
(2008) 10 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 12372 of 2008

Bharathi Souhardha Credit Co-operative Ltd.	APPELLANT
Vs	
The State of Karnataka and Others	RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Karnataka Souhardha Sahakari Act, 1997 — Section 31 (2) (b), 38

Citation : AIR 2009 Kar 1532 : (2009) 2 KarLJ 593 : (2009) 1 KCCR 749

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Ashok S. Mensinakai, for the Appellant; Nagashree, HCGP for R1 and R3 and Mahesh R. Uppin, for R2 and R4, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Though the matter is listed for preliminary hearing by consent of the parties, the petition is taken up for final hearing.

2. It is noticed that notice issued to respondents-5 and 7 is not yet returned, but it is observed by this Court that they are not necessary parties to adjudicate the matter in controversy. Accordingly, notice to them is dispensed with.

3. The petitioner is a Co-operative Society registered under the provisions of the Karnataka Souhardha Sahakari Act, 1997 (for short hereinafter referred to as the "Act"). According to the petition averments, the petitioner-Society is conducting its business without there being any allegations of whatsoever nature either by its customers or by its members. The present petition is filed challenging the legality and correctness of the order passed by the 2nd respondent as per Annexure-F dated 15th September 2008, wherein, the petitioner-Society has been superseded and an Administrator has been appointed exercising his power u/s 38 appointing one T. Raghupathy Bhat as an Administrator for a period of six months.

4. According to the petitioner, a show cause notice was issued by the 2nd

respondent as per Annexure-C in the month of August 2008 calling upon the petitioner to show cause why the Society should not be superceded and an Administrator should not be appointed u/s 38 of the Act, for which the petitioner has sent a reply as per Annexure-D dated 1.9.2008. Thereafter, the 2nd respondent considering the cause shown by the petitioner has passed the impugned order on 15.9.2008 appointing one Sri. T.Raghupathy Bhat as an Administrator for a period of six months.

5. In the show cause notice, as per Annexure-C, the 2nd respondent has observed that on the complaint of the President of the petitioner-Society, one Smt. Harini Rao, a Chartered Accountant was appointed for the purpose of verification of the books of accounts and the functioning of the Society. In the report, the Chartered Accountant pointed out that though the Secretary was suspended on 20th July 2008, no alternate arrangement is made and a letter was addressed to the President of the Society on 31.7.2008 stating that the Society is not functioning in accordance with the provisions of law and the resolution book was not made available to her at the time of inspection, for which, it was informed to the Chartered Accountant by the President that the resolution book had been illegally taken by the Vice-President and the same is kept by him in his house and that a complaint has been lodged against the Vice-president on 23.3.2008 and it was reported by the Chartered Accountant that there is violation of Section 32(1)(h) & (i) of the Act and that no meeting of the society was convened after 9.2.2008 for over a period of six months and it is reported about the irregularities committed in not recovering installments from the loaners vide Pl. Nos. 289 and 321 and that the President has not explained and produced the accounts for having drawn the advance under the head "Sundry Advance" and that the "Sundry Advance" is drawn by the President for his personal use and that there was misapplication of the advance drawn by him and similarly several other violations were reported by the Chartered accountant. In the reply, the petitioner denied the allegations made against the society. Thereafter, the 2nd respondent considering the reply of the petitioner, superceded the society by appointing an Administrator as per Annexure-F.

6. The 2nd respondent has filed its detailed counter. According to the 2nd respondent, the writ petition filed by the petitioner is not maintainable, since the petition is represented by its President and not by the Chief Executive of the Co-operative Society in terms of Section 31(2)(b) of the Act and that the petition is also not maintainable, since the Chartered Accountant was directed to verify the records and submit the report based on the letter of the President. The letter of the President dated 2.7.2008 is produced by the 2nd respondent as per Annexure-R3. The report submitted by the Chartered Accountant is produced as Annexure-R4. It is also the case of the 2nd respondent that pursuant to the report of the Chartered Accountant, the petitioner-Society was called upon to convene the meeting on 18.8.2008. Even after giving such direction, no such meeting was convened and it is the case of the 2nd respondent that out of 11 directors, six directors have no objection for appointment of an Administrator by

superceding the Co-operative society. On these grounds, he requests the Court to dismiss the writ petition.

7. I have heard the learned Government Pleader appearing for the first and third respondent

8. Having heard the learned Counsel appearing for the parties, this Court has noticed that the writ petition is filed by the Society represented by its President Sri Kunjur Vyasa Rao.

9. Section 31(2)(b) of the Karnataka Souhardha Sahakari Act, 1997 reads as under:

The Chief Executive shall be the Chief Administrative Officer of the Co-operative and shall, subject to the general and superintendence of the Board, sign documents, enter into agreements and contracts, and institute and defend suits and other legal proceedings on behalf of Cooperative.

10. From the above provision of law, it is clear that all legal proceedings are to be initiated only by the Chief Executive of the Co-operative Society under the Act. During the course of arguments, it is fairly conceded by the petitioner's Counsel that there was no disability for the Chief Executive to institute legal proceedings. When there is a specific provision under the Act, the Chief Executive cannot delegate his power to the President to file the writ petition and when there is no disability of whatsoever nature for him to file the writ petition. Therefore, only on this short ground the petition filed by the petitioner is to be dismissed.

11. Be that as it may. Even if the Court considers the case of the petitioner on merits also this Court cannot interfere with the order passed by the 2nd respondent for the following reasons:

It is not in dispute that the President of the petitioner-Society as per Annexure-R3 has addressed a letter on 2.7.2008 stating that on account of difference of opinion between him and other Directors and also on account of non-co-operation of employees, the Society is unable to continue to function and for the time being, the work has been suspended and on account of the same, there are every possibility of delay in submitting the annual report to the 2nd respondent and there are chances for postponement of conducting the Annual General Meeting. From the reading of Annexure-R3, it is clear that the petitioner-Society, on account of internal dispute was unable to manage the affairs of the Society in accordance with the Act. When the President has addressed a letter to the 2nd respondent and based on the same, if the 2nd respondent has directed the Chartered Accountant to verify the records and submit a report in regard to the affairs of the Society and based on such direction, when the Chartered Accountant has submitted her report about the violations made by the petitioner-Society and when such report is not in dispute, this Court does not see any error committed by the 2nd respondent in appointing an Administrator. When the petitioner-President is unable to manage the affairs of the Society and if other

Directors and employees are not co-operating with him, in such circumstances, the 2nd respondent has taken a proper and just decision in superceding the petitioner-Society.

12. In the result, the writ petition is dismissed.