

(2003) 01 AP CK 0117
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21311 of 2002

K. Srinivasulu

APPELLANT

Vs

District Collector (Election Authority) and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Citation : (2003) 2 ALD 631 : (2003) 1 ALT 746

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Bodduluri Srinivasa Rao, for the Appellant; Government Pleader for Co-operation for Respondent Nos. 1 to 3 and E.V. Bhagiratha Rao, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—The only and important question that is to be decided in this writ petition is, whether the election dispute can be raised before the District Munsiff as per the unamended Sub-section (3) of Section 61, or before the Tribunal after amendment of the said sub-section of A.P. Co-operative Societies Act, 1964 (for short hereinafter referred to as "the Act").

2. The factual matrix is that the petitioner was the elected President of the Gudibanda Fisherman Co-operative Society. The 4th respondent is the candidate who lost the election. Hence he filed O.P.No. 22/2001 on 24.12.2001 before the Junior Civil Judge, Kodad and eventually the O.P. was allowed, resulting in filing of the writ petition.

3. The learned Counsel appearing for the petitioner Sri B. Srinivasa Rao assailing the impugned judgment, mainly contended that the Junior Civil Judge has no jurisdiction to entertain the election dispute after the amendment to Sub-section (3) of Section 61 of the Act, which came into force with effect from 25.4.2001, He submitted that since the O.P. was filed on 24.12.2001, the Junior Civil Judge ought not have entertained the election dispute, inasmuch as by virtue of the

amendment, the jurisdiction conferred upon him was taken away and it was conferred on the Tribunal. He submitted that since the judgment was passed without jurisdiction, it is a nullity and the same is liable to be set aside.

4. On the other hand Sri Bhagiratha Rao, Counsel appearing for the respondent No. 4 supporting the impugned judgment, contended that the amendment has created any amount of ambiguity and the aggrieved party is kept in darkness since he is unable to know the forum for getting his grievance redressed after amendment. He further submitted that by virtue of the amendment, only the appellate jurisdiction is conferred upon the Tribunal and not the original jurisdiction and hence when no original jurisdiction is conferred, this Court cannot confer such jurisdiction, under Article 226 of the Constitution of India. With these submissions he sought for dismissal of the writ petition.

5. In order to appreciate the relative contentions and to examine the legal position it is necessary to refer to the relevant provisions of the Act. Sub-section (3) of Section 61 prior to amendment read as under:

3(a) Every dispute relating to, or in connection with, any election to a committee of a society referred to in Clause (a) of Sub-section (3) of Section 31, shall be referred for a decision to a Subordinate Judge, or whether there is no such Subordinate Judge, to the District Judge having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

(b) Every dispute relating to, or in connection with, any election to the office of President of the Primary Co-operative Society referred to in Sub-section (5) of Section 31 or to a committee of such class of societies as may, by notification in the Andhra Pradesh Gazette, be specified by the Government in this behalf and referred to in Clause (b) of Sub-section (3) of Section 31, shall be referred for decision to a District Munsiff having jurisdiction over the place where the main office of the society is situated, and his decision thereon shall be final.

6. From the above provision as per Clause (a), dispute relating to any election to a committee of a society, shall be referred to a Subordinate Judge and in his absence, to a District Judge having jurisdiction. Sub-clause (b) is relevant for the present purpose. As per this clause, dispute with regard to election to the office of a President of a Society, shall be referred to a District Munsiff having jurisdiction and his decision thereon shall be final.

7. Sub-section 3 of Section 61 has been amended by Act No. 22 of 2001 and the same has come into force with effect from 25.4.2001. By virtue of this amendment, Sub-section 3 of Section 61 has been substituted as follows:

Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

8. From the above amended Sub-section 3 of Section 61, it is clear that every

election dispute of a society shall be referred to a Tribunal having jurisdiction and that the decision of the Tribunal is final.

9. A comparison between the un-amended and amended provision makes it abundantly clear that the jurisdiction with regard to election disputes, which was earlier conferred on the District Munsif has been virtually taken away and the same was conferred on the Tribunal. It is to be noted that as per the un-amended Act, the decision of the District Munsiff in election dispute is final and also as per the amended Act, the decision of the Tribunal in election dispute of a society is final.

10. The expression "Tribunal" has been defined u/s 2(t) of the Act and the same is extracted as under:

"Tribunal" means a Tribunal constituted u/s 75 and having jurisdiction.

11. Hence, it is also necessary to refer to Section 75 of the Act, which deals with the constitution of Co-operative Tribunals under Chapter XI as under:

(1) The Government may, for the purpose of this Act, by notification constitute as many Tribunals as may be necessary for such area or areas as may be specified in the notification.

(2) The Tribunal shall consist of a Chairman and not more than two other members to be appointed by the Government.

(3) The Chairman shall be a person who is or has been a judicial officer not below the rank of a District Judge and a member shall be a person, who holds or has held a post not below the rank of Additional Registrar of Co-operative Societies.

(4) The Government may, from time to time, likewise reconstitute any Tribunal constituted under Sub-section (1) or may abolish such Tribunal.

(5) The quorum to constitute a meeting of a Tribunal and the manner of taking decision thereat and the procedure and conduct of its business shall be such as may be prescribed.

(6) No Act or proceeding of any Tribunal shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect, in the constitution or reconstitution thereof.

12. Thus Section 75 enables the Government to constitute Tribunals as may be necessary, by a notification. This provision was inserted by Act No. 15 of 1991. It is also to be noted that Clauses (a) and (b) of Sub-section 3 of Section 61 prior to amendment Act 22 of 2001 were introduced by Act No. 14 of 1966. Therefore, the situation between introduction of Act 14 of 1966 and Act 15 of 1991, was that the disputes relating to the election of the Committee or the President were to be entertained and adjudicated by a Subordinate Judge or District Munsif, as the case may be.

13. Further it is also necessary to extract Section 76 of the Act as under-

Appeal :--(1) Any person or society aggrieved by any decision passed or order made u/s 6, Section 9A, Section 9B, Section 9C, Section 12A, Section 13, Section 15A, Section 16, Section 17, Section 19, Section 21, Section 21A, Section 21AA, Section 23, Sub-section (3) of Section 32, Section 34, Section 34-A, Section 60, Section 62, Section 64, Section 66, Section 70, Section 71, Section 73 and Section 117 may appeal to the Tribunal:

Provided that nothing in this sub-section shall apply to any order of withdrawal or transfer of a dispute under Sub-section (3) of Section 61.

(2) On a reference made by the Registrar of Co-operative Societies, the Tribunal shall call for and examine the records of any proceeding which is appealable to for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and where it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

(3) Any appeal under Sub-section (1) shall, subject to the other provisions of this Act, be preferred within sixty days from the date of communication to the appellant of the decision, afresh or order complained of but the Tribunal may admit an appeal preferred after the said period of sixty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this Section, the Tribunal may, after giving the parties an opportunity of making their representations, pass such order thereon as it may deem fit.

(5) The decision or order of the Tribunal on appeal shall be final.

(6) The Tribunal may pass such interim orders pending the decision on the appeal as may deem fit.

(7) The Tribunal may award costs in any proceedings before that authority to be paid either out of the funds of the society or by such party to the appeal as the Tribunal may deem fit.

14. A reading of the above provision would also reveal that the Tribunal constituted u/s 75 is vested with the jurisdiction to entertain the appeals against the decisions or orders passed under different sections of the Act, mentioned therein and the decision of the Tribunal is final. Further as per the proviso to Sub-section (1) of Section 76, it is clear that this provision or appeal shall not apply to any order of withdrawal or transfer of dispute under Sub-section (3) of Section 61.

15. At no point of time, there was any right of appeal to the aggrieved party in election matters. The only change is that jurisdiction hitherto conferred upon the Civil Court had now been withdrawn and conferred upon the Tribunal.

16. Coming to the present case, there is no dispute that the O.P. was filed by the 4th respondent on 24.12.2001. The amendment to Sub-section 3 of Section 61 had come into force with effect from 24.5.2001. Obviously the O.P. was filed subsequent to the amendment. In other words as on the date of filing of the O.P. the Junior Civil Judge has no jurisdiction to entertain the election dispute. Oblivious of this fact that the Civil Court has no jurisdiction by virtue of the amendment, the O.P. was entertained and adjudicated upon and orders were passed. In view of the above legal position, the order passed by the Civil Court suffers for want of jurisdiction and hence it is nullity in the eye of the law.

17. The learned Government Pleader brought to the notice of this Court G.O.Ms.No. 160, Agriculture and Cooperation (Co-op.IV) Department dated 11.3.1993 wherein the Government has constituted Tribunals, one at Hyderabad and another at Vijayawada, carving out the respective jurisdictions.

18. For the foregoing reasons, I am of the considered view that since the Junior Civil Judge had entertained the O.P. and passed order without jurisdiction, the same is nullity in the eye of law and liable to be set aside and hence it is not necessary for this Court to go into the merits of the case.

19. A plain reading of the provisions is sufficient to come to the conclusion that there is no ambiguity whatsoever and the intendment of Legislature is to take away the original jurisdiction of the Civil Courts and confer the same on the Tribunals which have been constituted u/s 75 of the Act.

20. As pointed out by the learned Counsel appearing for the petitioner, though it appears that Section 76 of the Act is clothed with appellate jurisdiction, it is with regard to orders or proceedings passed under other sections mentioned therein. Further the ambiguity, if any, is cleared by the proviso to Sub-section (1) of Section 76.

21. Therefore, it can safely be concluded that by virtue of amendment to Sub-section 3 of Section 61 of the Act, the original jurisdiction which was earlier conferred on the Civil Court was taken away and the same is conferred on the Tribunal and the decision with regard to the election dispute under that section is final. Though from a reading of Section 76 of the Act, it appears that the Tribunal has to deal with appeals in relation to some of the disputes, mentioned in the Sub-section 1 of that section, it is abundantly clear that the statute by way of amending Sub-section 3 of Section 61, conferred original jurisdiction also in relation to election disputes.

22. Curiously the learned Counsel for the respondent submitted that the petitioner has not taken this ground before the Junior Civil Judge. It is a settled principle of law that jurisdiction being a substantial question of law and goes to the very root of the matter, can be agitated before this Court and the same can be taken note of by this Court.

23. For the foregoing reasons, the impugned order is set aside and the Writ

Petition is allowed.