeping in view the criteria or the eligibility contemplated under Bye- law 15 and dispose of their law after due consideration.

The Division Bench after elaborate consideration has agreed with the above conclusion reached by the learned single Judge and held thus:

"Accordingly, he is not entitled to enroll new members. But it has to be noted that the wording of Section 33(2) of the Kerala Co- operative Societies Act is slightly different from the wording of Section 30 of the Act. In the Kerala Act, the Administrator of the functions of the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in Karnataka Act is not considered in the Kerala decision. the difference in the authority vested in an Administrator and a Special officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division bench of Kerala High Court, cannot have any application while determining

the comparative authority of an administrator and Special officer appointed under Section 30 and 30A of the Karnataka Act respectively.

In view of what is stated above, we confirm the decision of the learned single Judge and dismiss these appeals. the direction regarding election given by the learned single judge shall be carried out by the concerned respondent within two months from the date of receipt of a copy of this Judgement."

Shri Santosh Hedge, learned senior counsel, contends that since the Administrator has power to conduct elections, by necessary implication, he has power to update the electoral lists by either enrolling the new members or substituting the legal representatives of the members in accordance with the bye-laws; therefore, he has power to enroll the members. We find that there is no force in the contention. The power of Administration given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws. The division Bench has minutely and carefully gone into all the questions and agreed with the learned single judge that the Administrator has no power to enroll new members; but he has the powers to organise election process in accordance with the provisions of the Act, the rules and the bye-laws of the society. In that view of the matter, we think that the High Court has not committed any error of law warranting interference.

The appeal is accordingly dismissed. However, we confirm the direction issued by the learned single Judge for enrollment of new members by the board or the Board of Directors, as the case may be, in accordance with the bye- law No.15 and dispose them of No costs.