

(1983) 06 KAR CK 0027
In the Karnataka High Court
Case No : WP 10611/83

Shankar Rao and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-06-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 64(1)

Citation : (1983) 2 KarLJ 263

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

Judgement

1. The 1st petitioner is the President of the 2nd petitioner-Belgaum District Central Co-operative Bank Ltd. In this petition, the petitioners have challenged the legality of the order made by the 2nd respondent-Joint Registrar of Co-operative Societies in Karnataka, Belgaum Dvn., Belgaum in exercise of his power under S. 64 (1) of the Act.

2. It is alleged in the petition that the directors of the Bank and the present Government in Karnataka have political differences and that one Sri V.L. Patil who is a Cabinet Minister in the State hails from Belgaum Dist. The petitioners have also set out in detail a number of other petitions which are pending in this Court in regard to certain notices issued under the provisions of the Co-operative Societies Act. It is also urged that the order is bad in law because it is passed at the instance of the Dy. Registrar and not on account of the opinion formed by the 2nd respondent. In the result, it is prayed by the petitioners that the order be quashed being illegal and contrary to the intendment of S. 64 (1) of the Act.

I do not think the allegations made or the contentions advanced by the petitioners require to be examined further.

3. The order made is mala fide is without substance. The Court is expected to inter mala fide on the allegations contained in paragraphs 2 and 3 of the statement of facts. Para 2 refers to the political differences, the petitioner-Bank has with Mr. V.L. Patil. There is no allegation that Sri V.L. Patil is responsible for

the impugned order being passed. This Court in order to infer that the impugned order is passed mala fide because the earlier actions taken against the Directors of the Bank by the Department of Co-operation in Karnataka in accordance with the provisions of the Act and are being questioned in this Court is not a fair submission. This Court in those proceedings will deal with them in accordance with law. But mere existence of litigation earlier to the passing of this order cannot compel this Court to infer mala fides:

The impugned order which is at Annexure-A to the writ petition clearly points out that the Bank has committed certain irregularities in its management which require an enquiry. As many as six irregularities are pointed out which are required to be enquired into by the Officer appointed and responsibility for mismanagement, if any, is to be fixed by that Officer. In other words the order is only a step in aid for the Registrar to act under S. 68 of the Act if found necessary.

4. Sri B. Thilak Hegde, learned counsel for the petitioners strenuously argued that the order was without the authority of law and in excess of the jurisdiction vested in the Registrar as the same was not passed on any opinion formed by the Registrar himself but at the instance of the Deputy Registrar. It is true that the preamble to the order at Annexure-A points out that the Deputy Registrar has in fact made a report and has recommended an enquiry. Merely on that account it cannot be said that the Registrar has no jurisdiction to pass an order under S. 64 (1). In fact what should be assumed is that normally the Registrar functions with several aides in order to form an opinion and otherwise discharge his duties and functions under the Act. He necessarily has to collect information through the reports furnished by his subordinates. While exercising power under sub-sec. (1) of S. 64 it is not expected that the Registrar himself must find some irregularity in a society in regard to which he should order enquiry. That would make the section unworkable as it is physically impossible for the number of Registrars that the State has to personally satisfy themselves before they initiate action under S. 64 (1), nor can it be said that the impugned order falls outside the scope of sub-sec. (1), because it is at the instance of the Deputy Registrar. "On his own motion" occurring in that section should be understood to mean at his own instance and no more than that. All that is required is that he should be satisfied that there are irregularities in the Society on account of which investigation is necessary by himself or by some person authorised by him in writing to hold an enquiry into the constitution, working and financial position of a Co-operative Society. In other words the scope of enquiry extends to the very constitution of the Co-operative Society or the manner in which it is constituted, its working and its financial conditions. If on the report of the Deputy Registrar, the 2nd respondent has come to the conclusion as is evident from the impugned order that an enquiry into the specific matters listed in the order is necessary, as already pointed out it is only a step in aid for him to exercise his powers under S. 68 of the Act to give suitable directions to the officers and directors of the Society if found necessary depending on the result of the enquiry. That cannot be

said to be without either the authority of law or in excess of the jurisdiction vested in him.

I therefore, see no merit in the writ petition. Therefore it is rejected at the stage of preliminary hearing.