
(1973) 01 DEL CK 0004

In the Delhi High Court

Case No : Letters Patent Appeal No's. 63 and 110 of 1970, against Judgment of V.S. Deshpande J., reported in AIR 1971 Delhi 141

K. Subba Rao

APPELLANT

Vs

The National Co-operative Consumers Federation Ltd. and
Others

RESPONDENT

Date of Decision : 10-01-1973

Acts Referred:

Citation : AIR 1974 Delhi 132 : (1973) 1 ILR Delhi 564

Hon'ble Judges : Narain Andley, C.J.; S.N. Shankar, J

Bench : Division Bench

Advocate : W.C. Chopra, for the Appellant; R.L Aggarwal J.K. Mehra, S.S. Chadha and P.N. Sethi, for the Respondent

Judgement

S.N. Andley, C.J.—This judgment will dispose of two appeals (L. P. A No. 63 of 1970 and L. P. A. No. 110 of 1970), both being against the judgment dated March 5, 1970 of a learned Single judge of this Court in Civil Writ No. 519 of 1969. The appellant in the first appeal is K. Subba Rao and the appellant in the second appeal is the Delhi Administration. The writ had been filed by the National Co-operative Consumers Federation Limited, New Delhi, hereinafter referred to as "the Society". The Society is registered as such under the Bombay Co-operative Societies Act, 1925 as extended to Delhi. The respondents to the writ petition were the Delhi Administration (respondent No. 1); the Registrar, Co-operative Societies " Delhi (respondent No. 2); Jyoti Prasad Jain, Amba Prasad and Dr. T. Karnesbwara Rao (respondents Nos. 3, 4 and 5 respectively) and the aforesaid K.Subba Rao (respondent No. 6). K. Subba Rao was appointed by the Society as its Accounts Officer on May 15, 1967 on a salary of Rs. 700/-per month in the scale of Rs, 700-1250 plus allowances. He was appointed in the first instance on probation for one year but the period of probation was extended by the Society up to December 26, 1968. By office order dated December 9, 1968. K. Subba Rao was informed that his services would not be required after the expiry of his probation period in his letter dated December 20, 1968 to the

Registrar of Co-operative Societies K. Subba Rao challenged the termination of his service and made a request to arbitrate in the matter. This prayer for arbitration was made by invoking Section 54 of the said Act. The Society wrote to the Registrar by letter dated January 14, 1969 objecting the arbitration on the ground, inter alia, that the application of K. Subba Rao was untenable as Section 54 of the said Act contemplated arbitration only in case of dispute touching the constitution or business of a Society and there was no such dispute between the Society and K. Subba Rao. In spite of the objection, the dispute about the termination of the service of K. Subba Rao was admitted by the Registrar, Co-operative Societies, u/s 54 of the said Act and by his letter dated January 28, 1969 he called upon the Society to file its statement and to nominate its arbitrator. The Society was also informed that hearing in the case will take place on February 15, 1969 and that pending decision of the case it should not fill the vacancy created by the termination of service of K. Subba Rao. Thereupon, the Society filed its written statement on the merits and also challenged the validity of the reference on the ground that the dispute did not fall within the purview of Section 54 of the said Act. The Society also appointed Amba Prasad as its arbitrator. Dr. T.Kameshwara Rao was appointed arbitrator by K. Subba Rao while Jyoti Prasad Jain was appointed arbitrator as the nominee of the Registrar. Amba Prasad and Dr. T. Kameshwara Rao could not proceed with the Arbitration whereupon the Registrar of Co-operative Societies withdrew the dispute from these two arbitrators and directed that his nominee shall proceed to decide the case alone. It may also be stated here that K.Subba Rao filed his reply to the written statement of the Society wherein he prayed that the order of termination of his service should be set aside and his reinstatement ordered with such consequential, incidental and ancillary reliefs as to damages and costs etc. as are deemed fit by the arbitrators in the circumstances of the case. Thereafter, the arbitration proceeded and the Registrar's nominee gave his award on June 3, 1969. He held that K. Subba Rao had not been legally removed and "must be deemed to be continuing in service and must be allowed to resume his duties immediately. He should be allowed full pay and allowances as on continuous duty. He should be allowed one month's pay as token damages for the harassment and worry caused to the plaintiff as also the humiliation he had to suffer." The arbitrator also awarded costs. It was then that the writ petition which has given rise to this appeal was filed by the Society in this Court.

2. The learned Single judge held that the termination of the services of K. Subba Rao by the Society did not constitute a dispute touching the business of the Society within the meaning of Section 54 of the said Act and that the award amounted to an order of reinstatement which relief could not be given by the Registrar or his nominee. The learned Single judge also repelled the contention on behalf of K. Subba Rao that the writ petition was not maintainable without exhausting the remedies provided by Section 54-A or by Section 26 of the said Act. This contention, it may be stated, was not urged before us in appeal by the learned counsel appearing for K. Subba Rao. The learned Single judge,

Therefore, allowed the writ petition and quashed the aforesaid award dated June 3, 1969.

3. The first question that arises for consideration is whether the termination of the services of K. Subba Rao can be said to amount to a dispute touching the constitution or business of the Society within the meaning of Section 54 of the said Act. This section is in these terms:

"Arbitration- If any dispute, touching the constitution or business of a society, arises between members or past members of the society Or persons claiming through a member or past member or between members or past members or persons, so claiming and any officer, agent or servant of the society (past or present), it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the registrar or his nominee and two persons, of whom one shall be nominated by each of the parties concerned. A dispute shall include claims by a society for debts or demands, due to it, from a member or past member, or the heirs, or assets of a past member, whether such debts or demands be admitted or not Provided that if the question at issue, between a society and a claimant, or between different claimants, is one, involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter, until the question has been tried by a regular suit, instituted by one of the parties or by the society. If no such suit is instituted within 6 months of the Registrar's order suspending proceeding, the Registrar shall take action, as laid down in paragraph I of this Act,"

4. The learned Single judge was right in saying that all disputes arising between a society and its employees are not covered by this section for, if that were so, the further qualification that such a dispute must be touching the business of the society would have been unnecessary. As pointed out by the learned Single judge the object for which the Society was formed is to assist, aid and counsel its member institutions and to facilitate their working and generally to act as the spokesman of the Consumers' Co-operative Movement in India. In furtherance of these objectives, it may undertake activities such as assistance to its members in "grading, packaging, standardization, bulk buying, storing, pricing, account keeping etc. Looking at the objects of the Society the answer to the question as to what is its business must be with reference to the above mentioned objects. Every incidental activity, for example, employment of staff for the purpose of achieving the objects cannot be said to be one of the objects of the Society. The contention, however, is that the word "touching" is a word of wide amplitude and would take in such incidental activities also.

5. Chagla J. took the view in G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia, that,

"The word "business" is a very wide term and certainly it is not synonymous with the objects of the society. The expression "touching the business of a society

would mean affecting the business of a society or relating to the business of a society. Although it is not one of the objects of the company to employ or dismiss servants, it is something which it does in the ordinary course of its business. And what ever is done in the ordinary course of business certainly relates to or affects the business.

The learned judge equated "touching" to "relates to or affects the business" and held that the employment or dismissal of a servant would give rise to a dispute touching the business of the Society. A Full Bench of the Madras High Court had occasion to determine the question whether a dispute relating to the election of Directors of the Society concerned in that case was a dispute touching the business of the Society in *M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao*, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, . The learned judges approved the observations of Chagla J. in *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, and observed that the expressions "affairs of the society" and "business of the society" were synonymous. They were dealing with the Madras Co-operative Societies Act, 1932, Section 51 of which is to the same effect as Section 54 of the said Act except that in the former a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society is excluded from the purview of any dispute touching the business of the Society. They observed that the exclusion meant that but for it such a matter would have been a matter relating to the business of the society. They also observed that the words "affair" and "business" have been used as inter-changeable terms in the Act and are not intended to denote different concepts. Then we have a Full Bench decision of the Bombay High Court in *Farkhundali Nannhay Vs. V.B. Potdar and Another*, , which approved the view of Chagla¹ and the one taken in the Madras Full Bench. They observed:-

"The nature of business, which a society does, is to be ascertained from the objects or society does or is necessarily required to do for the purpose of carrying out its objects can be said to be art of its business. The word "touching" is also very wide and would include any matter which relates to, concerns or affects the business of the society.

Every society must necessarily employ some servants for the purpose or carrying on its business. The payment of wages or any sum due to them under law is Therefore part of the business of the society. In any case, there can be no doubt that such payment would touch the business of the society with in the meaning of section.54. These views do not appear to have been approved by the Supreme Court in *Deccan mechants Co-op. bank Ltd. v. Dalichand jugraj jain*, Air 1968 Sc 1320 where sec.91(1) of the Maharastra Co-op. Societies Act 1961 has been considered. The Supreme Court observed :-

"It is clear that the word "business in this context 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. In this sub-

section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws."

Then comes the observation which, in our opinion, disagrees with the views expressed in the aforesaid Bombay and Full Bench decisions. This observation is,

"While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word "touching" is very wide and would include matter which relates to or concerns the business of a society, but we are doubtful whether the word "affects, should also be used in defining the scope of the word touching"."

Applying this observation, it must be held that the employment and dismissal of staff which the society does are is necessarily required to do for the purpose of carrying out its objects cannot be said to be part of its business and Therefore even it touching is given a wide interpretation, it would not cover the case of termination of the services of an employee of the society so as to constitute a dispute relating to such termination to be a dispute touching the business of the society. In another case in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, the dispute relating to alteration of conditions of service of the employees of the society was held not to be a dispute touching the business of the society within the meaning that expression in Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964. The Supreme Court noticed the decisions of the High Courts Sagar Motor Transport Karmchari Union, Sagar Vs. Amar Kamgar Passenger Transport Co. Co-operative Society, Sagar, M.P. and Another, but did not consider it necessary to examine them in detail in view of its own decision in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, .

They observed:-

"Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the work men employed by the society cannot be held to be a dispute touching the business of the society."

6. We, Therefore, agree with the learned Single fudge that according to the ratio of the aforesaid two decisions of the Supreme Court it must be held that the

business of the Society is to be found in the objects for which the Society is formed and giving a narrow interpretation to business and even a wide interpretation to "touching" the present dispute relating as it does to the termination of the services of K.Subba Rao cannot be said to be a dispute touching the business of the Society. We need only mention another case reported in *Surathkal Co-op. Town Bank, Ltd. v. Padmanabhayya*, (1968) 2 Lab LJ 313 relied upon by the counsel for the Delhi Administration where relying upon *M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao*, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, , it was held that a dispute related include any in business of the Society. In view of the aforesaid Supreme Court decisions, this view cannot now be accepted.

7. As to the argument of the appellant that on such interpretation there will be no disputes between an officer, agent or servant of the Society which will be referable to arbitration u/s 54 of the Act, we agree with the observations of the learned Single judge when he says that "if the dispute between the society and respondent No. 6 was regarding some work which the respondent No. 6 did directly touching the business of the society, then the dispute regarding that work would be a dispute touching the business of a society. Any other dispute with respondent No. 6 would not be a dispute touching the business of the society."

8. The next question is whether the Registrar has the power to order reinstatement as he has done in this case. On the basis of the decisions of the Supreme Court in *S.B. Dutt Vs. University of Delhi*, and *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, learned counsel for the appellant has rightly conceded that the arbitrator could not order reinstatement.

9. In the result, both these appeals are dismissed with costs. Fee to counsel in these appeals is fixed as Rs. 150/- for each of these appeals.

10. Appeals dismissed.