
(1994) 08 KAR CK 0018
In the Karnataka High Court
Case No : W.A. No. 807 of 1994

Bhatkal Urban Co-operative Bank Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Citation : (1994) ILR (Kar) 2525 : (1994) 4 KarLJ 303

Hon'ble Judges : M.F. Saldanha, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : S. Vijayshanker and Vigneshwara S. Shastri, for the Appellant; L.M. Pandurangaswamy, Government Advocate for R-1 and C.N. Kamath, for R-2, for the Respondent

Judgement

M.F. Saldanha, J.—Though this Appeal is directed against a seemingly innocuous order of remand, it has thrown up issues of some consequence which were vigorously agitated by learned Counsel on both sides and, therefore, require determination. The three appellants before us are Co-operative Banks, all of them relatively old ones, located at Bhatkal, Ankola and Honnavar respectively. The second respondent, to this Appeal, the Sirsi Urban Co-operative Bank Limited has its Head Quarters at Sirsi, also in the District of Uttara Kannada. The dispute centres around the fact that the second respondent - Bank obtained permission from the Reserve Bank of India to open its Branches in some urban and semi-urban areas in North Canara District. There is a reference in the pleadings that the Reserve Bank of India did not notify the other Banks who were already operational in those areas either about the application or about the grant of sanction but that aspect of the matter has not been agitated in these proceedings. The second respondent - Bank after passing the requisite Resolution, was required to obtain sanction under the Co-operative Societies' Act for amending its Byelaws with regard to the extension of its area of operations. For this purpose, an application was made to the Registrar, and the Joint Registrar under the powers delegated to him, approved the amendment in question. Normally, it would appear as though this was a routine matter but on a

closer scrutiny, it would indicate that the repercussions of this step were far reaching in so far as the second respondent - Bank would be entering into the area of Banking business in regions that were earlier being looked after almost exclusively by the three appellants - Co-operative Banks, which regions were out of bounds for the second respondent - Bank prior to the grant of the sanction. Put more simply, it meant that the second respondents were enlarging their area of operation which would now overlap the area of operation of the three appellants Co-operative Banks.

2. The present appellants before us carried the matter in revision contending that it was necessary that the Registrar, prior to granting sanction ought to have heard them, that they are prejudicially affected by the order and consequently that the sanction order be set aside with a direction that the aggrieved parties be heard and the matter be decided de novo on merits.

3. The revision application was heard by the Minister prior to which the Department intimated the various parties about the hearing on 10-1-1994. The second respondents did not file any appearance but sent a telegram requesting for an adjournment on the ground that the General Manager was not available. In the meanwhile, the date of hearing was altered to 11-1-1994 and the second respondents sent a second telegram requesting for time. This was not granted and the matter was disposed of with the observation that it appeared that the second respondents were not much interested in the matter. In any event, it is material to record that the only order that was passed was one of remand. The Minister relied on the law as laid down by this Court which basically proceeded on the basis of the Rules of Natural Justice that the affected parties ought to be heard and to this extent therefore, set aside the sanction order and remanded the matter to the Registrar for a fresh hearing.

4. The order of remand was challenged by the second respondents through Writ Petition No. 19740/1991. At this stage, the limited grievance projected before the Court by the second respondents was that the revisional authority namely the Minister had committed the same error which the Joint Registrar was accused of, namely that he had decided the matter without hearing the necessary parties. It was contended that the second respondents had asked for time which was wrongly denied and that therefore the revisional order must be set aside and that the revision application be restored to file with a direction that the parties be heard and an order be passed on merits. The learned Single Judge considered that this plea was both justified as also reasonable and allowed the Petition on this limited ground. It is against this order that the three Co-operative Banks who had succeeded at the revisional stage have preferred the present Appeal. In the meanwhile, however, the second respondents are alleged to have opened certain Branches and the further allegation is to the effect that this was done despite stay orders being passed by the Appellate Court and, therefore, the Contempt Proceedings have been taken out against them. A further plea was also made to this Court, that the Appeal be expeditiously heard and disposed of

as the appellants are being gravely prejudiced since the second respondents have started functioning in what they termed as "their respective areas of operation." This was why the Appeal was set down for immediate hearing and we have directed that the Contempt Petition shall await the outcome of this Appeal.

5. Mr. Vijaya Shankar, learned Senior Counsel appearing on behalf of the appellants advanced the submission that admittedly, the only point canvassed before the learned Single Judge was with regard to the non-hearing of the second respondents at the revisional stage despite their having sent two telegrams asking for time. He submitted that normally one could never find fault with the decision of the learned Single Judge that the second respondents ought to have been heard at that stage, His contention, however, was to the effect that this is an over simplification of the case because the remand ought to have been directed to the original authority namely the Joint Registrar. Learned Counsel submitted that no purpose whatsoever would be served by remanding the matter to the revisional authority because the power to sanction the amendment vests in the Registrar and admittedly, the appellants had not been heard when the original sanction order was passed. Reliance was sought to be placed on an earlier Decision of this Court in the case of KUNDAWADA SERVICE CO-OPERATIVE SOCIETY v. STATE OF KARNATAKA 1. 1981(1) KLJ 71, wherein the Division Bench categorically laid down that if a Society proposes to enter into an area of operation of another similar Society, that it was necessary to hear the former Society which is likely to be adversely affected as a result of this change before permitting the amendment to the Byelaws. As far as this proposition is concerned, the issue is almost beyond dispute but we do propose to elaborate on the reasoning that was set down on the earlier occasion.

6. At this stage, it would be convenient to deal with the submissions canvassed by M. Kamath on behalf of the second respondents who contended that it is neither a requirement of law nor an inflexible principle that can be culled out from the provisions of the Co-operative Societies Act, that for amendment of the Byelaws, any outsiders should be heard. In fact, Mr. Kamath sought to distinguish this Decision on the basis of the ratio in the case of Shri Nithyananda Electrical Co-operative Society Ltd. Vs. Joint Registrar of Co-operative Societies,

In that Decision, it was contended that permission to register another Society doing similar business within the area of operation of a pre-existing Society should not be granted as it would at this stage affect the earlier Society. The learned Single Judge negated this contention on the ground that a certain degree of competition is not only permissible but is necessary, however observing that the Registrar must carefully evaluate all relevant aspects, particularly the question of economic viability. Mr. Kamath submitted that the Reserve Bank of India is the Apex Body which supervises and controls all the Banking Institutions including the Co-operative Banks. The Reserve Bank of India was conscious of the fact that the appellants were old and established Co-operative Banks doing business in that area but having regard to the changed

circumstances, after evaluating the matter, the Reserve Bank of India had approved of the second respondents who are a larger financial institution opening Branches in different areas in Uttar Kannada. He submitted that the whole ground on which the appellants have raised a dispute proceeds on the footing that the area of operation of each of the appellants was a closely guarded/sacred territory in which area no other Bank should be allowed to do business. He contended that this is against all democratic norms and more importantly, that once the Competent Authority namely the Reserve Bank of India had granted permission after carefully evaluating the potentialities and the needs of those areas, that the sanction by the Registrar for amendment of the Byelaws was a mere consequential formality. He contended that even on merits, he would justify that there was a genuine need for a bigger Bank having regard to the growth of population and business and that there was enough scope for the appellants and the respondent No. 2 to co-exist.

7. Mr. Kamath also advanced a strong plea with regard to the principles of Natural Justice and relied on several Decisions which we shall deal with only in passing. He submitted that denial of a hearing to him before the Minister was unsustainable in law and placed reliance on the Decision of the Supreme Court in the case of Satyavir Singh and Others Vs. Union of India (UOI) and Others, The principles of Natural Justice have been very lucidly re-stated by the Supreme Court, particularly in paragraphs (25) and (28) about which there can be no dispute whatsoever, A reference was also made to the well known case of R. v. SECRETARY OF STATE FOR THE HOME DEPARTMENT, EXPARTE MUGHAL 4. 1973(3) All E.R. 797 wherein Lord Denning observed that-

"The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the "rules of natural justice" so as to avoid the consequences."

Mr Kamath submitted, that whereas he had every right to be heard because the sanction order in respect of the amendment of his own Byelaws has been set aside behind his back, that on the other hand, the appellants had no locus standi because they were in no way concerned with the expansion of the area of operation of the second respondents. Mr. Kamath therefore submitted that in the guise of the plea of Natural Justice the respondents were attempting to impose themselves on a case with which they had no concern. To this extent, he relied on the aforesaid Decision to point out that the plea of Natural Justice is sometimes required to be watered, down.

8. As far as this aspect of the matter is concerned, it is necessary for us to lay down that the situation in rural India in particular requires to be taken cognizance of insofar as several of the business needs of those regions are catered to by Co-operative units. Apart from rendering service, however, these units have also become power centres with various affiliations and have therefore become vulnerable to political control and serious infighting. Instances are many where the Courts have come across situation wherein due to unhealthy

infighting, such Co-operative units have been virtually destroyed. It is therefore very essential that the supervisory authorities exercise due and adequate control over all such situations. More importantly, the economic viability and the desirability of permitting either a new Society or an existing Society requires to be carefully, correctly and dispassionately assessed on the basis of reliable data. It is true that no area is to be treated as the personal fiefdom of any particular existing unit but the consequences of permitting others to enter the area require very careful evaluation, particularly in a situation where it may lead to cut throat competition or where it may result in virtual collapse or destruction of the existing Society. These aspects of the matter cannot be assessed by the Minister in a vacuum. Where the existing Societies have their area of operation defined, they certainly have a say in the matter of permitting the other competitors though they may not in given instances be able to enforce any such prohibition. Unless the pre-existing Societies are heard, the Registrar himself will not be able to assess the possible damage or destruction and to this extent, therefore, the appellants were justified in their plea that the Joint Registrar was in error in having sanctioned the amendment of the Byelaws without notice to them. To this extent again, the revisional authority was correct in holding that they must be given a hearing.

9. Mr. Kamath was vehement about the fact that it would be improper to remand the proceeding back to the Registrar because he submitted that the Minister was perfectly competent to hear the parties and decide on whether the amendment should be permitted or not. He maintained that if the matter is remanded to the authority in the first instance, that it would set in motion the whole chain of litigation and that his clients would be adversely affected.

10. We are unable to appreciate this contention or to uphold it, because the initial authority is the one who had erred in the first instance. It is at that point of time that the appellants are required to place on record their objections, factual or legal and not at the appellate or revisional stage. Once it is pointed out to the revisional authority that they were not heard, he would be obliged to remand the matter and it is for this reason that we refrain from upholding the view of the learned Single Judge that the case be remanded to the revisional authority. The correct procedure would be to remand the case to the Joint Registrar with a direction that the parties be given an opportunity to produce whatever material they desire to be relied on, that they be heard and that the matter be disposed of, having regard to the special circumstances within a period of four weeks" from the date of communication of this order. We have already indicated that as far as the Contempt Proceedings are concerned, that we refrain from making any observations while deciding the Appeal and that those proceedings will be heard independently.

11. The Appeal accordingly succeeds. The order of the learned Single Judge is set aside. The Joint Registrar is directed to dispose of the matter within the time limit prescribed in this Judgment in keeping with the direction issued by this

Court. As far as the Interim Order is concerned, having regard to the facts and circumstances of the case, it shall continue to operate until disposal of the case by the Joint Registrar who shall issue appropriate directions in the light of this Decision. In the circumstances of the case, there shall be no order as to costs.