

(1988) 01 KAR CK 0008
In the Karnataka High Court

M.P. Ananthadevarraj Urs

APPELLANT

Vs

Bangalore Turrf Club Lit and Another

RESPONDENT

Date of Decision : 08-01-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mysore Race Course Licensing Act, 1952 — Section 13 (9) (a), 13 (9) (b), 4, 8

Citation : (1988) 64 CompCas 692 : (1988) ILR (Kar) 3023

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, for the Appellant; N. Santhosh Hegde and Naganand, for the Respondent

Judgement

K.A. Seami, J.—In this petition under article 226 of the Constitution, the petitioner has sought for the following reliefs:

"The petitioner, therefore, prays that this Honable Court be pleased is issue a writ of mandamus or any other appropriate writ, direction or order:

(a) declaring the Order No. FD 5- CRC 86, BANGALORE, dated November 25, 1986 (annexure M), passed by the first respondent as illegal, unconstitutional and ultra vires the provisions of section 4 of the MYSORE Race Course Licensing Act, 1952;

(b) directing the first respondent not to enforce the conditions stipulated in order dated November 25, 1986;

(c) declaring that the provisions of section 8 of the Mysore Race Course Licensing Act, 1952, are void, unconstitutional and violative of article 14 of the Constitution; and

(d) grant any other reliefs that this hon"ble Court any deem fit in the circumstances of the case including an order ass to costs in the interests of justice and equity." Annexure - M, ass it stood at the time of filing of the writ

petition, was as follows:

"ORDER

In exercise of the powers conferred by section 4 of the Mysore Race Course Licensing Act, 1952 (Karnataka Act 8 of 1952), the Government Of Karnataka are placed to stipulate the following additional condition to the licenses granted to the Bangalore Turf Club in Form II and III under the Mysore Race Course Licensing Rules, 1952, namely:

"The license shall obtain prior approval of the Government for the appointment or removal of the Racing Consultant - cum - senior Stipendiary Steward - cum - Adviser, Kungul Stud Farm / cum - Chief Executive Officer and Secretary, Bangalore Races."

2. The order, annexure M, had been subsequently modified by the order bearing No. FD 216 CRC 87, dated August 18, 1987, The modified order reads thus:

"The licensee shall obtain prior approval of the Government for the appointment or removal of the Racing Consultant - cum - Senior Stipendiary - cum Adviser, Kungul Study Farm and Secretary, Bangalore Races."

3. Consequently, the following words "cum - Chief Executive Officer" are deleted from the order. As a result thereof, the main grievance of the petitioner as to the appointment of Shri M. Arsshad Ali Khan as Chief Executive Officer does not survive.

4. Several contentions are raised in the petition and are also urged at the time of arguments. However, in view of the preliminary objection raised by the learned Advocate - General; , it appears that it is not necessary to refer to the various intentions urged on behalf of the petitioner.

5. The preliminary objection raised on behalf of the State by the learned Advocate - General is that the petitioner is a member of the club known as "Bangalore Turf Club Ltd.". The club is a company registered under Companies Act though it is not having any share capital.

6. The contention of the learned Advocate - General is that the impugned order, at the most, can affect the managerial right of the club about which when the club itself is not aggrieved, it cannot be held to affect the right of the petitioner as member of the club nor can it be held to affect his personal interest involved in the club.

7. Shri R. N. Narasimhamurthy, learned senior counsel appearing for the petitioner, submits that the petitioner, being a member of the club, is also entitled to elect the managing committee of the club and as such he is also entitled to see that the powers of the club are not affected in any manner; that even if the club does not come forward to challenge the same, as a member of the club, he is entitled to see that the managerial powers of the club are not affected.

8. The matter does not appear to be *res integra*. The learned Advocate - General has placed reliance in support of his intention on a decision of the Supreme Court in *Daman Singh v. State of Punjab* AIR 1985 SSC 973. In *Daman Singh's* case, a member of a co - operative society challenged the amalgamation of the Co - operative society. While considering the same, the Supreme Court observed thus (at page 979):

"The next submission of learned counsel was that section 13(8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned co - operative societies and were, therefore, violative of the principles of natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, members of one society would be forced against their will and without being heard to associate themselves with members of another society. We have to hesitation in rejecting this submission also. Once a person becomes a member of a co - operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the Statute and the bye - laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorizes compulsory amalgamation of co - operative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why section 13 (9) (a) provides for the issue of notice to the society and not to individual members. Section 13 (9) (b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a co - operative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to further elaborate on the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by section 31 (11), the option to walk out, as it were, by withdrawing his share, deposits or loans as the case may be." (emphasis * supplied)

9. That being the position, a member of the club loses his individuality qua the club and has no independent rights except those given to him by the statutes and bye - laws of the club and he must speak through the club only.

10. Since the petitioner has no locus stand to maintain this petition, the other contentions raised in the writ petition need not be gone into and the same are left open.

11. For the reasons stated above, the preliminary objection raised on behalf of the State is upheld and the writ petition is dismissed.