

(1989) 06 KAR CK 0031
In the Karnataka High Court
Case No : W.P. Nos. 16349 to 16359/84

Venkataraman Laxminarayan Bhat and Others

APPELLANT

Vs

Karnataka Appellate Tribunal and Others

RESPONDENT

Date of Decision : 26-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 69

Citation : (1989) 2 KarLJ 291

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

M.P. Chandrakantharaj Urs, J.-The above batch of writ petitions is filed as a common petition by persons who were ex-directors on the Committee of Mangement or employees of the Multipurpose Co-operative Society, Siddapur duly incorporated under the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as the Act). They are aggrieved by the order dated 23rd March, 1981 passed by the Joint Registrar of Cooperative Societies, Belgaum Division, Belgaum by which each of the petitioners in this batch of petitions and after other writ petitions pending in this Court were directed to make good the amounts ranging from Rs. 29,450/- to Rs. 339/- in purported surcharge proceedings under Sec. 69 of the Act on account of the petitioners and some others causing deficiency in the assets of the Co-operative Society by breach of trust, negligence, misappropriation and fraudulently retaining money or other property belonging to the Co-operative Society, viz., the Multipurpose Co-operative Society of Siddapur, (later, re-named as Siddapur Agricultural Produce Marketing Co-operative Society Ltd.,).

2. The appeals filed against that order of the Joint Registrar who is respondents came to be confirmed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as the Tribunal) in Appeals Nos. 264, 265 and 450/1981 by a common order dated 18th September, 1984 as at Annexure-A to the petitions. Aggrieved by the said two orders, the present writ petitions are filed challenging the correctness and legality of the impugned orders inter alia on the

ground that the entire procedure followed is irregular, contrary to law and lacks initial jurisdiction which the Tribunal has totally overlooked and has blindly confirmed the order of the Joint Registrar-2nd respondent without proper application of mind or correctly appreciating the points raised before it. Therefore, they have prayed for quashing of the two orders.

3. The facts themselves are not in dispute and the facts necessary for purpose of disposing of this batch of writ petitions are as follows and they may be stated as under.

4. The petitioners were promoters, some of them were directors on the Board of Management of the said Agricultural produce Marketing Society, Siddapur. They have themselves averred that they conducted the affairs of the Society for over 30 years and thereafter a few persons who were inimically disposed towards them got elected to the Committee of Management and thereafter in order to harrass and reap vengeanon the petitioners caused proceedings to be initiated under Sec. 64 of the Act and thereafter proceedings under Sec. 69 of the Act by the 2nd respondent resulting in the impugned order as at Annexure-B.

5. Just as it was contended before the Tribunal, in this Court also Mr. A.G. Holla, learned Counsel for the petitioners, has inter alia contended that the entire proceedings initiated was without jurisdiction in as much as no specific charge against each of the petitioners was ever framed by the 2nd respondent before proceeding to fix the financial liability to make good what he has termed the loss caused to the Co-operative Society, thereby resulting in the diminishing of the assets of the said Co-operative Society by acts of commissions and omissions of the petitioners jointly and severally.

6. It is indeed strange that in paragraph-7 of the order of the Tribunal, respondent-1, there is a clear analysis of Sec. 69 of the Act by the Tribunal after setting out the text of the provision. It will be useful to re-produce Sec. 69 of the Act in this order as well and it is follows:

"69. Surcharge-(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that the Committee of Management of such society or the President, Vice-President, the Chairman, Vice-Chairman or any other member of the Committee of Management or any person who is or was entrusted with the organisation or management of such cooperative society or who is or has at any time been an officer or an employee of a co-operative society has made any payment contrary to the Act, the rules or the bye-laws or has caused any deficiency in the assets of the co-operative society by berach of trust or negligence or has misappropriated or fraudulently retained any money or other property belonging to such co-operative society, the Registrar may, of his own motion or on an application of the Committee, Liquidator or any creditor, frame charges against such person or persons and after giving such person and in the case of a deceased person, to his representative who inherits his estate, an opportunity of making representation, make an order requiring him to pay or

restore the money or property or any part thereof with interest at such rate as he may determine or to contribute such sum to the assets of the co-operative society by way of compensation to such extent as he may consider just and equitable.

2) This section shall apply notwithstanding that the act is one for which the person concerned may be criminally liable."

7. To acquire jurisdiction to initiate proceedings the Registrar concerned has, to have first material in the form of his own suo moto investigation or at the instance of someone else, to initiate the proceedings. Such material must evidence the diminishing of assets of the Co-operative Society due to negligence, misappropriation etc., which are enumerated in the section. It is on the availability of such material and based on such material the Registrar has to frame charges as correctly analysed by the Tribunal as the first requirement. It is thereafter that first requirement is satisfied he may call upon the persons who are likely to be affected by the Specified charges to make a representation and then hold such enquiry as may be necessary on such representation and then proceed to fix the liability individually on each of the ex-officer or employee, director, past-member, and past-employee etc of the Co-operative Society if found guilty of the charge framed, fix the financial liability which he has to make good against the diminished assets by the conduct alleged against each of the said officers, employees etc., If the order under Sec. 69 of the Act suffers from lack of any one of these ingredients then the order would be one clearly without jurisdiction and would suffer from patent illegality apparent on the face of the record and calls for interference by this Court under Arts. 226 and 227 of the Constitution.

8. It may be useful to point out here that the surcharge proceedings under Sec. 69 of the Act are not dissimilar to the proceedings which a Company Court may initiate on the complaint of the Liquidator or a member of a Company under Secs. 541, 542 and 543 of the Companies Act, 1956, which are generally termed as misfiance proceedings. The case law on that subject is not wanting. If proceedings under Sec. 69 of the Act result in a person proceeded against being foisted with financial liability and even prosecution in a criminal Court for offences such as misappropriation, fraud etc., the action of the Registrar, therefore in my view acquires nature and character very akin to criminal proceedings initiated with civil consequences and therefore must observe strictly and comply with the requirements of the rules of natural justice which would satisfy the judicial conscience of this Court.

9. On the admitted facts of this case it suffices for me to point out that no charge as such has been framed by the Registrar against each of the petitioners specifying in what manner the assets of the Co-operative Society in question has diminished and how each one of the respondents is responsible for such diminishing and to what extent. Unfortunately, in this batch of petitions show cause notice issued by the 2nd respondent-Joint Registrar has not been produced

by any of the petitioners. Equally unfortunately, despite lapse of four years, the learned Government Pleader is unable to produce the records of the case before the Court. When the matter had been taken up for hearing, the learned Government Pleader prayed for further time to secure the records that has been refused by this Court on the ground that sufficient time had been given and neither statement of objections had been filed nor the records produced. Therefore, this Court has to proceed on the basis as if there are no records or if the records were produced would have gone against the 2nd respondent had they been produced. However, Mr. A.G. Holla, learned Counsel for the petitioners, pointed out that in some of the connected petitions which have not been set down for hearing today, show cause notice was produced as Annexure-C i.e., in W.P. No. 15811 and W.P. No. 15812/1984. In fact he has given inspection of the said annexure to the Court as well as the Counsel appearing for the opposite side. It is a true copy of the petition-show cause notice issued. A perusal of the show cause notice indicates that the foundation for initiating proceedings and issuing the show cause notice dated 26-6-1978 was the report of the auditor under Sec. 64 of the Act. That report foisted the liability on the petitioners in this batch of petitions. There is no intrinsic evidence in the show cause notice, that the report prepared by the auditor was after notice to the petitioners. There is no indication that the material used by the auditor was with the knowledge of the petitioners. If any statement was recorded by witnesses in order to foist liability was after notice to the petitioners and whether such witnesses were subjected to cross-examination by the petitioners is not indicated. In other words, whether such enquiry was in accordance with the well established principles on rules of natural justice or behind the back of the petitioners is seriously doubted. The only redeeming feature is that it was accompanied by a copy of the report. In other words, the charge contemplated under Sec. 69 of the Act was not framed by the Joint Registrar-2nd respondent herein but by the auditor who made his investigation and enquiry under Sec. 64 of the Act. That will not be held to satisfy the first requirement as the Tribunal refers to it of Sec. 69 of the Act. If the first requirement is not satisfied, then this Court has no alternative as observed earlier but to quash the impugned orders and remit the matter back to the 2nd respondent to commence proceedings afresh specifying against each of the petitioners charge or charges relating to him and the manner in which he has caused the diminishing of the assets of the Co-operative Society while he was in charge of the management of that Society, in one or the other capacity in language which will be clearly understood by the petitioners, so that they may answer the charge and set up their defence in accordance with their understanding of the charge or charges. If they seek representation in that behalf, that representation should include not only an opportunity of being heard but also adducing evidence in rebuttal to the evidence on which the 2nd respondent Joint Registrar relies upon to prove the charge or charges. The witnesses shall be permitted to be cross-examined by the petitioners or their Counsel, if they are permitted to enter appearance, and if witnesses are examined by the Registrar. Subject to the above observations, this batch of

petitions is allowed and rule issued earlier made absolute. But in the circumstances of the case, there will be no order as to costs.

Petitions allowed.