

(1965) 09 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2041 of 1965

Dist. Co-operative Federation Ltd., Meerut and another	APPELLANT
Vs	
Registrar, Co-operative Societies. U. P., Lucknow and others	RESPONDENT

Date of Decision : 07-09-1965

Acts Referred:

Citation : (1965) 09 AHC CK 0025

Hon'ble Judges : JAGDISH SAHAI, J and W.BROOME, J

Final Decision : Allowed

Judgement

Jagdish sahai, J.—In this writ petition the petitioners are the District Cooperative Federation Ltd., Meerut (hereinafter referred to as the federation) and one Sri Radhey Shyam Jaiswal, while the respondents are (1) the Registrar, Cooperative Societies, Meerut, (2) the Deputy Registrar, Cooperative Societies, Meerut, (3) the Assistant Registrar, Cooperative Societies, Meerut, (4) the Additional District Cooperative Officer, Meerut, Sri J.D. Gaiha, (5) the Consumers Cooperative Stores Ltd., SubArea V. Meerut and (6) Shri B.B. Rajvanshi.

2. The allegations made in the writ petition, in short, are as follows :

The federation (petitioner No. 1) is a society registered under the Cooperative Societies Act (hereinafter referred to as the Act) while Sri Radhey Shyam Jaiswal is a member of the Modern Industrial Cooperative Society Ltd. which is a member of the federation (petitioner No. 1). The Ganga Khader Consumers Cooperative Stores Ltd., Hastinapur and the Consumers Cooperative Stores Ltd., SubArea V, Meerut are primary societies registered under the Act. Both these societies

are also members of the federation. Under the byelaws of the federation, the Board of Directors is to consist of 12 directors elected by the delegates from amongst themselves. A meeting to elect the Board of Directors of the federation was held on the 27th April, 1963, wherein Sri Hukum Chand represented the Ganga Khader Consumers Cooperative Stores Ltd., Hastinapur, and Sri B.B.

Rajvanshi represented the Consumers Cooperative Stores Ltd., SubArea V, Meerut. In that meeting the Directors were elected. Dissatisfied with the election, Sri Hukum Chand, representing the Ganga Khader Consumers Cooperative Stores Ltd., but without any authority from it, filed under R. 115 of the rules framed under the Cooperative Societies Act (hereinafter referred to as the rules) an application for reference to arbitration, before the Assistant Registrar, Cooperative Societies. The Assistant Registrar appointed Sri J.D. Gaiha, the Additional District Cooperative Officer (respondent No. 4) as the sole arbitrator. In the reference proceedings the 12 persons who had been elected to the Board of Directors were arrayed as defendants or opposite parties.

3. During the reference proceedings an objection was raised on behalf of Sri Kalyan Singh and Sri R.S. Jaiswal, who were amongst those elected as Directors, to the effect that Sri J.D. Gaiha had been wrongly appointed as the sole arbitrator and was not competent to act as such. This application was dismissed. The validity of the reference was also challenged on the ground that the reference had been made at the instance of a member of a society and not by the society itself; and inasmuch as the federation was composed of societies and not of individual persons the reference was incompetent. In order to meet this objection a resolution was passed by the Ganga Khader Consumers Cooperative Stores Ltd. on the 20th October, 1963, authorising Sri Hukum Chand to file the arbitration reference; and thereupon the Deputy Registrar substituted the Ganga Khader Consumers Cooperative Stores Ltd. as plaintiff or applicant in place of Hukum Chand. On 29/1/1964 the Ganga Khader Cooperative Stores Ltd. passed another resolution to the effect that they did not want to continue the arbitration proceedings and authorised one Sri Rani Lal Gumbar to withdraw the reference. On 12/2/1964 Sri Ram Lal Gumbar made an application to the sole arbitrator, praying that the case (Suit No. 3883 of 1962/63) be allowed to be withdrawn, in view of the resolution of the Ganga Khader Cooperative Stores Ltd., dated 29/1/1964. In the meantime Sri B.B. Rajvanshi, who had represented the Consumers Cooperative Stores Ltd., SubArea V, Meerut in the general meeting held on 27/4/1963 to elect the Board of Directors, on the authority of a resolution dated 19/2/1964 passed by the Consumers Cooperative Stores. SubArea V, Meerut (hereinafter referred to as the stores) made an application that the stores be substituted as plaintiff in place of the Ganga Khader Consumers Cooperative Stores Ltd. The federation objected to the substitution application made by Sri B.B. Rajvanshi, but the objection was overruled and the sole arbitrator substituted the Stores as plaintiff in the arbitration case by means of an order dated 23/1/1964. The federation filed an appeal challenging the aforesaid order and thereafter a revision before the Assistant Registrar and the Deputy Registrar respectively; but the same were dismissed by the orders dated 18/8/1964 and 25/9/1964 respectively. Feeling aggrieved, the federation (petitioner) approached this Court and filed Writ Petition No. 4811 of 1964. On 22/10/1964 S.N. Dwivedi, J. passed the following order :

"Issue notice.

Until further orders Sri J.D. Gaiha, Additional District Cooperative Officer, Meerut, shall not proceed further with the hearing of the Arbitration Case No. 3883 of 1962 pending before him."

Sri Gaiha, the Additional District Cooperative Officer, Meerut, however, gave his award on 23101964 and his case before us is that the stay order was not served on him. Against this award an appeal was filed before the Assistant Registrar and on its being rejected on 1441965, a second appeal was filed before the Deputy Registrar, which was also dismissed on 761965. The prayer in this writ petition is that the award dated 23101964, the order of the Assistant Registrar dated 1441965 and that of the Deputy Registrar dated 761965 be quashed. There is also the prayer that this Court may pass such further writ, order or direction as it may deem fit and proper.

4. Mr. S.C. Khare, learned counsel appearing for the petitioners, has made the following five submissions before us :

1. That the reference having been made at the instance of a private person, who was only a member of a society, and not by the society itself was bad; and in any case the manner in which substitution was allowed is unwarranted by law.

2. That this Court on 22101964 passed an order staying further proceedings before the arbitrator which had the effect of immediately suspending the jurisdiction of the arbitrator; and for that reason the award dated 23101964 is without jurisdiction.

(3) (a) That there is no legal evidence in support of the findings recorded by the arbitrator;

(b) and that in acting on the basis of an affidavit he has not only contravened the provisions of Rr. 118 and 123 of the rules, but has adopted a procedure which is not countenanced or supported by the rules and the law.

4. That no opportunity was given to the petitioners of being heard.

5. That the award and the impugned orders have been passed mala fide, because the persons who had lost in the election were the persons in direct political link with the Ministers of the State.

5. The case has come to us on a reference to a larger Bench by R.S. Pathak, J., because he found it difficult to agree with the Single

Judge decision of this Court in Rajdhari Devi v. Dy. Registrar, Cooperative Societies, U.P., Gorakhpur, AIR 1963 All 113.

6. With regard to the fourth and fifth submissions of the learned counsel, we would like to point out that there is a controversy on facts between the parties. In view of the fact that the decision on these submissions would involve adjudication on disputed questions of fact, we do not propose to go into them.

7. We would first deal with the second submission of the learned counsel. In this

connection it may be pointed out that there is some dispute as to whether or not a stay order has the effect of immediate suspension of jurisdiction of the Court, authority or the tribunal seized of the matter. In *Parsotam Saran v. Brahma Nand*, AIR 1927 All 401, a Full Bench of this Court had taken the view that in the absence of the stay order being communicated, any order passed by a court or tribunal does not become invalid. In *Ram Samujh v. State*, AIR 1962 All 80 a learned Single Judge of this Court distinguished the case reported in AIR 1927 All 401 on the basis of certain authorities which had not been noticed in that case. However, we do not consider it necessary for us to go into this question or into the one relating to the competence of the reference, because, after hearing learned counsel for the parties, we have come to the conclusion that the award dated 23/10/1964 and the orders impugned by this writ petition cannot be sustained, because the award is based on no evidence and the arbitration proceedings resulting in the award are bad on the ground of violation of the provisions of Rr. 118 and 123 of the Cooperative Societies Rules.

8. But before we go in detail into the question of whether the findings recorded in the award are or are not based on any evidence and whether the arbitrator could decide on the basis of an affidavit alone, we would like first to consider whether AIR 1963 All 113 has been correctly decided. *Srivastava, J.*, relying upon the provisions of S. 46 of the Indian Arbitration Act, held in *Rajdhari Devis case*, AIR 1963 All 113 that even though there be a statutory arbitration made under the provisions of a special Act or rules, it would be deemed to be an arbitration under the provisions of the Indian Arbitration Act 1941. Section 46 of the Arbitration Act reads :

"The provisions of this Act except SubSection (1) of S. 6 and Ss. 7, 12 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."

Srivastava, J. read the words "as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement" to mean that an arbitration made under R. 115 would be deemed or treated to be an arbitration under the Arbitration Act and that all the provisions of the said Act would be applicable to such an arbitration. He observed as follows :

" The provisions of this Act except SubSection (1) of S. 6 and Ss. 7, 12 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. If an arbitration under the Cooperative Societies Rules is an arbitration under an enactment, viz., the Cooperative Societies Act, the provisions of the Indian Arbitration Act apply as if the arbitration was in pursuance of an arbitration

agreement. The enactment itself is to be treated as an arbitration agreement. On account of this deeming clause, therefore, the arbitration under the Cooperative Societies Rules is put on the same level as an arbitration under an AGREEMENT (here into ours). If arbitration under an agreement cannot be controlled by writs, the same disability must be applicable to arbitration under these rules. The only difference between an ordinary arbitration under an agreement and an arbitration under the Cooperative Societies Rules appears to be that while the former is actually based on an agreement the latter is deemed to be based on an agreement. It cannot, therefore, be said that though ordinary arbitrators are not amenable to writ jurisdiction, arbitrators under the Cooperative Societies Rules can be controlled by writs."

9. Section 46 of the Arbitration Act itself, says that the provisions of that section could¹ apply only to the extent they are not inconsistent with that other enactment or with any rules made thereunder. In the present case the Act and the Rules are a complete Code so far as arbitration in matters relating to Cooperative Societies are concerned. The rules provide for the manner in which a reference is to be made, for the appointment of an arbitrator, an appeal against his decision, a second appeal against the decision of the appellate authority and the manner in which the arbitration award shall be executed. The Act and the Rules provide exhaustively for every matter relating to arbitration in connection with a dispute contemplated by R. 115 of Rules and it is difficult to see as to which provision of the Arbitration Act can be made applicable to an award made under the Act read with the Rules. The learned Senior Standing Counsel has not been able to show any such provision to us. With great respect to Srivastava, J., we have to point out that this aspect of the matter was not considered in Rajdhari Devis case, AIR 1963 All 113. In our judgment, what S. 46 of the Arbitration Act provides is, that in the absence of any provision relating to any matter connected with an arbitration in the special Act, the provisions of the Indian Arbitration Act would be followed to the extent of the omission; and for that limited purpose a statutory award made under any other enactment shall

be deemed to have been made under the Arbitration Act. It is not and it could not be the intention of S. 46 of the Arbitration Act to make a statutory award given under the provisions of a special Act, an award under the Arbitration Act for all purposes. In any case there is nothing in S. 46 of the Arbitration Act or any other provision of that Act which obliterates the distinction between an award based on the agreement of the parties and a statutory award. A statutory award does not have its roots in consent of the parties, as an award based on the agreement of the parties has. We are, therefore, of the opinion that AIR 1963 All 113 has not been correctly decided. The present petition being directed against a statutory award is, in our opinion, maintainable. Nothing has been shown to us on the basis of which we could take a contrary view.

10. Now, we come to the third submission made by Mr. Khare that in the instant case the provisions of Rr. 118 and 123 have been infringed, and in accepting the

affidavit and basing his decision on the same, the arbitrator has acted without jurisdiction. We would first like to point out that it is the admitted case of the parties and it is also evident from the award itself that it is based on no other evidence but that furnished by the affidavit of B.B. Rajvanshi. Rules 118 and 123 of the Cooperative Societies Rules read as follows :

"118. In these proceedings the Registrar, the arbitrator or the Chairman of the arbitrators, as the case may be, shall fix the date and the place of the hearing the dispute and carry on the necessary correspondence in connection with the disposal of the case. He shall have the power to administer oaths, and to require by summons (i) the attendance of the parties concerned and of witnesses and (ii) the production of all books and documents relating to the matter in dispute.

123. A memorandum of the statements of the parties who attend and of such witnesses as are examined shall be made; and upon the evidence so recorded and after consideration of any documentary evidence produced by either party, a decision or award, as the case may be, shall be given in accordance with justice, equity and good conscience."

It is admitted by learned counsel for the parties that there is no rule or provision in the Act permitting the acceptance of affidavits as a piece of evidence on which an award or decision could be based. Mr. Shanti Bhushan, the learned Senior Standing Counsel, however contended that inasmuch there is nothing in the rules which prohibits the acceptance of evidence by means of affidavits, such a course should be deemed to be permissible. In our judgment the submission is without any force. It is well settled that if the law requires a thing to be done in a particular manner, it shall be done in that manner or not at all. In *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253 the question that the Judicial Committee had to consider was whether in view of the provisions of S. 364 of the Code of Cri. P.C. requiring the recording of a confession in the manner provided by that section, it was permissible for the prosecution to give any other evidence with regard to the confession made by an accused person, however unimpeachable that evidence might be. The Privy Council rejected the submission made on behalf of the prosecution and held that all other methods except the one provided by S. 364, Cri. P.C. were barred. Even though there is no express provision in the Code of Criminal Procedure or the Evidence Act barring the production of evidence relating to confessions not recorded in accordance with the provisions of S. 364, Cri. P.C., it was held that such a bar did exist. In *Hari Vishnu Kamath v. Ahmad Ishaq*, (S) AIR 1955 SC 233 and some other cases the Supreme Court has taken the same view. In our judgment the provisions of Rr. 118 and 123 of the Cooperative Societies Rules are conclusive and exhaustive as to the manner in which evidence shall be recorded. Rule 118 clearly speaks of witnesses being examined and documents being produced. Rule 118 also provides for oaths being administered; and R. 123 provides that a memorandum of the statements of the parties who attend and of such witnesses as are examined shall be made. It is clear therefore that Rr. 118 and 123 contemplate only two kinds of evidence;

documentary evidence and statements made by witnesses or parties before the arbitrator. Rule 123 further provides that "upon the evidence so recorded and after consideration of any documentary evidence produced by either party, a decision or award, as the case may be, shall be given". From this it is clear that the decision or award is to rest on the evidence recorded by the arbitrator and on the documentary evidence produced before him.

Mr. Shanti Bhushan placed reliance upon a Single Judge decision in *Srinivasa Ayyangar v. Pichumani Ayyangar*, AIR 1933 Mad 164. In our opinion, the case has no relevance to the facts before us. In that decision the learned Judge was considering a case which had been tried under the provisions of the Code of Civil Procedure and to which the provisions of O. XIX, R. 1, C.P.C. permitting admission of affidavits applied. There is no such provision in the Act or the rules. Mr. Shanti Bhushan next placed reliance upon *Khandesh Spinning and Weaving Mills Co. Ltd., Jalgaon v. Rashtriya Girni Kamgar Sangh, Jalgaon*, AIR 1960 SC 571 at p. 574. That case is also clearly distinguishable, there being a clear provision in the Bombay Act, which their Lordships were concerned with, for the admission of affidavits. We have found it extremely difficult to accept the submission of Sri Shanti Bhushan that even though the Act and the Rules do not provide for the reception of affidavits as evidence, the Arbitrator could make his award only on the basis of an affidavit. It is trite that the substantive rights cannot be decided on the basis of affidavits alone.

11. Mr. Shanti Bhushan next contended that the affidavit of B.B. Rajvanshi was a document within the meaning of Rr. 118 and 123 of the Rules. We are unable to agree. It is

nothing but the statement of Rajvanshi recorded on a paper after oath had been administered to him outside the proceedings before the Arbitrator. We therefore reject this submission of Mr. Shanti Bhushan also.

12. The result, therefore, is that it must be held that there has been a complete disregard of the provisions of Rr. 118 and 123 of the Rules and that the award of the Arbitrator suffers from the defect that it is based on an affidavit which was not permitted by the rules. In other words the award of the Arbitrator is based upon material which the rules do not recognise and which could not under the rules be the basis of the award. The award is, therefore, without jurisdiction.

13. Some argument was made before us that the petitioners deliberately avoided appearing before the Arbitrator and that under the circumstances the Arbitrator had no option but to proceed as best as he could in the matter. In the first place, whether or not the petitioners were cooperating in the proceedings before the Arbitrator, he was not justified in basing his award on an affidavit without recording evidence or admitting documents. We have already held earlier that he had no jurisdiction to base an award on affidavits. Besides, we see no legal or practical difficulty in a witness being examined or a document being produced before the arbitrator, even if the petitioners were deliberately keeping out of the

arbitration proceedings. Consequently the alleged dilatory tactics on the part of the petitioners could not invest the Arbitrator with jurisdiction to decide the case on the basis of an affidavit alone. Mr. Khare has, moreover, pointed out the ordersheet dated 20th October, 1964, prepared and signed by the Arbitrator. In the last but one and the last line the words "proceedings closed" after the words "counteraffidavit" and before the words "for orders" have been clearly squeezed in subsequently. The words proceedings closed are in a different ink; and because of the limited space available the size of the letters used in these words is much smaller than in the rest of the order. The addition of these words has not been initialled or dated. It is obvious that an interpolation has been made to show that the proceedings had closed on 20th October, 1964 and that the case was reserved for pronouncing of the award. Mr. Khare's submission that proceedings had never closed on 20th of October, 1964 and that the words "for orders" were in connection with adjournment applications made by the petitioners before the arbitrator stands fully substantiated, as we would presently show.

It has been contended by Mr. Shanti Bhushan that even though the words proceedings closed are in a different ink and seem to have been written afterwards, the interpolation does not matter, because the applications for adjournment had already been dismissed on 20th of October, 1964. This submission is totally wrong. A perusal of Para. 10 of the award itself shows that the applications were not dismissed on 20th October, 1964, but on 23rd of October, 1964 when the award was made. Para. 10 of the award reads :

"On the next date of hearing, that is 20th October, 1964, Shri B.B. Rajvanshi was present on behalf of the plaintiff Society. Despite notice defendants did not turn up personally, Sri Kalyan Singh, Secretary, District Cooperative Federation Ltd., Meerut defendant No. 4 sent an application through Sri Kashi Ram Sharma, Brick Kiln Inspector, expressing his inability to attend due to the illness of his father and absence of Sri R.C. Jaiswal, Director, Defendant No. 6 and requested for ten days adjournment. Shri Ishwar Dayal Sharma, Incharge, Fertilizer Depot., District Cooperative Federation, Ghaziabad, presented an application from Shri R.P. Jaiswal, son of Shri R.S. Jaiswal, defendant No. 6, requesting for an adjournment since his father Sri R.S. Jaiswal, defendant No. 6 was out of station. Shri B.B. Rajvanshi on behalf of the plaintiff society objected to any further adjournment being allowed because the defendants had failed to file their counteraffidavit and the case had been lingering for the last about 2 years. Defendants have been persisting in evading to file their counteraffidavit in spite of adjournments allowed to them on their request on four successive dates.... It is obvious that the defendants are anxious to complete their 2 years term of office by such obstructive methods. Their applications for adjournment cannot, therefore, be allowed and are rejected."

The context of the order sheet dated 20/10/1964 also clearly shows that the words "for orders" related to adjournment applications. Lastly the words "for orders"

could never be used if the idea was to close the proceedings and fix a date for delivery of the award. The Arbitrator was not a layman. He was a senior officer of the cooperative societies department. He must have known that the adjudication he had to give was known as "award" and not "orders". His own ordersheet shows that he knew the difference between an order and an award. In view of the clear purposeful interpolation made by the Arbitrator we find force in the submission of Mr. Khare that since the adjournment applications were in the possession of the Arbitrator, he could on the back of them write an order showing that the same were rejected on 20th October, 1964 and that consequently no value should be given to what has been written on the back of the applications.

14. In view of what we have said above we are of the opinion that it has been satisfactorily proved that the Arbitrator did not follow the procedure provided by law and that he had no jurisdiction to base his award on the affidavit of Rajvanshi. It is also clear that on 20th October, 1964 the case had not been closed.

15. In view of the findings recorded above we allow this writ petition with costs, quash the award of the Arbitrator dated 23rd October, 1964 and the orders dated 14th April and 7th June, 1965 passed by the Assistant Registrar and the Deputy Registrar, Cooperative Societies, Meerut, respectively.

16. Since it appears that a public document has been purposefully interpolated, we direct that a copy of this judgment shall be sent to the Honble Chief Minister, U.P. for such action as she may consider proper to take in the public interest.

Petition allowed.