
(1973) 05 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 419 of 1971

Bihar State Co-operative Marketing Union Ltd.

APPELLANT

Vs

The Registrar, Co-operative Societies and Another

RESPONDENT

Date of Decision : 01-05-1973

Acts Referred:

Citation : AIR 1974 Patna 77

Hon'ble Judges : S.N.P. Singh, J;H.L. Agrawal, J

Bench : Division Bench

Advocate : Rama Raman and Ram Kishore Prasad, for the Appellant; Prabha Shankar Mishra and Rajendra Pd. Singh, for the Respondent

Judgement

S.N.P. Singh, J.—The petitioner Bihar State Co-operative Marketing Union Ltd., (hereinafter to be called "the Marketing Union"), ie a society registered under the Bihar and Orissa Co-operative Societies Act. 1935 (hereinafter) referred to as "The Act"). In this writ application under Articles 226 and 227 of the Constitution the petitioner has challenged the validity of the order of the Registrar. Cooperative Societies, Bihar (respondent No. 1). dated the 2nd of February. 1971, passed in Miscellaneous Appeal No. 9 of 1970. A copy of the impugned order has been made Annexure "4" to the writ application.

2. The material facts for the disposal of this application may be stated as follows. Two posts of Accountant in the office of the Marketing Union fell vacant in the year 1970. The Executive Committee of the Marketing Union recommended to the Board of Directors that one of the posts of Accountant be filled in by promotion from the ministerial staff at the Headquarters. The Board of Directors by the resolution dated the 24th of June. 1970 approved the recommendations of the executive committee and Promoted the cashier Sri H. N. Banker as accountant- Thereafter the Bihar State Co-operative Marketing Union's Employees" Union (hereinafter referred to as "the Employees" Union") respondent No. 2. filed an application before the Registrar u/s 48 (1) (b) and (c) of the Act challengins the decision of the Board of Directors. According to the

employees" Union, the regular channel of promotion being from Upper Division Assistant to Head Assistant and from Head Assistant to Accountant, the post of Accountant should have been filled in by promoting a person holding the post of Head Assistant. On the 31st of July, 1970, the Marketing Union filed written statement before the Registrar in which it took the stand that the post of Cashier is higher in rank to the post of Head Assistant and as such the promotion of the Cashier to the post of Accountant was legal and valid. The marketing union also raised preliminary objections about the maintainability of the application under S. 48 of the Act on the following two grounds, namely, (1) that the matter relating to the promotion of an employee is not a dispute "touching the business of a registered society:" and (2) that the dispute having been raised by the employees" Union and not by any of the employees of the Marketing Union, it cannot be said to be a dispute between the society or its managing committee and any agent or servant of the society. The Registrar by the impugned order (Annexure 4) overruled the preliminary objections raised by the petitioner and held that the application filed by the Employees" Union was maintainable. Being aggrieved by that order the Marketing Union has filed this writ application challenging the validity of the order.

3. Mr. Rama Raman, learned counsel appearing for the petitioner, submitted before us that the Registrar (respondent No. 1) has erred in law in overruling the preliminary objections raised by the petitioner and has taken an erroneous view on both the points which were raised before him.

4. Section 48 (1) of the Act reads thus-

"(1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises-

(a) amongst members, past members persons claiming through members, past members or deceased members and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members whether such sureties are members or non-members, and the Society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society: or

(d) between the society and any other registered society: or

(e) between a financing bank authorised under the provisions of Sub-section (1) of Section 16 and a person who is not a member of a registered society; such dispute shall be referred to the Registrar;

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of Section 32 or Section 63.

Explanation-- (i) A claim by a registered society for any debt or demand due to it from a member, non-member, past member or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

Explanation-- (2) The question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section".

It was urged on behalf of the petitioner that the word "business" in Section 48 (1) means the actual trading and other business activities of the society which it is authorised to enter into under the Act, The Rules and the Bye-laws of the society. The word "business" according to learned counsel appearing for the petitioner, has not been used in the larger sense to include all the affairs of the society. Therefore, any dispute between the society and its servants relating to the conditions of service of the employees of the society will not be a dispute "touching the business of a registered society". Learned counsel appearing for the employees' Union, on the other hand, contended that the words "touching the business of a registered society" in Section 48 (1) of the Act are of wide amplitude and they include any matter which relates to or concerns or affects the business of society. The dispute relating to the service conditions of the employees of a society is a matter which is directly concerned with the business of the society and such a dispute can be decided by the Registrar u/s 48 (1) of the Act.

5. The point in controversy appears to have been settled by the decisions of the Supreme Court in the cases of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal. Andhra Pradesh. Hyderabad AIR 1970 SC 2451. In the case reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , while interpreting section 91 of the Maharashtra Co-operative Societies Act, 1960. it was observed by their Lordships of the Supreme Court as follows:--

"Five kinds of disputes are mentioned in Sub-section (1) first, disputes touching the constitution of a society: secondly, disputes touching election of the officebearers of a society: thirdly, disputes touching the conduct of general meetings of a society: fourthly, disputes touching the management of a society;

and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial "or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws".

In that case the point for consideration was whether the dispute touching the assets of a society would be a dispute touching the business of a society. Dealing with that question it was observed by the Supreme Court as follows:

"This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank, and the appeal should fail on this short ground."

The Supreme Court further held:

"While we agree that the nature of business which a society does can be ascertained from the objects of the society it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word "touching" is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word "affects" should also be used in defining the scope of the word "touching"."

In the case reported in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, the Supreme Court had to interpret Section 61 of the Andhra Pradesh Co-operative Societies Act. In that case an industrial dispute between twenty-five Cooperative Central Banks in the State of Andhra Pradesh and their workmen represented by the Andhra Pradesh Bank Employees' Federation, Hyderabad, had been referred to the Industrial Tribunal, Hyderabad, u/s 10(1)(d) of the Industrial Disputes Act, 1947. The subject-matter of the dispute related to a number of service conditions including promotion. The jurisdiction of the Industrial Tribunal to deal with the dispute was challenged on the ground that u/s 61 of the Andhra Pradesh Cooperative Societies Act the Registrar was competent to decide the dispute and such a dispute could be

referred to him. Their Lordships of the Supreme Court following the decision In the case reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, held as follows:

"Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects. such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society". Mr. Prabha Shankar Mishra, learned. Counsel appearing for respondent No. 2. submitted that the Supreme Court has given a narrow meaning to the word "business" because the context in which the word has been used in Section 91 of the Maharashtra Co-operative Societies Act and Section 61 of the Andhra Pradesh Co-operative Societies Act indicates that the word has been used in a narrow sense and it does not include the affairs of a society. According to learned counsel, a wider meaning should be given to the word "business" in Section 48 (1) of the Bihar Act as the provisions contained in Section 48 (1) are not similar to the provisions of Section 91 of the Maharashtra Act or Section 61 of the Andhra Pradesh Act. In my opinion, it is difficult to hold that the word "business" in the Bihar Act has been used in a different sense so as to include within its ambit the service conditions of the employees of a society. The two decisions of the Supreme Court are settled on the point that the dispute with regard to the service conditions of the employees of a society cannot be held to be a dispute touching the business of a society. It must, therefore, be held that the dispute in the instant case which has been raised before the Registrar namely, that the promotion of the cashier to the post of Accountant was not valid and justified being a dispute in relation to the service conditions of the servant employed by the Marketing Union cannot be held to be a dispute touching the business of the society. The Registrar, therefore, has no Jurisdiction to deal with such a dispute u/s 48 (1) of the Act.

6. In the case of Raghav Jha v. The Registrar. Co-operative Societies, Bihar. Patna ILR (1962) Pat 325 a Bench of this court held that election disputes are disputes referable to the Registrar as they touched the business of a registered society. It was submitted by Mr. Prabha Shankar Mishra that a wider meaning has been given to the word "business" in that case. In my opinion since the Question whether a dispute regarding the service conditions of an employee can be referred to the Registrar u/s 48 of the Act was not involved in that case, the decision in that case is not of any assistance to the contention made by learned counsel appearing for respondent No. 2.

7. Mr. Prabha Shankar Mishra raised an alternative contention that the application filed by respondent No. 2 before the Registrar was in substance an appeal under the Staff Regulations of the Bihar State Co-operative Marketing

Union Limited, Learned counsel first referred to Section A (iii) of the Staff Regulations and submitted that the application filed by respondent No. 2 was in substance an appeal before the Registrar relating to the interpretation of the Staff Regulations. Section A (iii) of the Staff Regulations provides as follows:--

"In all disputes regarding the interpretation of the Staff Regulations the English Text only shall be considered as authentic and the decision of the managing Director shall be considered final. An appeal may, however, lie to the Registrar. Co-operative Societies, Bihar. within 15 days from the communication of the decision".

It is clear from the above provisions that an appeal lies to the Registrar from the decision of the Managing Director in a dispute regarding the interpretation of the Staff Regulations. In the instant case respondent No. 2 has not moved the Registrar against any decision of the Managing Director with regard to the interpretation of the Staff Regulations. Respondent No. 2 moved the Registrar against the resolution of the Board of Directors promoting the cashier to the post of Accountant. It cannot, therefore, be held that the provisions of Section A (in) of the Staff Regulations were attracted and the petition filed by respondent No. 2 before the Registrar, though labelled as an application u/s 48 (1) (b) and (c) of the Act. was in substance an appeal u/s A (iii) of the Staff Regulations.

8. Mr. Mishra next referred to Section H (II) of the Staff Regulations and submitted that the petition filed by respondent No. 2 may be treated to be an appeal u/s H (II). There is no substance in this contention also. In Section H (I) procedure has been prescribed for dealing with cases of indiscipline and misconduct. The appointing authority has been empowered u/s H (I) to award punishment to an employee for any proved act of indiscipline or misconduct. Section H (II) provides that an appeal may be filed against the order of the appointing authority within two months of the receipt of the final order to the prescribed authority. As provided u/s H (II), an appeal relating to the s second grade employees is to be filed before the Registrar, co-operative societies. It is clear that the provision for appeal in Section H (II) is not general in the sense that any person being aggrieved by any order can file an appeal before the prescribed authority u/s H (II) An appeal u/s H (II) can be filed only by a person who is aggrieved by an order of the appointing authority passed u/s H (I) in the disciplinary proceeding. The application filed before the Registrar by respondent No. 2 cannot be held to be an appeal u/s H (II) of the Staff Regulations.

9. In the course of his argument. Mr. Mishra also made a reference to Rule 33 of the Bihar Co-operative Societies Rules, 1959, and submitted that t.hp Registrar is competent to deal with the question as he has been given wide powers under Rule 33. It is really difficult to appreciate how Rule 33 is relevant to the question under consideration. Rule 33 empowers the Registrar to determine and fix the service conditions of an employee of a registered society by general or special order. In the application respondent No. 2 has simply alleged that the promotion of the Cashier as Accountant was not valid and justified. Respondent No. 2 has

not filed any application before the Registrar for determining the service conditions of an employee. There is no question before the Registrar for determination of the service conditions of an employee. Rule 33, therefore, is not at all relevant to the facts of the instant case.

10. Having considered all the points which have been urged on behalf of respondent No. 2. I hold that the application filed by respondent No. 2 before the Registrar is not maintainable and the Registrar has no jurisdiction to deal with the dispute which has been raised in the application.

11. As the application must succeed on the first point, it is not necessary to consider the question whether the Employees' Union can raise a dispute before the Registrar if the dispute comes within the ambit of Section 48 (1) of the Act.

12. In the result, this application is allowed the order of the Registrar as contained in Annexure "4" is set aside by a writ of certiorari and the Registrar is prohibited to proceed any further with the case which has been instituted on the basis of the application filed by respondent No. 2. There will be no order as to costs.

H. L. Agrawal, J.

13. I agree.