

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE SRI JUSTICE M. GANGA RAO

+ W.A.No.935 of 2017

%Date: -01-2018

Between:

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Co-operation Department, Secretariat, Velagapudi, Amaravathi, Guntr District.
2. The Commissioner & Registrar of Cooperative Societies, Government of A.P., Vijayawada, Krishna District.
3. The District Cooperative Officer, Ananthapuramu, Ananthapuramu District.
4. The Deputy Registrar of Cooperative Societies / Inquiry Officer, Ananthapuramu, Ananthapuramu District.

... Appellants

Vs.

1. K. Vijay Chandra Reddy, S/o. K. Jaya Chandra Reddy, Occ: Chief Executive Officer, Ananthapur District Cooperative Central Bank, Ananthapuramu District.
2. The Ananthapur District Cooperative Central Bank, Ananthapuramu, Ananthapuramu District, rep. by its General Manager.
3. The District Collector, Ananthapuramu District.

... Respondents

! For the Appellants : G.P. for Cooperation

^ For the Respondent No.1 : Mr. Vedula Srinivas

^ For the Respondent No.2 : Mr. O. Manohar Reddy

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE SRI JUSTICE M. GANGA RAO

W.A.No.935 of 2017

JUDGMENT: (per VRS,J)

The State of A.P. has come up with the above writ appeal challenging an order passed by the learned Single Judge granting interim suspension of an order of suspension passed against the 1st respondent herein.

2. Heard the learned Government Pleader for Cooperation (A.P.) appearing for the appellants, Mr. V. Srinivas, learned counsel appearing for the 1st respondent and Mr. O. Manohar Reddy, learned counsel appearing for the 2nd respondent-Bank.

3. The 1st respondent is working as Chief Executive Officer of the 2nd respondent- Ananthapur District Cooperative Central Bank.

4. By proceedings dated 03.05.2017, the Commissioner and Registrar of Cooperative Societies appointed the Deputy Registrar of Cooperative Societies, Ananthapur as an Inquiry Officer to conduct an inquiry. This was done by the Commissioner in exercise of the powers conferred by Section 51 of the A.P. Cooperative Societies Act, 1964.

5. Pursuant to his appointment as Inquiry Officer, the Deputy Registrar issued a letter dated 22.05.2017 calling upon the 1st respondent to produce the records relating to (1) certain allegations regarding discharge of fake fixed deposits to one Mr. P. Ramesh; (2) non-redressal of certain grievances of the employees of the Bank with regard to seniority; (3) certain allegations regarding sanction of loans; and (4) non-compliance of the inspection reports of NABARD. The 1st respondent

seems to have responded to the said notice requesting for copies of the allegations on the basis of which inquiry was ordered.

6. However, the Deputy Registrar sent an interim report on 31.05.2017 complaining of non production of records, on the basis of which the Registrar of Cooperative Societies passed an order dated 01.06.2017 placing the 1st respondent under suspension.

7. Challenging the order of suspension, the 1st respondent filed a writ petition in W.P.No.18272 of 2017, along with an application in W.P.M.P.No.22294 of 2017 for interim stay of all further proceedings. On the said application, the learned Judge passed an order of suspension dated 21.06.2017. Aggrieved by the said order, the State has come up with the above writ appeal.

8. It is seen from the order of the learned Judge impugned in the above writ appeal that he was persuaded to grant an interim order on the short ground that none of the conditions stipulated in Section 59(1) of the Act are satisfied and that therefore the Registrar of Cooperative Societies had no jurisdiction or power to pass the order of suspension. In addition, the learned Judge also went into the merits and held that there was no disobedience of the summons issued by the Inquiry Officer and that the 1st respondent did not willfully suppress or withhold any information. The learned Judge opined that there was no misappropriation or breach of trust or collusion and that therefore, the order of suspension was passed in a routine manner without proper consideration of the gravity of the allegations and the nature of the evidence placed before the Inquiry Officer. The learned Judge also recorded a finding that the Registrar had acted with *mala fide* intention and with an ulterior motive to harass the 1st respondent.

9. The grievance of the appellants is that the learned Judge ought not to have interfered with an order of suspension at the interlocutory stage and that the learned Judge was wrong in testing, even at the threshold, the correctness of the allegations forming the basis for the inquiry.

10. However, it is contended by the learned Counsel for the 1st respondent that the action of the Inquiry Officer in sending an interim report on 31.05.2017, without even giving sufficient opportunity to the 1st respondent to respond to the allegations, was completely arbitrary and *mala fide* and that the appreciation of the scope of Section 59 by the learned Judge was in tune with the law. It is also his contention that when the allegations that were sought to be inquired into related to the years 2014-2015, there was no necessity to place the 1st respondent under suspension in the year 2017. According to the learned counsel for the 1st respondent, the Inquiry Officer proceeded with the inquiry without any interruption, after placing the 1st respondent under suspension and that he had also recorded the statements of as many as 13 officers of the Bank and 21 members of the Managing Committee. The 4th respondent is alleged to have claimed that the inquiry was concluded on 31.10.2017. Therefore, it is contended that there is no necessity to keep the 1st respondent under suspension.

11. We have carefully considered the above submissions.

12. At the outset it should be pointed out that what was challenged by the 1st respondent in the main writ petition was an order of suspension passed by the Registrar in exercise of the powers conferred under Section 59 of the A.P. Cooperative Societies Act, 1964. Pending writ petition, the 1st respondent was entitled only to ask for interim suspension of the order

of suspension. But what the 1st respondent sought in W.P.M.P.No.22294 of 2017 was a stay of all further proceedings pursuant to the order of suspension dated 01.06.2017. A stay of all further proceedings pursuant to an order of suspension would normally mean the stay of the inquiry and other related proceedings.

13. It appears from the arguments advanced on both sides that what the 1st respondent wanted was only an interim suspension of the order of suspension, though the prayer was couched in a different manner. The learned Judge passed an order granting interim suspension and not interim stay of all further proceedings pursuant to the order of suspension. But the learned Judge ordered interim suspension “as prayed for”. Therefore, even if we do not agree with the appellants, we may have to modify the order of the learned Judge, as otherwise the continuation of further proceedings would be in jeopardy.

14. On the question whether the learned Judge could have granted an interim suspension of the order of suspension at all, it is seen that a statutory inquiry under Section 51 of the Act was ordered by proceedings dated 03.05.2017 with respect to three different sets of complaints. In the order of suspension dated 01.06.2017, there is a reference to three sets of complaints at Sl.Nos.1 to 3 of the reference column. Item No.4 in the reference column relates to the proceedings dated 03.05.2017 by which a statutory inquiry under Section 51 was ordered. Item No.5 in the reference column refers to the interim report of the Inquiry Officer dated 31.05.2017, which triggered the order of suspension.

15. Therefore, essentially three sets of complaints indicated in Item Nos.1 to 3 of the reference column of the order of suspension led to the

initiation of the statutory inquiry under Section 51 and the interim report of the Inquiry Officer led to the order of suspension.

16. The first set of complaints indicated in Item No.1 of the reference column does not bear any date and the order of suspension states that as per the said complaint, the funds of the Bank were misappropriated by discharging fake fixed deposits and the Bank did not take any action against the employees involved in the fraud. The second set of complaints referred to in Item No.2 of the reference column of the order of suspension relates to the period 2014. The third set of complaints indicated in Item No.3 of the reference column relates to sanction of loans and non-redressal of the grievances of the employees.

17. It appears that these three sets of complaints, by themselves did not convince the Registrar of Cooperative Societies to place the 1st respondent under suspension. What impelled the Registrar of Cooperative Societies to suspend the 1st respondent was the interim report of the Inquiry Officer dated 31.05.2017. As per the interim report of the Inquiry Officer, the 1st respondent intentionally avoided the production of the records and that there was disobedience of the summons issued under Section 55.

18. But as rightly observed by the learned Judge, the very appointment of the Inquiry Officer was under the proceedings dated 03.05.2017. The first communication sent by the Inquiry Officer to the 1st respondent was dated 22.05.2017. By the said communication, the 1st respondent was directed to produce certain records on 26.05.2017. This communication dated 22.05.2017 did not indicate the list of records to be produced. But this communication merely directed the 1st respondent to produce connected records relating to certain allegations regarding (1)

discharge of fake fixed deposits sanctioned to one Mr. P. Ramesh; (2) non-redressal of grievances of some employees regarding seniority; (3) Sanction of loans; and (4) non-compliance of inspection reports of NABARD.

19. Therefore, the 1st respondent sent a reply dated 26.05.2017 requesting the Inquiry Officer to supply copies of the allegations, to enable him to produce the relevant records.

20. In response, the Inquiry Officer sent a letter dated 29.05.2017 giving an indication about the records that were to be produced. The relevant portion of the letter dated 29.05.2017 reads as follows:

“Regarding Item 1, the records relating to fake fixed deposits relating P.Ramesh, S/o. P. Ramaiah, Korrapadu village may be furnished.

Regarding item 2, the records relating to seniority dispute of Smt. K. Surekha Rani from the date of notification of recruitment of managers to till date.

Regarding item 3, the copy of petitions of T. Pullanaidu and others dt.20.03.2017 and petition of V. Krishna Reddy dt.25.04.2017 are herewith enclosed.

Regarding item 4, the copy of the letter of the Special Commissioner for Cooperative and Registrar of Cooperative Societies, A.P., Guntur letter Rc.No.2028/2014/Cr.2, dt.16.03.2015 on the inspection of NABARD for the year ended 31.03.2014 is enclosed.

Therefore, I request you to appear before the Inquiry Officer, ADCC Bank Ltd., Ananthapuramu on 31.05.2017 at 10.30 am at Office of ADCC Bank Ltd., Ananthapuramu and produce all the connected records without fail.”

21. As required by the Inquiry Officer in his communication dated 29.05.2017, the 1st respondent appeared before the Inquiry Officer on 31.05.2017 at 10.30 am. He also submitted a letter, which discloses that he produced certain records.

22. If the Inquiry Officer was not satisfied with the records so produced, he could have called upon the 1st respondent to produce specific records. But instead, the Inquiry Officer chose to send an interim report dated 31.05.2017 requesting the Registrar to place the 1st

respondent under suspension. Therefore, the learned Judge, in our considered view, was right in thinking that the suspension has been ordered hastily.

23. As we have pointed out earlier, the Registrar of Cooperative Societies did not place the 1st respondent under suspension, on account of the nature of the allegations referred to in item Nos.1 to 3 of the reference column of the order of suspension dated 01.06.2017. The Registrar chose to place the 1st respondent under suspension only on the basis the allegation of non-production of records made by the Inquiry Officer. This allegation of non-production of records appears to be *prima facie* incorrect and uncharitable. Therefore, we find nothing wrong in the learned Judge granting the interim order of suspension.

24. On the question of interpretation of Section 59, we think that the learned Judge was right. Unfortunately or fortunately, Section 59 (1) stipulates certain pre-conditions for placing an officer of a Society under suspension. The conclusion of the learned Judge that these conditions are not satisfied is unassailable. Therefore, even on legal issues we find no justification to interfere with the order of the learned Single Judge.

25. But there are two mistakes that require to be cured. The first is that instead of asking for interim suspension of the order of suspension, the 1st respondent prayed for interim stay of all further proceedings pursuant to the order of suspension. Though the learned Judge granted only an order of suspension, the learned Judge also added "as prayed for". Therefore, technically the order of the learned Judge, when taken together with the prayer made by the 1st respondent, would give a different connotation. Hence this aspect needs to be clarified.

26. One more issue which needs to be clarified is that in some portion of the impugned order, the learned Judge touched upon the merits of the case and also recorded a finding that the Registrar had acted with *mala fide* intention and ulterior purpose to harass the 1st respondent. This finding was not called for and such findings may have a bearing upon the inquiry. Therefore, we are of the considered view that the writ appeal could be disposed of by modifying the order of the learned Single Judge.

27. Accordingly, the writ appeal is partly allowed to the following effect:

- a. There will be an interim suspension of the order dated 01.06.2017 impugned in the writ petition. However, the 1st respondent should produce all the records called for by the Inquiry Officer and the inquiry proceedings may go on and may be taken to their logical end.
- b. The observations made by the learned Judge on the merits of the case, shall not have a bearing upon the outcome of the inquiry, since those observations of the learned Judge are only *prima facie*.
- c. The finding of the learned Judge that the Registrar of Cooperative Societies acted with *mala fide* intention and ulterior purpose to harass the 1st respondent, is set aside.

As a sequel, miscellaneous petitions pending in this writ appeal, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

____ January, 2018
Js.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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(Per VRSJ)



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