

(1998) 11 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29181 of 1998

Pulla Co-operative Rural Bank Limited, Pulla, West Godavari District

APPELLANT

Vs

Bonam Ram Mohan Rao and others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Citation : (1998) 6 ALD 661 : (1998) 6 ALT 274 : (1999) 1 APLJ 117

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. P.M. Gopala Rao, for the Appellant; Mr. G. Veera Reddy, for the Respondent

Judgement

1. This writ petition is directed against the judgment and order of the A.P. Co-operative Tribunal at Vijayawada dated 13-10-1998 passed in OA No.339 of 1996, setting aside the order of Deputy Registrar of Co-operative Societies, Eluru dated 2-11-1996, disqualifying the first respondent herein as member of the Committee of Management of the Pulla Co-operative Rural Bank, Pulla.

2. The relevant facts germane for disposal of the writ petition be stated briefly as under:

The first respondent stood as guarantor for the loan borrowed by his son on 17-7-1995, and the loan had to be repaid within a period of one year. The loan was not repaid within the stipulated time. Therefore, the petitioner-Bank issued notice to the first respondent on 5-10-1996 bringing to his notice about the default of the principal borrower in repaying the loan amount and directing the first respondent to repay the loan amount on or before 16-10-1996. The first respondent did not reply to the notice. In the circumstances, the petitioner-Bank moved the second respondent who is conferred with the power of Registrar as regards the petitioner-Bank under Rule 24 of the Andhra Pradesh Co-operative Societies Rules, 1964, for short, the "Rules", to disqualify the first respondent. The second respondent, acting on the representation of the petitioner-Bank,

issued show-cause notice to the first respondent under Rule 24(1) of the Rules on 26-10-1996. The first respondent submitted his reply on 31-10-1996 asserting that he is not the guarantor for the loan, and his signature was forged. The second respondent after considering the above factual plea raised by the first respondent rejected the same and passed the order on 2-11-1996, disqualifying the first respondent to be a member of the Committee of Management of the petitioner-Bank. The first respondent being aggrieved by the said order of the second respondent filed appeal, OA No.339 of 1996 before the A.P. Co-operative Tribunal at Vijayawada. The Tribunal placing reliance on the decision of a learned single Judge of this Court in Arepalli Satyanarayana Vs. Deputy Registrar of Co-operative Societies and Another, , allowed the appeal and set aside the order of the second respondent dated 2-11-1996. Hence, this writ petition by the petitioner-Bank assailing the validity of the judgment and order passed by the A.P. Co-operative Tribunal, Vijayawada.

3. The learned Counsel appearing for the petitioner-Bank firstly contended that the facts of the case decided in Arepalli Satyanarayana v. Deputy Registrar of Cooperative Societies, Bhimavaram (supra), are distinguishable from the facts of the present case. Elaborating his contention, the learned Counsel would draw the attention of the Court to that in that case the loan had to be repaid on or before 1-10-1995 whereas the loan was repaid on 25-9-1995, and in that view of the matter, the petitioner therein had good cause to succeed. Alternatively, the learned Counsel would argue that the opinion expressed by the learned single Judge in that case is quite contrary to the binding decisions, of the Division Benches of this Court in P. Venkata Subba Reddy v. K. Anjaneyulu, 1993 (1) LS 19 SRC, and R. Venkata Rangareddy and Another Vs. N. Muralidhar Rao and Others, . On the other hand, Sri G. Veera Reddy, learned Counsel appearing for the first respondent submitted that Section 21 of the A.P. Cooperative Societies Act, 1964 (for short "the Act") does not disqualify a person to be a member of the Co-operative Society if he commits default in repayment of loan; the term "default in payment of any amount" occurring u/s 21-A of the Act should be restricted to default committed by a member of the Committee to pay the loan amount, as a principal borrower, and not as a guarantor or surety, and consequently provisions of sub-Rule (1) of Rule 24 of the Rules should also be construed accordingly, and if it is so construed, it cannot be said that the first respondent committed any default.

4. Provisions of Section 21-A of the Act and the provisions of Rule 24 of the Rules together constitute a complete code in itself to answer the point raised in the present case. Section 21-A(b) of the Act provides that no person shall be eligible for being chosen as, and for being, a member of the Committee, if he is in default in the payment of any amount. The first respondent is found to be a guarantor for the loan borrowed by his son. The liability to repay the loan cast on the guarantor is coextensive with the liability of principal borrower. This position is not and cannot be contested. If the liability of the first respondent is co-extensive with the liability of the principal borrower, it does not throw any

difficulty in understanding the purport of the provisions of Rule 24(1)(b) of the Rules. Rule 24(1)(b) provides that no person shall be eligible for being chosen as a president of a Primary Cooperative Society or as a member of the committee of any society, if he is in default to the Society or to any other Society for such period as is specified in the bye-laws of the Society concerned, or in any case for a period exceeding three months, or is a defaulter to the Society or to any other Society. There is no factual controversy between the parties that under the bye-laws of the Society, the loan should have been repaid on or before 16-10-1996. It is also admitted position that the loan was repaid by other guarantor, namely, one Sri Anjaneyulu on 13-10-1996, i.e., after the prescribed period. If this is the undisputed factual matrix of the case, by force of the provisions of Rule 24(1) of the Rules and also binding decisions of the Division Benches of this Court in *P. Venkata Subba Reddy v. K. Anjaneyudu* (supra) and *R. Venkata Ranga Reddy v. N. Muralidhar Rao* (supra), the first respondent incurred disqualification with effect from 17-10-1996, and he was statutorily liable to be declared as disqualified under Rule 24 of the Rules. Sub-rule (4) of Rule 24 makes it abundantly clear that when the Registrar passes an order of disqualification after giving an opportunity to the concerned member, that would come into effect with effect from the date on which he incurred disqualification as envisaged under the provisions of Rule 24(1) of the Rules, and not from the date of the order. To the same effect are the above two decisions of the Division Benches of this Court. In that view of the matter, with respect, I should state that the opinion expressed by the learned single Judge in *Arepalli Satyanarayana v. Deputy Registrar of Co-operative Societies, Bhimavaram* (supra) is not a good law, and per incuriam. In fact, the decisions of the Division Benches are not considered in that decisions.

5. In the result, the writ petition is allowed, and the impugned Judgment and Order of the A.P. Co-operative Tribunal at Vijayawada dated 13-10-1998 passed in OA No.339 of 1996 is quashed. The order made by the second respondent-Deputy Registrar of Co-operative Societies, Eluru dated 2-11-1996 is confirmed. No costs.