

(2008) 09 AP CK 0028

Andhra Pradesh High Court

Case No: Writ Petition No. 12612 of 2008

Prudential Co-operative Bank

Shareholders and Depositors

Welfare Association

APPELLANT

Vs

Deposit Insurance and Credit

Guarantee Corporation and

Another

RESPONDENT

Date of Decision: Sept. 30, 2008

Acts Referred:

- Deposit Insurance and Credit Guarantee Corporation Act, 1961 - Section 13, 13(1), 16, 17, 18
- Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 - Regulation 22

Citation: (2009) 1 ALD 166 : (2009) 1 ALT 634 : (2009) 147 CompCas 193

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: V. Srinivas, for the Appellant; M.P. Ugle and S. Ashok Anand Kumar, for the Respondent

Final Decision: Dismissed

Judgement

G. Rohini, J.

The petitioner herein claims to be a registered society representing the shareholders and depositors of the second respondent-bank. This writ petition is filed seeking a mandamus directing the first respondent-Corporation to pay a sum of Rs. 227.13 crores to the depositors of the second respondent-bank as per Sections 16 and 17 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, to see that all the depositors of the bank receive their dues in full and also to restrain the second respondent-bank from making any repayment to the first respondent-Corporation.

2. It is not in dispute that the second respondent-bank was wound up vide orders of the Reserve Bank of India, dated December 6, 2004. Pursuant thereto, a liquidator was appointed on December 7, 2004, by the Commissioner of Co-operative Societies and he assumed the charge on December 8, 2004. Aggrieved by the same, one of the shareholders of the second respondent-bank filed W. P. No. 23156 of 2004, seeking a mandamus to quash the proceedings of Reserve Bank of India, dated December 6, 2004. The said writ petition was allowed by order dated May 5, 2005, thereby setting aside the impugned order of the Reserve Bank of India (RBI). However, W. A. No. 1053 of 2005 preferred by the Reserve Bank of India along with a batch of cases was allowed by a Division Bench by judgment dated October 10, 2007, thereby upholding the order of winding up of the second respondent-bank.

3. In the instant case, the petitioner association alleges that the first respondent-Corporation which is a statutory body incorporated under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (for short, "the Act 47 of 1961") for the purpose of insurance of deposits and guaranteeing of credit facility, has been seeking recovery of the amounts from the second respondent-bank even before the claims of all the depositors of the second respondent are settled. According to the petitioner, the first respondent-Corporation is bound to pay a total sum of Rs. 227.13 crores to the depositors either directly or through the second respondent-bank. It is alleged that as against Rs. 227.13 crores, the first respondent-Corporation paid only a sum of Rs. 75.59 crores so far by the first respondent-Corporation and even before paying the balance to the depositors, the first respondent-Corporation demanded reimbursement of the said amount from the second respondent-bank contrary to the provisions of the Act 47 of 1961.

4. Hence this writ petition to direct the second respondent-bank not to make any repayment to the first respondent-Corporation till all the depositors of the bank receive their dues in full.

Separate counter-affidavits have been filed by respondents Nos. 1 and 2 denying the allegations made by the petitioner and stating that Section 21(2)(a) of the Act 47 of 1961 mandates that the liquidator shall repay to the first respondent the amounts claimed by it and therefore no mandamus can be issued compelling the respondents to act in contravention of Section 21(2)(a) of the Act 47 of 1961.

I have heard learned Counsel for both the parties in detail and perused the material on record.

5. The first respondent-Corporation is established under the Deposit Insurance and Credit Guarantee Corporation Act, 1961, for insuring deposits in commercial banks. The scheme of the Act shows that the Corporation insures all deposits in commercial banks and a premium rate would be determined by the Corporation from time to time with the previous approval of the Central Government. The Corporation's liability will arise in the event of liquidation of a bank.

6. In the case on hand, since the second respondent-bank was wound up and a liquidator was appointed, it is not in dispute that the first respondent-Corporation is liable to pay to the depositors of the second respondent-bank in accordance with the provisions of the Act. It is also clear from the counter-affidavit filed on behalf of the second respondent that the first respondent-Corporation admitted the claim made by the second respondent to the extent of Rs. 227.13 crores. Out of Rs. 227.13 crores the first respondent-Corporation already released a sum of Rs. 75.59 crores on January 25, 2007. Thereafter, the first respondent-Corporation sought repayment of the said amount of Rs. 75.59 crores and accordingly the second respondent-bank repaid a sum of Rs. 40.59 crores up to May 23, 2008.

7. At that stage, the present writ petition has been filed contending that it is not permissible for the second respondent-bank to start repayment of the amounts to the Corporation till the entire deposits to the tune of Rs. 227.13 crores is paid to the depositors.

For proper appreciation of the above contention, it is necessary to refer to some of the relevant provisions under the Act and the Regulations made thereunder:

16. Liability of Corporation in respect of insured deposits.- (1) Where an order for the winding up or liquidation of an insured bank is made, the Corporation shall, subject to the other provisions of this Act, be liable to pay to every depositor of that bank in accordance with the provisions of Section 17 an amount equal to the amount due to him in respect of his deposit in that bank at the time when such order is made:

Provided that the liability of the Corporation in respect of an insured bank referred to in Clause (a) or Clause (b) of Sub-section (1) of Section 13 or Clause (a) or Clause (b) of Section 13 clause shall be limited to the deposits as on the date of the cancellation of the registration:

Provided further that the total amount payable by the Corporation to any one depositor in respect of his deposit in that bank in the same capacity and in the same right shall not exceed one lakh rupees.

Provided further that the Corporation may, from time to time, having regard to its financial position and to the interest of the banking system of the country as a whole, raise, with the previous approval of the Central Government, the aforesaid limit of one thousand and five hundred rupees....

21. Repayment of the amount to Corporation.- (1) Where any amount has been paid u/s 17 or Section 18 or any provision therefore has been made u/s 20, the Corporation shall furnish to the liquidator or to the insured bank or to the transferee bank, as the case may be, information as regards the amount so paid or provided for.

(2) On receipt of the information under Sub-section (1), notwithstanding anything to the contrary contained in any other law for the time being in force,:

(a) the liquidator shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, payable by him in respect of any deposit such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit;...

8. In exercise of the powers conferred by Section 50(3) of the Act the Reserve Bank of India (RBI) made the Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 (for short, "the Regulations").

Regulation 22 which provides the procedure for repayment to the Corporation u/s 21(2)(a) of the Act runs as under:

22. The amounts repayable to the Corporation under Sub-section (2) of Section 21 of the Act shall be paid from time to time by,:

(a) the liquidator as soon as the realisations and other amounts in his hands, after making provision for expenses payable by that time, are sufficient to enable him to declare a dividend of not less than one paisa in the rupee to each depositor.

9. On a combined reading of the above provisions, it is clear that the liability of the Corporation to pay to every depositor arises once an order of winding up of the insured bank is made.

So far as repayment of the amount to the Corporation is concerned, Section 21(2)(a) of the Act makes it clear that the liquidator has to repay the Corporation out of the amounts payable by him in respect of any deposit in the manner prescribed. Regulation 22 provides such procedure stating that the amounts repayable to the Corporation shall be paid from time to time as soon as the realisations and other amounts in the hands of the liquidator are sufficient to enable him to declare a dividend of not less than one paisa in the rupee to each depositor after making provision for expenses payable by that time.

10. Thus, the only restriction upon the liquidator is to ensure that the amounts in his hands are sufficient to enable him to declare a dividend to each depositor. Except that, there is no other provision either under the Act or the Regulations which prohibits the liquidator to make repayments to the Corporation. Hence, the contention of the petitioner that the repayment cannot be made by the second respondent-bank till the entire amount of Rs. 227.13 crores is received by the depositors of the second respondent-bank is untenable.

11. As a matter of fact, in the counter-affidavit filed on behalf of the second respondent-bank, it is explained that the bank has recovered Rs. 158.48 crores after December 7, 2004 and it has yet to recover Rs. 100.66 crores under principal plus interest as on June 1, 2006 in 2,305 accounts. It is also stated that the bank has Rs. 18.14 crores in its current account and Rs. 15.80 crores in fixed deposit and under attachment by the Co-operative Tribunal, Visakhapatnam. Thus, a total sum of Rs. 33.94 crores is still available with the bank. Thus, the second respondent made it

clear that all the depositors of the bank would receive their amounts even if Rs. 35 crores is repaid to the first respondent-Corporation.

12. It is also relevant to note that the first respondent-Corporation while releasing Rs. 75.59 crores towards the insured claim made it clear in the covering letter addressed to the bank that the Corporation has right of repayment in preference over the claims of other creditors and as such whenever the amount of recovery after meeting the expenses exceeding 1 per cent, of total deposit, the second respondent should remit the appropriate amount to the Corporation. The claim of the first respondent-Corporation being in terms of the statutory provisions cannot be held to be arbitrary or illegal on any ground whatsoever.

13. Similarly, the apprehension expressed by the petitioner society that on account of repayment to the first respondent, the depositors of the second respondent-bank would be denied the admitted amounts due to them appears to be without any basis in the light of the resources available to the second respondent-bank as explained in its counter-affidavit.

14. Hence, the repayment being made by the second respondent-bank to the first respondent-Corporation in accordance with Section 21(2)(a) of the Act read with Regulation 22 cannot be found fault with and no mandamus as prayed for can be issued compelling the second respondent to act in contravention of the statute.

15. The writ petition being devoid of any merit is hereby dismissed. No costs.