

(1975) 05 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 813/72

Rashtriya Khadan Mazdoor Sahakari Samiti, Ltd., Durg.

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal-
Cum-Labour Court. Jabalpur and others

RESPONDENT

Date of Decision : 05-05-1975

Acts Referred:

Agricultural Refinance and Development Corporation Act, 1963 — Section 8
Air Corporations Act, 1953 — Section 3
Constitution of India, 1950 — Article 226, 227, 246, 251(2), 254
Deposit Insurance and Credit Guarantee Corporation Act, 1961 — Section 3
Employees State Insurance Act, 1948 — Section 3
Food Corporations Act, 1964 — Section 16
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1)(d), 12
Life Insurance Corporation Act, 1956 — Section 3
Madhya Pradesh Co-operative Societies Act, 1960 — Section 10, 19, 2(a), 4, 55
Unit Trust of India Act, 1963 — Section 3

Citation : (1976) ILR (MP) 905 : (1975) JLJ 732

Hon'ble Judges : P.K. Tare, C.J.; M.L. Malik, J.; C.P. Sen, J

Bench : Full Bench

Advocate : P.S. Nair with O.P. Namdeo, for the Appellant; Y.S. Dharmadhikari with S.D. Mukerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, C.J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner, a registered Co-operative Society, challenges the order of the Central Government, dated 6-4-1972 (Petitioner's Annexure-D) as also the award of the Central Industrial Tribunal, dated 8-9-1972 (Petitioner's Annexure-E) on the ground that the reference to the Industrial Tribunal was not maintainable in law in respect of the dismissal of the employee, by name, Ramprasad and his wife, Smt. Jankibai, as they were employees of the petitioner Co-operative Society and as such, the question of their dismissal or termination of service will be governed by the provisions of the Madhya Pradesh Co-operative Societies Act, 1960, and not by the provisions of the Central Industrial Disputes

Act, 1947.

2. The facts leading to the filing of the present writ petition lie in a narrow compass: Ramprasad and his wife, Smt. Jankibai were servants of the petitioner, Co-operative Society. They were charged with an act of misconduct. The Society appointed an Enquiry Officer, who found them guilty. Therefore, their services were terminated by the Society. The question of their dismissal was taken up by the third respondent, namely, the Samyukta Khadan Mazdoor Sangh and the Central Government, by order, dated 6-4-1972 (Petitioner's Annexure-D) referred the following question for adjudication by the Industrial Tribunal:

Whether the Rastriya Khadan Mazdoor Sahaksri Samiti, Post Office, Dalli-Rajhara, Durg (Madhya Pradesh) is justified in terminating the services of Shri Ramprasad and Shrimati Jankibai, with effect from the 5th May, 1971. If not, to what relief are these workmen entitled?

The said reference u/s 10(1)(d) of the Industrial Disputes Act, 1947, was heard by the first respondent, the Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court. No reply was filed on behalf of the petitioner, Co-operative Society. The Industrial Tribunal, therefore, recorded the evidence of Ramprasad, who stated that the charges levelled against him and his wife Smt. Jankibai were false and they had replied to the said charges. There was no inquiry at all and neither he nor his wife was given an opportunity to defend. Therefore, the Industrial Tribunal, relying on the assertion of Ramprasad, held that there was no proper inquiry with regard to the charges made by the employer against the employees and that there was no opportunity to defend. Under the circumstances the order of termination of service was unwarranted and unjustified. The Industrial Tribunal, therefore, answered the reference to the effect that the Rastriya Khadan Mazdoor Sahakari Samiti, Durg, was not justified in terminating the service of Ramprasad and his wife. Smt. Jankibai with effect from 5-5-1971. Accordingly, they were ordered to be reinstated in service and were directed to be paid their wages and other dues with effect from 5-5-1971.

3. It does not appear that the question as to whether the matter is governed by the Madhya Pradesh Co-operative Societies Act, 1960, or the Central Industrial Disputes Act, 1947, was at all raised before the Industrial Tribunal, nor does it appear to have been raised before the Central Government, which made a reference to the Industrial Tribunal u/s 10(d) of the Industrial Disputes Act, 1947. However, it appears that the petitioner had raised such an objection before the Assistant Labour Commissioner, Vide Annexure-C. For this reason we have permitted the petitioner to raise this question before us besides the other question on merits.

4. Before dealing with the main question involved in the present writ petition, we may dispose of the two other points, namely (i) that the matter being governed by the terms of the contract, the petitioner could dispense with the services of employees at pleasure and that an inquiry of any sort was necessary, and (ii)

that the dispute not having been raised by the employees with the employer, the reference by the Central Government was not tenable and as such, the award of the Industrial Tribunal was without jurisdiction.

5. As regards the first point, the learned counsel for the petitioner invited attention to a Division Bench decision of this Court in Krishna Chandra Gupta Vs. Registrar, Co-operative Societies, . In that case the facts were that the petitioner, Krishna Chandra Gupta was appointed to the post of Assistant Manager-cum-Accountant by an order passed by the Chairman of the Board of Directors. Some months after his appointment when certain mistakes and irregularities committed by him were brought to the notice of the Board of Directors, the petitioner was cautioned to be careful. Later on, Bhagwatprasad, a peon of the Bank, made a complaint to the Chairman that the petitioner had abused him and had slapped him. Another complaint was made by M/S. N. G. Brothers, Bilaspur, with regard to the settlement of a loan of Rs. 500. The working Committee of the Bank, therefore, passed a resolution suspending the petitioner. The resolution of the Working Committee was communicated to the petitioner and he was asked to express his regret for his misbehaviour towards Bhagwatprasad. In that letter a reference was also made to the complaint made by M/s. N.G. Brothers, Bilaspur. The petitioner was called upon to furnish his explanation. He did not reply. He, however, sent a letter tendering his apology for having slapped Bhagwatprasad and also expressed his regret for the acts against which M/S. N. G. Brothers, Bilaspur had complained Thereafter the Working Committee passed a resolution dismissing the petitioner. It was contended on behalf of the petitioner that the Working Committee could not have dismissed the petitioner without giving him an opportunity and without holding an inquiry. That contention was negatived. The Division Bench laid down that conditions of service of employees of the bank must be ascertained from the byelaws themselves. If the byelaws do not provide for the procedure to be followed, then the ordinary law of master and servant will apply. It was not the petitioner's contention that the dismissal was in violation of any byelaws or any statutory rules framed under the Co-operative Societies Act, 1912. There can be no doubt that if the provisions of the Madhya Pradesh Co-operative Societies Act, 1960, be held applicable, in that event, the matter will be governed by the statutory rules framed by the State Government or the byelaws framed by the Co-operative Society or any specific terms of contract. If we hold the M.P. Co-operative Societies Act, 1960. applicable to the instant case, in that event, we may have to examine this aspect. However, if we find that the Central Industrial Disputes Act, 1947. applies in that event, different considerations will prevail. In our opinion, this case relied on by the learned counsel for the petitioner does not at all advance the petitioner's case any further.

6. The second point urged on behalf of the petitioner was that the petitioner never raised a dispute with the employer and consequently, the Central Government had no power to refer the dispute for adjudication by the Industrial Tribunal. For this proposition reliance was placed on the pronouncement of their

Lordships of the Supreme Court in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, . In that case their Lordships in paragraph 4 of the judgment observed as follows:

No doubt, the order of the State Government making the reference mentions that the Government had considered the report submitted by the Conciliation Officer under sub-section (4) of section 12 of the Industrial Disputes Act, in respect of the dispute between the appellant and workmen employed under it, over the demand mentioned in the Schedule appended to that order and, in the Schedule the Government mentioned that the dispute was that of reinstatement of respondent No. 3 in the service of the appellant and payment of his wages from 21st February, 1958. It was urged by Mr. Gopalkrishnan on behalf of the respondents that this Court cannot examine whether the Government, in forming its opinion that an industrial dispute exists, came to its view correctly or incorrectly on the material before it. This proposition is, no doubt correct; but the aspect that is being examined is entirely different. It may be that the Conciliation Officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 6 and payment of wage, to him from 21st February, 1958, but when the dispute came up for adjudication before the Tribunal, the evidence produced clearly showed that no such dispute had ever been raised by respondent with the management of the appellant. If no dispute at all was raised by the respondent with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being, raised by the workmen with their employer, cannot become an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the tribunal, had ever existed between the appellant Corporation and the respondents and the State Government, in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist and that opinion could only be formed on the basis, that there was a dispute between the respondents relating to reinstatement.

7. There can be no doubt that before a Central or a State Government refers a dispute to the Tribunal for adjudication, the dispute must be raised by the concerned parties with the employer or the employee as the case may be. In the absence of such dispute being raised between the concerned parties, a reference to the Industrial Tribunal will not be tenable. There can be no doubt about that proposition in view of the authoritative pronouncement of their Lordships of the Supreme Court. It is therefore, necessary to examine whether such a dispute was raised by the employees with the employer. It was necessary to raise such a dispute if we ultimately hold that the provisions of the Central Industrial Disputes Act, 1947, apply. However, if we hold the provisions of the M. P. Co-operative

Societies Act, 1960, applicable; in that event, raising of such a dispute with the employer would not be necessary. It is to be noted that the employee's case had been taken up by the third respondent, the Samyukta Khadan Mazdoor Sangh. From the recital in the order of reference, dated 6-4-1972 (Petitioner's Annexure-D), it is clear that the management of the Rashtriya Khadan Mazdoor Sahakari Samiti contractors and their workmen represented by the Samyukta Khadhan Mazdoor Sangh had jointly applied to the Central Government under sub-section (2) of section 10 of the Industrial Disputes Act, 1947, for a reference to the Industrial Tribunal of an industrial dispute that existed between them. Hence the Central Government made the reference. The very fact that the petitioner applied for a reference of the dispute with the employees to the Industrial Tribunal would show that the employees had approached the employer. In view of these facts the mere failure of the third respondent to produce the correspondence showing a demand for justice to be made on the employer, would not, in our opinion, attract the principle laid down by their Lordships of the Supreme Court in *Sindhu Resettlement Corporation Ltd., v. Industrial Tribunal of Gujrat* (supra). It was not that the employees or the Union, namely, the third respondent, who represented them directly approached the Assistant Labour Officer or the Central Government. The recital in the said notice is a clear indication of the fact that a demand was made by the employees through their Union on the employer and as no settlement could be arrived at, the Union and the employer made a joint request to the Central Government to refer the dispute to the Industrial Tribunal for adjudication. This point raised on behalf of the petitioner, in our opinion, is without substance and consequently, we reject this contention.

8. Coming to the question as to which of the two Acts applies to the instant case we were handicapped on account of the fact that the petitioner has failed to produce its byelaws. The purpose for which the petitioner Society was formed is to raise contract labour. This work previously used to be done by private contractors. But in pursuance of a settled policy of the Government, the said work has been entrusted to Co-operative Societies. It was for this purpose that the petitioner Co-operative Society was formed. Its object as such was introduced the principle of co-operation in industrial matters. But the essential feature is that the activity of the Co-operative Society is in respect of an industrial matter and not exclusively for the purpose of introducing co-operation. This aspect, in our opinion, will have a bearing on the question for consideration before us. We may next examine the provisions of the two Acts.

9. Section 4 of the M. P. Co-operative Societies Act, 1960, states as to what Societies may be registered. The said provision is as follows:

Subject to the provisions of this Act, a society which has as its objects the promotion of the economic interest of its members or their general welfare in accordance with cooperative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act.

The requirements of the section are that a Society must have as its objects the

promotion of the economic interest of its principles or their general welfare in accordance with the co-operative principles, or in the alternative the Society must have been established with the object of facilitating the operations of such a society. In either of the events such a society can be registered. In the absence of the necessary material, we are unable to hold as to for what objects the petitioner society was formed. But for the purposes of this petition we assume that its object was one of the three mentioned in section 4 of the Act. Section 10 of the Act classifies the Societies into ten different categories. In the absence of the necessary material, we are unable to hold as to which is the category of the petitioner Society. However, we may assume that it belongs to category No. 10 that is, a General Society. It cannot be classified in any one of the remaining nine categories. Section 55 of the Act empowers the Registrar to determine terms of employment in Societies. It is as follows:

Section 55:- (1) The Registrar may from time to time frame rules governing the terms of employment and working conditions in a society or a class of societies and the society or the class of societies to which terms of employment and of working conditions and applicable shall comply with the order that may be issued by the Registrar in this behalf. (2) Where a dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a Society, 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.

The said section provides for settlement of disputes between a Society and its employees. Section 64 of the Act provides for settlement of such disputes. It is as follows:

Section 64:- Deputes (1) 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 Registrar by any of the Parties to the dispute if the parties thereto are among the following: -

(a) a society, its committee, any past committee, or any past or present officer, any past or present agent, any past or present servant of a nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society or the Liquidator of the society:

(b) a member past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society:

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person:

(d) a surety of a member, past member or deceased member or a person other

than a member who has been granted, a loan by the society whether such a surety is of is not a member of the society:

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purposes of sub-section (1), a dispute shall include --

(a) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of and debt or demand due to it from the principal debtor as a result of the default of the principal debtor whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society. Provided that any matter arising out of election proceeding between the period commencing from the announcement of election programme and ending with the declaration of results shall not be deemed to be dispute for the purpose of this clause.

(3) If any question arises whether a dispute removed to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

By this section the decision of the Registrar is made final under the Act, which cannot be called in question in any Court. Further on section 77 of the Act provides for appeal, which is as follows:

Section 77. Appeals.--(1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Act or the rules thereunder--

(a) if such order is passed by an officer subordinate to the Registrar, other than Additional Registrar or Joint Registrar, whether or not the officer passing the order is invested with the powers of the Registrar- to the Registrar;

(b) if such order is passed by the Registrar. Additional Registrar or Joint Registrar-- to the State Government.

(2) A second appeal shall lie against any order passed in first appeal by the

Registrar, Additional Registrar or Joint Registrar to the State Government on any of the following grounds and no other, namely: --

- (i) that the order is contrary to law; or
- (ii) that the order has failed to determine some material issue of law; or
- (iii) that there has been a substantial error or defect in the procedure as prescribed by this Act which may have produced error or defect in the decision of the case upon merits.

(3) Every appeal shall be presented in the prescribed manner to the appellate authority concerned within 30 days of the date on which, the order appealed against was communicated to the party affected by the order;

Provided that in computing the period of limitation under this sub-section the time requisite for obtaining a copy of the order appealed against shall be excluded.

(4) Where an application for membership has been rejected under sub-section (4) of section 19 an appeal shall lie in such manner, and to such authority, as may be prescribed and the society to which the application for membership relates shall abide by such order as may be passed on such appeal.

Section 77-A. Bar of Appeal. Revision or Review in respect of certain orders regarding Co-operative Bank.--Notwithstanding anything to the contrary contained in this Act, where with previous sanction in writing or on the requisition of the Reserve Bank of India--

- (i) an order for the winding up of a Co-operative Bank is made, or
- (ii) a scheme of compromise or arrangement or conduction or reorganisation or amalgamation is made or is given effect to, or
- (iii) an order for the suppression of the committee or managing body by the whatever name called of a Co-operative Bank and the appointment of an Administrator there for has been made, no appeal, revision or review there against shall lie or be permissible, and such order or the sanction or requisition of a Reserve Bank shall not be liable to be called in question.

Section 80 of the Act provides for revisions. It is as follows:--

Section 80 Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon. Subject to the provision of section 77-A. The State Government or the Registrar may call for and examine the record of any enquiry on the proceedings of any subordinate officer for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government or the Registrar that any decision or order or proceedings so called for should be modified annulled reversed the State Government or the Registrar, as the case may be, may pass

such, order thereon as to it or he may deem fit:

Provided that

- (i) no application for revision shall be entertained against an order appealable under this Act;
- (ii) no such application shall be entertained unless presented within 45 days from the date of order under challenge;
- (iii) no order under this section shall be made to the prejudice of any party unless such party has had an opportunity of being heard.

Section 82 of the Act bars the jurisdiction of Courts. The same is as follows:

Section 82. (1) Save as provided in this Act no civil or revenue Court shall have any jurisdiction in respect of--

- (a) the registration of a society or of bylaws or of an amendment of a bye-law;
- (b) the removal of a committee and the management of the society after such removal;
- (c) any dispute required to be referred to the Registrar or his nominee or Board of nominees;
- (d) any matter concerning the winding up and the dissolution of a society.

(2) While a society is being wound up no suit or other legal proceedings relating to the business of such society shall be proceeded with, or instituted against the liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever.

10. There can be no doubt that if the matter be governed by this Act, the procedure as laid down by the said sections will have to be followed and the third respondent in that event could not have approached the Central Government for a reference under the Industrial Disputes Act, 1947.

11. Further on section 93 of the Act provides that certain other Acts will not apply to Co-operative Societies. The said section is as follows:

Section 93. Certain other Acts not to apply to Co-operative Societies.--Nothing contained in the Madhya Pradesh Shops and Establishments Act, 1958, (25 of 1958), the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 (19 of 1959) and the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960) shall apply to a society registered under this Act.

It is to be noted that the said section provides for exclusion of the Madhya Pradesh Industrial Relations Act, 1960, and it does not mention the Central

Industrial Disputes Act, 1947. This Act had received the assent of the President and consequently, the provisions of this Act will prevail in Madhya Pradesh even though there might be a conflict with a Central enactment as per Article 254(2) of the Constitution of India. Similarly, the Madhya Pradesh Industrial Relations Act, 1960, had also received the assent of the President and it will prevail in the State of Madhya Pradesh inspite of any conflict with any Central Enactment, in respect of the Concurrent List. But, so far as mines are concerned, the said Act will not at all apply as mining is a Central subject and it is only the Central Industrial Disputes Act, 1947, which will be applicable to mines, as laid down by a Special Bench of this Court in *Samyukta Khadan Mazdoor Sangh, Rajnandgaon v. M/S. Hindusthan Steel Limited, Ranchi* 1973 MPLJ 269.

12. The question of applicability of the two Acts had come up for consideration before a Division Bench of this Court in *Sagar Motor Transport Karmchari Union, Sagar Vs. Amar Kamgar Passenger Transport Co. Co-operative Society, Sagar, M.P. and Another*, It is necessary for us to examine the reasoning adopted by the members of the Division Bench. For the sake of convenience, we may reproduce the observations of the Division Bench as follows:

Having heard learned Counsel for the parties, we have formed the opinion that this application must be dismissed. The M.P. Co-operative Societies Act. 1960, was enacted in 1960. It received the assent of the President on 28th April 1961. The assent was first published in the Madhya Pradesh Gazette on 12th May, 1964. That Act came into force on 15th May, The M.P. Co-operative Societies Act, 1960. is "an Act to consolidate and amend the laws relating to Co-operative Societies in Madhya Pradesh".

Section 55(2) of the Act runs as follows:--

55. (2) Where a dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, 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 depute and his decision shall be binding on the society and its employees". The language of this provisions is clear enough to show that under the Act, which is a special enactment dealing with the special subject of co-operative societies, a dispute with regard to termination of services of an employee of a co-operative society can be decided only by the Register or any officer appointed by him, not below the rank of Assistant Registrar, section. 55(2) contains a special provision for adjudication of disputes between a co-operative society and its employees regarding terms of employment, working conditions and disciplinary action. It is no doubt true that the definition of "industrial dispute" given in section 2(1) of the Industrial Disputes Act. 1947, is wide enough to include diputes between a co-operative society and its employees regarding the terms of employment, working conditions and disciplinary action. The Industrial Disputes Act, 1947, is also a special enactment dealing with the special subject of industrial disputes and their adjudication. But whereas the Industrial Disputes Act, 1947, deals

generally will) Industrial disputes arising between "employers" and "employees" as defined in that Act. Section 55(2) of the M. P. Co-operative Societies Act is concerned only with the adjudication of disputes between a co-operative society and its employees. There is no provision in the Industrial Disputes Act, 1947, that disputes arising between a body or a society governed by a special enactment and its employees, also governed by that special enactment, with regard to terms of employment, working conditions and disciplinary action, shall be adjudicated upon in accordance with the Industrial Disputes Act, 1947. notwithstanding the fact that a special provision has been made for adjudication of these disputes in the special enactment regulating the society or body and its employees.

There is thus a conflict between the Industrial Disputes Act, 1947. a Central law, and the M. P. Co-operative Societies Act, 1960. a law by the State regard to the adjudications of disputes between, a co-operative society and its employees regarding terms of employment, working conditions and disciplinary action. But as "industrial and labour disputes" is one of the matters enumerated in the Concurrent List and the M. P. Co-operative Societies Act, 1960, received the assent of the President, section 55(2) of the Act must prevail in the State over the provisions of the Industrial Disputes Act, 1947, in regard to disputes between a co-operative society and its employees regarding terms of employment, working conditions and disciplinary action. This is clear from Article 254(2) of the Constitution.

Learned Counsel referred us to the decisions in Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Others, and Jullundar T. C. Society v. Punjab Society AIR 1959 PUM 34. Where it has been held that the provisions of the Bengal Co-operative Societies Act, 1940, and the Punjab Co-operative Societies Act, 1955. have to yield to the provisions of the Industrial Disputes Act, 1947. This conclusion of the Calcutta and Punjab High Courts proceeded on the reasoning that the Industrial Disputes Act, 1947, was a special enactment dealing with the special subject of industrial disputes and the relevant Co-operative Societies Act was, on the other hand, a general enactment which must yield to the special provisions of the Industrial Disputes Act, 1947. It is not necessary to examine this reasoning. It is sufficient to point out that section 55(2) of the M. P. Co-operative Societies Act, 1960 and the material sections of the Bengal Co-operative Societies Act, 1940, and the Punjab Co-operative Societies Act, 1955, differ *toto nolo* and thus render the two decisions cited on behalf of the petitioner altogether inapplicable in the present case. In those Acts there is no provision analogous to section 55(2) of the Local Act. It may, however, be pointed out that both under the Bengal Co-operative Societies Act and the Punjab Co-operative Societies Act a dispute regarding disciplinary action taken by a Co-operative Society against its employees is expressly excluded from the purview of the Registrar's jurisdiction.

Learned counsel also urged that section 93 of the Act, which said that certain

Acts including the M.P. Industrial Relations Act, 1960, shall not apply to a society registered under the Act, made no mention whatsoever, of the Industrial Disputes Act, 1947, and that therefore, it must be taken that the Act of 1947, would apply to a Co-operative Society. We are unable to accept this contention. The omission of any reference in section 93 to the Industrial Disputes Act 1947, cannot be read as a positive direction that the Industrial Disputes Act, 1947, would apply to a society registered under the Act, even though that Act, as pointed out earlier, does not regulate adjudication of disputes between a co-operative society and its employees regarding terms of employment, working conditions and disciplinary action. On the other hand, the provision in section 93 of the Act, that the M. P. Industrial Relations Act, 1960, shall not apply to a society registered under the Act only emphasize the fact that a dispute falling u/s 55(2) of the Act can be decided only by the authorities pointed out therein even though the dispute may be capable of adjudication under the M. P. Industrial Relations Act, 1960, as an industrial dispute.

13. It is this reasoning, which we are required to examine in the present case. The Division Bench, which heard the present petition on an earlier occasion has referred the entire case to the Full Bench and not merely any stated question of law. We may next examine the provisions of the Industrial Disputes Act, 1947. Section 2(a) of the Act defines the "appropriate Government" to mean (i) in relation to any industrial dispute concerning:--

(a) any industry carried on by or under the authority of the Central Government..... (b) or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government, (c)..... (d) or in relation to an industrial dispute concerning the Industrial Finance Corporation of India established u/s 3 of the Industrial Finance Corporation Act, 1948, or the Employees' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948, (34 of 1948) or the "Indian Airlines" and "Air India" Corporations established u/s 3 of the Air Corporation Act, 1953. or the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 or (e) "the Agricultural Refinance Corporation established u/s 8 of the Agricultural Refinance Corporation Act, 1963 (10 of 1963), or the Deposit Insurance Corporation established u/s 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961) or, the Unit Trust of India established u/s 3 of the Unit Trust of India Act, 1963 (52 of 1963) or "(f) the Food Corporation of India established u/s 3, or a Board of Management established for two or more contiguous States u/s 16 of the Food Corporation Act, 1964, or (g) a banking or an insurance company, a mine, an oil-field, (h) a cantonment Board, (i) or a major port, the Central Government, and (ii) in relation to any other industrial dispute, the State Government.

Section 2 (j) of the Act defines an "industry" as under:

Industry means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or

industrial occupation or avocation of workmen;

Evidently, an industry will not include the activities of a Co-operative Society, which may be in the nature of a business. Section 2 (k) of the Act defines an "industrial dispute" in the following words:

"industrial dispute" means any dispute or difference between employers and employees or between employer and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

14. As was observed by the Division Bench in *Sugar Motor Transport Karmachari Union, Sugar v. The Amar Kamgar Passenger Transport Company, Co-operative Society, Sugar* (supra), the definition of "industrial dispute" may be wide enough to include any dispute between the employer and the employee, yet section 55(2) of the M. P. Co operative Societies Act, 1960, being a special provision in respect of employer and employee in a Co-operative Society, the same will prevail if it be held that the M.P. Co-operative Societies Act, 1960, applies to such a dispute.

15. At this stage we might advert to the pronouncement of their Lordships of the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, wherein their Lordships made the following observations:

The Tribunal and the High Court, in rejecting the plea taken on behalf of the Banks, expressed the view that the disputes actually referred to the Tribunal were not capable of being decided by the Registrar of the Co-operative Societies u/s 61 of the Act, and, consequently, the reference to the Industrial Tribunal under the Industrial Disputes Act was competent. Learned Counsel appearing on behalf of the Banks took us through the provisions of the Act to indicate that, besides being a local and special Act, it is a self-contained Act enacted for the purposes of successful working of Co-operative Societies, including Co-operative Banks, and there are provisions in the Act, which clearly exclude the applicability of other laws if they happen to be in conflict with the provisions of the Act. It is no doubt true that the Act is an enactment passed by State Legislature which received the assent of the President, so that, if any provision of a Central Act, including the Industrial Disputes Act, is repugnant to any provision of the Act, the provision of the Act will prevail and not the provision of the Central Industrial Disputes Act, 1947. The general proposition urged that the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act will be barred if the disputes in question can be competently, decided by the Registrar u/s 61 of the Act is, therefore, correct and has to be accepted. The question, however, that has to be examined is whether the Industrial dispute referred to the Tribunal in the present cases was such as was required to be referred to the Registrar and to be decided by him u/s 61 of the Act.

Their Lordships laid down that if a dispute be capable of a decision by the

Registrar under the provisions of the Co-operative Societies Act, the same cannot be tried by an Industrial Tribunal under the Industrial Disputes Act. The two jurisdictions would be exclusive of each other.

16. Further on section 10 of the Act provides for reference of disputes to Boards, Courts or Tribunals and the subsequent sections make provision for the procedure to be followed, including duties of conciliation officers, Boards, Courts and Tribunals, the manner of arbitration and manner of adjudication. It is not necessary for us to refer to those provisions in great details. Previously, the Industrial Disputes Act, 1947 contemplated only a collective dispute between the employer and employees. But, by introducing section 2 A, as per the Industrial Disputes (Amendment) Act, 1955, which came into force with effect from 1-4-1955. dismissal of an individual workmen is now considered to be an industrial dispute. The said section is as follows:

S. 2-A. Dismissal, etc., of an individual workman to be deemed to be in industrial dispute. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissals, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.

Thus, there can be no doubt that the dismissal of an individual workman could become an industrial dispute as per amended provision.

17. The learned Advocate General for the respondents invited our attention to the Supreme Court case of Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club, and urged that the said case will be distinguishable inasmuch as a Club may not be an industry or an undertaking, it was urged that the kind of activity carried on by the petitioner Society, namely, running of contract labour, would clearly be a trade or a business activity, which would necessarily involve organisation of labour for raising coal from the mines. Therefore, it was suggested that the activity of the petitioner Society should be considered to an industrial activity. In this connection we may observe that every activity would not be an industrial activity. In The Management of Safdar Jung Hospital, New Delhi v. Kuldip Singh Sethi AIR 1976 SC 1407, it was contended on behalf of the respondent that the hospital was an industry. That contention was negatived by their Lordships of the Supreme Court and the appeal of the hospital was allowed.

18. We may consider this matter from another point of view. The Industrial Disputes Act, 1947, and the M. P. Industrial Relations Act, 1960. have been enacted by the Parliament and the State Legislature respectively under Item 22 of the Concurrent List contained in Schedule VII, List III. The M. P. Co-operative Societies Act, 1960, has been enacted by the State Legislature under Item No. 32 of List II of Schedule VII, that is, the State List, which is within the ordinary

power of the State Legislature and regarding which the Parliament would not ordinarily legislate except under the conditions mentioned under Article 246 of the Constitution of India. Article 254(1) of the Constitution of India provides that if there be repugnancy between a law made by the Legislature of a State and a law made by Parliament. Which the Parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, shall prevail. However, sub-clause (2) of Article 254 of the Constitution provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, shall prevail in that State. The industrial dispute is in the Concurrent List; while the law relating to Cooperative Societies would be a State subject. As such, the conflict would be between a law made by the Legislature of a State in its exclusive power to legislate on the State subject on the one hand and the law made by the Parliament on a matter enumerated in the Concurrent List. As such, by virtue of Article 254(2) of the Constitution, the law made by the Legislature of the State will prevail in the State of Madhya Pradesh even though there may be a conflict between the State law and the Central Industrial Disputes Act, 1947.

19. There can be no doubt that an activity may be connected with an industry. But the nature of the activity must be industrial in nature. Judged in this light, there can be no doubt that the activity of the Petitioner Society is to raise contract labour. But, for that purpose it has organised itself into a Co-operative Society and so far as its internal organisation is concerned, it is governed by the provisions of the Madhya Pradesh Co-operative Societies Act, 1960. We may note that section 55(2) of the M.P. Co-operative Societies Act, 1960, is a special provision, which is not to be found in any of the other States' Co-operative Societies Acts or the Central Co-operative Societies Act, 1912. As a special provision has been made in this State enactment, which must prevail in the State by virtue of Article 254(2) of the Constitution of India, we are of the opinion that any dispute between the Co-operative Society and its employees, must be decided in accordance with the provisions of section 55(2) of the Act and such jurisdiction is vested in the Registrar. Therefore, we would approve of the reasoning of the Division Bench of this Court in *Sagar Motor Transport Karmachari Union, Sagar v. The Anjar Kamgar Passenger Transport Company, Co-operative Society, Sagar* and following the dictum of their Lordships of the Supreme Court in *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh* we would hold that where dispute is triable by the Registrar of Co-operative Societies, its decision by an Industrial Tribunal would altogether be excluded. In this view of the matter, we would affirm the view of the Division Bench of this Court in *Sagar Motor Transport Karmachari Union, Sagar v. The*

Amar Kamgar Passenger Transport company, Co-operative Society, Sagar (supra).

20. As a result of the discussion aforesaid we hold that the dispute between the petitioner society and the petitioner's employees, namely, Ramprasad and Shrimati Jankibai was not an industrial dispute, which could have been referred to the Industrial Tribunal u/s 19(1)(d) of the Industrial Disputes Act, 1947. In this view of the matter, the reference and the award of the Industrial Tribunal are rendered as being without jurisdiction. We further hold that the said dispute was triable by the Registrar or his nominee u/s 55(2) of the M.P. Co-operative Societies Act, 1960. We, therefore, quash the reference (Petitioner's Annexure-D) dated 6-4-1972, as also the award of the Industrial Tribunal, dated 8-9-1972 (Petitioner's Annexure-R). In all propriety the question of termination of services of Ramprasad and his wife, Smt. Jankibai is to be decided by the Registrar or his nominee u/s 55(2) of the M. P. Co-operative Societies Act, 1950. Steps in that behalf might be taken by any person aggrieved.

21. Consequently, this petition succeeds and is accordingly allowed and the order of reference and the award of the Industrial Tribunal are accordingly quashed. However, under the circumstances, we direct that there shall be no order as to costs of this Court. The outstanding amount of the security deposit shall be refunded to the Petitioner.

Per C. P. Sen J

1. I had the advantage of going through the opinion recorded by Hon'ble the Chief Justice but with great respect. I regret I am unable to agree with the views expressed by him. I, therefore, proceed to record my reasons in detail separately.

2. This case has come up before this Full Bench on a reference by a Division Bench to reconsider mainly, the decision of a Division Bench of this Court in Sagar Motor Transport Karmchari Union, Sagar Vs. Amar Kamgar Passenger Transport Co. Co-operative Society, Sagar, M.P. and Another, that is whether Section 55(2) of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as the Co-operative Act), completely ousts the jurisdiction of the industrial Courts under the Industrial Disputes Act, 1947, in respect of all industrial disputes in the State of M.P., concerning employees of a Co-operative Society.

3. The petitioner is a Society registered under the M. P. Co-operative Act and it carried on business of raising iron ores. One Ramprasad and his wife Smt. Jankibai were employed as raising majdoors in the Kokan Mines at Dalli-Najhara of Durg District. Their services were not terminated with effect from 5-5-1971. They therefore raised industrial dispute through the respondent No. 3 Union before the Assistant Labour Commissioner. Raipur challenging their terminations for certain misconducts under Rule 14(3) (a) and (h) of the Industrial Employment (Standing Orders) Central Rules, 1946, on the ground that no enquiry was held and no opportunities were given. The application was opposed by the petitioner Society. However, the petitioner and the respondent No. 3 jointly applied to the Central Government under sub-section (2) of section 10 of

the Industrial Disputes Act, 1947, for reference of the industrial dispute to an Industrial Tribunal. Accordingly, the Central Government referred the dispute to the Central Government Industrial Tribunal, Jabalpur on 6-4-1972 u/s 10(1)(d) of the Act. The respondent No. 1 after holding an enquiry, gave his award on 8-9-72, setting aside the termination on orders of the said workmen Ramprasad and his wife Smt. Jankibai on the ground that there was no proper enquiry and no opportunities were given to the workmen. The petitioner Society was proceeded ex-parte as it remained absent inspite of service of notice.

4. Against this award, the petitioner has filed this petition under Articles 226 and 227 of the Constitution. Apart from the objections that the respondent No. 2, Union of India, had no jurisdiction to refer the dispute u/s 10 nor the respondent No. 1, Central Government Industrial Tribunal, could have adjudicated the dispute under the Industrial Disputes Act between the petitioner Society and its employees, the dispute could only be decided by the Registrar u/s 55(2) of the Co-operative Act, by relying on Sagar Motor Transport Karmachari Union, Sagar v. The Amar Kamgar Passenger Transport Company and another (supra); the petitioner has further raised various other objections. It has been contended that (i) since the petitioner Society has not framed any rules or bye-laws about the service conditions of its employees, employment is purely at pleasure, governed by law of master and servant and hence dispute about termination could not be an industrial dispute; (ii) the employees having not raised their disputes with their employer petitioner Society first, the Central Government could not have referred the disputes to the Central Government Industrial Tribunal by relying on The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, (iii) in any case, the reference could have been made by the State Government, as the State Government is the appropriate authority for the petitioner Society registered under the Co-operative Act; and (iv) the petitioner Society was not given proper opportunity to defend its case by the Industrial Tribunal.

5. Before going into the main question, it would be better to dispose of the various other contentions. Admittedly, the petitioner Society is carrying on business of raising iron ores from the mines i.e. mining. There can be no dispute that mining is an industry and any employee engaged in the mining operations is a workman in the mining industry. Any dispute between such employer and its employees would be industrial dispute within the meaning of the Industrial Disputes Act. Such minerals as declared by special enactment are in the central list of the Constitution and as such the Central Government is the appropriate Government for reference of such dispute u/s 10 of the Act. The Supreme Court in G.V. Ramanaiah Vs. The Superintendent of Central Jail, Rajahmundry and Others, has defined "appropriate Government" to be one within whose legislative competence the subject matter lies. Besides, under the Mines and Minerals (Regulation and Development) Act, 1957, the control and development of all mines and minerals specified therein, including iron ores, are with the Central Government and so the Central Government is the "appropriate Government" for

referring such dispute. Further, a Division Bench of this Court in *Sanyukta Khadan Majdoor Sangh v. M/s. Hindusthan Steel Ltd* 1973 MPLJ 269 has held that "workmen" in mines are governed by the Industrial Disputes Act, 1947 and not by the M.P. Industrial Relations Act, 1960. Therefore the reference to the Industrial Court was proper and validly made by the proper authority under the Industrial Disputes Act.

6. The petitioner Society having itself taken the action under the Industrial Employment (Standing Orders) Central Rules, it is not now open to it to say that Industrial Disputes Act has no application. The employees of the petitioner Society having raised the dispute before the Assistant Labour Commissioner and both the parties having jointly moved the Central Government for referring the dispute to the Industrial Tribunal, it is too late in the day to contend that the employees did not raise the dispute with the employer before the reference was made by the Central Government. In *S.R. Corpn. v. Industrial Tribunal, Gujrat* (supra), it has been held by the Supreme Court that before the Government can make a reference, the dispute is to be raised by the employee with his employer and then only reference can be made. In that case the only dispute raised by the retrenched employee was about the retrenchment compensation but the Government made a reference for reinstatement. That case has no application here. The reference in this case is in respect of the same dispute pending between the parties before the Assistant Labour Commissioner and both the parties jointly moved the Central Government for reference. The Industrial Tribunal had duly served notice of hearing on the petitioner under registered post and the acknowledgment is on record. The petitioner cannot be permitted to say here that notice served on its Manager was not proper service, when in fact the Manager had been representing the petitioner Society before the Assistant Labour Commissioner. He never raised any objection that service of notice on him was not proper and he was not authorised to represent the Society. The Manager on behalf of the petitioner had also moved the Central Government for reference of the dispute to the Industrial Tribunal. The petitioner having chosen to remain ex-parte before the Tribunal, cannot now complain that it was not given sufficient opportunity to defend its case.

7. Before going into the main question, it would be necessary to quote the relevant provisions of the Co-operative Act, material for determination of this question. Section 55 is as under:--

Section 55(1) The Registrar may from time to time frame rule governing the terms of employment and working conditions in a society or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, 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.

Clause (a) of sub-section (1) of section 64 is quoted hereunder:--

Section 64(1)--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 Registrar by any of the parties to the dispute if the parties thereto are among the following:--

(a) a society, its committee, any past committee, any past "or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society.

Clause (c) of sub-section (1) of section 82 and sub-section (3) are to this effect:--

S. 82(1) Save as provided in this Act no civil or revenue Court shall have any jurisdiction in respect of--

"S. 82(c) any dispute required to be referred to the Registrar or his nominee or Board of nominees:

S. 82(3) Save as provided in his Act no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever.

Section 93 is as under:--

Nothing contained in the Madhya Pradesh Shops and Establishments Act, 1958 (25 of 1958), the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 (19 of 1959) and the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960) shall apply to a society registered under this Act.

8. In Sagar Motor Transport Karmachari Union, Sagar v. The Amar Kamgar Passenger Transport Company (supra) the Division Bench held that the Co-operative Act is a special enactment in respect of co-operative societies and Industrial Disputes Act, 1947, is a special enactment regarding industrial disputes, but section 55(2) of the Act provides for adjudication of disputes regarding terms of employment, working conditions and disciplinary action in respect of an employee of a co-operative society by the Registrar or his nominee; whereas Industrial Disputes Act, 1947, deals generally with industrial disputes arising between employees and employees, on the other hand the Co-operative Act deals only with employees of co-operative societies and therefore the special enactment contained in section 55(2) would override the general provisions of the Industrial Disputes Act. It has further been held that M.P. Co-operative Societies Act, 1960. being a subsequent enactment and it having received the assent of the President on 28-4-1961, and as there is conflict, section 55(2) would prevail over the Industrial Disputes Act, 1947, in this State under Article 254(2) of the Constitution, as "Industrial and labour dispute" is entry No. 22 of the concurrent list in the seventh schedule of the Constitution. Therefore, the

reference of the dispute regarding termination of two employees of that Society to the Industrial Tribunal u/s 10(1) was held to be invalid.

9. It is well settled that if the Legislature makes a special Act dealing with a particular subject and later makes a general Act, which by its terms would include the subject of the special Act and is in conflict with the special Act, nevertheless unless it is clear that in making the general Act the Legislature has had the special Act in its mind and has included to obrogate it, the provisions of the general Act do not override the special Act. If possible, general Act is not to be extended to special subject specially dealt by earlier Act [Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others, . Similarly, a general Act cannot be treated as impliedly repealed by a later local or special Act because ordinarily the general law of the country is not altered by special legislation without particular reference to it. The special Act is to be treated as exception to the general Act. In both the above cases, if both the statutes can be read together without contradiction or repugnancy or absurdity or unreasonableness, they should be harmoniously construed, as repeal by implication is seldom favoured and conflict if possible is to be avoided. But in case both the enactments are absolutely repugnant and inconsistent with one another, than the Courts have no other alternative but to declare the prior Act as repealed by the subsequent Act. What is a general statute and what is a special statute is often a question of difficulty, but classification has to be made with reference to the context in each case and the subject-matter dealt with by each statute. Most Acts can be classified as General Acts from one point of view and special Acts from another.

10. The M. P. Co-operative Societies Act, 1960, is "an Act to consolidate and amend the laws relating to Co-operative Societies in Madhya Pradesh". It has been enacted with a view to strengthening and developing co-operative movement in the State. Co-operative Societies come under entry No. 32 of the State List of the Constitution. The Co-operative Act is therefore a general enactment concerning co-operative societies, making provisions on different subjects concerning co-operative societies. Section 55 of the Co-operative Act quoted above is a peculiar feature in the Madhya Pradesh Act. There are no such analogous provisions in other State Acts. Industrial and Labour Disputes come within entry No. 22 of the concurrent list. The Industrial Disputes Act, 1947, has been legislated for investigation and settlement of industrial disputes. The Act is based on necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The principal object of the Act is to encourage collective bargaining and to maintain industrial peace by resorting to the machinery set up under the Act, to prevent illegal strikes and lock outs and to provide lay-off and retrenchment compensation. The Act is calculated to ensure social justice to both employers and employees and advance the progress of industry. It can certainly be said to be a special enactment concerning only industrial disputes and not other types of disputes between employer and employee. Therefore, this special enactment about industrial

disputes cannot be held to have been repealed by the Co-operative Act, touching also on the relations between a society and its employees, in the absence of any specific provisions for its repeal. Similarly, if section 55 of the Cooperative Act is treated as special enactment concerning a society as a employer and its employees, while Industrial Disputes Act as a general enactment concerning all employers, as held by the Division Bench, still the Cooperative Act has not repealed the Industrial Disputes Act either directly or by necessary implication. Both can stay together without there being any repugnancy or inconsistency, both can be enforced without any conflict, as will be shown hereinafter.

11. sub-section (1) of section 55 of the Co-operative Act provides that the Registrar from time to time to frame rules governing the terms of employment and working conditions in a society or class of societies and the same has to be complied by the Society or societies concerned. Under sub-section (2), in case of a dispute regarding terms of employment, working conditions and disciplinary action by a society, the Registrar or his nominee shall decide the dispute. The State has also similar powers to frame rules u/s 95(2)(jj) of the Act. The Registrar or his nominee has been empowered to decide dispute concerning an individual employee about his terms of employment, working conditions and disciplinary action taken against him by his employer-Society in contravention of the rules framed under the Act either by the Registrar or by the State. Clearly, the Registrar or his nominee can resolve the dispute by confining himself to the provisions of the Act, rules or bye-laws and the dispute to be settled is an individual dispute. Whereas, the Industrial Disputes Act, 1947 (before its amendment by Act No. 35 of 1965) did not provide for adjudication of individual disputes but provided for reference of collective disputes i. e. industrial disputes, for adjudication. Industrial Disputes Act further provides for strikes and lock outs, lay-off and retrenchment compensation and the Act is a comprehensive legislation providing for all types of industrial disputes. The Co-operative Act, on the other hand, has no such provision for reference, strikes and lock outs, lay-off and retrenchment etc. etc. It only provides for a particular type of dispute for adjudication by the Registrar or his nominee i. e. only of employer employee disputes within the four corners of the Act, rules or bye-laws, and that the decision so given shall be binding on the parties. Therefore there is no repugnancy or conflict between the two Acts and both the provisions could stand together.

12. Clause (c) of sub-section (1) of section 82 of the Co-operative Act only bars jurisdiction of Civil or Revenue Courts in respect of any dispute required to be referred to the Registrar or his nominee. There is no such restriction on the jurisdiction of the labour or industrial Court. But sub-section (3) enjoins that once an award is given, the same cannot be questioned in any Court. So, unless an award is given, the jurisdiction of the labour or industrial Court is not barred in respect of any particular dispute in question. Moreover, section 92 of the Co-operative Act provides that the Companies Act, 1956, shall not apply to a society registered under the Act. Similarly, section 93 lays down that provisions of M.P.

Shops and Establishments Act, 1958, M.P. Industrial Workmen (Standing Orders) Act, 1959 and M.P. Industrial Relations Act, 1960, shall not apply to a society registered under the Act. It is therefore clear Industrial Disputes Act, 1947, has not been made inapplicable to a society nor it is so by necessary implication. If the State Legislature wanted that provisions of the Industrial Disputes Act are not to be nude applicable to a society, such provision would have been made to this effect, as has been done in respect of other enactments. If a co-operative society carries on industrial activity on a organised scale, there is no reason why the provisions of the social, and beneficial legislation like the Industrial Disputes Act should not apply to its employees. Otherwise, an anomalous situation may arise, there can be two mining industries side by side in the same area but one of the employers may defeat the provisions of the Industrial Disputes Act by simply getting his concern registered as a Co-operative Society. In this case, the petitioner society had taken disciplinary actions against its employees for misconduct under the Industrial Employment (Standing Orders) Central Rules and therefore the remedy of the employees lay under the provisions of the Industrial Disputes Act, 1947.

13. Further, Regulation of mines of all major mineral including iron ores and their developments have been taken under the control of the Central Government under the Mines and Minerals (Regulation and Development) Act, 1957. Therefore, Regulation of such mines and mineral development including Regulation of labour and safety in such mines are central subjects as per entry in list I of the Constitution. Therefore, the Central Government is the appropriate Government of referring of an industrial dispute concerning such mining industry u/s 10 of the Industrial Disputes Act. How can the State Legislature possibly deprive such rights of the Central Government in respect of its central subjects by enactments of the M.P. Co-operative Act? Therefore, section 55(2) of the Act can in no case take away such vested rights of the Central Government in its own exclusive sphere. It is true that the State has got competence to legislate on subjects in lists II and III of the Constitution and for that purpose it can incidentally affect an entry in list No. 1 of central subjects and thereby the legislation will not cease to be a legislation with respect an entry in list II or III K.D. If. The Kannan Devan Hills Produce Vs. The State of Kerala and Another, . Legislative power normally includes all incidental and subsidiary powers but there are limits to such incidental or ancilliary powers and they have to be exercised in aid of the main topic of the legislation. In D.N. Banerji Vs. P.R. Mukherjee and Others, it has been held that Industrial Disputes Act, 1947. encroaches upon powers of Municipal Commissioner to dismiss or appoint municipal servant working in a department which is an industry. But Act is not *ultra vires* because there is encroachment on provincial subject viz. local Government.

14. As per Article 254(1) of the Constitution, if there is repugnancy between a law made by a State and that of the Parliament with respect to one of the matters enumerated in the concurrent list, the law made by Parliament shall prevail to the extent of the repugnancy, and the law made by the State to the extent of

such repugnancy be void. Clause (2) of this Articles is exception to this rule and the proviso qualifies the exception. Under this clause, if the legislature of a State makes a provision repugnant to the provisions of the law-made by the Parliament, it would prevail if the legislation of the State has received the assent of the President. Even in such a case, in view of the proviso, Parliament may subsequently either amend, vary or repeal such law made by the legislature of a State. In *Deep Chand Vs. The State of Uttar Pradesh and Others*, the Supreme Court has laid down the following three tests to ascertain the repugnancy between the two statutes:

- (i) Whether there is direct conflict between the two statutes:
- (ii) Whether the Parliament intended to lay down exhaustive Code in respect of the subject-matter replacing the Act of the State Legislature and
- (iii) Whether the law made by the Parliament and the law made by the State occupied the same field.

15. The Supreme Court in *Zayerbhai v. State of Bombay* AIR 1959 SC 752 held that if the later legislation deals not with matters which form the subject-matter of an earlier legislation, but with other and distinct matters, though of a cognate and allied character, then Article 254(2) will have no application. Similarly, in *A.S. Krishna Vs. State of Madras*, , it has been observed that if a State law is found to relate lo a State subject in the list II, no question of any repugnancy to any Union law can possibly arise, because the State Legislature has exclusive jurisdiction to enact the law, and it will prevail even if there is any conflict between any of its provisions and those of a Union law relating to list I or list III.

16. As has been observed earlier, there is no repugnancy between the M.P. Co-operative Act and the Industrial Disputes Act and both can exist side by side. Co-operative Act has provided for settlement of different types of disputes than those disputes provided under the Industrial Disputes Act. There are no provisions in the Cooperative Act for settlement of collective disputes by reference by appropriate Government no provisions about strike and lock out, lay off and compensation, whereas the Industrial Disputes Act did not provide for settlement of individual disputes of an employee. u/s 55(2) of the Co-operative Act, the Registrar has to decide dispute about terms of employment, working conditions and disciplinary action taken against and employee in terms of the provisions of the Co-operative Act, the rules and bye laws. Moreover, the Co-operative Act is an enactment under Entry No. 32 of the State list regarding Co-operative Society and incidentally it has dealt with its employees about terms of employment, service conditions and disciplinary action. Broadly speaking, it is a State Act within the State list and so Article 254(2) is not at all attracted. In any case, there is no direct conflict between the two statutes and both occupy different fields and the Co-operative Act is not an exhaustive Code on Industrial Disputes. In *Ahmedabad M.O. Assn. v. I.G. Thakore* AIR 1957 SC 1091 the Supreme Court held that provisions in Chapter v. of the Bombay Industrial

Disputes Act, 1938, are not repugnant to the Industrial Disputes Act, 1947, as there are no provisions for Standing Orders and their changes in the latter Central Act. Therefore, both can stand together.

17. After the decision of the Division Bench of (his Court in Sagar Motor Transport Karmachari Union v. The Amar Kamgar Transport Company (supra), there are two decisions of the Supreme Court on State Co-operative Acts of Bombay and Andhra Pradesh. In D. 11. Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , the Supreme Court interpreted section 91 of the Maharashtra Co-operative Societies Act, 1961, which is analogous to section 64 of the M.P. Co-operative Act and the Supreme Court held that sub-section (1) of the section, the word "business" has to be used in a narrower sense and it means actual trading or commercial or similar business activity of the society and further the word "dispute" covers only live types of disputes i. e. disputes touching (i) the constitution of the society, (ii) election of office bearers, (iii) conduct of general meetings, (iv) management and (v) the business of a society. In that case, the dispute was between a society, which was Co-operative Bank and its tenants and the dispute was referred to Registrar's nominee for arbitration. The tenants sought protection under the Rent Act and contended that the dispute was not one that touches the business of the bank and that their dispute could only be decided under the Rent Act. The Supreme Court upheld the contentions and held that the dispute was not touching the business of the society and it not being one of the disputes enumerated in section 91(1), it cannot be decided u/s 91 of the Act. It has also been observed that the Maharashtra Co-operative Societies Act was passed, in the main to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the matters relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for obtaining that social objective, it is necessary that a dispute between the landlord and the tenant should be dealt with by the Courts set up under the Rent Act and in accordance with special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Act. The two acts can be harmonised best by holding that the matters covered by the Rent Act, its provision, rather than the provisions of the Maharashtra Co-operative Societies Act should apply.

18. In the other case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , the Supreme Court interpreted Section 61 of the Andhra Pradesh Co-operative Societies, Act, 1964, similar to section 91 of the Maharashtra Act and section 64 of the M.P. Act, with only difference that it mentions disputes other than disputes regarding disciplinary action. Relying on the earlier case, the Supreme. Court held that dispute touching the business of a society cannot possibly include disputes in respect of alterations in the service conditions of the employees of a society. It has further been held that the Registrar or other person dealing under the Act is not competent to grant relief in respect to disputes relating to alteration of various conditions of service of

employees as they have to act within the four corners of the Act. Its rules and bye-laws. It has therefore been held that such disputes are to be decided under the Industrial Disputes Act, 1947. It has also been observed that in case of disputes capable of being resolved by the Registrar, jurisdiction of the Industrial Tribunal under the Industrial Disputes Act is barred in view of Article 254(2) of the Constitution. As has been pointed out earlier, the nature of dispute to be adjudicated u/s 55(2) of the M.P. Co-operative Act is limited in scope and is not comprehensive enough to include all industrial disputes and they do not at all cover all the disputes and the remedies provided under the Industrial Disputes Act, 1947. In view of the two decisions of the Supreme Court mentioned above, all industrial disputes cannot possibly be adjudicated by the Registrar or his nominee and the same has to be done by the Industrial Tribunal under the Industrial Disputes Act. The sweeping observation of the Division Bench of this Court that the M.P. Co-operative Act prevails over the Industrial Disputes Act and the latter Act can have no application in Madhya Pradesh in respect of employees of Co-operative societies is contrary to the two Supreme Court decisions and is therefore no longer good law. At the most, the State Act could have prevailed with respect to disputes covered u/s 55(2) of the Act.

19. A large number of High Courts have held with respect to their respective State Co-operative Societies Acts that industrial disputes are to be decided under the Industrial Disputes Act. Some of these cases are *The Jullundur Transport Co-operative Society Vs. The Punjab State* and *Another, Kerala State Handloom Weavers Co-operative Society Ltd. v. State of Kerala* 1964 (1) LLJ 559 (D B.), *Malbar Co-operative Central Bank Ltd. v. State of Kerala* 1968 (1) LLJ 670 (D B.), *Kendriya Sarvodaya Saliakari Ltd. v. industrial Tribunal* 1967 I LLJ 270 (D B.), *Gujarat State Co-operative Lund Mortgage Bunk Ltd. v. Labour Court* 1968 I LLJ 670 (D B.) *K. Subha Rao v. National Consumers federation* AIR 1974 Raj. 132 (D B.) and *Rambhau Jairam Dhamange and Others Vs. The President, Vinkar Co-operative Society Ltd., Chanda and Others,) etc. etc.* In these cases it has been held that jurisdiction of the Industrial Courts are not ousted by the respective Co-operative Societies Act, containing provisions similar to section 64 of the M. P. Co-operative Act and inspite of non-obstante clause in the section "Notwithstanding anything contained in any other law for the time being in force". But now the Supreme Court has said that this provision does not envisage adjudication of industrial disputes. It is to be mentioned here that there are no analogous provisions to that of section 55(2) of the M. P. Co-operative Act. However, the limited scope of this section has already been pointed out and the section does not override the comprehensive provisions contained in the Industrial Disputes, Act, 1947, about industrial disputes. Now proceeding with the assumption of the Division Bench that section 55(2) of the M.P. Co-operative Act prevails over the Industrial Disputes Act in view of Article 251(2) of the Constitution, but that position has now changed in view of the amendments of the Industrial Disputes Act by amending Act No. 45 /1965 and Act No. 45 /1971 which came into force on 19-11-1965 and 8-12 1971 respectively, individual disputes are now industrial

Disputes. Therefore under the proviso to Article 254(2), the Central Act will now prevail in view of the amendments subsequent to M.P. Co-operative Act of 1960 in respect of the same subject matter. Under the circumstances, employees of these co-operative societies engaged in industrial activities are to be governed by the Industrial Disputes Act and not by section 55 of the M.P. Co-operative Act, in view of the amendment of the Industrial Disputes Act in 1965 and in 1971.

20. I am, therefore, of the opinion that the petition must fail and it has to be dismissed with costs. Counsel's fee Rs. 200, if certified. The outstanding amount of the security deposit, after deduction of the costs, be refunded to the Petitioner.

Per Malik J.

1. I had the advantage of reading the draft judgments prepared by Hon'ble the Chief Justice and brother C.P. Sen J. I am in agreement with Sen J. To avoid verbosity, I am not restating the facts nor the relevant provisions of law. The simple question to answer is whether an industrial dispute raised by a workman engaged by a Co-operative Society is referable to an Industrial Tribunal under the Industrial Disputes Act, 1947, or whether he has an exclusive remedy u/s 55(2) of the Madhya Pradesh Co-operative Societies Act, 1960. In the present case, the activity of the Society is to extract iron ore and the dismissed employee is one of the raising Mazdoors. The workman is employed in the iron-ore mining industry which is a Central subject, is not disputed. The Co-operative Societies Act is the State Act on a subject in the State List. It would not be within the legislative competence of the State Legislatures to trench upon the held allocated exclusively to the Union Legislature. That is the first aspect which arises for consideration. Any beneficial legislation touching upon the subject of iron-ore mining, any advantage given to a workman employed in the industry of the mining, and any procedural remedies provided for adjudication of disputes by any Central Act relating thereto, cannot be taken away by the State Act. If the employer happens to be a Co-operative Society the activity of which is iron-ore mining, it shall be governed as much by the Central Act in matters touching upon the subject of mining as and other individual private industrialist. If the Central Act provides for industrial disputes to be raised before the Industrial Tribunals, that right cannot be taken away by any State Legislation. [See: G.V. Ramanaiah Vs. The Superintendent of Central Jail, Rajahmundry and Others, , where the question arose as to which Government should exercise the powers to remit the sentence, whether the Central or the State, when the offence involved was covered by the subject in List I.]

2. The second aspect is more important. The dispute contemplated u/s 55(2) of the M.P. Co-operative Societies Act is a dispute relating to rights and obligations arising out of the ordinary law of master and servant, or the law of contract, including breach of bye-laws or terms and conditions of service. The industrial dispute as such, which has acquired a special meaning or significance in the Industrial Law. Is not referable to the Registrar. The Industrial Law seeks to provide extra-ordinary process of adjudication even outside the scope of contract

and terms and conditions of employment, and the controversies in an industrial dispute, by their very nature, are outside the scope and purview of an ordinary litigation. The industrial dispute connotes an entirely different concept from a dispute arising under a Co-operative Societies Act. The two Acts, therefore, can exist side by side and when a dispute is one touching the terms and conditions as embodied in the terms of contract, which is sought to be enforced, the Registrar will have an authority to deal with it but when the dispute is beyond his authority and falls for consideration under the Industrial Law, the Industrial Tribunal will have jurisdiction to deal with it. See: Gujarat State Co-operative Land Mortgage Bank Ltd. and Others Vs. Labour Court, Rajkot (P.R. Mankad) and Another,

3. The view seems to find favour with the Supreme Court in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad 196 II LLJ 698, and to quote the relevant portion, this is what their Lordships observed:

Dealing with the contention., that the byelaws of a co-operative society framed in pursuance of the provisions of the Act, would be law or have the force of law and hence an industrial tribunal altering a condition of service contained in a bye-law would be acting contrary to law, it was held that the bye-laws contemplated by the Act can be merely those which govern the internal management, business or administration of a society. The bye-laws may be binding between the person affected by them but they do not have the force of a statute. The bye-laws framed by a society under the Act are similar in nature to the articles of association of a company incorporated under the Companies Act and such articles have never been held to have the force of law. The bye-laws are just like the standing orders certified under the Industrial employment (Standing Orders) Act which govern the service conditions of workmen employed in industries and which are binding between the employers and the employees of the industry and they do not have the force of law.

The industrial tribunal while adjudicating an industrial dispute is not bound by the service conditions laid down by the standing orders certified under the Industrial Employment (Standing Orders) Act. The jurisdiction of industrial tribunal is not merely to administer the existing laws or to enforce the existing contracts but the industrial tribunal has the right to vary contracts of service between the employer and employees which jurisdiction can never be exercised by a civil Court or a Registrar acting under the Co-operative Societies Act.

Their Lordships of the Supreme Court did refer to the decision of this Court in Sagar Motor Transport Karmchari Union, Sagar Vs. Amar Kamgar Passenger Transport Co. Co-operative Society, Sagar, M.P. and Another, and, it appears, did not agree with the broad proposition that all disputes whether contractual or industrial would be referable to the Registrar alone. Their Lordships said that industrial disputes by their very nature were not referable to the Registrar.

4. I need not dwell on other points covered by brother Sen J. with whom I fully

agree. In the result, the petition must fail.

ORDER

By the Court--As per the majority opinion, this petition fails and is dismissed with costs. Counsel's fee Rs. 200, if certified. The outstanding amount of the security deposit, after deduction of the costs, be refunded to the petitioner.