

(2006) 09 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 3120 of 1994

Hariram Ambulkar and others

APPELLANT

Vs

Bhatkuli Taluka Sahakari Shetki Kharedi Vikri Sanstha Ltd.,
Amravati and another

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13)
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Gujarat Co-operative Societies Act, 1961 — Section 76
Industrial Disputes Act, 1947 — Section 2, 2(k), 2(s)
Maharashtra Co-operative Societies Act, 1960 — Section 101, 137, 156, 43, 44
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 30(2)

Citation : (2006) 09 BOM CK 0013

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Anil Kadu, for the Appellant; A.M. Gordey, for the Respondent

Judgement

B.P. Dharmadhikari, J.—The petitioners before this Court are employees of respondent No. 1 Co-operative Society. Respondent No. 1 is duly registered under the provisions of Maharashtra Co-operative Societies Act, 1960. Respondent No. 2 is the Industrial Court functioning under provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 hereinafter referred to as MRTU Act, before which the petitioners filed a U.L.P. Complaint and the same has been held to be not maintainable in view of section 91 of Maharashtra Co-operative Societies Act, hereinafter referred to as MCS Act. The said judgment and order of respondent No. 2 Industrial Court is questioned in present writ petition.

2. All petitioners state that they are working as Salesmen in the shop of respondent No. 1 and get the total salary of Rs. 1060/- only per month. On 19-1-1993, respondent No. 1 - Society passed Resolution No. 7 and decided to

recover amount from salary of petitioners on the ground of alleged shortage as mentioned in audit note for the year 1983-84. Accordingly it issued an order dated 29-1-1993 proposing recovery from June, 1993. Total recovery proposed from salary of petitioner Nos. 1 to 3 was Rs. 1608/- while from petitioners No. 4 to 6 it was Rs. 5297/- only. The petitioners therefore filed U.L.P. Complaint No. 508/1993 u/s 28 read with Item 9 and 10 of Schedule IV of MRTU Act and challenged said recovery on various grounds along with the ground that it was also in breach of principles of natural justice. They also moved application u/s 30(2) of the MRTU Act for grant of interim relief. Industrial Court stayed said recovery. Respondent No. 1 employer (society) then appeared and raised preliminary objection before Industrial Court about jurisdiction. They contended that in view of specific remedy u/s 91 of Maharashtra Co-operative Societies Act, Complaint as filed before Industrial Court was not maintainable. Said objection was upheld by Industrial Court vide its order dated 18-1-1994 and it directed present petitioners to file dispute before appropriate forum. This Court has issued Rule on 25-10-1994 but refused to grant any stay of recovery.

3. I have heard Advocate Shri Kadu for petitioners and Advocate Shri Gordey for respondent No. 1 Society.

4. By inviting attention to section 91 of MCS Act, Advocate Kadu has contended that the grievance made by petitioners before Industrial Court was/is an industrial dispute as defined in section 2(k) of Industrial Disputes Act and from scheme of section 91 it is apparent that such dispute is excepted from jurisdiction of Co-operative Court. It is argued that no recovery from salary of an employee can be made on the basis of alleged losses which are reflected only in audit note without giving concerned employee an opportunity to show cause and without conducting departmental inquiry. The recovery proposed is in breach of service conditions and amounts to punishment. He argues that audit note cannot be used against petitioners because it is not prepared after giving them reasonable opportunity and is prepared behind their back. It is argued that dispute u/s 2(k) is triable only before Industrial Court and the respondent No. 2 Industrial Court has refused to exercise jurisdiction available to it in the matter. He has stated that he could not get any judgment of this High Court except Full Bench judgment in 1966 Mh.L.J. 1, Rambhau vs. President, Vinkar Co-operative Society and requested to rely upon judgments reported at 1964 CTD 217, Maroti Yeshwant Kumbhare vs. President, Gurudeo Weavers and 7967 CTD 314, P. R. Mhaskar vs. District Deputy Registrar. Both these judgments are of Maharashtra State Co-operative Tribunals Bombay and deal with admissibility of audit note. I have permitted him to point out the reasoning and application of mind therein.

5. Advocate Gordey on the other hand has contended that as the Society has claimed to recover amount of loss/damages caused to it, Co-operative Court alone has jurisdiction in the matter. His attention was invited to rulings reported at 1984 Mh.L.J. 297, Maharashtra Co-operative Housing Finance Society vs. V. S. Loni and another, Pralhad Vithalrao Pawar Vs. Managing Director and Another, ,

Maharashtra State Co-Operative Agricultural and Rural Development Bank Ltd. and Another Vs. Vasant Mahadeo Gire, and he has tried to distinguish them by urging that explanation clauses in section 91(3) are not considered there. He contends that dispute raised by petitioners is not industrial dispute at all because no cognizance of such dispute can be taken by Labour Court functioning under Industrial Disputes Act unless and until there is reference thereto by Appropriate Government after receipt of failure report after conciliation. He further states that the petitioners cannot directly file such dispute and it is required to be espoused by Trade Union. He also relies upon provisions of section 91 to point out that it begins with non obstante clause and hence, has to prevail on provisions of MRTU Act. He points out that action of respondent No. 1 Society is in furtherance of Audit Note and its own resolution and hence covered u/s 91(3) expl. 2(i) and (iii), no other tribunal can examine it. He therefore seeks dismissal of writ petition.

6. It is, therefore, necessary to first consider language of section 91 of MCS Act itself. Said section reads as under:-

"91.(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a co-operative Court, if both the parties thereto are one or other of the following.

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a de-registered society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45 and any person claiming through such person:

(d) a Surety of member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed u/s 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society or de-registered society or the official Assignee of such a de-registered society; Provided that, an

industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society u/s 73-IC or a society specified by or u/s 73-G, or refusal of admission to membership by a society to any person qualified there for, or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, shall not be deemed to be a dispute for the purpose of this section.

(3) Save as otherwise provided under sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1 - A dispute between the Liquidator of a society or an official Assignee of a de-registered society and the members (including past members, or nominees, heir of legal representative or deceased member) of the same society shall not be referred to the Co-operative Court under the provisions of sub-section (1).

Explanation 2 - For the purposes of this sub-section, a dispute shall include -

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant or employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member by any officer, past officer or deceased officer, by any agent, 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;

(iv) a refusal or failure by a member, past member or a nominee, heir of legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment".

The proviso to sub-section (1) of above section has been added by Maharashtra Amendment Act 20 of 1986 with effect from 21-5-1986. The said provision specifically excludes Industrial Disputes u/s 2(k) of Industrial Disputes Act from section 91 of MCS Act. Sub-section (3) bars jurisdiction of other Courts in relation to Disputes mentioned in sub-section (1) if it is not otherwise provided for u/s 93(2) of MCS Act. Respondent No. 1 Society has relied upon explanation

2(i) and (iii) to contend that claim by society for any demand due to it from its employee or for any loss caused to it by such employee is deemed to constitute a dispute. Section 93(2) is again the provision which begins with non obstante clause which permits Co-operative Court to suspend proceedings before it in relation to any dispute if question at issue involves complicated questions of law and fact, till the question is tried by regular suit instituted by one of the parties or by the society. The question therefore is of understanding the scope of proviso to sub-section (1) and whether sub-clauses (i) and (iii) of explanation 2 of sub-section (3) supersede said proviso. It will be therefore worthwhile to examine what was the view of this Court before this Amendment. As already stated above, the first judgment is of Full Bench of this Court in case of Rambhau vs. President, Vinkar Co-operative Society (supra). In view of subsequent judgments of Hon''ble Apex Court on the point to which I intend to refer little latter, reproduction of paragraph 27 of this judgment which mentions the conclusion reached by Hon''ble Full Bench is sufficient.

"27. The position, therefore, is that the dispute referred to the Registrar under sub-section (1) of section 91 must be such as a Civil Court can take cognizance of and try. Like a Civil Court, the Registrar cannot grant any relief outside the contract of employment. He cannot, therefore, try any matter in which a demand is made for change in the conditions of service or for reinstatement of an employee whose services had been terminated. By and large, the Co-operative Societies Act and the Industrial Disputes Act provided for the settlement of different classes of Disputes. Even though therefore, the words "any dispute " in sub-section (1) of section 91, are very wide, they will have to be given a limited meaning, for the reasons which I have given above. These words mean any dispute which the Registrar is competent to try and decide"

7. The 1984 judgment of Division Bench of this Court in case of Maharashtra Co-operative Housing Finance Society vs. V. S. Loni and another (supra) does not consider this Full Bench judgment. However it considers latter judgments of Hon''ble Apex Court on this issue. This Div. Bench judgment also makes reference to the judgment of Hon''ble Apex Court in case between Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and also to the Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, . Hence instead of making reference to these two judgments of Hon''ble Apex Court independently, I find it appropriate to consider the same along with 1984 Div. Bench judgment of this Court.

Respondent V. S. Loni in Maharashtra Co-operative Housing Finance Society vs. V. S. Loni and another (supra), was branch manager with petitioner society when his services were terminated by order dated 4-2-1981. Grievance made by him about his termination was held to be a dispute within the meaning of section 91(1) of MCS Act by Registrar of Co-operative Societies on 5-4-1982 and it directed that the dispute should be referred to Co-operative Court No. 1, Bombay. Initially respondent employee made various prayers which in fact

demanded reinstatement back in service. However latter on those prayers were amended and he sought damages equivalent to his last emoluments till he secured alternate employment. The observations of Div. Bench in paragraph 4 of the report show that respondent employee sought relief of reinstatement and failing it, relief of damages. The Employer society approached High Court under Article 226 of Constitution contending that Co-operative Court did not have jurisdiction to hear and decide such dispute. The Employer society argued that such a claim cannot be entertained or granted even by Civil Court. It also appears that the Employer also suggested that the dispute between parties was essentially an industrial dispute which could be properly adjudicated upon by the machinery provided under the Industrial law. The Div. Bench in paragraph 14 notices the judgment of Hon"ble Apex Court in case of Co-operative Central Bank (supra) and found that the dispute relating to alteration of conditions of service could not be a dispute touching the business of a co-operative society under the Andhra Pradesh Co-operative Societies Act. The Hon Apex Court noticed that such relief about alteration of number of conditions of service could only be granted by an Industrial Tribunal dealing with Industrial Dispute. Hon"ble Apex Court also noticed that section 61 of Andhra Act by itself did not contain any clear indication that the Registrar could not entertain a dispute relating to alteration of conditions of service of employees of a registered society and further observed that meaning given to expression "touching the business of society", in its opinion, made it very doubtful whether a dispute in respect of alteration of conditions of service could be held to be covered by this expression.

The Div. Bench further noticed that in case of Gujarath State Co-operative Bank (supra), employee removed from service was covered by Bombay Industrial Relations Act and he approached Labour Court for relief of reinstatement. The Employer society contended that Registrar under Cooperative Society's Act alone had jurisdiction in the matter. The Hon Apex Court noticed that employee was not enforcing any term of contract of employment and he alleged that his services had been unfairly and vindictively terminated. The Hon"ble Apex Court also found that "The rights and reliefs which he is claiming could not be determined and granted by a Civil Court in a suit." Following observations of Div. Bench in paragraph 17 are important:

"17. Noticing the new industrial jurisprudence that has arisen the Supreme Court observed that the Civil Courts lack jurisdiction to make contracts for parties and the Civil Courts reach their limit of power when they enforce contracts which the parties had made. But the authorities created by the laws enacted for the purpose of adjudication of Industrial disputes could not only alter terms of contract between the employer and the employee but in certain cases impose a new contract upon the parties. It was essentially an industrial dispute which on the facts in that case was covered by the Bombay Industrial Relations Act. The Supreme Court accepted a submission made by a counsel appearing before it that: "if the Court is incapable of granting the relief claimed, normally, the proper construction would be that it is incompetent to deal with the matter."

In paragraph 20, the Div. Bench found that the questions relating to payment of wages, appointment and removal of servants were the matters not "touching the business" of society. In paragraph 23, Div. Bench also rejected the argument that such a dispute was covered by the term "management". It has noticed that any dispute which cannot be resolved by Registrar, is not covered u/s 91 of MCS Act. It has concluded that in Gujarat State Cooperative Bank (supra), Hon"ble Apex Court has held that a dispute involving a claim for reinstatement in service of an employee of co-operative society was neither touching the business of society nor touching the management of society. The Div. Bench therefore dismissed the petition and conclusions drawn by it are mentioned in paragraph 27 of the report. The Div. Bench held that claim of employee for reinstatement in service and/or a claim by employee for alteration of conditions of service can be entertained and decided by the adjudicating authorities under Industrial law.

8. Division Bench in the 1984 judgment (supra) also makes reference to unreported Div. Bench judgment dated 10-1-1974 in Spl. C.A. No. 1734 of 1969, W. S. Pasarkar vs. Ashok Sahakari Sakhar Karkhana Ltd. in paragraph 25 and 26 of its report. In paragraph 26, it notices that employee in this earlier Division Bench judgment was found to be rendering maintenance and repair service to the machinery and therefore earlier Div. Bench noted that his activity or sphere of employment would directly touch the main business activity of the society. Earlier Div. Bench therefore found that purported wrongful dismissal would give rise to dispute touching the business of society. The 1984 Division Bench found that this was directly in conflict with law laid down by Hon"ble Apex Court in Gujarat State Co-operative Bank case (supra).

Gujarat State Co-operative Bank case (supra) is distinguished while taking somewhat similar view by Div. Bench judgment of Rajasthan High Court in Sawai Madhopur Co-op. Marketing Society Ltd. Vs. Rajasthan State Co-operative Tribunal, Jaipur and Another, . Following observations made in paragraph 12 onwards are self speaking:

"12.....The ambit and import of the word "touching" is very wide and it includes any matter which relates to the management of the society more particularly when the Legislature deals with the matters relating to officers and employees in the provisions of the Act and the Rules then it can be said that the matters of suspension or termination of service of officers and servants touches the management of the society"; Having regard to the provisions of the Rajasthan Act and the Rules made thereunder, in our opinion, a wider meaning has to be given to the expression touching the management of the society so as to cover within its encompass officers and employees of the society. Such a wider meaning in our opinion, is clearly contemplated by the provisions which we have considered and discussed above it appears that attention of their Lordships of the Supreme Court was not drawn to the provision of section 76 under Chapter VII of the Gujarat Act and the Rules made thereunder. It is noteworthy that whether any dispute between a society and its officers or servant relating to service

whether touches the management of the society or not did not fall for consideration in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and the decisions turned on the respective provisions of the Acts.

13. In Deccan Merchants Co-operative Bank Ltd. (supra) the dispute was between a tenant and member of the Bank in respect of the building which was acquired by the Co-operative Bank. It was held that it is not a dispute touching the business of the Bank and the word business was held to be used in narrower sense in sub-section (1) of section 91 of the Maharashtra Co-operative Societies Act, 1961. It was observed that the word business means the actual trading or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and the bye-laws and in the context of the five kinds of dispute mentioned in sub-section (1) of section 91 it was held that the word "business" does not mean affairs of a society because election of office bearers, conduct of general meetings and management of a society would be treated as affairs of a society.

14. In Co-operative Central Bank Ltd. vs. Additional Industrial Tribunal, A. P. (supra) the dispute was with regard to alteration of conditions of service and the dispute was not within the conditions of service. Change in conditions of service is beyond the scope of the Act and the Rules so it was held that alteration of conditions of service is not a dispute touching the business of the society. Such a dispute is not contemplated to be dealt with u/s 62 of the Andhra Pradesh Co-operative Societies Act. There was a charter of demand regarding alteration of condition of service and the Registrar was required to decide the dispute in accordance with the provisions of byelaws.

15. Reference may also be made to a decision of Supreme Court in U.P. Cooperative Cane Union Federation Ltd. and Another Vs. Liladhar and Others, it was held in that case that a dispute between an employee other than an officer of a co-operative society and the society arising out of a disciplinary proceeding does not fall within the ambit of Rule 115. In order to attract Rule 115 it must be shown that the dispute is one touching the business of the society and that it is a dispute between the society and any officer of the society. Both the conditions have to be cumulatively fulfilled before Rule 115 is attracted which would result in ouster of the jurisdiction of the Civil Court in respect of dispute in view of the provision contained in Rule 134. That was a case of a godown keeper and it was held that he is not an officer and it was also held that disciplinary proceedings resulting in dismissal of a godown keeper, does not give rise to a dispute touching the business of the society. This has not been examined in this case as to whether a dispute of the nature in question is a dispute touching the management of the society. As Rule 115 only contemplated a dispute touching the business of the society. The rule was framed u/s 43 of the U. P. Co-operative Societies Act, and under the rule making power Rule 115 was made. In para 19

of the judgment Their Lordships of the Supreme Court after considering the provision of section 70 of the U. P. Co-operative Societies Act, 1965 analogous to section 75 of the Rajasthan Act made an observation that the Legislature in terms excluded a dispute relating to disciplinary action by the society against the paid servants of the society from the purview of the compulsory arbitration. It is legislative exposition of the topic under discussion. It is significant to note that there is no such exclusion u/s 75 of the Rajasthan Act and their lordships of the Supreme Court rested the judgment on the second limb of the submission that the dispute must be between the co-operative society and its officer and godown keeper could not be styled as an officer of the co-operative society as held by their lordships.

16. In the light of the consideration which we have made above, it is not necessary to deal with other case-law which has been referred to by the learned counsel for the parties as the cases do not directly deal with the controversy in question. Thus having regard to the provisions of the Act and the Rules as considered above, we are clearly of the opinion that the dispute in question relating to validity of the suspension and termination is a dispute touching the management of the society and falls within the ambit of section 75 and we agree with the view taken by the learned single Judge."

9. Hon"ble Rajasthan High Court has also accepted that a legislation in terms can exclude a dispute relating to disciplinary action by the society against the paid servants of the society from the purview of the Co-operative Court. Full Bench judgment in Rambhau vs. President, Vinkar Co-operative Society (supra) and Division Bench judgment in Maharashtra Co-operative Housing Finance Society vs. V. S. Loni and another (supra) clinch the issue insofar as this High Court is concerned. The phrase dispute touching the business or management of society is to be given restricted meaning and therefore, it covers the dispute which can be taken cognizance of by Civil Court and hence by Co-operative Court. This test of maintainability of dispute before Civil Court as civil suit is not applied by Rajasthan High Court.

Reference can now be made to Division Bench judgment after 1986 amendment to section 91 MCS Act. It is Pralhad Vithalrao Pawar Vs. Managing Director and Another, . There the persons raising dispute were not either "workman" u/s 2(s) of Industrial Disputes Act or "employee" u/s 3 (13) of Bombay Industrial Relations Act. Both of them were terminated by their employer societies. They approached High Court directly, and after taking review of various judgments of Hon"ble Apex Court and of its own, the Division Bench observed that remedy u/s 91(1) of MCS Act is substitute for the remedy which could have been available before the Civil Court and as both were not covered by the Labour legislation or were not government/public servants, remedy if any, available to them was to move the Co-operative Court by filing the dispute u/s 91(1) of MCS Act and claim relief for damages for wrongful termination of service or for declaration that termination was bad and for continuation in service. In paragraph 6, the Division

Bench has reproduced the proviso added by Maharashtra Act 20 of 1986 and thereafter in paragraph 13 recorded :-

"Thus, the Supreme Court in case of Gujarath State Co-operative Land Development Bank Ltd vs. P. R. Mankad (supra) and the Division Bench of this Court in case of Maharashtra Co-operative Housing Finance Society Ltd (supra) concluded that the claim which is not entertainable by Civil Court u/s 9 of the CPC cannot be allowed to be entertained u/s 91 of the Co-operative Societies Act. This is the restraint on exercise of jurisdiction by the Co-operative Court u/s 91. It really deals with the relief which can be granted. It does not lay down the proposal that dispute between the terminated employee or a Co-operative Society and the society or a dispute about any of the service conditions of such an employee is not entertainable u/s 91. If the employee is covered by the definition of "Workman", dispute will have to go before the Labour Court and if the employee is not covered by the term "Workman", then the dispute will have to go before the Co-operative Court. If the parties are Co-operative Society and its employees, Co-operative Court will have all the jurisdiction but will not grant a relief that the Civil Court would not have granted. The Supreme Court in case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and in case of Gujarath State Co-operative Land Development Bank Ltd (supra) came to the conclusion that the claim based upon contracts between the employees of the Co-operative Society and the Society or the claim for damages arising out of breach of such contracts can be a part of dispute touching the "management" of the Cooperative Society within the meaning of section 91 of the Co-operative Societies Act and such a claim would be entertained and decided by the machinery provided under the said Act. This view is strengthened after the amendment to section 91(1)(a) by incorporating the proviso, referred to hereinabove."

Learned Single Judge in Maharashtra State Co-Operative Agricultural and Rural Development Bank Ltd. and Another Vs. Vasant Mahadeo Gire, has considered challenge to order of transfer and found that, in view of prayers made and grounds raised, as challenge to such orders was possible before Civil Court, dispute u/s 91 of MCS Act was maintainable. The law and view taken in Division Bench Judgment in 1984 judgment in case of Maharashtra Co-operative Housing Finance Society vs. V. S. Loni and another (supra) has been followed. Paragraph 27 of this 1984 judgment has been reproduced and in paragraph 10, Learned Single Judge found that proviso to sub-section (1) of section 91 of the MCS Act excludes certain classes of disputes but employee before it was neither "workman" nor "employee" to enable him to approach either Labour Court or Industrial Court. Hon"ble Apex Court itself has recently in Morinda Cooperative Sugar Mills Ltd. Vs. Morinda Coop. Sugar Mills Workers Union, taken the review of practically all its earlier judgments and has held that suit filed by union claiming dearness allowance on the wage and fixed allowance in accordance with third wage report was very much maintainable because the issue cannot be said to be covered by expression "touching the business of the society".

10. Hon''ble Full- Bench has in *Rambhau vs. President, Vinkar Cooperative Society (supra)* given restricted meaning to word "dispute" in section 91 of MCS Act and has observed that Industrial Disputes Act operates and governs settlements in relation to different types of disputes. It has noticed that only those matters where Registrar can grant relief as per law are covered by the word "dispute". Therefore only where Civil Court would have taken cognizance of the grievance of employee, the said grievance is covered u/s 91(1) and is required to be filed before Co-operative Court. The Co-operative Court is subject to all limitations which the Civil Court is already subject to in this respect. This interpretation is before 1986 amendment by which proviso mentioned above has been added after sub-section 91(1)(e) in MCS Act. The 1984 judgment of Division Bench of this Court in case of *Maharashtra Cooperative Housing Finance Society vs. V. S. Loni and another (supra)* even in the absence of proviso has observed that certain disputes can only be entertained and decided by the adjudicating authorities under relevant Industrial Law. It found that issue regarding payment of wages on account of termination of services cannot be a subject matter of dispute touching the "business" of Society and has relied upon paragraph 32 and paragraph 14 (ii) of *Gujarath State Co-operative Bank's case (supra)*. The subsequent Division Bench Judgment in case of *Pralhad Pawar* also holds that if employee is covered by the definition of "workman" or "employee", dispute will have to go before the competent Labour Court or Industrial Court. In the facts of present case, it is not in dispute that the petitioners who approached Industrial Court are all "workman" as defined in section 2(s) of Industrial Disputes Act and hence, it is apparent that their dispute can be filed before the Industrial Court if it is held to be a forum competent for that purpose.

11. Next question which falls for consideration is whether the dispute or grievance made by petitioners is an "Industrial Dispute" as defined in section 2(k) of Industrial Disputes Act. It reads: "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with conditions of Labour, of any person". Such dispute must be real dispute between the parties to it so as to be capable of settlement or adjudication if one party to it gives necessary relief to other and it must be in relation to terms of employment or conditions of Labour. Both these ingredients are satisfied in present matter. Terms of employment of petitioners are regulated by various labour laws including model standing orders framed under Industrial Employment Standing Orders Act. Their wages cannot be reduced or deducted and no recovery can be effected from their wages without giving them appropriate opportunity in accordance with principles of natural justice and till they are found guilty in disciplinary proceedings for alleged misappropriation and corresponding loss or damage allegedly caused to Employer/Society. The audit note is not sacrosanct and cannot be used against petitioners without giving opportunity to them. The above referred two judgments of State Co-operative Court consider this angle

but I find it wholly unnecessary to discuss that issue here. The issue can be considered by competent Court where parties will lead evidence to substantiate their challenge. The contention of respondent/employer Society that amount is due to it on account of audit note cannot be accepted to hold that Society can recover the amount from petitioners only on the basis of such audit note without giving them any opportunity. In view of various judgments of Hon''ble Apex Court and of this Court already mentioned above making reference to "disputes about service conditions or improvements therein", such dispute cannot be treated as one covered by (or touching) either "management" or "business" of Society. However the recovery is claimed to be on account of claim towards damage or loss caused by petitioners to the Society. Reliance is therefore upon provisions of section 91(3), explanation 2(i) or (iii). Words "whether such loss be admitted or not" in clause (iii) are being highlighted. Question is whether the position mentioned above that such dispute is neither touching the business nor touching the management of Society is to be ignored or whether proviso added in May, 1986 to section 91(1) of MCS Act is to be given its full effect or can it not be said that what is intended by that amendment stands diluted because explanation clause of section 91(3). Intention of giving by one hand and taking away by another hand cannot be generally attributed to legislature more particularly when the amendment has come after said provisions were already interpreted to exclude Industrial dispute from jurisdiction of Co-operative Court. Though Industrial Court has not at all taken into consideration the scope of Item 9 of Schedule IV of MRTU Act, it has considered the above-mentioned explanation to record its finding and also found that there is no Industrial dispute. The effect of arguments of employer Society is to create inconsistency between these two clauses of same section in such situation. It also militates with the express findings on the issue by Division Benches, Full Bench of this Court and of Hon''ble Apex Court. However, bare perusal of section 91 is sufficient to repeal such contention. Provision to section 91 added in May, 1986 speaks of entire section 91 and provides a deeming fiction for entire section itself. Subsection (3) uses the words "any dispute referred to in sub-section (1)" and therefore clarifies that "dispute" to be understood for the purposes of bar of jurisdiction of other Court or Tribunal has necessarily to be a dispute u/s 91(1) and therefore not an Industrial dispute. The explanation of section 91(3) cannot be read as overriding this scheme of section 91. Language employed in Explanation 2 of sub-section (3) i.e. "For the purposes of this subsection, a dispute shall include" again speaks of that sub-section only and though there is again a deeming fiction in said explanation, this deeming fiction is restricted to disputes which can be covered under sub-section (3) itself. It cannot reach proviso to section 91(1) added in May, 1986 and militate with deeming fiction created there substantively for entire section including sub-section (3). In effect, it follows that entire sub-section (3) is in a way occupying subordinate or secondary position in the scheme of section 91. The Hon''ble Full Bench of this Court has already excluded Industrial disputes from cognizance of Co-operative Court in 1970 when only explanation to sub-section (3) was available and proviso

containing deeming fiction in section 91 did not exist. There is nothing pointed out to this Court to take different view of the matter. The amendment effected in May, 1986 by which said provision containing deeming fiction has been added to section 91 is not a circumstance in favour of respondent Society but it puts controversy beyond doubt and is a circumstance in favour of present petitioners. The purpose of amendment only appears to be to put the otherwise clear situation beyond doubt. The unambiguous language of said proviso and its placement in sub-section (1) clearly shows the intention of legislature to put Industrial disputes out of jurisdiction of Co-operative Court.

12. There is one more argument of Advocate Shri Gordey. He states that in view of scheme of Industrial Disputes Act, 1947 dispute of present nature cannot be taken cognizance of by Conciliation Officer or by Tribunal unless and until it is espoused by Trade Union. According to him as grievance of petitioners is not so espoused, the Labour Court or Industrial Court functioning under Industrial Disputes Act 1947 cannot entertain it and hence, it is not Industrial Dispute and Co-operative Court alone is competent to decide it. However, the proviso to section 91(1) of Act only requires Industrial Dispute as defined in section 2(k) and fact whether such dispute is espoused by Trade Union or not is totally irrelevant. Section 2(k) does not speak of any such support of Trade Union and, in any case, here petitioners have invoked provisions of section 28 read with section 30, Item 9 Schedule IV of MRTU and PULP Act 1971. The arguments are therefore unsustainable.

13. In the result, Industrial Court's order dated 18-1-1994 in U. L. P. complaint 508/1993 is accordingly quashed and set aside. Said Complaint is restored back to the file of Industrial Court, Amraoti with direction to it to try and decide the same on merits as expeditiously as possible and in any case within period of one year from the date of communication of this order to it. Rule is made absolute accordingly. However, in the circumstances, there shall be no order as to costs.