
(2000) 01 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 2772 of 1998-C

K.P. Velayudhan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Citation : AIR 2000 Ker 125

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair, for the Appellant; C.T. Ravikumar, Govt. Pleader and M. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, C.J.—Judgment of learned single Judge declining to interfere with Ext. P4 order of Government is under challenge in this Writ Appeal.

2. A brief reference to the factual aspects would suffice. Appellant was an employee of Cheruvathur Farmers Co-operative Bank Ltd. (hereinafter referred to as "the Bank"). Disciplinary action was initiated against him. Finally, an order directing reduction in rank, as a measure of penalty, was passed. An appeal was preferred before the Board of the Bank which did not succeed. Dispute was raised by the appellant u/s 69 of the Kerala Co-operative Societies Act, 1969 (in short "the Act"). Same was not entertained by Arbitrator on the ground that the controversy raised by appellant was not a "dispute" within the definition of the expression in Section 69. Accordingly petition filed by appellant was dismissed. A revision petition was filed before Government, purportedly u/s 87 of the Act. Government rejected the said petition holding that the impugned order was one u/s 70 of the Act and was therefore not revisable and only an appeal would lie u/s 82. Appellant moved this Court for interference. View of Government was confirmed in the O.P. and that is why present appeal has been filed.

3. Learned counsel for appellant submitted that on a bare reading of Sub-section

(4) of Section 69 as it stood at the relevant time, the conclusion of Government cannot be maintained. Learned counsel for the Bank however submitted that the view taken by learned single Judge as well as by State Government does not suffer from any infirmity.

4. In order to appreciate rival submissions, relevant statutory position needs to be noted. Section 69 reads as follows :--

"Section 69.-- Disputes to be referred to Registrar :-- (1) Notwithstanding anything contained in any law for the time being in force, if dispute arises.

(a) among members, past members and persons claiming through members, past members and deceased members: or

(b) between a member, past members, or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(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

(d) between the society any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member, or employee or a person other than member who has been granted a loan by the society whether such a person is or is not a member of the society; or

(h) between the society and a creditor of the society, 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.

Explanation :-- In this section and in Section 70, the term "Registrar" means the Registrar of Co-operative Societies appointed under Sub-section (1) of Section 3 and includes any person on whom the powers of Registrar under this Section and Section 70 are conferred.

(2) For the purposes of Sub-section (1), the following shall also be deemed to be disputes, namely :--

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety and amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation :-- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Registrar unless it is referred to it within one month from the date of the election.

(4) If any question arises whether a dispute referred to the Registrar under the section is a dispute as defined in Clause (1) of Section 2 the decision thereon of the Registrar shall be final."

Sub-section (3) of Section 70 as it stood at the relevant time read as follows :

"(3) The Registrar or such person shall decide the dispute or the arbitrator shall pass an award in accordance with the provisions of this Act and the rules and the bye-laws and such decision or award shall, subject to the provisions of Section 82, be final. Pending decisions or award, the Registrar, such person or the arbitrator, as the case may be, may make such interlocutory orders, as he may deem necessary, in the interests of justice."

Section 82 reads as follows :--Section 82. Appeals to Tribunal.-- (1) Any person aggrieved by-

(a) an order of the Registrar made under Clause (ii) of Sub-section (8) or Clause (ii) of Sub-section (9) of Section 14; or

(b) an award of the Co-operative Arbitration Court, under Sub-section (1) of Section 70, may within sixty days from the date of such decision or award, as the case may be, appeal to the Tribunal and the Tribunal may pass such order on the appeal as it may deem fit.

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(d) any decision of the Registrar made under Sub-section (3) of Section 70; or

(e) any decision under Sub-section (3) of Section 70 of the person invested by the Government with such powers in that behalf or

(f) any award of the arbitrator under Subsection (3) of Section 70, may, within sixty days from the date of such order, decision or award, as the case may be, appeal to the Tribunal and the Tribunal may pass such order on the appeal as it may deem fit.

(2) An order passed by the Tribunal under Sub-section (1) shall be final."

5. On a combined reading of Sub-section (4) of Section 69 and Sub-section (3) of Section 70, the position clearly emerges that if any question as to whether a dispute which has been referred to u/s 69 is a dispute, has to be decided by the Registrar whose decision becomes final. Section 82 deals with appeals to Tribunal. Clauses (e) and (f) of Sub-section (1) of Section 82 throw considerable light on the controversy. The Tribunal is constituted under Chapter XIII. Section 81 deals with jurisdiction to entertain appeals in respect of categories of orders enumerated in Sub-section (1).

6. Above being the position, provisions of Section 87 which deals with power of revision of Registrar and the Government were clearly applicable to the facts of the case. The aforesaid Section 87 provides for revision before the Registrar only in those matters where no appeal lies. Learned single Judge was not therefore Justified in holding that revision before Government was not maintainable. Accordingly we set aside the Judgment passed by learned single Judge and direct that the revision filed before the Government be heard and disposed of on merits.

Writ Appeal is allowed as above.