
(1983) 01 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 4802 of 1978

Raghav Jha

APPELLANT

Vs

Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 11-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151
Constitution of India, 1950 — Article 226, 227

Citation : (1983) 31 BLJR 422

Hon'ble Judges : Uday Sinha, J;Prabha Shanker Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prabha Shanker Mishra, J.—The petitioner has moved this Court for a writ in the nature of certiorari to quash the order in Award Case No. 170 of 1963 passed on 17-12-1963 by the Assistant Registrar, Co-operative Societies, contained in Annexure-1 the order in Award Appeal No. 45 of 1963 dated 30-11-1964 passed by the Joint Registrar, Co-operative Societies, contained in Annexure-2, the order of the Joint Registrar, Co-operative Societies, Bihar, Patna, in Revision Petition No. 1 of 1965 dated 21-10-1967, contained in Annexure-3 and the order of the Registrar, Co-operative Societies, Bihar, Patna, in Revision Case No. 21 of 1967, contained in Annexure-4.

2. The petitioner was the Secretary of the Sitamarhi Central Co-operative Bank Ltd, the respondent No. 4, a Bank registered as a Co-operative Society under the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as the Act). During his tenure as the Secretary of the said Bank irregular expenses were allegedly incurred out of the funds of the Bank. The respondent Bank filed Award Case No. 170 of 1963 against the petitioner. The Assistant Registrar, Co-operative Societies, respondent No. 3, entertained the application. The petitioner was served with the notice to show-cause. After hearing the petitioner and the respondent Bank, "the respondent No. 3 made an award for a sum of Rs.

6,004.54 paise on account of expenses incurred out of the funds of the Bank in the private and individual cases of the petitioner and for unjustified transfer of dues against a sundry debtor to the profit and loss account and excess bills realized by him. Bank's claims on account of some other expenses were, however, rejected. The petitioner preferred an appeal before the Joint Registrar, Co-operative Societies, Bihar, and respondent No. 2. The appeal was heard and was dismissed except in respect of a claim of Rs. 10/- as excess T.A. in which part the appeal was allowed; the petitioner thereafter filed a review petition. The Joint Registrar finding no merit rejected the review application. He, however, made some observations in favour of the petitioner. The petitioner having failed before the Joint Registrar filed an application in revision u/s 56 of the Act. The Registrar respondent No. 1 held that the revision application was not maintainable and rejected the same. The petitioner has filed the instant application under Articles 226 and 227 of the Constitution of India and questioned the validity of the orders of the Assistant Registrar, the Joint Registrar and the Registrar on various grounds.

3. The facts stated in the writ application have not been controverted, as the respondents have not chosen to file any return.

4. Mr. Kamalapati Singh, learned Counsel appearing for the petitioner has contended that under the Act a distinction has been maintained between "the Registrar" and "the person appointed to act as the Registrar". The appellate order passed by the Joint Registrar; Co-operative Societies was an order passed by a person empowered to act as the Registrar under the Act and, therefore, a revision u/s 56 of the Act against his order was/is maintainable. The Registrar committed an error of jurisdiction in holding that the revision petition was not maintainable. He has further contended that as the Joint Registrar is also "a person empowered to act as the Registrar under the Act" and not "the Registrar" he was not competent to dispose of the appeal against the order of the Assistant Registrar who also was/is "a person appointed to act as the Registrar under the Act". As a corollary to this, according to his contention, the Assistant Registrar was also not competent to entertain the award case and the award made by him was/is without jurisdiction.

5. Section 6 of the Act provides that the State Government may appoint a person to be the Registrar of the Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar. Sub-Section (2) of Section 6 runs as extracted:

The State Government may, by general or special order published in the Official Gazette, confer (a) on any person appointed under Sub-section (1), to assist the Registrar under this Act except the powers u/s 26; and (b) on any Co-operative Federation or financing bank, all or any of the powers of the Registrar u/s 20, Sub-section (3) of Section 28 and Section 33.

6. It is not in dispute that both the Assistant Registrar and the Joint Registrar

(the respondent No. 3 and the respondent No. 2 respectively) was appointed to assist the Registrar u/s 6(1) of the Act and were conferred powers u/s 6(2) of the Act to exercise the powers of the Registrar.

7. A dispute touching the business of a registered society between the Society or its Managing Committee or any past or present officer, Agent or Servant of the Society falls u/s 48(1)(c) of the Act. A reference of the dispute of this nature to the Assistant Registrar, by way of transfer of the dispute for disposal by him is permissible u/s 48(2)(b) of the Act as he also was/is a person who was/is appointed to exercise the powers of a Registrar. A decision by him, therefore, would be deemed to be an order passed in exercise of the power conferred u/s 48(2)(b) of the Act. Sub-section (6) of Section 48 provides that any person aggrieved by any decision given in dispute transferred or referred under Clause (b) or (c) of Sub-section (2) may, within three months from the date of such decision, appeal to the Registrar. Sub-section (7) provides that the Registrar, in a case of dispute u/s 48 of the Act, shall have the power of review vested in a Civil Court u/s 114 and under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, and shall also have the inherent jurisdiction specified in Section 151 of the said Code.

8. Sub-section (9) of Section 48 reads as follows:

Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under Clauses (b) or (c) of Sub-section (2) shall be final

It is thus apparent that Section 48 of the Act contemplates a decision of a dispute touching the business of the Society by the Registrar of the Cooperative Societies and/or by a person appointed by the State Government to assist the Registrar of the Co-operative Societies for the State or any portion of it and if the dispute is decided by a person exercising the powers of the Registrar under the Act and not the Registrar, the aggrieved party may prefer an appeal before the Registrar and subject to the order of the Registrar on appeal or review a decision given in a dispute transferred or referred under Clause (b) or (c) of Section 48(2) of the Act shall be final.

9. A Bench of this Court in the case of Din Dayal Singh Vs. The Bihar State Co-operative Marketing Union Ltd., noticed the special significance of the expression "save as expressly provided in this section" in Sub-section (9) of Section 46 of the Act and held, ""by use of that expression the legislature appears to have clearly laid down that provisions of other sections of the Act do not affect the finality of the order passed u/s 48. The Court further held, it is true that Sub-section (9) of Section 48 gives finality to decisions given in a dispute transferred or referred under Clause (b) or (c) of Sub-section (2) only and not to a decision contemplated under Clause (a) Sub-section (2) but reading Section 48 as a whole it is manifest that the decision contemplated under Clause (a) of Sub-

section (2) must be by the Registrar "himself" (used in Clause (a) and not by any person exercising the powers of a Registrar in this behalf "(used in Clause (b) An order under Clause (a) which can be passed by the Registrar himself, and not by any person exercising the powers of a Registrar, obviously cannot be revised u/s 56 of the Act." Din Dayal Singh's case was one in which the Court was concerned with an order passed in the appeal against the decision given in a dispute transferred under Clause (b) of Sub-section (2) of Section 48. The Court concluded by holding that in view of the language of Sub-section (9) of Section 48, the appellate order of the Deputy Registrar passed u/s 48 (6) of the Act was final and the Registrar could revise the same u/s 56 of the Act.

10. The appellate order passed by the Deputy Registrar in Din Dayal Singh's case was also one like the order of the Joint Registrar in the instant case. In Din Dayal Singh's case the Deputy Registrar was a person appointed by the State Government to assist the Registrar and empowered to exercise the powers of the Registrar under the Act. In the instant case it is the Joint Registrar who has been appointed by the State Government u/s 6(1) of the Act and empowered to act as the Registrar u/s 6(2) of the Act. Powers conferred upon the Joint Registrar, it is obvious, included the power of the appellate authority u/s 48(6) of the Act. The petitioner also understood this position and moved the Joint Registrar in appeal and also under Sub-section (7) of Section 48 of the Act for review.

11. Section 56 of the Act reads as follows:

The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator u/s 44.

A Bench of this Court in Sahebganj Motor Transport Co-operative Society Ltd. Vs. The Registrar, Co-operative Societies and Others, negated the contention that the Registrar can revise orders passed only u/s 44 of the Act and not under other sections of the Act. In Din Dayal Singh's case, this; Court also noticed that the question is not free from difficulty and much can be said in support of this contention, but proceeded to decide the case on assumption that the power of revision conferred on the Registrar u/s 56 of the Act is not limited to orders passed by a person exercising the powers of a Registrar u/s 44 only, but held that in spite of the view that Section 56 is not limited in its application to orders passed u/s 44 only, it has got no application to orders passed by a person exercising the powers of a Registrar u/s 48 of the Act.

12. Mr. Singh contended before us that the view taken by this Court in Din Dayal Singh's case is evidently erroneous and placed reliance upon the decision of the Supreme Court of India in State of Orissa and Others Vs. Arakhita Bisoi, , in support of his contention that the remedy of revision u/s 56 of the Act cannot be denied to the petitioner on the ground that there are expressions like "save as expressly provided in this section" a decision of the Registrar under this section...shall be final". The Orissa case was one in which the Revenue Officer u/s 43 of the Orissa Land Reforms Act, 1960, as amended by Act 13 of 1965 and

subsequently by Act 29 of 1976, rejected the plea of the land holder that there was a partition between him and his sons and determined the surplus land as 12.08 standard acres. The landholder preferred an appeal before the Sub-divisional Officer and the Sub-divisional Officer confirmed the order of the Revenue Officer and dismissed the appeal. Against the order of the appellate authority, the landholder filed a revision before the Additional District Magistrate. The Additional District Magistrate held that the appellate orders u/s 44 were final and that no revision lay against the same. The landholder filed a petition under Articles 226 and 227 of the Constitution challenging the order of the Additional District Magistrate rejecting the revision petition. A Bench of the Orissa High Court allowed the writ petition holding that the Additional District Magistrate had powers to revise the order of the appellate authority passed u/s 44 by virtue of the powers conferred on him u/s 59 of the Act. The High Court came to the conclusion that a revision was entertain able u/s 59 by the Additional District Magistrate even before the amendment introduced by Orissa Act 29 of 1976. The relevant provisions of law were extracted in the judgment of the Supreme Court and after testing them in accordance with the cardinal rule that when there are in a statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect be given to both and that a construction which runs either of them inoperative and useless should not be adopted except in the last resort, held that the powers of revision conferred u/s 59 of the Orissa Act were/are very wide and empowered the Collector or the Board of Revenue to revise any order passed under the Act.

In my opinion, the above decision of the Supreme Court is disguisable. True it is that one gets the impression that the expression "save as expressly provided in this section" in Sub-section (9) of Section 48 of the Act was noticed as an expression of special significance in Din Dayal Singh's case and this Court observed that by use of that expression the legislature appears to have clearly laid down that provisions of other sections of the Act do not affect the finality of the order passed u/s 48. But the ratio of the case, in my opinion, is substantially different. This Court did not confine only to these expressions of special significance but also noticed the scheme of the law, that a distinction has been maintained in the between the Registrar and a person appointed to assist the Registrar who may be vested with all or any of the powers of the Registrar under the Act. A dispute referred to the Registrar u/s 48 (1) of the Act can be either disposal of the Registrar himself or transferred or referred for disposal u/s 48 (2) Clauses (b) and (c), a right of appeal to the Registrar is given to a person aggrieved by a decision given in dispute transferred or referred under Clause (b) or (c) of Sub-section (2). An order under Clause (a), which can be passed by the Registrar himself, and not by any person exercising the power of a Registrar, obviously cannot be revised u/s 56 of the Act. A person acting u/s 48(b) of the Act does so as the Registrar and exercises powers and functions of the Registrar and not of a person appointed to assist him u/s 6 of the Act even if his initial appointment by the State Government was/is made to assist the Registrar. There

is no reason, on the basis of the principle of harmonious construction of the various provisions of the statute not to hold that the order passed by the Joint Registrar in appeal is one, as if, passed by the Registrar himself. In that view of the matter Section 56 of the Act shall not be attracted and a revision application will not be maintainable.

13. The relevant provision of the law in the Orissa Land Reforms Act which was before the Supreme Court specified the authorities who could revise the appellate orders. The Collector could revise any order passed in appeal by any officer below the rank of a Collector and the Board of Revenue could revise any order passed by the Collector. None of the provisions of the said law was such which could require any specific attention to a problem like one arising in the present case. I am fully conscious of the rule that to harmonize not to destroy and that in interpreting the statute the Court always presume that the Legislature insert every part thereof for a purpose that every part of the statute should have effect. This Court has already accepted the wider amplitude of the revisional jurisdiction of the Registrar in *Sahebgan Motor Transport Cooperative Societies Case*. The Registrar can exercise his revisional power against any order passed by a person exercising the powers of a Registrar. The provisions where the Act has contemplated exercise of power by a person empowered to act as the Registrar are separable from the provisions where the actions of the Registrar are contemplated. A comparison of the expressions used in Section 48(2) and Section 48(6) of the Act is useful in this regard. If the powers of the Registrar are conferred upon any other person such as the powers u/s 48(6) of the Act conferred either on the Joint Registrar or the Deputy Registrar that by itself should not be taken to suggest that all such powers and functions exercised by them will be one by a person appointed to assist the Registrar. Powers and functions of a person appointed to assist the Registrar depend, a part from the delegation by the State Government, on a particular function which a particular provision of the Act has contemplated. Even if there is a blanket conferment of power u/s 6(2) of the Act upon a person appointed u/s 6(1) of the Act, he cannot be treated as the Registrar to exercise the power u/s 56 of the Act.

14. A question as to the jurisdiction of the appellate authority to entertain an appeal against an order in a case transferred for disposal u/s 48(2)(b) fell for decision by this Court in the case of *Md. Islam and Ors. v. The District Co-operative Officer-cum-District Certificate, Officer Purnea and Ors.* 1979 B.B.C.J. 101. In that case the Deputy Registrar had entertained the appeal. A Bench of this Court held that it cannot be said that Sub-section (6) of Section 48 while speaking of the appeal before the Registrar against the decision under Clause (b) or Clause (c) of Sub-section (2) of Section 48 has meant that the appeal inevitably must be entertained by the Registrar himself. Although the Court refrained from giving any concluded opinion on this point, the contention of this nature without full disclosure of facts and without bringing to our notice, the nature of the powers conferred upon the Joint Registrar either by the Registrar or by the State Government cannot be decided and, if decided, shall only create

confusion instead of deciding or concluding a dispute. Facts are wholly inadequate for any detailed examination of this contention. If the petitioner wanted to force this issue for a decision before this Court, it was incumbent upon him to place before this Court all the relevant materials and/or to allege categorically and specifically that there has been no delegation or conferment of the powers of the Registrar u/s 40(6) upon the Joint Registrar. The petitioner himself presented his appeal before the Joint Registrar and accepted his authority to hear and decide the appeal. If he was inclined to question the power of the Joint Registrar to hear the appeal, it was always open to him to move the Registrar and not the Joint Registrar. In the absence of the relevant facts, it is not possible to hold that the appellate order of the Joint Registrar and/or the order rejecting the review petition are/is without jurisdiction and void ab initio. In my opinion, the petitioner cannot now urge before this Court that the Joint Registrar had no jurisdiction to decide the appeal.

15. Now coming to the contention of Mr. Singh as to the jurisdiction of the Assistant Registrar to entertain the dispute and his making the award, I have already noticed that there is no dispute to the fact that the Assistant Registrar has been conferred with the powers of the Registrar for the purposes of deciding the dispute u/s 48(1) of the Act. The dispute in the instant case, therefore, has been decided by the Assistant Registrar exercising the powers of the Registrar in this behalf. He must be evidently deemed to have received such a dispute for disposal on transfer. There can be various ways of transferring a dispute for disposal by a person empowered to act as the Registrar in this behalf. Such an order may be made on receipt of a particular reference. There can be at the same time a general conferment of power to entertain any dispute touching the business of a registered society by the State Government in exercise of the powers u/s 6(2) of the Act. The petitioner has not brought to our notice any of the relevant facts. An issue like this cannot be decided on presumptions and/or may-bes. This question was never canvassed at any lower forum and if the petitioner desired to raise this question as a question of jurisdiction and law for the first time in a writ proceeding it was for him to bring on the record the relevant facts. In any view, the Assistant Registrar who passed the award contained in Annexure-1, was a person assisting the Registrar within the meaning of Section 6(1) of the Act: exercising powers of the Registrar within meaning of Section 6(2)(a) of the Act. This contention of Mr. Singh also, therefore, must fail.

16. Although, I have disagreed with the contentions of Mr. Singh and not agreed to interfere with the orders impugned by him on the above discussed grounds, I am of the view that the award against the petitioner for a sum of Rs. 2.534.50P. On account of transfer of dues against sundry debtors to the Profit and Loss Account of the Bank is not justifiable. It is admitted on all sides that the Special General Meeting of the Bank held on 26-2-1961, which was presided over by Shri L. Oayal, I.A.S., the then Registrar, Co-operative Societies, Bihar, Patna, and adopted a resolution for the adjustment of Rs. 2.535.50P which was bad debt.

The petitioner has claimed that he as the Secretary of the Bank only carried out the resolution of the Special General Meeting and the said amount was adjusted in pursuance of the resolutions of the Special General Meeting, The adjusted amount was payable to the Bank by individual loanees and not by the petitioner. It is one thing to disapprove the adjustment and it is another thing to hold the petitioner responsible for the said amount. If the Registrar and/or other authorities to the Cooperative Department disapproved the adjustment for some reason, they would have permitted the Bank to proceed against the individual loanees and realize the debt from them. Nothing in this regard was ever done. The petitioner at least has got a good excuse for the adjustment of the accounts and transfer of Rs. 2,534,50P. from the sundry debtors account to the Profit and Loss Account of the Bank. In my opinion, no award for the said amount of Rs. 534.50P. could have been made against the petitioner in the absence of materials to show that he was in any way responsible for appropriation of the said amount. The award, according to me, in that part, is illegal and cannot be sustained.

17. In the result, this application is allowed in part and the award of Rs. 2,534 50P. on account of book transfer from sundry debtors account to the Profit and Loss Account of the Bank is hereby set aside. Let a writ in the nature of certiorari issue quashing only that part of the award as contained in Annexure I and the orders as contained in Annexures 2, 3 and 4 confirming the said part of the award. The writ application is dismissed in respect of other parts of the award. On the facts and in the circumstances of the case, there shall be no order as to cost.

Uday Sinha, J.

18. I agree.