

(1963) 01 CAL CK 0008
In the Calcutta High Court

East Indian Railway Employees" Co-operative Credit Society Ltd. APPELLANT

Vs

Arbitrator and District Auditor, Co-operative Credit Societies and Others RESPONDENT

Date of Decision : 10-01-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1963) 2 LLJ 167

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner is a co-operative society of the employees of the East Indian Railway (now the Eastern Railway). Respondent 3, Pramatha Nath Sen Gupta, who was at one time a railway employee, was appointed, on 1 August 1953, to the post of the secretary of the petitioner-society, which was a paid post. Respondent 3 was, it is alleged, charged with mismanagement of the affairs of the society and was suspended with effect from 13 March 1958. It is further alleged that there was a disciplinary proceeding started by the society against the petitioner, in which he refused to participate. It is also alleged that the petitioner was found guilty mis-conduct in the aforesaid proceeding and his service was terminated therefore. The notice of termination of service, dated 29 April 1953, however, reads differently and is set out below:

As your service is no longer required by this society, the society has, by a resolution of the managing committee held on 18 April 1958, decided to terminate your service by giving one month's notice to you. In pursuance of the said resolution this is, therefore, to give you notice terminating your service as secretary with the expiry of one month from the date of receipt of this notice.

This is however, without prejudice to the rights of the society to recover from you any loss or damage that might have been occasioned to the society by reason of

your neglect or default during the period of your secretaryship.

Respondent 3 unsuccessfully challenged the order of termination of his service before the City Civil Court, Calcutta, and also before the Registrar of Co-operative Societies. Thereafter, respondent 3 claimed from the petitioner-society a sum of Ha. 14,262 86 said to be due to him as arrears of pay and emoluments with interest, unrefunded security deposit and value of share capital invested by him. The society having failed to pay, respondent 3 lodged a dispute before the Registrar of Co-operative Societies, on 29 April 1961, claiming the aforementioned amount. Respondent 2, Assistant Registrar of Co-operative Societies, entertained the dispute and fry an order, dated 28 August 1961, referred the matter to the arbitration of respondent 1, arbitrator and district auditor. Before respondent 1, the petitioner-society raised, by way of demurrer, the following preliminary objections:

(a) That the dispute being one relating to and involving disciplinary action taken by the society against one of its employees, the authority constituted under the Bengal Co-operative Societies Act has no jurisdiction to entertain the dispute.

(b) That a dispute between employee of a co-operative society and the society regarding pay and allowances is not a dispute touching the business of the society and as such the authority constituted under the Bengal Co-operative Societies Act has no jurisdiction to entertain the dispute.

(c) That if the dispute was at all entertainable, the General Manager was the only authority competent to entertain the same and the Assistant Registrar had no such jurisdiction.

2. The respondent-arbitrator negated the objections by an order, dated 30 November 1961.

3. The petitioner-society moved against the order, dated 28 August 1961, referring the alleged dispute to arbitration and also the " order, dated 30 November 1961, negating its preliminary objections, praying for writs of certiorari and mandamus, and obtained this rule.

4. Mr. Noni Coomar Chakravarti, learned advocate for the petitioner-society, contended, in the first place, that the reference to the arbitration of respondent 2 was bad, because the Assistant Registrar had no jurisdiction to entertain the alleged dispute. This argument is not very well-conceived. Sections 2(r), 9 and 10 of the Bengal Cooperative Societies. Act, 1940 Thereinafter referred to as the Act), reads as follows:

Section 2(r).-"Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar referred to in Section 10 have been or has been conferred or imposed under Clause (a) of that section.

Section 9.-The State Government may appoint a person to be Registrar of Cooperative Societies for West Bengal and may appoint persons to assist him.

Section 10.-Subject to the rules, the State Government may, by general or special order in this behalf, confer all or any of the powers or impose all or any of the duties entrusted to the Registrar by or under this Act, other than those specified in Schedule II:

- (a) upon any person appointed u/s 9 to assist the Registrar; and
- (b) upon any co-operative society in respect of any other co-operative society which is a member of the co-operative society first mentioned.

5. In exercise of the powers under Sections 9 and 10 of the Act the State Government issued a notification, dated 1 June 1953, appointing the General Manager, Eastern Railway, to assist the Registrar, and conferring on the said General Manager "all the powers entrusted to the Registrar by or under the Act other than those specified in Schedule II to, and in Chap. VII of the said Act in respect of " the petitioner-society. The petition for enforcement of the disputed claim (copy whereof is annexure B to the petition) was addressed to " The Registrar, Co-operative Societies, West Bengal at Calcutta." The word "Registrar," according to the definition in Section 2(r) of the Act, would include any person appointed to assist the Registrar, such as respondent 2 was. u/s 87(1)(c) of the Act, the Registrar has power to refer any dispute, mentioned in Section 86 of the Act, for disposal to one or more arbitrators to be appointed by the Registrar. That is what was done by respondent 2 by his order, dated 28 August 1961 The first branch of the argument advanced by Mr. Chakravarti must, therefore, fail as misconceived.

6. Mr. Chakravarti next relied on Section 86 of the Act, which reads as follows:

Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:

- (a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society; or
- (b) a member, past member or person claiming through a member, past member or deceased member of the society; or
- (c) a surety of a member, past member or deceased member of the society, whether such surety is or is not a member of the society; or
- (d) any other co-operative society or the liquidator of such society.

7. He contended that the dispute as raised by respondent 3 was not a dispute touching the business of the co-operative society and was, therefore, incapable of being referred to the Registrar. He, further, contended that even if it was a

dispute touching on the business of a co-operative society, the dispute was with regard to disciplinary action taken by the society against a paid servant and therefore, expressly excluded from the scope of Section 86.

8. In my opinion, neither of the two arguments should succeed. The word "touching," which precedes the words "the business of a co-operative society" in Section 86 of the Act, is a word of very wide import and causes inclusion of any matter which relates to, concerns, or affects the business of the society. The nature of business, which a society does, must necessarily be ascertained from the objects of the society. In order to carry on the business, a society has to do a number of things, which may be ancillary to the business or in aid of the business. By force of the word "touching" those matters also must be deemed to be included within the business of the society.

9. Mr. Chakravarti, however, argued that however wide the import of the word "touching" may be, it must not be deemed to include a dispute between a society and its employees. He drew inspiration for this branch of his argument from a decision of this Court in *Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Others*, . In that case there was a dispute between the society and its workmen over wages, wage-scales and dearness allowance. The State Government, in exercise of its power u/s 10 of the Industrial Disputes Act, referred the dispute to an industrial tribunal for adjudication. The society felt aggrieved by the reference and moved this Court, under Article 226 of the Constitution, seeking the quashing of the order of reference. The contention raised by the society before this Court was that the Bengal Co operative Societies Act, 1940, was a special statute and Section 86 of the Act contained provisions for resolution of a dispute of the nature which the State Government referred to an industrial tribunal for adjudication. In that context P.B. Mukherji, J., observed as follows:

Can a dispute between the co-operative society and its own workmen be said to be a dispute touching the business of a co-operative society? Strictly speaking, dispute between a co-operative society and its workmen does not relate to the actual business of a co-operative society and therefore does not touch the business of the co-operative society. Consequentially, however, a dispute between the co-operative society and its workmen may ultimately touch or affect the business of the co-operative society. I am inclined to think that the remote and the consequential result should not be included within the expression "any dispute touching the business of a co-operative society." I am persuaded to accept that construction by the further consideration of the fact that a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society is expressly excluded from the purview of Registrar's Jurisdiction by Section 86 of the Act. Legislature therefore did not intend that dispute regarding disciplinary action by the society against its paid servant should be settled by the Registrar. But then this, singular exclusion of dispute regarding disciplinary action might be argued to impliedly include all

other disputes such as industrial disputes, on the principle of *expressio unius est exclusio alterius*, specially when Section 86(a) of the Act expressly refers to the society and its servant as disputing parties.

But the key to the solution of this problem appears in the definition of the word "dispute" in Section 2(j) of the Bengal Co-operative Societies Act, 1940, which provides:

"Dispute" means any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a co-operative society whether such claim be admitted or not.

The limitation in that definition is "capable of being the subject of civil litigation." "Now, here the dispute referred to the industrial tribunal is wages and wage-scales and dearness allowances." Wages, wage-scales and dearness allowances do not appear to be fit or proper matters capable of being the subject of civil litigation ...In that view, it appears that the express limitation of the "dispute" in the Bengal Co-operative Societies Act excludes the present disputes which have been referred to the industrial tribunal from being the subject of settlement by the Registrar of the Co-operative Societies.

But the difficulties of the interpretation do not end here. "Dispute" as defined in Section 2(j) of the Bengal Co-operative Societies Act is expressly said to include "a claim in respect of any sum payable to or by a co-operative society, whether such claim be admitted or not. Now a sum payable to or by a co-operative society surely can be the subject of a civil litigation and therefore it appears difficult to appreciate why that was specially included. It has therefore been argued ...that a claim for a particular wage or dearness allowance is ultimately a claim for a sum payable by a co-operative society and hence is a dispute within the meaning of the Bengal Co-operative Societies Act.

In interpreting the expression "a claim in respect of any sum payable to or by a co-operative society," appearing in Section 2(j) of the Bengal Co-operative Societies Act, 1940, I am of the opinion that the claim for fixing wages and wage-scales generally and dearness allowances cannot be described as a "claim in respect of any sum which is payable." The question of "pay ability of a sum" in the context of that particular definition seems to be individual debt or individual sum of money and does not appear to include claims for a general wage-scale and dearness allowances and a matter of collective bargain between labour and employer.

I am, therefore, of the opinion on a proper construction of the definition of the word "dispute" in Section 2(j) of the Bengal Co-operative Societies Act, that neither of the two conditions (1) "subject of civil litigation" and (2) "any sum payable" is satisfied in the present dispute which has been referred to the industrial tribunal.

10. I have no reason to differ from the observations of his lordship in so far as

they refer to industrial disputes. The dispute in the instant case is, however, not an Industrial dispute but the claim is in respect of a sum of money recoverable by an employee from the society in respect of his arrears of salary with interest, unrefunded security deposit and share capital invested. A claim of this nature is capable of being the subject-matter of civil litigation and falls within the definition of dispute as in Section 2(j) of the Bengal Co-operative Societies Act. Payment of wages to workmen or employees, in the industry or business carried on by a co-operative society, touches the business of the society, although a dispute as to what should be the scale of pay and wages payable to the workmen, on principles of social justice, may not be a dispute touching the business of the society and capable of being enforced by civil litigation. But where an employee claims an ascertained sum as arrears of his pay and the society refuses to pay that amount, that is a dispute which falls within the definition of dispute in Section 2(j) of the Act. A view similar to the view taken by me was also taken by the Bombay High Court in the Full Bench decision in *Farkhundali Nannhay Vs. Potdar V.B.*, .

11. I do not also find any substance in the other contention advanced by Mr. Chakravarti that the claim was in regard to disciplinary action taken by the society against a paid servant and was therefore expressly excluded from the scope of Section 86. In my opinion, the claim has little to do with disciplinary action, if any at all, taken against respondent 3. From the materials on record it appears that the services of respondent 3 were dispensed with by notice and that too under the provision of his service conditions. The claim of respondent 3 for arrears of pay and refund of security deposit, etc, based on the termination of his service by notice, is not a claim with regard to any disciplinary action" by the society against its paid employee.

12. All the arguments advanced by Ms. Chakravarti, therefore, fall. This rule is discharged with costs, hearing fee assessed at five gold hours to be payable to the two sets of contesting respondents.

13. All interim orders stand vacated.