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(2003) 06 AP CK 0019

Andhra Pradesh High Court

Case No: Writ Petition No. 10327 of 2003

T. Mrugapani	APPELLANT
Vs	
A.P. State Co-operative Bank and Others	RESPONDENT

Date of Decision: June 26, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 6 ALD 647 : (2003) 5 ALT 760

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: N. Subba Reddy and G.V. Shivaji, for the Appellant; Bobba Vijayalakshmi, for Respondent Nos. 1 and 2, Additional Advocate-General, for Respondent Nos. 3 and 4 and M.S. Ramachandra Rao, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
The petitioner is employed as Chief General Manager in the Andhra Pradesh State Co-operative Bank Limited (for short "the Bank"), the 1st respondent herein. Disciplinary proceedings were initiated against him by issuing charge-sheet dated 5-5-2001. Six charges relating to several commissions and omissions of the petitioner were framed. He has also been placed under suspension. On receiving the explanation submitted by the petitioner, an Enquiry Officer was appointed to conduct a domestic enquiry. The Enquiry Officer submitted his report on 26-7-2002.

2. The Managing Director of the Bank, the 2nd respondent herein, had issued show-cause notice dated 22-5-2003 to the petitioner. In the show-cause notice, the 2nd respondent has referred to the charges levelled against the petitioner, the findings

recorded by the Enquiry Officer and the reasons for disagreeing with the same. In conclusion, the show-cause notice reads that the Committee of Persons in-charge (for short "the Committee") Board of the Bank, has disagreed with the findings of the Enquiry Officer and finds that the petitioner is guilty of all the charges framed against him. It was further stated that the Committee has decided to inflict the punishment of dismissal upon the petitioner. He was called upon to submit explanation, within 10 days from the date of receipt of the same, as to why the said punishment should not be imposed upon him. The show-cause notice is challenged in this writ petition.

3. The main contentions raised on behalf of the petitioner are that (1) he was not given an opportunity of being heard, before the findings recorded by the Enquiry Officer were differed from, and (2) the decision contained in the show-cause notice is not proper and legal; in that, the 3rd respondent has no authority to participate in the decision making and that the decision does not have the support of the majority of the Committee.

4. The respondents have filed counter-affidavit. Reference was made to the various stages of proceedings. As regards the contentions raised on behalf of the petitioner, the respondents contend that they were not required in law to give a show-cause notice before disagreeing with the findings recorded by the Enquiry Officer. They plead that the petitioner can put forward all his contentions, in response to the present show-cause notice itself. As regards the 2nd contention, the respondents plead that though the 2nd respondent has delegated his powers to his nominee as a member, he is still competent to exercise the powers as member of the Committee. The allegation as to the absence of support of majority of the members of the Committee is refuted.

5. Sri N. Subba Reddy, learned Senior Counsel appearing for the petitioner, submits that on a consideration of the material before him, the Enquiry Officer has found that the petitioner is not guilty of various charges, which were serious in nature, and found the petitioner guilty of only certain minor irregularities. According to him, before the disciplinary authority takes a decision to differ with the findings recorded by the Enquiry Officer, it is under obligation to hear the petitioner and take a final decision in this regard, only on consideration of the explanation that may be offered by the petitioner. Placing reliance on several judgments of the Supreme Court, the learned Senior Counsel submits that the very show-cause notice is vitiated and contravenes the principles of natural justice.

6. It is also his contention that on expiry of the term of the elected Managing Committee, the Government, in exercise of its powers u/s 32(7)(a) of the A.P. Co-operative Societies Act (for short "the Act"), has constituted a Persons In-charge Committee, comprising of 5 members, through its orders in G.O. Ms. No.45, Agriculture and Co-operation (Co-op.III) Department, dated 19-2-2003. The Registrar of the Co-operative Societies or his nominee was one of the members of the Committee. The Registrar, 3rd respondent herein, nominated one B. Sreedhar, Additional Registrar, as his nominee and thereby a statutory body came into existence. The learned Senior Counsel points out that once such a

Committee has come into existence, the 3rd respondent has no power or jurisdiction to discharge the functions as member of the Committee. It is also contended that when the file relating to the disciplinary proceedings against the petitioner, on receipt of the report of the Enquiry Officer, was circulated to various members of the Committee, except Respondents 2 and 4, no other members have agreed to differ with the findings. It is in this context that the learned Senior Counsel submits that the decision cannot be said to be that of the Committee/Board. It is his case that once the 3rd respondent nominated Mr. B. Sreedhar and delegated the powers to him, he could not have taken part in the decision-making. Reliance was placed on several judgments touching on this aspect also.

7. Learned Additional Advocate-General, appearing for Respondents 1 to 4, has raised a preliminary objection as to the maintainability of the writ petition itself. He submits that what is challenged in the writ petition is only show-cause notice and when the petitioner had an opportunity to submit his explanation raising legal and factual contentions, he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. According to him, cause of action cannot be said to have accrued to the petitioner inasmuch as no final decision, adversely affecting the interest of the petitioner, has been taken.

8. He further submits that the impugned show-cause notice has furnished in detail the reasons that prompted the disciplinary authority to differ with the findings recorded by the Enquiry Officer. According to him, the decision contained therein needs to be treated as provisional, and it is only when the explanation submitted by the petitioner is considered and a final decision is taken, that the petitioner can be said to have had a cause of action in case the decision goes against him. As regards participation of the 3rd respondent in the Committee, the learned Additional Advocate-General submits that by nominating the Additional Registrar of Co-operative Societies, the 3rd respondent did not divest himself of the membership of the Committee. Elaborating further, he submits that the nominee can certainly represent the principal, viz., the 3rd respondent, and as long as the nominee did not take any decision on a particular issue, it is always open to the principal viz., the 3rd respondent. He relied upon certain English and Indian Judgments in support of his contentions.

9. In the affidavit filed in support of the writ petition, it was alleged that the 2nd respondent acted with a mala fide intention in issuing the impugned show-cause notice. Since mala fides were alleged against the 2nd respondent, he was impleaded eonomine as respondent No.5. However, during the course of the arguments, the aspect of mala fides was not stressed.

10. In view of the rival contentions of the parties, the questions that arise for consideration in this writ petition are:

(1) Whether the writ petition is maintainable against the impugned show-cause notice?

(2) Whether the petitioner was entitled to be given an opportunity before the respondents have decided to differ with the findings recorded by the Enquiry Officer? and

(3) Whether it was competent for the 3rd respondent to participate in the decision, having nominated another person on his behalf in the Committee?

11. Relying upon the judgment of the Supreme Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , and the judgment of this Court in Special Officer, Urban Land Ceilings, Nampally, Hyderabad and others Vs. M. Vijayalakshmi and others, , the learned Additional Advocate General, submits that the writ petition is not maintainable against the show-cause notice issued to the petitioner. There is absolutely no quarrel with the proposition that the High Court under Article 226 of the Constitution of India, will be slow in interfering with the show-cause notices. However, the reluctance in this regard is not absolute. It is more on the grounds of public policy and hesitation, than as principle, that the adjudication is declined. The reasons for non-interference with the show-cause notices are that no decision as yet exists on issuance of a show-cause notice and that the person issued with the show-cause notice is afforded with an opportunity to put forward all his contentions. One of the exceptions to this general principle, as pointed out by the Supreme Court in State of U.P v. Brahm Datt Sharma case (supra) above is where "the notice is shown to have been issued palpably, without any authority of law". Therefore, it needs to be seen as to whether the impugned notice suffers from such an infirmity. This, in turn will depend on the answer to the 2nd question framed above.

12. The domestic enquiry initiated against the petitioner into the charges levelled against the petitioner has resulted in submission of a report by the Enquiry Officer. For the purpose of this writ petition, it is not necessary either to refer to the charges or the detailed findings thereon. Suffice it to say that the Enquiry Officer held that charges 1 and 2 are not proved and charges 3, 4, 5 and 6 are partly proved.

13. The Managing Committee of the Bank, being the competent authority, has considered the report of the Enquiry Officer. From a reading of the show-cause notice, it is evident that it has decided to differ with the findings recorded by the Enquiry Officer. Extensive discussion was undertaken, by furnishing reasons, as to why the competent authority has differed with the findings recorded by the Enquiry Officer. The question in this case is not as to the sufficiency of the reasons for differing with the findings. The issue is as to whether the competent authority could have done so without issuing a notice to the petitioner.

14. As evident from the various judgments of the Supreme Court, there has been some oscillation in the recent past on this aspect. In State Bank of India v. S. S. Koshal , the Supreme Court upheld the power of an appointing authority to differ with the findings of the Enquiry Officer without giving an opportunity to the Delinquent Employee. It was held therein:

"No such fresh enquiry is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer''s report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding."

15. However, in Ram Kishan Vs. Union of India and others, , the Supreme Court has taken a different view. Not only it was held that in the event of disagreement with the findings of the Enquiry Officer, the disciplinary authority should issue a notice to the delinquent, but also such notice should contain reasons on the basis of which the disciplinary authority proposes to differ with the findings of the Enquiry Officer. It was observed as under:

"In the absence of any ground or reason in the show-cause notice, it amounts to an empty formality, which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."

16. Strictly speaking, the necessity to issue notice, in such circumstances, came to be crystalized with the judgment of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Dealing with the impact of the 42nd Amendment on the right of an employee to be put on notice, before an opinion is formed by the disciplinary authority, on the basis of the report of the Enquiry Officer, the Supreme Court has gone to the extent of holding that even in a case where the disciplinary authority proposes to agree with the findings of the Enquiry Officer, such a notice is mandatory. Summing up the law on the subject, Sawant, J., speaking for himself, Venkatachalliah, CJ., Mohan and Jeevan Reddy, JJ., observed as under:

"Both the dictates of reasonable opportunity as well as principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusion, the delinquent employee should have an opportunity to reply to the Enquiry Officer''s finding. The disciplinary authority is then required to consider the evidence, the report of the Enquiry Officer and the representation of the employee against it (Para 26)."

When it was held that even in cases where the disciplinary authority proposes to accept the findings, issuance of notice to the Delinquent Employee is mandatory, the requirement to issue notice becomes more imperative when the proposal is to differ with the findings.

17. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Supreme Court, after reviewing the case law on the subject, held as under:

".....Whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to report before it records its findings (Para 19)."

To the same effect is the Judgment of the Supreme Court in State Bank of India and Others Vs. K.P. Narayanan Kutty, .

18. There is no denial of the fact that the petitioner was not put on notice, before the competent authority had decided to differ with the findings of the Enquiry Officer. Such a course of action was held to be totally impermissible. The violation is substantial and goes to the very root of the matter. Having regard to the pronouncements of the Supreme Court referred to above, it can safely be said that the show-cause notice is palpably without any authority of law. Hence, questions 1 and 2 deserve to be decided in favour of the writ petitioner,

19. Now remains the question as to whether it was competent for the 3rd respondent to participate in the decision, having nominated another person on his behalf in the Committee?

20. The term of the Managing Committee of the bank expired some time ago. In contemplation of introducing certain reforms, the Government of A.P. has decided to constitute Managing Committees with Persons-in-charge. In exercise of its power u/s 32(7)(a) of the Act, the Government issued G.O. Ms. No.45 dated 19-2-2003, laying down the broad guidelines for appointment of Persons in charge for various categories of the Societies. So far as the Bank is concerned, the G.O. provides for appointment of the following Persons in charge:

(a) Sri T.D. Janardhana Rao, elected Chairman. APCOB, who will function as Chairperson of the PICs.

(b) The Managing Director, APCOB.

(c) The Commissioner for Co-operation and Registrar of Co-operative Societies or his nominee.

(d) The Secretary to Government Institutional Finance (Fin, and Plg. Deptt.)

(e) The Chief General Manager, NABARD, Regional Office, Hyderabad."

The 3rd respondent herein was included as one of its members. It was in this context that the 3rd respondent issued proceedings dated 22-2-2002 nominating one B, Sreedhar, the Additional Registrar of Co-operative Societies, as his nominee. Though, in the said proceedings, he has referred to exercise of power u/s 32(7)(a), to that extent it needs to be ignored, inasmuch the 3rd respondent is not at all the authority conferred with the

power to appoint the Persons in-charge for the Bank.

21. It is the specific case of the petitioner that the file relating to the further course of action against him, consequent on the submission of the report by the Enquiry Officer, was circulated to various members of the Committee. It is alleged that the Chairperson and the Chief General Manager of NABARD did not agree with the proposal to differ with the findings and it was not signed by the nominee of the 3rd respondent. It is alleged that only Respondents 2 and 4 have agreed with the proposal. Exception is taken to the participation of the 3rd respondent in the decision making process. The basis of the contention is that once the 3rd respondent has nominated Sri B. Sreedhar as his nominee, it is not open to the 3rd respondent to Act as member of the Committee.

22. The nomination referred to above, can, in away, be treated as creation of agency or delegation of power. The 3rd respondent has permitted his nominee to act on his behalf. This, in fact is the purport of the agency in Civil and Common law and delegation of powers in the Administrative Law. In either case, the acts of the agent or the delegate, as the case may be, would bind the principal. Delegation of powers has become an important aspect of Administrative Law. We are only concerned with a small facet of the said aspect, viz., whether the principal would continue to possess the power even after delegation.

23. As in the case of agency, in the case of delegation also, the power continues to rest with the principal. It is only with his authorisation and permission that the agent or delegate continues to exercise the power. To certain extent, the doctrine of pleasure covers the field. The principal shall always have the power to withdraw the agency or delegation, as the case may be. The exercise of the power by agent or delegate shall be only during the pleasure of the principal.

24. In Huth v. Clarke, 1890 Queens Bench Divisions 391, both the members of the Bench Lord Coleridge, Chief Justice, and Wills, Justice, has stated the law in slightly different terms. Lord Coleridge took the view that whenever the principal chooses to exercise the power, which he has delegated, he can be said to have resumed the same. He observed:

"the word "delegation" implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating, and many examples of this might be given.

25. Justice Wills, viewed the matter from a different angle. According to him, the delegation does not result in denudation of powers by the principal. He observed as under:

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

The difference between these two opinions, if at all, is only as regards emphasis. They are unanimous to the extent that there does not exist any impediment for the principal authority to exercise the powers even after he has delegated the same. To this can be added a rider that the exercise of powers by the principal shall not have the effect of nullifying the result of the exercise of the powers by the delegate. Even if revocation of the delegation is needed to enable the principal to exercise his power, such revocation can be implied from the very exercise of the powers.

26. It is not pointed out that the nominee of the 3rd respondent has participated in the decision making or has subscribed to any view. That being the situation, it cannot be said that there was anything to prevent the 3rd respondent to participate in the proceedings and to take a view. Therefore the contention of the petitioner in this regard cannot be accepted.

27. Arguments were advanced to indicate that the decision contained in the show-cause notice cannot be said to be that of the Committee. The basis for the submission is that even if the participation of the 3rd respondent is taken into account, only three out of five members have decided the matter and such a decision cannot be said to be that of the Committee.

28. The learned Additional Advocate-General has invited the attention of this Court to the relevant provisions of the Bye-Laws of the Bank. Bye-law 30(f) mandates that the opinion of the majority of those present and voting in the meeting of the Board of the Management, shall be the decision of the Board. That being the case, no exception can be taken for treating the decision contained in the show-cause notice as that of the Board.

29. Certain ancillary submissions were also made as regards the status of the Committee with reference to the various provisions of the Act and Rules made thereunder. Inasmuch as it is held that the show-cause notice is vitiated for not affording an opportunity to the petitioner, it is not necessary to go into those minute aspects.

30. In the result, the show-cause notice dated 5-5-2001 is set aside. It is however, left open to the respondent to issue show-cause notice to the petitioner, in case the respondents propose to differ with the findings of the Enquiry Officer. Such notice shall contain the reasons, on the basis of which, they propose to differ. Thereafter, it shall be open to the petitioner to submit explanation and, for the respondents to proceed with the matter, in accordance with law.

31. The writ petition is allowed to the extent indicated above. No costs.