

(1988) 10 KAR CK 0015
In the Karnataka High Court
Case No : W.P. No. 17518/1986

Katappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-10-1988

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 7

Citation : (1989) 1 KarLJ 127

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The essential facts of the case are these:

Petitioners-1 to 7 are the Directors of the Milk Producers Co-operative Society Ltd., Siddenahally, Hoskote Taluk, Bangalore District, and petitioner-8 is the President of the said society. The petitioners have joined together with a common grievance and filed a single writ petition aggrieved by the order passed by respondent-3 on 13-8-1986 granting registration under Section 7 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act") to respondent-4 society. The petitioner society was carrying on the activities of procuring and supplying of milk within its jurisdiction and that there were no complaints against the society. The society had been carrying on the business for more than 12 years. According to the petitioners, the financial position of the society was quite sound and the society was capable of expanding its activities. It is alleged by the petitioners that on account of political animosity certain political elements were out to destroy the society by prevailing upon respondent-3 for initiation of proceedings for liquidation of the society. By order dated 17-2-1986, the Deputy Registrar of Co-operative Societies, Bangalore District, Bangalore, ordered for the liquidation of the Society and also directed the cancellation of the registration of the society after completion of the liquidation proceedings. According to the petitioners, the said order was passed without notice and without any enquiry. Thereafter, the petitioners preferred an appeal under Section 106 of the Act before the Joint Registrar of Co-operative Societies, Bangalore, in Appeal No. 20/85-86. On 22-8-1986, the Joint Registrar

of Co-operative Societies set aside the order of the Deputy Registrar of Co-operative Societies and remanded the matter to respondent-3 to hold fresh enquiry. It is at that stage when the matter was pending, an application was made under Section 7 of the Act by respondent-4 to respondent-3 for registration of the very same society in their name. According to the petitioners, respondent-3, without making any verification and without determining the facts whether the petitioner society was liquidated granted the registration in favour of respondent-4 in the place of the existing society. A Certificate of Registration to that effect was also issued on 13-8-1986, the correctness of which is challenged in this writ petition.

2. The short point for consideration is whether the impugned order dated 13-8-1986 issuing a Certificate of Registration is contrary to law.

3. It is necessary to refer to the impugned Certificate of Registration dated 13-8-1986 which reads thus:

"The Assistant Registrar of Co-operative Societies, Doddaballapur Sub-Division, Doddaballapur, hereby notifies that Doddamaralagere Halu Uthpadakara Shekara Sangha Niyamitha, Hoskote Taluk has been registered under Section 7 of Karnataka Co-operative Societies Act 1959."

4. The order does not disclose that the registration has been granted in the place of the petitioner society. All that the impugned order says is that Doddamaralagere Halu Uthpadakara Sahakara Sangha Niyamitha, Hoskote Taluk, has been registered under Section 7 of the Act. What the petitioners are contending is that respondent-3 should have held an enquiry before granting Registration Certificate to a fresh society when the existing society is functioning already in the very same place and that there is a duty cast on the authority to hold an enquiry before granting fresh registration certificate in one and the same locality in order to avoid unnecessary competition.

5. The argument does not commend itself because there is no statutory prohibition to grant registration in favour of a Milk Producing Co-operative Society in any area or place or locality on the ground that there is in existence an effectively functioning Co-operative Society of a similar nature. No such statutory prohibition has been brought to my notice under the Act. In the absence of any such statutory bar, it is difficult to accept the argument that the registration cannot be granted for more than one Co-operative Society in any specified area or locality or place because such a narrow view would militate against the consumers' interest or, in other words, public interest. Avoidance of competition is not a valid ground to hold the impugned Certificate of Registration as void. On the other hand, it would be reasonable and necessary to permit free and fair competition particularly in business and in the supply of consumers' goods and more so in respect of supply of milk needed by one and all in general. In order to grant such a registration, I do not think it is necessary for the authority to hear the petitioners. All that could be said is that if ultimately the petitioners are able

to establish that their society does not deserve to be liquidated and succeed in doing so, the petitioners could also continue to operate and cater to the needs of the public. In short, it is my opinion that the right that is in question is not the exclusive right of the petitioners, but it is a right enjoyed in common and there could be no monopoly of such a right by a Cooperative Society and this applies with equal force to the petitioner society. The competition cannot be described as either unhealthy or unnecessary. I may also observe that the question of liquidation of the petitioner society constitutes a separate issue and it has to be decided on its own merits and that issue cannot be mixed up with the question of grant of registration to another society though in the same place when an application is made under Section 7 of the Act. For grant of such a registration, the only restriction that could be applied is the restriction placed by the requirements of Section 7 of the Act itself. It is not the case of the petitioners that the certificate granted under Section 7 of the Act under the impugned order is in violation of any of the conditions, which are conditions of eligibility, for grant of registration under Section 7 of the Act. When the registration has been granted under Section 7 of the Act, it has to be presumed that the granting authority has satisfied itself with regard to the statutory requirements envisaged under Section 7 of the Act and that the proposed society satisfies the requirements of sound business and also has reasonable chances of success.

6. It would be of relevance to quote a passage from the Law of Torts by Ratanlal and Dhirajlal, 20th Edition, page-7:

"In India the same principles have been followed. The Privy Council has observed that 'there may be, where a right is interfered with, *injuria sine damno* sufficient to found an action: but no action can be maintained where there is neither *damnum* nor *injuria*.'"

(*Kali Kissen Tagore v. Jodoo Lal Mullick*, (1879) 5 C.L.R. 97, 101).

"In cases of *damnum sine injuria*, i.e. actual and substantial loss without infringement of any legal right, no action lies. Mere loss in money or money's worth does not of itself constitute legal damage. The most terrible harm may be inflicted by one man on another without legal redress being obtainable. There are many acts which, though harmful, are not wrongful and give no right of action. *Damnum* may be *absque injuria*. Thus, if I have a mill, and my neighbour sets up another mill, and thereby the profits of my mill fall off, I cannot bring an action against him; and yet I have suffered damage. But if a miller hinders the water from running to my mill, or causes any other like nuisance, I shall have such action as the law gives.'"

(Per Hankford, J., in *Gloucester Grammar School*, (1410) Y.B. 11 Hen. IV, fo. 47 pl. 21, 22).

7. I do not see any illegality in the order which is assailed in this writ petition. This writ petition is devoid of merits and hence dismissed.

8. In the circumstances of the case, there shall be no order as to costs.

Writ petition is dismissed.