
(2002) 03 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 734 of 2002

Godavari Khore Sahakari Dudh Utpadak Sangh Ltd. and
Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Citation : (2002) 3 ALLMR 875 : (2002) 6 BomCR 221

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : R.B. Raghuwanshi and V.H. Dighe, for the Appellant; V.B. Ghatge, A.G.P. for Respondent Nos. 1 to 3, P.M. Shah and V.D. Hon.C., for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—Heard.

2. Rule.

3. By consent, Rule made returnable forthwith.

4. The petitioner is a federal society. The petitioner claims that entire Kopergaon taluka is its area of operation. Several milk societies operating in Kopergaon taluka are the members of the petitioner society.

5. The petitioner alleges that as per the policy of the Government only one federal milk collecting society can be registered in one taluka and therefore, no other society can be registered in Kopergaon taluka.

The petitioner further alleges that for political reasons, certain politicians want to register other federal milk collecting societies in the area of operation of the petitioner society. Accordingly, three applications were made to the District Deputy Registrar (for short, D.D.R.) for establishment of federal milk collecting societies, one of which was made by women members and the said application was granted by the D.D.R. The said order of the D.D.R. was immediately

challenged by the petitioner society by filing Writ Petition No. 3469/2001 before this Court, in which, stay to the opening of bank account is granted by this Court. The petitioner alleges that being unsuccessful in getting permission to open bank account because of the stay granted by this Court, another application made by respondent No. 4 herein was considered by the D.D.R., again for political reasons and permission to open a bank account and to start collecting milk was granted. This order of D.D.R. dated 25-1-2002 is challenged in the present petition.

6. Shri P.M. Shah, learned Senior Advocate appearing for the respondent No. 4 drew my attention to the fact that the order dated 25-1-2002 was challenged earlier by filing Writ Petition No. 589/2002 before, this Court. In the said petition, the respondent appeared and pointed out that the impugned order, which was purportedly passed u/s 4 of the Maharashtra Co-operative Societies Act, 1960 (for short, M.C.S. Act), was appealable u/s 152(1)(b) of M.C.S. Act and therefore, the writ was not maintainable. Faced with the above formidable objection, the petitioner sought leave of the Court to withdraw the said petition with liberty to file an appeal before the Jt. Registrar. This Court protected the petitioner by granting 15 days time so as to enable the petitioner to file an appeal and the Writ Petition No. 589/2002 was, thus, allowed to be withdrawn on 11-2-2002.

7. The very order which was the subject-matter of challenge before this Court in Writ Petition No. 589/2002 is challenged by filing the present petition. In my opinion, this is nothing but forum hunting. The petitioner being unsuccessful in persuading this Court in admitting the petition sought to withdraw it and has filed this second petition before another Judge of this Court. This practice deserves to be strongly deprecated. The petition deserves to be dismissed on this ground alone.

8. Even otherwise, I find that the impugned order is appealable u/s 152 of the MC.S. Act and appeal has been filed by the petitioner bearing Appeal No. 3/2002, in which, stay has been granted till final disposal and the appeal has been posted for final hearing on 8-3-2002. The petitioner having availed of the alternative remedy, which is efficacious, cannot simultaneously file a writ.

9. The petitioner contends that the order dated 25-1-2002 is without jurisdiction and null & void and therefore, a writ is maintainable. There is a distinction between an order which is erroneous and an order which is without jurisdiction. Every Tribunal or authority which has powers to decide can, while deciding the matter, commit an error. It is for this reason it is said that every Court or Tribunal has an inherent likelihood to err. An erroneous order, unless set aside in appeal, also binds the parties. If an order is passed by an authority which has no authority or jurisdiction to decide the issue, such an order will be called as order without jurisdiction. In present case, admittedly the D.D.R. had a power u/s 4 of M.C.S. Act to pass an order and whether, the D.D.R. ought to or ought not to have granted permission to open a bank account is a question of merits and not

an issue of lack of jurisdiction. In the circumstances, contention of the petitioner that the order dated 25-1-2002 is without jurisdiction is rejected.

10. For the reasons mentioned above, the petition is rejected. Rule discharged. No order as to costs.