
(1977) 01 OHC CK 0011
In the Orissa High Court

Bargarh Co-operative Land Development Bank Ltd.

APPELLANT

Vs

Khetrapal Naik

RESPONDENT

Date of Decision : 14-01-1977

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 2A, 4

Citation : (1977) 1 LLJ 403

Hon'ble Judges : S.K. Ray, Acting C.J.

Bench : Single Bench

Judgement

S.K. Ray, A.C.J.

1. The petitioner is the defendant in a suit for a declaration that the orders purporting to suspend and dismiss the plaintiff are void and inoperative and for other consequential reliefs. The opposite party was working as a Senior Supervisor under the petitioner-Bank which is a primary Co-operative Society registered as a Co-operative Society under the Orissa Co-operative Societies Act, 1962 (herein-after referred to as the "Societies Act"). There were several charges of misconduct against him and the petitioner instituted an enquiry into those charges and suspended him with effect from 26-10-73 pending enquiry and later on, terminated his services with effect from 12.11-73 as the charges against him were fully substantiated in such: enquiry The plaintiff appealed to the Board of Directors of the petitioner-Bank against the order of termination, but was unsuccessful. Thereafter he filed the suit for the aforesaid reliefs out of which the present revision arises.

2. The learned Subordinate Judge framed 7 issues and as issues 3 and 7 related to the jurisdiction of the Court to try the suit they were heard as preliminary issues, Issues 3 and 7 are extracted herein below:

3. Has the Court no jurisdiction to try the suit?

7. Is the suit not cognizable in the civil Court?

These two issues arose from the pleadings of the parties that the petitioner-Bank is an industry u/s 2(j) of the Industrial Disputes Act (hereinafter referred to as the Act") and the dispute involved in the suit was triable in the forum provided under the said Act. There is no controversy that if the petitioner-Bank is held to be an "industry" within the meaning of its definition u/s 2(j) of the Act and the plaintiff is a "workman" as defined u/s 2(s) and the dispute an "industrial dispute" as defined u/s 2(k) of the Act, then the civil Court would have no jurisdiction to try the present suit.

3. The trial Court held that the petitioner Bank is not an industry and consequently decided the two issues in favour of the plaintiff and against the defendant. It was never mooted by the plaintiff that he is not a workman as he was getting wages more than five hundred rupees per month. For the first time the learned Counsel for the opposite party wanted to raise this point contending that it was for the defendant to discharge its initial onus of proving that the plaintiff was getting wages less than five hundred rupees per month and was not working in a supervisory capacity under the defendant and thereby fulfilled the definition of "workman" u/s 2(s) of the Act. Such a contention involves a question of fact as to whether the plaintiff was getting wages less than Rs. 500 or more than Rs. 500. This point not having been raised at all in the Court below and Mr. Mohan the learned Counsel for the opposite party being not in a position to categorically state on affidavit before this Court that his client was getting wages more than Rs. 500, he ultimately abandoned the contention.

4. There is no dispute over the proposition that where a statute re-enacts a right existing at a common law and provides a special forum of remedy, therefore, the jurisdiction of the civil Court to deal with the matter is not excluded unless the statute says so either expressly or by necessary implication, and that where a statute creates a new right but provides no special remedy, therefore, the jurisdiction of the ordinary civil Court is not ousted to enforce such a right, and that where a statute creates a new right not existing at a common law and specifies a particular mode in which that right is to be enforced, the jurisdiction of the civil Court is barred by implication. The Act provides a special forum of remedy for the "industrial disputes" as defined in Section 2(k) of the Act. Though the industrial dispute as defined embraces within its ambit a number of rights existing at common law, nevertheless, the Act provides a special forum of remedy to deal with such disputes involving parties to that dispute, namely, the employer and the workman as defined in Section 2(i) of the Act. Section 2A of the Act specifically provides that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is party to the dispute, even though adjudication of such a dispute, involves determination of the nature, ambit and scope of the contractual right between the employer and employee. Therefore, there does not appear to

be any doubt that the nature of the dispute in question in the suit is completely covered by Section 2A of the Act. Thus, if other ingredient are fulfilled, viz., that the defendant is an industry and that the plaintiff is a workman, the jurisdiction of the civil Court would automatically be ousted. Since the only new ground of Mr. Mohanty that the plaintiff is not workman as he was earning wages more than Rs. 500 was not pressed and as it was never contended in the Court below that the plaintiff is not a workman as defined u/s 2(s), for that reason, it has to be taken for granted for the purpose of this Civil Revision that the plaintiff fulfils the definition of "workman". The only question, therefore, to be considered is whether the petitioner-Bank is an industry. That was the only question which was considered and answered against the defendant by the trial Court.

5. In the case of the Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, . which has been referred to by the trial Court, the ingredients which go to make an establishment an "industry" have been enumerated as follows:

- (a) Systematic activity like that of a trade or business. Systematic activity does not mean casual activity.
- (b) Co-operation of employer and employees.
- (c) Production of material services.

It is appropriate at this stage to review the ambit and scope of the Societies Act to determine whether the aforesaid ingredients are present in respect of a registered society. Section 4 thereof provides that a co-operative society which has, as its object, the promotion of economic interests of its members in accordance with co-operative principles, or a co-operative society established with the object of facilitating the operations of such a society, may be registered under that Act, Sections 6 and 7 of the Societies Act indicate that a registered society" must have its bye-laws and the provisions of that Act for the purpose of carrying out the objects of the society in accordance with Section 4. In other words, they indicate that every registered society indulges in a systematic activity like that of a trade or business. A registered society is a body corporate with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. The society is vested with certain rights and is also under obligation of certain liabilities towards the members and its creditors. Chapter IV of the Societies Act provides for its management, and the provisions contained in Chapter VII indicate that a registered society earns profit and dividends are paid, its funds are invested in profitable manner and its accounts are audited by Auditor and profit and loss accounts are prepared. In my opinion, having regard to the scheme of the Societies Act every registered society indulges in a systematic activity like that of a trade or business, there is co-operation of employer and employees and that it undertakes production of material services, and thus, all the ingredients of an "industry" are present in respect of every

registered society under that Act. Therefore, in my opinion, the petitioner-Bank fulfils the definition of "industry" in Section 2(j) of the Act which means any business, trade, under, taking, manufacture or calling of employers and any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

6. The point whether a registered society under the Societies Act is an industry or not was specifically considered by this Court in the case of Bhanjnagar Co-operative under Bank Ltd. v. Jaganath Rat and Anr., (1973) C.L.T. 495. Their Lordships helde:

A Co-operative Society is an industry, and the Industrial Tribunal had jurisdiction to enter, tain the dispute between the petitioner and opposite party No. 1.

This is a Division Bench decision and is binding upon me.

7. Having regard to the provisions of Sections 2(s) and 2A of the Act, there can be no manner of doubt that the points in controversy in the suit relate to a dispute or difference between the society and the plaintiff in regard to the latter's dismissal or otherwise termination of his services and a part of the controversy also arises out of such dispute or difference, and must be deemed to his an "industrial dispute" within the meaning of the Act. Special forums of remedy have been created under the Act and all industrial disputes are to be referred to a Board, Court or Tribunal constituted thereunder. The intendment of this Act to vest exclusive jurisdiction in the Board, Comt or Tribunal, as the case may be, in regard to all industrial disputes between the employer and the workman and thereby necessarily oust the jurisdiction of the civil Court in regard to such matters. The mere fact that the appropriate Government in certain cases may refuse to refer industrial dispute u/s 10 of the Act will not have any effect on the conclusion that the civil Court's jurisdictions completely ousted in regard to all industrial disputes envisaged in the Act

8. It is contended by Mr. Mohanty that the contractual right between the employer and the employee prohibiting illegal suspension and discharge is not a right created under the Act for the first time, but it is a common law right which is existing before the enactment of the Act. That may be so, but since exhaustive forums are provided for determination of industrial disputes, the jurisdiction of the civil Court is necessarily and by inevitable inference ousted in regard to such disputes, even though such disputes involve rights pre-exming in common law.

9. The learned Subordinate"; Judge was wrong in by-passing the direct decision of the Court in the case of Bhanjanagar Cooperative Union Bank Ltd., v. S. Jaganath Rao and Anr. (supra). The decision of the Supreme Court in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, , referred to by the trial Court doe3 not appear to me to support his views. The learned Subordinate Judge was in error in decidiag issues 3 and 7 in favour of the plaintiff. The order of the Subordinate Judge is accordingly, set aside and issues 3 and 7 are decided in favour of the defendant. In other words, the disputes in controversy in the suit

being industrial disputes, are beyond the jurisdiction of the civil Court. The revision is accordingly, allowed with costs which is assessed at one gold mohur.

10. Revision is allowed with costs.