
(1986) 11 KL CK 0014
In the High Court Of Kerala

Kanayannur Service Co-op. Society Ltd.

APPELLANT

Vs

V. Sarakutty

RESPONDENT

Date of Decision : 18-11-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Industrial Disputes Act, 1947 — Section 10
Payment of Wages Act, 1936 — Section 15, 17, 18, 2, 22

Citation : (1987) 2 LLJ 498

Hon'ble Judges : Sivaraman Nair, J;Shamsuddin, J

Bench : Division Bench

Judgement

Sivaraman Nair, J.—This Civil Revision Petition is filed against the judgment of the District Judge, Ernakulam in A.S. No. 78 of 1979, in his capacity as the Appellate Authority under the Payment of Wages Act. That appeal was filed by the present petitioner against the order in P.W.A. No. 58 of 1976 of the Labour Court, Quilon which is the Authority under the Payment of Wages Act 58 of 1976.

2. The respondent was the Secretary of the petitioner-Society. She was kept out of employment for a period from 24th November 1975 to 31st August 1976 without payment of salary. She filed P.W.A. No. 58 of 1976 under the Payment of Wages Act, claiming an amount of Rs. 2,177.50 as unpaid wages. The Authority allowed the application to the extent of Rs. 1,526.50, over-ruling the objection of the petitioner-Society on a point of jurisdiction that the dispute should have been referred to and could be decided only by the Registrar of Cooperative Societies u/s 69 of the Kerala Co-operative Societies Act. The Authority also found that the petitioner-Society had no right to deny wages to the respondent employee. It was against that order that the petitioner filed A.S. No. 78 of 1979 u/s 17(a) of the Payment of Wages Act. Narendran J., who heard the matter, felt that the question whether the jurisdiction of the Authority under the Payment of Wages Act, 1936 was ousted by the provisions of the Kerala Co-operative Societies Act, 1969 required a decision by a Bench of this court.

3. The relevant statutory provisions on which considerable reliance was placed by the petitioner are Sections 69 and 100 of the Kerala Co-operative Societies Act. The relevant provision of Section 69 reads as follows:

Notwithstanding anything contained in any law for the time being in force, if a dispute arises

xx xx xx xx (c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

xx xx xx xx Such dispute shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

A dispute is defined in Section 2(i) of the Act as meaning

any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

Evidently, the dispute relating to payment of wages may, perhaps be a dispute as defined in the Act. Section 100 of the Act imposes a bar of jurisdiction of courts and provides:

No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act.

The effect of this bar is to deprive any civil or revenue court of jurisdiction in respect of any matter for which provision is made in the Act. Obviously, a civil or revenue court will have no jurisdiction to entertain and decide a dispute as defined in the Act and which has to be referred to the Registrar u/s 69 of the Act.

4. It is not seriously contended before us that the Authority under the Payment of Wages Act is a civil or revenue court. If it is not one such, the bar u/s 100 will not be operative. A provision similar to Section 69 of the Act has been understood to deny jurisdiction only to civil courts and in respect of matters which are capable of being determined by civil courts.

5. With the enactment of the Payment of Wages Act and the constitution of Authorities thereunder, the disputes relating to unpaid or delayed wages are to be determined by the Authority under the Act and not by ordinary civil court. Section 22 of the Payment of Wages Act provides that:

No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed-

(a) has formed the subject of a direction u/s 15 which has been presented by the plaintiff and which is pending before the, authority appointed under that Section

or of an appeal u/s 17: or

(b) has formed the subject of a direction u/s 15 in favour of the plaintiff; or

(c) has been adjudged in any proceeding, u/s 15 not to be owed to the plaintiff;
or

(d) could have been recovered by an application u/s 15

It is evident, therefore, that no civil court is competent to entertain or decide a claim for recovery of wages which is subject to or could have been recovered u/s 15 of the Payment of Wages Act. The bar u/s 100 of the Co-operative Societies Act operates only against civil or revenue Courts. The bar provided thereunder will not be operative to take away the jurisdiction of Authorities other than civil or revenue courts to entertain and decide claims for delayed or unpaid wages.

6. The question which is yet to be decided is whether the non-obstante clause, with which Section 69 begins, shall take away the jurisdiction of an Authority under the Payment of Wages Act to decide a question relating to delayed or unpaid wages, which is also within the definition of "dispute" u/s 2(i) of the Act. The Authority under the Payment of Wages Act and the District Court as the Appellate Authority found that the dispute relating to unpaid wages is capable of being entertained and decided by Authorities under the Payment of Wages Act as also by the Registrar u/s 69 of the Cooperative Societies Act. There being no exclusion and Section 100 of the Act not being operative, the authorities concurrently found that they were competent to decide the dispute.

7. Shri. S. Gopalakrishna Iyer, counsel for the petitioner, submitted that the non-obstante clause has the effect of denying jurisdiction to any Authority to decide a dispute falling under any of the clauses of Section 69(1) of the Act. It is true that Section 69 of the Act provides that disputes enumerated in Clauses (a) to (h) shall be referred to the Registrar for decision notwithstanding anything contained in any law for the time being in force. The next portion of the section viz. no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute, however, makes it clear that the jurisdiction of courts alone are taken away and that the non-obstante clause is operative only in cases where the disputes are capable of being determined by courts. In this state of the law, it is difficult to accept the assertion that the jurisdiction of all, other than the Registrar, has been excluded by Section 69 of the Co-operative Societies Act.

8. The same conclusion can be reached on the basis of precedents of this court. The earliest of the decisions in this regard and also the most eloquent was the decision rendered by M.S. Menon J., as he then was, speaking for a Bench in *Malabar Co-operative Central Bank Ltd, Kozhicode v. State of Kerala* 1964 I LLJ 557. The controversy involved in that decision was whether a reference of a dispute between the Co-operative Society and its employees relating to wages to be paid and other service conditions was competent in the light of Section 51 of the Madras Co-operative Societies Act, 1932. In his inimitable style M.S. Menon.

C.J., observed at p. 558:

Co-operative societies are creatures of statute, controlled by their constitution and concerned with their contracts. Industrial disputes stem, not from the subtle refinements of contractual obligations, but from the rougher jurisprudence of social justice and readjustment. The uplands of the Industrial Tribunals are out of bounds to the Registrar of Co-operative Societies.

In *Kerala State Handloom Weavers' Co-operative Society Ltd. Vs. State of Kerala and Others*, the same Division Bench held at p. 561 with reference to Section 60(1) of the Travancore-Cochin Co-operative Societies Act, that-

the arbitration proceedings contemplated by Section 51(1) of the Madras Co-operative Societies Act 1932 is not concerned with industrial disputes and notwithstanding the said sub-section, industrial disputes can be referred for adjudication u/s 10 of the Industrial Disputes Act, 1947.

xx xx xx xx The question in cases like this is not whether the dispute referred for adjudication touches the business of a co-operative society; the question really is whether that dispute comes within the category of disputes covered by Section 60(1) of the T.C. Co-operative Societies Act, 1951. The purpose of Chapter XIII of the T.C. Cooperative Societies Act, 1951 ? the Chapter in which Section 60(1) occurs?is not to resolve all controversies touching the business of co-operative societies under the provisions of that Chapter; but to resolve only such controversies as can be resolved in an ordinary court of law. In other words, the arbitration provided by Chapter XIII is an alternative to the normal processes of the ordinary Courts and not to the extraordinary process of adjudication under the Industrial Disputes Act, 1947 which has been designed to deal with controversies which by their very nature are outside the purview of ordinary litigation.

9. This trend of thought was followed by Govindan Nair, J., as he then was, in the decision reported in *K.V. Service Co-op. Society Ltd. v. Assistant Registrar Circle Officer of Cooperative Societies Mukundapuram. Trichur District and Anr.* 1973 II LLJ 541 again speaking for a Division Bench. In emphasising the distinction between the powers of the Registrar, who had to function as an alternative forum for determination of civil disputes, it was said, that the Tribunals which were constituted under special enactments can, in disregard of well-known concepts of law, readjust rights and obligations in a manner conceived to be just in the light of socio-economic changes that are taking place.

10. A Full Bench of the Bombay High Court in the decision reported in *Rambhau Jairam Dhamange v. Vinkur Co-operative Society Ltd.* 1966 I LLJ 90 relied on the decision in *Kerala State Handloom Weavers Co-op. Society v. State of Kerala*, (supra) and held that the dispute referred to the Registrar u/s 91 of the Maharashtra Co-operative Societies Act (which corresponds to Section 69 of our Act) must be such as a civil court can take cognizance of and try.

11. In *A.P. Sankara Wariyar v. North Malabar District Co-op. Supply and Marketing Society Ltd. and Anr.* 1982 II LLJ 440 Bhat, J., considered the question whether the provisions of Section 69 of the Co-operative Societies Act excluded the jurisdiction of the Labour Court in a matter involving dismissal of an employee of a co-operative society. It was held, following the earlier decisions referred to above, that Section 69 of the Act provides only an alternative to the normal processes of ordinary courts, and if an ordinary court cannot adjudicate on the dispute, it means that the Registrar of Co-operative Societies cannot also adjudicate on it. It is true that the decisions in *K.V. Service Co-operative Society Ltd. v. Assistant Registrar Circle Officer of Co-operative Societies, Mukundapuram, Trichur District* and another (*supra*) and *A.P. Sankara Wariyar v. North Malabar District Co-operative Supply and Marketing Society Ltd., and Anr.* (*supra*) dealt with cases of dismissal and were largely influenced by the fact that the Registrar could not order reinstatement of a dismissed employee, as much as a civil court could not enforce a service contract by forcing a former employee on an unwilling employer. But the principles involved are clear that only in respect of such disputes as can be competently decided by a civil court can the bar of jurisdiction u/s 100 of the Act be operative, and only in respect of such disputes can the Registrar claim exclusive jurisdiction. We have already found that the Authorities under the Payment of Wages Act are not courts. We do so hold notwithstanding Section 18 of the Payment of Wages Act which confers on authorities under that Act limited powers of a civil court in some matters and deem such authorities as Civil Courts for certain purposes. That provision is necessary only because of the fact that such authorities are not civil courts and such powers have to be conferred by express provisions. If they are not Courts, the exclusion of jurisdiction either u/s 69 or Section 100 of the Co-operative Societies Act will not be operative to deny jurisdiction to such authorities.

12. In this view, the finding of the Original and Appellate Authorities that they have jurisdiction to decide the question of payment of wages is unassailable. We, therefore, hold that the Authorities under the Payment of Wages Act had jurisdiction, notwithstanding the provisions contained in Sections 69 and 100 of the Co-operative Societies Act to decide the question as to whether an employee was entitled to claim delayed or unpaid wages by resort to proceedings under the Payment of Wages Act.

13. We do not feel that we are called upon to consider the propriety of the findings concurrently come to by the original and appellate authorities on the question of denial of wages due to the respondent. We do not find any such error of law or jurisdiction or misdirection in law or perversity in the appreciation of evidence as to attract the provisions of Section 115 of the Code of Civil Procedure.

The revision petition, therefore, fails and is hereby dismissed. But, in the circumstances of this case, there will be no order as to costs.