
(1955) 07 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Application No. 26 of 1954

B. Balreddy

APPELLANT

Vs

Joint Registrar, Co-operative Society and others

RESPONDENT

Date of Decision : 21-07-1955

Acts Referred:

Arbitration Act, 1940 — Section 12, 36, 37, 46, 48(1)
Constitution of India, 1950 — Article 14

Citation : (1955) 07 AP CK 0013

Hon'ble Judges : Palnitkar, C.J.;Taki Bilgrami, J

Bench : Division Bench

Advocate : K. Madhava Reddy, for the Appellant; B. Narhar Shastri, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Taki Bilgrami, J.—This application for issue of an appropriate writ is directed against the award of the arbitrator appointed by the Registrar of the Co-operative Society under the Co-operative Societies Act, holding the applicant, who was the secretary of the Taluka Agricultural Co-operative Association. Medak, to be liable for payment of Rs. 5231-11-0 to the Taluka Agricultural Co-operative Association, because from the money in his charge, this amount was found short, and the applicant was unable to account for it.

Aggreived by this award, the applicant filed a revision petition before the Registrar, Co-operative Society, Respondent 1 which was dismissed.

2. The grounds on which the petitioner wishes to impeach this order are as follows:

(1) that under the Co-operative Societies Act. an Arbitrator once appointed cannot be removed and another appointed in his place unless the Registrar withdraws the case and hears it himself;

(2) There was no dispute between the respondent 2 (the Taluka Agricultural Co-

operative Association) and the applicant as the Accountant had accepted the claim of the Society for this amount in toto and there could be no valid reference;

(3) the petitioner was not an office-bearer of the Society, hence Section 48 of the Co-operative, Societies Act under which the reference was made had no application;

(4) all the parties to the dispute were not a party to the reference;

(5) the Arbitrator, Zahiruddin, had investigated the case and could not act as an Arbitrator;

(6) the procedure laid down by the rules for inquiry was not followed & the inquiry made in a manner contrary to the principles of natural justice, and resulted in a grave injustice to the petitioner. He was not allowed to produce rebutting evidence. Other officers who were really in charge of the accounts and money were not subjected to either inquiry and liability, and the petitioner who had no control over the funds was singled out for the purpose;

(7) the Hyderabad Co-operative Societies Act is repugnant to the Arbitration Act and contravenes the provisions of Art. 14 of the Constitution and is therefore void.

3. Among the grounds enumerated above, the, one which was strenuously urged by the applicant's counsel, and vigorously contested by the opposite party is that the arbitrator, Zahiruddin, who passed the award, had investigated the case and it was contrary to the principles of natural justice that he should act as an arbitrator, and consequently the whole proceeding is vitiated and the award is void.

It is not admitted by the opposite party that Zahiruddin investigated the case. Reliance is placed on behalf of the applicant on a letter dated 2-11-1951 of Zahiruddin to the Registrar, showing his unwillingness to act as an arbitrator because he had investigated the case. No record of any investigation done or any report being made by Zahiruddin has been summoned. In the file called, no material is to be found relating to this matter. The officer of the Co-operative Society called to bring the file assures that no such record exists. The arbitrator himself (respondent 3) denies this in his counter.

Shri Shastri on behalf of the Co-operative Society states that this letter if at all was written by Zahiruddin which is not certain, was evidently written because Zahiruddin was shirking the task and putting forward wrong excuses, and that is why his objections were ignored. We feel justified in accepting this explanation in absence of any material on record.

4. The second ground taken up by the learned counsel of the applicant is that the Arbitration Act X of 1940 has been extended to the Hyderabad State. S. 46 of which, expressly makes it applicable to all arbitrations including those under the provisions of any other Statute for the time being in force, and since the Co-

operative Societies Act under which the Arbitration proceedings were commenced was in force when the Arbitration Act was extended to Hyderabad, the arbitration is subject to provisions of S. 5 of the Arbitration Act.

Under this section, the authority of an arbitrator once appointed cannot be revoked unless by the leave of the Court. In the present case, the authority of the previously appointed arbitrator, Shri S. M. Naqvi was revoked and the arbitrator who passed the award was appointed without leave of the Court in contravention of the express mandate of the above section, therefore the entire proceeding was without jurisdiction and the award invalid and cannot bind the applicant.

We regret that we are unable to concede the correctness of the basic assumption on which the entire structure of the learned counsel's reasoning rests. We do not think that S. 5, Arbitration Act, can apply to arbitrations under the Hyderabad Co-operative Societies Act. Section 46 of the Arbitration Act runs as follows:

The provisions of this Act, except sub-s. (1) of S. 6 and Ss. 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

Arbitrations under other Statutes or Rules framed; thereunder are expressly exempted from the application of the provisions of this Act if the provisions of such enactments touching the arbitration, are inconsistent with the Arbitration Act. That the provisions of the Hyderabad Co-operative Societies Act which govern the Arbitration proceedings are in principle and details inconsistent with the Arbitration Act, is to our mind obvious.

Sub-section (3) of S. 51 of the Co-operative Societies Act, 1962 bars the jurisdiction of the civil Court to question an award passed under this enactment. Clause (a) of S. 60(1) empowers the civil Courts having local jurisdiction to execute the award under S. 48 as if it was a decree of the civil Court. There were corresponding provisions in the former Act which was in force at the time of reference and arbitration.

See S. 41(6) and S. 42(7) . All these provisions are basically inconsistent with the Arbitration Act and, therefore, in our opinion, saved under the proviso of S. 46 of the Arbitration Act from the application of that section. The inconsistency is evident and it is hardly necessary to point out further details in which the mandates of the two enactments cannot be reconciled with each other.

A Division Bench of the Calcutta High Court in -- Nanda Kishore Goswami and Another Vs. Bally Co-operative Credit Society, Ltd. and Others, had decided on similar interpretations of S. 46, Arbitration Act, that an award passed under S. 43, Local Co-operative Society Act, is not subject to the provisions of the Arbitration Act by virtue of S. 46 of that enactment. The inconsistency pointed

out by their Lordships in that case was also the ouster of the jurisdiction of the civil Courts, and providing of the special machinery to enforce the award.

We find ourselves entirely in agreement with this decision and with the reasoning at which it proceeds. The learned counsel for the applicant places reliance on -- *East India Film Studios Vs. P.K. Mukherjee and Others*, In that case, the question was whether an arbitration under the Defence of India Act is subject to the provisions of the Arbitration Act, and is void if it contravenes the provisions of S. 5 of the above Act.

Their Lordships have held that by virtue of the provisions of S. 46, Arbitration Act, the Act is made expressly applicable to the arbitrations under any other existing statutory provision, hence they were applicable to the arbitration under the Defence of India Act, 1939, and the award was void on account of the contravention of the express provisions of S. 5, Arbitration Act. That case, in our opinion, is not applicable to the present. The question under consideration there was whether by virtue of S. 46, Arbitration Act, that Act was applicable to Arbitration under the Defence of India Act or not.

5. The third ground urged is that the applicant was removed from the service before the award was passed and cl. (b) of S. 48 (1) confines the powers of reference to arbitration to officers among whom past officers cannot be included, the award is therefore void. If it was the intention of the legislators to include them, it is argued, they would have been expressly included as the ex-members are included under cl. (a).

Reliance is placed on *Dinkar Wasudeo Joshi Vs. Registrar, Co-operative Societies*, in which it was held that the term: "servant" in S. 54, Bombay Co-operative Societies Act which corresponds to S. 48 of the Hyderabad Act does not include legal representatives of the officer. In this case, a previous Single Bench case of the same High Court *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, was dissented from in which Chagla, C. J. had held that a servant removed from service was included in the term "servant" in the above-mentioned section.

We think it is not necessary to decide the point because we think as was held in *Chela Narian v. joint Registrar, Co-operative Society (S)* AIR 1955 Hyd 33 (E) a case in which the point requiring determination was exactly the same and the facts were curiously alike by a Division Bench of the High Court that the question is not of a violation of principles of natural justice or of jurisdiction but merely of the construction of a particular provision of a statute. In that case, the writ applicant was also a dismissed servant of the Co-operative Society, against whom an award of a similar nature had been passed and he was challenging it on identical ground.

This objection was over-ruled and it was held that a wrong interpretation of a statutory provision or an error of law or fact is not sufficient for issue of a writ. This rule is well established and recognized. The Supreme Court's decision in

Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, is a recent and emphatic judicial pronouncement on the point.

A still more recent Full Bench decision of the Allahabad High Court in Deoria Sugar Mills Ltd., Deoria Vs. Govt. of U.P. and Others,) may be referred to as containing a lucid exposition of the rule in which all the previous authorities have been reviewed and summed up. This High Court has uniformly adhered to this view. On this ground also, in our judgment, the petitioner cannot succeed.

6. No other point was raised or arises for decision. After carefully going through the record, we find nothing which would induce us to believe that any miscarriage of justice has resulted on account of any irregularity there may have been in the conduct of the arbitration proceedings. This application therefore must fail and is hereby dismissed.

Since it appears to have been filed in good faith and on some apparently reasonable grounds and in view of the fact that the applicant is a dismissed servant under the obligation, in accordance with the award to make good the amounts not accounted for, we make no order as to costs. This judgment will govern Writ application No. 25-5-1954-55.