(1997) 06 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No''s. 31251 to 31269 of 1996

Chikodi Large Size Multi-Purpose Co-operative Society Limited, Chikodi, District Belgaum and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 17-06-1997

Acts Referred:

Indian Trust Act, 1882 — Section 20
Karnataka Co-operative Societies Act, 1959 — Section 30 B, 57 (2), 58

Citation : (1997) ILR (Kar) 3163

Hon'ble Judges : L. Sreenivasa Reddy, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri K. Nagaraj, High Court Government Pleader and Sri B.S. Kamate, for the Respondent

Judgement

1. The petitioners are all Co-operative Societies registered under the provisions of the Karnataka Co-operative Societies Act, 1959, (for short ''the Act''). In these writ petitions they have challenged the circular dated 2-8-1996 at Annexure-A issued by the second respondent to credit the interest accruing on the reserve fund to the account of the reserve fund itself, thereby preventing them from withdrawing the accrued interest.

2. Respondents 1 and 2 have filed their counter inter alia contending that the impugned order at Annexure-A has been passed u/s 30-B of the Act and it is in the public interest. Respondent 3 has filed a separate statement of objections, denying the contentions in the writ petitions.

3. Sri Jayakumar S. Patil, learned Counsel appearing for the petitioners contended that, u/s 57(2) of the Act, the Co-operative Societies out of their net profits in any year once required to transfer an amount not being less than 25% of the profits to the reserve fund and accordingly the societies as per the directions issued by the Registrar of Co-operative Societies have been depositing such profits with the third respondent.

4. The grievance of the petitioners is that, the Registrar of Cooperative Societies has no power under the Act to issue the impugned circular at Annexure-A and even otherwise the said circular is not in conformity with Section 30-B of the Act and as much as it is not in public interest and it is no way helpful to the Co-operative Societies, in securing proper implementation in their developmental programmes. According to the learned Counsel, by the impugned circular at Annexure-A the petitioners-Societies have been deprived of their legitimate right to draw the interest accrued on their reserve fund and to utilise such interest for meeting their day-to-day expenses and other developmental activities. The next contention of Sri Jayakumar S. Patil is that, before passing the impugned order at Annexure-A the petitioners ought to have been heard in order to ascertain their financial conditions and to find out whether the interest accrued on the reserve fund was required by them for running their day-to-day administration or to meet other expenses. He further contended that, even according to Rule 23 of the Co-operative Societies Rules, 1960 there is no prohibition to draw the interest accrued on the reserve fund.

5. On the other hand, Sri Nagaraja, learned High Court Government Pleader contended that the impugned order at Annexure-A has been made in public interest and the members of the Co-operative Socieites. In order to appreciate these rival contentions, it is useful to extract Sections 57(2) and 58 of the Act and Rule 23 of the Co-operative Societies Rules read thus:

"Section 57(2).--A Co-operative Society shall, out of its net profits in any year transfer an amount not being less than twenty-five per cent of the profits to the reserve fund.

Section 58: Investment of funds.--A co-operative society may invest or deposit its funds,

(a) in a Government Savings Bank; or

(b) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882 (Central Act II of 1882); or

(c) in the shares or securities of any other Co-operative Society; or

(d) with any Co-operative Bank or Scheduled Bank approved by the Registrar.

Rule 23. Object and investment of reserve fund.--(1) A reserve fund maintained by Co-operative Society is intended to meet unforeseen losses. It shall be indivisible and no member shall have any claim to share in it.

(2) A Co-operative Society shall not invest or deposit its reserve fund except in one or more of the modes mentioned in clauses (1) to (d) of Section 58 of the Act:

Provided that the Registrar may, by general or special order, permit any Co-operative Society or any class of Co-operative Socieities to invest the reserve fund or a portion thereof in its own business, or in the construction or purchase of building or lands required for carrying on the object of the Society.

(3) No Co-operative Society whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such fund except with the sanction of the Registrar previously obtained in writing."

It is clear from Section 58 of the Act that every Co-operative Society has to maintain the reserve fund to the extent mentioned in Section 57(2) of the Act subject to proviso to the said section.

6. It is not in dispute that the petitioners Co-operative Societies have been depositing 25% of their profits earned in any year with the third respondent-Bank, pursuant to the directions issued by the Registrar of Co-operative Societies. Section 30-B of the Act no doubt, empowers the State Government (the said power has now been delegated to the Registrar of Co-operative Societies) to give direction to the Co-operative Societies in public interest. Sri Nagaraj, learned High Court Government Pleader was unable to point out any valid reason for imposition of ban on withdrawal of interest accrued on the reserve fund. It is not in dispute that the petitioners-Societies were not heard before passing the impugned order at Annexure-A u/s 30-B of the Act. In my view, the principles of natural justice require that, they should have been heard before passing the impugned order at Annexure-A with a view to ascertain their financial position and the amount required to meet their day-to-day establishment expenses and developmental activities. In the absence of any prohibition under Sections 57 and 58 of the Act to withdraw the interest on the reserve fund, the Registrar of Co-operative Societies was not right in issuing the impugned notification at Annexure-A. Therefore, in my considered view the same cannot be sustained insofar as these petitions are concerned.

In the result, the writ petitions are allowed and the impugned order at Annexure-A is quashed insofar as it relates to these petitioners-Societies are concerned. However, liberty is given to the first and second respondents to pass appropriate orders u/s 30-B of the Act after providing an opportunity of being heard to these petitioners regarding their financial position, amount required for their expenditure towards running the administration and other developmental activities.

