(2017) 01 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 22815, 22828 and 22829 of 2009

K. Satyanarayana APPELLANT

Vs

A.P. Cooperative Tribunal RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Andhra Pradesh Co-Operative Societies Act, 1964 — Section 51, Section 60
Constitution of India, 1950 — Article 226

Citation : (2017) 2 ALT 356

Hon'ble Judges : Sri A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Mr. Vedula Venkataramana, Senior Counsel, for the Petitioners; G.P. for Co-operation (A.P.), for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

Sri A. Ramalingeswara Rao, J.—These three Writ Petitions are being disposed of by this common order as a common point of law relating to the interpretation of Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, the Act), is involved in these three cases.

2. The undisputed facts in the instant cases are that the first petitioner in W.P.No.22815 of 2009 and the petitioners in W.P.Nos.22828 and 22829 of 2009 were working as the employees of the District Co-operative Central Bank Limited, Gajapathinagaram Branch. Petitioner Nos.2 to 6 in W.P.No. 22815 of 2009 are the legal heirs of one Sri P.Lakshmana Rao, who was also the employee of the same bank and who died during the pendency of the proceedings. Proceedings were taken against them before the second respondent pursuant to an enquiry conducted under Section 51 of the Act into the affairs of the third respondent Society. The enquiry revealed sanctioning of benami loans, and drawing the amount by the Ex-President and Ex-Secretary of the Society with the help and cooperation of the employees of the District Co-operative Central Bank Limited, Gajapathinagaram Branch, the petitioners in these Writ Petitions. Surcharge

notices were issued calling upon the delinquents, including the petitioners, to show cause as to why an order under Section 60(1) of the Act should not be passed against them making them liable jointly and severally. The petitioners submitted their explanation stating that they were not employees of the Co-operative Society, they were not entrusted with the duties of the Society and proceedings cannot be taken against them. When an order of surcharge was passed on 30.04.2003, the petitioners filed O.A. Nos.208, 209 and 210 of 2004 before the Andhra Pradesh Co-operative Tribunal, Visakhapatnam, and the Tribunal by its orders dated 29.06.2005 and 07.04.2005 set aside the orders of surcharge passed by the second respondent and remanded the matter back to the second respondent for conducting a fresh enquiry. After remand, fresh notices were issued to the employees of the Society as well as employees of the bank. After recording the statements of the delinquents, elaborate orders were passed on 06.09.2007 by the second respondent, making the petitioners jointly and severally liable along with the employees of the Co-operative Society for the loss caused to the Society. The plea taken by the petitioners that the duties and responsibilities discharged by them do not come under the provisions of Section 60(1) of the Act and the notices issued to them were beyond the jurisdiction of the second respondent, was negatived. Against the said orders, the petitioners filed O.As before the Andhra Pradesh Co-operative Tribunal, Visakhapatnam, the details of which are as under:

Sl. No

W.P. No.

Name of the petitioner

Surcharge Order

O.A.No.

Date of Order in O.A

1.

22815 of 2009

1. K. Satyanarayana

Rc. No.3/87/2001-C, dated 06.09.2007

64 of 2008

09.09.2009

2. P. Jaya Lakshmi

3. P.V.Sanyasi Rao

4. P.Sarath Babu

5. P.Naga Latha

6. P.Sundaramma

Petitioner Nos. 2 to 6 in W.P.No. 22815 of 2009 are representing Sri P. Lakshmana Rao, who was the second applicant in O.A.No.64 of 2008 and died during the pendency of the proceedings.

2.

22828 of 2009

N.Simhadri Raju

Rc.No.1/87/2001-C, dated 06.09.2007

66 of 2008

09.09.2009

3.

22829 of

K.Satyanarayana

Rc.No.2/87/2001-C, dated 06.09.2007

65 of 2008

09.09.2009

3. A specific contention was raised by the petitioners before the Tribunal that they are employees of the District Cooperative Central Bank and since they were discharging their duties as per the job chart on the instructions of the bank and were not entrusted with any duty of the Society, no proceedings under Section 60 of the Act can be taken against them. The Tribunal came to the conclusion that the duties of the Supervisor and Branch Manager are closely related to the disbursement of loan. The Supervisor takes part in the loan process from the stage of documentation till the disbursement of loan amount, whereas the Branch Manager verifies the entire loan documentation and on satisfaction, disburses the loan amount through bank accounts. Since the petitioners failed to perform their duties, which resulted in misappropriation by way of benami loans, which could be foreseeable, the loss caused to the Society shall be made good by all the persons who were entrusted with the duties. Accordingly, the appeals preferred by the petitioners were dismissed by orders dated 09.09.2009. Challenging the said orders, the present Writ Petitions were filed.

4. In the light of the above facts, the only point that arises for consideration, on the facts of the case, is the application of Section 60 of the Act to the petitioners.

5. Heard learned Senior Counsel, Sri Vedula Venkataramana and the learned Government Pleader.

6. Section 60 of the Act reads as follows :

60. Surcharge:- (1) Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 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, or 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 sub-section 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 his act."

7. It is undisputed that a Co-operative Society and also the Co-operative Central Bank are registered as Societies under the provisions of the Act and are under administrative control of the Registrar of the Co-operative Societies. The "society" is defined in Section 2(p) of the Act, which is as follows:

"2(p) ''society'' means a Co-operative society registered or deemed to be registered under this Act;"

8. It is necessary to examine the scheme of the Act as spelt out in the provisions of the Act in order to ascertain whether there is any scope for making the employees of other societies liable for the losses caused to the society. Section 9 of the Act says that the registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. Section 29 deals with liability of past member and estate of

deceased member. Section 30(2)(x) of the Act empowers the General Body to review the loans and advances sanctioned to or the business done with the society by the members of the committee or their near relatives, and report to the Registrar about any default in the recovery of the amounts due to the society. Item (xxii) thereof gives the power to review all overdue loans and defaulters. The powers and functions of the committee contained in Section 31-A includes the power of suspension of any officer or servant of the society under Section 59, initiate action of prosecution of any person who may have incurred criminal liability under the provisions of the Act or any other law for the time being in force, review of all outstanding loans and ensure coverage of legal action on all overdue loans and advances, giving information on the affairs of the society to the supervisory council, the Registrar, financing bank and the federal society to which the society is affiliated, and to place the report on the loans, defaulters thereof and action to recover them before the General Body. Section 35 says that any debt or other amount due to a society by any member shall be a first charge upon the crop or other agricultural produce, cattle fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials owned by such member. Section 36 provides for making a charge on the immovable properties of a member for the loans borrowed. Section 37 deals with deduction from salary or wages. Section 47 places restrictions on borrowings and loans. Section 50 deals with audit of the accounts, whereas Section 51 deals with inquiry. Section 52 provides for inspection. Section 53 enables inspection of books of any society, which is indebted to it by financing bank or federal society. The responsibility of the persons maintaining the books of account is mentioned in Section 55-A. Section 59 provides for suspension of officer or servant of society, who has committed or responsible for misappropriation, breach of trust or other offence in relation to the society. When Sections 59 and 60 are read together, it makes it clear that the surcharge proceedings cannot be taken against non employees or non-office bearers or non-members of the society.

9. The normal process of disbursement of loans involves release of amounts by the Bank to the concerned societies as per their norms and acceptance of loan applications by the societies. In the said process the petitioners may have been connected with the discharge of loans at the time of their scrutiny for sanction, but the ultimate loan amount would be disbursed by the concerned Co-operative Society to the borrowers, who would repay the amount to the Society only. In the event of default committed by the borrowers, the Society would be put to loss. The bank, on its own, can insist for payment of the amount due to it from the Society, but no loss would be caused to the bank.

10. It is submitted by the learned Senior Counsel for the petitioners that in order to attract Section 60 of the Act, there must be a loss occasioned to the bank and the loss caused to the Society cannot be a cause of action for proceeding against the employees of the bank, like the petitioners herein. He further submitted that though the wording employed in Section 60 of the Act is not satisfactory, since

the ultimate order passed by the concerned authority in proceedings under Section 60(1) of the Act results in fixing the liability, the provisions must be strictly construed.

11. The words "breach of trust" and "wilful negligence" occurring in the above Section 60 are related to the conduct of the employees of the Co-operative Society only. Though the job chart of the employees of the Co-operative Central Bank include scrutiny of loan applications submitted by the Society, any failure in the discharge of their duties would not attract an action under Section 60 of the Act. The employees of the Co-operative Bank are governed by a settlement entered with the Andhra Pradesh Co-operative Banks Association with their employees and their conduct and service rules are regulated by such settlement.

12. Though a joint notice was issued to the petitioners along with the President and Secretary of the Society, the petitioners stand on a different footing in view of the nature of duties undertaken by them as employees of the Bank. The primary responsibility for the irregularities committed in the affairs of the society rests on the office bearers of the Society and the employees working therein. Though the employees of the bank are connected in the process of sanction of the loans and the bank itself is a Society, no action can be taken against the employees of another Society, "bank" in respect of the irregularities committed in a Society. In any event, the joint and several liability cannot be mulcted on the petitioners.

13. In view of the above, the proceedings taken against the petitioners are held to be without jurisdiction. Accordingly, the Writ Petitions are allowed by setting aside the impugned orders of the Deputy Registrar of Cooperative Societies, Vizianagaram, and confirmed by the Andhra Pradesh Cooperative Tribunal, Visakhapatnam, in so far as the petitioners are concerned. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

