(2003) 11 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22576 of 2003

M. Ramachandram APPELLANT

Vs

Joint Registrar District Co-operative Officer and Others RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Banking Regulation Act, 1949 — Section 22(5)

Citation : (2004) 1 ALD 322 : (2004) 1 ALT 283 : (2004) 1 APLJ 190 : (2005) 124 CompCas 117

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Minnikanti Laxmiprasad, for the Appellant; Government Pleader for Respondent Nos. 1, 2 and 4, K. Srinivasa Murthy, SC for RBI for Respondent No. 3 and T. Suryakaran Reddy, SC for Central Government, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioner is the Member and Ex-Chairman of Vasundara Co-operative Urban Bank Limited, Secunderabad (hereinafter referred to as ''the Urban Bank''). It held a licence under the Banking Regulation Act, 1949 issued by the Reserve Bank of India and it is registered under the Andhra Pradesh Co-operative Societies Act (for short ''the Act'').

2. The Reserve Bank of India, 3rd respondent, issued a show-cause notice dated 29.11.2002 to the petitioner directing it to show-cause as to why its licence should not be cancelled. The petitioner submitted explanation and thereafter some correspondence ensued. Ultimately, through its order dated 1.9.2003, the 3rd respondent cancelled the licence of the Urban Bank. The petitioner filed Writ Petition No. 19254 of 2003 against the said cancellation order. The said writ petition was disposed of through orders dated 24.9.2003 leaving it open to the petitioner to avail the remedy of appeal provided for u/s 22 of the Banking Regulation Act. The petitioner preferred such appeal before the 5th respondent together with an application for grant of interim suspension. The 5th respondent made an endorsement dated 8.10.2003 to the effect that there is no power in

them to pass interim orders.

3. In view of the cancellation of the licence by the 3rd respondent and further instructions issued by it u/s 115B of the Act, the 1st respondent appointed the 4th respondent as Special Officer of the Urban Bank in the place of the management. Subsequently, the 1st respondent passed orders dated 27.9.2003 directing winding up of the Urban Bank and appointing the 2nd respondent as a liquidator. The petitioner challenges the same.

4. The learned Counsel for the petitioner submits that the appointment of a liquidator to the Urban Bank was totally impermissible, since the circumstances provided for u/s 64 of the Act are not attracted. It is also his contention that the appellate authority in the Banking Regulation Act namely, the 5th respondent had incidental powers to consider the application for interim orders and that the rejection by it is contrary to law. He places reliance upon the judgment of the Supreme Court in I.T. Officer v. Mohd. Kunhi AIR 1969 SC 430.

5. The learned Senior Counsel appearing for the Reserve Bank of India, Sri K. Srinivasa Murthy, submits that the order passed by the 1st respondent is not specifically challenged before this Court and the question of interference with the same does not arise. As regards the other proceedings, the learned Counsel submits that the Act provides for appeal u/s 76 of the Act against the order passed u/s 64 of the Act. The learned Government Pleader for Co-operation submits almost to the same fact.

6. Basically, the challenge in this writ petition is to the order dated 27.9-2003 passed by the 1st respondent. This order has two facets. Firstly, it directs winding up of the Urban Bank. Secondly, it provides for appointment of the 2nd respondent as liquidator. The learned Counsel for the petitioner has concentrated his challenge to the second aspect of the matter and states that the circumstances for appointment of the liquidator did not exist. Stating that no appeal is provided against the order passed u/s 65 of the Act, he tries to sustain the maintainability of the writ petition.

7. Section 64 of the Act provides for winding up of the societies under certain circumstances. It is true that the basis for ordering winding up of the societies u/s 64 of the Act is the result of the enquiry u/s 51 or inspection u/s 54 or receipt of the application by not less than 2/3rd of the members. This holds good for ordinary type of Co-operative Societies. However, Chapter XIII-A of the Act prescribes special procedure in respect of societies, known as ''Eligible Co-operative Banks''. Such banks are defined under Clause (gg) of Section 2 of the Act. It is not in dispute that the Urban Bank falls into this category. Section 115-B of the Act mandates that whenever the Reserve Bank of India requires the eligible Co-operative Banks shall be wound up, steps shall be taken by the Registrar. Section 115-B of the Act starts with a non obstante clause and thereby is given an overriding effect, upon Section 64 of the Act. A combined reading of Sections 64 and 115-B of the Act justifies the winding up of an eligible Co-

operative Bank, even in the absence of a report of enquiry or inspection or application by two-thirds of the members.

8. Section 65 of the Act provides for appointment of liquidator. This is not an independent exercise. It is consequential to the order passed u/s 64 of the Act winding up of a society. The reason is that once winding up of a society is ordered; it ceases to be under the management of any elected body and the assets and liabilities of the society cannot be left in a lurch. Therefore, there cannot be a selective challenge to the order directing the appointment of liquidator without challenging the order directing winding up. Further, Section 76 of the Act provides for an appeal against the order passed u/s 64 of the Act. Therefore, this Court is not inclined to interfere with the impugned order dated 27.9.2003, be it as regards winding up of the Urban Bank or appointment of the 2nd respondent as liquidator. If the petitioner is so advised he has to avail the remedy provided for u/s 76 of the Act.

9. Coming to the other aspect of the matter, namely, the refusal by the appellate authority under the Banking Regulation Act, 5th respondent, to grant interim orders, it needs to be observed that the petitioner has availed the remedy of appeal u/s 22(5) of the said Act and filed an application for grant of interim orders. The 5th respondent rejected the same with the following endorsement:

"There is no provision for interim relief u/s 22(5). Hence rejected".

10. It is true that Section 22(5) of the Banking Regulation Act, which provides for an appeal against any decision of the Reserve Bank of India cancelling the licence, to the appellate authority and that there is no independent provision enabling the appellate authority to pass interim orders. The question as to whether the power to grant interim orders needs to be treated as incidental and whether the appellate authority can consider such application even in the absence of specific provision, was considered by the Supreme Court in its decision in I.T. Officer v. Mohd Kunhi (supra). That case related to an appeal provided for under the provisions of the Income Tax Act, 1961. The relevant provisions did not specifically empower the Appellate Tribunal to pass interim orders. After discussing the Indian and English cases on the subject, the Supreme Court ultimately held as under:

"In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction".

11. Their Lordships appeared to have been impressed by the observation made by the Chancery Division in Polini v. Gray (1879) 12 Ch D 438 (Sic), which reads as under:

"It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of Appeal before the second trial, as to the Court of last instance before the hearing of the final appeal".

12. From the decision of the Supreme Court referred to above, it is evident that even in the absence of a specific provision in statute constituting an appellate authority, the power to grant interim orders in the interest of justice is incidental to exercise such appellate powers. In that view of the matter, the 5th respondent has to consider the application of the petitioner for grant of interim orders afresh.

13. The writ petition is accordingly disposed of in the following terms:

(a) It shall be open to the petitioner to avail the remedy of appeal provided for u/s 76 of the A.P. Cooperative Societies Act against the order of the 1st respondent dated 27-9-2003 directing winding up of the Urban Bank and appointing the 2nd respondent as liquidator, and

(b) The 5th respondent-appellate authority under the Banking Regulation Act, shall reconsider the application of the petitioner for grant of interim orders and pass appropriate orders within a period of ten days from the date of receipt of a copy of this order. No order as to costs.