

(2008) 06 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No's. 17802 of 1994, 10161 of 1995, 14680 of 1996, 6219, 6220, 20964, 21003 of 2000 and 19704 of 2001 and W.P.M.P. No. 27073 of 1994 in W. P. No. 17802 of 1994, W.P.M.P. No. 9296 of 2000 in Writ Petition No. 6219 of 2000, 9297 and 25315 of

P. Eswaramoorthy and Others

APPELLANT

Vs

R.J.B. Leoraj and Others

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 40, 48, 48(6), 56
Constitution of India, 1950 — Article 254(2)
Industrial Disputes Act, 1947 — Section 10, 10(1)

Citation : (2008) 3 LLJ 694 : (2008) 4 LW 883 : (2008) 5 MLJ 238

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : Venkatesan, for Aiyar and Dolia, for the Appellant; R. Parthiban, for Respondent 1 and Ravichandran, for Satish Parasaran, for Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of the learned Counsel for the parties and perused the records.

2. W.P. No. 17802 of 1994:

2.1. When this matter came up for disposal before the learned single Judge on 31.7.2002, the learned single Judge framed two questions and directed the matter to be placed before the Hon'ble Chief Justice for posting the same before an appropriate Division Bench. Accordingly, the matter was posted before this Division Bench on the orders of the Hon'ble Chief Justice. The two questions are as follows:

1. In matters relating to service conditions of employees of Cooperative Societies, whether the Industrial Disputes Act (Special Law) or the Cooperative

Societies Act (General Law) is applicable?

2. Whether an employee of a Cooperative Society can invoke the provisions of Section 90 and/or Section 152/153 (Appeal / Revision) for redressal of his service grievances?

2.2. The reason for framing the two issues were an apparent conflict between the decisions rendered by this Court and referred by the learned Judge in his order are as follows:

(i) In Somasundaram Vs. Liyakat Ali and another, , S.S. Subramani, J. has held that orders regarding inter-se seniority between employees of Co-operative Societies is not an order passed under the Co-operative Societies Act, such seniority cannot be decided and the bar of jurisdiction of Civil Court u/s 156 is not attracted in matters relating to determination of inter-se seniority of employees of Co-operative Societies and no remedy is available under the Industrial Act. As such, Civil Suit is maintainable.

(ii) In K. Radhakrishnan Vs. The Additional Registrar (Marketing, Planning and Development), Office of the Registrar of Co-operative Societies, Kilpauk, Madras-10 and another, , P.Sathasivam, J. (as he then was) has held that seniority is part of service conditions of employees which may be construed as an action under Special bye-laws of the Union and a revision u/s 153 of the Co-operative Societies Act is maintainable.

(iii) In The Management of Madras Atomic Power Project Employees Consumers Co-operative Stores Limited Vs. The Deputy Commissioner of Labour (Appeal) Madras -6 and 2 others, , P. Sathasivam, J. (as he then was) has held that disciplinary action against paid servant of society is not a dispute u/s 90 or not one "touching business" of the society.

3. When this matter came to be listed, at the request of the members of the bar, several other writ petitions were also tagged on along with this writ petition on the ground that the answer to questions raised in this writ petition will have a bearing on the other writ petitions.

4. Before venturing into the legal issues raised in these writ petitions, it is necessary to briefly refer to the factual aspect of each of the writ petition.

4.1. In W.P. No. 17802 of 1994, there was a dispute between the petitioner and the contesting respondent regarding seniority and promotion and when the seniority list dated 11.11.1984 was published. Aggrieved by the said list, the first respondent filed a petition u/s 90 of the Tamil Nadu Co-operative Societies Act, 1983 in July 1991. The said dispute was taken on file by the Deputy Registrar of Co-operative Societies, Coimbatore (11th respondent) and the said dispute was allowed by an order dated 31.8.1994. As against the said order, the Co-operative Society filed an appeal u/s 152 before the Co-operative Tribunal. But even during the pendency of the same, the aggrieved private respondents moved this Court challenging the proceedings of the Arbitrator. This writ petition was admitted on

26.10.1994.

4.2. W.P. No. 10161 of 1995 is filed by three employees of the Co-operative Societies against the order of the first respondent Deputy Registrar in entertaining a petition u/s 90 of the Co-operative Societies Act and setting aside the promotion granted in favour of respondents 2 to 4. This writ petition was admitted on 08.8.1995.

4.3. W.P. No. 6219 of 2000 is filed by an employee of the Co-operative Society against an order passed by the second respondent Deputy Registrar, Salem in entertaining a petition regarding promotion granted to the writ petitioner by the Co-operative Society and setting aside the same and also directing the respondents 3 and 4 to be promoted to the post of Assistant Manager purporting to exercise power u/s 90 of the Co-operative Societies Act. W.P. No. 21003 of 2000 was filed by the Management challenging the very same order.

4.4. In W.P. No. 6220 of 2000, the petitioner, an employee of the Co-operative Society, challenges the order of the Deputy Registrar made u/s 90 of the Co-operative Societies Act. By exercising power u/s 90 vide order dated 29.02.2000, the promotion of the writ petitioner was set aside and respondents 3 and 4 were directed to be promoted. The very same order is challenged by the Salem District Co-operative Bank in W.P. No. 20964 of 2000. W.P. No. 19704 of 2001 is also filed by one Mohammed Sheriff challenging the very same order.

4.5. W.P. No. 14680 of 1996 is filed by the Ramanathapuram District Central Co-operative Bank against a preliminary order passed by the first respondent (revisional authority) holding that the revision petition filed by the second respondent was prima facie maintainable and the objection of the petitioner Bank was overruled vide order dated 24.5.1996. The said writ petition was admitted on 09.10.1996.

5. The following contentions were raised by Mr.G.Venkataraman of M/s Aiyar & Dolia, learned Counsel appearing for the petitioner in W.P. 17802 of 2004:

(a) The disputes relating to terms of employment, working conditions and disciplinary action would not come within "any dispute" u/s 90 of the Tamil Nadu Co-operative Societies Act and "any dispute" provided for therein is restricted in its scope to a dispute of civil nature which is capable of being resolved by the Registrar or his nominee and does not take in an "industrial dispute between the society and its workmen which under Industrial Disputes Act is triable by Labour Court / Industrial Tribunal.

(b) Industrial Disputes Act is a special law dealing with the special subject. Industrial disputes which in their nature are essentially different from ordinary civil disputes between an employer and his employee governed by the law of contract. Industrial disputes Act provides for special machinery for adjudication of industrial disputes. As against this, the Tamil Nadu Co-operative Societies Act is a general enactment and it must yield to Industrial Disputes Act.

(c) The scope of the expression "any dispute" touching the business of the Society occurring in Section 90 is limited to disputes directly relating to actual trading, or commercial activities of the Society. This expression does not take in dispute between the Society and its employee relating to conditions of his employment such as Seniority, promotion, revision of scale of pay, revision of dearness allowance, disciplinary action, etc.

(d) The expression "Management" in Section 90 of the Tamil Nadu Co-operative Societies Act means as per Section 2(7) read with Section 33(1)(a), the Board of Directors in which the Management of the Society vests. It does not include individual workers or employees of the Society. The expression "Management" does not take in the matter touching the service conditions of the servants of the Society such as their seniority, promotion or dismissal / termination from service.

(e) Unless the State Legislature specifically by legislation bars the jurisdiction of the Labour Court / Industrial Tribunal as in the case of Karnataka Co-operative Societies Act or Madhya Pradesh Co-operative Societies Act in regard to adjudication of terms of employment, working conditions and disciplinary action against workmen of Co-operative Societies, the Industrial Tribunal / Labour Court alone has jurisdiction to decide the disputes. It cannot be taken as of now Section 90 provides for an alternative forum.

6. In addition to the above submissions, Mr. Vijay Narayan, learned Senior Counsel appearing for the petitioner in W.P. No. 14680 of 1996 submitted that what applies to Section 90 of the Co-operative Societies Act will also apply to the revisional powers conferred u/s 153 of the Co-operative Societies Act. Therefore, the order impugned in that writ petition is liable to be set aside.

7. Before proceeding to deal with the submissions made by the learned Counsel for the parties, it is relevant to refer to the specific provisions of the Co-operative Societies Act with regard to settlement of disputes, Appeals and Revisional powers.

7.1. Section 73 of the Tamil Nadu Co-operative Societies Act, 1961 (Old Act) provided for settlement of disputes being referred to the Registrar for a decision. It is clearly stated that any dispute touching the constitution of the committee or the Management or the business of a registered society other than the dispute regarding disciplinary action taken by the society or its committee against the paid servant of the society, can be brought under the said Section. A similar provision has been made u/s 90 of the Tamil Nadu Co-operative Societies Act, 1983 (New Act). In that provision, a specific exclusion was made regarding the disciplinary action taken by the competent authority constituted u/s 75(3) of the Act.

7.2. In the 1961 Act (Old Act), an appeal was provided u/s 96 as well as a revision was provided u/s 97. A bar of jurisdiction of the Civil Court was made u/s 100 of the Act. In the 1983 Act (New Act), an appeal is provided u/s 152 and a revision is made u/s 153 and there is also a bar of jurisdiction of Civil Court u/s

156. While the revisional powers u/s 97 of the 1961 Act (Old Act) was of general nature, under the 1983 Act (New Act), Section 153 includes revisional power over orders passed u/s 75(3) which deals with service conditions of the employees belonging to common cadre. While revision u/s 97 of the 1961 Old Act only refers to the examination of record of any officer subordinate to the Registrar, the revisional power u/s 153 under the 1983 New Act includes not only the revisional power over the orders passed by the subordinates but includes the action taken by the Board of Directors of the Society or any officer of the registered society or of the competent authority constituted u/s 75(3) of the new Act. While the power u/s 73 (Old Act) or Section 90 (New Act) is more or less parimateria with each other, there is a vast difference between the revisional power u/s 97 (Old Act) compared to Section 153 (New Act).

8. This distinction will have to be kept in mind while referring to the decisions rendered under the Old Act.

9. With this background, the decisions referred at the bar can be dealt with.

10. A Full Bench of this Court in M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, compared the provisions found in the Madras Co-operative Societies Act 1912 and the Madras Co-operative Societies Act 1932. It was held that the words "touching the business of the society" will cover a dispute concerning election and the Deputy Registrar can deal with such a dispute.

11. In South Arcot Co-operative Motor Transport Society Ltd. (for ex-servicemen) Devanam-pattinam, Cuddalore Vs. Syed Batcha and Others, , a learned single Judge had held that the claim for retrenchment compensation cannot be claimed u/s 51 which dealt with disputes touching the business of the Society.

12. The Supreme Court vide its decision in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, dealt with the case of a tenant and the owner of the building, which was subsequently acquired by a co-operative society, and held that such a dispute cannot be brought u/s 91 of the Maharashtra Co-operative Societies Act which is almost in parimateria with Section 90 of our New Act. It also held that the term "touching the business" though may be wider in connotation, but the word "dispute" found in that section covers only those disputes which are capable of being resolved by the Registrar or his nominee.

13. The Supreme Court vide its decision in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, held in paragraph 7 as follows:

Para 7: 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....

14. It is significant to note that Section 61 of the Andhra Pradesh Act as interpreted by the Supreme Court is more or less a reproduction of Section 73 of the 1961 Tamil Nadu Act which is in pari materia of Section 90 of the 1983 Act. Therefore, the reasoning of the Supreme Court will have greater bearing on the issue on hand.

15. The Supreme Court once again, in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, while dealing with the term "dispute" found in the Gujarat Co-operative Societies Act held that it did not include a dispute regarding a discharged employee of a co-operative society. The following passage found in paragraph 37 may be reproduced:

Para 37: Be that as it may, what has been directly bidden "out-of-bounds" for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the connotation of "management". A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression "any dispute", a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a civil court, is outside the scope of the expression "touching the management of the Society used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.

16. Once again, the Supreme Court in U.P. Cooperative Cane Union Federation Ltd. and Another Vs. Liladhar and Others, dealt with a similar provision found in U.P. Co-operative Societies Act and paragraphs 16 to 18 may be usefully extracted below:

Para 16: Therefore, on the strength of the aforementioned two decisions it has to be held that a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of the society cannot be said to be a dispute touching the business of the society.

Para 17: To some extent this conclusion can be reinforced by reference to the U.P. Cooperative Societies Act, 1965, which repealed and replaced the Cooperative Societies Act, 1912, in its application to the State of U.P. Section 70 of the 1965 Act provides for settlement of disputes. The relevant portion reads as under:

70. Disputes which may be referred to arbitration. - (1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a cooperative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises.

Para 18: It will be crystal clear that while making a statutory provision for resolution of disputes involving cooperative societies by arbitration by the Registrar, the legislature in terms excluded a dispute relating to disciplinary action taken by the society against paid servants of the society from the purview of the compulsory arbitration. It is legislative exposition of the topic under discussion. It must, however, be made distinctly clear that at the relevant time 1912 Act was in force and the contention has to be answered with reference to 1912 Act and the rules framed thereunder. It is, however, difficult to believe that the 1965 Act which repealed and replaced the 1912 Act excluded from the field of operation that which was already included under the repealed Act. On the contrary it would appear that what was implicit in the 1912 Act and the rules framed thereunder that such a dispute did not touch the business of the society and was not within the purview of the compulsory arbitration, was made explicit by expressly excluding it from the field of compulsory arbitration.

17. Further, once again, dealing with the very same provision of the U.P. Co-operative Societies Act, the Supreme Court vide its decision in Allahabad District Cooperative Limited Vs. Hanuman Dutt Tewari, held as follows:

Para 2: The expression "business of the society" has been construed by several decisions of this Court. In Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain it was pointed out that "the word "business has been used in a narrower sense and it seems the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws". In Cooperative Central Bank Ltd. v. Addl. Industrial Tribunal, A.P. it is said "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 dispute touching the business of the society.

18. When many state enactments dealing with Co-operative Societies made specific provisions entrusting power with the Registrars of the Co-operative Societies to deal with disciplinary action taken against the employees of the Co-operative Societies, the Courts found that since the power was made under a special enactment, it will necessarily exclude the jurisdiction of the authorities under the Industrial Disputes Act to adjudicate such disputes.

19. Dealing with Section 55 of the M.P. Co-operative Societies Act, 1961, the Supreme Court in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, in paragraph 3 held as follows:

Para 3: ...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....

20. The Supreme Court further vide its judgment in Yogendra Prasad Vs. Addl. Registrar, Co-op. Societies, Bihar and others, dealt with Section 48 of the Bihar and Orissa Co-operative Societies Act 1935 and interpreted the revisional power of the Registrar. The following passages found in paragraphs 5 and 6 may be usefully extracted below:

Para 5: ...That apart, it is clear that the Registrar is the final supervisory authority over the subordinate officers exercising the powers or performing the duties under the Act. The language in Section 56 was couched very widely without being hedged with any limitation like the revisional powers u/s 115 CPC or the similar language used in sister Acts in some other States like A.P. The reason appears to be obvious. The order of the Deputy Registrar by language of Sub-section (6) of Section 48, undoubtedly shall be final. We are aware that

when the legislature gives "finality" to an order, it is normally not open to revision. But still it must be construed in the light of the scheme of the Act, its operation and resultant effect. The language in Section 56 is not hedged with any limitation of the finality in Sub-section (6) of Section 48. Thus we hold that the revisional power u/s 56 is independent of the appellate powers u/s 48(6). The latter is amenable to revision by the Registrar. The ratio of the Division Bench in *Din Dayal* case¹ is, therefore, not good law.

Para 6: ...The proceedings u/s 48 are in the nature of a civil suit, otherwise cognisable by a civil court u/s 9 of the CPC. The statute has taken out the jurisdiction of the civil court and expressly conferred on the Registrar or a person exercising the powers of the Registrar to decide the dispute touching the business or management of the Society between its members, past members etc. or their office bearers, agent or officers or servants of the Society etc. The proceedings u/s 40 are not in substitution of Section 48, but are independent of and in addition to the normal civil remedy u/s 48. The culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings u/s 40. But that is not so u/s 48. Therefore, mere initiation or an order passed u/s 40 does not divest the jurisdiction or power of the Registrar u/s 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award u/s 48(3) or revision u/s 56 does not amount to double jeopardy.

21. The Supreme Court while dealing with the power of the State of Haryana in exercising its power of revision under the Haryana Co-operative Societies Act, 1984 vide its decision in *Shahabad Cooperative Sugar Mills Ltd. v. Special Secretary to Government of Haryana Corporation* 2006 (12) SCC 404 also referred to the provisions of the Punjab Co-operative Societies Act providing for revisional power on the Registrar and the State Government vide paragraphs 20, 21 and 23, which reads as follows:

Para 20: The said decision was followed by a Division Bench of the Punjab and Haryana High Court in *Punjab State Handloom Weavers Apex Society Ltd. v. State of Punjab*, stating: (Punj LR p. 85, para 5

5. A perusal of the above provision shows that the State Government as well as Registrar have been empowered to examine the legality or propriety of any decision or order passed by a society. They can do so either suo motu or on the application of a party to a reference. The power is not subject to any provision of the rules or the bye-laws. It is in the nature of a supervisory jurisdiction conferred on the Government and the Registrar. In the very nature of things where an order has been passed by the Registrar, the power vests in the State Government.

The decision of the High Court rests on the latter category of the decisions, referred hereinbefore.

Para 21: The revisional jurisdiction is akin to the appellate jurisdiction.

Para 23: Provisions for appeal or revision provide for statutory remedies. The Appellate Authority or the revisional authority can exercise its appellate or revisional jurisdiction provided it would be maintainable in law.

22. On the question of bar of jurisdiction on the power of the Labour Court vis-a-vis the revisional power of the Registrar, the Supreme Court in R.C. Tiwari's Case (cited supra) held that Section 55 of the M.P. Co-operative Societies Act bars the jurisdiction of the Labour Court to deal with similar issues. But in so far as the State of Madhya Pradesh is concerned, it has a separate Industrial Disputes Act enacted by the State Legislature and hence, it may not have a general bearing in respect of other States unless there are special exclusions made in the respective State Co-operative Societies Acts.

23. While dealing with the question of the Karnataka Co-operative Societies Act, excluding the jurisdiction of the Industrial Disputes Act, the Supreme Court clarified the legal position in Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd., . The relevant passages found in paragraphs 18 to 21 and 24 may be usefully reproduced below:

Para 18: This aspect has been completely overlooked by the Division Bench of the Karnataka High Court in Veerashaiva Coop. Bank (supra). It misled itself to an erroneous assumption that two decisions of this Court in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, and Sagarmal v. Distt. Sahkari Kendriya Bank Ltd., Mandsaur and Anr., (1997) 9 SCC 354 laid down the proposition that once a specific procedure and effective remedy is provided under the Cooperative Societies Act, it ipso facto excluded the settlement of disputes u/s 10 of the Industrial Disputes Act. On that assumption, the High Court held that Section 70 of the KCS Act excluded the jurisdiction of Labour Courts/Industrial Tribunals in regard to references u/s 10 of the ID Act. The High Court held so in view of Clause (d) of Sub-section (2) of Section 70 which provided that any dispute between a cooperative society and its employees (past or present) in regard to terms of employment, working conditions and disciplinary action will be deemed to be a dispute to be decided by the Registrar under Sub-section (1) of Section 70, overlooking the fact that Amendment Act 19 of 1976 by which Clause (d) was inserted in Section 70(2), had not received the assent of the President and therefore the jurisdiction of the Registrar u/s 70(1) of the KCS Act as expanded by Section 70(2)(d), could not prevail over the provisions of the ID Act. If the amendment to Section 70(2) by Act 19 of 1976 should be read or construed as having the effect of enabling Section 70(1) of the KCS Act to prevail over the provisions of the ID Act, then the said Amendment Act (Act 19 of 1976) would have required the assent of the President under Article 254(2). But there was no such assent.

Para 19: As the Division Bench had relied on two decisions of this Court in R.C. Tiwari (supra) and Sagarmal (supra), it is necessary to refer to them. But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed

to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, cooperative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of Section 70 of the KCS Act, in *Veerashaiva Coop. Bank (supra)* and *Karnataka Sugar Workers Federation (supra)*.

Para 20: *R.C. Tiwari (supra)* related to the Madhya Pradesh, where the ID Act itself was inapplicable (except to the extent indicated in the M.P. Industrial Relations Act, 1960). In that case, an employee of a cooperative society who had been dismissed from service for misconduct, raised a dispute under the Madhya Pradesh Cooperative Societies Act, 1960. The Deputy Registrar concerned held that the dismissal was proper and rejected the reference. Thereafter the employee sought a reference u/s 10(1) of the ID Act. The Labour Court held that the domestic inquiry was vitiated and set aside the order of dismissal. The said order was challenged by the employer society before the Madhya Pradesh High Court. The High Court held that in view of the provisions of Section 55 of the Madhya Pradesh Cooperative Societies Act, 1960, the Labour Court had no jurisdiction and therefore the reference to the Labour Court was bad. It also held that the findings recorded by the Deputy Registrar, Cooperative Societies against the employee in the award made u/s 55 of the Madhya Pradesh Cooperative Societies Act, would operate as *res judicata*. This Court upheld the said decision of the High Court and dismissed the special leave petition. The decision was rendered with reference to the special provisions of the M.P. Cooperative Societies Act, 1960 and the M.P. Industrial Relations Act, 1960. Having regard to Section 110 of the M.P. Industrial Relations Act, the provisions of the Central Act - the Industrial Disputes Act, 1947 (except Chapters V-A, V-B and V-C relating to lay-off and retrenchment, special provisions relating to lay-off, retrenchment and closure in certain establishments and unfair labour practices), did not apply to any industry to which the said M.P. Industrial Relations Act applied. The ID Act did not apply in the State of Madhya Pradesh to adjudication of disputes between the employer and employees, not because of any bar in the M.P. Cooperative Societies Act, but because of the State having made a law relating to industrial disputes, namely, the M.P. Industrial Relations Act, 1960 which had received the assent of the President. The M.P. Cooperative Societies Act, 1960, vide Section 55, specifically provided that where a dispute including a dispute relating to terms of employment, working conditions and disciplinary action by a society arises between a society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the society and its employees; and Section 93 of the M.P. Cooperative Societies Act provided that nothing contained in the M.P. Industrial Relations Act, 1960 shall

apply to a society registered under that Act (the M.P. Cooperative Societies Act). It is in these circumstances that in R.C. Tiwari⁴ this Court held that the ID Act did not apply to a dispute between a society and its employees in regard to any disciplinary action. In that case, the question of any repugnancy between a State Act (the Madhya Pradesh State Cooperative Societies Act) and the Central Act (the Industrial Disputes Act, 1947) did not arise. The State of Karnataka does not have a State Act governing industrial disputes as in Madhya Pradesh and therefore, the question of the Karnataka Cooperative Societies Act excluding the applicability of a State law relating to industrial disputes did not arise. The decision in R.C. Tiwari (supra) was not, therefore, relevant or applicable. The Division Bench of the Karnataka High Court committed an error in following the decision in R.C. Tiwari (supra) to hold that the jurisdiction of Labour Court under the ID Act was barred, in view of Section 70 as amended by the Amendment Act 19 of 1976, even prior to the amendment of Sections 70(1) and (2) by Act 2 of 2000.

Para 21: The decision of this Court in Sagarmal (supra) also related to Madhya Pradesh. In that case, the appellant was an employee of a cooperative bank and he was removed from service after a disciplinary inquiry. The employee challenged his removal by seeking a reference to the Labour Court u/s 10 of the Industrial Disputes Act, 1947. A reference was made and the Labour Court granted him relief of reinstatement with back wages. The employer bank challenged the award in a writ petition and the High Court quashed the award on the ground that it was a nullity, having been made in an incompetent reference. While affirming the decision of the High Court, this Court held that the provisions of the ID Act, did not apply to the respondent cooperative bank, and the only question was about the availability of remedy either under the Madhya Pradesh Cooperative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960. This Court observed that if such a question had arisen, Section 93 of the Madhya Pradesh Cooperative Societies Act would have come into effect, but no occasion arose for consideration of such a question inasmuch as the employee did not resort to the remedy either under the Madhya Pradesh Cooperative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960, but chose the remedy of a reference u/s 10 of the ID Act, which was inapplicable in the State of Madhya Pradesh. This Court reiterated that as the only question before the High Court was the competence of a reference u/s 10 of the Industrial Disputes Act, 1947, and not the availability of the remedy under the Madhya Pradesh Cooperative Societies Act, 1960 or the Madhya Pradesh Industrial Relations Act, 1960, the view taken by the High Court that the reference u/s 10 of the ID Act was incompetent, and the award made therein a nullity, did not suffer from any infirmity. In short, Section 10 of the ID Act was held inapplicable not because the Madhya Pradesh Cooperative Societies Act, 1960 prevailed over the provisions of the Industrial Disputes Act, 1947 but because in Madhya Pradesh, the provisions of the ID Act, 1947 (except certain specified provisions relating to lay-off, etc.) did not apply in view of the

provisions of the Madhya Pradesh Industrial Relations Act, 1960. Therefore, the decision in *Sagarmal* (supra) was also of no assistance. Therefore, the decision in *Veerashaiva Coop. Bank* was erroneous.

Para 24: The resultant position can be summarised thus:

(a) Even though Clause (d) was added in Section 70(2) with effect from 20-1-1976, Section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the ID Act to decide an industrial dispute between the society and its employees. Consequently, even after insertion of Clause (d) in Section 70(2) with effect from 20-1-1976, the Labour Courts and Industrial Tribunals under the ID Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between cooperative societies and their employees was taken away only when Sub-section (1) and Sub-section (2)(d) of Section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18-3-2000 and was brought into effect on 20-6-2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in Section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus:

(i) exclusively with Labour Courts and Industrial Tribunals till 20-1-1976;

(ii) concurrently with Labour Courts/Industrial Tribunals under the ID Act and with Registrar u/s 70 of the KCS Act between 20-1-1976 and 20-6-2000; and

(iii) exclusively with the Registrar u/s 70 of the KCS Act with effect from 20-6-2000.

24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee u/s 90 and consequently, no appeal will lie to the Tribunal u/s 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority u/s 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted u/s 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority u/s 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court / Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in Somasundaram Vs. Liyakat Ali and another, may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either u/s 153 or by an industrial dispute u/s 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar u/s 156 of the Co-operative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P. Sathasivam, J. (as he then was) in K. Radhakrishnan Vs. The Additional Registrar (Marketing, Planning and Development), Office of the Registrar of Co-operative Societies, Kilpauk, Madras-10 and another, upholding the right of revision u/s 153 has laid the correct position of law. Likewise, the judgment of P.Sathasivam, J. (as he then was) in The Management of Madras Atomic Power Project Employees Consumers Co-operative Stores Limited Vs. The Deputy Commissioner of Labour (Appeal) Madras -6 and 2 others, holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided.

25. In the light of the above,

25.1. W.P. No. 14680 of 1996 filed by the Ramanathapuram District Central Co-operative Bank challenging the preliminary order dated 24.5.1996 will stand dismissed. Since the matter is already 12 years old, the first respondent therein is directed to dispose of the revision petition within a period of twelve weeks from the date of receipt of a copy of this order after giving notice to the respective parties in accordance with law.

25.2. All other writ petitions, viz., W.P. Nos. 17802 of 1994, 10161 of 1995, 6219, 6220, 20964 and 21003 of 2000 and 19704 of 2001, will stand allowed and the orders passed by the Deputy Registrar u/s 90 of the Tamil Nadu Co-operative Societies Act will stand set aside as they were made without jurisdiction.

25.3. However, there will be no order as to costs. All the connected Miscellaneous Petitions will stand dismissed.