

(2012) 08 AP CK 0027

Andhra Pradesh High Court

Case No: Writ Petition No. 7077 of 2001

The Karimnagar Cooperative
Urban Bank Limited

APPELLANT

Vs

B. Hanumanlu and Others

RESPONDENT

Date of Decision: Aug. 2, 2012

Acts Referred:

- Andhra Pradesh Co-operative Societies Act, 1964 - Section 50, 51, 52, 53, 60

Citation: (2013) 1 ALT 608

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K. Vasudeva Reddy, for the Appellant; D. Linga Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy

1. The petitioner is a Cooperative Urban Bank Limited, functioning at Karimnagar. The 1st respondent was functioning as Deputy Registrar of Cooperative Societies, in the Cooperative Department of the Government of A.P., in the year 1994. He was appointed as the Chief Executive Officer (CEO) of the petitioner-Bank, on deputation, with effect from 08-06-1994, and he held that position till 26-03-1996. Enquiry u/s 51 of the A.P. Cooperative Societies Act (for short "the Act") was conducted into the affairs of the bank, covering the period, during which the 1st respondent functioned as CEO. In a report submitted in September, 1997, several irregularities were pointed out, and it was alleged that a sum of Rs. 85,000/- of the funds of the petitioner, were misappropriated. Taking the same into account, the Deputy Registrar of Cooperative Societies, Karimnagar, the 3rd respondent herein, initiated surcharge proceedings u/s 60 of the Act. Through an order, dated 23-11-1998, the 3rd respondent fixed the liability of the petitioner at Rs. 2,15,201-50 ps. On the one hand, the 1st respondent filed C.T.A. No. 194 of 1999 before the Cooperative

Tribunal, Hyderabad, u/s 76 of the Act and on the other hand, he moved the Additional Registrar of Cooperative Societies, the 4th respondent, u/s 77 of the Act, against the report of enquiry, submitted in September, 1997. The 4th respondent passed an order dated 22-01-1999, observing that the findings in proceedings u/s 60 of the Act are to be based on independent evidence, and the 1st respondent can urge all the grounds, including the defects, if any, in the report u/s 51 of the Act, before the authority u/s 60. Not satisfied with that, the 1st respondent made a further revision to the Government, the 6th respondent. Through order dated 30-07-1999, the 6th respondent remanded the matter to the 4th respondent, once again. On such remand, the 4th respondent passed an order dated 09-11-2000, holding that the report submitted u/s 51 of the Act, pointing out irregularities on the part of the 1st respondent; is vitiated.

2. On the other front, the Tribunal allowed the C.T.A. No. 194 of 1999 through its order dated 03-08-2000, mainly on the ground that the 1st respondent was not given an opportunity to lead independent evidence in the surcharge proceedings, and remanded the matter to the 3rd respondent. On such remand, the 3rd respondent took note of the order dated 09-11-2000, passed by the 4th respondent and closed the proceedings.

3. This writ petition is filed challenging the order dated 09-11-2000, passed by the 4th respondent and the order dated 28-11-2000, passed by the 3rd respondent.

4. Sri K. Vasudeva Reddy, learned counsel for the petitioner, submits that the revision filed by the 1st respondent against the report filed u/s 51 of the Act was untenable and that by resorting to gross misuse of legal process, he got the entire proceedings terminated. He contends that a report u/s 51 of the Act does not have any independent existence and at the most, it would give rise to the initiation of surcharge proceedings.

5. The contest to the writ petition is mainly by the 1st respondent. His counsel, Sri D. Linga Rao, submits that Section 77 of the Act provides for a remedy of revision, wherever, an appeal is not maintainable against an order or proceedings issued under the Act. He contends that the 4th respondent has taken the view that the observations made in the enquiry report u/s 51 of the Act, are untenable and with that, the very basis for the proceedings u/s 60 of the Act ceased to exist. Learned counsel submits that the orders challenged in the writ petition are passed strictly in accordance with the provisions of the Act, and that no exception can be taken to them.

6. The enquiry conducted u/s 51 of the Act into the affairs of the petitioner-bank revealed certain irregularities. According to the scheme under the Act, observations made in the report of enquiry u/s 51 or the inspection and audit under Sections 52 and 53 of the Act, are not final. The rights of the parties cannot be said to have been decided in such report, much less any liability is fixed. The outcome of the exercise

undertaken in the said provisions, would at the most constitute the basis for initiation of surcharge proceedings. It is beneficial to have a glance at both the provisions under Sections 51 and 60 of the Act.

51.Inquiry:- The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

(the provisos are omitted, since they are not necessary for the purpose of this case)

60.Surcharge:- (1) Notwithstanding anything contained in any other law for the time being in force where in the course of an audit u/s 50 or an inquiry u/s 51 or an inspection u/s 52, or Section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organisation, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or wilful negligence as the Registrar or the person authorised as aforesaid thinks just:

Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

(2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this

behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

Through catena of judgments, this Court held that any observation made in the inquiry, audit or inspection, cannot be treated as final in the surcharge proceedings u/s 60 of the Act, and wherever the surcharge proceedings are initiated, the concerned authority has to independently make out a case as to misappropriation or defalcation of funds of the society by the charged employee.

7. The surcharge proceedings initiated against the 1st respondent u/s 60 of the Act, resulted in an order, dated 23.11.1998, wherein liability against him was fixed at Rs. 2,15,201/- . It was just unthinkable as to how he can file a revision u/s 77 of the Act against the report submitted u/s 51 of the Act. The 4th respondent, who initially took up the revision, made a correct observation, in his order, dated 22.01.1999, that the 1st respondent can put forward all his defence in the proceedings u/s 60 of the Act. However, the 6th respondent, was benevolent enough to allow a further revision, through an order contained in a small paragraph without even mentioning as to how the order passed by the 4th respondent was liable to be set aside. In fact, he did not set aside the order challenged before him.

The order reads:

The attention of the Registrar of Cooperative Societies, Hyderabad is invited to the reference cited and he is informed that Government remand back the case to the Additional Registrar. The Additional Registrar shall provide sufficient opportunity to the petitioner, obtain necessary records from the Co-op Urban Bank, Karimnagar examine them, hear the case afresh and dispose on merits. Until such time, status quo shall be maintained.

8. It is on account of such lopsided exercise and showing of unwanted sympathy, if not favour, by persons occupying high positions in the departments of Government, that one after the other societies and cooperatives banks, have become bankrupt and corrupt officials are going scot free. The least that the 6th respondent required to verify was as to whether any surcharge proceedings were initiated u/s 60 of the Act, on the basis of the report, and if so, the status thereof. It is relevant to mention here that by the time, the order was passed, the 1st respondent has already availed the remedy of appeal before the Tribunal, against the surcharge order. Another serious flaw on the part of the 6th respondent was that it did not issue notice to the petitioner before it has frustrated the entire proceedings through its order dated 30.07.1999.

9. Not being aware of the clandestine manner in which the petitioner has moved the authorities u/s 77 of the Act, the Tribunal allowed the appeal and remanded the

matter to the 3rd respondent for fresh consideration and disposal. When the matter was being taken up by the 3rd respondent, he was shown the copy of the order dated 09.11.2000, passed by the 4th respondent, on a remand made by the 6th respondent.

10. An Officer, by name, M.S.B. Chalapathi Rao, worked as Additional Registrar of Cooperative Societies, the 4th respondent. He wrote the order running into 9 closely typed pages giving a burial to the report submitted u/s 51 of the Act. But for the fact that Officer may have retired from service, the Court would have given him notice for the outrageous act performed by him. Holding such a high position, he was supposed to know the limitations of interference with a report u/s 51 of the Act and the basic requirement of issuing notice to the institution into whose affairs the enquiry or inspection was made. The influence of the 1st respondent over the officials of the department, is evident from the fact that he could manage favourable orders from various authorities by keeping the petitioner under dark. On account of the patently illegal order passed by the 4th respondent on 09.11.2000, the 3rd respondent was left with no alternative except to drop the proceedings u/s 60 of the Act.

11. Sri D. Linga Rao, learned counsel for the petitioner, submits that the revision u/s 77 of the Act, is maintainable against the outcome of an enquiry u/s 51 of the Act. He places reliance upon the judgment of this Court in *Voltas Employees' Co-operative House Building Society v. Registrar-cum-Commissioner for Co-operative Societies*¹. The question involved in the judgment was as to whether a special audit can be ordered by the concerned authority in suppression of an audit, conducted already. The answer was in the negative. The subsidiary issue was as to whether a revision u/s 77 of the Act can be maintained against an order directing special audit. Section 77 of the Act, provides for revision against the orders or proceedings against which an appeal u/s 70, does not lie. Since a specific order was passed directing special audit, revision was held to be maintainable. Such an order was not passed in the instant case. Nowhere in that judgment it was pointed out that the outcome of an audit inspection or enquiry can constitute the subject-matter of revision. At any rate, the revision filed by the 4th respondent was entertained without issuing any notice to the petitioner.

12. The 1st respondent cannot be permitted to go scot free, on account of the illegal steps and proceedings instituted by him.

13. For the foregoing reasons, the writ petition is allowed, and the orders impugned in the writ petition are set aside. The 3rd respondent shall take up the surcharge proceedings by proceeding on the assumption that the report u/s 51 of the Act submitted in relation to the petitioner-bank is very much on record, and shall record independent findings as to the liability of the 1st respondent duly, giving an opportunity to him.

14. The 1st respondent approached this Court in a different context. The arrangement directed by the Division Bench of this Court in Writ Appeal No. 1650 of 2002 shall remain in force, until the 3rd respondent passes fresh orders, but the amount is restricted to Rs. 2,20,000/-.

15. The miscellaneous petition filed in this writ petition also shall stand disposed of. There shall be no order as to costs.