

(2005) 02 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No"s. 38041-42 of 2004

Krishna and Another

APPELLANT

Vs

Sirsi Urban Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 118, 70

Citation : (2005) ILR (Kar) 1349 : (2005) 2 KCCR 804

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : G.B. Shastri, for the Appellant; C.K. Subramanya, for the Respondent

Judgement

Mohan Shantanagoudar, J.—By the impugned orders dated 27.9.2003 passed in Reference Nos. 276/85 and 18/86, the I Addl. Labour Court, Bangalore, held that it has no jurisdiction to entertain the disputes and consequently, closed the proceedings. While passing the impugned orders, the Labour Court relied upon the judgment of the Full Bench of this Court in the case of Karnataka Sugar Workers Federation (R) Vs. State of Karnataka and Others, .

2. The records disclose that the petitioners herein who were the employees of the Respondent -Bank were terminated on 15"" March 1983 and 27th May 1983. The conciliation proceedings were failed. The appropriate Government referred the disputes for adjudication to the Labour Court. The disputes were pending before the Labour Court, Hubli since 1984 to February 1985. Thereafter, the disputes were transferred to 1 Addl. Labour Court, Bangalore vide Government order dated 2.2.1985. Since then the matters are pending before the Labour Court, Bangalore. During the pendency of the disputes Section 70 and Section 118 of the Karnataka Cooperative Societies Act, 1959 ("the Act" for short) are amended to exclude the jurisdiction of Civil, Labour, Revenue Courts and Industrial Tribunal in the disputes touching the management or the business of the Co-operative Society. The said amendment was brought by virtue of Act No.

2 of 2000 by substituting the words "no Court or Labour or Revenue or Industrial Tribunal" for the words "no Court. In view of the aforesaid amendment, the Labour Court held that it has got no jurisdiction and consequently closed the proceedings.

3. Sri Balakrishna Shastry, learned Counsel appearing on behalf of the petitioners vehemently submitted that the proceedings before the Labour Court should be allowed to be proceeded with before the Labour Court only, inasmuch as, they are pending since 1984 and that the proceedings are almost nearing completion. He further submitted that in view of the provisions of Section 6 of the General Clauses Act, pending proceedings before the Court are saved and that therefore, they should be continued in the Labour Court. Per contra, learned Counsel appearing on behalf of the respondent contended that in view of the aforesaid amendment, the Labour Court has no jurisdiction to proceed further and the matters have to be dealt with by the Registrar u/s 70 of the Karnataka Co-operative Societies Act.

4. The Full Bench of this Court in the case of KARNATAKA SUGAR WORKERS FEDERATION v. STATE OF KARNATAKA (CITED SUPRA) while considering the constitutional validity of amended Section 70 of the act, has observed thus:

"Para 30:- It is seen that a Co-operative Society is constituted and registered under the statute and such registered body has to follow the mandatory provisions of Rules and Regulations. The employees of the co-operative Society may also be governed by the contract of personal service, but whenever dispute touching the constitution, management or business of a co-operative society arises between a society and another co-operative society and so also the disputes arising regarding the terms of employment, working, conditions and disciplinary action taken by the cooperative society, such disputes may be adjudicated by the Registrar of the Co-operative Societies as stated."

5. The relevant portion of Sections 70 of the Karnataka Cooperative Societies Act prior to the amendment reads thus:

"Section 70: Disputes which may be referred to Registrar for decision :- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx

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."

After the amendment, the relevant portion of the said Section 70 reads thus:

" Section 70:- Disputes which may be referred to Registrar for decision - (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

Such dispute shall be referred to the Registrar for decision and no Court or labour or revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

6. The relevant portion of Section 118 of the Karnataka Co-operative Societies Act before amendment reads thus:

" Section 118 :- Bar of jurisdiction of Courts -(1) Save as provided in this Act, no Civil or revenue Court shall have any jurisdiction in respect of ,--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) any dispute required u/s 70 to be referred to the Registrar or the recovery of moneys u/s 100.

After the amendment, the relevant portion of Section 118 reads thus:

"Section 118 :- Bar of jurisdiction of Courts - (1) Save as provided in this Act, no civil, labour or revenue Court or Industrial Tribunal shall have any jurisdiction in respect of ,

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) any dispute required u/s 70 to be referred to the Registrar or the recovery of moneys u/s 100;

7. As could be seen from the aforesaid amendment, it is clear that the words " no Court are substituted by the words "no court or labour or revenue court or Industrial Tribunal". The substitution of the existing provision by a new provision does not attract Section 6 of the General Clauses Act, 1987. When the amending Act substitutes certain word existing in the old Act, the inference is that the legislature intended that the substituted words should be deemed to have been

the part of the Act from the very inception. Where a Section of a statute is amended, the original ceases to exist and the new Section supersedes it and becomes part of the law just as if the amendment is always been there.

My aforesaid view is fortified by the judgment of the Apex Court in the case of Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, and the judgment of the Division Bench of this Court in the case of SHA CHUNILAL SOHANRAJ V. T. GURUSHANTAPPA 1972 (1) M.L.J. 327. In the case of SHAMRAO v. DISTRICT MAGISTRATE (cited supra), the Apex Court has observed thus:

"The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper cannons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and old words scored out so that thereafter there is no need to refer to the amending Act at all".

No repugnancy or inconsistency between the old and the new sub-sections have been pointed out to us. When the amending Act has stated that the old sub-section, has been substituted by the new sub-section, the inference is that the Legislature intended that the substituted provision should be deemed to have been part of the Act from the very inception.

When the proceedings were pending, the amended provision came into force, it is the amended provision that has to be applied and not the old provision which has ceased to exist."

In the case of SHA CHUNILAL SOHANRAJ v. T. GURUSHANTAPPA (cited supra), the Division Bench of this Court has observed thus:

" The matter pertains to rules of construction of statutes and the effect of amendment made to an Act. In the instant case, Sub-section (2) of Section 21 provides for the circumstances under which relief against eviction can be granted in proceedings under the Act. The said sub-section was amended by substitution of a new provision set out in the earlier part of this order. Where a section of a statute is amended, the original ceases to exist and the new section supersedes it and becomes part of the law just as if the amendment has always been there. (Vide Crawford, Statutory Construction - Interpretation of Laws pages 110-111).

An amending Act is not regarded as an independent statute. The statute in its old form is superseded by the statute in its amended form, the amended section of the statute taking the place of the original section, for all intends and purposes as if the amendment had always been there. The amendment should be considered as if embodied in the whole statute of which it has become a part. Unless a contrary intent is clearly indicated, the amended statute is regarded as

if the original statute had been repealed and the whole statute re-enacted with the amendment."

In my considered view, the same construction has to be applied to the case on hand. The substitution of certain words in Section 70 and Section 118 of the Karnataka Co-operative Societies Act, is by Section 3 of Amending Act No. 2/2000, which came into force on 20th June 2000. It is clear from the amended provisions that the legislature has by omitting the words "no Court", substituted the words " no court , or labour or revenue court or Industrial Tribunal" in the new Section 70 and Section 118 of the Karnataka Co-operative Societies Act. That shows that the bar that was there prior to amendment on the Courts to entertain the disputes falling within Section 70 of the Act will also apply to the Labour Court, Revenue Court and Industrial Tribunals.

In view of the aforesaid amendment to Section 70 and Section 118 of the Act and in view of the observations of the Full Bench of this Court, the Labour Court has got no jurisdiction to proceed with the matter. The only alternative remedy available for the petitioners is to approach the appropriate authority u/s 70 of the Act.

8. Looking to the fact that the petitioners have been fighting their litigation before the Labour Court since 1984 and major portion of the trial is over, in my considered opinion, it is not desirable to direct the petitioners to start the proceedings, afresh before the appropriate forum u/s 70 of the Act. In this view of the matter, I deem it just and proper to transfer the proceedings from the Labour Court to the file of Registrar of Cooperative Societies to proceed further in accordance with law. Hence, the following order is made:

The proceedings in Reference No. 276/85 and Reference No. 18/86 are restored to file and shall stand transferred to the file of Registrar of Co-operative Societies to be proceeded with u/s 70 of the Act. The I Addl. Labour Court, Bangalore, is directed to transmit all the records to the Registrar of Co-operative Societies.

The Registrar of Co-operative Societies is directed to proceed with the matters in accordance with law from the stage at which the proceedings were closed. The Registrar is further directed to dispose of the matters as early as possible, but not later than the outer limit of four months from the date of receipt of this order and records, after due notice to the parties. Both parties are at liberty to lead further evidence, if need be.

Writ Petitions are disposed of accordingly.