

(2012) 03 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44864 of 2005

M/s. Pradhan Prabandhak, Kishan Sahkari Chini Mill

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 10, 121, 122, 128, 135
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6H

Citation : (2012) 5 ADJ 657 : (2012) 4 AWC 3357 : (2012) 4 LLJ 726

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.K. Singh, A.K. Mishra and V.B. Mishra, for the Appellant; Anoop Trivedi, Vinod Upadhyay, M.K. Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri V.B. Mishra, Advocate, for petitioner and Sri Vinod Upadhyay, Advocate, for contesting respondent No. 4-workman. Writ petition is directed against the award of Labour Court dated 28.9.2004 in Adjudication Case No. 27 of 2002. The workman-respondent No. 4 raised an industrial dispute regarding his confirmation from crushing session 1997-98. The State Government in exercise of power u/s 4K of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "U.P. Act, 1947") vide notification dated 9.4.2002 made following reference:

2. By impugned award dated 28.9.2004 the Labour Court has answered reference in favour of workman.

3. Learned Counsel for petitioner submitted that petitioner is a Co-operative Society Sugar Mill and is governed by the provisions of U.P. Co-operative Societies. Act, 1965 (hereinafter referred to as "Act, 1965") therefore the provisions of Industrial Disputes Act are not applicable in view of Apex Court's decision in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, .

4. On the contrary, Sri Upadhyay learned counsel appearing for workman submitted that neither such objection was raised before Labour Court nor there is such averment in the entire writ petition and, therefore, for the first time this objection cannot be allowed to be raised before this Court. He relied on a Single Judge decision of this Court in Rama Shankar Vaish Vs. The Presiding Officer, Labour Court and Others, .

5. The question as to whether the dispute relating to service matter of an employee and an employer which is a Co-operative Society can be raised under provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "Central Act, 1947") or U.P. Act, 1947 came to be considered in Ghaziabad Zila Sahkari Bank (supra) and the Apex Court in para 36 said as under:

"36. It was submitted by learned senior counsel that, The U.P. Co-operative Societies Act, 1965 has been enacted to further the Cooperative movement in the State of U.P. and for providing for functions and responsibilities of Co-operative Societies and the authorities invested with their supervision, guidance and control. Thus the objects and reasons for the enactment of the said Act is not to regulate the service conditions of the employees of the cooperative societies and the Act only incidentally provides Sections 121 and 122 to regulate the terms and conditions of all employees of the Co-operative Societies, Officers, Supervisors and other employees. It was submitted that only those employees who are not covered by the provisions of the U.P. Industrial Disputes Act would fall within the ambit of Sections 121 and 122 of the U.P. Co-operative Societies Act. On the other hand, the U.P. Industrial Disputes Act, 1947 has been held to be a special statute in matters of settlement of Industrial disputes arising out of the terms and conditions of service of employees who fall within the definition of workmen, provided they are employed in establishments covered by the said Act. In regard to various establishments which have their own services rules, the U.P. Industrial Disputes Act will still apply to workmen employed therein. Learned senior counsel cited various decisions of this Court in the case of 1978 (37) FLR 280 (SC); Life Insurance Corporation of India Vs. D.J. Bahadur and Others, ; Allahabad District Cooperative Limited Vs. Hanuman Dutt Tewari, and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , in support of this contention."

6. Thereafter the Court also considered whether dispute relating to service conditions of employee of Co-operative Societies would be governed by Section 70 or not, which was specifically raised in para 39 of judgment, and answered it in paras 40 and 41 as under:

"41. This is further strengthened by Rule 130 (2) which provides that if the Resolution is not covered by Section 128 then it becomes operative immediately.

Application of Labour Laws

42. The learned senior counsel submitted that the legislature has specifically provided in the provisions of the U.P. Co-operative Societies Act itself that the

Labour Laws will apply to the employees of the Co-operative Societies, in Regulation 103 and in non-enforcement of Section 135. The fact that Section 135 has not been brought into force indicates clearly that (a) in order to exclude Labour laws there must be statutory exclusion (b) failing such an exclusion Labour Law will apply. In this case, there is a fact that an exclusion however u/s 135 has not been brought into force."

7. Thereafter, non-enforcement of Section 135 was also considered from para 42 and onwards and in paras 56, 61, 62 and 65, the Court said as under:

"56. The present dispute is not "any dispute relating to the constitution, management or the business of a Co-operative Society" and, therefore, the machinery provided in Section 70 or 128 of the U.P. Co-operative Societies Act would not be available to the employees of the Bank to enforce the settlement."

"61. The general legal principle in interpretation of statutes is that the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P legislature is clear, that the special enactment UP Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in Co-operative Societies and its machinery and provisions. The general Act the UPID Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the UPCS Act. This is also clear from necessary implication that the legislature could not have intended "head-on-conflict and collision" between authorities under different Acts. In this regard reference can be made to Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , where this Court observed that:

"Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar u/s 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be

said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-section (4) of Section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him u/s 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, u/s 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar u/s 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in Section 62(4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it u/s 62 of the Act is not competent to grant the re-Kef claimed by the workmen at all. On the principle laid down by this Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with u/s 62 of the Act and must, therefore, be held to be outside the scope of Section 61.

62. Further this Court observed in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , that:

"3....He also places reliance on Section 93 of the Societies Act which states that nothing contained in the Madhya Pradesh Shops and Establishments Act 1958, the M.P. Industrial Workmen (Standing Orders) Act, 1959 and the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication, application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies Act gives power to the

Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards power u/s 64, the language is very wide, viz., "Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference u/s 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society for which the Act therein was amended."

Similar view was taken by this Court in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, ; *Allahabad Bank Vs. Canara Bank and Another*, ; *State of Punjab Vs. Labour Court Jullunder and Others*, and *U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another*, ."

"65. We are therefore of the view that the Asst. Labour Commissioner (ALC)"s jurisdiction was wrongly invoked and his order dated 15.3.2003 u/s 6H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced Section 135 (U.P. Co-operative Societies Act) because, in any case the said provision (Section 135) had been included in the Act only by way of clarification and abundant caution."

8. It is clear from above judgement that even a dispute relating to service conditions of an employee of Co-operative Society would be governed by provisions of Act, 1965 and Central Act, 1947 or U.P. Act, 1947 would have no application despite that Section 135 has not been enforced.

9. A Division Bench of this Court (in which I was also a member) in Special Appeal *Brij Bhushan Singh and another v. State of U.P. and others*, 2009(2) ADJ 314 (DB), referring to the Apex Court decision in *Ghaziabad Zila Sahkari Bank* (supra) observed as under:

"It is said that Section 135 has not been enforced so far but the question as to whether despite of non-enforcement of Section 135 of 1965 Act, the Central Act, 1947 or U.P. Act, 1947 would apply to the employees of a Co-operative Society governed by the provisions of 1965 Act and the rules and regulations framed thereunder came to be considered in *Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others*, and it was held that Section 135 has been

added only by way of clarification and abundant caution and, therefore, where the provisions are contained in 1965 Act, the labour laws and in particular the U.P. Act, 1947 would not be applicable. It is also said that 1965 Act alone would apply in the matter of employment of Co-operative Societies to the exclusion of all other laws since it is a complete code in itself as regards employment in Co-operative Societies and its machinery etc. In para 78 of the judgement the Apex Court held:

"It is relevant to mention here that the services of the employees of the Bank are governed by service regulations 1975 framed under the Act of 1965, which provides complete machinery and adjudication. Moreover, the provisions u/s 70 of the U.P. Co-operative Societies Act, 1965 is elaborate in this regard, which provides complete machinery that if there is any dispute between the employers and the employees of the Co-operative Society, the matter shall be referred to the Arbitrator as provided u/s 70 of the U.P. Co-operative Societies Act, 1965. Section 70 of the U.P. Co-operative Societies Act and Section 64 of the M.P. Cooperative Societies Act are *pari materia* and this Court in the matter of R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , held that Labour Court and Industrial Laws are not applicable where complete machinery has been provided under the provisions of the Cooperative Societies Act and in such view of the matter the *Ld. Additional Labour Commissioner U.P.* has no jurisdiction to pass orders in the nature it has been passed."

10. Hon"ble Single Judge however in *Rama Shankar (supra)* has not considered the above exposition of law laid down in Division Bench decision that the dispute even relating to conditions of service of employer-Co-operative Society and its employee are to be looked into under the provisions of Act, 1965 and Industrial Disputes Acts have no application. Therefore the aforesaid judgment is *per incuriam*.

11. So far as objection that issue with respect to non application of industrial Dispute Act was not raised before the Labour Court is concerned, the award itself shows that the aforesaid objection was raised but has been decided by Labour Court against the petitioner-employer. The said view is contrary to Apex Court's decision in *Ghaziabad Zila Sahkari Bank (supra)* and, therefore, the issue decided by Labour Court against the petitioner-employer has to be answered in its favour and if that is so, the award itself cease to be a valid one. The Labour Court, therefore, has no jurisdiction in the matter.

12. In the result, writ petition is allowed. Impugned award dated 28.9.2004 (Annexure 3 to writ petition) is hereby set aside. However, this order shall not preclude the respondent-workman to take such legal recourse as permissible in law.