(1979) 02 KAR CK 0002

In the Karnataka High Court

Case No : WP. 871/75

Mysore Co-op. Bank Ltd. APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 22-02-1979

Acts Referred:

Karnataka Co-operative Societies Rules, 1960 — Rule 23(2)

Citation : (1979) 1 KarLJ 414

Hon'ble Judges : Puttaswamy, J

Judgement

In this writ petition, the petitioner has challenged the order dated 21-10-1974 of the Government (Ex. ''B'') confirming the order No. RSR.PR. 2239/72-73 dated 7-11-1973 of the Joint Registrar of Co-operative Societies, Mysore (Ex. ''A'') in so far as the said order was challenged before it.

Admittedly the petitioner is a co-operative Society registered and functioning under the Karnataka Co-operative Societies Act 1959 (hereinafter referred to as the Act) and the rules framed thereunder. On 25-4-1971 the Society decided to invest a sum of Rs. 52,000 available in its reserve fund in the construction of a building. On the basis of the said resolution the Society, sometime in January 1973 approached respondent-2 to accord his permission to invest the reserve fund of Rs. 52,000 in the construction of a building. On a consideration of the application made by the petitioner, the Joint Registrar being satisfied of the request made by the Society, by his order dated 7-11-1973 (Ex. ''A'') has accorded his permission to invest the reserve fund of Rs. 52,000 in the construction of a building, subject to certain conditions. The petitioner is dissatisfied only with condition No. 1 which reads thus:

"The bank should appropriate at least 10% of its net profits during the succeeding years until a sum of Rs. 52,000 is added on to the Reserve Fund during the next 10 years apart from the appropriation at 25% or until the amount of Rs. 52,000 is appropriated towards the Reserve Fund whichever is earlier."

Against the imposition of this condition, the petitioner moved the Government in a revision petition under S. 108 of the 1959 Act, which, by its order dated 21-10-1974 (Ex. ''B'') has dismissed the same and has refused to delete the conditions sought for by the petitioner.

Sri B. Thilaka Hegde, learned Counsel for the petitioner strenuously contended that the Joint Registrar while according his permission under the proviso to sub-rule (2) of R. 23 of the Karnataka Co-operative Societies Rules 1960 had no jurisdiction and power to impose condition No. 1.

Elaborating his contention Sri Thilaka Hegde maintained that the reserve fund can only be invested or diverted for the construction or purchase of building or lands which itself will be a permanent asset and which also cannot be encumbered as directed by sub-rule (3) of R. 23 and therefore the rule providing for sanction does not contemplate., imposition of a condition as has been imposed by the Registrar. Sri N.Y. Hanumanthappa learned High Court Government Pleader appearing for the respondents refuted the contentions of Sri Thilaka Hegde and supported the orders of the authorities.

It is not in dispute that the power to permit investment of reserve funds for construction or purchase of building or lands is regulated by proviso to sub-rule (2) of R. 23. Proviso to sub-rule (2) of R. 23 reads thus:

"Provided that the Registrar may, by general or special order, permit any co-operative Society or any class of co-operative societies to invest the reserve fund or a portion therefore on its own business, or in the construction or purchase of buildings or lands required for carrying on the object of the society."

Proviso to sub-rule (2) of R. 23 empowers the authority to accord its permission to invest the reserve fund only for the construction or purchase of building or land. Sub-rule (2) does not empower the authority to accord his permission subject to such conditions he may deem it necessary in the circumstances. Sri Hanumanthappa is unable to point out any other provision in the Act or the rules empowering the authority to impose impugned condition. In the absence of such a power to impose the impugned condition, Sri. Tilaka Hegde is right in his submission that the Registrar committed an error of jurisdiction in imposing the same.

Proviso to sub-rule (2) of R. 23 empowers the authority to accord permission for diverting the reserve fund only for the construction or purchase of buildings or lands which are required to be unencumbered by sub-rule (3) of R. 23. In my opinion the object of proviso to sub-rule (2) of R. 23 is that the reserve funds can be diverted for an equally good purpose like the construction or purchase of buildings or lands, which would more or less be analogous to the reserve fund owned by society. In this view, I am of the opinion that the imposition of condition No. 1 by the Joint Registrar is also not in accord with the object of the Rule.

In the light of the above discussion I hold that the order No. DPC 151 CEA 74 dated 21-10-1974 of the Government (Ex. ''B''), and the order No. RSR/ PR-2239/72-73 dated 7-11-1973 of the Joint Registrar in so far as it relates to imposition of Condition No. 1 (Ex. ''A'') are liable to be quashed and they are therefore quashed.

Rule made absolute. In the circumstances, I direct the parties to bear their own costs.

