

(2004) 11 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 10590 and 10593 of 2004

N. Rangappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Co-operative Societies Act, 1959 — Section 65, 72

Citation : (2005) ILR (Kar) 128 : (2004) 4 KCCR 511 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : G. Chandrasekhariah, for the Appellant; N. Basavarajaiah, HCGP for R1-R5, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The 8th petitioner in W.P.No. 10590/2004 and 7th petitioner in W. P No. 10593/2004 are Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959 (hereinafter called the "Act"). Rest of the petitioners in both the petitions are members of the respective Co- operative Societies.

2. All the petitioners in both the petitions, questioning the legality and validity of the order dated 30th September 1994 passed by the third respondent - Deputy Registrar of Co-operative Societies, Bangalore vide Annexure A, the order passed by the second respondent -Joint Registrar of Co-operative Societies, Bangalore dated 7th June 1997 vide Annexure B and the order passed by first respondent - Principal Secretary to Government, Co-operation Department, Bangalore, dated 15th February 2002 vide Annexure C, have presented the instant Writ Petitions. Further, the petitioners in these petitions have prayed to direct the respondents to permit the petitioners to carry on the activities of the 8th petitioner and the 7th petitioner - Cooperative Societies, respectively and to serve its members.

3. The grievance of the petitioners in these petitions is that, these petitioners are

the managing members of the 8th petitioner and 7th petitioner Co-operative Societies respectively. When they were so functioning effectively, without any blemish and to the satisfaction of the members of the 8th and 7th petitioners - Co-operative Societies, it appears, there was a Government direction to the competent authority to make spot inspection and submit the report regarding the manner in which the societies are functioning. Accordingly, the concerned Co-operative Development Officer, Bangalore North Taluk, has made the spot inspection of the 8th petitioner and the 7th petitioner - Co-operative Societies respectively, and after through evaluation of the entire records available, on the file of respective Societies has submitted the report u/s 65 of the Co-operative Societies Act before the third respondent - Deputy Registrar of Co-operative Societies, Bangalore District - 1. The Deputy Registrar of Co-operative Societies Bangalore District - 1 has initiated proceedings u/s 72 of the Co-operative Societies Act for winding up of these two Cooperative Societies, viz 8th petitioner and the 7th petitioner in these petitions respectively. A statutory notice was served on 27th June 1994, as referred at Sl.No. I of the reference in Annexure A, and in spite of giving statutory notice, the petitioners nor the 8th and 7th petitioners respectively in these Writ Petitions have chosen to file any objections to substantiate the stand that, the said Societies are functioning as per their respective bye laws and as per mandatory provisions of the Co-operative Societies Act and Rules. Having regard to this back ground, the Deputy Registrar of Cooperative Societies, after considering the report submitted by the competent authority regarding the nature of functioning, financial viability of the respective Societies etc., has passed the order for winding up of these two Societies by a common order dated 30th September 1994. Being aggrieved by the order passed by the Deputy registrar of Co-operative Societies, the president of the 8th petitioner and 7th petitioner - Co-operative Societies and their respective Directors have filed the appeal on the file of the Joint Registrar of Co-operative Societies, Bangalore Division, Bangalore in Appeal No. JRB/APPEAL/45/94-95 and Appeal No. JRB/Appeal/ 44/94-95. The Joint Registrar of Co-operative Societies, after evaluation of the material available on record and the order passed by the Deputy Registrar of Co-operative Societies has passed separate orders on 7th June 1997 vide Annexure B in both petitions. Being aggrieved by the order passed by both the authorities, the petitioners have filed a Revision Petition on the file of the Principal Secretary to Government of Karnataka, Co-operative Department in Revision Petition No. CMW 29/CAP 98 and No. CMW 28/ CAP 98. Both the Revision Petitions filed by the petitioners had come up for consideration before the first respondent and the first respondent, after considering the material available on record such as the report submitted by the competent authority, the order passed by both the authorities, etc., has dismissed the revision petitions, holding that, the Revisional Authority does not find anything wrong in the order passed by the Deputy Registrar of Co-operative Societies, confirmed by the Joint Registrar of Co-operative Societies. Feeling aggrieved by the orders passed by all the three competent authorities, referred above, the petitioners felt necessitated to present these petitions invoking the

extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

4. The principal submission canvassed by the learned Counsel appearing for the petitioners in both petitions is that, the winding up proceedings initiated against the 8th petitioner and 7th petitioner - Co-operative Societies respectively in these petitions u/s 72 of the Act is one without jurisdiction. Secondly, he submitted that, there is no notice as such given to the 8th and 7th petitioners - Co-operative Societies or the other petitioners who are the members of the said Societies. He submitted that, all the three authorities have committed an error and illegality in proceeding to pass the orders without conducting proper enquiry and without satisfying the grounds for winding up of the 8th and 7th petitioner - Co-operative Societies. Therefore, the impugned orders passed by all the three authorities are liable to be set aside.

5. Per contra, the learned Government Pleader, appearing for respondents, inter alia, contended and substantiated the impugned orders passed by the competent authorities, stating that the competent authorities after thorough evaluation of the entire material available on record and after going through the report submitted by the competent authority, have recorded concurrent findings of fact against the 8th and 7th petitioners - Co-operative Societies in both petitions. In view of the concurrent findings of fact recorded by all the authorities, on the basis of the oral and documentary evidence, interference by this Court, at this stage, is not justifiable. To substantiate the said submission, the learned Government Pleader has produced the original records and taken me through the report submitted by the Co-operative Development Officer, Bangalore North Taluk which is at ink page 7 and 35 of the original records. In the said report, the competent authority has made the spot inspection of the 8th petitioner - Co-operative Society on 23rd and 24th December 1992 and of the 7th petitioner - Co-operative Society on 18th February 1993 and 19th February 1993 and after thorough evaluation of the records has given a finding that the 8th petitioner in first Writ Petition has not been advancing any agricultural loans from 1985 onwards and virtually not functioning since 1985 and the 7th petitioner in the second petition is not functioning from 1988- 89 onwards and the financial viability of both the Societies is not satisfactory. Therefore, after considering the report submitted by the competent authority, the third respondent has proceeded to pass the impugned order vide Annexure A. He submitted that, the authorities have not committed any error or illegality as such nor the petitioners have made any good grounds for interference by this Court. Hence, the Writ Petitions filed by the petitioners are liable to be dismissed.

6. After hearing the learned Counsel appearing for the petitioners and the learned Government Pleader appearing for respondents for considerable length of time, and after considering the rival contentions advanced by both the Counsels, as referred supra, the only question that arise for consideration in these petitions is as to:

Whether the impugned orders passed by all the three competent authorities are sustainable in law?

7. After careful perusal of the impugned orders passed by the competent authorities vide Annexures A, B and C, respectively passed by the Deputy Registrar of Co-operative Societies, Joint Registrar of Co-operative Societies and the Principal Secretary to Government, Co-operative Department, it emerges on the face of the said orders that, the authorities have not committed any error of law much less material irregularity in passing the impugned orders. It is significant to note here itself that, these matters had come up for consideration on several occasions before this Court and at the request of the learned Government Pleader, the matter was being adjourned to enable him to procure the original records. Today, during the course of submission, he has made available the original records and pointed out the report of the competent authority which find a place in the original records at ink Page.7 (first -petition) Ink Page.35 (second petition). In the said pages, it can be seen that, a detailed report has been submitted after making the spot inspection, going into the grass root of the affairs of both the Societies. In respect of the 8th petitioner - Society in first petition, the competent authority has made spot inspection on 23rd and 24th December 1992 and recorded his report under different heads namely 1) Financial Viability of the society 2) The business potential, 3) The extent to which the Societies activities are conducive to the objects as stipulated in the bye-laws and to what extent its objects not covered by its activities, 4) Rent due to TAPCMS, Bangalore North Taluk, 5) Investments, Maintenance of Accounts, Board Meetings Audit Objections, General Body Meeting, Election of Board of Directors etc. Under the heading "Financial Viability of the society, it has been stated that the said society has hardly any scope for functioning as an economically viable unit. With regard to issue of Agricultural Loans by raising the same from financial institutions, it has been discussed elaborately under different headings and has specifically observed that the said society is not functioning since 1985. However, in respect of the 7th petitioner in second petition, the competent authority has made the spot inspection on 18th February 1993 and 19th February 1993 and recorded his report under different heads namely 1) Financial Viability of the society 2) The business potential, 3) The extent to which the Societies activities are conducive to the objects as stipulated in the bye-laws and to what extent its objects not covered by its activities, 4) Promotion of self help and thrift among members 5) Issue of agricultural loans by raising the same from financial institutions, 6) Distribution of food articles and articles of daily needs 7) Distribution of Agricultural requisites like fertilizers and seeds etc. to members, 8) Investments 9) Maintenance of Accounts, Board Meetings, Audit Objections, General Body Meeting, Election of Board of Directors etc. Under the heading "Financial Viability of the society, it has been specifically stated that the said society cannot function as an economically viable unit and under the heading "Business potential", it has been specifically stated that, the said society has no business potential to function as an economically viable unit. Further, it is

relevant to mention here itself that, these societies have been established with the aim and object of encouraging the agriculturists by way of advancing loans, to purchase fertilizers and to safeguard the Interest of the agriculturists, and to give just and reasonable price to the produce of the members of the said society. After careful perusal of the inspection report threadbare, it is revealed from the same that, the two societies have failed to achieve the aim, object and reasons for which they have been established. Further, it is made clear here itself that, these societies have been established several years back for the purpose of encouraging the agricultural activities. But, by the time the inspection of the society was made, the entire area has been well developed and all the agricultural lands have been converted into non agricultural lands and a big layout has been formed, and the allottees of the lands have constructed their houses and that, the said area comes within the area of the Municipal Corporation of Bangalore. The authorities have after taking into consideration the report submitted by the Co-operative Development officer and after seeing the economic viability of the societies, the manner in which they are functioning and due to change of circumstances in view of the subsequent development in the area, the first respondent has rightly passed the order at Annexure A for winding up of the affairs of the 8th petitioner in first petition and 7th petitioner in second petition -Co-operative Societies. Therefore, I do not find any substance in the submission of the learned Counsel for petitioners that the mandatory provision of Section 72 of the Act has not at all been followed and no opportunity as such has been given to the petitioners and hence, there is violation of the principles of natural justice. The third respondent, being the competent authority and the fact finding authority, after issuing the statutory notice as referred at Sl.No. I of the order vide Annexure A, has initiated the proceedings u/s 72 of the Act, after thorough evaluation of the oral and documentary evidence available on file and after taking into consideration the detailed report submitted by the Cooperative Development officer under different heads, as stated supra. I am of the considered view that all the three authorities have recorded concurrent findings of fact against the 8th petitioner in first petition and 7th petitioner in second petition and each and every aspect of the matter has been taken into consideration and appreciated by the revisional authority. The Revisional Authority, has specifically referred that, the 8th and 7th petitioners respectively in these two petitions have failed to repay the large sums of loans that they had borrowed from the financial institutions and that the said Societies are not functioning satisfactorily. In fact, the said societies have not even followed their main function of helping the farmers in their job of cultivation. However, it is specifically observed by the revisional authority that, he cannot find anything wrong with the order passed by the Deputy Registrar and after all it is desirable to eliminate cancerous elements from the fabric of co-operation or such malignant institutions would spoil the entire movement and therefore, the order passed by the Deputy Registrar of Co- operative Societies and the Joint Registrar of Co-operative Societies are well founded. Therefore, I do not find any error or illegality in the impugned orders and hence, interference in the same is totally

uncalled for. After thorough evaluation of the original records available on file and after appreciating the views taken by the competent authority - the Deputy Registrar of Cooperative Societies and appellate authority - the Joint Registrar of Co-operative Societies, the revisional authority has recorded well founded reasons and rejected the revision petitions filed by the petitioners. Therefore, in view of the concurrent finding of fact recorded by the Deputy Registrar of Co-operative Societies, being the fact finding authority, the order passed by the Joint Registrar of Co-operative Societies, on the basis of the documentary evidence available on file as well as the well-considered order passed by the revisional authority, I do not find any justification or good grounds to interfere in the orders passed by all the three authorities.

8. Having regard to the facts and circumstances of the case, as stated above, the Writ Petitions filed by the petitioners are dismissed. At this stage, the learned Counsel appearing for the petitioners submitted that, so far as another society namely Nagavara Vyavasaya Seva Sahakara Sangha Niyamita is concerned, the Government has permitted the said society to convert itself into Consumer Co-operative Society. If that is so, it is very much open for the petitioners to give necessary representation to the concerned authority and in turn, the concerned authority shall consider the same, if it is permissible under law.