
(1979) 12 KAR CK 0006
In the Karnataka High Court
Case No : WP 3226/78

Mahila Seva Samaj and Another

APPELLANT

Vs

Regr of Societies and Others

RESPONDENT

Date of Decision : 11-12-1979

Acts Referred:

Karnataka Societies Registration Act, 1960 — Section 25(2)

Citation : (1980) 1 KarLJ 327

Hon'ble Judges : Puttaswamy, J

Judgement

1. In this petition under Article 226 of the Constitution, the petitioners have challenged the order No. SOR 1749/57-58 dated 5-12-1977 (Exh.-C) of the Registrar of Societies in Karnataka, Bangalore (hereinafter referred to as the Registrar).

2. A society called "the Mahila Seva Samaja, Davangere" (hereinafter referred to as "the society") registered and functioning under the provisions of the Karnataka Societies Registration Act of 1960 (Kar. Act No. 17 of 1960) (hereinafter referred to as "the Act") is the 1st petitioner and the 2nd petitioner claims to be its elected president for the relevant period.

3. On 5-12-1977 respondents 2 to 5, who are members of the society, presented an application before the Registrar purporting to be under S. 25 of the Act, alleging various irregularities in its functioning and requesting him to order an enquiry into its affairs. On the said application itself the Registrar made an order as hereunder:

"I//P-Presented by the counsel along with the three petitioners. It appears these petitioners had also complained, earlier for whose petitions I had called for earlier. Please issue an order appointing H.Q.A. to the District Chitradurga as E.O. under S. 25 of the S.R. Act and to report within one month on the allegations made.

Sd/-

5-12-1977."

In pursuance of the above order, an order bearing No. SOR 1749/57-58 dated 5-12-1977 (Exh.-C) has been issued by the Registrar, under sub-sec. (1) of S. 25 of the Act to hold an enquiry into the affairs of the society by respondent No. 2. On 10-3-1978 this Court while issuing rule nisi, has stayed the operation of the said order with the result, respondent No. 2 has not held an enquiry into the affairs of the society.

4. Respondents 1 and 2 have entered appearance through Sri Annadanaya Puranik, learned I Additional Government Advocate and have produced the records.

5. Respondents 3 to 5, have filed a joint return supporting the action of respondent No. 1. They have alleged that on 19-9-1977, ten members of the Executive Committee, of the society, that being the majority of its governing body had approached the Registrar to order an enquiry under S. 25(1) of the Act and the impugned order is referable to that application and is, therefore sustainable.

6. Sri K. Subba Rao, learned counsel for the petitioners contended that the order made by the Registrar on the application made by respondents 3 to 5 on 5-12-1977 was impermissible and illegal, Elaborating his contention, Sri Subba Rao, maintained that an enquiry under S. 25(1) of the Act can be ordered by the Registrar suo motu or on an application made by the majority of the members of the governing body or by not less than 1/3 of the members of the society and cannot be made at the instance of only a few members of a society.

7. In the papers produced before Court, the application stated to have been filed by the ten members of the Executive Committee on 19-9-1977 is not available. But, there is an application presented by ten persons on 29-9-1977, who claim to be the majority members of the governing body of the society. On that application, the Registrar does not appear to have taken any action at all. The order made by the Registrar is on the application made to him by respondents 3 to 5 on 5-12-1977 and is not referable to any other application, report or any other information available with him. Secondly, the Registrar has not even examined the application made by the ten members and has not satisfied himself whether they constituted the majority of the governing body of the society.

8. Sub-sec. (1) of S. 25 of the Act that is material for deciding the controversy reads thus:

"The Registrar may on his own motion and shall on the application of the majority of the members of the governing body or of not less than one third of the members of the society, hold an enquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an enquiry into the constitution working . and financial condition of a registered society."

Sub-sec. (1) of S. 25 of the Act, authorises the Registrar to direct an enquiry on his own motion or suo motu when an application is made to him by the majority of the members of the governing body of a society or by not less than 1/3rd of the members of a society. Whether a suo motu enquiry should be ordered or not, is a matter exclusively for the Registrar to decide. In such case, the Registrar has the discretion and power to order an enquiry or not to order an enquiry. For making such an order, it is open to the Registrar to rely on any information, reports available or collected by him or furnished to him by any other person. When an application is made by the majority of members of the governing body of a society or by not less than 1/3rd of the members of the society and if the Registrar is satisfied with either of those requirements, he has no discretion in the matter and is under a compulsive duty to order an enquiry into the affairs of a society. But, before ordering an enquiry in the latter cases, he must be satisfied that the majority of the members of the governing body or not less than 1/3rd of the members have made an application before him.

9. Earlier I have found that the Registrar has made his order only on the application made by the three members of the society and not on the application, if any, made by the majority of the members of the governing body. It is not the case of the respondents that the said three members constitute not less than 1/3rd of the members of the society. By no stretch of imagination, it is possible to hold that the Registrar has ordered an enquiry suo motu or on his own motion. In these circumstances, the impugned order made by the Registrar is wholly without jurisdiction, manifestly illegal and is liable to be quashed. I, therefore, quash the impugned order of the Registrar. But, this order does not prevent the Registrar from ordering an enquiry into the affairs of the society on his own motion or on an application if any, already made or to be made by the majority of the members of the governing body or by not less than 1/3rd of the members of the said society in accordance with law and in the light of the observations made in this order.

10. Rule issued is made absolute.

11. In the circumstances of the case, I direct the parties to bear their own costs.