

(2017) 01 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 4600 of 2008

District Marketing Officer, Durg,

APPELLANT

Vs

Mehant Kash Vipanang Sangh, Durg

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Chhattisgarh Co-operative Societies Act, 1961 — Section 64
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2017) 2 CGLJ 448 : (2017) 153 FLR 38 : (2017) LabLR 438 : (2017) LIC 653 : (2017) 1 LLN 99

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : N K Shukla, Priya Mishra, Ashtha Shukla

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J. - Invoking writ jurisdiction of this Court under Article 227 of the Constitution of India, the petitioners herein call in question the legality, validity and correctness of the award dated 14.2.2008 (Annexure P/1) passed by the Labour Court, Durg in Case No.41/I.D.Act. Reference/2004 directing reinstatement of 10 workmen of respondent No.1-Union.

2. The essential facts requisite to decide the point in dispute are as under:-

2.1. Petitioner No.2-Kishan Rice Mill is a cooperative society registered under the provisions of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter called as "Act of 1960"). It is the case of the respondent No.1-Union that they were worked for fairly long time with the petitioners and without assigning any reason they have been disengaged as per date shown in the list annexed in the schedule i.e. April, 2003 to July, 2003. They made reference for conciliation under the provisions of the Industrial Disputes Act, 1947 (hereinafter called as "ID Act") as they have worked for more than 240 days in one calendar year and without retrenchment and without assigning any reason, their termination is bad.

2.2. The State Government after finding that there is an industrial dispute referred the matter to the Labour Court for adjudication in accordance with law by order dated 31.5.2004 to decide as to whether termination of Uttam Kumar and 21 other workmen attached with the reference order is valid and proper.

2.3. Upon being noticed by the Labour Court, the respondent No. 1-Union filed its statement of claim stating inter alia that their termination is contrary to the provisions of Section 25F of the ID Act and as such, termination be set aside and they will reinstate along with back wages.

2.4. The petitioners have also filed their statement of claim stating inter alia that the petitioner-Institution is a cooperative society registered under the provisions of the Act of 1960 and the provisions of the ID Act including Section 25F could not be applicable and as such, the reference petition deserves to be dismissed.

2.5. Thereafter, on 6.12.2004 issues were framed. On behalf of workmen, H.P. Sharma, Shankar Ganpat Bansod, Damuram, Rajhansh Tembhekar and Sekhu were examined and have produced the documents Exs.P/1 to P/12 to substantiate their claim. On behalf of the petitioners, no one has entered into witness box and none of the document has been produced.

2.6. Learned Presiding Officer of the Labour Court by its impugned award finding that there is violation of the provisions of Section 25F of the ID Act directed for reinstatement of 10 workmen as mentioned in the impugned award without back wages.

3. Feeling aggrieved against the impugned award, this writ petition under Article 227 of the Constitution of India has been filed by the petitioners-employer stating inter alia that the provisions of the ID Act are not applicable to the petitioner-Institution who is a cooperative society registered under the provisions of the Act of 1960, yet without deciding their preliminary objection proceeded to determine the reference and passed the impugned award and therefore, the impugned award deserves to be set aside.

4. Respondent No.1 has been served, but no one has entered into appearance to oppose and contest this writ petition.

5. Dr. N.K. Shukla, learned Senior Advocate along with Ms. Priya Mishra, learned counsel appearing for the petitioners, would submit that petitioner No.2 is a cooperative society registered under the Act of 1960 and under whom the members of respondent No.1-Union were engaged, they were discontinued as they were on daily wages for want of work and since the Act of 1960 is complete Code in itself, the provisions of the ID Act would not be applicable in view of the specific remedy available under Section 64 of the Act of 1960 and therefore, the impugned award deserves to be set aside on the sole ground.

6. None has appeared on behalf of respondent No. 1.

7. Mrs. Ashtha Shukla, learned counsel appearing as Amicus Curiae, would

submit that petitioner No.2 is a cooperative society registered under the Act of 1960 and therefore, jurisdiction of the Labour Court under the ID Act is barred in view of overriding provisions contained in Section 64 of the Act of 1960 and therefore, the impugned award passed by the Labour Court is without jurisdiction and without authority of law.

8. I have heard learned counsel appearing for the petitioner as well as Amicus Curiae and also gone through the record with utmost circumspection.

9. The crisp question for consideration would be whether the provisions of the ID Act would be applicable to the cooperative society registered under the provisions of the Act of 1960 and whether the award passed by the Labour Court holding the dispute to be an industrial dispute is permissible.

10. In order to decide the dispute, it would be appropriate to notice the provisions contained in Section 55 of the Act of 1960 which deals the Registrar's power to determine conditions of employment in societies which states as under:-

"55. Registrar's power to determine conditions of employment in societies.-(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute, including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

Section 64 gives overriding effect to the provisions of the Act of 1960 which states as under:-

"64. Disputes.-(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following:-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the

liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person.

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purposes of sub-section (1), a dispute shall include -

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debt or where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or of composite society :

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programmed till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

Section 10 (1) of the ID Act states as under:-

"10. Reference of disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is

apprehended, it may at any time, by order in writing,-

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this subsection notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;"

11. Thus, by virtue of the provisions contained in Section 64 of the Act of 1960, any dispute touching the constitution, management or business, terms and conditions of employment of a society shall be referred to the Registrar by any of the parties to the dispute and in that case, the provisions of the ID Act would not be applicable.

12. The issue raised herein is no longer res-integra and stands decided conclusively and authoritatively by Their Lordships of the Supreme Court in the matter of R.C. Tiwari v. M.P. State Co-operative Marketing Federation Ltd. and others (1997) 5 SCC 125 : (AIR 1997 SC 2652) in which Their Lordships have held that in view of the provisions contained in Sections 55 and 64 of the Act of 1960 which provide for alternative forum for resolution of dispute under the Act of 1960, the dispute relating to disciplinary matter of an employee of a cooperative society is covered by Section 64. Special procedure has been provided in Section 64 and therefore, reference under Section 10 of the ID Act stands excluded. It was observed as under:-

"3..... We find no force in the contention. Section 55 of the Societies Act gives

power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards power under Section 64, the language is very wide, viz., "Notwithstanding anything contained in any other law of the time being in force any dispute touching the constitution, a management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under section 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended."

13. The aforesaid decision of the Supreme Court has been followed with approval recently in the matter of Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner and others (2007) 11 SCC 756: (AIR 2007 SC (Supp) 425), in which Their Lordships followed with approval the ratio laid down in R.C. Tiwari's case (supra) and held that the general legal principle in interpretation of statutes is that "the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P. Legislature is clear, that the special enactment U.P. Co-operative Societies Act, 1965 alone should apply in the matter of employment by cooperative societies to the exclusion of all other labour laws. It is a complete code in itself as regards employment in cooperative societies and its machinery and provisions. The general Act, the U.P. Industrial Disputes Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the U.P. Co-operative Societies Act. This is also clear from necessary implication that the legislature could not have intended head-on conflict and collision between authorities under different Acts. As per Section 135 of the Act, the provisions contained in the Industrial Disputes Act, 1947 and the U.P. ID Act, 1947 shall not apply to cooperative societies. However, in view of the above said general legal principle, it is immaterial whether or not the Government had enforced Section 135 of the Act because, in any case the Section 135 had been included in the Act only way of clarification and abundant caution.

14. Similar is the view of the Division Bench of Madhya Pradesh High Court in the matter of Sagar Motor Transport Karmachari Union, Sagar v. Amar Kamgar Passenger Transport Co. Co-operative Society, Sagar, M.P. and another, AIR 1969 MP 46 in which Division Bench of the Madhya Pradesh High Court has clearly held that with regard to dispute between Co-operative Society and its employees,

Registrar alone can adjudicate under Section 55 (2) of the Act of 1960 and reference under Section 10(1) of the ID Act is illegal. It was observed as under:-

"4 The language of this provision is clear enough to show that under the Act, which is a special enactment dealing with the special subject of cooperative societies, a dispute with regard to termination of services of an employee of a cooperative society can be decided only by the Registrar or any officer appointed by him, not below the rank of Assistant Registrar. Section 55 (2) contains a special provision for adjudication of disputes between a cooperative society and its employees regarding terms of employment, working conditions and disciplinary action. It is no doubt true that the definition of "industrial dispute" given in section 2(k) of the Industrial Disputes Act, 1947, is wide enough to include the disputes between a cooperative society and its employees regarding the terms of employment, working conditions and disciplinary action. The Industrial Disputes Act, 1947, is also a special enactment dealing with the special subject of industrial disputes and their adjudication. But whereas the Industrial Disputes Act, 1947, deals generally with industrial disputes arising between "employers" and "employees" as defined in that Act, section 55 (2) of the M.R Co-operative Societies Act is concerned only with the adjudication of disputes between a cooperative society and its employees. There is no provision in the Industrial Disputes Act, 1947, that disputes arising between a body or a society governed by a special enactment and its employees, also governed by that special enactment, with regard to terms of employment, working conditions and disciplinary action, shall be adjudicated upon in accordance with the Industrial Disputes Act, 1947, notwithstanding the fact that a special provision has been made for adjudication of those disputes in the special enactment regulating the society or body and its employees.

5. There is thus a conflict between the Industrial Disputes Act, 1947, a Central Law, and the M.R Co-operative Societies Act, 1960, a law by the State in regard to the adjudication of disputes between a cooperative society and its employees regarding terms of employment, working conditions and disciplinary action. But as "industrial and labour disputes" is one of the matters enumerated in the Concurrent List and the M.R Co-operative Societies Act, 1960, received the assent of the President, section 55(2) of the Act must prevail in the State over the provisions of the Industrial Disputes Act, 1947, in regard to disputes between a cooperative society and its employees regarding term of employment, working conditions and disciplinary action. This is clear from article 254(2) of the Constitution."

15. Thus, it has clearly been held that remedy available under Section 10 of the ID Act shall stand excluded as a special comprehensive procedure is provided under the Act of 1960 for determining the dispute and therefore, the provisions of the ID Act would not be applicable to the cooperative dispute of an employee of the cooperative society relating to his employment.

16. In view of the aforesaid analysis, I am of the firm opinion that learned

Presiding Officer of the Labour Court has committed illegality in holding that there is an industrial dispute and directed for reinstatement. Accordingly, the impugned award is quashed holding the instant dispute is not an industrial dispute. However, quashing of the impugned award will not bar to the workmen who have been directed to be reinstated to proceed in accordance with law.

17. The writ petition is allowed to the extent indicated herein above leaving the parties to bear their own cost(s).

18. Before parting with the record, this Court appreciates the valuable assistance of Ms. Ashtha Shukla, who appeared as amicus curiae, prepared the case and short notice, argued the matter and assisted the Court.