

(1966) 07 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 375 of 1966

Krishnarao Bakaramji Hadge

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-07-1966

Acts Referred:

Citation : (1967) 69 BOMLR 150 : (1967) MhLj 22 : (1966) MhLj 1145

Hon'ble Judges : Patel, J;Deshmukh, J

Bench : Division Bench

Judgement

Patel, J.—This petition is filed challenging the decision of the State Government by which it has refused to entertain the revision application filed by the petitioner. The short facts are that the petitioner was in the employment of respondent No. 4, Nagpur Vislial Grahak Sahakari Sanstha Ltd., as a salesman. It seems during the audit, it was found that certain amount was not properly accounted for. Respondent No. 4, therefore, after making certain enquiry, charged the petitioner with the shortage and referred the dispute to the Deputy Registrar u/s 91 of the Maharashtra Co-operative Societies Act, 1960. In the present case, the Assistant Registrar, with delegated powers u/s 3 of the Act, exercised jurisdiction u/s 91 and held that a dispute existed which required to be decided under the provisions of the Act. He referred the matter to a nominee as provided by Section 93. This Court has held that before a decision is arrived at by the Registrar u/s 91 the person affected must be given a hearing, which the petitioner was not given. He filed a revision application to the State Government. The State Government in view of the decision of this Court directed the Registrar to hear the petitioner before deciding u/s 91 whether a dispute existed which required reference to an arbitrator. When the matter went before the Assistant Registrar again, the petitioner raised several issues, one of them being that the Assistant Registrar had no jurisdiction to deal with the matter. The Assistant Registrar decided all these points against the petitioner and held that a dispute did exist between respondent No. 4 and the petitioner. He nominated respondent No. 3 to hear the matter under the provisions of the Act and decide it. The

petitioner filed a revision application before the State Government and the State Government, by order, dated May 25, 1966, (annexure 8) intimated to the petitioner that the revisional jurisdiction of the State Government u/s 154 was shifted to the Co-operative Tribunal and that the Co-operative Tribunal had the ultimate power of entertaining an appeal against the order of a Registrar's nominee. The petitioner challenges this order of the State Government.

2. The matter involves a question of construction of Section 154 of the Co-operative Societies Act, 1960. It gives jurisdiction to the State Government and the Registrar to call for and examine the record of any enquiry or the proceedings of any other matter of any officer subordinate to them for satisfying themselves as to the legality or propriety of any decision or order passed and making such orders as they deem proper. An exception is created and that is "except those proceedings or matters referred to in Sub-section (9) of Section 149". Section 149 provides for appeals, review and revision and occurs in Chapter XIII. It may be stated that" appeals are really provided, not by Section 149 but by Section 97 of the Act. Section 14"D deals with the constitution of a Tribunal called "the Co-operative Tribunal" to exercise functions conferred on it by or under the Act. Section 97 is one of such sections which confers powers on the Tribunal of appeal and provides that

Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under the last preceding section, or an order passed u/s 95 may, within two months from the date of the decision or order, appeal to the Tribunal.

Section 149(9) provides that

The Tribunal may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed...

3. Section 97, which we have reproduced above, gives rights of an appeal against only limited number of orders. One is a right of appeal against an order made u/s 96 and the other is against an order made u/s 95. An order u/s 96 is made in a proceeding determined by the Registrar or by his nominee or board of nominees on merits, and an order u/s 95 is one relating to attachment before award and other interlocutory orders. If, therefore, the words "any proceeding in which an appeal lies to it" have to be interpreted in relation to Section 97, it would appear to include only such orders as are made on merits after the Registrar has referred the dispute to arbitration and the Registrar, or his nominee or the board of nominees have decided the dispute on merits. It would also include cases where interlocutory orders are made u/s 95.

4. Mr. Chandurkar has raised an ingenious contention and it is that it is wrong to say that the word "any proceeding" means a proceeding which commences with the enquiry by the Registrar or his nominee u/s 96. According to him, the proceeding commences from the initial step taken u/s 91 by which a reference is made by either of the parties covered by that section to the Registrar in

connection with a dispute. Section 91 requires that all disputes of the nature mentioned therein must be referred to the Registrar. Section 91(2) requires the Registrar to decide whether a dispute exists or not, and his decision is declared to be final. Thereafter, the Registrar either undertakes to decide the dispute himself or refers the dispute for decision to nominee or board of nominees u/s 93. Having regard to the precise terms in which Section 97 is framed, as also the terms of Sections 91 and 93, it is impossible to regard each of the two stages in the settlement of a dispute between the parties, as one proceeding. Section 91(2) indicates a complete stage by itself at which the Registrar makes a decision as to whether a dispute between the parties exists or not, This decision is final and is not subject to any review. After he decides that there is a dispute between the parties, he undertakes to determine the dispute on merits between them, or appoints nominees u/s 93. It is distinctly a different stage and a different proceeding which commences after his decision on the first proceeding and it is only a decision on merits given either by himself or by his nominee that is the subject-matter of an appeal. This procedure is, unlike the procedure where a tribunal of limited jurisdiction decides the initial questions in a proceeding which commences with the filing of a plaint and ends with the final order, entirely different. Under this Act, first the party makes a reference and the Registrar decides whether a dispute exists. Then commences the second proceeding on merits which is a judicial proceeding. It is impossible to hold that, the proceeding commences with the reference of the dispute to the Registrar and ends with the decision on merits, either by the Registrar or by his nominee. In this view of the matter, it is impossible to hold that u/s 149(9), the Co-operative Tribunal has revisional jurisdiction against an order u/s 91(2).

5. Both on behalf of respondent No. 4 and on behalf of the State, a contention is made that Section 154 cannot be read to give concurrent jurisdiction to the Government and the Registrar to revise orders of subordinate officers. The words are "The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them". This is a compendious way of providing revisional powers and jurisdiction and it must be read in the light of the other sections to mean that the Government may examine the records of the proceedings or enquiry of the Registrar because he is its immediate subordinate and the Registrar may call for and examine the record of enquiry of any officer subordinate to him. On behalf of the petitioner, it was contended that Section 154 provides a concurrent jurisdiction and gives a litigant a choice of approaching, either the Registrar or the State Government in a case like the present.

6. Section 3 provides for delegation of powers of the Registrar to any subordinate officer by the State Government, either by general or special order. It further provides that a person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. This section makes it clear that even if the Assistant Registrar is empowered to exercise the powers of

the Registrar, even so the Assistant Registrar works under the guidance, superintendence and control of the Registrar himself. He is clearly, therefore, subordinate to the Registrar. It is not possible to contend that merely because the Assistant Registrar exercises the delegated powers of the Registrar, his order must be taken to be the order of the Registrar. Under the Act, all the duties are cast on the Registrar. There is no statutory duty cast on the Additional or Deputy Registrar or Assistant Registrar as such. In all these cases, therefore, where delegated powers are exercised, they are exercised by virtue of Section 3, and in many cases the powers exercised are powers of the Registrar. Even so, all these officers are subordinate to the Registrar as shown by Section 152 which provides the forum of appeal against the orders made by respective officers. Section 152(7) states that?

An appeal against an order or decision under Sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 20, 35, 78 and 105 shall lie?

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

In the present case, the order is made by the Assistant Registrar. If it is made with the approval of the Registrar, then the revisional jurisdiction must, on the principles of this section, lie to the State Government, because, in that case, it becomes virtually the order of the Registrar. If, however, the order is made by the Assistant Registrar without reference to the Registrar, then the revision application will lie to the Registrar. In every case, whether the revision lies to the State Government or to the Registrar must, in view of Section 152 depend upon whether the order was made with the approval or sanction of the Registrar. All are agreed before us that, in the present case, the order was passed by the Assistant Registrar on his own without the sanction or approval of the Registrar. In accordance with the principles laid down by us, the revisional jurisdiction will, therefore, be of the Registrar.

7. Under the circumstances, it is impossible for us to direct the State Government to hear the revision. The petitioner may adopt such course as he is advised to take. There will be no order as to costs.