

(1992) 04 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3587 of 1988

Gokulananda Patel

APPELLANT

Vs

Secretary, Sundargarh Wholesale Consumers Co-operative
Stores Ltd. and Others

RESPONDENT

Date of Decision : 03-04-1992

Acts Referred:

Citation : (1992) 2 OLR 54

Hon'ble Judges : B.L. Hansaria, C.J.;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : B.L.N. Swamy and B.V.B. Das, for the Appellant; S.K. Nayak, A.G.A.
and P.K. Rath, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, C.J.—The legal fight ultimately seems to be a shadow fight because the principal question posed before us is whether the petitioner could have been proceeded u/s 67 of the Orissa Co-operative Societies Act. 1962 (for short, "the Act"), or Section 68 thereof.

2. To decide this point, we shall advert to the facts in brief. The petitioner was serving at the relevant time as the Secretary of the Co-operative Society in question. On audit being made, it was found that a sum of Rs. 81,450, 68 was recoverable from the petitioner because of commission of many alleged irregularities. The Assistant Registrar of Co-operative Societies, Sundargarh was approached by Annexure-1 to issue a decree in favour of the Society for realisation of the aforesaid sum with costs from the petitioner. This was taken to be a dispute case u/s 68 of the Act and the Assistant Registrar found that the petitioner was liable to pay a sum of Rs. 48,687.78 and cost of Rs. 50/-. An appeal was preferred which was dismissed followed by dismissal of revision by the Registrar and finally by the Government. This petition has been filed under Art, 226 of the Constitution.

3. The principal point raised by Shri Swamy is that Section 68 of the Act could not have been invoked in the present case inasmuch as the section does not apply in matters regarding disciplinary action taken by a society against a paid servant, as the petitioner is. We shall express our opinion on this contention; but we have not been able to understand from the address of the bar as to how the procedure of Section 67 of the Act, which ought to have been invoked in the present case, according to the petitioner, makes any difference, in so far as giving of opportunity to defend an incumbent is concerned. We have made this observation because according to Sri Swamy if the proceeding would have been taken u/s 67 of the Act, the petitioner would have been taken u/s 67 of the Act, the petitioner would have been able to assail the correctness of the audit report and pay the money found due in installments, which benefit is not available in a Section 68 proceeding. This submission may have some force if Section 68 is read with Explanation 1 to Sub-section(1) which speaks of a clause in respect of any sum payable". If a sum payable can alone be the subject-matter of Section 68 proceeding, then it may be that in that proceeding the payability of the sum may not be open to examination. If that would be so, in Section 68 proceeding an employee would be in disadvantageous position, because if Section 67 is invoked, he can challenge the correctness of the audit report, but that right is denied to him in Section 68 proceeding.

4. In the present case, however, we find that the Assistant Registrar, Co-operative Societies, even while invoking his power u/s 68 of the Act, went into the correctness of the finding as recorded in the audit report and ultimately found the petitioner liable for payment of a sum of Rs. 48,687.78, as against Rs. 81,450.68, mentioned in the audit report. As such, in the present case, despite invocation of Section 68, let us say wrongly, the same has not in any way affected the right of the petitioner in so far as the defence available to him is concerned, and so, he was not in disadvantageous position compared to the one which would have been available to him u/s 67 of the Act.

5. It is now to be seen whether in the present case. Section 68- can be invoked. A similar matter came up before this Court in Narayan Rath v. Nayagarh Central Co-operative Bank Ltd. 1LR 1973 Cut 204 and this Court held that Section 67 makes adequate provision for proceedings against a past or present servant of a co-operative society, if it is found in the course of an audit that he has made any payment contrary to the Act or the Rules and the Bye-Laws. The only allegation made against the petitioner in that case was that he had misutilised his power and position in the office and mischievously recommended sanctions of loans to different Co-operative Societies and thus caused loss to the bank. If in recommending the applications he was either negligent or committed breach of trust, those would be matters which would call for disciplinary action against him, apart from his being subject to surcharge proceedings u/s 67 of the Act, stated this Court. On appeal being preferred the aforesaid decision was set aside in Nayagarh Co-operative Central Bank Ltd. Vs. Shri Narayana Rath and Others, in which the apex Court held in paragraph 4 that prima facie the requirement of

Section 68(1) of the Act were satisfied. However, the merit of the case was not gone into by the Court because of the following provision in Section 68(4) of the Act;

"(4), If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

So, the Court held that the question whether the dispute related to the constitution, management of the business of the society was a matter which the Registrar has to decide before the writ jurisdiction of the High Court is allowed to be invoked. May it be said here that in the present case, adjudication has been done by the Assistant Registrar of Co-operative Societies exercising the power of the Registrar, and so. it was within his competence to take Section 68(4) decision and if he has held that Section 68 was attracted, his decision has to be taken as final.

6. Though Shri Swamy has drawn our attention to OJC No. 3302 of 1987 (Debendranath Patnaik v. Assistant Registrar Co-operative Societies) disposed of on 3-9-1988, that would not assist the petitioner, because in that decision a concession was made by the counsel appearing for the co-operative society that the case attracted the ratio of this Court's decision in Narayan Rath. The fact that decision had been reversed by the Supreme Court somehow missed all concerned.

7. Shri Swamy then draws our attention to Bihar State Co-operative Marketing Union Ltd. Vs. The Deputy Registrar, Co-operative Society (Judicial) and Another, in which it was held by a Division Bench that an order of punishment passed against an employee of a Co-operative Society in a disciplinary action against him, not being an order touching the business of the-society is not" appealable u/s 48 (2) of the Bihar Co-operative Societies Act,. 1935, In the present case, however, no disciplinary action has been taken against the petitioner and so, the Patna case cannot be pressed in- to service to contend that, the present case does not. attract Section 68 of the Act. For similar reason, the decision in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, cannot assist the petitioner because in that case the decision related to alteration of the conditions of service because of which it was not a dispute touching the .business of the society.

8. That a dispute of the present nature would come in the fold of Section 68 of the Act has been recently held in Prem Jeet Kumar Vs. Surender Gandotra and others, tn which some allegations were made against the appellant who was to start with, Secretary, and then President of the Society. Because of this, a contention was raised that the loss caused to the Society would attract Section 59 of the Delhi Co-operative Societies Act, 1972, which is in part materia with Section 67 of our Act." This contention was rejected and it was held that the

allegation could be the subject-matter of a proceeding u/s 60 of the Delhi Act, which is parallel to Section 68 of our Act.

9. In view of all the above, we do not find any lack of jurisdiction in the Assistant Registrar in having proceeded against the petitioner u/s 68 of the Act, apart from the fact that the same had not in any way materially affected the petitioner.

10. Shri Swamy has something to say about the correctness of the audit report in which fault was found with the petitioner even for some excess stock. We have not felt inclined to enter into the factual aspects of the matter, as three authorities below have dealt with the same and were satisfied about the liability of the petitioner to the extent of Rs. 48,687.78.

11. In the result, the petition is dismissed. But keeping in view the fact that it would not be possible for the petitioner to pay the amount at a time even if he be still in service, he is allowed to repay the amount in monthly instalments of Rs. 1000/-. the first of which shall become payable by 15th of May, 1992, and thereafter by the 1bth day of every succeeding month.

K.C. Jagadeb Roy, J.

I agree.