

(1961) 08 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 1504 of 1959

Farkhundali Nannhay

APPELLANT

Vs

Potdar V.B.

RESPONDENT

Date of Decision : 18-08-1961

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 38
Payment of Wages Act, 1936 — Section 15(2), 22

Citation : (1962) 1 LLJ 51

Hon'ble Judges : H.K. Chainani, C.J; V.M. Tarkunde, J; A.N. Mody, J

Bench : Full Bench

Judgement

Chainani, C.J.—The petitioner was employed by respondent 2, which is a co-operative society registered under the Bombay Co-operative Societies Act, 1925. The petitioner made four applications to the Payment of Wages authority for recovery of wages, retrenchment compensation and leave wages from respondent 2. It was contended by respondent 2 before the authority that it had no jurisdiction to entertain and try the application made by the petitioner and that it the only tribunal, which was competent to try and decide the matters in dispute, was the Registrar under S. 54 of the Co-operative Societies Act. This contention was accepted by the payment of Wages authority, which accordingly dismissed the our applications made by the petitioner. The petitioner then filed a special civil application before this Court, in which he contended that the view taken by the authority was erroneous. The Division Bench, before which the application came up for hearing, has referred the matter to us for decision.

2. Section 54 of the Bombay Co-operative Societies Act provides that when a dispute touching the business of a society arises between members or past members of the any officer, agent or servant of the society or between the society or its committee, and any officer, agent, member or servant of the society, it shall be referred to the Registrar for decision by himself or his nominee. It has been held in several cases that the jurisdiction conferred by this section is exclusive and that disputes of the kind referred to therein can only be

decided by the Registrar or his nominee. Respondent 2, therefore, contends that as the dispute is between a Co-operative Societies Act. The petitioner, on the other hand, relies on S. 15(2) of the Payment of Wages Act, which has been made applicable to co-operative societies by a notification issued by the State Government under S. 38 of the Bombay Shops and Establishments Act. Section 15(2) of the Payment of Wages Act provides as follows :

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on Bombay Industrial Relations Act, 1946 or any inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3) and in case of death of the employed person, it shall be lawful for his legal representative to make an application for such direction."

3. It is conceded that but for S. 54 of the Co-operative Societies Act, the applications made by the petitioner would be maintainable before the Payment of Wages authority. The question, which consequently arises for our decision, is whether a claim made by a servant of a co-operative society for wages against the society must be referred to the Registrar under S. 54 of the Co-operative Societies Act, or whether an application in respect of such claim can lie to the authority under the Payment of Wages Act under S. 15(2) of this Act.

4. Sri Singhvi, who appears for the petitioner has raised three main points. He has first urged that a claim in regard to wages made by a servant of a co-operative society cannot be said to touch the business of the society and that consequently such a claim cannot be referred to the Registrar under S. 54 of the Co-operative Societies Act. Section 22 of the Payment of Wages Act provides :

"No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed - ...

(d) could have been recovered by an application under S. 15."

5. Sri Singhvi has argued that the jurisdiction of the Registrar to decide such matters is ousted by this section, as the word "suit" in this section would include any legal proceeding for the recovery of wages or any deduction from wages. The third contention of Sri Singhvi is that the Payment of Wages Act confers substantial and substantive rights on employed persons, which can only be availed of by resorting to the special remedy provided in the Act, that is, by making an application under S. 15 of the Act and that consequently S. 54 of the Co-operative Societies Act will not apply in such cases. If there is a conflict between the two provisions, the former must prevail, as it is contained in an Act enacted by the Central Legislature.

6. In regard to the first point, the argument advanced is that the payment of

wages or any sum due to an employee cannot be said to relate to the business of a co-operative society. Dealing with the matter, apart from authority, it seems to us that there is no substance in this argument. The nature of business, which a society does, is to be ascertained from the objects of the society. But 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. The word "touching" is also very wide and would include any matter which relates to, concerns or affects the business of the society. Every society must necessarily employ some servants for the purpose of carrying on its business. The payment of wages or any sum due to them under law, is, therefore, part of the business of the society. In any case, there can be no doubt that such payment would touch the business of the society.

7. Sri Singhvi relied on an unreported decision of this Court in Keshav Narayan Raote v. Bombay Catholic Co-operative Housing Society, Ltd. [(1958) Special Civil Application No. 903 of 1953, decided by Vyas and Tambe, JJ., on 4 July 1958], in which it was held that the claim in regard to retrenchment compensation made against a co-operative society did not touch the business of the society. The only reason, which the learned Judges have given for coming to this conclusion, is that

"retrenchment compensation is a totally different thing from wages."

8. It is true that retrenchment compensation is not ordinarily payable under the terms of contract or under the rules or by-laws of a co-operative society. But we do not think that any distinction can properly be made between an amount which is payable to an employee under the terms of his contract and an amount which is payable to him under any law which governs the terms of his employment. A dispute in regard to the payment of any sum, to which a worker is legally entitled, can therefore be said to touch the business of the society. With respect, it seems to us that the view taken in this case is not correct.

9. Sri Singhvi referred to the decision of a single Judge of the Madras High Court in South Arcot Co-operative Motor Transport Society Ltd. (for ex-servicemen) Devanam-pattinam, Cuddalore Vs. Syed Batcha and Others, that the claim for retrenchment compensation by a workman against a co-operative society would not come within the ambit of S. 51 of the Madras Co-operative Societies Act (which corresponds to S. 54 of the Bombay Co-operative Societies Act), but could only be adjudged under the provisions of the Industrial Disputes Act. For the reasons, which I have given, it does not seem to us that merely because the amount claimed is not payable under the common law but is payable under the provisions of some statute, the claim or the, dispute in regard to it cannot be said to touch the business of the society.

10. Sri Singhvi also relied on the observations of Mukherji J., in Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Others, :

"... Strictly speaking, dispute between a co-operative society and its workman does not relate to the actual and business of a co-operative society and therefore

does not touch the business of the co-operative society. Consequently, however, a dispute between the co-operative society and its workman 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 expression "any dispute touching the business of a co-operative society."

11. The payment of wages to a person, who is employed by a society, in order to enable it to carry on its business, cannot be said to be remote consequence. It is the necessary consequence of the society's carrying on its business.

12. In *Madhava Rao v. Surya Rao* (1953) Mad. 1047 a Full Bench of the Madras High Court has held that the words "touching the business of a society" must be given their full import and that the dispute referred to in S. 51 of the Madras Co-operative Societies Act, need not directly arise out of the business of the society, but it is enough if it should have reference or relation to or concern with its business. The same view was taken by Chagla. J., as he then was, in *G.I.P. Railway Employees' Co-operative Bank, Ltd. v. Bhikhaji Karanjia* (1942) 45 Bom. L.R. 676 in which it was observed that the expression "touching the business of a society" in S. 54 of the Bombay Co-operative Societies Act is very wide and that it means "affecting or relating to the business of the society." With respect, we agree with the view taken in these cases.

13. We are also not inclined to accept Sri Singhvi's argument that the word "suit" in S. 22 of the Payment of Wages Act includes any legal proceeding. The word "suit" is a term of art and ordinarily means a proceeding instituted in a civil Court by the presentation of a plaint. A proceeding under S. 54 of the Co-operative Societies Act is not a suit and consequently S. 22 of the Payment of Wages Act cannot operate as a bar to such a proceeding being taken.

14. In order to decide the third point raised by Sri Singhvi, it is necessary to refer to some of the provisions of the Payment of Wages Act. Section 3 states that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act. The proviso to this section is as follows :

"Provided, that, in the case of persons employed (otherwise than by a contractor) -

(a) in factories, if a person has been named as the manager of the factory under Clause (f) of Sub-section (1) of S. 7 of the Factories Act, 1948 (63 of 1948), then the person so named and the employer jointly and severally;

(b) in industrial establishment, if there is a person responsible to the employer for the supervision and control of the industrial establishment, then the person so responsible and the employer jointly and severally;

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, then the person so nominated;

shall be responsible for such payment"

15. This section, therefore, imposes a liability for the payment of wages not only on the employer, but also on other persons, under whose supervision and control the employed persons work, such as the manager of a factory. Section 4 requires an employer to fix wage periods and provides that no wage period shall exceed one month. Section 5 contains provisions regulating the time of payment of wages. Sub-section (1) of S. 7 states that the wages of an employed person shall be paid to him without deduction of any kind except those authorized by or under this Act. Sub-section (2) of this section specifies the kinds of deductions which may be made. Sections 8 to 13 lay down the circumstances in which and the extent to which deductions may be made. Sub-section (3) of S. 15 states that after making inquiry, the authority may direct the refund to the employed person of the amount deducted or the payment of the delayed wages,

"... together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter ..."

16. This sub-section empowers the authority to direct an employer to pay compensation to his worker for withholding his wages or making unauthorized deductions therefrom. Section 17 provides for an appeal against a direction made by the Payment of Wages authority under S. 15. The right given to the employer to appeal is, however, restricted to orders under which he is directed to pay a sum exceeding rupees three hundred. Section 19 provides that if the amount directed to be paid to an employee cannot be recovered from any person, other than the employer, responsible under S. 3 for the payment of wages, it may be recovered from the employer. Sub-section (1) of S. 20 makes contravention of the provisions of Ss. 5 and 7 to 13 punishable with fine which may extend to two thousand rupees. Sub-section (1) of S. 21 states inter alia that no Court shall take cognizance of a complaint against any person for an offence under Sub-section (1) of S. 20 unless an application in respect of the facts constituting the offence has been presented under S. 15 and has been granted wholly or in part by the authority or the Appellate Court.

17. It will, therefore, be seen that the payment of Wages Act confers several substantive rights on workers. Some of these rights are such that they can only be secured by resorting to the remedy provided by the Act, viz., by making an application to the Payment of Wages authority under S. 15 of the Act. For instance, a worker can proceed against the person other than his employer, who is made responsible for the payment of his wages by S. 3 of the Act, only by making an application under S. 15(2) of the Act. Section 54 of the Co-operative Societies Act does not empower the Registrar to decide disputes between two servants of the society. As the person other than the society, who under S. 3 is also responsible for the payment of wages to persons employed by the society, will also be an employee of the society, an employee claiming wages cannot seek relief against him under S. 54 of the Co-operative Societies Act. Similarly, an

employee cannot in a proceeding under S. 54 claim compensation from the society for non-payment of his wages or delay in the payment thereof. It is only the Payment of Wages authority to whom a power has been given under Sub-section (3) of S. 15 to award compensation in such cases. The Registrar cannot, therefore, exercise this power. No prosecution can also lie against a society for contravention of the provisions of Ss. 7 to 13, unless an application has first been made under S. 15. These rights conferred by the Payment of Wages Act on employees of co-operative societies can, therefore, only be enforced by making an application under S. 15(2) of the Act. Section 54 of the Bombay Co-operative Societies Act, however, requires that all disputes between a society and its employees should be referred to the Registrar. This section, therefore, bars any other legal proceeding, including a proceeding under the Payment of Wages Act. To the extent to which S. 54 of the Co-operative Societies Act imposes a bar on a proceeding being instituted under S. 15 of the Payment of Wages Act, it is repugnant to that section. The latter provision, being contained in a Central Act, will prevail over the former. In other words, an application claiming wages can be entertained and tried by the Payment of Wages authority. Section 22 of the Payment of Wages Act does not, however, bar a reference to the Registrar under S. 54 of the Co-operative Societies Act. The remedy provided by S. 15 of the Payment of Wages Act is not exclusive. It will consequently be open to an employee of a co-operative society to proceed against the society in respect of his claim for wages either under the Payment Of Wages Act by making an application under S. 15 of the Act or under S. 64 of the Co-operative Societies Act by making an application to the Registrar in this behalf.

18. In this view the order made by the Payment of Wages authority must be set aside. The applications made by the petitioner to that authority will be restored and the authority will be directed to proceed further with them and dispose of them in accordance with law.

19. The petitioner should get his costs from respondent 2.