
(2001) 09 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1757 of 1999

Hyderabad District Co-operative Central Bank

APPELLANT

Vs

Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 6 ALT 63

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : C.V. Nagarjuna Reddy, in W.P. Nos. 1757, 5698, 5699 and 5770 of 1999, W.B. Srinivas, in W.P. No. 8866 of 1999 and T. Surya Karan Reddy, in W.P. No. 7714 of 1999, for the Appellant; C.V. Nagarjuna Reddy, in W.P. No. 7714 and Respondent No. 4 in W.P. No. 8866 of 1999, Government Pleader for Co-operation for Respondent Nos. 1, 3 and 4 in 1757, Respondent Nos. 1 and 3 in W.P. No. 5698, Respondent Nos. 1, 3 to 5 in W.P. 5699, Respondent Nos. 1 and 3 in W.P. No. 5770, Respondent Nos. 2 to 4 in W.P. No. 7714 and Respondent Nos. 1 to 3 in W.P. No. 8866 of 1999, W.B. Srinivas, in W.P. No. 1757 of 1999, G. Sudha, in W.P. Nos. 5698 and 5770 of 1999 and T. Surya Karan Reddy, in W.P. No. 5699 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

R. Ramanujam, J.—All these writ petitions arise out of a common surcharge order made by the District Co-operative Officer and Special Category Deputy Registrar of Co-operative Societies, Ranga Reddy District (hereinafter referred to as "the Surcharging Officer") in Rc No. 4507/90-C, dated 28-12-1991. Hence, all of them are disposed of by this common order.

2. Writ Petition Nos. 1757, 5698, 5699, 5770 of 1999 were filed by the Hyderabad District Co-operative Central Bank (hereinafter referred to as "the Bank") while Writ Petition Nos. 7714 and 8866 of 1999 were filed by its employees.

3. During the month of July, 1988 an amount of Rs. 12,26,400/- was sanctioned

by the Bank as loan under Loan A/c No. 1010 to the A.P. Housing Board Technical Staff Co-operative Credit Society (hereinafter referred to as "the Society"). When certain serious omissions and commissions in sanctioning of that loan amount by the officers of the Bank came to the notice of the Commissioner for Co-operative and Registrar of Co-operative Societies, Hyderabad (hereinafter referred to as "the Commissioner"), he ordered an enquiry u/s 51 of the A.P. Co-operative Societies Act, 1964 (hereinafter referred to as "the Act") by appointing one Sri Abdul Haq, Joint Registrar in his office, as an Enquiry Officer to conduct a statutory enquiry. That enquiry officer conducted the enquiry and found that the then President and some officials of the Bank and some of the employees of the Society acted in violation of the instructions issued by the Commissioner and the terms and conditions framed by the Bank, while disbursing the loan amount. The enquiry officer submitted his report to the Commissioner on 19-4-1990. On the basis of the said report, the Surcharging Officer initiated surcharge proceedings against 15 officials, including the Ex. Presidents of the Bank and the Society. During those surcharge proceedings, one of the 15 charged officials died. Ultimately, the Surcharging Officer having found that the 14 officers were responsible for incurring loss of Rs. 10,12,883/- by the Bank, issued surcharge proceedings in Re. No. 4507/90-C, dated 28-12-1991 to all of them making them liable, jointly and severally, for the said amount with interest at 18% per annum. Aggrieved by the aforesaid surcharge order, some of the surcharged officials filed appeals before the Co-operative Tribunal, Hyderabad (hereinafter referred to as "the Tribunal"). Some such appeals, with which we are concerned in these writ petitions, are CTA Nos. 45, 46 and 340 of 1996 and 23 of 1998.

4. The main contention advanced by the appellants in those appeals is that the Surcharging Officer has not conducted a detailed enquiry as contemplated u/s 60 of the Act and has not properly considered the representations submitted by them.

5. On a consideration of the rival contentions advanced before it, the Tribunal came to the conclusion that the Surcharging Officer neither conducted a detailed enquiry after giving due opportunity to the appellants nor considered the representations made by them. Accordingly, following the decision of a Division Bench of this Court in Challa Sanyasinaidu Vs. Deputy Registrar of Co-op. Society, Srikakulam, the Tribunal allowed those appeals, set aside the Surcharge order, and remitted the matter back to the Surcharging Officer for conducting a fresh enquiry u/s 60 of the Act and also in accordance with the law laid down by this Court in the aforesaid decision. A further direction was also issued by the Tribunal to complete the enquiry within six months from the date of receipt of a copy of that order and the records.

6. Aggrieved by the order of the Tribunal in CTA No. 23 of 1998, the Bank filed Writ Petition No. 1757 of 1999 and the concerned employee filed Writ Petition No. 8866 of 1999. Against the order of the Tribunal in CTA No. 340 of 1996, the Bank filed Writ Petition No. 5699 of 1999 and the concerned employee filed Writ

Petition No. 7714 of 1999. Against the orders of the Tribunal in CTA Nos. 45 and 46 of 1996, the Bank filed Writ Petition Nos. 5770 and 5698 of 1999 respectively.

7. Appearing for the Bank, which has figured as petitioner in Writ Petition Nos. 1757, 5698, 5699 and 5770 of 1999, Sri C.V. Nagarjuna Reddy, learned Standing Counsel, submits that the Tribunal has grossly erred in applying the principle laid down by a Division Bench of this Court in Challa Sanyasinaidu (1 supra) without noticing the fact that the charged officers were given full opportunity to submit their cases, that the charged officers never asked for permission to cross-examine any of the witnesses examined during the enquiry u/s 51 of the Act, that the explanations/ representations submitted by them were properly considered by the Surcharging Officer, and that the charged officers were in fact represented by their Advocates. He further submits that the Tribunal lost sight of the finding of this Court in the aforesaid decision contained in para 11 of the report, wherein it was held that when the charged employee failed to avail the opportunity by giving a list of witnesses sought to be cross-examined by him, it cannot be said that a fair opportunity was denied to him.

8. On the other hand, Sri W.B. Srinivas and Sri. T. Suryakaran Reddy, Counsel for the charged employees, who have filed Writ Petition Nos. 8866 and 7714 of 1999 respectively, submit that: (a) the Surcharging Officer has not supplied the petitioners (charged employees) a copy of the report stated to have been made u/s 51 of the Act, (b) the Surcharging Officer has not examined any witnesses nor did he consider the explanations/representations submitted by them, (c) since the Surcharging Officer failed to follow the elaborate procedure contemplated u/s 60 of the Act and also failed to consider the representations of the petitioners, the Surcharge Order, insofar as it relates to them, is vitiated, and (d) the Tribunal, instead of allowing their appeals, erroneously remanded the same back to the Surcharging Officer.

9. Before I consider the rival contentions, it is appropriate to note one vital fact here. Aggrieved by the order of the Tribunal in CTA No. 23 of 1998, dated 24-10-1998, the Surcharging Officer and the Commissioner filed Writ Petition No. 36033 of 1998, but that Writ Petition was dismissed at the admission stage by a learned single Judge of this Court - Justice B. Sudershan Reddy - holding thus:

The order of the Tribunal, in my considered opinion, does not suffer from any error apparent on the face of the record warranting this Court's interference in exercise of its Certiorari jurisdiction. The Tribunal having allowed the appeal preferred by the respondent remitted the matter for fresh consideration by the original authority in accordance with law. The order in no way adversely affects the rights of the petitioners herein. The petitioners are entitled to raise the very same objections before the original authority and get the matter adjudicated on merits.

I do not propose to express any opinion whatsoever on the merits of the case as the same is now required to be adjudicated by the original authority. Writ petition

fails and accordingly stands dismissed. But, the original authority shall decide the matter as expeditiously as possible, without granting unreasonable and unnecessary adjournments to any of the parties and strictly in accordance with law, uninfluenced by the order passed in this writ petition.

10. Sri. C.V. Nagarjuna Reddy, learned Standing Counsel for the Bank, however, rightly, submits that since the Bank is not a party to that writ petition, the aforesaid order of this Court does not bind it and, therefore, these writ petitions have to be considered on their own merits.

11. Therefore, now I proceed to consider the rival contentions. Section 60 of the Act reads thus:

60. Surcharge:-- (1) Wherein 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 subsection 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 this Act.

(Emphasis supplied)

12. A close reading of the aforesaid provision clearly indicates that after receiving the enquiry/inspection report, either u/s 51 or 52 of the Act, as the case may be, the Surcharging Officer has to conduct an elaborate enquiry after giving

opportunity to the person concerned. To put it simply, the enquiry/inspection report can only be the basis for commencing or initiating an enquiry u/s 60 of the Act, but that cannot, by itself, be the basis for an order u/s 60 of the Act.

13. However, earlier there was a divergence of judicial opinion on this crucial aspect, i.e., regarding the scope and nature of enquiry u/s 60 of the Act. In *S. Ramadas Vs. The Subordinate Judge and others*, , and in *S. Rama Subba Rao v. President, Kaikaluru Irrigation and Power Department, Sub-Divisional Employees Co-operative Credit Society Limited* 1994(1) APLJ 200, Justice B. Subhashan Reddy (as the then was) took the view that the enquiry u/s 60 of the Act should be an elaborate enquiry, like an enquiry by the Civil Court in a original proceeding. However, Justice P. Rama Rao (as he then was) took the opposite view in *Mohd. Ghouse v. Deputy Registrar of Co-operative Societies, Vikarabad and Ors.* 1996 (2) ALT 108, that such an elaborate enquiry is not required.

14. Subsequently, the matter was set at rest by a Division Bench of this Court in *Challa Sanyasinaidu* (1 supra), wherein their Lordships P. Ramakrishnam Raju and C.V.N. Sastri, JJ., confirmed the view taken by B. Subhashan Reddy, J., (in *S. Ramdas* and *S. Rama Subba Rao* - (2 and 3 supra) holding thus:

Para 10. In the course of inspection u/s 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities on the basis of the report of the enquiry officer, he may initiate surcharge proceedings u/s 60. That report may form the basis for the Registrar to proceed u/s 60 and issue a surcharge order eventually. The person against whom a report is sent u/s 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross-examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as pr the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the roper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry u/s 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated u/s 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-

examine the witnesses. The Registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order u/s 60 is passed. Therefore, we respectfully agree with the view taken by the learned Judge in *S. Rama Subba Rao v. President, Kaikaluru Irrigation and Power Department, Sub-Divisional Employees Co-operative Credit Society Limited* (2 supra). Even in *Mohd. Ghouse v. Deputy Registrar of Co-operative Societies, Vikarabad and Ors.* (4 supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issuance of notice proposing to fix the liability u/s 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same.

(Emphasis supplied)

15. A careful perusal of the surcharge order clearly indicates that full opportunity was not given by the Surcharging Officer to the charged officers, as laid down by this Court in the aforesaid Division Bench decision.

16. Further, the specific case of the charged officers i.e., petitioners in Writ Petition Nos. 7714 and 8866 of 1999, is that they were not supplied either with the copies of the enquiry report or the statements of witnesses recorded during Section 51 enquiry. It may be that the petitioners were allowed to look into those documents as pointed out by the learned Standing Counsel for the Bank. But that can never be a substitute for supplying copies of the enquiry report and the statements of witnesses. The Tribunal is, therefore, right in its conclusion that the Surcharging Officer has failed to give full opportunity to the charged officers.

17. The contention that the Tribunal has lost sight of the observations of the Division Bench in *Challa Sanyasinaidu* (1 supra), contained in para 11 of the report, cannot be accepted for the simple reason that the conclusion of the Division Bench that the petitioner therein was not denied of reasonable opportunity was based on the facts that case. The Division Bench has not laid down any general principle therein. As already noted hereinabove, the Surcharging Officer was under a legal obligation to supply copies of the enquiry report u/s 51 of the Act and the statements of the witnesses examined during such enquiry to the charged officers. In the instant case, the Surcharging Officer did not do so. Such was not the case in *Challa Sanyasi Naidu* (1 supra).

18. For the aforementioned reasons, it cannot be said that the Tribunal has committed an error, much less a patent error, in setting aside the surcharge order and remitting the matter back to the Surcharging Officer for reconsideration. Therefore, I do not find any justification or reason to interfere with the impugned order passed by the Tribunal.

19. Having regard to the fact that the matter is already delayed, I hope that the Surcharging Officer (District Co-operative Officer and Special Category Deputy Registrar of Co-operative Societies, Rangareddy District) will complete the surcharge proceedings, after giving full opportunity to the charged officers concerned in the appeals, as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

20. Subject to the above observation, all the writ petitions are dismissed, but, in the circumstances, without costs.