

(1986) 01 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No. 6220 of 1982

Gurusangappa

APPELLANT

Vs

Sangameswar Primary Teachers" Co-operative Society Ltd.

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Karnataka Co-operative Societies (Amendment) Act, 1976 — Section 69, 69 (1), 70 (2), 70 (2) (e)

Citation : (1986) ILR (Kar) 1095

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : B.H. Patil, for the Appellant; N. Basavaraju, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—The petitioner has presented this Petition praying for quashing the order of the Karnataka Appellate Tribunal dismissing the appeal of the petitioner presented against the award of the Arbitrator u/s 70(e) of the Karnataka Co-operative Societies Act, 1959 ("the Act" for short).

2. The facts of the case, in brief, are as under : The 1st Respondent-Society raised a dispute u/s 70 of the Act against the petitioner for recovery of a sum of Rs. 5,250-09. The dispute was referred to Arbitrator for decision. The Arbitrator by his award dated 31-7-1978 decreed the dispute. Aggrieved by the said award, the petitioner preferred an appeal to the Karnataka Appellate Tribunal. Before the Tribunal, one of the contentions of the petitioner was : that as the claim involved in the dispute was obviously based on the audit report and was being made against the petitioner who was an ex-office bearer of the Society, it could have been raised only u/s 69(1) of the Act and not u/s 70 of the Act. In support of this contention, the petitioner relied on a Division Bench decision of this Court in W.A. No. 356 of 1976 decided on 17-10-1978, S.C. Patil v. S.V. Hiremath. In the said Judgment, the Division Bench held that in respect of a dispute falling u/s 69, a

dispute could be raised only under the said provision and any dispute raised u/s 70 of the Act was a nullity. The Tribunal had no other alternative than to hold that the award of the Arbitrator was without jurisdiction in view of the said decision. Accordingly, the Tribunal recorded such a finding. However, it proceeded to dismiss the appeal on the ground of limitation.

4. In view of the dismissal of the appeal on the ground of limitation, and as the petitioner has not made out any good case to the effect that the dismissal of his appeal on the ground of limitation suffered from any patent error of law, in the normal course, we should have dismissed this Petition.

5. However, in view of the finding recorded by the Tribunal in the same order that the award of the Arbitrator was without jurisdiction and therefore void, the petitioner seeks a direction not to enforce the decree on the ground that it is void.

6. There could be no doubt that even though appeal of the petitioner has been dismissed on the ground that it was barred by limitation, if the decree made in the dispute was void, as contended for the petitioner, the petitioner is entitled to raise an objection on the execution side that the decree being void was inexecutable.

7. The Learned Counsel for respondent No. 1, however, submitted that the view taken by the Tribunal that the dispute was without jurisdiction as the same was raised u/s 70 of the Act itself was untenable, for the reason that there was an amendment of Section 70(2) of the Act by which Clause (e) was inserted. It reads :

"70(2)(e).... A claim by a co-operative society for any deficiency caused in the assets of the co-operative Society by a Member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not."

(Underlined by us)

A corresponding amendment was also made to Section 69 of the Act. These amendments came into force on 20-10-1976. The dispute in the present case was raised in the year 1978. Therefore, the Learned Counsel contended that the dispute raised u/s 70 of the Act was competent. In support of this submission, the Learned Counsel relied on the Judgment of this Court in Vasantrao Govinda v. Karnataka Appellate Tribunal 1980 (2) KAR LJ 106. In the said decision, Swami J. held that after the amendment of Section 70 and 69 by Act No. 19/1976, a matter falling u/s 69 of the Act could be the subject matter of a dispute u/s 70 of the Act.

8. As against the above submission, the Learned Counsel for the petitioner relied on the judgment of this Court in The Godachi Large Size Multi Purpose Society Ltd. v. Balaramappa Kamauna, W.P. No. 9622 add 9650 of 1981 DD 26-5-1981. In the said case also the question as to whether a dispute which fell u/s 69 could

be raised u/s 70 of the Act was the subject matter for consideration. After noticing the Judgment in Vasantrao Govinda 1980 (2) KARLJ 106, referred to above, Bhimiah, J, as he then was, declined to follow the judgment on the ground that it came into conflict with the Judgment of a Division Bench of this Court in W.A. No. 356 of 1976 rendered on 17-10-1978, after the amending Act came in to force.

9. If the Division Bench had, in W.A. No. 356 of 1976 considered the effect of the amendment made to Section 70(2)(e) & Section 69, certainly that Division Bench Judgment would have prevailed over Judgment of Swami. J 1980 (2) KARLJ 106. But it may be seen that though the Judgment was delivered on 17 10-1978 two years after the amending Act No. 19 of 1976 came into force, the dispute which was the subject matter for consideration was raised prior to the amendment Act 19/1976. Therefore, the Division Bench Judgment only declared the law as it stood prior to the amendment of Sections 69 and 70 and therefore it could not be said that in view of the said Division Bench Judgment the view taken by Swami. J 1980 (2) KARLJ 106, was not binding. However, as one Learned Single Judge disagreed with the view taken by another Learned Single Judge, the Writ Petition has been referred to a Division Bench u/s 9 of the Karnataka High Court Act for resolving the conflict.

10. We are entirely in agreement with the view taken by Swami, J 1980 (2) KARLJ 106. that in view of the amendment of Sections 69 and 70 of the Act by Act No. 19/1976, no objection could be raised to a dispute raised u/s 70 of the Act on the ground that it should have been raised u/s 69, for, after the amendment a dispute which earlier could have been raised only u/s 69 of the Act could also be raised u/s 70 of the Act.

11. In the result, we hold that the view taken by the Tribunal that the award in question was invalid on the ground that the dispute should have been raised u/s 69 of the Act, is not correct. With the above finding, we make the following order :

(i) Rule discharged.

(ii) Petition dismissed.