

Venugopal and Others Vs. Assistant Registrar Co-Operative Societies and Others

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Court : Karnataka

Decided On : Oct-15-2014

Judge : The Honourable Mr. Justice B.S. Patil

Appeal No. : W.P.No.47479 of 2014 c/w. W.P.Nos.47825-47828 of 2014 (CS-RES)

Appellant : Venugopal and Others

Respondent : Assistant Registrar Co-Operative Societies and Others

Judgement :

(Prayer:These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, Praying To Quash The Impugned Order Dtd. 1.9.2014 Passed By The R-1 Vide Annex-A And Registration Certificate Dtd. 1.9.2014 Issued By The R-1 Herein In Favour Of The R-2herein Vide Annex- B.)

1. In these two writ petitions, common questions are raised. Challenge in these writ petitions is with regard to the order passed by the jurisdictional Assistant Registrar of Co-operative Societies registering Dibburahally Vyavasaya Seva Sahakara Sangha Niyamitha as a primary agricultural co-operative society. A consequential challenge is also laid to the Certificate of Registration issued by the Assistant Registrar. The impugned order and the Certificate are produced at

Annexures- A and B.

2. Petitioners claim to be residents of Dibburahally Village. There was a Vyavasaya Seva Sahakara Sangha duly registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short, the Act) of which petitioners were Directors. The said Society was wound up. Steps were taken by one Narasimhappa - respondent No.4 in W.P.Nos.47825-828/2014 acting as Chief Promoter, for establishing a Vyavasaya Seva Sahakara Sangha at Dibburahally, by moving the Assistant Registrar seeking permission to collect funds from the shareholders for registration of a Co-operative Society. The proposal submitted by him was scrutinized and the Co-operative Development Officer was directed to submit his report regarding viability of establishing the Society.

3. On 18.02.2014, the Co-operative Development Officer, Sidlaghatta submitted a report. Considering the said report, the Chief Promoter had been permitted, on certain conditions, to collect the share amount. The time granted to him to collect the share amount from the shareholders was extended by one month. After collecting the share amount, the Chief Promoter submitted an application which was forwarded by the Co-operative Development Officer with his proposal for approval of the request. On consideration of the proposal and taking note of the purpose and the object for which the Society was to be registered and the fact that from 238 persons share amount had been collected to the tune of Rs.2,20,000/-, the Assistant Registrar, having found that the registration of the Society was for the benefit of the agriculturists in the locality to whom the facilities provided by the State Government would be extended, passed an order directing registration of the Co-operative Society under the provisions of the Act. It is this order that is challenged by the petitioners.

4. The main grievance of the petitioners is that in the process of collecting the share amount from 238 shareholders, the Chief Promoter did not notify the persons/residents of the locality to come forward to enlist themselves as shareholders and therefore, the petitioners who intended to participate in the process of formation of the Society were deprived of their right to join the other shareholders who had contributed towards the share amount.

5. It is contended by Sri Vivek Reddy, learned Senior Counsel appearing for the petitioners that the right conferred under Article 19(l)(c), after 97th Amendment to the Constitution, to form a Co-operative Society, would include right to participate in the process of formation of a co-operative society by becoming a shareholder at the initial stage of raising the share fund by the Chief Promoter. He invites the attention of the Court to the representations addressed to the President of Dibburahally Village Panchayat in Sidlaghatta and the Assistant Registrar of Co-operative Societies, Chikballapur vide Annexures D and F1 dated 07.07.2014 and 11.07.2014 respectively to contend that a grievance was indeed made regarding the omission on the part of the Chief Promoter in not publicizing the intended formation of the new Society and the initiative to raise initial share fund from the intending applicants. He, therefore, contends that there is violation of Article 14 of the Constitution, inasmuch as petitioners were deprived of equal opportunity of participating in the process of augmenting the share amount by becoming shareholders.

6. I have carefully considered these contentions keeping in mind the amendment to the Constitution brought in by the 97th Amendment. Article 19 (1) (c) confers on all citizens a fundamental right to form associations or unions or co-operative societies. It is thus clear that right to form a co-operative society has been incorporated as one of the fundamental rights by virtue of the 97th amendment to the Constitution. Similarly, by the 97th amendment, Part - IXB has been incorporated in the Constitution regulating and providing for incorporation of co-operative societies, the number and term of members, election to the members of the Board, procedure regarding supersession and suspension of Board, etc. Article 243ZI of the Constitution provides for incorporation of Co-operative Societies. It reads as under:

"Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding-up of co-operative societies based on the principles of voluntary formation, democratic member-control, member- economic participation and autonomous functioning."

7. The contention of the learned Senior Counsel is that a conjoint reading of Article 19(1)(c) and Article 243ZI of the Constitution would make it clear that the fundamental right to form a co-operative society would include a right to participate in the process of formation of the society which has been initiated by another person or group of persons. In this regard, he lays emphasis on the expressions used in Article 243ZI wherein reference has been made to the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning, in the process of incorporation of co-operative societies.

8. This contention cannot be accepted for the simple reason that the fundamental right conferred is with regard to formation of a co-operative society. The provision under Article 19(1)(c) makes it very clear that all citizens shall have the right to form a co-operative society. It is not the case of the petitioners that they intended to form a co-operative society but were prevented from exercising such a right by an}' authority or instrumentality of the State, so that they can seek to lay a challenge in that regard before this Court. If the exercise of a fundamental right is prevented or illegally restricted, then certainly this Court will come to the aid of the citizen in ensuring that his fundamental right is protected and the same is enforced. But, here is a case where petitioners have not taken any steps to form any society. They were no doubt the Directors of the erstwhile society which got wound-up. They have not initiated any steps to form another society to cater to the needs of the agriculturists in the locality. It is Sri Narasimhappa - respondent No.4 in W.P.Nos.47825-828/2014, who, as a Chief Promoter, moved the authority and sought permission to initiate the process for formation of a co-operative society. It was he, who was permitted to collect the share amount and as many as 238 persons have contributed the share amount by becoming initial shareholders.

9. If the petitioners were not notified by the Chief Promoter to become initial shareholders that will not amount to violating their fundamental right. They have no such fundamental right to become initial shareholders in a society which is sought to be formed by another person or group of persons.

10. It has to be noticed here that if the petitioners intend to become members of the society, they can certainly apply and become members in accordance with law and as per the bye- laws of the society. It is not their case that they are deprived of such opportunity. They are now interested in challenging the registration of the Society and the Registration Certificate issued in favour of the Society which is duly registered. The challenge can only be on the grounds, if at all any, as provided under the provisions of the Act. Sections 6 and 7 of the Act deal with the application for registration of a co-operative society and the registration and its process respectively. There is nothing to show that the said provisions contained in Sections 6 and 7 of the Act have been violated, so that this Court can, by exercising the power of judicial review, examine the correctness of the order of the Assistant Registrar in registering the Society. The power of judicial review, to be exercised in such a matter is very limited. Therefore, I am of the view that neither the fundamental right nor any statutory rights of the petitioners have been violated in registering the Dibburahally Vyavasaya Seva Sahakara Sangha Niyamitba.

Writ Petitions being devoid of merit are, therefore, dismissed.

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