
(1970) 02 OHC CK 0032
In the Orissa High Court
Case No : O.J.C. No. 231 of 1966

Netrananda Barik

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Citation : AIR 1970 Ori 227 : (1970) 36 CLT 812

Hon'ble Judges : G.K. Misra, C.J;S.K. Ray, J;R.N. Misra, J

Bench : Full Bench

Advocate : R. Mohanty and S.C. Ghosh, for the Appellant; Govt. Advocate and K.C.J. Ray, for the Respondent

Judgement

R.N. Misra, J.—This application under Articles 226 and 227 of the Constitution of India seeks to challenge the jurisdiction of the Assistant Registrar under the Orissa Cooperative Societies Act, 1951 (Act 11 of 1952) (hereinafter referred to as the Act) to make the impugned award on 27-3-62 in a dispute raised by Opposite Party No. 2. That award of the Assistant Registrar was challenged in an appeal before the Deputy Registrar u/s 128 (1) of the Act and was also subjected to two revisions in succession -- one u/s 131 before the Registrar and the other u/s 132 (1) before the State Government. The decision of the Assistant Registrar having been upheld by all the forums the petitioner has come up before this Court.

2. One of the grounds raised in the petition is that the Assistant Registrar had no jurisdiction to entertain the dispute directly and his taking cognizance of the dispute without a reference of the dispute being made by the Registrar has vitiated the exercise of a jurisdiction by the Assistant Registrar. When this writ application came up for hearing before a Division Bench consisting of their Lordships the Chief Justice and Ray, J., a decision of this Court passed in O. J. C. No. 104 of 1967 (Orissa) was cited wherein my Lord the Chief Justice and myself took the view that it was not open to the Assistant Registrar to entertain a dispute raised u/s 71 (1) of the Act unless such a dispute was referred to him by

the Registrar. The correctness of this decision was challenged before the Division Bench which was hearing this writ application and, therefore, in pursuance of the order dated 10-12-1969 "this larger Bench has been constituted to examine the correctness of the decision in O. J. C. No. 104 of 1967 (Orissa) (hereinafter referred to as the "earlier case").

3. The reasoning which was given in the earlier case to uphold the conclusion that no other authority except the Registrar was entitled to entertain a dispute under the Act was as follows :--

"It is not disputed by the parties that the Assistant Registrar and the Deputy Registrar are persons on whom jurisdiction has been conferred u/s 8 (2) of the Act to discharge the specified powers entrusted to the Registrar by or under the Act. But the scheme of Section 73 makes it clear that all references of disputes u/s 71 are to be made to the Registrar, and after the disputes are received he may dispose of the disputes himself or transfer such disputes for disposal to persons authorised u/s 8 (2) of the Act. The necessary consequence of this provision is that no other authority than the Registrar has jurisdiction to receive reference or disputes which are to be made u/s 71 of the Act, and after taking cognizance of the disputes u/s 73 it is open to the Registrar to keep the disputes for disposal by himself or transfer the same to the persons authorised in the manner indicated above. Therefore it follows that unless a dispute is transferred either to the Assistant Registrar or to the Deputy Registrar by the Registrar, the former has no jurisdiction to be in seisin of it. On the aforesaid analysis, the award of the Deputy Registrar is wholly without jurisdiction inasmuch as neither the Assistant Registrar before whom the dispute was originally placed nor the Deputy Registrar to whom it was transferred as indicated above could entertain the dispute unless it was one which had been received by the Registrar and had been made over to either of them for disposal in accordance with the Statute."

4. The learned Counsel appearing before us now did not dispute the correctness of the aforesaid conclusion if it was to be drawn only from the statutory provisions contained in Chapter IX of the Act. The clear effect of the provisions in Sections 71(1) and 73 of the Act would lead to the said conclusion. The correctness of the decision is, however, disputed on the basis that by notification as authorised under the Statute the powers vested in the Registrar under Sections 71 and 73 of the Act have been delegated to the other authorities under the Act appointed to assist the Registrar, and in view of the delegation of the authority of the Registrar to those subordinate authorities of the Registrar, it is now contended, the conclusion could not be correct. Before us in the earlier case reference to the notification by which such powers have been so delegated had not been placed (made--Ed.) and the conclusions were reached on a bare analysis of the statutory provisions in Chap. IX of the Act.

5. In view of the additional feature now placed at length, namely, that certain powers of the Registrar have been delegated to those appointed to assist him, the matter has to be reconsidered and the correctness of the earlier decision in

the present background has to be decided.

6. It would be useful to refer at length for convenience to all the material provisions of the Act in due course. That there is a clear distinction throughout the Statute between the "Registrar" and "persons appointed to assist the Registrar" cannot be and is not disputed.

Section 2 (n) of the Act defines "Registrar" means "a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act", Section 8 of the Act makes the following provisions :

"8 (1) The State Government may appoint a person to be Registrar of Co-operative Societies for the State of Orissa and may appoint persons to assist him.

(2) Subject to restrictions imposed by the rules, the State Government may, by general or special order in this behalf publish in the Gazette, confer all or any of the powers entrusted to the Registrar, by or under this Act, on any person appointed under subsection (1) to assist the Registrar."

7. It is not disputed that appointments have been made under Sub-section (1) of Section 8 of categories of authorities as persons meant to assist the Registrar. Such categories are the Additional Registrar, the Joint Registrar, Deputy Registrars and Assistant Registrars. It is also not disputed that by notifications duly published in the gazette the State Government have conferred many of the enumerated powers entrusted to the Registrar by or under the Act on those authorities.

8. The powers under Sections 71 and 73 appear to have been clearly conferred by that notification on all those authorities enumerated above who have been appointed to assist the Registrar. The notification relevant for the present purpose is dated 28-2-1956 and as far as relevant it reads as follows :--

"Notification.

Dated, Bhubaneshwar, the 28th Feb., 1956.

No. 3215/C.F. In pursuance of Sub-section (2) of Section 8 of the Orissa Co-operative Societies Act 1951 (Orissa Act XI of 1952) the Government of Orissa are pleased to confer on the Assistant Registrars of Cooperative Societies in charge of Co-operative Circles constituted in the Notification of the Government of Orissa in the Development (L. S. G.) Department No. 5153 L. S. G. dated the 29th June, 1954 the powers of Registrar of Co-operative Societies, Orissa under the following Sections under the said Act and Rules made thereunder and to the extent, if any, specified therein, namely :--

O O ?

(iii) Sections 71, 73, Sub-sections" (1), (2) (3) and (4) of Section 103, Section 104, Subsection (3) and Clause (a) of Sub-section (1) of Section 105 and Section 121."

It is not contended before us that Rules have been made imposing restrictions on conferment of the powers of the Registrar on the persons appointed to assist him as envisaged under Sub-section (2) of Section 8 of the Act.

9. On the basis of the aforesaid notification which admittedly was in force on the date when the dispute was filed before the Assistant Registrar in the present case it is contended that the power of the Registrar to receive disputes u/s 71 (1) of the Act was open to be exercised by the Assistant Registrar who as a fact took cognizance of the dispute directly. The jurisdiction inhering in the Registrar for exercise of powers under Sections 71 and 73 has been vested, it is contended, in the Assistant Registrar on the authority of the aforesaid notification and, therefore, the Assistant Registrar had jurisdiction to entertain the dispute filed before him by opposite Party No. 2 and no objection can be taken to his entertaining the dispute without a reference being made by the Registrar.

10. This contention raised on behalf of Opposite Party No. 2 who initiated the dispute before the Assistant Registrar is challenged by the petitioner with reference to the specific provisions made in Section 73 of the Act. The provisions of Section 73 are to the following effect :--

"(1) On receipt of a reference u/s 71, the Registrar may-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person authorised by the State Government to exercise the powers of a Registrar in this behalf; or

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators appointed in this behalf by the State Government.

(2) Subject to any rules, the Registrar may withdraw any reference transferred or referred under Clauses (b) and (c) of Sub-section (1) and decide it himself under Clause (a) of that sub-section or transfer or refer it again under Clause (b) or (c) of that Sub-section to another person exercising the powers of Registrar, or to an arbitrator or arbitrators other than those to whom the reference was originally transferred or referred.

(3) The Registrar, a person exercising the powers of the Registrar under this section, or an arbitrator or arbitrators deciding a dispute under this section, shall have power to order the expenses incurred in determining such dispute to be paid out of the funds of the society or by such party or parties to the dispute as he or they may think fit." Mr. Mohanty, learned Counsel for the petitioner contends that throughout the Act a distinction has been made between the Registrar and the persons authorised by the State Government to exercise the powers of a Registrar. In view of the fact that these two authorities, namely, the "Registrar" and "persons authorised to exercise the powers of a Registrar" appear in the same Chapter of the Statute, one authority cannot be equated to the other and a distinction must necessarily be maintained between the two. He seeks to place reliance for this argument on a decision of their Lordships of the

Supreme Court in *The Member, Board of Revenue Vs. Arthur Paul Benthall*, . It has been stated therein by their Lordships :

"When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in Section 5 and descriptions" in Section 6 have different connotations."

Mr. Mohanty contends that though Rules have not been framed imposing restrictions upon delegation as we are required to put a harmonious construction on the provisions contained in the different Sections of the Statute by necessary implication it would follow that the State Government had no jurisdiction to confer powers on persons appointed to assist the Registrar in such manner that the two terms would in fact stand equated.

11. Historically it is an undisputed position that until the notification of 28-2-1956 there had been no conferment of the Registrar's powers under Chapter IX on any person appointed to assist him. Therefore when it was challenged before this Court that the provisions of Section 133 of the Act by which restriction has been imposed on appearance of parties through counsel were unconstitutional in *Bharat Naik Vs. Assistant Registrar, Co-operative Societies and Another*, . Narasimham, J. has stated :

"Moreover, it seems a reasonable classification to divide into two groups the authorities who may exercise powers under the Act, the higher group consisting of the Registrar, the State Government, the Collector and the Board of Revenue, and the lower group consisting of other officers exercising the powers of Registrar, liquidator, arbitrator or body of arbitrators, etc. Before the former authorities there is no deprivation of the right of a party to be represented by a legal practitioner. It is only before the latter authorities that a party is deprived of the right of appearing through a legal practitioner.

If the Legislature thought that before the lower authorities the main questions to be decided may not generally involve difficult questions of law, but only ascertainment of facts and that for that purpose there would be no need for any legal practitioners to assist the party, it will be difficult to hold that the distinction made between these groups of authorities is unreasonable. Moreover, every order passed by any of the lower authorities is subject to appeal to the Registrar before whom a legal practitioner may appear as of right. The absence of any rule for the guidance of the Registrar while making an order of transfer u/s 73 of the Act will not affect the constitutionality of that provision. It is expected that while making orders of transfer the Registrar would first of all consider the questions involved in the case the competence of the transferee officer to decide those questions and then transfer only those cases where, in his opinion, the aid of a legal practitioner will not be required, before those lower authorities."

The reasoning given by the Division Bench in the aforesaid decision is not relevant to resolve the dispute before us. It is quite possible that in view of the

present delegations by which the powers entrusted to the Registrar under the Act have now been conferred on his subordinates, the reasoning given to negative the contentions raised before the Division Bench may not be justified. We, however, do not propose to express any final opinion on that point. Suffice it to say that the aforesaid authority is not relevant for our purpose except to the extent that it notices the fact that until then it was only the Registrar who was receiving the disputes.

12. The scheme contained in Chapter IX of the Act in regard to receipt of disputes as also for settlement of disputes seems to have been similar in the corresponding Statutes in the States of Bihar, Delhi, Madras, Punjab and Kerala. In the material Sections in the Statutes in vogue in those States the specified disputes are required to be referred to the Registrar and the Registrar is also authorised either to dispose of the disputes himself or refer the same for disposal to persons exercising the powers of a Registrar in that behalf. Provisions similar to the ones contained in Section 8 of the Act are also contained in those Statutes.

13. Mr. Mohanty contends that the provisions in the Statute are so drafted that there is enough room for the view that had been taken by us in the earlier decision. Possibly there is some force in that contention. But once the Statute authorises the State Government by notification in the *Jgazctte* to confer those powers which have been entrusted to the Registrar under the Statute on the persons appointed to assist him and such notifications have been duly made, we cannot take the view that the powers which were entrusted to the Registrar under Sections 71 and 73 of the Act cannot be exercised by the Assistant Registrar or any other persons so authorised. It was open to Government not to confer the powers of the Registrar u/s 71 of the Act on the Assistant Registrar and authorise the persons appointed to assist the Registrar only for the purposes of settlement of disputes u/s 73 of the Act. In that eventuality all disputes were bound to be referred only to the Registrar and the Registrar could decide the dispute himself or transfer them for disposal under Clause (b) or (c) of Sub-section (1) of Section 73 of the Act. There is, however, no restriction on the conferment of the power exercisable by the Registrar u/s 71 (1) on the persons appointed to assist him, and once such conferment is made in the manner indicated by the Statute objection cannot be taken to such conferment. In view of the clear provisions made in the Statute and in the face of the notification in question the only conclusion that can reasonably flow would be to hold that a dispute can also be referred to a person who has been authorised by notification to exercise the powers of the Registrar u/s 71 (1) of the Act.

14. A challenge to the notification was also attempted to be thrown on the ground that care has not been taken by the State Government to delegate the powers of the Registrar to his subordinates in a manner which would keep the spirit of the Statute intact. It was also canvassed that if full effect is given to the notification it would lead to uncertainty of jurisdiction and the self same dispute may be referred to either the Registrar or an authority subordinate to him. The

learned Government Advocate brought to our notice the conditions indicated in the conferment of powers in the notification. A broad distinction has been maintained in making the conferment of powers; disputes which arise between institutions whose area of operation is State-wide have been reserved for authorities having State-wide jurisdiction namely, the Additional Registrar and the joint Registrar; disputes arising in relation to societies having limited area of operation but beyond the local limits of circles have been reserved for the Deputy Registrars whose jurisdiction is in relation to ranges and the other disputes which are limited within the circles have been assigned to the Assistant Registrars. A dispute which is, however, entertainable by the Assistant Registrar being a dispute covered within the circle would also be maintainable before the Registrar direct unless a provision similar to the one made u/s 15, CPC which prescribes,

"Every suit shall be instituted in the Court of the lowest grade competent to try it"

is also made either in the Rules or in the notification or is indicated in the notification as a condition. Unless such a provision is made there may be some scope for ambiguity, but that by itself would not be a ground to resolve the dispute in favour of the petitioner.

15. On the aforesaid analysis we would hold that by virtue of the notification u/s 8 (2) of the Act the State Government have jurisdiction to confer all the powers which have been entrusted by the Statute to the Registrar upon persons appointed under Sub-section (1) of Section 8 of the Act to assist the Registrar. In view of such notification and authorisation the Deputy Registrar in the earlier case had jurisdiction to entertain the dispute directly though the dispute had not been referred by the Registrar. On the aforesaid conclusion of ours, the answer would necessarily be that the said point had not been correctly decided in the earlier case.

16. This matter will now go back for disposal on merits by the Division Bench. We do not propose to make any order as to costs of this reference.

G.K. Misra, C.J.

17. I agree.

Ray, J.

18. I agree.