

(2023) 07 CAL CK 0084
In the Calcutta High Court
Case No : WPA No. 26384 Of 2022

Mahadeb Pandit & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
West Bengal Cooperative Societies Act, 2006 — Section 102, 102(1), 102(1)(c)
Andhra Pradesh Cooperative Societies Act, 1964 — Section 61
Maharashtra Cooperative Societies Act, 1960 — Section 91
Gujarat Cooperative Societies Act, 1961 — Section 54(1)
Bengal Cooperative Societies Act, 1914 — Section 86
Punjab Cooperative Societies Act, 1961 — Section 55
Kerala Cooperative Societies Act, 1969 — Section 69

Citation : (2023) 07 CAL CK 0084

Hon'ble Judges : Lapita Banerji, J

Bench : Single Bench

Advocate : N.C. Bihani, Sahina Sumi, Soumya Mukherjee, Srijan Nayak, Rituparna Maitra, Pradip Kumar Roy, Joydip Roy, Arnab Ray

Final Decision : Dismissed

Judgement

Lapita Banerji, J

1. The petitioners have challenged a notice dated September 7, 2022, whereby the cut off date for assessing the eligibility of the incumbents for promotion was held to be September 30, 2021. The petitioners are working in Grade-2, Scale-I posts of the Bankura District Central Cooperative Bank Ltd.

2. Mr. Ray, learned Counsel appearing on behalf of the respondent bank challenges the maintainability of the writ petition on the ground that due to the availability of an alternative remedy under Section 102(1)(c) of the West Bengal Cooperative Societies Act, 2006, the present writ petition is not maintainable. It was submitted that the issue of granting promotion by a cooperative society to its employee comes within the scope of the word 'affairs' even if, not within the

scope of the words "management" or "business" in terms of Section 102(1) of 2006 Act.

3. He referred to a decision dated December 7, 2020 passed by an Hon'ble Coordinate Bench of this High Court in WPA 9964 of 2020 (Malda District Central Cooperative Bank Employees Union vs. State of West Bengal and Ors.).

4. The dispute in that case related to alteration of 'nomenclature' of the posts without consultation with the employees. Therefore, the promotional avenue of the Branch Managers to the post of Deputy Managers was seriously prejudiced. The feeder post of Junior Manager was equated to that of the Branch Managers. On the point of maintainability the Hon'ble Coordinate Bench held that the existing remedy under Section 102 before the Registrar can definitely be availed by the petitioners to remedy their grievances.

5. He relied on a decision of a Special Bench of this Hon'ble Court reported in AIR 1990 Cal 380 (Anjan Choudhury v. Anandaneer Cooperative Registered Housing Society and Others) for the contention that any dispute relating to the appointment or termination of service which in effect are conditions of service of the Officers/Employees of the society would relate to the 'affairs' of the society, even if, not necessarily concerned with its "business". Therefore, he submitted that matters concerning promotion of employees being conditions of service was hit by the bar of Section 102 of the 2006 Act. Since, there was an existence of a statutory alternative remedy the petitioners should have explored the said avenue, at the first instance.

6. Next, he relied on a decision reported in AIR 2021 Gauhati 163 (Hindustan Paper Cooperation Ltd Officers and Supervisors' Association, Morigaon, Assam vs. Union of India), for the proposition that when Legislature had deliberately omitted certain words or definition from a clause, it is not given to the Court to include that in a statute. He submits that only the disputes regarding "disciplinary action" of the employees have been excluded from the jurisdiction of the learned Registrar and therefore the other conditions of service cannot be excluded from the purview of his jurisdiction.

7. Mr. Bihani, learned Counsel appearing on behalf of the petitioners countered the argument of Mr. Ray, by citing several Judgments. He refers to a Special Bench Judgment reported in (1969) 2 SCC 43 (Cooperative Central Bank Ltd. & Others vs. Additional Industrial Tribunal, Andhra Pradesh and Others) to contend that service conditions and promotions have been taken out from the purview of the jurisdiction of the Registrar. In that case, Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 was referred to. Section 61 of the said Act reads hereinunder:

61. Disputes which may be referred to the Registrar:-

(1) Notwithstanding anything in any law for the' time being in force, if any dispute touching the constitution, management or the business of a society,

other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises-

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

(b) between a member, past member 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, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other society,

Such dispute shall be referred to the Registrar for decision.

8. In that context, the Hon'ble Special Bench of the Apex Court held that the dispute relating to the alteration of the conditions of service was a dispute that was already referred to the Industrial Tribunal. Such a dispute could not come under the expression 'touching the business of the society'. The word business is equated with actual trading or commercial business activity of the Society. In that case, alteration of the service conditions of the employees would also require alteration of the Rules framed by special by-laws. Without altering the By-laws the service conditions of the workmen could not be altered. Therefore, it was held that the disputes relating to the alteration of various conditions of service was not a dispute that the Registrar was competent to grant relief in.

9. No argument has been made as to whether disposal of the dispute with regard to alteration of service conditions will entail changing of the By-laws in the present case.

10. Next, he relied on a decision reported in (2017) 5 SCC 623 (Maharashtra State Cooperative Housing Finance Corporation Ltd. Vs. Prabhakar Sitaram Bhadange) Section 91 of the Maharashtra Cooperative Societies Act, 1960 is reproduced herein under:

"91. Disputes. – (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Cooperative Court if both the parties thereto are one or the other of the following –

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal

representative of any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society or the official assignee of a deregistered society;

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under Section 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transaction in respect of which restrictions have been prescribed under Section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the liquidator of such a society or deregistered society or the official assignee of such a deregistered society."

11. In that case, the issue was whether management 'or business of a society' would include dispute between management of the society and its employees. It was held that the dispute between the workers union of the cooperative society and the management was not a dispute relating to the management and business of the society. It has been clearly held in that case that even though on the facts of that case the disputes between the cooperative society and its employees were not covered by the provisions of Section 91 of the 1960 Act but, there were provisions in the Cooperative Societies Act of certain States where complete machinery for Redressal of grievances of its employees were provided under the Cooperative Society Act. In such cases, the jurisdiction of the Labour Court/Industrial Tribunal under the Industrial Disputes Act would also be barred having regard to the provisions of a Special statute vis-a-vis the general Statute like Industrial Disputes Act.

12. Next, he relied on a decision of a Special Bench reported in AIR 1969 SC 1320 (Deccan Merchants Cooperative Bench Ltd. Vs. M/s. Dalichand Jugraj Jain and Anr.). The said case was also in relation to Section 91 of the Maharashtra Cooperative Societies Act, 1961. It was held that five kinds of dispute were contemplated under Section 91.

(1); first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and, fifthly, disputes touching the business of a society.

The jurisdictions of Civil Courts were ousted in respect of the said five types of dispute.

13. The business of the society in that context did not mean the affairs of the society as the word affairs would mean election of Office bearers, conduct of general meeting and management of the society. Business has a narrower meaning relating to actual trading or commercial or similar business activity of the Society. On the facts of the case, it was held that the matters covered by the Rent Act and its provisions would not be affected by Section 91 of the Maharashtra Cooperative Societies Act. As far as the matters covered by the Rent Act and its provisions were concerned the said Act should prevail.

14. Next, he relied on a decision reported in (1979) 3 SCC 123 (Gujarat State Cooperative Land Development Bank Ltd vs. P.R. Mankad and Others). Relying on the case of Deccan Merchants (supra) it was held that the dispute between the Cooperative Society and its former employees relate to conditions of service and does not come within the purview of the words 'business' or 'management'. The Apex Court was not willing to widen the connotation of the word management to bring within the purview of the Registrar's jurisdiction a dispute between the Society and its discharged employees/servants. The conditions of service between the Society and its employees were contained in the by-laws. A change in the by-laws was not stipulated by the Act to be covered by Section 54(1) of the Gujarat Cooperative Societies Act, 1961.

15. In Gujarat State Cooperative's case also the word affairs was not under consideration. The issue under consideration was what encompassed the words "management" and "business" of the society.

16. Next, he relied on a decision reported in 1972 SCC Online Cal 197 (South Eastern Railway Employees' Cooperative Urban Bank vs. First Industrial Tribunal and Others). In that case, it was held that the word business occurring in Section 86 of the Bengal Cooperative Societies Act, 1914 could not be interpreted to mean that a dispute regarding alteration of conditions of service could be interpreted to be a dispute touching the business of a Cooperative Society. Relevant part of Section 86 of the 1916 Act is reproduced herein under:

"86. Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the registrar if the parties thereto are among the following.....

17. He then relied upon a Judgment reported in (2006) 6 SCC 80 (Morinda Coop. Sugar Mills Ltd. Vs. Morinda Coop. Sugar Mills Workers' Union). Section 55 of the Punjab Cooperative Societies Act, 1961 is reproduced hereinunder:

"55. Disputes which may be referred to arbitration- (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 cooperative society arises-

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

(b) between a member, past member 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 liquidator, past or present; or

(c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, 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 and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society,

Such disputes 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.

2. For the purposes of sub-section (1), the following be deemed to be disputes touching the constitution, management or the business of co-operative society, 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 society against the principal debtor where the society has recovered from the surety any 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 any officer of the society.

3. If any question arises whether a dispute referred to the Registrar under this Section is or not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

It was held that only if dispute touches the constitution, management or the business of the cooperative society, then the same has to be referred to arbitration. Therefore, a suit that was filed by the plaintiff/employees' union for fixation of Dearness Allowance was found to be maintainable and not referred to arbitration. The Appeal by the Cooperative Society was dismissed.

18. Next, he relied on a Judgment reported in (2014) 9 SCC 294 (Akalakunnam Village Service Cooperative Bank Ltd. & Anr. Vs. Binu N. & Others). Section 69 of the Kerala Cooperative Societies Act, 1969 reads herein under:

"69. Disputes to be decided by Co-operative Arbitration Court and Registrar.—
(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises—

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, a 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 and 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 a member, who has been granted a loan by the society, whether such a surety 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 Co-operative Arbitration Court constituted under section 70A in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(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 any 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;

19. Considering the provisions of the 1969 Act, it was held that a dispute regarding the recruitment process between the incumbents and the cooperative society was not a dispute that could be decided by the Cooperative Arbitration Court or the Registrar.

20. Upon detailed discussion of the various decisions cited on behalf of both the parties, this Court is of the view that the word 'affairs' could include the conditions of service of the employees unless specifically governed by any by-laws relating to the Bankura District Central Cooperative Bank Ltd. No attention of this Court is drawn to such by-laws which governed the service conditions of the employees. Therefore, this Court has not analyzed whether the Registrar had the power to alter such by-laws.

21. The Special Benches Judgment in Anandaneer Cooperative (supra) indicates that affairs of a cooperative will include disputes regarding appointment and termination. This Court finds that disputes relating disciplinary proceedings is only excluded under Section 102 of the 2006 Act.

Section 102 is set out hereinafter:

"102. (1) Any dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election in a Co-operative Society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises –

(a) among members, past members and persons claiming through members and deceased members or then sureties; or

(b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative society, its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or

(c) between the Co-operative society or its board and any past board, 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 or deceased employee of the Co-operative society; or

(d) between two Co-operative society or between a Co-operative society and a liquidator of another Co-operative or between liquidator of two different Co-operative or between a Co-operative society and any person having transaction with it or between a Co-operative society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(4) Any Civil court or any consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1),

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed."

22. Therefore, it is deemed that the other service related disputes can be adjudicated by the Registrar. Considering the language of Section 102 of the 2006 Act read with the interpretation given by the special Bench Judgment to the word affair, this Court finds that a dispute relating to the conditions of service can be adjudicated by the Registrar. Therefore, any dispute regarding promotion can also be adjudicated by the Registrar under the 2006 Act.

23. The Coordinate Bench's Order in Malda District (supra) also takes into account similar facts. The issue was not regarding alteration of nomenclature of a post, simplicitor, but of such alteration seriously prejudicing the promotional avenue of the Branch Managers to the post of Deputy Managers.

24. This Court agrees with the submission of Mr. Ray, that the petitioners have an effective alternative remedy for the present dispute and the same should be adjudicated by the authority concerned under Section 102(1) (c) of the 2006 Act. The petitioner could have only approached the Writ Court in the face of violation of principles of Natural Justice or extreme injustice. No such case is pleaded in the present writ petition.

25. Therefore, this Court is of the view that without exhausting the alternative remedy provided in Section 102 of the 2006 Act, the petitioners should not be allowed to avail of a remedy under Article 226 of the Constitution of India. This Court is not inclined to receive, try and entertain the present writ petition.

26. Accordingly, WPA 26384 of 2022 is dismissed. However, it is made clear that this Court has not gone into the merits of the writ petition. The petitioners will be at liberty to approach the appropriate forum, if so advised.

27. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.