

(1971) 02 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 48 of 1969

Ramashankar Tewari

APPELLANT

Vs

Gopal Banerjee and Others

RESPONDENT

Date of Decision : 12-02-1971

Acts Referred:

Citation : (1971) PLJR 377

Hon'ble Judges : S. Sarwar Ali, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Deba Prasad Mukherji, for the Appellant; R.P. Katriar and Mangal Prasad Mishra, for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—There is a Co-operative Society at Jamshedpur registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), hereinafter called the Act, the name of which is the Tisco General Co-operative Credit Society Ltd. (hereinafter to be referred to as the Society), respondent no. 9 in this writ application. On the 3rd of June, 1968 an advertisement was issued, a copy of which is Annexure 1 to the writ application, inviting applications for the post of an Accountant for the Society. The applicant, according to the advertisement, was required to possess an M. Com. degree and must have previous experience in Society works. In response to this advertisement, Shri Ramashankar Tewari, the sole petitioner in this writ application, filed an application on 14.6.68 (Annexure 2). He was called for interview on 1.7.68 and selected for the post. An appointment letter dated 2.7.68 (Annexure 3) was issued to him intimating to him that he had been temporarily appointed Accountant of the Society "for six months on probationary basis, likely to be made permanent on satisfactory service". The petitioner joined the post on 4.7.68. He received a letter dated the 30th December, 1968 (Annexure 4) from the Chairman of the Society stating that his appointment to the post of Accountant from the 4th July, 1968 had been held irregular by the

Assistant Registrar, Co-operative Societies, Jamshedpur, who is respondent no. 10 in this writ application, in a court judgment and the Committee of Management of the Society had been directed by him to re-advertise the said post in order to select a permanent incumbent. The petitioner was asked to put in a further application in response to the second advertisement made, and the tenure of his current employment was extended upto the 31st January, 1969. According to the petitioner's case, when he obtained a copy of the judgment of the Assistant Registrar passed on 17.10.68 (Annexure 5) he found that unauthorisedly and illegally he had annulled the appointment and even without giving him an opportunity of having his say in the matter. In pursuance of the direction given by the Assistant Registrar a second advertisement was issued on 30.12.68 (Annexure 6). The petitioner has come up to this Court and prayed in express language to quash the termination of his service made by respondent no. 9 by Annexure 4 dated 30.12.68 and to quash the advertisement made on 30.12.68 (Annexure 6). During the course of the argument, learned counsel for the petitioner asked us to quash the order of the Assistant Registrar (Annexure 5) as it was without jurisdiction given in a case which could not be a matter of reference to him u/s 48 of the Act as also on the ground that the order was made in violation of the principles of natural justice inasmuch as the petitioner was not noticed in the case.

2. In support of his contention, learned counsel put forward the argument that in view of the decision of the Supreme Court in (1) Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, the dispute which was referred to respondent no. 10 could not be a dispute "touching the business of a registered society" within the meaning of Section 48(1) of the Act and that it was not a dispute between a member and the Society within the meaning of Clause (b) of Sub-section (1).

3. In the Supreme Court case referred to above, the expression "touching the business of the society" occurring in Section 91(1) of the Maharashtra Co-operative Societies Act, 1960 came up for consideration. In view of the enumeration of certain types of dispute in the said sub-section a narrower meaning was given to the expression "touching the business of the society." It is to be pointed out that the disputes enumerated in the said sub-section are (i) touching the constitution of a society, (ii) touching the election of the office bearers, (iii) touching conduct of general meetings, (iv) touching the management of a society and (v) touching the business of a society. In such a situation in the context of the provision engrafted in Section 91(1), it was held that the word "business" did not mean affairs of society because election of office bearers, conduct of general meetings and management of a society would be treated as affairs of a society. The word "business" was held to have been used in narrower sense and it meant the actual trading or other similar business activity of society which the society is authorised to enter into under the Act, the Rules and the Bye-laws. But in our Act such disputes are not enumerated. Two of the disputes for the purposes of clarification or inclusion in the term "dispute"

have been indicated in Explanations (1) and (2) appended to Sub-section (1) of Section 48, otherwise the general words in the main Sub-section (1) are;

If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its Managing Committee against a paid servant of the society) arises.

The expression "touching the business of a registered society" in our Statute cannot be given a narrower meaning. In contrast to the Maharashtra Statute, a wider meaning has got to be given to the expression and within its ambit will come the affairs of the Society. This view finds further support from the words in the brackets "a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of, the society."

Although it related to the affairs of the society, it cannot come under the term of the exclusion. I am, therefore, inclined to think that the matter relating to the affairs of the society can be a dispute within the meaning of Sub section (1) of Section 48 of the Act.

4. The second ground of attack on the reference, however, as made on behalf of the petitioner is well founded and has got to be accepted as correct. A fact was stated in Paragraph 8 of the writ petition that Miscellaneous Case No. 25 of 1968 was started by the Assistant Registrar u/s 48 of the Act on the basis of a petition filed by Shri Gopal Banerjee who was then an ordinary member of the society although at the time of the filing of the writ application he was its President. Gopal Banerjee had filed this application on 29.6.68. This Assistant Registrar who undoubtedly was authorised by the State Government to entertain and dispose it of u/s 48 of the Act entertained it and by his order dated 17.10.68 (Annexure 5) came to the following conclusions--

1. The Secretary of the Society was not taken into confidence by the Managing Committee in matters of appointment of staff in the Society.
2. It was not proper on the part of the President of the Society to state before the date of interview that a particular candidate would have been an asset to the Society.
3. The necessity for an M. Com. Accountant was felt after seeing the performance of Shri Tewari at the time of interview of Jr. Clerks.
4. Shri R.S. Tewari who has been appointed had no previous Experience in "Society work" and thus he did not fulfill the terms of advertisement.

In view of those conclusions, in exercise of his power u/s 48 he directed the Managing Committee of the Society to re-advertise the post and to allow the petitioner to continue till the permanent incumbent was properly appointed in the manner indicated.

5. I am of the opinion that the matter of allegedly irregular appointment of the petitioner did relate, no doubt, to the affairs and management of the Society but

was not of a kind which could bring into existence any dispute between a member and the President or between a member and the Society either within the meaning of Clause (a) or Clause (b) of Sub-section (1) of Section 48 of the Act. It may well be that under the Bye-law the matter could be taken to the Registrar of the Co-operative Societies for his interference on account of the alleged irregularity committed in the appointment of the Accountant. But surely such an irregularity did not directly affect any interest of the member and cannot be said to be a dispute between him and the Society or its President. To be such a dispute there must be some matter directly affecting a member qua member vis-a-vis the Society. One may say that every member of the Society is interested in its good management and regular employment of its employees. But such a general interest cannot be termed as an interest of the kind of a member of the Society so as to make it a dispute referable to the Registrar or an officer holding the delegated power of the Registrar u/s 48(1) of the Act. To give support to the view I have expressed above reference can be made to the discussion of the principle of law in the decision of the Supreme Court in the case of (1) Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . In Paragraph 25 of the Report at Page 1326 it was pointed out that--

Before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at all, by the provision of Section 91(1)(a) or (c). But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Section 91(1)(b).

After referring to certain English decisions, a decision of the Bombay High Court in (2) Shyam Co-operative Housing Society Ltd. Vs. Ramibai Bhagwansing Advani and Others, was referred, to wherein it was held that it was not sufficient that there should be a dispute touching the business of the society but what is further required is that the dispute must be between the society and its member. In the Madras decision in 3) Manjeri S. Krishna Ayyar Vs. The Secretary, Urban Bank Ltd., Calicut and Another, a similar view was taken and so also in the case of (4) Mammu Keyi V. Thirurangadi Co-operative Rural Bank Ltd. (ILR 1964 Ker 83). Dissenting from the view of the Madhya Pradesh High Court the Supreme Court approved the view taken in the other cases of the various High Courts. Although the point decided therein is not identical to the one which falls for our decision, on a parity of reasoning it has got to be held that if a dispute between A, a member of the Society, and the Society, not being qua member, is not a dispute, it is much less a dispute, if it is not a dispute at all, between A and the Society. All affairs of the Society cannot raise dispute between a member and the Society or between a member and other members.

6. The order of the Assistant Registrar, respondent no. 10 is also bad for violation

of the principles of natural justice as his order was going to affect the appointment of the petitioner and justice required that he should have been noticed to show cause in the matter. No such thing was done.

7. I, therefore, hold that the reference was incompetent and the decision of the Assistant Registrar, respondent no. 10, must be struck down as being invalid and without jurisdiction.

8. When the basis of the termination of petitioner's service, as mentioned in the letter of the Society dated 30.12.68 goes, the action of the Society taken by that letter as also the advertisement issued by it (Annexure 6) also goes. Before we part with this case, it may be noted that a counter-affidavit had been filed on behalf of the Assistant Registrar, respondent no. 10, and also on behalf of the Society. In the counter-affidavit filed on behalf of the Society, it was stated that it would not have issued the letter dated 30.12.68 (Annexure 4) as also the advertisement (Annexure 6) but for the direction of the Assistant Registrar contained in his judgment (Annexure 5) which we have set aside today. It will be now for the Society to give effect to our judgment as may be possible in accordance with law and on the facts and in the circumstances existing today. In the result, the application is allowed to the extent and in the manner indicated above. There will be no order as to cost.

S. Sarwar Ali, J.

I agree.