

Smt. Krishna Kumari and ors. Vs. the Board of Revenue, Madhya Pradesh, Gwalior and ors.

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Court : Madhya Pradesh

Decided On : Feb-08-1971

Reported in : AIR1971MP201; 1971MPLJ589

Judge : Bishambhar Dayal, C.J. and K.L. Pandey, J.

Acts : Madhya Bharat Co-operative Societies Act, 1954 - Sections 63; [Trusts Act, 1882](#) - Sections 6 and 23

Appeal No. : Misc. Petn. No. 569 of 1968

Appellant : Smt. Krishna Kumari and ors.

Respondent : The Board of Revenue, Madhya Pradesh, Gwalior and ors.

Advocate for Def. : G.C. Jain, Adv. (for No. 3) and ;R.K. Tankha and ;A.S. Jha, Adv. (for Nos. 4 and 5)

Advocate for Pet/Ap. : R.S. Dabir, Adv.

Disposition : Petition allowed

Judgement :

Bishambhar Dayal, C.J.

1. This is a petition by eight persons who were Directors of the Gwalior Commercial Cooperative Bank, Gwalior (hereinafter referred to as the Co-operative Society), which is now under liquidation. The facts in short which have given rise to this petition are that according to the petitioners one Shri Jagan Prasad was running a bank called the Gwalior Bank at Gwalior. He was the sole proprietor thereof and after his death his son became the proprietor. In August 1955 it was decided to form a co-operative society and to transfer the assets and liabilities of this Bank to that society. The contention of the liquidator, on the other hand, is that this Bank was the joint family property of the petitioners who were members thereof. That question appears to have been assumed by the Deputy Registrar and the Board of Revenue, without deciding it on evidence, in favour of the liquidator. However nothing much turns on that fact. The Co-operative Society was formed under the Madhya Bharat Co-operative Societies Act, 1954 (Act No. 9 of 1955) (hereinafter referred to as the Act) and it was registered on the 26th August, 1955. Thereafter, the assets and liabilities of the Gwalior Bank as on 30th September, 1955, were transferred to this Co-operative Society on 2nd October, 1955, According to the report of the liquidator, this Co-operative Society continued to work from 1st October, 1955, to 31st May, 1958

and during this period it spent Rupees 43,000/- on different items and transacted no other business, so that it is quite clear that the Bank received no bank deposits after it was taken over by the Co-operative Society. This Society went into liquidation by order of the Registrar and stopped business from 5th May, 1958. Shri A. H. Sid-diqui, Advocate, was ultimately appointed liquidator and he made an application before the Registrar under Section 63 of the Act asking the Registrar to make an order against the Directors of the Bank for recovery of an amount of Rs. 2,35,000/-. Numerous items were mentioned as recoverable from the Directors. For instance, there were several items which had been advanced by the Gwalior Bank, when it was a private Bank, to individuals which had become time-barred and it was claimed that the Directors were liable to pay the same as they had neglected to recover them. There was again another item in which were included several items which had been given up by the private proprietors of the Bank and this was also said to be recoverable from the Directors. There were several items again which, according to the liquidator, were irrecoverable from the debtors and the Directors were made responsible on the ground that the proprietors of the private Bank, when making the advances, did not make proper enquiries at that time whether it was proper or not to advance the loans and whether they would be recoverable. There are again certain items of money withdrawn from the private Bank and paid to its constituents between the 5th August, 1955 when the Society was registered and 2nd October, 1955, when the Bank was handed over to the Co-operative Society,

2. After hearing the Directors, the Deputy Registrar, Co-operative Societies, who heard the applications passed an order imposing the liability upon the Directors, who are the petitioners, by his order dated 10th August, 1960. This is the first order challenged in this writ petition. Against this order an appeal was filed before the Government as provided by the Act which was transferred to the Board of Revenue. The Board of Revenue heard the appeal. By order dated 10th October, 1968 the Board of Revenue remanded the case to the Deputy Registrar for ascertaining the exact amount which had become irrecoverable in respect of certain loans granted by the private Bank. The Board of Revenue accepted the decision of the Deputy Registrar with regard to other items. Thus, the case has gone back to the Deputy Registrar. It is against this order of the Board of Revenue also that the present writ petition has been filed.

3. Although in the writ petition the relief claimed is that both these orders be quashed meaning thereby that the applications under Section 63 of the Act were wholly incompetent and liable to be dismissed, before us learned counsel appearing for the petitioners merely argued that the Deputy Registrar as well as the Board of Revenue committed a mistake in placing liabilities upon the Directors in respect of acts done by the proprietor or proprietors of the Gwalior Bank when it was a private Bank. Under Section 63 of the Act liability could be imposed on the petitioners only in respect of acts done by them as Directors of the Co-operative Society and consequently their acts and omissions relating to the Bank after the formation of the Co-operative Society and the transfer of the Bank in favour of the Co-operative Society could be considered and on that basis alone liabilities could be imposed upon the petitioners.

4. We have heard learned counsel for the parties and we have come to the conclusion that there is force in this contention. Section 63 (1) of the Act is as follows:--

'63 (1) Where in the course of an audit under Section 27 or an inquiry under Section

52, or an inspection under Section 53 or the winding up of a society it appears that any person who has taken part in the organisation or management of the society or any past or present Chairman, Secretary, Member of the Managing Committee or Officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on his own account or on the application of the officer conducting the audit or holding the inquiry or inspection or of the liquidator or any creditor or contributory, examine into the conduct of such person and after giving reasonable opportunity to the person concerned to submit his explanation, make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation, in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.'

On an analysis of this section it is clear that liability can be imposed upon two kinds of persons viz., those who have a hand either in the organisation or in the management of the Society. It is not disputed here that the petitioners have had a hand in the organisation as well as in the management of the Society. But the contention of the petitioners is that their acts which were done in the capacity of organizers and managers of the Society can only be taken into consideration. Their acts done in relation to the Gwalior private Bank, when it was a private Bank, and done in that capacity are irrelevant for the purposes of this section. The section further provides that the acts which will lead to an order under the Act must be such that the person concerned can be said to have--

- (1) misapplied any money or property of the society;
- (2) retained any money or property of the society;
- (3) become liable or accountable for any money or property of the society; or
- (4) been guilty of misfeasance or breach of trust in relation to the society.

If any of these acts are proved, then the Registrar has the power to order repayment or restoration of the money or property or to direct contribution of 'such sum to the assets of the society by way of compensation, in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.'

5. It is obvious that the acts mentioned above either relate to the property of the Society or are in relation to the Society. Any act done by the proprietor of the Gwalior Bank before the Bank was transferred to the Society cannot relate to the money or property of the Society or be said to be an act either of misfeasance or of breach of trust in relation to the Society. In respect of the acts which were done before the Society was formed, there can absolutely be no doubt that those acts cannot fall in any of these two categories, namely, misfeasance or breach of trust in relation to the Society. Learned counsel appearing for the liquidator, however, strenuously contended that the amounts which were withdrawn from the Bank after the date of the formation of the Society but before the date when the Bank was actually transferred to the Society would be acts done in breach of trust, for, according to learned counsel, the proprietors of the Bank must be deemed to have become trustees for the Co-operative Society as soon as the Society was registered because

the Society was registered mainly for the purpose of taking over this Bank. We are unable to agree with this argument. No trust could be deemed to have been created in favour of the Society unless there came into existence a binding relationship between the Society and the proprietors of the Bank by which the Society got an interest in the property of the Bank. Merely by registration of the Society it cannot be said that any interest was created in favour of the Society. The proprietors of the Bank still had the power not to transfer the Bank to the Society and in that case the Society would have had no connection with the Bank and would not have been in a position to say that it was a beneficiary in any sense. We are, therefore, of opinion that the Society got an interest in the properties of the Bank only on the date when it was transferred in favour of the Society on 2nd October, 1955.

6. While interpreting Section 63 of the Act it is also worth noting that large powers and powers not precisely defined have been given to the Registrar to impose liability for the payment of any amount and the only appeal provided against such an order is one to the State Government. There is no remedy available against such an order before any judicial tribunal. Such a power in the Registrar of Co-operative Societies must necessarily be construed very strictly and he can be held to have the power to impose liabilities which come within the strict words of the section. It may also be noted that with regard to the payment of money the Registrar can order such an amount as he thinks it necessary 'by way of compensation.' This term 'by way of compensation' refers to some loss suffered by the Society which has to be compensated. Therefore, the Registrar can have power to order payment of money by way of compensation only if it is proved that the Society suffered a loss on account of the act of the person against whom the order is made. From that point of view also the position of this particular Society requires special consideration. This Society had no assets of its own. After its formation all that happened was that the Gwalior Bank, which was a private property, was transferred to this Society. Therefore, whether the Bank which was handed over was a solvent Bank or an insolvent Bank, the Society was not to suffer any loss in respect of its own property by taking over the Bank. Of course, if after taking over of this Bank, the act of any of the petitioners has caused loss to the assets of the Society including the bank, such loss can be recovered by way of compensation from the petitioners. It may also be noted in this connection that there is no provision in the Act whereby the creditors of the Gwalior Bank, when it was a private property, are bound to accept the Co-operative Society as their debtor. Those depositors gave the amount in deposit to a private person or persons whom they thought were solvent and they were not consulted when this Bank was transferred to the Co-operative Society. We find it difficult to see how their right to recover the money from their original debtors is affected by this transfer of the Bank in favour of the Co-operative Society. But we do not propose to decide that point in this case as it may have to be considered in detail if the creditors take action against their original debtors for recovery of the amounts due to them which this Co-operative Society in liquidation is unable to discharge.

7. After giving the matter our anxious consideration we have come to the conclusion that the order of the Deputy Registrar dated 10th August, 1960 and the order of the Board of Revenue dated 10th October, 1960 are without jurisdiction to the extent that they impose liability on the petitioners with regard to their dealings with the Gwalior private Bank before it was transferred to the Co-operative Society. To that extent those orders are quashed. The case has already gone back to the Deputy Registrar for dealing with each item according to the directions of the Board of Revenue. The Deputy Registrar will now deal with the matter according to law as explained above.

8. Parties shall bear their own costs of this petition. The outstanding amount of the security deposit shall be refunded to the petitioners.

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