

(1984) 10 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Appeal No. 1411 of 1982

Jagdish Singh

APPELLANT

Vs

Registrar, Co-operative Societies, Delhi and Others

RESPONDENT

Date of Decision : 08-10-1984

Acts Referred:

Citation : (1985) ILR Delhi 352

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : Ramesh Chandra and A.S. Chandhiok, for the Appellant;

Judgement

Sachar, J.

(1) This is a reference to a larger bench made by Chadha, J. by his order of 22nd March, 1984. The Petitioner in course of his employment with respondent No. 3 Bank was given a substantive rank of Deputy Manager on Feb. 3, 1980. Later on disciplinary proceedings were started against the petitioner. He was given a charge-sheet on 29th December, 1980, and an enquiry was held and ultimately the petitioner was informed on 27th January, 1981 that his services had been terminated as a result of disciplinary proceedings with immediate effect. His appeal to the Board of Directors also failed.

(2) The petitioner, Therefore, moved an application u/s 60 of Delhi Co-operative Societies Act, 1972 (to be called Delhi Act) seeking to raise a dispute about the termination of his services. The Deputy Registrar by his order dated 28th January 1982 held that since petitioner was a paid employee of the bank working as a Deputy General Manager he is not permitted to raise a dispute u/s 60 of the Delhi Act and the order of termination of services of the petitioner is nothing but disciplinary action taken by the bank against its employee. He, Therefore, without going into the merits of the case held that the application for arbitration u/s 60 was not maintainable. The petitioner Therefore, came to this Court by means of writ petition. Before the learned Single Judge a reference was made to

Chander Nagar Co-operative House Building Society Ltd. and Another Vs. Ashok Ohri, wherein Avadh Behari, J. has held that the legislature has ousted Jurisdiction of the Civil Court only in respect of disputes which are specified in sub-section (2) and to which the parties must be such as are mentioned in sub-section (1) of Section 60. The learned Judge was of the view that what is a dispute within Delhi Act is defined in sub-section (2) of Section 60 of the Delhi Act and it is only if dispute is covered by three categories mentioned in that sub-section that the matter could be called a disputes touching the constitution, management and business of a society. He also held that definition given in sub-section (2) is exhaustive.

(3) As categories mentioned in sub-s. (2) of Section 60 of the Act does not mention of disputes regarding the termination of the services of an employee, the claim of the petitioner would be straightaway barred on the judgment of Avadh Behari, J. Chadha, J. however, was not inclined to agree with it and that is why he referred this matter to the larger Bench.

(4) We have gone through the judgment of Avadh Behari, J. and though the counsel for respondent has made some effort to support the judgment, we cannot accept and we say with respect, its correctness. We cannot read sub-s. (2) of S. 60 as a definition section which defines disputes which alone could be referred to arbitration u/s 60. This interpretation completely ignores the various disputes which are mentioned in sub-s. (1) and which shall be referred to arbitration u/s 60. If disputes mentioned in sub-section (2) of Section 60 are the only ones which could be referred to arbitration, the whole of sub-s. (1) becomes otiose and it is impermissible to attribute any superfluity to the legislature. Also it would make no sense as to why sub-s. (1) was enacted at all if the disputes which could be referred are only those covered by sub-s. (2). So interpreted all the disputes referred to in sub-s. (1) of Section 60 would become non-referable. For example clause (c) of sub-s. (1) of Section 60 provides for a reference of disputes between a society of its committee and any past committee and any officer or employee. Sub-s. (2) does not cover any such dispute. Similarly a dispute between the society and another cooperative society or with a liquidator of any other society mentioned in clause (d) of sub-s. (1) of Section 60 would also not be referable on the reasoning of Avadh Behari, J. This total emasculation of sub-s. (1) of Section 60 is an impermissible interpretation. We are of the view that when deeming language was used in sub-s. (2) all that it means is that notwithstanding that the categories mentioned in sub-s. (2) may not even satisfy the test of being disputes touching the constitution or business of the society they shall be deemed to be disputes which they would not be but for the deeming provision. Thus clause (b) dealing by a claim by a surety against a principal debtor, could never be included as a dispute touching the constitution, management or business of the society, and would not have been referable under Sub-s. (1) of Section 60. Hence, the necessity to enlarge the scope of items which could be referred to arbitration. Similarly, a dispute regarding election of office bearer of society had been held by some courts not to be

covered in sub-s. (1) of Section 60. The misconception in the judgment of Avadh Behari, J. has arisen from the unfortunate draftsmanship by which similar provision in other Acts has been put in different but totally unnecessary language in Delhi Act. In Acts of other States e.g. Maharashtra Act after providing for situation is sub-s. (1) Explanation (2) has been added to say that for the purpose of this sub-section a dispute shall include and there are reproduced almost exactly provisions similar to clause (a) and (b) of sub-section (2) of Section 60 of Delhi Act. Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . Same is the position and Explanation added to subs. (1) of Section 61 of Andhra Pradesh Co-operative Societies Act. (See Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others,). Of Course, sub-s. (2) of Section 60 of Delhi Act has changed the phraseology to making the disputes mentioned therein deemed to be disputes, but it cannot be taken that they are the very disputes which can be referred and sub-s. (1) has become redundant. The word dispute as not been defined in the Act nor in sub-s. (2). [The term "dispute" means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.] (Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others,). In our view Avadh Behari, J. has taken a very narrow view on the mere absence of the word "also" in sub-section (2) because he accepts that if the word "includes" and "also" were to be found in sub-section (2) it would have been permissible to regard categories of disputes mentioned in sub-s. (2) as additions to those mentioned in sub-s. (1). But then how can we read the statute in such a manner that the whole of sub-section (1) of Section 60 should become a dead letter and a useless appendage in the Act which is the assent if the interpretation of Avadh Behari, J. was to be accepted. By now it is recognised all around that Co-operative movement should be encouraged as well that as many disputes as possible should be settled in the forum by arbitration. To accept the interpretation of Avadh Behari, J. would be to seriously strangle the development of arbitration machinery, a positive disservice to the cooperative movement also. The trend of later cooperative legislation is to expand the scope of disputes which are referable to arbitration. We cannot allow a careless act of bad draftsmanship of sub-s (2) to nullify to a very large extent the whole object and purpose of the latest Act of 1972. The later Act could not in logic provide by one hand matters referable for disputes in sub-s. (1) and take away as if sleight of hand, all those categories by sub-s. (2) if interpreted as by Avadh Behari, J.

(5) The only logically inevitable conclusion is that [sub-s. (2) of Section 60 of Delhi Act enumerates disputes, which are in relation to the disputes mentioned in sub-s. (1) of Section 60 with the result that if disputes touching the constitution management and business of the society fall within the contour of either sub-s. (1) or sub-s. (2) of Section 60 of Delhi Act, they are referable to arbitration.] We must, Therefore, with respect hold that Chander Nagar House Building Society Ltd. and another v. Ashok Ohri (supra) does not lay down correct law and is, Therefore, overruled.

(6) This, however, does not conclude the matter because according to Mr. Chandhiok the decision of the Deputy Registrar is valid because according to him Section 60(1) itself says that disputes touching the constitution, management or business of a society other than the disputes regarding disciplinary action taken by the society or its committee against a paid employee of the society arises it will be referred to Registrar. The argument is that the disputes raised in the present case is dispute regarding the disciplinary action taken by the society against a paid employee and is not referable to the Registrar. According to Mr. Chandhiok and Mr. Singh advocates, they do not have to invoke the decision of Avadh Behari, J. The counsel say that sub-s. (1) of S. 60 of Delhi Act itself bars a reference to the Registrar in a case like the present vis a vis a disciplinary action against a paid employee. Mr. Ramesh Chandra, however, on the other hand says that as he has taken the plea that the Board of Directors was not properly constituted and hence there was no Board which could take any legal action against the petitioner, the dispute raised by him is dispute touching the constitution, management or business of the cooperative society and is referable u/s 60(1) of the Act. We may also note that Mr. Singh appearing for the society refutes the suggestion that any member of the Board of Directors was disqualified or that the management committee was not a validly constituted body. We need not go into these rival contentions because we propose to remit the matter back to the learned Single Judge who has not gone into the merits of the case. The reason is that the learned Single Judge found difficult to dispose of the matter in view of the difficulty posed by decision of Avadh Behari, J. and as we have now given our findings on the question of law, the matter has naturally to go back to the learned single Judge for deciding it on merits. It is so ordered accordingly. The matter stands disposed of as above with no order as to costs.