

(1960) 04 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 479 of 1957

Arumughan

APPELLANT

Vs

The Kadalundi Co-operative Urban Bank Ltd. and Another

RESPONDENT

Date of Decision : 06-04-1960

Acts Referred:

Constitution of India, 1950 — Article 12, 19(1), 19(1)(g), 226

Citation : (1960) KLJ 651

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : T.S. Vetikiteswara Iyer, C.S. Ananthakrishna Iyer and R.C. Plappilli, for the Appellant; V. Balakrishna Eradi, K.P.G. Menon and V. Sreekumara Menon Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The petitioner was an employee of the first respondent, a Co-operative Bank registered under the provisions of the Madras Co-operative Societies Act, 1932, hereinafter referred to as the "Act". Pending an enquiry against him for irregularities, he was placed under suspension, by order Ext. A dated October 9, 1956 by the President of the Bank. This was followed by Ext. B dated January 2, 1957, an order passed by the Board of Directors of the Bank, dismissing the petitioner from employment. Ext. B was confirmed by the decision of a sub-committee of the Board of Directors, dated April 3, 1957. The petitioner's complaint is, that these orders have been passed in violation of the rules of natural justice and of the rules framed under the Act, and of the bylaws Ext. B 1, framed by the Bank. Two preliminary objections have been raised on behalf of the Bank by its learned counsel, first, that the petition ought not to be entertained on account of the delay in preferring it, and secondly, that no writ could issue to the Bank which is not a statutory body. For the purpose of this petition Exts. A and B may be left out of account, for, by a proceeding Ext. C, dated January 19, 1957 the President recognised, that the proceedings prior to

that date were not proper and valid, and directed a fresh sub-committee to be constituted for holding the enquiry against the petitioner. It was after this that Ext. D decision was taken by the sub-committee. This petition was filed on November 28, 1957, more than seven months after the date of Ext. D. The Petitioner has offered the explanation for the delay in paragraph 6 of his affidavit in support of the petition, that he had preferred an appeal u/s 41(2) of the Madras Shops and Establishments Act, 1947 to the appellate authority at Trivandrum. Though the date of preferring this appeal has not been set out in the affidavit, it is stated, that the appeal papers must have reached the office of the appellate authority by May 3, 1957. The appeal was dismissed on the ground that no appeal lay, and it was not contended, that an appeal was competent. The affidavit does not set forth the particulars in order to establish, that the petitioner had good and sufficient reasons to believe, that an appeal was maintainable. On this ground of delay itself, the petition is liable to be dismissed.

2. I shall also deal with the second preliminary objection raised before me. The contention of the petitioner's learned counsel was, that the Bank is a statutory body created by the Act, and that the bylaws Ext. B1 framed by the Bank, have statutory force. Section 4 of the Act enables a Society to be registered under the Act. A "financing bank" is a registered society "under Section 2 (c) of the Act, and a registered society means a society registered or deemed to be registered under the Act. It may be deemed, that the Bank has been registered under the Act. Sections 2(a) and 12 of the Act enable bylaws to be framed by registered societies. Section 65 of the Act, which was also pressed into service, confers the rule-making power on the State Government. Clause (d), sub-section (2) of section 65 prescribes the matters in respect of which a society may or shall make bylaws. Sub-rule (uu) of Rule II framed under the Act provides that the procedure to be followed in the disposal of disciplinary cases against officers and servants of the registered society, may be prescribed by bylaws. Ext. B1 has been framed pursuant to these provisions. On the above provisions it was contended by the learned counsel, that Ext. B1 has statutory force, and that the Bank is a creature of the Act. I am not prepared to accede to these contentions. A body, which is the creature of a statute, such as the University under the Kerala University Act, is different from a body which is registered in pursuance of a statute or is recognised by it. As held by a Division Bench in Ramnath Sharma Vs. State of M.B. and Others, :

there are, on the other hand a number of Banks or banking or commercial corporations not created by statute, but incorporated or registered under it, and subject to it, and such rules and regulations as might be made under it, if they (the controlling authorities) abuse their powers or violate any provision of the law, the aggrieved corporation can seek a remedy by way of a writ; but the employee or a third party contracting with the corporation cannot seek the remedy of a writ against it, because the offending corporation is not State as defined in Article 12 of the Constitution and exercises no public functions.

I am in respectful agreement with these observations, and I hold that the Bank is not a statutory body, but is only a banking corporation registered under the Act and an employee like the petitioner, whose relations with such corporation are governed by the contract of employment, cannot seek a remedy under Article 226. His remedy consists in invoking the ordinary civil jurisdiction to enforce his rights under the contract. The bylaws framed by the Bank have no statutory force, merely because the provisions of the Act enable such bylaws to be framed. Notwithstanding their registration under the Act, they remain as bylaws of the corporation. Granting that the bylaws have been violated in the present case, in holding the disciplinary enquiry against the petitioner, the petitioner cannot avail himself of any remedy under Article 226.

It was urged on behalf of the petitioner, that he has a fundamental right to hold his office under Article 19(1)(g). There are observations against this view, in *Chaturbhuj Sahai Vs. Chairman, Board of Directors, Bihar State Co-operative Bank Ltd.*, that "the service of the petitioner which is really a matter of contract between the Bank on the one side and the petitioner on the other" is not "an occupation of the kind contemplated in clause (g) of Article 19(1)." I do not feel called upon to decide this point, as the petitioner has not raised it in this petition. The learned counsel for the Bank had a third preliminary objection, that the Board of Directors or the President of the Bank was not a judicial or quasi-judicial body and therefore no certiorari could issue against any of them. I do not propose to deal with this contention either, as in my opinion, the petitioner must fail on the two grounds discussed above. This petition is therefore dismissed, but without costs.