

(2009) 03 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition No. 14661 of 2008

Altaf Hussain and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Co-operative Societies Act, 1959 — Section 64, 64 (2A)

Citation : AIR 2009 Kar 2323 : (2009) ILR (Kar) 3361 : (2009) 4 KarLJ 343 :
(2010) 1 KCCR 58 : (2010) 8 RCR(Civil) 2088

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Madhusudhan R. Naik for Kamal and Bhanu, for the Appellant; H. Hanumantharayappa, High Court Government Pleader for Respondents-1, 2 and 5 and Sailesh S.K., for Respondents-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by persons claiming to be members/ shareholders of the third respondent-Private Co-operative Bank who it appears were on the Board of Directors of the Bank.

2. It is claimed that the first petitioner was the Chairman and second petitioner was a Director at the point of time when the management of the Bank was superseded and management of the affairs of the Bank was entrusted to the second respondent-Joint Registrar of Co-operative Societies.

3. The present writ petition is in the wake of the order dated 11-7-2008 (copy at Annexure-F) passed by the second respondent-Joint Registrar of Co-operative Societies purporting to be an order in exercise of the powers of the Registrar u/s 64 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") and for the purpose of inquiring into the manner of management of the Bank earlier, particularly, when it was in the management of the elected representatives of the shareholders of the Bank and in the context appointing one KB. Chennegowda,

retired Assistant Registrar of Cooperative Societies as Inquiry Officer and fixing his remuneration for conducting inquiry at rupees one lakh.

4. This order itself had come to be passed superceding the earlier like order which was in vogue ever since 19-10-2005 whereunder one M.S. Rudraiah also a retired official of the Co-operative Department who retired as Joint Registrar of Co-operative Societies who it appears had not even commenced his inquiry u/s 64 of the Act as per the report of the liquidator who was in charge of the affairs of the society even in terms of communication dated 5-9-2007. Said Rudraiah himself was successor to one Syed Asif, another retired Assistant Registrar who was incharge of the inquiry as per earlier order dated 13-5-2005 and on finding that there was need to replace him.

5. It is in the wake of such series of appointments of Inquiry Officers to conduct the inquiry u/s 64 of the Act, the present writ petition complaining that issuing such orders and appointing successive Inquiry Officers is not only an abuse of the power u/s 64 of the Act but also is at cross purposes to the mandate of completing an inquiry of this nature within the normal duration of twelve months and which can be at the maximum extended to an outer limit of another six months but not beyond as stipulated u/s 64(2-A) of the Act which reads as under:

64. Inquiry by Registrar.-.....

(2-A) An inquiry under Sub-section (1) shall be completed within a period of twelve months which may, however be extended by the State Government on the recommendation of the Registrar, for a further period of six months.

6. It is also the version of the petitioners that the society went out of the control of elected representatives even during the year 2001; that it has been managed only by the officials of the Co-operative Department every since 10-4-2004; that while so, the Bank itself was ordered to be wound up and liquidator appointed as per order dated 30-6-2006; that the Bank reached the stage of inviting an order for liquidating the Bank during the tenure of the officials of the department being at the helm of affairs of the Bank; that when such is the position, appointing successive Inquiry Officers to go into the affairs of the manner of the management or the accounts of the Bank for the earlier period and that too keeping it open for as long a period of eight years is nothing but harassment to the petitioners; that the petitioners are unnecessarily being victimised by such thoughtless action on the part of the respondents; that the impugned order is also in contravention of the provisions of Section 64(2-A) of the Act and therefore the impugned order deserves to be quashed by issue of a writ of certiorari.

7. Notice had been issued to the respondents. Sri Hanumantharayappa, learned Government Pleader appears for the State and its officials, Sri Sailesh S.K., learned Counsel appears for the third respondent-Bank.

8. I have heard Sri Madhusudhan R. Naik, learned Senior Counsel appearing for

the petitioners.

9. Submission of Sri Madhusudhan R. Naik, learned Senior Counsel appearing for the petitioners is that the authorities under the Act have virtually misused the powers under Section 64 of the Act by appointing successive Inquiry Officers; that it is an abuse of the power; that the entire exercise of appointing Inquiry Officers at this point of time is a futile exercise as the liquidator has already been appointed to wind up the affairs of the third respondent-Bank; that no useful purpose will be served by going back in point of time, particularly, as to what happened eight years earlier as inquiry report of this nature is only for the purpose of learning from the past mistakes and to correct such mistakes in future in terms of the report of the auditor or as directed by the Registrar; that when the society itself is being liquidated there is no scope for such corrective action and moreover successive Inquiry Officers have caused financial strain on the already dwindling reserves of the Bank; that remuneration of rupees one lakh to the Inquiry Officer as now submitted under the present order is nothing but draining of the funds of the society and therefore also the order deserves to be quashed.

10. It is also the submission of Sri Madhusudhan R. Naik, learned Senior Counsel appearing for the petitioners that when earlier Inquiry Officers had accepted the explanation given by the petitioners and had not proceeded any further, appointing one more Inquiry Officer is nothing but misuse of the power to the detriment of the petitioners who are subjected to harassment and who are asked to face repeated inquiry; that such appointments are clearly in the teeth of Section 64(2-A) of the Act.

11. Appearing on behalf of the respondents-State and its officials Sri Hanumantharayappa, learned Government Pleader submits that the impugned order is very much necessitated in the facts and circumstances, particularly, in the wake of the earlier developments that the inquiry could not be completed on any one of the earlier occasions but had been aborted midway etc.

12. Sri Sailesh, learned Counsel appearing for the third respondent-Bank submits that the entire inquiry is for the purpose of ascertaining as to any mismanagement on the part of the erstwhile Directors; that it is only at a preliminary stage to fix responsibility if any losses had been caused to the Bank and as to in what manner it can be got over; that unless an inquiry is held into the affairs of the bank while it was under the erstwhile management there is no way of fixing responsibility on any person or recovering any losses to the Bank; that the Bank might have incurred losses due to the mismanagement of the erstwhile management; that none of the Inquiry Officers concluded the inquiry and submitted a report and therefore it had become necessary to appoint an Inquiry Officer; that it is fresh appointment and provisions of Section 64(2-A) of the Act is not attracted; that the present Inquiry Officer also has substantially completed the inquiry and he is likely to complete it within short time and therefore no interference is warranted and prays for dismissal of the writ petition.

13. While there cannot be any two opinions about the existence of the power to hold inquiry u/s 64 of the Act and precisely for the purpose of finding out as to whether any irregularity had occurred in the management of the affairs of the third respondent-Bank, one limitation on the power is indicated to be u/s 64(2-A) of the Act.

14. While Sub-section (2-A) to Section 64 of the Act does impress upon all concerned that the inquiry should be completed within outer time-limit of eighteen months, the outer limit cannot be understood as one putting a ban on the inquiry being either beyond this period or as one to abort the inquiry if had not been completed within this time. Stipulation of time-limit is to impress upon the person holding an inquiry that it should be completed expeditiously and to instill a sense of urgency so that the purpose of inquiry is served; that the erring persons are identified and remedial action is taken. Prolongation of an inquiry of this nature while is possibly to the disadvantage of the society itself, can only be to the advantage of the persons who might have committed some irregularities. Such persons cannot take advantage of prolongation to characterise an order appointing the Inquiry Officer as bad in law because the time stipulation of eighteen months is over.

15. In my view, Section 64(2-A) of the Act cannot be construed as a provision in favour of persons who perhaps were responsible for any irregularities in the management of Co-operative Bank and where there is a need for identifying such persons and their role for remedying the irregularities, that cannot be taken advantage of by such persons who claim that just because the inquiry is not completed within eighteen months, they get immunity from such situations.

16. It may be true that prolongation of the inquiry or even subjecting persons to be inquired on more than one occasion may result in some hardship to persons against whom inquiry is being held, but that by itself cannot be a cause for quashing an order of the nature under Annexure-F which is one to conduct an inquiry and to ascertain as to whether any mismanagement had occasioned any loss to the society when prevailed earlier.

17. This apart, a perusal of the earlier developments indicate that none of the Inquiry Officers had earlier completed the inquiry or submitted a report. The inquiry is not completed till the outcome of the inquiry is reported in the proper manner and to the authority causing inquiry. Just because some Inquiry Officers were either indolent, lethargic or deliberately slept over the matter, that in my opinion, cannot give rights in favour of the petitioners to seek for quashing of orders appointing the Inquiry Officer itself.

18. In the present case, none of the earlier officers having submitted a report and exonerating the petitioners of their role or management of their functioning while in the management of the third respondent-Bank, it cannot be said that some right had accrued in favour of the petitioners and that is sought to be denied or an additional burden sought to be placed on the petitioners.

19. With the Reserve Bank of India having given a report noticing several irregularities of the manner in which the affairs of the third respondent-Bank had been conducted and in that background if an inquiry was required to be held, unless such inquiry is held in a proper manner and completed, the purpose and object of Section 64 of the Act is not served. Unless the situation is a clear case of gross abuse of the power u/s 64 of the Act and for victimising persons, there cannot be any interference by this Court under Article 226/227 of the Constitution of India to quash orders of the nature at Annexure-F appointing fresh Inquiry Officer for holding and completing the inquiry. The matter does not deserve further examination in writ jurisdiction.

20. Accordingly, this writ petition is dismissed.