

(1942) 11 BOM CK 0005
In the Bombay High Court
Case No : O.C.J. Arbitration No. 35 of 1942

G.I.P. Railway Employees Co-operative Bank Ltd.	APPELLANT
Vs	
Bhikhaji Merwanji Karanjia	RESPONDENT

Date of Decision : 12-11-1942

Acts Referred:

Arbitration Act, 1940 — Section 33
Bombay Co-operative Societies Act, 1925 — Section 54

Citation : AIR 1943 Bom 341 : (1943) 45 BOMLR 676

Hon'ble Judges : Chagla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chagla, J.—The petitioner is a limited company incorporated in Bombay and is also registered under the Bombay Co-operative Societies Act (Bom. VII of 1925). The business of the company is banking business. The respondent was an employee of the petitioner company until his services were dispensed with in the manner I shall presently indicate.

2. On June 10, 1941, the respondent was served by the petitioner with a charge sheet in which certain charges were made against the respondent and he was suspended from service as from that date. The respondent refused to give any explanation with reference to these charges and by his letter of June 25, 1941, he informed the petitioner that he declined to answer the charges. On July 7, 1941, the respondent made an application to the Registrar of Co-operative Societies requesting the Registrar to be permitted to refer his case to arbitration u/s 54 of the Bombay Co-operative Societies Act, 1925. In this letter of July 7, 1941, the respondent has ventilated his grievances and has made various charges against the manager of the petitioner company. He states that he had no trouble till he fell into the bad books of the manager who was actuated by ill-will against him and who sought to remove him from service. He also challenges the order of suspension passed against him by the manager of the petitioner

company. He also suggests that he would not get a fair trial if the charges levelled against him were tried by a tribunal appointed by the petitioner company and that he would rather have these charges investigated by arbitrators appointed u/s 54 of the Bombay Co-operative Societies Act.

3. On July 17, 1941, the board of directors of the petitioner company resolved to terminate the respondent's services as from August 17, 1941. On August 8, 1941, the Registrar of Co-operative Societies wrote to the manager of the petitioned company pointing out that the respondent had urged that the dispute between him and the petitioner company should be referred to arbitration u/s 54 of the Bombay Cooperative Societies Act and making certain enquiries of the manager of the petitioner company. Further correspondence ensued between the Registrar of Co-operative Societies and the petitioner company. On December 15, 1941, the Assistant Registrar of Co-operative Societies wrote to the petitioner company that the dispute between the respondent and the petitioner company had to be decided according to Section 54 of the Act and suggesting that the petitioner company should appoint a nominee so that a board of arbitrators might be constituted to decide the dispute between the respondent and the petitioner company. On December 16, 1941, the petitioner company by their attorneys replied denying that there was any dispute touching the business of the petitioner company. On December 19, 1941, the Assistant Registrar of Co-operative Societies wrote to the chairman of the petitioner company formally notifying the petitioner that Mr. J.A. Dias had been appointed as the Registrar's nominee in the dispute between the respondent and the petitioner and he requested the petitioner company to obtain the necessary papers in respect of the dispute from him. On December 20, 1941, the petitioner company wrote to Mr. J.A. Dias requesting him to formulate the dispute which it was suggested should be referred to arbitration. On January 31, 1942, the petitioner company received from Mr. Dias a copy of the document dated January 26, 1942, signed by the respondent setting out various complaints made by the respondent against the petitioner company and claiming various reliefs against the petitioner company. This document of January 26, 1942, in many respects follows the lines of the letter of July 7, 1941, to which I have already referred. Of course this letter of January 26 contains additional grievances on the part of the respondent inasmuch as when he wrote the letter of July 7, 1941, he was merely under suspension whereas when he wrote this letter of January 26, 1942, he had been dismissed by the resolution of the board dated July 17, 1941. In this letter of his the respondent challenges the various resolutions passed by the board including presumably the resolution terminating his services. On February 27, 1942, the petitioner company by their attorneys wrote to the Registrar of Co-operative Societies pointing out that, according to them, the questions raised by the respondent by his letter of January 26, 1942, did not constitute a dispute within the meaning of Section 54 of the Bombay Co-operative Societies Act, 1925. On April 1, 1942, the Registrar of Co-operative Societies replied declining to interfere in the matter. On May 7, 1942, the petitioner company by their

attorneys wrote to the respondent asking him to withdraw the proceedings pending before the Registrar of Co-operative Societies otherwise they would resort to necessary action in a Court of law. On that the petitioner company filed this present petition alleging that the respondent's claim is a claim by a discharged employee against his employer for damages for wrongful dismissal and for defamation in connection with such dismissal and for other reliefs based on the same causes of action. The petitioner company contends that such a dispute is not a dispute touching the business of a Society within the meaning of Section 54 of the Bombay Co-operative Societies Act. The petitioner company therefore wants a declaration from the Court that there is no valid arbitration agreement between the petitioner company and the respondent.

4. The application is made u/s 33 of the Indian Arbitration Act (X of 1940), which provides that any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.

5. The first contention raised by the Advocate General on behalf of the respondent is that the Arbitration Act has no application to the proceedings under the Bombay Co-operative Societies Act and that, therefore, this Court has no jurisdiction to maintain this petition. Mr. Daphtary on behalf of the petitioner company has relied on Section 46 of the Indian Arbitration Act which lays down that the provisions of this Act 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. Mr. Daphtary's contention is that there is an arbitration agreement under the Bombay Co-operative Societies Act, and by reason of Section 46 the provision with regard to arbitration in the Bombay Co-operative Societies Act becomes an arbitration agreement within the meaning of Section 33 of the Indian Arbitration Act and that it is open to him to challenge the validity of the agreement u/s 33 of the Act. In order to appreciate these rival contentions it is necessary to consider what the provisions with regard to arbitration are in the Bombay Co-operative Societies Act. Section 54 of the Bombay Co-operative Societies Act provides that if there is any dispute touching the business of a society between certain categories of persons enumerated in that section, then such a dispute shall be referred to the Registrar of Co-operative Societies for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. The proviso to that section gives the power to the Registrar, in case the question at issue between a society and a claimant is one involving complicated questions of law and fact, to suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society ; if no such suit is instituted within six months of the Registrar's

order suspending proceedings, the Registrar is given power to proceed with arbitration. Then Section 54A gives power to the Registrar to set aside the award and order the dispute to be referred back to arbitration if he is not one of the arbitrators. Section 55 gives the power to the Registrar or his nominee or the arbitrators to grant an attachment before the award under circumstances set out in that section. Section 56 deals with appeals against the award of the arbitrator, and the appeal is to be preferred to the Registrar and to be decided by him. Section 57 provides that the order passed in appeal by the Registrar u/s 56 shall be final and conclusive and the award of the arbitrators or a decision by the Registrar or his nominee u/s 54 shall not be liable to be called in question in any civil or revenue Court. Then Section 64 provides for the right of appeal to the Provincial Government against certain orders passed by the Registrar, and I may point out that an appeal to the Provincial Government lies against the orders made by the Registrar of Co-operative Societies u/s 54 of the Act. On a consideration of these sections I am of opinion that the Bombay Co-operative Societies Act, 1925, sets up a Special Court with a special jurisdiction and with special powers to try matters referred to in Section 54. The question is whether there is anything in the Arbitration Act which is inconsistent with the provisions of these sections to which I have referred which would not entitle the petitioner company to present a petition for a declaration that the arbitration agreement is invalid. To my mind it is clear that both the question of the validity of the arbitration agreement and the question of the validity of the award referred to in Section 33 of the Indian Arbitration Act are to be decided by the Special Court set up under the Bombay Co-operative Societies Act, 1925, and not by this Court as provided in Section 33 of the Indian Arbitration Act. Mr. Dalphatary has been constrained to concede that it would not be open to this Court to set aside the award made by the Registrar of Co-operative Societies or his nominee or by the arbitrators, or to consider the validity of the award made by him which is made final u/s 57 of the Bombay Co-operative Societies Act. But Mr. Dalphatary argues that even if that be so, there is nothing to prevent the Court from considering the validity of the arbitration agreement or in other words from considering whether the disputes referred to arbitration are disputes which fall within the purview of Section 54 of the Bombay Co-operative Societies Act. I do not think that that contention is sound, because, as I have pointed out, looking to the scheme of these sections dealing with arbitration, it is clear that all matters relating to these arbitration proceedings are to be determined by the authorities set up by that Act.

6. Assuming I am wrong in the view I have taken, the next question is whether even if the Court could entertain this petition, the petitioner company has succeeded in making out its case that the disputes sought to be referred to arbitration by the respondent are disputes which do not fall within the purview of Section 54 of the Act. The question that arises for determination is whether the disputes between the respondent and the petitioner company as they appear from his letter to the Registrar of Co-operative Societies dated July 7, 1941, and

his further letter dated January 26, 1942, are disputes touching the business of the petitioner company. It has been argued on behalf of the petitioners that it is not the business of the petitioner company to employ or dismiss servants. The employment and dismissal of servants is merely a machinery to carry out the objects of the petitioner company; and the objects of the petitioner company are as set out in their bye-laws :

(a) To raise funds by means of issuing shares, borrowing money, accepting money on deposit at interest or otherwise; (b) To lend money to shareholders at interest with security; and without interest and security in so far as advances from Sir Lawless Hepper Relief Fund are concerned; (c) To invest monies or funds of the Bank not required for object (b); (d) To encourage thrift, self-help and co-operation; (e) To prevent shareholders falling into permanent indebtedness and to assist them financially in times of difficulty and to help them to get out of debts, and (f) To help, maintain, and promote the aims and objects of Sir Lawless Hepper Relief Fund.

It is argued that employing or dismissing servants does not touch any one of these objects. The petitioner company undoubtedly has to carry out these objects and it can only carry them out through the agency of various persons. In doing so, it has to employ servants; it has got to enter into contracts with servants; and it has to dismiss servants. It is therefore contended that if the grievance of a servant dismissed by the petitioner company is that he was wrongfully dismissed or that he was entitled to damages, that is not a question which comes within the purview of Section 54 of the Bombay Co-operative Societies Act because it does not touch the business of the petitioner company.

7. I do not think that it would be right to give a restricted meaning to the words "touching the business of a society" used by the Legislature in Section 54 of the Act. The word "business" is a very wide term and certainly it is not synonymous with the objects of a society. The expression "touching the business of a society" would mean affecting the business of a society or relating to the business of a society; and it cannot be said that when a company employs or dismisses a servant, it does not do something which relates to its business. It is true that it is not one of the objects of the company to employ or dismiss servants; but it is something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business. The very fact that Section 54 refers to disputes between a society and its servants indicates that disputes of the nature raised by the respondent in this case should be decided by the Registrar of Co-operative Societies. It would be difficult otherwise to imagine what other kind of disputes there could be between the Society and its servant which would form the proper subject-matter of a dispute within the meaning of Section 54 of the Bombay Co-operative Societies Act. Mr. Daphtary has suggested that there may be cases where an officer of a bank does something which is contrary to the rules or where he is in possession of the funds of the company. But then that would narrow down the definition of

the term "servant" so as to include only high and important officials of the company and menial servants would not be included in that category at all. If there is no warrant for restricting the meaning of the word "business," there is certainly less warrant for restricting the meaning of the word "servant" used in Section 54 of the Bombay Co-operative Societies Act. In *Gopi Nath v. Ram Nath* ILR (1924) All. 374 the word "business" came in for judicial interpretation. In that case the election of the directors was challenged. The case was governed by the Co-operative Societies Act; but the rules made u/s 43 of that Act were very similar to Section 54 which I have got to consider here; and in their judgment Ryves and Daniels JJ. in considering the word "business" say (p. 376):-

Having regard to the very wide form in which Section 43 and the rules made under it are couched, we think that the word "business" was not intended to be understood in any such restricted sense.

The contention before them was that the word "business" should be confined to money business of the Society there such as the giving of loans to members and the settlement of money claims. That contention was rejected by the Court.

8. In *Dasaratha Row v. Subba Rao* AIR [1923] Mad. 481 the dispute arose between a member of a Co-operative Stores and the Society with regard to sums of money entrusted to the former for purchase of certain articles, and the question that arose for determination was whether that particular dispute between the member and the Society was a dispute touching the business of the Society. The contention in that case was that these words only referred to disputes regarding the internal management of the affairs of a society or disputes in regard to the principles which would regulate the conduct of business. The learned Judge refused to accept that contention and held that the words were quite general and it was not necessary to restrict their construction.

9. Comparison of different statutes is not always a safe guide, but we have a similar Act in Madras called the Madras Co-operative Societies Act (VI of 1932), and Section 51 of that Act deals with arbitration and is practically in terms similar to our Section 54. It is to be noticed that Section 51 of the Madras Co-operative Societies Act expressly excludes from the application of the arbitration clause disputes regarding disciplinary action taken by the society or its committee against a paid servant of the society. Presumably but for this express exclusion such a dispute between the society and its paid servant would have been a dispute touching the business of the society.

10. It has been further argued by Mr. Daphtary that u/s 54 of the Bombay Co-operative Societies Act the only dispute which can be referred to arbitration is a dispute between the society and its servant who is in the service of the society at the time the dispute is referred to arbitration. In this particular case as it happened, as I have pointed out, the respondent applied to have this dispute referred to arbitration on July 7, 1941, when he was admittedly still in the service of the petitioner company. But even if he were not, I am not prepared to

accept the contention sought to be placed by Mr. Daphtary on this particular clause of Section 54 of the Act. The only two conditions which are necessary, as far as the facts of this case are concerned, before Section 54 would apply, are that the parties must be the society and its servant and that it must relate to the dispute touching the business of the Society. The section does not provide that at the time of the initiation of the arbitration proceedings the party other than the society must be in its employment. The curious result that would follow, if I were to accept Mr. Daphtary's contention, would be that a servant would be entitled to agitate his claim before the arbitrators before his dismissal with regard to any grievance that he may have relating to the contract of service, but as soon as he was dismissed he would no longer have the right to resort to the summary proceedings provided by Section 54 of the Bombay Co-operative Societies Act, In giving this wide construction to Section 54. I am taking into consideration what to my mind is the obvious object of the Act, viz. to provide a cheap and summary remedy in respect of all disputes between a Co-operative Society and those persons with whom it has got to deal as mentioned in Section 54 of the Act. There is no reason why a servant if he has a claim against the society or the society if it has a claim against the servant with regard to any dispute that may arise between them should not have the facility of these cheap and summary proceedings provided by the Act.

11. In the result the petition must fail and must be dismissed with costs.

12. Mr. Daphtary says that his clients are proposing to prefer an appeal from this decision of mine and he wants the stay order passed by Mr. Justice Sen on June 11, 1942, to continue for a period to be fixed by me. I would, therefore, direct that the stay order should continue for a fortnight from today. If no directions are obtained from the Court of Appeal during that period, the stay will be dissolved.

13. [The petitioners appealed (No. 36 of 1942), but the appeal was dismissed (Beaumont C.J. and Weston J.) on January 28, 1943, owing to non-attendance of parties.-EDS.]