

(2000) 05 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 17478 of 2000

The Honnavar Urban Co-operative Bank Limited, Honnavar	APPELLANT
Vs	
Karnataka Co-operative Appellate Tribunal, Bangalore and Others	RESPONDENT

Date of Decision : 29-05-2000

Acts Referred:

Bank Employees Service Rules — Rule 5
Constitution of India, 1950 — Article 227
Karnataka Co-operative Societies Act, 1959 — Section 17

Citation : (2000) ILR (Kar) 2220 : (2000) 4 KarLJ 265 : (2000) 3 KCCR 1900

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri Vijaya Shankar, for Sri Vigneshwar S. Shastri, for the Appellant; Sri M.N. Ramanjaneya Gowda, A.G.A. and Sri S.V. Shastri, for the Respondent

Judgement

1. Heard Mr. Vijayashankar, learned Counsel for the petitioners and Mr. S.V. Shastri, learned Counsel for the respondent 4. Government Advocate takes notice for respondents 1 to 3. Writ petition is taken up with the consent of parties for final disposal.

2. The matter revolves around the appointment of the 2nd petitioner as General Manager of 1st petitioner-bank.

3. The facts, very briefly, are the 1st petitioner is a co-operative bank having various branches. Its area of operation is within Uttara Kannada District. The 1st respondent was pleased to give approval for appointment to the post of Manager and other employees. Permission was also granted under Rule 17(1) of the Karnataka Co-operative Societies Rules to have a post of General Manager in the pay scale of Rs. 2,600-4,575 as per Annexure-B. The 1st petitioner-bank amended its bye-laws to have a post of General Manager as per Bye-law No. 42. Bye-law No. 38(T) empowers the bank to make subsidiary rules relating to the conditions of service of its employees. The amended bye-laws have been duly

approved by the Registrar of Co-operative Societies.

4. The Bank Employees Service Rules indicated that as per Rule 5 the General Manager can be appointed either by direct recruitment or by promotion or by deputation. Having regard to this provision the bank passed a resolution dated 8-4-1999 and resolved to fill up the post of General Manager by direct recruitment. The qualification required was M.Com. II Class with C.A.I.I.B. with banking experience (Annexure-D). Pursuant to this resolution, an advertisement was issued in all the leading local newspapers calling for applications to fill up the post of General Manager. Since sufficient number of qualified candidates were not available the bank passed one more resolution dated 9-9-1999 modifying the earlier resolution prescribing M.B.A. or M.Com. II Class or B.Com. with C.A.I.I.B. with banking experience. The true copy of the second resolution dated 9-9-1999 is before me as Annexure-F. The modified qualifications were also advertised in the newspaper giving wide publicity as per Annexure-G.

5. The 1st petitioner-bank received 23 applications including the application of one Rajeev Govind Shanbhag (second petitioner). The bank wanted the most qualified person to hold the office of the General Manager. The list of candidates who applied to the post of General Manager and who appeared for the written examination is placed before the Court as Annexure-J.

6. The petitioner-bank permitted the 4th respondent to appear for the written examination. The letter is marked as Annexure-K. However, the 4th respondent did not appear for the written examination.

7. Out of the candidates who appeared for the written examination, five candidates were listed for oral test. It is relevant to state that the examination was conducted by the bank through Institute of Banking Personnel Selection, Bombay which is recognised by the Reserve Bank of India. Ultimately after completing all the procedure the 2nd petitioner was selected as General Manager. A resolution was passed on 6-2-2000 to this effect (Annexure-M). The 2nd petitioner was issued with an appointment order on 7-2-2000 (Annexure-N). It is stated that he reported for duty on 7-2-2000. He resigned his post as Senior Clerk and joined duty as General Manager on 7-2-2000 itself. The joining report dated 7-2-2000 is produced at Annexure-Q.

8. The 4th respondent who did not appear for the written examination for the post of General Manager raised a dispute u/s 70 of the Karnataka Co-operative Societies Act (hereinafter referred to as "the Act"). The dispute was raised before the respondent 2. The 2nd respondent passed the following order at Annexure-W.--

"IN THE COURT OF THE JOINT REGISTRAR, CO-OPERATIVE SOCIETIES,
BELGAUM DIVISION, BELGAUM

No. JRL.DAM. 54.99-2000

Between:

1. Shri Raghuveer Madhav Pai as Manager and Chief Executive Officer, Honnavar Urban Co-operative Bank Limited, Honnavar District, Uttara Kannada. Plaintiff

And

1. President, The Honnavar Urban Co-operative Bank Limited, Honnavar District, U.K.

2. Sri Rajeev Govind Shanbag, Occ: Service c/o. The Honnavar Urban Co-operative Bank Limited, Honnavar. Defendants Dispute u/s 70 of the KCS Act, 1959.

31-3-2000

ORDER SHEET

The dispute is admitted. The plaintiff was present. He has filed an application for engaging an Advocate. The same is permitted. Sri S.C. Hiremath filed vakalath on behalf of the plaintiff.

The Advocate for plaintiff pressed for consideration of I.A. No. I. He was heard. It is found that the balance of consideration is in favour of the plaintiff. Therefore LA. No. I deserves to be allowed. The defendant 2 is hereby restrained to function as General Manager of the D. 1 -bank and the plaintiff is continued as Chief Executive of the D. 1-Bank till the final disposal of this dispute.

The case is referred to D.R.C.S., Karwar for further adjudication. The order pronounced in the open Court on 31-3-2000.

Sd/- H. Veerabhadra Swamy 31-3-2000".

9. Apparently the bank filed an application to vacate the interim order before the Deputy Registrar of Co-operative Societies, Karwar. Even before the application for vacating the stay was considered, the 1st petitioner-bank moved a revision before the Karnataka Appellate Tribunal against the interim order passed by the Joint Registrar. The 1st respondent-Tribunal passed a detailed order confirming the interim order passed by the Joint Registrar.

10. Aggrieved by the order passed by the Joint Registrar at Annexure-W and confirmed in Revision by the 1st respondent at Annexure-Y the petitioners have preferred this writ petition.

11. It was submitted by the learned Counsel for the petitioners that the interim order passed by the Joint Registrar at Annexure-W was palpably wrong. Such an interim order should never have been passed without hearing the petitioners. It was further submitted that when the 2nd petitioner had already taken charge on 7-2-2000 as General Manager it is not open to the Joint Registrar on 31-3-2000 to grant an interim injunction without hearing the petitioners. It was further submitted that the Appellate Tribunal-the 1st respondent having held at paragraph 11 that the petitioners had approached the Tribunal without filing an

application for vacating the interim order of the Joint Registrar, all that the Appellate Tribunal could have done was to direct the petitioners to approach the Deputy Registrar for vacating the interim order. Instead of that the 1st respondent has disposed of the matter on merits. The 1st respondent has foreclosed the opportunity of the petitioners to approach the Deputy Registrar for vacating the interim order and has decided the matter on merits which has further complicated the matter.

12. In these circumstances, the petitioners seek the quashing of the orders passed by the Joint Registrar at Annexure-W and the order passed by the 1st respondent-Appellate Tribunal at Annexure-Y.

13. The learned Counsel for the unsuccessful candidate-4th respondent Mr. S.V. Shastry strenuously submitted that the proper thing for the petitioners to have done was to have filed an application for vacating the interim order granted by the 2nd respondent and it would not be open for this Court to disturb the finding at Annexure-W and Annexure-Y.

14. There would be no difficulty in directing the petitioners to approach the 3rd respondent for vacating the interim order. However, this interim order has also been confirmed by the 1st respondent. In these circumstances, the petitioners had no alternative except to approach this Court for relief.

15. A perusal of the impugned order at Annexure-W would clearly indicate that the Joint Registrar was in error in granting injunction against the 2nd petitioner and literally promoting the 4th respondent (unsuccessful candidate) from the category of Manager to the post of General Manager without hearing the petitioners.

16. The question that arises for consideration in this writ petition is:

Whether in the facts and circumstances of the case it would be appropriate for this Court to modify the interim order before remitting the dispute to the Deputy Registrar?

17. It is undoubtedly true that Courts will not normally interfere with ex parte interim orders granted unless one approaches the same Authority for vacating the interim order. However, in extraordinary circumstances, where the ex parte interim orders cause grave injustice to the parties and are palpably erroneous on the face of it, this Court can certainly exercise powers in modifying the interim order and remitting the matter for disposal of the dispute.

18. In this case, admittedly, the 2nd petitioner was selected not by the bank but by an independent authority known as the Institute of Banking Personnel Selection, Bombay. The 4th respondent was given an opportunity to sit for the written examination as per Annexure-K. The 4th respondent did not sit for the examination in spite of the offer given by the bank. Apart from this, when the advertisements were given by the bank inviting applications for the post of General Manager at Annexure-E1 and at Annexure Nos. E2, E3 and G. In all

these announcements the 4th respondent has subscribed his name as Manager. The post of General Manager as per Rule 5 of the Bank Employees Service Rules could be by direct recruitment or by promotion or by deputation. The bank in its wisdom chose the method of direct recruitment for the post of General Manager. When the 4th respondent did not even appear for the written examination, it is not known how the Joint Registrar at Annexure-W has literally promoted the 4th respondent as General Manager from the rank of Manager. The Joint Registrar has taken the role of an Appointing Authority in passing an ex parte interim order which is not permissible in law and on the facts of this case.

19. The Supreme Court in *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, , held that the High Court can interfere with the interim orders under Article 227 of the Constitution if the order is made without jurisdiction. The Supreme Court relied on the *Morgan Stanley Mutual Fund Vs. Kartick Das*, , and held that the Tribunal has no jurisdiction to grant an ex parte interim order without proper application of mind. In granting an ex parte injunction the Supreme Court held that the Courts or Tribunals must take the following factors into consideration:

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) the Court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the Court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;
- (e) the Court would expect a party applying for ex parte injunction to show utmost good faith in making the application;
- (f) even if granted, the ex parte injunction would be for a limited period of time;
- (g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

19-A. The Supreme Court at paragraphs 13 and 14 further held as follows.--

"13. As ex parte order is only of short duration and it is granted to safeguard the interest of the applicant, but, at the same times, such an order cannot be granted as a matter of course. A Court or Tribunal has also to consider the consequences of such an order if ultimately the order is to be revoked after hearing the defendant. In such circumstances, the Tribunal must put the applicant on terms while granting an ex parte order and compensate the defendant in case the ex parte order was obtained without any justification and harm has been caused to the defendant. It must be remembered that an ex parte order can also affect the reputation of the person against whom it is issued

and sometimes it may be difficult to undo the damage caused by an interim order. A Tribunal while granting ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereotyped order in terms of the prayer made. Then an ex parte order cannot be allowed to continue indefinitely and the continuance of interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to hear long drawn arguments. Principles on which an interim order can be granted are well-settled. Sub-section (a) of Section 19 requires that application for recovery of debt itself is to be disposed of finally within a period of six months from the date of receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted ex parte is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an ex parte order of injunction or stay.

14. High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that High Court itself considered the merits of the case. Objection of the High Court was two-fold: (1) the Tribunal did not give any reasons and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. Judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the Courts and Tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When facts of the case brought before the High Court are such that High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in vacuum".

(emphasis supplied)

20. This is a clear authority which confers power on the High Court to interfere with an ex parte interim order made without jurisdiction. I have no doubt that the Joint Registrar could not have passed such an ex parte interim order at Annexure-W without hearing the petitioners. The Joint Registrar ought to have known that the 2nd petitioner had already taken charge on 7-2-2000 and therefore ought to have heard the petitioners before passing the interim order.

21. The 1st respondent-Appellate Tribunal equally ought not to have dealt with the matter on merits. It ought to have remitted the matter to the Joint Registrar to enable the petitioners to file an application for vacating the stay. The 2nd respondent has committed grave error in passing the ex parte impugned order without hearing the petitioners in the facts and circumstances of the case.

22. In the result, the impugned orders Annexure-W and Annexure-Y are set aside. The Deputy Registrar-3rd respondent is directed to dispose of the application for interim orders after hearing the petitioners and the 4th respondent as expeditiously as possible. The Deputy Registrar is also directed to dispose of the dispute as expeditiously as possible strictly in accordance with law without being influenced by the observations made by this Court. The writ petition is disposed of accordingly. No costs.