

(2014) 06 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 85771 of 2013 (CS-RES)

Ramachandra S. Bhagavat

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 64, 68, 68(1), 69, 70

Citation : (2014) 6 KarLJ 28

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, Advocate for the Appellant; K. Vidyavathi, Additional Government Advocate, Advocate for the Respondent

Judgement

A.N. Venugopal Gowda, J.—Petitioner is a member of respondent 4-Co-operative Bank. He was elected as a director of the bank. He had lodged a complaint on 28-11-2008 before respondent 2 alleging acts of misappropriation and thereby causing deficiency in the funds and assets of respondent 4. Based on the said complaint respondent 2 issued a direction on 20-12-2008 to respondent 3 to initiate an enquiry into the affairs of the respondent 4. An Enquiry Officer having been appointed, conducted enquiry under Section 64 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act" for short) and submitted report which revealed the causing of deficiency in the funds and assets of the society. In furtherance of the said report the respondent 3 issued an order on 24-3-2010 under Section 68(1) of the Act, directing the respondent 4 to initiate further action and submit compliance report within 45 days. Respondent 2 sent a communication dated 19-1-2012 to respondent 3 to submit explanation and the action taken report insofar as the aforesaid aspects are concerned. Alleging inaction on the part of the authorities concerned, W.P. No. 66974 of 2012 was filed and the same was disposed of on 19-2-2013 with a direction to the 3rd respondent to consider a notice, which the petitioner had caused on 11-7-2012. Respondent 3 having issued an endorsement in compliance of the order passed in W.P. No. 66974 of 2012, this writ petition was filed, to quash the

endorsement dated 17-6-2013, vide Annexure-H and direct the respondent 3 to comply with the order passed on 19-2-2013 in W.P. No. 66974 of 2012, vide Annexure-G. Sri Dinesh M. Kulkarni, learned Advocate, contended that the impugned endorsement is arbitrary and illegal. He submitted that the petitioner was not granted opportunity of hearing to substantiate his contentions and that mechanically the impugned endorsement was issued. He submitted that the respondent 3 ought to have initiated further action under Section 69 of the Act against the officers and members of the Managing Committee of respondent 4, who are responsible for the deficiencies which have been pointed out in the enquiry report submitted pursuant to the enquiry held under Section 64 of the Act.

2. Smt. K. Vidyavathi, learned AGA, on the other hand submitted that, pursuant to the mandamus issued on 19-2-2013 in W.P. No. 66974 of 2012, further action was taken. She submitted that having regard to the events which have taken place, the compliance reports having been submitted by the respondent 4, each item was examined and factual position was verified and the petitioner was informed on 17-6-2013 vide Annexure-H. She further submitted that in the facts and circumstances of the case, the writ petition is untenable.

3. Perused the writ record and considered the rival contentions. W.P. No. 66974 of 2012 was filed to direct the Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum, to consider the notice dated 11-7-2012 of the petitioner. The writ petition was disposed of on 19-2-2013 directing the respondent 3 to consider the said notice. Respondent 3 having examined the record relating to the holding of enquiry under Section 64 of the Act and the order passed under Section 68 of the Act as well as the compliance reports submitted by the Managing Director of the bank, has informed the petitioner itemwise/issuewise, the action taken. The claim of the petitioner that there ought to have surcharge proceedings under Section 69 of the Act, suo motu by the Registrar, in my opinion, at this stage, is unwarranted. The respondent 3 after receipt of the final compliance report from respondent 4 in respect of the matters pointed out in the order passed under Section 68 of the Act should examine as to whether there is a need for proceeding under Section 69 of the Act. It is also open to the petitioner to raise a dispute under Section 70 of the Act against the members/past members and the persons claiming through the members or the Managing Committee members as well as the employees past or present and if such a dispute is instituted, the jurisdictional Registrar shall decide the same in accordance with law. In such a dispute the petitioner can place reliance on the enquiry report as well as the consequential order passed under Section 68 of the Act. If there is non-compliance of any aspects pointed out in the enquiry report and the statutory order passed under Section 68 of the Act, the same is required to be examined and the case be decided by the Registrar.

Subject to the above, writ petition is disposed of.

Smt. K. Vidyavathi, learned AGA, is permitted to file memo. or appearance within

four weeks.