

(2016) 11 RAJ CK 0076

In the Rajasthan High Court

Case No : Special Appeal(Writ) No.1321 of 2013 in Civil Writ Petition No.18575 of 2012

Hemant Kumar Saraswat

APPELLANT

Vs

The Jackson Co-operative Credit Society

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, Section 2(a)(1), Section 2(bb)

Citation : (2017) 152 FLR 195

Hon'ble Judges : Mr. Navin Sinha, C.J. and Vijay Kumar Vyas, J.

Bench : Division Bench

Advocate : Mr. Suresh Kashyap, Advocate, for the Appellant; Mr. Gobind Ram D. Talreja assisted by Mr. A.K. Pareek and Mrs. Rani Bhandari, Advocates, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Mr. Navin Sinha, C.J. - The present appeal assails order dated 13.09.2013 allowing S.B. Civil Writ Petition No.18575/2012. The Learned Single Judge set aside the Award dated 09.07.2012 of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur directing reinstatement with 25% back wages, holding that the Central government was not the "appropriate Government" for making the reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act").

2. Learned Counsel for the Appellant submits that membership of the respondent Society is restricted to railway employees only. An employee ceases to be a member upon retirement. The bye-laws provide that the General Manager of the western railways was the nominated President of the Society, and the Financial Controller and Chief Accounts officer were the nominated Vice President and Financial advisor of the Society. The loans given by the Society to its members were recovered by deduction from their salary by the railways, incorporated in their pay slips. The railways charged a fee from the Society for making such

deduction. The Society therefore functions under the control and authority of the railways. The State Government cannot interfere with the management and functioning of the Society. The Circular dated 1.5.1912 issued for establishment of the Society makes it evident that it was established at the behest of the officers of the western railways.

3. Under Section 38 of the Multi-State Co-operative Societies Act, 2002 (hereinafter called "the Multi-State Cooperative Act"), the President alone was authorised to represent the Society at meetings with other societies. Referring to Section 48 it was submitted that the Central Government had the right to make such number of nominations to the Board of Directors of the Society dependent on the subscribed share capital by it. Section 77 empowered the Central Government to direct special audit into the affairs of a multi-state co-operative society. The Central Government could give directions to the Society under Section 122 in public interest or for proper implementation of the Act and that under Section 123, the Central Government could supersede a Society and appoint an Administrator if it was negligent in performance of duties under the Act or was acting prejudicial to the interest of the Society or its member.

4. Evidently the Society is fully controlled by the western railway and the Central Government. The reference had therefore rightly been made by the Central government and the Learned Single Judge ought not to have interfered with the Award on grounds for lack of jurisdiction.

5. It was lastly submitted that no objection was taken by the respondents before the Labour Court that it was the State government alone which was the "appropriate Government". Reliance was placed on 1984 LAB. I.C. 1682 (SC) (Regional Provident Fund Commissioner, Karnataka v. Workmen) 2002(95) FLR 974(Delhi) (DB) (Municipal Corporation of Delhi v. Mahavir) and 2006(108) FLR 1101 (L.K. Verma v. H.M.T. Ltd.). Before us also no other issue was urged with regard to the Award except the question regarding "appropriate government" to make the reference.

6. Learned Counsel for the Respondents submitted that the arguments are sans pleadings. An objection was raised before the Labour Court with regard to the incompetence of the reference by the Central Government. The Society was not an industry carried on under the authority of the Central government under Section 2(a)(i) of the ID Act and it was neither controlled by the railways. The authority to make the reference would lie with the State government alone under Sub clause (ii). Reliance was placed on (2007) 4 SCC 685 (Bharat Cooperative Bank(Mumbai) Ltd. v. Co-operative Bank Employees Union) and 2012(132) FLR 282 (Bombay), (Rajendra Kondiba Darekar v. General Manager, The Saraswat Co-op. Bank Ltd., Mumbai).

7. We have considered the submissions on behalf of the parties.

8. The Society was established and registered in the year 1912 under the Co-operative Societies Act by the employees of the western railway with its principle

office at Bombay and the Board of Directors had the power to open sub-branches in the States specified. The object of the Society was to encourage thrift, self-help and cooperation amongst the members, to create funds for the purpose of making advances to members of the Credit Society at moderate rates of interest, to receive sums on deposit at such rate or rates of interest, as may be decided by the Board of Directors and to generally carry on the business of a Co-operative Credit Society, subject to the provisions of the Act. Membership was open to all employees of the western railway. The capital of the Credit Society was to be raised by allotment of shares and the Society could borrow money or receive deposits from members and the power to carry out all transactions under the bye-laws were vested with the Board of Directors.

9. A person desirous of membership to the society was required to apply with the stipulated fee and the right to refuse membership vested with the Board of Directors. Membership could cease by resignation, ceasing to be an employee of the western railway or expulsion, bankruptcy and death. The expulsion of members was to be by not less than two-third of the members present in the meeting of the general body. The day to day management of the Society vested in the President, Financial Adviser and Chief Accounts Officer for the time being of the western railway. The affairs of the Credit Society were controlled by a Board of Directors at Mumbai. The supreme authority of the Society was the General Body. Subscription by monthly thrift deposit was compulsory. The Multi State Co-operative Act came into force on 19.08.2002 and applied to all Co-operative Societies with objects not confined to one State. Section 22 of the Multi Co-operative Act provides for conversion of a Cooperative Society to a Multi State Co-operative Society. The Society is a body corporate under Section 9 of the Multi-State Co-operative Act with perpetual succession and a common seal having power to hold and acquire, hold and dispose both movable and immovable property, enter into contracts, institute and defend Suits and do all such things necessary for the purpose for which it was created. The Central government is one of the persons/entity also entitled to membership of a Multi State Co-operative Society under Section 25. The Central government is entitled to have its nominees in the Board of Directors of the Society in relation to the number of shares held by it. The Central Government may provide assistance under Section 61 on a request made by a Multi State Co-operative Society. Section 77 empowers the Central Government to order special audit in specified cases. Section 122 empowers the Central Government to give directions to a co-operative Society. The Central Government has framed the Multi State Co-operative Societies Rules, 2002 under Section 124.

10. Section 2(a)(i) of the ID Act, in its relevance to the present controversy, provides that the "appropriate Government" in relation to a industrial dispute would be the Central Government if the industry was carried on by the Central Government or under the authority of the Central Government. The seminal question for consideration is if the Society can be said to be carried on under the authority of the Central Government.

11. The meaning of the phrase "carried on under the authority of the Central Government" has been the subject of judicial consideration earlier as already noticed by the Learned Single Judge. However for convenience we consider it prudent to quote the relevant extract again from (2001) 7 SCC 1 (SAIL v. National Union Waterfront Workers) as follows :-

"30. From the above discussion, it follows that the phrase "any industry carried on under the authority of the Central Government" implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government company or other government company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question.

39.....Such an authority may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power...."

12. Reference may also be made to (2010) 8 SCC 480 (Tata Memorial Hospital Workers Union v. Tata Memorial Centre) which considered the principles laid down in SAIL (supra). The Tata Memorial Hospital was established in 1940 as a public charitable trust, managed by its Board of Trustees. It was amalgamated with the Indian Cancer Research Centre under an agreement dated 06.01.1966 with the Government of India and registered as a Society under the Societies Registration Act, 1860. Under the rules and regulations of the Society, the administration and management vested in a governing Council consisting of 4 members to be appointed by the government of India and 3 members by the trustees of the Trust and the Director of the Centre (ex officio). The question for consideration was whether the Trust functioned under the authority of the Central government as its delegate or an independent entity. Relying on (1969) 1 SCC 769 (Heavy Engineering Mazdoor Union v. State of Bihar) it was observed that even if a minister appoints the Directors, gives directions, calls information or supervises business, that will not make the industry an agent of the government. It was held that the properties belonging to the Society vested in the governing body under Section 5 of the Societies Registration Act as it was not a body corporate capable of holding property in its name. After noticing the rules and regulations of the Society and that the administration and management vested in the governing Council as also its decision was final it was held as follows :-

"78. Hence we have to conclude that even on the test of control and management of the Hospital and the Centre, they are functioning independently under the first respondent Society. They cannot be said to be "under the control" of the Central Government. In the circumstances the State Government shall have to be held as the appropriate Government for the first respondent for the purpose of the ID Act and consequently the MRTU Act."

13. The appellant was a clerk in the Branch Office of the Society at Ratlam and was terminated way back in 1989 for unauthorized absence leading to the reference in question. Relying on 2001(91) FLR 182, (Steel Authority of India Ltd. v. National Union Water Front Workers), quoting extensively from the same, the learned Single Judge after noticing the bye-Laws of the Society observed that Officers of the Railway were only the ex officio members of the Board of Directors. There was nothing on record to hold that the Society was being run under the authority of the Central Government and not by the virtue of its own Board of Directors/General Body under the Bye-Laws and thus it was the State Government alone which was competent to make the reference granting liberty to the appellant to move before the Conciliation Officer afresh as the merits were not being considered in view of the limited submissions on behalf of the parties.

14. Adverting to the facts of the present case, the Society is a body corporate having perpetual succession and a common seal. The ultimate authority rests with the general body of the Society and the day-to-day management vests in a Board of Directors. Under Section 42 of the Multi State Co-operative Act the Society was required to devise procedures for Association of the representatives of employees in the management decision making process. The Central Government holds one Share only for Rs.10/- as compared to a subscribed capital of Rs. 111,60,76,676/-. The mere fact that the President, Vice- President and Financial Advisor of the Society by nomination may be the incumbent officers of the western railway or that the railways had been given the authority to make deduction of loan given by the Society from salary of a member cannot mean that the Society was being run under the authority of the Central Government rendering the Central Government the appropriate government to make the reference. Similarly the fact that the Central Government may have certain statutory supervisory powers over a Society under the Multi-state Co-operative Act will not mean that the Society was functioning under the authority of the Central Government.

15. The respondents had specifically raised the issue for incompetency of the reference by the Central Government before the Labour Court evident from the discussions in this regard in the order under appeal itself.

16. Regional Provident Fund Commissioner, Karnataka (supra) has no relevance to the present controversy as in view of the provisions of the Provident Funds Act, it was held that the Central Government was the appropriate Government since the management vested with the Central Board which could also give directions to the State Board which would act as its agent. Mahavir (supra) also has no relevance to the present controversy as the question involved therein was with regard to the Lieutenant Governor having powers to make reference in relation to an industrial dispute in a Union Territory. L.K. Verma (supra) has no relevance to the present controversy.

17. In Bharat Co-operative Bank(Mumbai) Ltd. (supra), the question was with regard to the meaning of the definition "Banking Company" under Section 2(bb)

of the ID Act holding that all other banks as specified therein were covered by Section 2(a)(ii) and therefore with regard to a Multi-State Co-operative Society not covered by the definition of Section 2(bb), the appropriate Government would be the State Government.

18. In the entirety of the discussion, we therefore find no reason to interfere with the order of the learned Single Judge.

19. The appeal is dismissed.