

(1988) 07 KAR CK 0029
In the Karnataka High Court
Case No : W.P. No. 9058/1988

Servothama Anchan

APPELLANT

Vs

Chitta Ranjan Shetty and Others

RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 17

Citation : (1989) 1 KarLJ 123

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-The petitioner was an elected director of 3rd respondent-Vijaya Raitara Seva Sahakari Sangha Niyamitha. That was challenged by the 1st respondent in a dispute raised under Sec. 70 of the Karnataka Co-operative Societies Act, 1959. The 4th respondent-Assistant Registrar of Co-operative Societies who was the Arbitrator in proceedings bearing Dispute No. 257/1986-87 recorded a finding though in the absence of the petitioner that as per Exhibits P1, P2, Ex. P2(a) to Ex. P2(e), the petitioner was an agent of rival Co-operative Bank collecting pigmy deposits from share-holders and non-share-holders in the same area. Aggrieved by the same he filed an appeal to the Karnataka Appellate Tribunal which has dismissed the same on the sole ground that Exhibits P1, P2, Ex. P2(a) to P2(e) established that he was carrying on the job of collecting pigmy deposits for and on behalf of the rival Co-operative Bank and therefore was carrying on business adverse to the interests of the society of which he was admittedly a director. It has held that collection of pigmy deposits for an agreed commission amounts to doing business. Aggrieved by the order of the Tribunal, the present writ petition is preferred under Art. 226 of the Constitution.

2. Mr. M. Gopalakrishna Shetty, learned Counsel for the petitioner, urged two grounds in this Court for setting aside the order of the Tribunal as well as the Arbitrator. The first ground was that collection of pigmy deposits was not a business. The second ground was that despite his request for adjournment the Arbitrator did not grant the same and proceeded ex parte which resulted in

denial of adequate opportunity to the petitioner and therefore the impugned orders of the Arbitrator and the Tribunal are liable to be set aside on that ground only.

3. Exhibits P1, P2, P2(a) to (e) established that at the time when the petitioner had stated that he was sick and therefore not liable to attend the proceedings before the Arbitrator, he was actually collecting pigmy deposits. Therefore, the Arbitrator refused to adjourn the case holding that tactics were adopted by the petitioner to prolong the dispute before the Arbitrator. He also accepted that evidence as evidence of collecting pigmy deposits for the rival Co-operative Bank on the basis of commission. If that evidence is not impeached then the finding recorded by the Tribunal also cannot be impeached. If any person occupies himself with an avocation for deriving money or profits then he is said to be carrying on a business for profit. Though business normally is referred to as trading in commercial transactions, occupation of the type involved here, namely, collection of pigmy or small deposits from various people in a given area for a commission on behalf of the Co-operative Bank or institution cannot be said to be an occupation carried on for no profit at all.

4. In that view of the matter, the petitioner was indeed carrying on business and if he was carrying on business during the period when he was alleged to be sick, according to his own statement. Then the adjournment was also rightly refused and proceedings taken ex-parte.

5. For the above reasons, there is no merit in this writ petition and it is rejected.

Writ petition is rejected.