

(2017) 01 AP CK 0047
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7418 OF 2007

V. Premsagar Rao

APPELLANT

Vs

Joint Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 51, Section 60

Citation : (2017) 2 ALT 82 : (2017) 2 AndhLD 500 : (2017) 1 HLT 345

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

Bench : Single Bench

Advocate : Mrs. Bobba Vijaya Lakshmi, Counsel, for the Petitioner; Government Pleader for Cooperation, for the Respondents

Final Decision : Disposed Off

Judgement

A. Ramalingeswara Rao, J.—The petitioner is a retired Special Cadre Deputy Registrar and he was appointed as Election Officer to conduct elections to the 1st respondent Bank in December, 2001, while he was working as Deputy Registrar of Co-operative Societies/Officer on Special Duty, Karimnagar District Co-operative Central Bank, Karimnagar District. Elections were conducted on 30.12.2001. While so, President of 2nd respondent Bank addressed a letter dated 22.5.2002 complaining to the Commissioner for Cooperation and Registrar of Co-operative Societies, A.P. with regard to alleged lapses committed by the petitioner in relation to the said elections. The 1st respondent authorised the Divisional Co-operative Officer, Karimnagar to conduct an enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short, the Act) to look into the affairs of the 2nd respondent with special reference to the allegations levelled by the President of the Bank. Enquiry Officer conducted enquiry and held that the petitioner was responsible for irregularities in conducting elections and recommended for recovery of Rs.1,45,073/- in lumpsum by invoking provisions of Section 60 of the Act. Based on the same, the 1st respondent issued a show-cause notice under Section 60 of the Act vide proceedings in Rc.No.6336/ 2002-

W, dated 17.05.2004 directing the petitioner to appear before him on 27.5.2004. He appeared on the said date and sought time for submitting the explanation. The said request was rejected by order dated 27.5.2004 and he was asked to appear on 3.6.2004. He appeared on 3.6.2004 and sought further postponement of enquiry upto 14.6.2004, but the adjournment was rejected and the order of Surcharge was passed on 4.6.2004 for an amount of Rs.1,78,928/- along with interest at 18% per annum w.e.f. 30.12.2001. The petitioner submitted an explanation on 14.6.2004, later to passing of the order. In view of the order passed by the 1st respondent on 4.6.2004, the petitioner challenged the said order in CTA No.21 of 2004 before the A.P. Co-operative Tribunal, Warangal, and the same was dismissed on 19.2.2007. Against the said order, the present writ petition is filed.

2. It appears that against the petitioner, regular disciplinary proceedings were taken up under A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, CCA Rules) and the Commissioner and Registrar passed an order on 3.10.2005 dropping the proceedings and instructed the petitioner to be more careful in future as the alleged expenditure was incurred in respect of extra reserve personnel, advertisement in local T.V. Channel, payment of D.A to Police Personnel, purchase of extra trunk boxes, etc., which were found to be inevitable during process of election. These facts are not in dispute.

3. The only point raised in the present writ petition is with regard to the jurisdiction of the 1st respondent to initiate proceedings under Section 60 of the Act.

4. Learned counsel for the petitioner submits that the Registrar alone can take action, even if it is assumed that the action can be taken under Section 60 of the Act, and the 1st respondent has no jurisdiction to take action.

5. As stated above, the petitioner has no opportunity to raise the plea of jurisdiction before the 1st respondent as the petitioner was pleading for time to submit his explanation and in the meanwhile an order was passed on 4.6.2004. However, the said plea was taken before the A.P. Co-operative Tribunal, Warangal and the said point was dealt with by the Tribunal as follows:

17. The third fold of contention of the learned counsel for the appellant is that Section 60 (1) of surcharge proceedings are not binding/not applicable to the appellant and that no powers are delegated to the respondent No.1 as his surcharge proceedings as Joint Registrar/District Cooperative Officer his findings as Joint Registrar are not within the provisions of the Act. No such powers are delegated to Joint Registrar of Cooperative societies. But as per the surcharge proceedings dated 4.6.2004 the designation of enquiry officer shown as Joint Registrar /District Cooperative Officer and G.O.Ms. No.34/1995 explains that powers are delegated to the District Co-operative Officer from the Registrar. Therefore the learned counsel for the appellant contention has no force on this aspect as the impugned surcharge proceedings are within the provisions of A.P.

Cooperative Societies Act and the powers are being rightly delegated under G.O.Ms. No.34 and surcharge proceedings are binding on the appellant since he has misappropriated amount. The learned counsel for the appellant placed reliance on the ruling reported in 1999 (5) ALT 576 stating that the earlier preliminary enquiry report and subsequently under Section 51 proceedings ordered as de novo enquiry which is a nullity and binding on the appellant.."

6. A perusal of G.O.Ms. No.34, Food and Agriculture (Co-op. IV) Department, dated 18.01.1989, which contains the names of authorities who were delegated the powers under the provisions of the Act show that in respect of Urban Banks coming under Banking Regulation Act, 1949, the Deputy Registrar of Co-operative Societies in-charge of divisions was given the following powers.

All the powers of the Registrar under the Act except those under Sections 4(2), 7 (1) (insofar as it relates to prescribing minimum share capital and membership) Sections 17, 18 third proviso to sub-section (1) of Sections 31, Section 32 (7), 34, 50, 51, 52, 64 (1), 76, 86, 115, 116, 116-A, and 116-C and the powers of the Registrar under Rules 4, 12, 27, 28, 29, 34 (14), 39, 41, 45, 59 and 68.."

7. The said delegation does not contain the power under Section 60. The 1st respondent is the District Co-operative Officer and he was not delegated with any power relating to Urban Banks coming under the Banking Regulation Act. He was given the delegated powers in respect of the District Cooperative Central Bank and District Cooperative Marketing Societies, whereas in the instant case the 2nd respondent is a District Urban Bank. The Tribunal proceeded on the assumption that the District Co-operative Officer was delegated with the power to take action under Section 60 of the Act, by mistaking that the District Cooperative Central Bank is involved in the present case.

8. The case can be looked from another angle also as the petitioner is admittedly an employee of the Co-operative Department and he is subject to disciplinary control of the Registrar of Cooperative Societies. In relation to service matters, CCA Rules are applicable to him and as stated above appropriate proceedings were already initiated and after enquiry proceedings were dropped. In such a case, he, being not an employee of Cooperative Society, cannot be subjected to proceedings under Section 60 of the Act though some loss might have been caused to the society. The activities of the petitioner would be regulated in accordance with service rules applicable to the petitioner only. This Court in respect of the employees of the Central Bank, against whom when proceedings were taken under Section 60 of the Act, took a view that the employees of the Co-operative Central Bank cannot be proceeded under Section 60 of the Act in W.P. No.22815 of 2009 and batch dated 5.1.2017. On this ground also, proceedings against the 1st respondent should be quashed.

9. Though the petitioner took several grounds before the A.P. Cooperative Tribunal, those grounds are not being dealt with under the present order in view of the above position. In view of the lack of jurisdiction of the 1st respondent and

in view of the non-maintainability of the proceedings against the petitioner under Section 60 of the Act, proceedings against the petitioner pursuant to the order passed by the 1st respondent in proceedings dated 4.6.2004 and confirmed by the A.P. Cooperative Tribunal at Warangal, in CTA. No.21 of 2004, dated 19.2.2007 are set aside and the Writ Petition is allowed.

10. It appears that the petitioner deposited an amount of Rs.1,50,000/- and the same was encashed by the 2nd respondent, pending disposal of the writ petition pursuant to an order passed by this Court. It is needless to observe that in view of allowing writ petition, 2nd respondent shall pay the amount to the petitioner forthwith. No order as to costs.

11. Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed.