
(2009) 10 KL CK 0124

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 27909 and 29415 of 2009

A.R. Nagar Service Co-operative Bank Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-10-2009

Acts Referred:

Constitution of India, 1950 — Article 254, 254(2)

Citation : (2009) 10 KL CK 0124

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, P.A. Anitha, for the Appellant; K.M. Firoz and K.C. Santhosh Kumar, for the Respondent

Judgement

S. Siri Jagan, J.—The common issue raised in these two writ petitions is as to whether Section 69 of the Kerala Co-operative Societies Act, 1969, (hereinafter referred to as "the Societies Act") as amended by Amendment Act 1 of 2000, ousts the jurisdiction of the Labour Courts and Industrial Tribunals under the Industrial Disputes Act, 1947 in respect of service matters of workmen of co-operative societies answering the definition of "dispute" as defined under the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). In W.P. (C) No. 27909/2009, a co-operative society challenges the order by which the Government of Kerala has referred a dispute raised by a workman of the society to the Labour Court, Kozhikode for adjudication under the Industrial Disputes Act, 1947 and the proceedings before the Labour Court, pursuant to the reference. In the other writ petition, the workman who raised the said dispute seeks to sustain the order of reference and the proceedings before the Labour Court. Since, I am expected only to decide the question of law and leave it to the parties to resort to either of the two remedies, it is not necessary to refer to the facts leading to the dispute in detail. Suffice it to note that by Ext. P-1 order in W.P. (C) No. 27909/09, the Government of Kerala has referred the dispute raised by the Petitioner in the other writ petition for adjudication by the Labour Court, Kozhikode and the Labour Court has taken cognizance of the dispute as I.D. No.

6/2009, by issuing Ext. P-2 summons to the parties.

2. Section 69 of the Kerala Co-operative Societies Act, 1969, as it stood prior to its amendment by Amendment Act 1/2000 read thus:

69. Disputes to be referred to Registrar.--(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past members or person claiming through a member, a past member or deceased member 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 representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a society is or is not a member of the society; or

(h) between the society and a creditor of the society, such dispute, 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 dispute.

Explanation.--In this section and in Section 70, the term "Registrar" means the Registrar of Co-operative Societies appointed under Sub-section (1) of Section 3 and includes any person on whom the powers of the Registrar under this section and Section 70 are conferred.

(2) For the purposes of Sub-section (1), the following shall also be deemed to the disputes, 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 surety 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 principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation.--A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Registrar unless it is referred to it within one month from the date of the election.

(4) If any, question arises whether a dispute referred to the Registrar under the section is a dispute as defined in Clause (i) of Section 2 the decision thereon of the Registrar shall be final.

Although the legislature enacted Amendment Act 15/97 amending the said Section, that amendment was never brought into force. By Amendment Act 1/2000, the same was amended again to read as under, which amendment, though enacted in 2000, was brought into force only with effect from 2-1-2003.

69. Disputes to be decided by Co-operative Arbitration Court and Registrar.--

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, a past member or deceased member 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 representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) between the society and a creditor of the society; such dispute shall be referred to the Co-operative Arbitration Court constituted u/s 70A, in the case of non-monetary disputes and to the Registrar, in the case of monetary dispute and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of Sub-section (1), the following shall also be deemed to be disputes, 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 surety 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 principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation.--A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;

(d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in Sub-section (1) of Section 80, including their promotion and inter se seniority.

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election.

For our purpose, what is relevant is Sub-section 2(d) thereof. Although prior to introduction of Sub-section 2(d) in Section 69, under Sub-section 1(c) thereof, an employee could maintain a dispute before the arbitrator u/s 69, in view of the definition of the term "dispute" in Section 2(i) of the Act, Section 69 could be invoked only for resolving disputes touching the business, constitution, establishment or management of a society and not in respect of service matters of employees. Section 2(i) read thus:

2. Definitions.--

* * * * * (i) "dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

Section 100 of the Act excluded jurisdiction of civil courts in respect of matters for which provision is made in the Act thus:

Bar of jurisdiction of courts.--No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act.

It was held by this Court and the Supreme Court that disputes regarding service matters of employees could not be referred u/s 69 as the same did not come within the purview of the definition of dispute, since such disputes are not disputes touching the business or management of the society. I am not referring to those decisions, since it is not disputed before me that prior to the introduction of Sub-section 2(d), a dispute regarding service matters of an employee was not capable of being resolved by the Registrar u/s 69 of the Co-operative Societies Act. But, it was the view of this Court that the Registrar could invoke the jurisdiction under Rule 176 of the Kerala Co-operative Societies Rules, 1969 to rescind resolutions of managing committees of co-operative societies regarding service matters of employees, in the event of any violation of the provisions of the Act or Rules. By adding Sub-section 2(d) to Section 69, a deeming provision was introduced, whereby disputes regarding service matters are also deemed as a dispute for the purpose of Sub-section (1). Sub-section (1) was amended in tune with newly introduced Section 70A by the same amending Act, constituting Co-operative Arbitration Courts, who were authorized to adjudicate non-monetary disputes.

3. In view of the amendment of Section 69 of the Societies Act, by incorporating Sub-section 2(d), whether the jurisdiction of the Labour Courts and Industrial Tribunals to entertain industrial disputes raised by employees of co-operative societies, under the Industrial Disputes Act, is ousted, is the question to be decided in these cases. The answer to this question essentially depends on legislative competence under the Constitution of India. The Societies Act is a State Act and the Industrial Disputes Act is a Central Act. The subject of "co-operative societies" fall under Entry 32 of List II and the subject of "industrial and labour disputes" fall under Entry 22 of List III of the 7th Schedule to the Constitution of India. The subject of "industrial and labour disputes" being in the concurrent list, both the Union and State have legislative competence to enact legislation in respect thereof. But Article 254(2) of the Constitution of India stipulates as follows:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of State.--

(1) * * * * * (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Here, the Industrial Disputes Act is an earlier law made by the Parliament prior to the Societies Act and therefore the amended Section 69 of the Societies Act will prevail only if presidential assent under Article 254(2) has been received for the amendment to Section 69. It has been so held by the Supreme Court in *Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.*, , with specific reference to an identical provision in Karnataka Co-operative Societies Act, 1959. Section 70 of that Act was originally substantially similar to Section 69 of the Societies Act prior to its amendment by Act 1 of 2000. With effect from 20-1-1976, Clause (d) was added to Sub-section (2) of Section 70, which is similar to Sub-section 2(d) of Section 69 of the Societies Act. Again, by Act 2 of 2000, the Karnataka State Legislature amended Sub-section 2(d) adding the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 17 of 1947)". This Amendment Act received the assent of the President on 18-3-2000 and was brought into force on 20-6-2000. After the said amendments in 1976 and 2000, Section 70 of the KCS Act (relevant portions) reads thus:

70. Disputes which may be referred to Registrar for decision.--(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 co-operative society arises--

* * * * * (c) between the society or its committee and...any officer, agent or employee, or any past officer, past agent or past employee....of the society...

* * * * * such dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely--

* * * * * (d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions, and disciplinary action taken by a co-operative society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

After narrating the facts of the case, the Supreme Court formulated two questions, the first of which alone is relevant for our purpose which reads thus:

(i) Whether the jurisdiction of the Labour Court under the Industrial Disputes Act was barred by Section 70 of the KCS Act with reference to Co-operative Societies and if so, from when?

After tracing the metamorphosis of Section 70 through the two amendments in 1976 and 2000, and the law on legislative competence with reference to Article 254, ultimately the Supreme Court concluded thus in paragraph 24:

24. The resultant position can be summarized thus:

(a) Even though Clause (d) was added in Section 70(2) with effect from 20-1-1976, Section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the ID Act to decide an industrial dispute between the society and its employees. Consequently, even after insertion of Clause (d) in Section 70(2) with effect from 20-1-1976, the Labour Courts and Industrial Tribunals under the ID Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when Sub-section (1) and Sub-section (2)(d) of Section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18-3-2000 and was brought into effect on 20-6-2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in Section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus:

(i) exclusively with Labour Courts and Industrial Tribunals till 20-1-1976;

(ii) concurrently with Labour Courts/Industrial Tribunals under the ID Act and with Registrar u/s 70 of the KCS Act between 20-1-1976 and 20-6-2000; and

(iii) exclusively with the Registrar u/s 70 of the KCS Act with effect from 20-6-2000.

This decision squarely covers the issue involved in these cases.

4. Therefore, Section 69 of the Societies Act can validly exclude the jurisdiction of Labour Courts and Industrial Tribunals under the Industrial Disputes Act, with reference to workmen of co-operative societies only if such provision has obtained the assent of the President of India as provided under Article 254(2) of the Constitution of India. Relying on a sentence in the Division Bench decision of this Court in *Kaloor Vadakkummary Service Co-operative Society Ltd. v. Assistant Registrar, Mukundapuram and Ors.* 1973 KLT 523 stating that "The Act was passed with the assent of the President after the enactment of the Industrial Disputes Act, 1947", the learned Counsel for the Society would raise an argument that since the Act itself had originally received the assent of the President, after introduction of Sub-section 2(d), the jurisdiction under the Industrial Disputes Act would stand excluded since Section 69 starts with the non obstante clause "Notwithstanding anything contained in any law for the time being in force" and since Sub-clause (h) of Sub-section (1) of Section 69, stipulated that "no other Court or authority shall have jurisdiction to entertain

any suit or other proceedings in respect of such dispute". This argument would not hold water for two reasons. The first is that contrary to the observation in the abovesaid case, even for the Act, Presidential assent was not received. Since none of the books relating to Kerala Co-operative Societies Act, 1969 contained any reference to Presidential assent for the Act, I directed the learned Government Pleader to ascertain from the Government as to whether the Act had in fact received Presidential assent. The learned Government Pleader, after getting instructions, confirmed that no Presidential assent was received for the Societies Act. Therefore, the reference to such assent in 1973 KLT 523 is clearly a mistake. Further, Presidential assent should be obtained after the repugnancy comes into being. Prior to insertion of Section 69(1)(h) and Section 69(2)(d), there was no repugnancy between the Societies Act and the Industrial Disputes Act and therefore the question of requirement of Presidential assent prior to Amendment Act 1 of 2000 does not arise at all. Therefore, without Presidential assent for Amendment Act 1 of 2000, the jurisdiction of the Labour Courts and Industrial Tribunals under the Industrial Disputes Act for adjudicating industrial disputes raised by workmen of co-operative societies cannot be excluded by the Societies Act. That being so, in view of the fact that the Amendment Act 1 of 2000 amending Section 69 of the Kerala Co-operative Societies Act has not received the assent of the President as provided under Article 254(2) of the Constitution of India, the said Section does not exclude the jurisdiction of the Labour Courts and Industrial Tribunals in respect of disputes raised by the workmen of co-operative societies in Kerala. But, as laid down by the Supreme Court in Dharappa's case (supra), the jurisdiction to decide any dispute of the nature mentioned in Section 69(2)(d) of the Kerala Co-operative Societies Act vests concurrently with Labour Courts/Industrial Tribunals under the Industrial Disputes Act and with the Co-operative Arbitration Court and the Registrar as the case may be depending on whether the dispute is non-monetary or monetary.

In the above view, W.P. (C) No. 27909 of 2002 is dismissed and W.P. (C) No. 29415 of 2009 is disposed of as above.