Mohammad Faizan and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-13-1997

Reported in : AIR1998Pat64

Judge : Bisheshwar Prasad Singh, J.

Acts : Bihar Co-operative Societies Act, 1935 - Sections 48 and 54; Bihar Co-operative Societies Rules, 1959 - Rule 68

Appeal No. : C.W.J.C. Nos. 1574 and 1575 of 1997

Appellant : Mohammad Faizan and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : Rajesh Kumar Pandey, Kamlapati Singh and Ishwari Singh, Advs.

Advocate for Pet/Ap. : Yogendra Mishra, Birendra Nath Mishra and Bhuwan Mohan Trivedi, Advs.

Disposition : Petitions allowed

Prior history : 1. These two writ petitions involving common questions and based on similar facts have been heard together and are being disposed of by this common judgment and order. In both the writ petitions the petitioners, who at the relevant time were the Chairman and the Secretary-cum-manager of the Co-operative Societies concerned, have challenged the award passed by the Assistant Registrar, Co-operative Societies under Section 48 of the Bihar Cooperative Societies Act making the petitioners liable for

Judgement :

1. These two writ petitions involving common questions and based on similar facts have been heard together and are being disposed of by this common judgment and order. In both the writ petitions the petitioners, who at the relevant time were the Chairman and the Secretary-cum-manager of the Co-operative Societies concerned, have challenged the award passed by the Assistant Registrar, Co-operative Societies under Section 48 of the Bihar Cooperative Societies Act making the petitioners liable for payment of the dues claimed by Nalanda District Central Co-operative Bank (respondent No. 2 herein). The order of the Assistant Registrar has been upheld in appeal and revision preferred under the Act. The amount awarded to respondent No. 2 'Bank is sought to be realised by way of arrears of land revenue and accordingly certificate cases have been initiated against the petitioners. The petitioners have, therefore, impugned the orders passed by the authorities under the Act, which are Annexures 6, 7 and 8 in both the writ petitions. They have also prayed for quashing of the entire proceeding of the certificate cases initiated against them.

2. The representative facts are taken from C.W.J.C. No. 1574 of 1997. The facts of the case in so far as they are relevant are as follows : Petitioner Nos. 1 and 2 at the relevant time were the Chairman and the Secretary-cum-Manager respectively of Star Powerloom-cum-Handloom Co-operative Society Ltd. In their capacity as Chairman and Secretary-cum-Manager of the aforesaid Co-operative Society they had requested respondent No. 2 Nalanda District Central Cooperative Bank (hereinafter referred to as the Bank) for grant of cash credit facility with a limit of Rs. 50,000/- in the year 1985. They had requested for grant of such facility on behalf of the Co-operative Society of which they were the office-bearers. The respondent-Bank extended the said facility to the Co-operative Society and necessary documents were executed by the petitioners on behalf of the Co-operative Society. According to the petitioners, the cash credit facility was utilised for the purpose of grant of loans to its weaver members to whom the Cooperative

Society supplied yarns. According to the petitioners, the Government of India introduced a scheme known as the Agricultural and Rural Debt Relief Scheme 1990, which was notified under notification dated 18th May, 1990. The Governor of Bihar also issued Memo bearing No. 6248 dated 13th June, 1990 under which the central scheme was adopted and a provision was made for writing off loans advanced to members of the Society not exceeding Rs. 10,000/-. This was reiterated in Memo No. 1548 dated 15th June, 1990. It is the case of the petitioners that the benefit under the said scheme was made available to weavers and artisans of urban area as well, and they rely upon the circular issued by the Reserve Bank of India dated 18-5-1990 (Annexure-4). Petitioner No. 1 as Chairman of the Co-operative Society submitted a detailed report to the respondent-Bank in the prescribed form giving full particulars of the amounts disbursed by way of loan to weaver members individually. Such loans advanced to each member did not exceed Rs. 10,000/- in any case. The respondent-Bank, however, did not take necessary steps to forward its report to the Government or the appropriate authority with a view to write off the loans and neglected in the performance of their duty to get the scheme implemented and the loans waived. According to the petitioners, the loans advanced to its weaver members could not be recovered in view of the scheme adopted by the Government of Bihar, as individual members who had been granted loan up to Rs. 10,000/- were entitled to the benefit of write off.

3. The petitioners contend that with a view to absolve himself of the charge of negligence, the Managing Director of the respondent-Bank, who is also empowered to act as certificate officer, got a time-barred claim filed before respondent No. 3, Assistant Registrar. Co-operative Societies, Bihar Sharif Circle, and on the basis of the said time-barred claim Award Case No. 3/94-95 was started claiming a consolidated sum of Rs. 1,04,354.84 from the respondent-Society. In the said Award Case neither the Managing Committee nor the member- loanees were arrayed as opposite parties. Respondent No. 3 passed an award only against the petitioners, who at the relevant time were the Chairman and Secretary-cum-Manager respectively of the Co-operative Society. The Assistant Registrar. Co-operative Societies rejecting the plea of the petitioners held that under the scheme of 1990 only rural Weavers Cooperative Societies

could get the benefit of debt relief and not the Societies of urban area. The petitioners then took up the matter before respondent No, 4, Joint Registrar, Co-operative Societies, Bihar, Patna, being dispute No. 175 of 1993. The Joint Registrar dismissed the case of the petitioners on the ground that the claim of write off by the petitioners was barred by limitation, since the scheme itself was wound up on 30th June, 1991. The Co-operative Society then moved the Registrar, Co-operative Societies (respondent No. 5) challenging the award passed by the Assistant Registrar (Annexure-6), and their appeal was numbered as Award Appeal No, 122 of 1996. The said appeal was dismissed by the Registrar by order dated 10-1-97 (Anhexure-8). The Registrar held that the cash credit facility extended to the appellant did not fall within the ambit of Agricultural Debt Relief Scheme, 1990 and, therefore, waiver of the loans was not permissible. He also held that the scheme did not apply to loans advanced to Co-operative Societies by way of cash credit facility. He also held that the benefit under the Debt Relief Scheme could only be claimed if the claims were submitted before NABARD by 31-3-1991 and no claim could be entertained thereafter.

4. In view of the award passed against the petitioners a certificate proceeding being Certificate Case No. 10/96-97 was initiated by respondent No. 6 which compelled the petitioners to approach this Court lor relief.

5. The petitioners contend that in view of the fact that the Co-operative Society had utilised the loan facility for grant of loans to its weaver members by supplying them yarn, and no weaver member had been granted a loan exceeding Rs. 10,000/-, the loans advanced to its members stood waived under the Debt Relief Scheme of 1990, and could not he recovered. The claim of the Bank was, therefore, illegal as it could not override the Debt Relief Scheme and compel the Co-operative Society to refund the amount advanced by it pursuant to the cash credit facility extended by the said Bank. The petitioners, therefore, contend that neither they, as officebearers, nor the Managing Committee, nor the Co-operative Society was liable to repay the amount to the Bank, and that the Bank itself was guilty of negligence inasmuch as it had not taken necessary steps to get the loans waived under the Debt Relief Scheme. The petitioners submit that the Assistant Registrar as well as the Registrar under the Act erred in law in thinking that the

loans disbursed by the Co-operative Society to its weaver members were not covered by the debt relief scheme, or that the claims were barred by limitation.

6. In the counter-affidavit filed on behalf of respondent No. 2 it is the case of the respondent-Bank that the Co-operative Society was an urban based Society and, therefore, not entitled to any relief under the Agricultural and Rural Debt Relief Scheme, 1990. It is further contended that relief under the scheme was to be granted to its members under certain circumstances and terms and conditions. The cash credit loan was not a loan to an individual member, but was a loan to the Society which had taken the said loan for meeting its day-to-day expenditure in connection with its commercial activities. The respondent-Bank has placed on record its letter sanctioning the facility, letter of acceptance, letter of continuity, deed of hypothecation and promissory note. These documents were signed by the petitioners'. It is further asserted that the cash credit loan was not granted by the respondent-Bank to the Co-operative Society for granting loan to individual members of the Society, and as such there could be no claim for relief under the Debt Relief Scheme as that benefit could not be extended to the Society. It is submitted that the cash credit loan advanced to the Society did not come within the term 'eligible loans' under the Debt Relief Scheme.

7. Before adverting to the submissions urged on behalf of the parties, it would be necessary to notice that a proceeding was initiated against the petitioners under Section 48 of the Bihar Cooperative Societies Act. Under that section if any dispute touching the business of a registered society arises amongst members and class of members specified therein, such dispute has to be referred to the Registrar. The disputes contemplated by Section 48 include a dispute between a society and any other registered society. The dispute, therefore, was essentially between the respondent-Bank and the Co-operative Society for recovery of the amount advanced by the respondent-Bank to the Co-operative Society under the cash credit facility extended to the Cooperative Society. It is also apparent that the proceeding was not one under Section 40 of the Act which authorised the initiation of a proceeding, known as surcharge proceeding, in certain circumstances. A surcharge proceeding may be initiated against any person who has taken part in the organisation or management of the society or any past or present officer of the

society who has made any payment contrary to the rules or bye-laws of the Society or against the directions or instructions of the financing Bank for which the society is acting as agent under subsection (3) of Section 16 of the Act or by reason of his culpable negligence or misconduct involving the Society in any loss or deficiency, or has failed to take into account any sum which ought to have been brought into account, or has misappropriated or fraudulently retained any property of the society. A surcharge proceeding, therefore, by its very nature imposes a personal liability on the person concerned. Such a proceeding can be taken subject to certain conditions mentioned in Section 40 of the Act. In the instant case no surcharge proceeding under Section 40 of the Act was contemplated.

8. Counsel for the petitioners submitted that the amount which was advanced by the Bank to the Co-operative Society by reason of the cash credit facility extended by the Bank to the Cooperative Society, was utilised for the purpose of grant of small loans to the members of the Society. Since the loans advanced to each member did not exceed Rs. 10,000/-, the loans were to be waived under the Debt Relief Scheme of 1990. If the loans were to be written off, as contemplated by the Scheme, there is no justification for the respondent-Bank to claim that very amount from the Co-operative Society.

On the other hand, the respondent-Bank contends that the cash credit facility was not extended for the purpose of grant of loan to individual members of the Society, but was extended for the purpose of utilisation in the commercial activities of the Co-operative Society. The Society was, therefore, not justified in granting loans to individual members.

In my view, it is not necessary to go into this question as to whether the individual members of the Society to whom the loans had been advanced were entitled to waiver of the loans under the scheme. The Scheme is a detailed scheme and waiver of loan can be claimed only if the conditions mentioned in the Scheme are satisfied. The Scheme does not contemplate a general waiver of all loans, and to the extent of Rs. 10,000/- waiver of such loans is permissible only if the conditions mentioned in the Scheme are fulfilled. In the absence of relevant facts it is not possible in this proceeding to record any finding on this question.

9. The main thrust of the argument of counsel for the petitioners was that in any event the petitioners could not be held personally liable for the loan advanced by the Bank to the Co-operative Society, which was utilised by the Co-operative Society for the purpose of advance of loans to its weaver members. He submitted that this was not a surcharge proceeding in which the petitioners could be held personally liable for their negligence or misconduct or illegal action. It is no one's case thai the petitioners as office-bearers of the Society misappropriated the loan advanced to the Society by the Bank. Counsel for the petitioners drew my attention to Section 54 of the Co-operative Societies Act, which provides as follows :

"54. Properly from which sums due from a society can be recovered-- All sums due from a registered society to the Government and all sums recoverable from a registered society under Sections 33, 39, 44 or 48 may be recovered firstly, from the property of the society, secondly, in the case of a society, the liability of the members of which is limited, from the members, past members or estates of deceased members, or their sureties subject to the limit of their liability; and thirdly, in the case of other societies from the members, past members or estates of deceased members of their sureties to such extent or in such proportion as may be determined by the Registrar."

10. It was submitted that since the award was passed under Section 48 of the Act, the recovery must be made in the manner envisaged by Section 54. The submission has force and must be accepted. A mere reading of Section 54 makes it clear that if an amount has to be recovered from a registered society under Section 48 of the Act, apart from the property of the society, the members may also be held liable to the extend of their limited liability. It is for this reason that Rule 68 of the Bihar Co-operative Societies Rules, 1959 provides that if a dispute under Section 48 is between a registered society and an affiliating society, the reference shall contain the names of the members of the Managing Committee and a list of the debtor-members of the former society along with the amounts outstanding against each of them. The Rule also provides for issuance of notice to be served on the opposite party. The Rule also provides for adjustment in case any sum recoverable from a registered society is recovered under Section 54 from

a member or past member etc., and in such a case the debt of the member, if any, to such society, shall be deemed to have been reduced to the extent of the amount recovered from him.

11. As I have observed earlier, this was a dispute between respondent No.' 2, Co-operative Bank and the Co-operative Society of which the petitioners were office-bearers. The claim was against the Co-operative Society and, therefore, it was the Co-operative Society which could be held liable for repayment of the dues. Having regard to the provisions of Section 54 of the Act, the members of the Managing Committee and the debtor-members ought to have been made opposite parties in the said dispute, which was not done in the instant case. However, the fact remains that the petitioners cannot be held personally liable for the dues which the respondent-Bank claimed from the Cooperative Society of which the, petitioners were office-bearers at the relevant time. The amount claimed by the respondent-Bank could be recovered only in accordance with Section 54 of the Act read with Rule 68.

12. It was then sought to be urged on behalf of the respondent-Bank that the petitioners had made themselves personally liable by executing certain documents and in this connection reference was made to the annexures annexed to the counter-affidavit, Annexure-A is a letter addressed by petitioner No. 1 as Chairman of the Co-operative-Society to the Honorary Secretary of the respondent-Bank for extension of cash credit facility to the Co-operative Society to the extent of Rs. 50,000/-. This letter has been addressed by petitioner No. 1 as Chairman of the Co-operative Society, and there is nothing in the said letter to infer that petitioner No. 1 had personally undertaken to repay the amount due under the cash credit facility. Annexure-B is a letter by the Executive Officer of the Bank to the Joint Registrar informing him that the cash credit loan had been granted to the Co-operative Society concerned. Annexure-C is the letter of acceptance executed by the petitioners for and on behalf of the Co-operative Society in their capacity as Chairman and Manager-cum-Secretary of the Co-operative Society. Annexure-D is the letter of continuity, and this has also been signed by the petitioners for and on behalf of the Co-operative Society. Lastly, there is Annexure-E, a promissory note, executed on 16-1-1985, which is signed by the petitioners but not in their personal

capacity. The petitioners have put their signatures for and on behalf of Star Powerloom-cum-Handloom Primary Weavers Co-operative Society Ltd. Annexure-F is the deed of hypothecation, and that has also been signed by the petitioners for and on behalf of the Co-operative Society of which they were office-bearers. There is nothing in Annexures-A to F to substantiate the submission urged on behalf of the respondent-Bank that the petitioners had personally undertaken to discharge the liability arising out of the cash credit loan extended by the Bank to the Co-operative Society. It must, therefore, be held that the petitioners are not personally liable for the amount claimed by the respondent-Bank from the Co-operative Society.

12-A. I have, therefore, no hesitation in coining to the conclusion that the cash credit loans advanced by the respondent-Bank to the Co-operative Society may be recovered from the Co-operative Society in the manner prescribed by the Act and after giving notice to all concerned parties. The said loans cannot be recovered from the petitioners who were the then Chairman and and Secretary-cum-Manager of the concerned Co-operative Society as they were not personally liable to discharge the liability. It must, therefore, follow that the certificate proceedings initiated against the petitioners are illegal, as the liability is not to be discharged by the petitioners personally.

13. In the result, Annexures-6, 7 and 8 in both the writ petitions are quashed. Consequently, the proceedings in Certificate Case No. 10/96-97 in C.W.J.C. No. 1574 of 1997 and Certificate Case No. 9/96-97 in C.W.J.C. No. 1575 of 1997 pending before the court of Certificate Officer-cum-District Co-operative Officer, Nalanda, are quashed.

14. The writ petitions are accordingly allowed.