
(2004) 03 AP CK 0090
In the Andhra Pradesh High Court
Case No : Writ Petition No. 25634 of 2003

V.P. Rama Rao

APPELLANT

Vs

District Co-operative Officer/Registrar and Others

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALD 701 : (2004) 3 ALT 515 : (2004) 102 FLR 718

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy and B. Mahender Reddy, for the Appellant;
Government Pleader for Respondent No. 1 and M. Bhaskara Lakshmi, for the
Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—Heard Sri K. Ramakrishna Reddy, learned Senior Counsel instructed by Mr. B. Mahender Reddy, learned Counsel for the petitioner; learned Government Pleader for Co-operation for the 1st respondent and Smt. Bhaskara Lakshmi, learned Counsel for the 2nd respondent.

2. The petitioner is a Secretary of the 2nd respondent-Co-operative Bank. By proceedings dated 11.6.2003 the 2nd respondent issued a charge memo listing out about 5 species of charges and called upon the petitioner to explain why an amount of Rs. 2.30 crores invested allegedly at the instance of the petitioner with certain other banks, could not be recovered from him together with interest and also why disciplinary action be not taken against him for the enumerated lapses. By another proceedings dated 1.7.2003, the 2nd respondent placed the petitioner under suspension pending domestic enquiry, which was ordered by a resolution of the Bank dated 30.6.2003, for a period of three months, or the completion of the enquiry, whichever is earlier. The petitioner was declared entitled to subsistence allowance as per rules during the Court of enquiry. The order dated 1.7.2003 records certain allegations of misconduct against the

petitioner as the foundation for the action of placing him under suspension pending enquiry. Assailing these two proceedings the writ petition is instituted seeking their invalidation.

3. Sri Ramakrishna Reddy, learned Senior Counsel appearing for the petitioner contends that as the ingredients of Section 59 of the A.P. Co-operative Societies Act, 1964 (for short "the Act") are not present in the case on hand, the 2nd respondent-Bank was incompetent to have placed the petitioner under suspension. The power of the 2nd respondent, according to the petitioner, is traceable only to Section 59 as reiterated in Section 31-A(15) of the Act.

4. Counter-affidavits have been filed by the respondents. Insofar as the core issue in this writ petition is concerned, Respondents 1 and 2 contend that the 2nd respondent-Bank has the power as the employer to exercise disciplinary control over its employees including the petitioner, including the power to place him under suspension and also qua such powers available under the Byelaws of the Bank and that the grant of power to the Registrar u/s 59 of the Act is not in derogation of the inherent powers of the employer Bank. The powers of the Registrar u/s 59 do not usurp or eclipse the powers of the employer but merely operate as a check on any failure of the employer to act against the misconduct of an employee, is the substratum of the defence of the respondents to the challenge in the writ petition.

5. That the petitioner is an employee of the 2nd respondent-Bank and that his wages and emoluments are paid by the 2nd respondent-Bank and that he is subject to the general disciplinary control of the 2nd respondent, is not in dispute. What is however contended on behalf of the petitioner is that qua the provisions of Section 59, it is the Registrar and the Registrar alone who has the power to initiate the process of suspension (including pending enquiry) of an employee of a Cooperative Society, by issuing directions if the circumstances set out in the statutory provision are present in any contextual situation.

6. In view of the limited canvass in which the lis is presented, it is necessary to consider the provisions of Section 31A(11) and (15) and Section 59 of the Act, which are as follows:

"31-A. Powers and functions of the committee :--The committee of a society shall, subject to the provisions of the Act, Rules, Byelaws and Resolutions of the General Body, exercise the following powers and functions, namely :

.....

(11) decide matters connected with the day-to-day management of the society;

.....

(15) suspension of any officer or servant of the society u/s 59;

59. Suspension of officer or servant of society :--(1) Where in the course of an audit u/s 50 or an inquiry u/s 51 or an inspection u/s 51 or Section 53, it is

brought to the notice of the Registrar that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of the society, direct the committee pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him, but not retrospectively.

(2) On receipt of such direction, the committee shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

(3) The Registrar may direct the committee to extend, from time to time, the period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar."

7. On a true and fair construction of the provisions of the Act, it is apparent that the control invested in the Registrar, over the affairs of Co-operative Societies, is a control legislatively designed for achieving good governance of Co-operative Societies. By the investiture of such control in the Registrar, it is neither the legislative intent nor the expressed or implied statutory mandate that the Co-operative Societies should function as mere administrative arrangements or appendages of the Cooperative Department represented by the Registrar. The co-operative spirit and the autonomy of Co-operative Societies to function according to the majoritarian choices expressed in periodical elections and constitution of the governing bodies of the Societies for such purposes is ensured by the provisions of the Act. To ensure a check on potential maladministration of the Societies or laxity of the elected or nominated Management in the management of the affairs of the Society, certain supervisory powers are conferred on the officers of the Co-operative Department. Section 59, on a true and fair construction of the provisions in the content of the legislation as a whole, is one such provision which inheres in the Registrar the power and in a given context a corollary statutory obligation to direct the committee of the society to place or cause to be placed, a paid officer or servant of the society under suspension, where in course of an audit u/s 50 or an enquiry u/s 51, or an inspection u/s 52 or 53, it is brought to the notice of the Registrar that a paid officer or servant of a society has committed or has otherwise been responsible for misappropriation or breach of trust or other offence in relation to the society. Sub-section (2) of Section 59 of the Act obligates the committee of the society to give effect to the directions of the Registrar under Sub-section (1) notwithstanding any contrary provisions in the Byelaws of the society. Sub-section (2) of Section 59 of the Act is in the nature of a provision *ex abundanti cautella* since it is well settled that the provisions of Bye-laws are subject to legislative provisions.

8. Even where the power of suspension of a specific paid servant or officer of a

society inheres (under the byelaws of the society) in a body other than the Committee of the society, as for instance in the Chairman, President or elected Secretary of the Society, then, notwithstanding the investiture of such power of suspension in such officer of the society, the committee is required to itself place an officer or servant of the society under suspension or cause him to be so placed, after receipt of a directive from the Registrar. There is nothing however in the language of Section 59 per se or as part of the statutory architecture which permits the inference that the power conferred on the Registrar u/s 59 totally eclipses any available and inherent power of the Society to exercise disciplinary control over its paid employees.

9. Section 31A is couched in enabling phraseology. u/s 31A the Committee of a Society shall exercise the powers and functions enumerated in Sub-sections (1) to (23) including decision on matters connected with the day-to-day management of the Society (Sub-section 11) and suspension of any officer or servant of the society u/s 59 (Sub-section 15). Sub-section (15) of Section 31A is apparently a reiterative verbal formula in view of the fact that Section 59 already obligates a committee of the society to comply with the directions of the Registrar. Section 31A(15) reiterates the obligation of the committee of the society u/s 59 in respect of suspension of an officer or servant on the directive of the Registrar.

10. In the considered view of this Court neither the provisions of Section 59 taken singly or in conjunction with the provisions of Section 31A(15) of the Act permit the inference that the power of suspension of the employees of the Society vests exclusively in the Registrar of the Cooperative Societies to the total exclusion of any such power in the Co-operative Society. After abolition of centralised service for certain categories of employees and decadarisation, the Paid Secretaries stood allotted to the various societies. Rule 72(3)(a) of the A.P. Co-operative Societies Rules, 1964 enjoins that a Secretary, on allotment to a society, shall be deemed to be an employee of that society and Sub-rule (3) thereof declares, inter alia, that the society shall exercise disciplinary control over the Secretary. The petitioner, who is the Secretary of the 2nd respondent-Bank is therefore subject to the disciplinary control of the 2nd respondent-Bank. This generic disciplinary control that the 2nd respondent-Bank has over the petitioner is not over borne by the provisions of Section 59 or Section 31A(15) of the Act.

11. In the circumstances and on the analysis above, the proceedings dated 11.6.2003 and 1.7.2003 issued by the 2nd respondent do not fall foul of Section 59 of the Act.

12. Sri Ramakrishna Ready, learned Senior Counsel urges that the exercise of the power of suspension by the 2nd respondent is arbitrary, as even the enquiry u/s 51 into the affairs of the Society is still pending and even before receipt of a report consequent on such enquiry and an ascertainment of the role and involvement of the petitioner in the allegations of misconduct, the 2nd

respondent has, in unbecoming haste, placed the petitioner under suspension pending enquiry. It is also contended that there is no specific power under the Bye-laws of the 2nd respondent-Bank enabling the 2nd respondent-Bank to place the petitioner under suspension.

13. The Bye-laws of the 2nd respondent-Bank are neither statutory nor have a statutory flavour. The 2nd respondent-Bank is neither pleaded, urged or demonstrated to be an Agency or instrumentality of the State. The service relationship between the petitioner and the 2nd respondent-Bank does not fall to be considered by this Court in exercise of its jurisdiction under Article 226 of the Constitution because no constitutional or public law obligations are owed by the 2nd respondent to the petitioner qua the service relationship between them. The grievance of the petitioner as against the 2nd respondent-Bank in respect ,of his service relationship with the said respondent in respect of violation of the Bye-laws of the society, cannot be considered by this Court under Article 226 of the Constitution. The position in this area is no longer res integra in view of the decision of the Full Bench of this Court in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, and of the Supreme Court in Federal Bank Limited v. Sagar Thomas and Ors. 2003 (7) SC 22. In respect of this grievance the petitioner is at liberty to pursue his remedies before an appropriate forum including a jurisdictional Civil Court.

14. On the analysis above I discern no merits in the writ petition. The writ petition is accordingly dismissed. No costs.