
(1962) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 280 of 1961

Gokul Prasad Moujilal Bharat

APPELLANT

Vs

Laxman Singh Maha Singh and Others

RESPONDENT

Date of Decision : 16-02-1962

Acts Referred:

Co-operative Societies Act, 1912 — Section 43(2)

Madhya Pradesh Co-operative Societies Rules, 1962 — Rule 26

Citation : AIR 1962 MP 265 : (1963) ILR (MP) 620 : (1962) JLJ 416 : (1962) 7 MPLJ 641

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golvalkar, J.; K.L. Pandey, J

Bench : Full Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.S. Dabir, for Respondent No. 2, R.K. Tankha and P.C. Pathak for Respondent No. 1 and H.L. Khaskalam, Government Advocate for Respondent Nos. 7 to 10, for the Respondent

Judgement

Dixit, C.J.

This matter comes up on a reference by a Division Bench of this Court and the question that has been referred to the Full Bench for decision is:-

"Whether a challenge to the validity of the election of the Chairman of the Board of Directors of the, respondent, the Co-operative Central and Land Mortgage Bank Ltd., is a dispute falling under bye-law 52 of the bye-laws framed by the Bank?"

At a meeting of the Board of Directors of the Bilaspur Co-operative, Central and Land Mortgage Bank Ltd., held on 19th May 1951, the respondent No. 2 Kesheorao Goverdhan was elected as Chairman of the Board. Thereupon the respondent No. 1. Laxmansingh, who was defeated at the election, filed an application under Rule 26 of the Rules made by the Local Government under the Co-operative Societies Act, 1912, challenging the validity of the election of Keshorao as the Chairman and claiming a declaration about his own election as chairman. The Registrar acting under Rule 27 referred the election dispute to

three arbitrators for decision. The arbitrators made an award on 18th September, 1961, holding that the election of Kesheorao as the Chairman was invalid and declaring Laxmansing as the duly elected Chairman. Thereafter the petitioner Gokul Prasad who is a share-holder and a member of the Board of Directors, filed a petition under Articles 226 and 227 of the Constitution challenging the validity of the award given by the arbitrators inter alia on the ground that the Dispute about the validity of the election of Kesheorao not being "any dispute touching the business" of the Bank, the Registrar had no jurisdiction to decide the dispute himself or refer it to arbitration for decision under Rules 26 and 27 and the bye-laws of the Bank.

The Co-operative, Central and Land Mortgage Bank Ltd., Bilaspur, is constituted under the Co-operative Societies Act, 1912. The object of the Act, as set out in the preamble, is to facilitate the formation of Co-operative Societies for the promotion Of thrift and self-help among agriculturists artisans and persons of limited means. Sections 3 to 11-A of the Act deal with the formation and registration of Co-operative Societies. The rights and liabilities of members and the duties of registered societies are dealt with by Sections 12 to 17. Sections 18 to 38-A contain provisions, about the privileges of registered societies, their property and funds and the inspection of their affairs.

Then after dealing with the matter of dissolution of the registered societies, the Act proceeds to give to the Government the power to make rules to carry out the purposes of the Act. Section 43 provides that the Government "may for the whole or any part of the State and for any registered society or class of such societies, make rules to carry out the purposes of the Act" and says that in particular and without prejudice to the generality of this foregoing power, such rules may provide for matters specified in Clauses (a) to (t) of Sub-section (2) of Section 43. The rules framed by the Government may, according to Clause (c), "prescribe the matters in respect of which a society may or shall make bye-laws" Clause (1), which is material here, says that the rules may-

"provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member Or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision, Or, if he so directs, to arbitration, and prescribed the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and provide for the making of interlocutory orders including grant of temporary injunctions for preventing the ends of justice being defeated and provide for the mode of the enforcement of the decision of the Registrar any interlocutory order or the awards of arbitrators."

Rules 11 to 13 are concerned with the matters which may be dealt with by bye-laws and the making of alteration or abrogation of the bye-laws. Rules 26 and 27 run as follows-

""26. Any dispute touching the business of a co-operative society between members or past members of the society or persons claiming through a member or past member, or between a member or past member or persons so claiming and the committee or any officer, shall be referred to the Registrar.

The Registrar, on receiving notice of such dispute, shall at his discretion, either decide the dispute himself or shall appoint an arbitrator or shall refer it to three arbitrators, of whom one shall be nominated by each of the parties to the dispute and the third shall be nominated by the Registrar and act as chair-man. If any party to a dispute fails to nominate an arbitrator within 15 days, the Registrar may himself make the nomination."

Rule 29 lays down that the decision of the Registrar or the award of the arbitrator or arbitrators shall be given "in accordance with justice equity and good conscience" upon the evidence recorded and after consideration of any documentary evidence produced by either side.

Coming to the bye-laws framed by the respondent-Bank, bye-law 2 enumerates the objects of the Bank. Bye-laws 30 to 38 contain provisions about the constitution of the Board of Directors. Bye-law 30 (1) says that the affairs of the Bank shall be managed by a Board of directors. The powers and duties of the Board of Directors are prescribed by bye-law 37. The opening words of that bye-law are :

"The Board of Directors shall have general control over the affairs of the Bank and in particular their powers and duties shall be as follows"".

The powers and duties of the Board of Directors are enumerated in Clauses (1) to (24) of the Bye-law. The last clause gives to the Board of Directors the power "generally to conduct the business of the Bank".

The bye-laws also contain a provision about the settlement of disputes concerning the business of the Bank. Bye-law 52 provides that-

"Any dispute concerning the business of the Bank between members or paid members of the Bank or persons claiming through them or between a member or a past member or persons claiming as such and the Board or any officer shall be referred to the Registrar as provided in the rules under the Act".

Bye-law 53 contains a provision for deciding disputes concerning the validity or effect of the proceedings of a meeting of the Board or of the general body. It says-

""Should any doubt arise as to the construction or meaning of the provisions of the Co-operative Societies Act or any bye-law of the Bank or as to validity or effect of the Proceedings of a meeting of the Board or of the general body, the Board shall report the same to the Registrar for decision and act according to his advice which shall be final".

It will be seen that the question whether a dispute about the validity of the

election of the Chairman of the Board of Directors is a dispute falling under bye-law 52 is really one whether such a dispute can be referred to the Registrar for decision under Rule. 26. For bye-law 52 itself says that a dispute of the kind mentioned therein shall be referred to the Registrar as provided in the rules under the Act.

On the language of Rule 26 it is plain that the essential requisites that must be fulfilled in order that a dispute may be capable of reference to the Registrar under that rule are two. First, a dispute must be (a) between members or persons claiming through them inter se, or (b) between past members or persons claiming through them inter se, or between two parties of either of these categories or (c) between any of these classes on the one hand and the committee or any officer on the other. Secondly, the dispute must be one "touching the business of a co-operative society".

Here, the dispute as to the validity of the election of the Chairman of the Board of Directors is no doubt one between members inter se. The question which we have to consider is whether it is a dispute ""touching the business" of the Co-operative Central and Land Mortgage Bank Ltd., Bilaspur. The question thus raises a short point of construction as to the scope, meaning and ambit of the expression "touching the business of a co-operative society" used in the Rule 26.

It was urged on behalf of the petitioner that R. 26 was limited in its application to disputes regarding or concerning the business of a co-operative society as set out in the bye-laws as the objects of the society and that the election of the Chairman of the Board of Directors was not within the scope of business of the Society as defined in the Act or in the bye-laws. The respondents, however, contended that the meaning of the words business of a co-operative society" was enlarged by the use of the word "touching" and, therefore, the disputes which could be referred to the Registrar under rule 20 were not restricted to matters properly arising from and out of the business of the society but also covered matters concerning the internal management of the society and its constitution. The respondents commended to us for acceptance of the view taken by the Madras High Court in M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, , in construing a somewhat similar provision, namely, Section 51 (1) of the Madras Co-operative Societies Act, 1932,

In our judgment, the question as to the construction of the expression "touching the business of a co-operative society"" does not present much difficulty. There is nothing ambiguous about the expression, the plain words of which must be given their plain meaning. The word "touching" no doubt means "in reference or relation to, respecting, regarding or concerning". But the meaning of the word "touching" has no bearing on the meaning of the words "business of a co-operative society".

The scope of the expression "Any dispute touching the business of a co-operative

society" is no doubt wider than that of the expression "any dispute as regards the business of a co-operative society". But the word "touching" has not the effect of depriving the express words "the business of a co-operative society" of their full meaning and content so as to include a dispute extraneous to the business of the society in the expression "Any dispute touching the business of a co-operative society". A dispute touching, that is to say, having reference for relation to, regarding or concerning, the business of a co-operative society must necessarily have some connection with the business of the society. A dispute divorced altogether from the business of the society cannot be regarded as one touching the business of the society.

Now, the business of a society is clearly the functions or activities of the society having some continuity, regularity and permanency. In deciding as to what the business of a cooperative society is, one must have regard to the general scope of the Act, the rules under the Act and the bye-laws of the society. The Act is designed for promoting thrift and self-help among agriculturists, artisans and persons of limited means by the formation of co-operative societies. This is clear from the preamble of the Act.

The provisions of the Act are all intended to make agriculturists, artisans and men of limited means self-sufficient and for enabling them to make as much profit as possible out of their own labour and to give them credit facilities for that purpose. Under Rule 3 every application for the registration of a society must state the objects of the society. The objects of the Bank here are set out in bye-law 2. Every activity of the Bank, which is necessary and incidental to the carrying out of the objects enumerated in bye-law 2, would constitute the business of the society." That the objects mentioned in bye-law 2 constitute the business of the Bank is made clear by bye-law 13 (g) when it provides that the capital of the Bank shall be employed in the grant of loans in such other business as is included in the objects of the Bank and mentioned in bye-law 2. "This bye-law (i. e, bye-law-2) does not specify the ejection of the Chairman of the Board of Directors .as one of the objects of the Bank.

The business of a co-operative society is not the same thing as the ""affairs of society" or the administration and management of the society. The Act, the rules and the bye-laws themselves make a distinction between the "affairs of a society" and its "business". For example, . Section 13(3) of the Act speaks of ""voting in the affairs of a registered society". So also Section 35(2) says that all officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar may require. Rule .14 makes a provision for managing "the affairs of the society" on the dissolution of the committee of any registered society. Again, bye-laws 30 and 37 use the expression "the affairs of the Bank" while dealing with the constitution and the powers and duties of the Board of Directors. Bye-law 30 (1) prescribed that the affairs of the Bank shall be managed by a Board of Directors. Bye-law 37 begins with the direction that the Board of Directors shall have general control over the

affairs of the Bank.

It is noteworthy that clause (24) of bye-law 37 says that the Board of Directors shall "generally conduct the business of the Bank". Thus there is a clear distinction between the "affairs of the bank" or the administration and management of the Bank and the "business of the Bank". The Board of Directors manage the affairs of the Bank and have general control over them. The Board of Directors exercise the powers and duties enumerated in bye-law 37 and generally conduct the business of the Bank. That being so, it is impossible to accept the position that the "business of the Bank" includes the election of the Chairman of the Board of Directors. The individual shareholders of the Bank are no doubt required to elect Directors and the Directors have to elect a Chairman. But that is not a part of the business of the Bank. It is not an activity of permanence, continuity and regularity and of a character set out in bye-law 2. It is only a step in the constitution of the Board of Directors which manage the affairs of the Bank and generally conduct its business.

A dispute therefore, about the validity of the election of the Chairman of the Board of Directors cannot by any stretch of Imagination be regarded as one having any relation or reference to any matter which constitutes the business of the Bank. Such a dispute cannot, therefore, be referred to the Registrar for decision under Rule 26 or bye-law 52.

This view is strengthened in this case by rules 27 and 29 which give to the Registrar discretion to refer the dispute to an arbitrator or arbitrators and provide that the arbitrators shall give an award "in accordance with justice, equity and good conscience" upon the evidence recorded by them and after consideration of any documentary evidence. If a dispute is filed before the Registrar under Rule 26 then under Rule 27 he can, if he chooses, decide it himself or refer it to an arbitrator or to three arbitrators. If a dispute¹ is referred to arbitrators, then it must be decided by them in accordance with justice, equity and good conscience. These rules do not make the Registrar the sole domestic tribunal for adjudication of disputes according to law. They give to the Registrar freedom to refer the matter to an arbitrator or arbitrators for decision.

Under the general law of arbitration a question of law no doubt can be specifically referred to arbitration and when the arbitrator gives an award on the question of law the award cannot be disturbed notwithstanding that it is erroneous unless it appears from the award that the arbitrator has proceeded illegally on principles of construction which the law does not countenance. A mere dissent of the Court from the arbitrator's conclusion on construction is not enough for setting aside the award. The arbitrator is required, in the absence of any express provision to the contrary, to decide the questions submitted to him according to the legal rights of the parties and not according to him what he may consider fair and reasonable under the circumstances. But Rule 29 far from requiring the arbitrators to decide the dispute according to the legal rights of the parties enjoins them to decide it in accordance with justice, equity and good conscience.

Therefore, it is plain that a question as to the validity of an election or as to the illegality of any rules or statutory provisions cannot properly be made the subject-matter of an arbitration. A dispute as to the validity of an election according to the rules and regulations governing it cannot be compromised lawfully by way of accord and satisfaction. If, therefore, a dispute regarding the validity of the election of the Chairman of the Board of Directors cannot be decided by arbitration then it is clear that Rules 26, 27 and 29, which permit the settlement of a dispute by arbitration, have no applicability here.

There are no doubt conflicting decisions on the interpretation of the expression "touching the business of a registered society" Occurring in some of the States' Co-operative Societies Acts. In *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, and *Kunwar Nihal Singh Vs. Chanda Kunwar and Another*, the Bombay, Madras and Allahabad High Courts have taken the view that "business of a society was not synonymous with the objects of the society and whatever the society does through its committee or the Board of Directors in the ordinary course of business relates to or concerns the business of the society. With due deference to the learned Judges of the Bombay, Madras and Allahabad High Courts, we do not find ourselves in agreement with the view expressed by them.

There is a real distinction between "business of a society" and the "management or administration of a society". The management and administration of a bank mean the management of the bank qua an organization and not qua its business. It is true that a co-operative society or bank cannot function properly and do its business if it is not validly constituted or if its administrative machinery is not in proper order. But from this it requires a big leap to come to the conclusion that matters relating to the constitution, administration and management of the bank are matters touching the business of the bank. When the Act, the rules and the bye-laws before us themselves recognise the distinction between business of a society and its "management and administration by using the expressions "the affairs of the society" and "business of the society" and when the bye-laws refer to the business of the Bank as that included in the objects of the Bank, mentioned in bye-law 2, it is difficult to ignore the difference between "business" and "management of the business" and hold that whatever is necessary or required to be done for bringing into existence a society and for its proper functioning is included in the "business of the society".

The view taken by the Calcutta High Court is not different from our own view. In *Ramendra Nath Mukherjee Vs. Balurghat Central Co-operative Bank Ltd.*, Rankin C. J. was not inclined to hold that a dispute about the constitution of a registered society or as to whether a person is or is not a share-holder is a dispute touching the business of the society. So also in *Barisal Co-operative Central Bank Ltd., v. Benoy Bhusan* AIR 1964 Cal 537 the question as to whether certain persons are entitled to be substituted in place of a deceased member was not regarded as a question relating to the business of the society. In *Hara Dayal*

Nag Vs. Chandpur Central Co-operative Bank, Ltd., Mukherjea J. (as he then was) also expressed the view that a dispute relating to the constitution of the board of management and its power to call an extraordinary general meeting of the shareholders was not a matter touching the business of the society.

The decision of this Court in Kisanlal v. Co-operative Bank Ltd., Senoi 1945 Nag LJ 482 : (AIR 1946 Nag 16) does not relate to the validity and the constitution of the Board of Directors or to the validity of the election of the Directors or the Chairman of the Board of Directors. The question that was considered in that case was whether a dispute relating to a mortgage executed by the treasurer of a cooperative bank as security for the moneys belonging to the bank held by the treasurer was a dispute touching the business of the bank. It was held that u/s 32 of the Co-operative Societies Act, 1912, a registered co-operative society was required to invest or deposit its fund in the manner provided in that section and no other; that the investing or depositing of its fund was a business of the society; and that consequently a dispute relating to a mortgage executed by the treasurer of a bank for the safe deposit of the funds of the bank was a dispute touching the business of the bank. The observation in that case viz., "In the absence of any restriction on the scope of the meaning of the word "business" used in Rule 26 it must be understood in its natural and ordinary sense as covering any acts which are essential for the functioning of the corporate body", when read in the context of the facts of the case, must, therefore be taken as meaning that any act which is essential or is required to be done in the course of business of a socitey and is a part of it would be included in the expression "business of the society". It cannot be read as implying (sic) down that a question as to the validity of the constitution of the Board of Directors or the election of Directors and the Chairman is a question touching the business of the society. It is noteworthy that in 1945 Nag LJ 482 : (AIR 1946 Nag 16) (supra) the decision in Barisal Co-operative Central Bank Ltd. Vs. Benoy Bhusan Gupta and Another, was distinguished by pointing out that there was nothing in that case to guide the decision on the point which arose thefore the Judges of this Court.

In Gokul Bharat v. C. T. Lande, M. P. No. 198 of 1960, D/- 12-10-1961, it has been held that a dispute as regards the validity of a general meeting of the Co-operate Central and Land Mortgage Bank Ltd., Bilaspur, is not a dispute falling under bye-law 52. Rule 26 or bye-law 52 does not take away the right of the aggrieved party to institute a suit for determining the validity of the election of the chairman of the Board of directors. Again, if the Board itself feels some doubt as to the validity of the election of the Chairman, then it can under bye-hw 5.3 "report the matter to the Registrar for decision".

For the foregoing reasons, we would answer the question referred to us for decision by saying that a dispute as to the validity of the election of the Chairman of the Board of Directors is not a dispute touching the business of the Co-operative Central and Land Mortgage Bank Ltd., Bilaspur and therefore such a

dispute cannot be referred to the Registrar for decision under Rule 26 read with bye-law 52.