

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 10<sup>TH</sup> DAY OF September 2003

PRESENT

THE HON'BLE MR. N K JAIN, CHIEF JUSTICE  
AND

THE HON'BLE MR. JUSTICE MOHAN SHANTANAGOUDAR

**WRIT APPEAL No. 5933 OF 2003 C/W 5943 OF 2003(CS-SS)**

**W.A.No.5933 OF 2003 :**

BETWEEN :

M SANJEEVA  
S/O.DEVA GOWDA, MAJOR  
MATANDOR HOUSE, HIREBANDADY VILLAGE  
HIREBANDADY, PUTTUR, D.K.

... APPELLANT

(By Sri : B V ACHARYA SR ADV FOR Sri ASHOK HARNAHALI,  
ADV )

AND :

- 1 STATE OF KARNATAKA  
REP.BY SECRETARY TO GOVT.,  
DEPT.OF CO-OP., M.S.BUILDING  
BLORE-01
- 2 THE CENTRAL ARCANUT AND COCO MARKETING  
AND PROCESSING COOP.LTD.,  
VARANASI TOWER, MANGALORE 575 001  
REP.BY ITS MANAGING DIRECTOR
- 3 PRAMOD KUMAR RAI S/O.JATHAPPA RAI  
MAJOR, KAJEMARU MANE,  
KADAMBANDY VILLAGE  
PUTTUR
- 4 PADMASEKAR JAIN  
S/O.SANATHKUMAR, MAJOR  
PALLODYGUTTU, KAVALKATE POST  
BENTVALA TQ, D.K.

... RESPONDENTS

(By Sri : A G HOLLA SR ADV FOR Sri SHASHI K KIRAN SHETTY  
ADV FOR C/R3, Sri M N SHESHADRI AGA FOR R1)

**W.A.No.5943 OF 2003 :**

**BETWEEN :**

THE CENTRAL ARECANUT & COCO MARKETING &  
PROCESSING CO-OPERATIVE LTD  
VARANASI TOWERS, ANGALORE 575 001  
REP BY ITS MANAGING DIRECTOR ... APPELLANT  
(By Sri : B V ACHARYA SR ADV FOR Sri K M NATARAJ ADV)

**AND :**

- 1 THE STATE OF KARNATAKA  
REP BY ITS SECY TO THE DEPARTMENT OF  
CO-OPERATION M.S. BUILDING  
BANGALORE 1
- 2 PARMOD KUMAR RAI S/O JATHAPPA RAI  
MAJOR R/O KAJEMARU MANE,  
KADAMBANDY VILLAGE, PUTTUR
- 3 PADMASEKAR JAIN S/O SANATHKUMAR  
MAJOR R/O PALLODYGUTTU,  
KAVALKATE POST,  
BANTWAL TALUK D.K DISTRICT
- 4 M SANJEEVA S/O DEVA GOWDA  
MAJOR R/O MATANDOOOR HOUSE,  
HIREBANDADY VILLAGE  
HIREBANDADY PUTTUR  
D.K DISTRICT

... RESPONDENTS

(By Sri : A G HOLLA Sr Adv FOR Sri SHASHI K KIRAN SHETTY  
ADV FOR R2 AND Sri M N SESHADRI AGA FOR R1)

WRIT APPEALS FILED U/S 4 OF THE KARNATAKA HIGH  
COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN  
THE WRIT PETITION 6058/2003 DATED 24.7.2003.

These Writ Appeals having been heard on 02.09.2003 and  
reserved for orders, this day the CHIEF JUSTICE delivered the  
following :

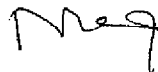
**JUDGEMENT**

**JUDGMENT**

These writ appeals are filed against the common order dated 24.07.2003 passed in W.P.No.6058/2003 wherein the learned single Judge has not interfered with Notification dated 26.12.2002 (Annexure-A), issued by the 1<sup>st</sup> respondent. As in both the appeals, common questions of law and fact are involved, they are taken up together.

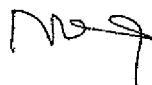
2. It is stated that the 2<sup>nd</sup> respondent is a society governed by Multi-State Cooperative Societies Act, 2002 (Central Act 39 of 2002) {for short 'the 2002 Act'}. Earlier the Act of 1984 was in force and it was replaced by the 2002 Act. The management of the 2<sup>nd</sup> respondent-Society is vested with the Board of Directors. The appellant-petitioner was elected as a member of the Board of Directors vide notification dated 22.01.2003 for a period of 3 years. Being aggrieved by the issuance of notification dated 26.12.2002, issued by the State Government, the appellant-petitioner filed the above writ petition challenging the nomination of the 3<sup>rd</sup> and the 4<sup>th</sup> respondents, made by the Government, to the 2<sup>nd</sup> respondent-Society. The learned single Judge, as stated, while not interfering with the impugned notification dismissed the writ petition. Hence, these writ appeals.

3. Sri Acharya, learned counsel for the appellant submits that while Rule 31(2) of the Multi-State Co-operative Societies



(Registration, Membership, etc.) Rules, 1985, which starts with a non-obstante clause, provides for nomination of persons in excess of the limits prescribed in Rule 31(1), as per the present Section i.e., Sec.48 of the Act of 2002, the State Government can nominate only specified number of persons to the Board. According to the learned counsel, the learned single Judge has not considered all these factors. He also submits that as per Section 41(3) of the 2002 Act, the Board shall consist of such number of Directors as specified in the Bye-laws, which is 19 in the present case, and if the reasoning of the learned single Judge is accepted it would exceed the maximum number specified in the bye-laws. He further submits that the learned single Judge erred in not appreciating the Judgment of the Kerala High Court in *OP No.2097 of 2003(Y)* (decided on 29.01.2003) in a proper perspective, and therefore, the notification dated 26.12.2002 is liable to be quashed and the order of the learned single Judge is liable to be set aside.

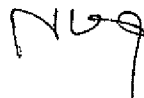
4. On the other hand, Sri A.G.Holla, learned senior counsel for the 2<sup>nd</sup> respondent-Society, submits that by the earlier order dated 20.04.2000, C.D.Jayaram Gowda has been nominated as a member of the Board of Directors invoking Rule 31(2) of the Rules, and therefore, the argument that only one can be nominated is untenable. He further submits that as per Section 48 of the Act of



2002 the Government is empowered to nominate two persons, and exercising the same, the 3<sup>rd</sup> and 4<sup>th</sup> respondents have been nominated by issuing the impugned notification. He submits that the statute prevails over the bye-laws and the power conferred by the provisions of the Act can be exercised nominating the persons in excess of the limit prescribed in the bye-laws, and therefore, the order of the learned single Judge needs no interference.

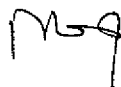
5. Sri M.N.Seshadri, learned A.G.A. submits that the order of learned single Judge needs no interference as neither there is any violation nor there is any inconsistency and the nomination of two persons is as per law. It is stated that in the present Act, the extra seat is omitted. He submits that the decision of the Kerala High Court (supra) is not applicable as the appointment of respondent-C.D.Jayaram Gowda is under Sec.31(2) of the Act. The learned Government Advocate submits that there is no inconsistency and therefore the argument that when already one nominee is there and only one can be nominated and exceeding to two is bad, cannot be sustainable.

6. We have heard the learned counsel for the parties and perused the material placed on record and the relevant Act and Rules.



7. The point for determination is whether power of nomination of State under Sec.48 of 2002 Act is independent of and in addition to power of nomination under the Bye-laws of second respondent-Society?

8. A bare reading of Section 41(1) of the Act of 1984 makes it clear that the Central Government or the State Government has the right to nominate on the board such number of persons as may be prescribed and Section 41(2) of the Act states that the bye-laws of Multi-State Co-operative Society may provide for the nomination in excess of the limits prescribed under Section 41(1) of the Act. Rule 31(2) of the Rules also states that the bye-laws of a multi-state co-operative society may provide for the nomination by the Central or State Government of persons in excess of the limits referred to in Rule 31(1). Nomination can be made under Sec.48 of the 2002 Act and it depends upon the equity share capital. If the share capital is less than 26%, the nomination will be one and if more it will be two and for share capital above 50% the nomination will be three, provided such nominated persons shall not exceed 1/3 of the total number of persons nominated and shall hold the office during the pleasure of the Government.



9. According to the appellant-petitioner in view of provisions of Bye-laws and provisions of Sec.48 of 2002 Act, number of persons nominated cannot exceed two and one of them should be a Senior Officer of the Co-operative Department as per Bye laws of second respondent and wherefore nomination of respondents 3 and 4 would exceed power of Govt. to nominate under Sec.48 and nomination cannot be made in addition to number of members specified in the Bye law. However, according to respondents 1, 3 and 4 the power to nominate can be exercised independently both under Bye law and Sec.48.

10. The M.S. Co-op. Societies Act & Rules 2002 have replaced M.S.Co-op, Societies Act, 1984 and Rules 1985. However orders passed under the provisions of the repealed Act and Rules are saved and wherefore Annexure-D Order dated 20.4.2002 nominating one person in exercise of power under Rule 31 (2) of M.S. Co-op. S.Rules, 1985 is saved and that position is not disputed by the appellant-petitioner.

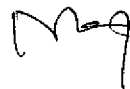
11. It is well settled that this Court cannot add or subtract words while construing the provisions of a Rule or a Statute and it has to be read with the plain and simple meaning. It is also settled that Rules cannot over-ride the Act. But in the instant case



nomination has been made under Rule 31(2) of Multi State Co-operative Societies (Registration, Membership, etc.) Rules, 1985, which has been saved under the new 2002 Act. In view of Sec.48 of the Act, nomination can be made as per the share capital and accordingly in the instant case two persons can be nominated as per the share capital. Therefore the nomination of two persons vide order dated 22.1.2003 cannot be said to be bad, and the argument that only one person should be nominated as already the other person C.D.Jayaram Gowda has been nominated on 20.4.2000 under Rule 31(2) of the Rules, is not acceptable.

12. More so, a Full Bench of this Court in C.MUDASI vs. STATE OF KARNATAKA (1994 (3) Kar.L.J. 5), found in similar circumstances that the State Government can exercise power under Section 53-A of the Act independently of the bye-laws and while considering the question with reference to provisions of Sec.29, 53A of the Karnataka Co-operative Societies Act, 1959 and Bye-laws of the Society, has observed in relevant paras 16 and 17 as follows:

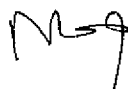
“16. Section 53-A of the Act is a statutory power exercisable under the Act and it certainly prevails over any bye-law that may be framed. Merely because bye-laws have to be framed in conformity with the Act, it does not mean the same would






control or whittle down the powers exercisable under the statute. Even in the absence of any power for nomination under the Act, if the bye-laws themselves provide for nominations, there can be no question of nominations being traced to the Act even though made under the bye-laws. Unless the bye-laws themselves provide that nominations could be made as provided under any one of the provisions of the Act and the bye-law itself is traceable to the Act under which nomination is made, there is no question of reading the bye-laws as controlling provisions of the Act. In such an event when the bye-laws do not refer to any provisions of the Act but merely make a provision for nomination, the State Government can exercise the powers under Section 53-A of the Act independent of the bye-laws since the Act prevails over the bye-laws.

“17. The difficulty noticed in *Konkodi Padmanabha's* case, in our view, really does not arise for consideration. With great respect we must state that the Act controls bye-laws and not vice versa. Bye-laws are merely delegated legislation or subordinate legislation and can never override the Act. Whatever may be the number that may be fixed under the bye-laws, that number cannot circumscribe the number of nominations to be made in exercise of the powers under the Act. In that view of the matter, with respect, we disagree with



the view that the nominations by the Government under Section 53-A of the Act should be only to the extent of 1/3 of total number of Directors and such nomination is not in addition to the nominations provided under bye-law but excluding the nominations contained in bye-law, and further, the nominations could not be and should not have the effect of increasing the number of Board of Directors as fixed by the bye-laws. On the other hand, we have come to the conclusion that it is permissible for the Government to make nominations to the extent of 1/3 of Board of Directors and such nominations are in addition to the nominations provided in the bye-laws unless the bye-laws themselves are traceable to any provisions of the Act, namely Section 29 or Section 53-A of the Act. Further, the nominations could exceed the number of members on the Board of Directors fixed in the bye-laws."

13. The provisions of Sections 41 and 48 of 2002 Act correspond to Sections 32 and 41 of 1984 Act. Sec.41 deals with Board of Directors and Sub-Section (3) states that the Board shall consist of such number of Directors as may be specified by bye law and that the maximum number of Directors shall not exceed 21. Sec.48 provides for nominees of the State Government on Board. Byelaws of the Society though framed in pursuance of provisions of the Act, unlike Rules, cannot be held to be law or to



have force of law and they govern internal management, business or administration of a Society as held by the Supreme court in Co-operative Central Bank Ltd. vs. Additional I.T.A.P. (AIR 1970 SC 270). Nomination note Annexure-D has been made under Rule 31(2) of 1985 Rules pursuant to Section Sec.32 of 1984 Act providing for Constitution of Board of Directors as per bye-laws. However, nomination under impugned order is made in exercise of the powers vested under Sec.48 of the 2002 Act and in view of decision of Full Bench, the only finding that can be given is that power of nomination under Sec.48 is independent of nominations made under bye-law and contention of counsel for appellant-petitioner has to be accordingly rejected. Sec.48 does not contemplate that one of the members nominated should be a Senior Officer of Co-operative Department and in view of Full Bench decision of this Court which applies to the present case also, the decision of single Judge of Kerala High Court relied upon by petitioner is not helpful to him in the present case.

14. So also a person can invoke writ jurisdiction if there is violation or infringement of fundamental right or any right conferred by the Statute. In the instant case, the learned counsel has not been able to show what right has been infringed. More so the private disputes cannot be resolved in writ jurisdiction. The learned single Judge has not interfered as the petitioner-appellant



has not been able to show what prejudice has been caused by the nomination of respondents 3 and 4. The appellant has not been able to satisfy us also and being an elected member, he cannot be affected by nomination of other members.

15. On consideration and in view of the above discussions, we find no error or illegality in the detailed order of learned single Judge so as to call for interference in these appeals. Both the writ appeals are dismissed with no order as to costs.

Sd/-  
Chief Justice

Sd/-  
Judge

snb/kms