

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4th DAY OF FEBRUARY 2003

PRESENT

THE HON'BLE MR.JUSTICE M.F. BALDANHA

And

THE HON'BLE MR.JUSTICE M.S. RAJENDRA PRASAD

WRIT APPEAL NO.360/2000

BETWEEN

Sri M. Nagaraj  
aged about 42 years  
s/of. Muniyappa  
r/of. V. Manchenahalli  
village, Jigani Hobli  
Anekal Taluk  
Bangalore Dist.

APPELLANT

(By Sri M. Narayana Reddy, Adv.)

AND

1. State of Karnataka  
by its Secretary  
Co-operative Dept.,  
Multi-storeyed Building  
Vidhana Soudha  
Bangalore.
2. The Secretary, Primary  
Co-operative Agriculture  
and Rural Development Bank  
Ltd., Anekal Taluk  
Bangalore District.
3. The Deputy Registrar of  
Co-operative Societies  
Circle-II, Pampamahakavi Road,  
Chamarajpet, Bangalore Respondents contd..

Respts. in Writ Appeal No.360/2000 contd..

4. N. Narayana Reddy, aged about  
55 yrs., s/of.late Nanja Reddy  
r/at. Lakshmisagara village  
Athibele Hobli, Anekal Taluk,  
Bangalore Dist. Respondents

(Sri Chandrashekar Rodnavar, HCGP for R-1 & R-3)

(Sri R.S. Ravi, Adv. for R-2)

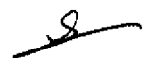
(Sri G.A. Vishwanath Reddy, Adv. for R-4)

Writ Appeal is filed under S.4 of the  
Karnataka High Court Act praying to set aside the  
order passed in the Writ Petition No.37703/99,  
dated 13.12.99 etc.

Writ Appeal coming on for hearing this day,  
SALDANHA J.delivered the following:-

JUDGMENT

We have heard the learned Counsel  
representing the parties and the learned  
Government Advocate on merits. A very limited  
relief has been sought in this appeal which is  
directed against an order passed by the learned  
Single Judge in W.P. No.37703/1999 dated  
13.12.1999. The learned Single Judge had set  
aside the election of the office bearers and had  
directed a fresh election but while doing so, the  
observation in paragraph 10 of the order was to



the effect that the provisions of Section 29A of the Karnataka Co-operative Societies Act, 1950 prescribe that the Committee shall be deemed to have been validly constituted if it consists of the majority of elected members. In the present instance, having regard to the disqualifications that had taken place that there were only seven persons who continued validly on the Committee and out of them, since four were present the contention raised was that the Committee had been validly constituted for purposes of holding the election. The appellants' learned Counsel submitted that since this issue is one of consequence that he has confined his challenge only to that aspect of the order because it is his submission that the learned Single Judge was in error in having applied the provisions of S.29A where~~in~~ in fact he ought to have applied S.29F read with Rule 14A of the byelaws. What is demonstrated is that unless the Court accepts this interpretation that there is scope for serious irregularities taking place as has happened in the present case <sup>where a</sup> ~~is~~ typical situation emanating from one where a small minority of members exercise the



powers of the Committee and then contend that they have elected the office bearers from among themselves. The submission is that the law of meetings always prescribes for a minimum quorum for very good reason and that where there are two differing provisions that it is very necessary to apply the correct provision when the purpose of the meeting is for the election of the office bearers. The further submission that is canvassed is that S.29F deals with a specific situation namely one wherein the office bearers are being elected and S.29A deals with all other situations where the Committee would be meeting to transact normal day-to-day business not necessarily the elections. The added submission is that where the S.29F mandates that the election shall be held in consonance with the provisions of the Act, Rules and the Byelaws, that this last aspect cannot be ignored.

2. The learned Government Advocate has submitted that the Act has undergone changes from time to time but he has supported the submission canvassed on behalf of the appellants because his contention is that it is very necessary in order

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to avoid illegalities but more importantly in order to avoid possible mischief, to provide for adequate representation in keeping with the provisions of law and that in cases where the byelaws specify for a specific quorum that this provision would apply. In sum and substance, he has contended that the reliefs asked for in this appeal are liable to be granted.

3. We have done a careful analysis of the relevant provisions and we do find that there is a specific legislative intent behind providing for the holding of the elections in the manner prescribed by S.29F of the Act. This is an independent section and more importantly, it is a specific provision which would necessarily override the general provision as contained in S.29A. On the state of the present record where the byelaws mandate that the quorum shall be five members of the Committee, this provision would necessarily be binding and if any meeting is held with less than five members, then that meeting cannot transact any business namely the election of the office bearers.

4. Having regard to the aforesaid position in

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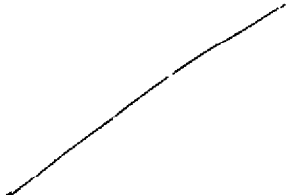
law, the finding of the learned Single Judge to the limited extent that he has upheld the position that a simple majority of members as provided for in S.29A would suffice for a meeting wherein the office bearers ought to be elected must necessarily be set aside. The order passed by the learned Single Judge is accordingly modified but the rest of the directions which are to the effect that fresh elections are to be held stand confirmed. We also modify the operative part of the order by adding on the requirement that the holding of the fresh election shall be in keeping with the provisions of S.29F r/w. Rule 14A and the relevant provisions of the byelaws.

5. The appeal succeeds to this extent. No order as to costs.

6. We have noticed from the order passed by the learned Single Judge as observed by him in paragraph 10 that he has followed the line of reasoning that was adopted in the earlier decision in W.P. No.42083/1999, disposed of on 7/8-12-1999. The appellants' learned Counsel brings it to our notice that this decision has been reported and that the ratio of that decision is being <sup>wrongly</sup> followed

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in numerous cases and having regard to the decision of the Appeal Bench in the present appeal that it would be necessary to specify that that <sup>the earlier</sup> decision is no longer good law. Having regard to the fact that it is essential that the correct legal position be pressed into operation, we further direct the office to ensure that this judgment is reported.



Sd/—  
Judge

Sd/—  
Judge

GS/-