
(2003) 03 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3292 of 2003

G. Narasinga Rao

APPELLANT

Vs

Chairman, Cooperative Urban Bank Limited

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

General Clauses Act, 1897 — Section 6
Multi-State Cooperative Societies Act, 1984 — Section 4, 4(2), 74
Multi-State Cooperative Societies Act, 2002 — Section 126, 126(4)

Citation : (2003) 03 AP CK 0070

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : D. Goverdhan Chary, for the Appellant; Govt. Pleader, for the Respondent

Judgement

C.Y. Somayajulu, J.—The petitioner obtained a loan from the first respondent, which is a Cooperative Society, governed by the provisions of Multi State Cooperative Societies Act, 1984 (for short "1984 Act), for recovery of which first respondent filed a claim petition before the Joint Registrar, (Admn.)/Central Registrar (the Arbitrator) u/s 74 of 1984 Act, who passed an award against the petitioner. In the meanwhile, Multi State Cooperative Societies Act, 2002 (for short "2002 Act") came into force on 19.08.2002, whereby 1984 Act stood repealed. So petitioner preferred an appeal to the Cooperative Tribunal against the award passed by the Arbitrator. As the Cooperative Tribunal refused to entertain the appeal. Petitioner filed W.P. No. 891 of 2003 before this Court questioning the said rejection. A learned Single Judge of this Court by his order dated 04.02.2003 disposed of the writ petition by directing the petitioner to file an appeal before the Central Registrar within four weeks from the date of the order. In pursuance of the said order, the petitioner seems to have preferred an appeal before the Commissioner for Cooperation and Registrar of Cooperative Societies, i.e., third respondent, on the basis that he is the person on whom the powers of Central Registrar are conferred under the 1984 Act and so he

continues to be Central Registrar under 2002 Act also. But third respondent returned the appeal on the ground that powers of Central Registrar are not conferred on him under 2002 Act and so petitioner has to prefer the appeal before the Central Registrar, New Delhi. Questioning the said return, petitioner filed this writ petition.

2. The contention of the learned counsel for the petitioner is that as per Rule 31 of the Rules framed under 2002 Act an appeal against the order of Arbitrator would lie to the Central Registrar, and since the Central Government nominated the Registrars of Cooperative Societies in all States as Central Registrars, third respondent ought not to have returned the appeal preferred by the petitioner. The contention of the learned counsel for the first respondent is that in view of Section 126 of 2002 Act provisions of 1984 Act only would apply to the proceedings initiated by the first respondent against the petitioner before the Arbitrator and so the appeal against the award of the arbitrator has to be preferred before the authority mentioned in Rule 37 of the Rules framed under 1984 Act and so the appeal preferred before the third respondent is not maintainable. The contention of the learned Government Pleader is that though the third respondent was conferred with the power of Central Registrar under 1984 Act, in view of the fact that 1984 Act is repealed and since no fresh notification is issued and 2002 Act confers the power of Central Registrar on the third respondent, third respondent cannot not exercise the powers of Central Registrar under 2002 Act and so the action of the third respondent in returning the appeal cannot be found fault with.

3. Since the award in this case was passed on 20.08.2002, and since 2002 Act came into force on 19.08.2002, it is clear that the award was passed subsequent to the coming into force of 2002 Act. But by virtue of Section 126(6) of 2002 Act appeal against the award is a proceeding instituted under 1984 Act can and has to be preferred only as per the appeal provision contained in 1984 Act, but not by the provisions contained in 2002 Act. Even otherwise also it is well settled that the remedy of appeal is to be determined with respect to the date of institution of the proceedings, but not with respect to the date of disposal of the case before the primary authority, see *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . Since proceedings in this case were initiated before the Arbitrator when 1984 Act was in force, by virtue of Section 126(4) and also by virtue of the ratio in *GARIKAPATI VEERAIHAH* case (1 supra) the appeal has to be preferred as per the appeal provision contained in 1984 Act. As per Section 90 of 1984 Act an appeal from a decision or order made by the Central Registrar lies to the prescribed authority. "Prescribed" is defined in Section 3(p) of 1984 Act as "prescribed by rules". Rule 37 of the Rules made under 1984 Act lays down as to before whom an appeal u/s 4 of 1984 Act would lie. Since the award in this case was passed by the Joint Register, (Admn.)/Central Registrar, who is conferred with the power u/s 4(2) of 1984 Act, appeal has to be preferred before the concerned authority as prescribed in Rule 37 of the Rules framed under 1984 Act. Therefore, third respondent not entertaining the appeal against the order of

arbitrator cannot be said to be erroneous. May be he is in error in naming the authority before who the appeal lies. The appeal has to be preferred before the authority mentioned in Rule 37 of the Rules framed under 1984 Act.

4. The contention of the learned Government Pleader that notification issued under 1984 Act would automatically cease to operate on the coming into force of 2002 Act cannot be accepted, because as per Section 6 of the General Clauses Act, 1897, third respondent can continue to act as Central Registrar under 2002 Act also. But since the appeal under 1984 Act does not lie to the third respondent, third respondent's action in returning the appeal cannot be said to be erroneous.

5. In view of the above, the writ petition is disposed of with a direction to the petitioner to file an appeal before the authority prescribed in Rule 37 of the Rules framed under 1984 Act. Subject to the condition of the petitioner paying 1/4th of the amount due to the first respondent within a period of one week from today, the operation of the order of the Joint Registrar (Admn.)/Central Registrar passed u/s 74 of 1984 Act against the petitioner shall stand stayed for a period of two weeks from today. No costs.