
(2004) 03 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : LPA No. 178 of 2003

Ab. Majid Dar

APPELLANT

Vs

Kashmir Mercantile Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Citation : (2010) 3 JKJ 826

Hon'ble Judges : S.K. Gupta, J;Permod Kohli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J

1. Order dated 22.9.2003 passed in OWP No. 181/2003 by the learned Single Judge, is subject matter of challenge in the present appeal. This

appeal arises in the backdrop of the following facts. Respondent-1 is a Co-operative Society registered under the Jammu and Kashmir

Cooperative Societies Act and is carrying on banking business in the province of Kashmir Appellant herein an employee of respondent-3, bank

was posted as General Manager. An embezzlement of Rs. 17.91 lac was detected in the Spore branch of the bank and services of one Mst.

Rukhsana, Accountant were term(sic)ated. The management of the Co-operative Societies also initiated action again(sic) the appellant herein.

Pursuant to the emergency meeting of the Board of Director of the bank the appellant was placed under suspension vide decision dated 3.3.2003

and vide subsequent order dated 28.3.2003, the powers of the Chief Executive were conferred upon one of the Directors of the bank in place of

the appellant.

2. Aggrieved of his suspension, the appellant approached Registrar, Co-operative Societies, Jammu and Kashmir, challenging his suspension and

seeking enquiry into the matter. The Registrar, Co-operatives Societies vide his order No. RCS/373-74 dated 29.3.2003 authorized the Joint

Registrar, Co-operatives (Audit), Kashmir to hold enquiry into the circumstance leading to suspension of the appellant and submit his findings. The

Enquiry Officer submitted enquiry report to the Registrar, Co-operatives Societies vide his No. JRA/KMR/13 dated 12.4.2003.

3. Respondent-1 (bank) invoked extra ordinary jurisdiction of the High Court through the medium of OWP No. 181/2003, challenging the powers

and jurisdiction of the Registrar, Cooperative Societies to enquire into the matter. The writ court after hearing the parties before it, allowed writ

petition of respondent-1 (bank) and quashed orders dated 13.3.2003 and 29.3.2003 impugned in the writ petition being without jurisdiction. Writ

Court also returned positive finding that the Registrar, Co-operative Societies had no authority to enquire into the matter.

4. Mr. M. A. Qayoom, learned counsel appearing for the appellant has sought to challenge the judgment before us primarily on the ground that

Registrar, Co-operatives Societies had the jurisdiction to initiate proceedings under sections 67 and 70 of the Co-operative Societies Act.

5. The Registrar, Co-operatives was also authorized to exercise his appellate and revisional power under rules 21 and 23 of SRO 233 dated

8.7.1988 issued by the government in exercise of rules making powers of the Act. Mr. Qayoom has taken us to various communications on record

to impress upon the court that the appellant was in no way responsible for the embezzlement and the action of placing him under suspension, is

actuated with mala fide. It is also urged that bank being instrumentality of the State, is not competent to invoke writ jurisdiction of the High Court,

as it does not enjoy fundamental right enshrined under Part-III of the constitution.

6. We have heard Mr. M. A. Qayoom, learned counsel for appellant and Mr. M. H. Attar, learned counsel appearing for respondent-1 at length

and carefully perused the record before us and the judgment impugned in this appeal.

7. Learned Single Judge has considered the provision of section 70 of the Co-operative Societies Act, 1989 and various judgments referred to by

the parties and is of the opinion that the Registrar, Co-operative Societies had no jurisdiction to enquire into the matter relating to the service

conditions of the employees of the Co-operative Societies and all matters related thereto. Relying upon various judgments, learned Single Judge

consequently quashed the proceedings initiated by the Registrar, Co-operative Societies at the instance of the appellant and resultant orders.

Section 70 of the Co-operative Societies Act, 1989 deals with the reference of the disputes to arbitration, which reads as under-

70. Dispute which may be referred to arbitration (1) Notwithstanding anything contained in any law for the time being in force, if any dispute

touching the constitution management or the business of a cooperative societies arises:

(a) among members, past members and persons claiming through a member, past member or deceased member and sureties of members, past

members or deceased members whether such sureties are members or non-members;

(b) Between any member past members or persons claiming through a member, past members or deceased member, or sureties of members, past

members or deceased members and the society, its committee or any officer, agent or employee of the society; or

(c) Between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee

or the nominee, heirs or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) Between the society and any other co-operative society.

Such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect

of such disputes.

(2) For the purposes of sub-section (1), the following shall be deemed to be dispute touching the constitution, management or the business of a

cooperative society, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member

whether such debt or demand be admitted or not;

(b) a claim by a society against the principal debtor where the society has

recovered from the surety any amount in respect of any debt or demand

due to it from the principle debtor as a result of the default of principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any office of the society;

(d) the question whether a person is or was member or a co-operative society or not.

(3) If any question whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the

business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

8. Sub-Section (1) of section 70 of the Cooperative Societies Act envisaged reference of disputes between the parties specified therein, relating to

constitution, management or the business of the Co-operative Societies. However, the disputes, which are required to be adjudicated upon by the

Registrar under sub-section (1) have been enumerated under sub section (2). A bare reading of the aforesaid section demonstrates that the service

disputes between the society and its employee are beyond the scope of the section.

9. Mr. Qayoom has failed to show that the dispute of this sort, is covered by any of the provisions of this section. In the alternative, another

argument advanced is that, the Registrar has the power to enquire into the matter u/s 67 of the Act. Relevant extract of the aforesaid section, is

reproduced as under:-

67. Inquiry by Registrar (1) The Registrar of his own motion and shall on the application of a majority of the committee or of not less than one third

of the members to hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold enquiry into the constitution,

working and financial condition of a co-operative society.

10. According to learned counsel, if dispute is not covered u/s 70 of the Act, the Registrar still has the powers u/s 67. It is noticed that section 67

falls under chapter VIII, which deals with audit, enquiry, inspection and surcharge.

11. We have considered the question of application of the aforesaid provisions. This chapter deals with financial matters of the cooperative society

and Registrar has been empowered to hold enquiry into financial matters of the

society under two contingencies (1) of his own motion and (ii) if the majority of the committee or of not less than one -- third members, apply to the Registrar to hold enquiry into the financial conditions of the co-operative society. Much stress has been laid on the words ""used in the section like constitution and work."" At the first place, the question of taking action against an employee does not fall within the scope of section and has nothing to do with the constitution and working of the society. Otherwise also, the scope of enquiry u/s 67, cannot be divorced from the financial matters of the society, keeping in view the phrase used in the section"" hold enquiry into the constitution working and financial condition of the cooperative society."" All question relating to the constitution, working, have to be looked into only in respect to the financial condition of the society and not independent of that.

12. We are unable to persuade ourselves to agree with the contention of the learned counsel for the appellant. It is finally argued on behalf of appellant that the Registrar has the jurisdiction under rules 21 and 23 of SRO 233. Copy of this SRO has been placed with the memo of appeal.

These rules namely; the J&K Co-operative Societies Service Rules 1988, were framed under this SRO in exercise of rules making powers conferred upon the government u/s 124 of the J&K Co-operative Societies Act, 1960.

13. Admittedly/Act of 1960 has been replaced by the Act of 1989, having been repealed by Section 177 of the new Act. We are informed that under the new Act, rules have been framed. However, it is stated by learned counsel for appellant that so far the service conditions are concerned, it is SRO 233, which continued to remain in operation having been protected u/s 172(2) of the Co-operative Societies Act 1989. Assuming SRO 233 has its application to the case of the appellant, rules 21 and 23 relied upon by the appellant are quoted as under:

21. Appeals: An appeal against an order imposing a penalty shall lie to the Divisional Joint Registrar/Registrar Co-operative Societies within 30 days from the date of passing of the order appealed against.

23. Revisions: The Registrar Co-operative Societies may on application from any aggrieved person or otherwise call the record of the proceedings of any case disposed of by a lower authority and pass such orders as it may

deem proper.

14. As far powers of revision are concerned, the Registrar can exercise this power only in respect to the cases, disposed of by a lower authority

and society is not a lower authority under him. The learned counsel for appellant does not dispute this position. As far appeal is concerned, the

same is preferred against an order-imposing penalty. Rule 19 deals with the penalty that may be imposed upon member of service for good and

sufficient reason. Suspension of an employee, is not one of the penalties under Rule-19. Suspension is separately dealt with under Rule 20 of SRO

233, which reads as under:-

20. Suspension: As far as possible no member of the service shall be placed under suspension except where his continuance in the office is"" likely

to prejudice the investigation, inquiry, trial or is likely to subvert the discipline in the society. An employee who is placed under suspension will

ipso-facto become entitled to payment of suspension allowance at the rate of 50% of the emoluments he was drawing immediately before being

placed under suspension;

Provided that the suspension period will not be extended for more than 6 months in any case and the provisions of Jammu and Kashmir Civil

Service Regulations read with Rule 3 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 will be guiding

principles governing those suspensions.

15. No appeal is permissible against an order of suspension under SRO 233. We do not find any force in the argument of learned counsel for

appellant on this count also.

16. Mr. M. H. Attar, learned counsel appearing for respondent-1 (bank) referred to section 26 of the Co-operatives Societies Act, 1989

contained in Chapter-IV which deals with the management of the Co-operative Society and is reproduced as under:-

26. Final authority in a Co-operative Society: The final authority in a Co-operative Society shall vest in the general body of members:

Provided that where the byelaws of a Co-operative Society provide for the constitution of a smaller body consisting of delegates of members of

the society elected in accordance with such bylaws, the smaller body shall exercise such powers of the general body as may be prescribed or as

may be specified in the bye-law of the Society;

Provided further that nothing in this section shall affect any powers conferred on a committee or any officer or a Cooperative Society by the rules or the bye-laws.

17. It is contended that, it is primarily the General Body of the Society with whom the final authority vests in a Co-operative Society. However, the same can be delegated to some smaller body where the byelaws so permit or where the rules permit, powers to be exercised by an officer of the Co-operative Society. According to him under the bye-laws, it is Board of Directors, which is the supreme decision making authority of the bank and the action against the appellant was admittedly taken by a valid decision of the Board of Directors of the Society which is in consonance with provisions of section 26 of the Cooperative Societies Act, 1989.

18. Mr. M. A. Qayoom has placed reliance upon judgment of the Apex Court reported in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, . In this case, the Apex Court after considering the provision of section 55 of the M.P. Co-operative Societies Act held that the Registrar, Co-operative Society has the jurisdiction to decide the service disputes. Relevant part of the judgment of Apex Court in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , is quoted hereunder:-

Section 55 of the Societies Act postulates thus:

55. Registrar's power to determine conditions of employment in societies (1) The Registrar may from time to time frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of

the order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso the time requisite for obtaining copy of the order shall be excluded.

(3) Learned counsel for the petitioner seeks to place reliance on Section 64 of the Act' dealing with disputes referable to the arbitration and

contends that the dispute of dismissal from service of the employees of the society being not one of the disputes referable to arbitration under

Societies Act, the award of the Dry. Registrar is without jurisdiction. He relied on the decision of this court in Co-operative Central Bank Ltd. and

Others Vs. Additional Industrial Tribunal and Others, . He also places reliance on Section 93 of the Societies Act, which states that nothing

contained in the Madhya Pradesh Shops and Establishments Act, 1958. The M. P. Industrial Workmen of Standing orders) 1959 and the M. P.

Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication application of the Act has not been

excluded and that therefore, the Lab our Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies

Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the society or a class of Societies including the terms

and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken

by a society, or arises between a society and its employees the Registrar or any officer appointed by him, not below the rank of Assistant

Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards powers u/s 64, the language is

very wide, viz, ""notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, a management

or business of a society or the liquidation of a society shall be referred to the Registry by any of the parties to dispute."" Therefore, the dispute

relating to the management or business of the Society is very comprehensive is repeatedly held by this Court. As a consequence, special procedure

has been provided under this Act. Necessarily, reference u/s 10 of the Societies Act stands excluded. The judgment of this court arising under

Andhra Pradesh Act has no application to the facts for the reason that under that

Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended.

19. We have considered the aforesaid judgment. The Apex Court returned finding on interpretation of section 55 of the M.P. Co-operative

Societies Act, which specifically empowers the Registrar to deal with such matters. Learned Single Judge has also considered the same.

20. We are in agreement with the finding of the learned Single Judge that, there is no corresponding provision in the Jammu & Kashmir

Cooperative Societies Act, 1989 empowering the Registrar to deal with such issue. Similar issue was considered by the Learned Single Judge of

this Court in 1999 KLJ 405 and in SWP No. 381/2001 titled J&K Co-operative Supply and Marketing Federation Ltd. v. J&K Special Tribunal

and it was ruled that the dispute of this nature is not covered under the provision of the Co-operative Societies Act. In the case reported in 1999

KLJ (supra), a learned Single Judge of this court while considering the scope of sections 63 and 64 of 1960 Act (pari-materia of section 70 of

1989 Act), held as under:

It is manifest that the legality or otherwise the termination of service of an employee and claim of back wages thereto is a matter not covered by the

provision. Such dispute does not touch the management of the society for purpose of reference of matter for decision to Registrar under the Act.

The dispute in question is excluded from the kind and array of disputes referable to the Registrar. Besides, it is seen that the Registrar has not at all

acted on the application or representation of respondent no. 7. There is nothing on record to show that the Registrar has initiated any action much

less decided the question of its competence or otherwise to adjudicate the dispute in person. Thus the dispute is squarely referable to Labour

Court under the Act. Thus seen the Government has the powers and authority to refer the matter for adjudication to the Labour court u/s 10 of the

Industrial Disputes Act.

21. Learned Single Judge has also made reference to AIR 1970 SC 251 and Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R.

Mankad and Others, wherein it is held that the disputes of similar nature are required to be decided under Labour Laws by Labour Courts.

22. We find that the view expressed by the learned Single Judge is correct and

the only view that can be taken on appreciation of provision of Jammu and Kashmir Co-operative Societies Act, 1989 and the law laid down by the Apex Court and this Court.

23. We do not find any legal and valid ground to interfere with the order passed by the Learned Single Judge. This appeal is accordingly dismissed.