

(2016) 11 CAL CK 0049
In the Calcutta High Court
Case No : W.P. No. 28100 (W) of 2015

Majdia Taldaha Union Co-operative

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 3A
Constitution of India, 1950 — Article 226
West Bengal Co-operative Societies Act, 2006 — Section 146(2)(a)
West Bengal Judicial (Condition of Service) Rules,

Citation : (2017) 1 CalLT 702

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Mr. Milan Ch. Bhattacharjee, Sr. Advocate and Mr. Mukteswar Maity, Advocate, for the Petitioner; Mr. Jaydeep Kar, Sr. Advocate, for the High Court; Mr. Khirshnendu Banerjee and Mr. Vineet Kothari, Advocates, for the Respondent Nos. 4 to 6; Mr. P.K. Pakras

Final Decision : Dismissed

Judgement

Harish Tandon, J.—The instant Writ Petition is filed by Majdia Talaha Union Co-operative Large Sized Primary Agricultural Credit Society Ltd. challenging the orders dated 30th November, 2011, 4th September, 2015 and 3rd November, 2015 passed in Appeal No. 37 of 2011 by the West Bengal Co-operative Tribunal whereby and where under the appeal was registered upon condonation of delay and directions were passed in furtherance thereof. Basically, the petitioner intended to impugn the entire proceeding, which is entertained by the Co-operative Tribunal not only on the ground that it lacks jurisdiction but also on the ground of validity and legality of the appointment of Chairman of the said Tribunal.

2. The specific points urged at the Bar would be succinctly indicated later. The undisputed facts relevant to address the issues raised in this Writ Petition are required to be adumbrated. The dispute Case No. 44 of 2009-2010 was filed

before an authority under Section 95 of the West Bengal Co-operative Societies Act challenging the notice issued by Asit Kumar Sarkar, the respondent no. 4 herein, as secretary of the society to hold a meeting, to be declared as illegal and not binding on the society. The first petitioners of the dispute case was shown as Taldah Majdia Union Cooperative Large Sized Primary Agricultural Credit Society Ltd. and second petitioner was one Bhaskar Dutta, who is the petitioner no. 2 herein. An award was published on 12th October, 2010. A Writ Petition was filed by the present petitioners assailing the award dated 8th December, 2010 on various grounds including that the award is bad and illegal having passed in favour of Taldaha Majdia Union Co-operative Large Sized Primary Agricultural Credit Society Ltd. when the Co-operative Society is registered as the petitioner no. 1 herein.

3. While entertaining the Writ Petition the Court found that such discrepancy is vital and may invite the consequence of setting aside thereof. On such prima facie finding the parties were directed to exchange their affidavits and the operation of the award dated 8th December 2010 was stayed for a limited period. The said order was assailed before the Division Bench of this Court in MAT 833 of 2011 wherein it is indicated that the Hon"ble Judge has proceeded on the wrong premise that the award was made and published on 8th December, 2010 when the fact remains that it was passed on 12th October, 2010 and set aside the said order.

4. Subsequently, the said Writ Petition appeared on 2nd November, 2011 and was disposed of granting liberty to the Writ Petitioners to approach the Tribunal for redressal of their grievance. It appears from the record that challenging the award the respondent no. 4 filed an appeal before the West Bengal Co-operative Tribunal being Appeal No. 37 of 2011 on 11th November, 2010 without accompanying the original certified copy. In the order dated 30th November, 2011 the Tribunal directed the registration of the appeal upon condonation of delay. It is specifically observed that the award was passed on 12th October, 2010 and was communicated to the appellant therein on 25th October, 2010. The certified copy was applied on 12th November, 2010 and was made ready for delivery on 25th February, 2011 and was filed on 1st March, 2011.

5. The challenges in this Writ Petition are basically found on three fold submissions-

Firstly, the Chairman of the Co-operative Tribunal never held the post of Judicial Secretary or Legal Remembrancer in terms of Section 146(2)(a) of the West Bengal Co-operative Societies Act, 2006;

Secondly, the appeal is incompetent having filed without the certified copy of the impugned award;

Thirdly, the dispute was raised by a union, which is not registered under the West Bengal Co-operative Societies Act and therefore it cannot bind the present petitioners.

6. Mr. Bhattacharjee, learned Senior Advocate appearing for the petitioner submitted that the Tribunal lacks jurisdiction as the Chairman appointed by the High Court never held the post of Judicial Secretary or Legal Remembrancer as mandated by Section 146 of the said Act. He vehemently submitted that mere holding the post of a Senior District Judge does not satisfy the criterion required under the aforesaid provision and once it is found that the Chairman lacks requisite qualification to be appointed to such post, the orders passed by the Tribunal is invalid, bad and is not legally enforceable.

7. He further submitted that a dispute was raised by a wrong juristic person, which would be evident from the cause title of the award and therefore such award cannot bind the union being the petitioner no. 1 herein. He audaciously submitted that the appeal without the certified copy cannot be regularized on subsequent filing thereof more so upon condonation of delay.

8. On the other hand, it is submitted by the Advocate appearing on behalf of the respondents that the person appointed as Chairman of the Co-operative Tribunal is a senior most District Judge which is not below in rank of a Legal Remembrancer or Judicial Secretary under Section 146 of the said Act. It is further submitted that the senior most District Judge is appointed on deputation to various post of the State Government including the post of the Judicial Secretary and Legal Remembrancer and it would be fallacious to suggest that no District Judge can be appointed to such post unless he held the post of the Judicial Secretary or Legal Remembrancer. It is strenuously submitted that the appeal was filed, though without certified copy, within the period of limitation and an application for certified copy was filed before the time expires and therefore the filing of the certified copies subsequent to the filing of the appeal is merely a procedural defect which cannot be said to fatal.

9. After hearing the respective submissions, the first and foremost issue raised by the petitioner in this Writ Petition is over the appointment of a Chairman of the Co-operative Tribunal, which according to the petitioner is contrary to the provisions of Section 146 of the Act. It would be relevant and apt to reproduce the said provision which runs thus:-

"146. Tribunal. - (1) The State Government shall, by notification, constitute one or more Tribunals which shall consist of a Chairman and not less than-

(i) one "Judicial Member"; and (ii) one administrative Member.

(2) No person shall be qualified for appointment-

(a) as the Chairman unless he is or has been a Judge of the High Court or is holding or has held a post not below the rank of Judicial Secretary or Legal Remembrancer;

(b) as a Judicial Member unless he has held or is holding a post not below the rank of District Judge belong to Higher Judicial services;

(c) as an administrative Member unless he has held or is holding a post not below the rank of Joint Secretary in the State Government.

(3) Where more than one Tribunal is constituted, the State Government shall, by notification, specify the district or districts over which such Tribunals shall have jurisdiction. The Tribunals, so constituted, shall have jurisdiction over the affairs of cooperative society having registered offices situated within the territorial jurisdiction of such Tribunals.

(4) (a) A Tribunal shall exercise all the powers conferred upon an Appellate Court by Order 41 in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(b) Any person aggrieved by an order made by a Tribunal may, within ninety days from the date of such order, apply to such Tribunal to review of such order on one or more grounds specified in rule 1 of Order 47 of the Code of Civil Procedure, 1908.

(c) A Tribunal shall not make any order on an application made under clause (b) without giving the person likely to be affected adversely by such order an opportunity of being heard and such application shall be disposed of by the Tribunal within three months from the date of its presentation.

(d) When an appeal or application for review is filed before a Tribunal, it may make, on such terms and condition as it thinks fit, such interlocutory order as may appear to it just and convenient after giving the parties an opportunity of being heard.

(e) The Tribunal shall exercise jurisdiction, power and authority and perform function conferred or imposed on it by or under this Act by one or more benches, each bench consisting of such number of Judicial Member and administrative Member as may be determined by the Chairman:

Provided that each such bench shall consist of one Judicial Member and one administrative Member:

Provided further that if the Judicial Member and the administrative Member of the bench are divided in their opinion on any matter such matter shall be referred to a bench which shall consist of one administrative Member and two Judicial Members of whom the Chairman shall be one:

Provided also that in the case of difference of opinion between two or more benches, the State Government shall constitute a large bench consisting of such number of members as the State Government may think fit.

Explanation.-For the purpose of this sub-section Judicial Member shall include the Chairman.

(5) The State Government shall by notification fix the place at which the Tribunal may hold its sitting."

10. There is a fallacy in the submission of the petitioner that unless a person holds the post of a Judicial Secretary or Legal Remembrancer he disqualified himself to be appointed as Chairman of the Co-operative Tribunal. The expression "the post not below the rank of" has significant meaning and it would be preposterous to suggest that the Chairman must held the post of a Judicial Secretary or Legal Remembrancer. What is requisite in the aforesaid provision is that the Chairman should not hold the post below the rank of Judicial Secretary or Legal Remembrancer. The West Bengal Judicial (Conditions of Service) Rules, 2004 which came into force on and from October, 2004 defines District Judge under Rule 23(c) thereof as under:-

"23(c):"District Judge" includes the District and Sessions Judge, the Additional District and Sessions Judge, the Judge of Special Court, the Chief Judge and Judge of the City Civil Court, the Chief Sessions Judge and Sessions Judge of the City Sessions Court, the Chief Judge of the Small Causes Court, and any Judicial Officer of this Part posted in any other post or any post equivalent thereof or posted on deputation."

11. The cadre of the District Judge is divided in three categories under Rule 24 thereof in the following:-

"24. Cadre.- (1) The Higher Judicial Officers in the rank of District Judges of the service as mentioned in Part II shall include the following posts forming the cadre, namely:-

- (a) District Judge;
- (b) District Judge in Selection grade;
- (c) District Judge in super time scale.

(2) The strength of the cadre of the service shall be such as specified in Schedule IV and the Government in consultation with the High Court may vary such strength of the cadre from time to time:

Provided that the number of posts as referred to in clause (b) and clause (c) of sub-rule (1), shall be determined by the Government from time to time depending upon the total strength of the officers in the service."

12. Rule 40 of the said Rule postulates that the Higher Judicial Officer in the rank of a District Judge may be deputed to perform the duties of any post under the Central Government or the State Government or the Union Territory of Andaman and Nicobar Islands to serve in any organization which is wholly or partly owned or controlled by such Government. It would not be wrong to say that the Judicial Secretary or Legal Remembrancer are the posts under the State Government, which is under the complete control of the State Government. The High Court enjoins the power to appoint senior District Judges to such posts and it is nobody's case that the present Chairman who holds the post of a District Judge has been appointed by the High Court as Chairman of the Co-operative Tribunal.

Had it been the legislative mandate that the person cannot be appointed as Chairman of the Co-operative Tribunal unless he holds the post of a Judicial Secretary or Legal Remembrancer the language employed under Section 146(2) of the Act would have been worded differently. The expression "not below the rank of Judicial Secretary or Legal Remembrancer" assumes significance and conveys a definite legislative intention.

13. It has not been argued before me that the post of a District Judge is below the rank of the aforesaid posts and therefore this Court can safely proceed that it is not so. It is a salutary principle of interpretation of statute that the Court should adopt plain and simple meaning assigned to the words therein to make the provision workable rather to make it redundant or otios. Furthermore, even if the contention of the petitioner is accepted for the sake of argument, the order passed by the Chairman cannot be rendered illegal, invalid and without jurisdiction under De Facto Doctrine. Since, this Court finds that the appointment of a District Judge as Chairman of the Co-operative Tribunal is neither illegal nor bad and it would be unnecessary to elaborate the De Facto Doctrine in the instant case.

14. The Tribunal received the appeal within the period of limitation and further recorded that the certified copy applied within the period of limitation provided therefore was filed immediately upon receiving the same. the learned Advocate for the petitioner emphasized on Third Schedule appended to the said Act prescribing the period of limitation on different eventualities. Serial No. 7 of the Third Schedule postulates that a person aggrieved by an order of the Registrar may file an appeal before the Co-operative Tribunal within one month from the date on which the order is communicated. It is sought to be contended by the petitioner that Rule 197(h) of the West Bengal Co-operative Societies Rules, 2011 clearly indicates that the registration of Memorandum of Appeal shall be subject to the provisions of Order 41, Rule 11 of the Code of Civil Procedure.

15. It is further submitted that the reference of Order 41, Rule 11 of the Code of Civil Procedure conveys a definite intention of the legislature that such appeal shall be guided under the provisions of Order 41 of the Code. The Rule 1 thereof provides that it should be accompanied by a certified copy of the judgment. The petitioner further relies upon Section 146(4)(a) of the said Act in furtherance of the aforesaid submissions as under the said provision the Tribunal shall exercise all the powers conferred upon the Appellate Court by Order 41 of the First Schedule of the Code of Civil Procedure. There is no hesitation in my mind that the power enshrined under Order 41 of the Code of Civil Procedure upon the Appellate Court shall regulate, guide and control the appeal filed before the Co-operative Tribunal.

16. By reference of the aforesaid provisions it would be preposterous to suggest that the Tribunal lacks jurisdiction to condone the delay if an appeal is filed beyond the prescribed period of limitation. All the rules contained under Order 41 of the Code would become applicable by reference in the special statute and it

would be fallacious to say that some of the rules contained therein would not apply unless a special reference is made therein. In other words, it is sought to be contended by the petitioner that because of the reference of Order 41, Rule 11 the intention of the legislatures are to exclude other rules under the said order. Order 41, Rule 3A of the Code confers power on the Appellate Court to condone the delay in filing an appeal and such power can be exercised by a Co-operative Tribunal because of the reference of Order 41 in the aforesaid Section and its applicability in the proceeding.

17. Apart from the same, procedure is the hand made of justice and cannot be used as jealous mistress. The appeal was admittedly filed within the prescribed period of limitation but may not be in proper form. Such mistake is not fatal so as to invite the dismissal thereof. It is curable and may be regularize for securing the ends of justice. The power to condone the delay is found to exist in the Co-operative Tribunal because of the reference and applicability of the provisions of Order 41 of the Code and if such power is exercised the Writ Court should not upset the order as it patently lacks jurisdiction. The discretion of the Court in condoning the delay cannot be found to be irrational, illogical and opposed to legal parameters. The Writ Court should be slow and circumspect in interfering with the said order.

18. The last point urged by the petitioner that the award is passed against a union, which is not registered under the said Act is untenable both on facts and in law. It has been brought to the notice of this Court that subsequently the amendment has been allowed correcting the name of the co-operative society. Even otherwise the petitioner is all along away of the award being passed and the proceeding being pending before the Tribunal have been contesting the same. The petitioner is quite aware that the dispute raised before the competent authority was in relation to the affairs of the said co-operative society and therefore it would be too late in a day to suggest that the award should fail on such defect. Mere mis-description does not invalidate the proceeding as the same is curable and having cured subsequently.

19. Mr. Bhattacharjee was very much vocal in his submission that the proceeding was initiated against a wrong person, which would be apparent from the cause title. As indicated above it is merely a case of a mis-description and certainly not a case of initiation of proceeding against a wrong juristic person.

20. From whatever angle this Court looks at, does not find any substance in the submission advanced by the petitioner.

21. The Writ Petition, thus, fails.

22. However, there shall be no order as to costs.