
(1939) 08 CAL CK 0023
In the Calcutta High Court

Chatra-Serampore Co-operative Credit Society Ltd.	APPELLANT
Vs	
Gopal Chandra Mitra and Others	RESPONDENT

Date of Decision : 11-08-1939

Acts Referred:

Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1940 Cal 198

Hon'ble Judges : Roxburgh, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—This is an appeal on behalf of the Chatra Serampore Cooperative Society, which was the defendant in a suit commenced by the plaintiff for a declaration that an award made by an arbitrator appointed by the Assistant Registrar Co-operative Societies, under Rule 22 of the Rules framed by the Local Government u/s 43, Co-operative Societies Act was illegal, inoperative and ultra vires. There was also a prayer for a permanent injunction restraining the defendant Society from enforcing the award by execution against the plaintiff. It appears that one Osman Miya had borrowed a sum of Rs. 500 from the defendant Society, by executing a bond on 3rd January 1926. The defence case was that the plaintiff stood one of the sureties for Osman Miya in the bond. There being default in payment of the instalments stipulated in the bond, the whole amount due under it became payable, and in 1933 a dispute was sent by the defendant to the Assistant Registrar, Co-operative Societies under Rule 22 of the Co-operative Society Rules, The Assistant Registrar appointed one Asutosh Chatterjee as arbitrator, who issued a notice on the plaintiff to appear before him on 14th October 1933. The arbitrator decided the case against the plaintiff overruling his defence that he did not stand a surety or sign the bond as such. There was an appeal against this award under Sub-rule (5) of Rule 22 which was heard by the Assistant Registrar, and it was dismissed.

2. The present suit was thereupon commenced by the plaintiff and his allegation in substance was that the award was fraudulent, illegal and ultra vires. It was

said that the arbitrator did not allow him any opportunity to prove his case or to adduce the evidence which he wanted to adduce. The award was erroneous on the face of it; and the arbitrator overlooked that the claim of the Society against the plaintiff was long time-barred. The whole thing, it was alleged, was the result of an ill feeling between the plaintiff, and an employee of the defendant Society, who had forged the name of the {plaintiff as a surety in the bond. The defendant in its written statement traversed all the allegations of the plaintiff, and contended inter alia that the award was valid and binding in law, and could not be questioned in a Civil Court under Rule 22(6). The trial Court accepted the defendant's version and dismissed the plaintiff's suit. There was an appeal preferred by the plaintiff against this decision which was heard by the Subordinate Judge, Second Court, Hooghly. The Subordinate Judge reversed the judgment of the trial Judge and decreed the plaintiff's suit, holding inter alia that Rule 22(6) was ultra vires of the Local Government, and that the award was a bad and invalid award under law, there being misconduct on the part of the arbitrator, and violation of the rules of procedure, laid down in Rule 22 itself. It is against this decision that the present second appeal has been preferred.

3. Mr. Deb who appears for the appellant has challenged the propriety of the lower Appellate Court's decision primarily on the, ground that Sub-rule (6) of Rule 22 framed u/s 43, Co-operative Societies Act, is intra vires of the Local Government and consequently the legality of the award could not be questioned in any Civil Court. In support of his contention the learned advocate has relied upon a recent decision of this Court in Dacca Co-operative Industrial Union Ltd. Vs. Dacca Co-operative Sankhya Silpa Samity Ltd. No. 1 and Others, , Mr. Sen who appears for the respondents, and who has presented his client's case with considerable ability and thoroughness, has argued on the other hand that Rule 22(6) is ultra vires inasmuch as it ousts the jurisdiction of Civil Courts, and that in any event the Civil Court is not precluded from pronouncing the award to be a nullity in the circumstances of the present case. Two questions arise for our determination in this appeal. The first is whether Sub-rule (6) of Rule 22 as framed u/s 43, Co-operative Societies Act, is ultra vires of the Local Government. The second point is whether, even if Sub-rule (6) is not ultra vires, the Civil Court has still power to interfere when the award is made without jurisdiction or in opposition to the provisions of the rules themselves.

4. On the first point, the appellant has in its favour the recent decision of a Division Bench of this Court in Dacca Co-operative Industrial Union Ltd. Vs. Dacca Co-operative Sankhya Silpa Samity Ltd. No. 1 and Others, . There it was held that Sub-rules (2), (5) and (6) of Rule 22 as framed by the Local Government are not ultra vires, and even though they may not come within the specific clauses enumerated in Section 43(2), Co-operative Societies Act, they are within the scope of Sub-section (1) of Section 43, which constitutes the primary source of the rule-making power. Mr Sen has challenged the propriety of this decision so far as it relates to Sub-rule (6). He concedes that it is within the competence of the Local Government, to empower the Registrar to appoint an

arbitrator, and to lay down the procedure to be followed in the arbitration proceedings. The Government is also competent to set up an appellate tribunal, and invest it with authority to hear appeals from awards. It cannot, however, Mr. Sen says, without express authority from the Legislature oust the jurisdiction of Civil Courts as established by general law and prevent a subject from having access to the ordinary legal tribunals in regard to matters of arbitration.

5. In other words, Mr. Sen's contention is that the rules can provide for settling of certain disputes by arbitration, but when the arbitrator has made his award, it would be open to challenge before the Civil Court, in the same way as any other award. The learned advocate points out in this connexion that if it was the intention of the Legislature to exclude the jurisdiction of Civil Courts in such matters, it would have expressly said so, as it has done in Section 42 of the Act. After careful consideration, I have come to the conclusion that this contention cannot succeed. The provision of Section 43(2), Clause (1) itself indicates that the Legislature intended framing of rules by which disputes of a certain character could be referred to the Registrar for decision, and if he so directed, to arbitration. It contemplated also the framing of rules regarding the mode of appointing the arbitrator and the procedure to be followed by him down to the actual enforcement of his decision. A set of rules framed on these lines would automatically oust the jurisdiction of Civil Courts, at least to the extent of questioning the propriety of the decision of the arbitrator on its merits, as obviously there is no sense in making provision for settlement of disputes by arbitration, if the same matter could be repaginated in Civil Courts. The question however arises, as to whether the Civil Courts should not be given the same powers of control as they exercise with regard to other awards under the general law. Here again the Local Government was to frame the rules in such manner as would carry out the purposes of the Act. If the object of the Act is to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, the Local Government might well consider it proper to lay down a much simpler procedure than that embodied in Sen. 2, Civil P.C., which undoubtedly involves much trouble and expenses.

6. The provision for appeal to an appellate officer against the award was made in my opinion with this object in view and the Local Government considered it to be a sufficient check upon the mistakes or abuse of authority by the arbitrator. I think therefore that the substitutional remedy provided for by Sub-rule (5) has taken away the remedy which the parties might have had under the general law and Sub-rule (6) is rather a superfluous provision which states explicitly what was clearly the implication of the previous sub-rules. It is necessary in this connexion to refer to two decisions upon which Mr. Sen, has laid considerable stress in support of his contention, and which are to be found in *Chester v. Bateson* (1920) 1 K.B. 829 and *Paul Ltd. v. Wheat Commission* (1937) A.C. 139. The first case has little bearing on the present question. The question in this case was, whether the Defence of Realm Consolidation Act, 1914, which authorized the framing of regulations inter alia to prevent assistance being given to the

enemy or the successful prosecution of the war be endangered, justified a regulation which provided that no person should without the consent of the Minister of Munitions, take any proceedings for the purpose of obtaining an order or decree for the recovery of possession, of or for the ejectment of a tenant of any dwelling house in which a munition worker was living, and which was situated in an area declared to be a special area by the Minister of Munitions. It was held that the regulation was ultra vires, as it was not a necessary or even reasonable way to aid in securing the public safety and the defence of the realm, to give power to a Minister to forbid any person to institute any proceeding to recover a house, so long as a worker was living in it.

7. As I have said already, the purpose of the Co-operative Societies Act as declared in its Preamble, could reasonably and properly be served by a rule of this character, and this case which stands on a quite different footing cannot throw any light on the matter. The other case in *Paul Ltd. v. Wheat Commission* 1937 A.C. 139 is more important, and at first sight it seemed to support the contention of Mr. Sen. The facts of this case stand as follows: Section 5, Sub-section (1) Wheat Act of 1932, empowered the Wheat Commission to make by-laws for giving effect to the provisions of the Act, and Sub-section (2) laid down that by-laws made under this Section should provide inter alia for final determination by arbitration of disputes arising as to such matters as might be specified in the by-laws. Purporting to act under this Section the Wheat Commission made a by-law (numbered 20) providing that "any dispute arising between the Wheat Commission and any other person as to whether any substance in flour...shall be referred to arbitration" as therein provided "and the decision of the referee as to the matter in dispute shall be final and conclusive. The following provision shall have effect in relation to any reference under this bye-law : The Arbitration Act 1889 shall not apply...." It was held by the House of Lords, that the bye-law (20) -which purported to exclude the operation of the Arbitration Act 1889 from any arbitration u/s 5, Sub-section (1), Wheat Act of 1932 was ultra vires and invalid. Lord Macmillan, in course of his judgment observed as follows:

The Arbitration Act is a statute of general application and it confers a valuable and important right of resort to the Courts of law. To exclude its operation from an arbitration is to deprive the parties to the arbitration of the rights which the Act confers. When a public general statute provides for the reference of disputes to arbitration it is to be presumed that it intends them to be referred to arbitration in accordance with the general law as to arbitration, with all the attendant rights which the general law confers. I do not think that when Parliament enacts by one statute that disputes under it are to be referred to arbitration it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitration. If this is intended, express words to that effect are in my opinion essential, and there are here no such express words.

8. As the objectionable portion was considered to be a vital part of the bye-law, the whole bye-law was held to be ultra vires, and the House of Lords decided the entire case on its merits. It is to be seen, that the rule-making Section in the Wheat Act meant arbitration under the ordinary law, as laid down in the Arbitration Act. This, as Lord Macmillan pointed out would bring in all the attendant rights which the general law confers, and there were no words used by the Legislature by which these rights could be held to have been taken away either in whole or in part. In the case before us Section 43 (2), Clause (1) goes much further than the English Act, and provides for a complete procedure, up to the enforcement of the award, the whole of which if the rule-making authority so chooses, could be outside the jurisdiction of Civil Courts. It does not simply say that the rules are to be made for settlement of disputes by arbitration, which would mean certainly, arbitration according to ordinary law. I hold therefore that on the authority of this decision, we would not be justified in holding that Rule 22(6) is ultra vires of the Local Government.

9. The next question is whether, taking Sub-rule (6) to be intra vires, the Civil Court could still entertain a suit for declaring the award to be invalid and inoperative? In my opinion, if the award, is without jurisdiction the Civil Court could certainly declare it to be a nullity. It was held in *Dacca Co-operative Industrial Union Ltd. Vs. Dacca Co-operative Sankhya Silpa Samity Ltd. No. 1 and Others*, , that if the appointment of the arbitrator was void under the law, the award, as well as the appellate order confirming the same would be nullities, and the Civil Court would have jurisdiction to declare them void. The Civil Courts could not however enter into the question relating to misconduct on the part of the arbitrator or other irregularities in the procedure for which the remedy must be sought in the rules themselves. It seems to me that the law has been stated here a little too narrowly. In my opinion, even if the arbitrator was validly appointed, the award can still be a nullity, if there was violation of the rules regulating the arbitration in matters of substance. Not only a proper appointment of the arbitrator in accordance with the rules is essential for creating jurisdiction in the arbitrator but the fundamental rules attaching restraint to the exercise of authority by the arbitrator, are in my opinion equally mandatory and a violation of them would nullify the award. The cases in *Andrews v. Mitchell* (1905) A.C. 78 and *Wayman v. United Brethren Friendly Society* (1917) 1 K.B. 677 are apposite illustrations in point. These are cases-under the Friendly Societies Act, 1896, Section 68 of which provides that every dispute between a member of a Friendly Society and the Society shall be decided in the manner directed by the rules of Society and that the decision so given should be-binding and conclusive on all parties without appeal. In the first of these cases a member of a Friendly Society was summoned before the Arbitration Committee" for a breach of the rules, and was in his absence expelled from the Society by a resolution of the Committee on a different; charge, of which no notice had been given, to him as required by the rules. It was held by the House of Lords, that the decision of the Committee was null and void. It was observed by Lord Halsbury, L.C. that these rules were

matters of substance and not of mere form. They were the foundation of the jurisdiction which was assumed by the Committee and if these rules were neglected, they had no jurisdiction to entertain that charge.

10. In the second case, a resolution of expulsion was passed against a member of a friendly society, without giving him any notice and without hearing him in his defence. It was held that the Committee did not adjudicate in the proper sense of the word, and as they acted in direct opposition to the rules, the resolution was a nullity. This principle has been followed with regard to proceedings in arbitration under the rules framed by the Assam Government u/s 43, Co-operative Societies Act by S.K. Ghosh, J. in *Shillong Co-operative Bank v. Chiniram Medhi* 41 C.W.N. 670. As was observed by Heaton, J. in *Ganesh Mahadev Jamsandekar Vs. Secretary of State for India*, :

When a special tribunal is provided by law, the jurisdiction of Civil Court is excluded, if the special tribunal has acted according to law. If there has not been a decision by such tribunal, arrived at in the manner provided by the Act, then the tribunal has not operated and the bar to that does not exist.

11. This was a case, where the Collector of Custom, acting as tribunal under the Sea Customs Act confiscated the property of the plaintiff without hearing him and without taking any evidence. It was held that the jurisdiction of the Civil Court was not ousted if it appeared that there was no legal adjudication of the matter in accordance with the provision of the Sea Customs Act.

12. Coming now to the facts of the present case, we find that there was nothing wrong in the appointment of the arbitrator, who was appointed in due compliance with the rules. The point for consideration is whether the plaintiff was duly summoned and was heard in his defence. It appears from the records that the plaintiff got notice of the proceeding, though it was a short one, and he duly appeared before the arbitrator on the date of hearing. His defence was that he did not sign the bond as a surety. The question is whether or not he was given opportunity to prove his case. The evidence on this point is discrepant, and whereas the plaintiff's own case is that he wanted to examine a hand writing expert, his witness says that he wanted time to produce his office records which contained his signature. Any way, if the arbitrator did not allow him to adduce evidence in support of his case, his adjudication would not be an adjudication in law. But on this point much light is thrown by the records of the appellate officer. It appears from the plain, tiff's petition of appeal that he did not make any grievance of the fact that the arbitrator did not give him time to adduce evidence, and this point was not raised before the appellate officer at all. The only point that he took was that the signature on the bond was not his. The Assistant Registrar compared the signature on the bond with the admitted signature of the plaintiff, and found against him.

13. I cannot say that the facts of the case would attract the principle which has been enunciated in the decisions mentioned above. A ground is taken that the

arbitrator ignored the law of limitation. The decision of the arbitrator may be wrong in fact or in law, but that is not a ground which would entitle the Civil Courts to interfere in the matter. The result therefore is that this appeal is allowed. The judgment and decree of the lower Appellate Court are set aside and those of the trial Court restored. Considering the special circumstances of the case, we direct that the parties would bear their own costs throughout.

Roxburgh, J.

14. I agree.