(1990) 02 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 21813 of 1989

Dharwar Co-operative Milk Producers Societies Union Ltd. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 226, 32

Citation : (1990) ILR (Kar) 1816

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : K.R.D. Karanth and A. Mahabaleshwara Bhat, for the Appellant;

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—The petitioner is the Dharwar Co-operative Milk Producers Societies Union Ltd. represented by its Managing Director. It is aggrieved by the activities of the 5th respondent/Sri Krishna Milk Private Ltd. which is alleged to be carrying on the activities similar to the activities carried on by the petitioner under a letter of understanding reached between the National Dairy Development Board, Union of India and the State Government. In the circumstances, the following reliefs are sought in the Writ Petition:

(a) Call for the records from the 2nd respondent pertaining to the issue of Provisional Registration Certificate bearing No. 0012-00254;

(b) Issue a Writ in the nature of Certiorari or such other appropriate Writ, direction or order quashing the Provisional Registration Certificate, bearing No. 001200254 issued by the Assistant Director, District Industries Centre, Sirsi Sub-Division, Sirsi;

(c) Issue a Writ in the nature of Mandamus restraining Respondents 1 to 3 or their subordinates from issuing permanent registration certificate as a Small Scale Industry or a licence to manufacture milk foods to the 5th respondent; and

(d) Issue a Writ in the nature of Mandamus directing Respondents 1 to 3 to take action to prevent the 5th respondent from collecting raw milk from milk producers and carrying on the manufacture of milk foods in the district of Uttar Kannada.

In support of the reliefs, Mr. Dayanand Karanth, learned Counsel for the petitioner, has asserted that under the Letter of Understanding at Annexure B the Government of Karnataka was desirous of implementing the Operation Flood-III Project and as such became a signatory to the Letter of Understanding and held out promises which are found at paragraphs 3.5, 3.6, 3.7 and 3.8 of the Letter of Understanding. The Court''s attention was specially drawn to paragraph 3.8 which reads as follows:

"The State Government shall take action not to promote or permit any activity/ organization in the Project Area which will be detrimental to, or inconsistent with, the objectives of Operation Flood III programmes in the Project Area."

Based on the contents of the Letter of Understanding it is contended by the learned Counsel for the petitioner that huge amounts are expended by the Society In order to achieve the object for which it has been incorporated and the Societies in defined areas are set up. It is only on account of the promises held out by the State In terms of the Letter of Understanding, all the amounts were expended and the petitioner is under compulsion to honour its commitments and extending the doctrine of promissory estoppel this Court must give the relief to the petitioner and prevent the State Government from allowing the 5th respondent to operate in the same area as a rival to the activities of the petitioner. The thrust of the argument is as follows:

In the defined areas assigned to the petitioner the villages who produce milk are required to supply milk exclusively to the Member-Society who in turn supply to the petitioner and it in turn will produce milk products such as pasteurised milk, frozen milk, ice cream, milk powder, etc. The 5th respondent is offering higher price for the milk produced more or less in the same area in Uttar Kannada District, Yellapur Taluk, thereby making it impossible for the Societies affiliated to the petitioner to purchase milk from the milk-producers at the rates paid by the 5th respondent and thereby flow of milk into the manufacturing units of the petitioner has been affected.

2. In other words, what is sought to be established is a right the origin of which is not founded in any law or legislation passed by the legislature, but upon the Letter of Understanding reached without the knowledge of the milk producers in the area.

3. The doctrine of promissory estoppel is a judicial doctrine to be applied between a promisor and a promisee, if the promisee is placed at a disadvantage on account of the promise made by the promisor. The Court in such a case where it is demonstrated or it is demonstrable gives relief and holds responsible the State Government and compel it to perform the promise. But, where application

of the doctrine amounts to infringement of the Constitutional rights of others like the 5th respondent, a private limited company, which does more or less the same activity as of the petitioner the doctrine has no application. The milk producers want to sell their produce to the 5th respondent in order to fetch higher price and the petitioner wants to make a mockery of the situation on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution. The Letter of Understanding between any party by whatever name it may go shall not have the effect of denying the constitutional right guaranteed under the provisions of the Constitution. It cannot whittle down the rights when the understanding was reached behind the back of the citizens and without their knowledge or consent. Such a proposition cannot be recognised by the Court. Therefore, on the facts of this case, the petitioner cannot have any foundation to the relief claimed on this doctrine.

4. All that is done is that the milk producers in the village want to sell their milk at higher price and it is their right to do business and, if that is interfered with, it amounts to denying social and economic justice to them and even on that ground this Court cannot grant the relief which the petitioner seeks.

5. It was next contended that the 5th respondent is carrying on an industry which is a schedule industry under the Industrial Development Regulation Act, 1957. Therefore, the State Government is bound to prevent the 5th respondent from carrying on the business without licence.

6. This argument cannot be accepted for two reasons; firstly, the aforementioned Act regulating the setting up of industries has itself made provisions for consequences of carrying on an Industry without obtaining a licence. That consequence may be prosecution or imposition of penalty. If that is what the law provides, then 3rd party cannot take advantage of the Act and plead for its right which is not found in the Act. Yet another reason is, in more than one case particularly in the case of the The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, and in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, the Supreme Court had occasion to examine identical complaint of the trade being carried on by a rival in the business without obtaining licence from the appropriate authority. In the first case mentioned above, the rice mill was run without a licence and another rice mill owner affected thereby made a grievance of it. In that situation the Supreme Court ruled that rival trader cannot have locus standi to prosecute a petition under Article 226 of the Constitution restraining another trader who is in the same occupation or trade and as he is not serving any public interest by bringing to notice a case of breach of law but only promoting his commercial interest, the Court may not grant any relief. In the other case a rival cinema theatre owner complained against another cinema theatre owner running cinema house without obtaining licence from the District Magistrate. In the latter mentioned case a large number of cases have been reviewed on the question of locus standi.

7. The petitioner under Article 226 or Article 32 of the Constitution cannot extend

his locus standi and deny the rights of a rival trader. However, Mr. Karanth contended that since the said decisions were rendered long ago, progress has been made in the field of locus standi and therefore this Court may ignore the same in the light of the later decisions. The enlargement of locus standi in the field of public interest litigation is undoubtedly something which this Court should take note of. However, social, economic and political justice cannot be denied to a large sections of public on the technicality of locus standi. But when a private interest is sought to be promoted, the doctrine of locus standi has still relevance notwithstanding the later decisions. Nobody should be permitted to prosecute a private industry in the guise of promoting public interest.

8. Mr. Karanth specially drew the attention of this Court to the fact that as evidenced by the Letter of Understanding at Annexure 8, what was sought to be protected was the public interest in the area of the milk producers and the co-operative field.

9. Nobody is prevented by the 5th respondent to supply milk to the Societies of the petitioner in order to defeat the laudable objects of the petitioner/Society. The question is whether the milk producers can be compelled to do so. In that behalf, Article 39 is pressed into service by the petitioner. Article 39(b) of the Constitution provides that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. That Article is found in Part IV of the Constitution the contents of which are not enforceable in a Court of Law, though the Court may derive assistance to interpret other provisions of the Constitution in the light of the directives given under the Constitution.

10. This is self-defeating argument; because the petitioner wants the material resources to be entirely at its disposal. In other words, the petitioner does not want the material resources of the area to be distributed to anyone else. That becomes impermissible under Article 19 of the Constitution to which I have already referred unless the Parliament creates a monopoly in terms of Clause (6) of Article 19 of the Constitution creating a monopoly In favour of itself. By any other dubious means it cannot create monopoly in favour of third party. That is, favouring one in preference to favouring all. That way it is entirely against Article 14 as well.

11. The assistance sought by the learned Counsel for the petitioner on the basis of the contents of Clause (b) of Article 39 must be understood in the light of the other provisions in the Constitution.

12. In the light of the above discussion and reasons and in the absence of any legal right of the petitioner to obtain the reliefs prayed for, this petition is dismissed as misconceived.

