
(1968) 04 PAT CK 0031

In the Patna High Court

Case No : C.W.J.C. 825 of 1967 and C.R. 1356 of 1967

Ratan N. Tata and Another

APPELLANT

Vs

Capt. S.B. Mathur and Another

RESPONDENT

Date of Decision : 22-04-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (1968) 16 BLJR 985

Hon'ble Judges : P.K. Banerji, J;N.L. Untwalia, J

Bench : Division Bench

Judgement

N.L. Untwalia and P.K. Banerji, JJ.—Captain S. B. Mathur, the first opposite party in the writ application, was employed as the Chief Pilot Instructor of the Jamshedpur Co-operative Flying Club, of which petitioner No. 1 is the President and Petitioner No. 2 is the Secretary. According to the petitioners' case, Captain S. B. Mathur was found guilty of certain charges and was dismissed by an order of the Managing Committee, dated the 16th of October, 1967. Captain Mathur made an application to the Registrar, Co-operative Societies, Bihar, the second opposite party in the writ application, praying to him to set aside the order of dismissal on the grounds mentioned in his petition. A rejoinder was filed on behalf of the petitioners and, inter alia, a point was taken that the Registrar had no jurisdiction to entertain and decide the dispute of the nature of disciplinary action taken by the Managing Committee against its paid servant. The Registrar Registered the dispute as Dispute No. 37A of 1967 and gave a preliminary hearing to the parties on the point of his jurisdiction to decide this dispute. By order dated the 27th of November, 1967, he held that Rule 15 of the Bihar & Orissa Co-operative Societies Rules, 1959 (hereinafter called the Rules) and Section 66 of the Bihar & Orissa Cooperative Societies Act, 1935 (hereinafter referred to as the Act) read with Rule 33 of the Rules conferred the necessary powers on the Registrar to entertain the application filed by the said opposite party No. 1, before him. The objection of the petitioners was, therefore, rejected.

2. The petitioners in the first instance filed the Civil revision application (Civil Revision No. 1356 of 1967) on the 8th December, 1967, in which a rule was issued on the 11th December, 1967. In the order issuing the rule, a doubt was expressed as to whether the Registrar, on the facts of this case, was purporting to act as Court within the meaning of Section 115 of the Code of Civil Procedure. To obviate the doubt, and as a matter of precaution, the petitioners moved this Court and obtained a rule under Articles 226 and 227 of the Constitution of India and this application came to be registered as civil writ jurisdiction case. Both the applications have been heard together and since the effective order is going to be made in the writ jurisdiction case, we allow the prayer of the petitioners for permission to withdraw the Civil revision application which will stand dismissed as withdrawn.

3. It is neither advisable nor necessary to enter into the merits of the order of dismissal passed by the Managing Committee against opposite party No. 1. The only question which falls for determination in this case is whether the Registrar has power or jurisdiction to entertain the application filed by opposite party No. 1 and to set aside the order of the Managing Committee of the Jamshedpur Co-operative Flying Club Ltd., if otherwise the order is lit to be quashed.

4. Section 48 of the Act which provides for reference of disputes to the Registrar and confers power on him to decide them, says -

(1) 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-

* * * (c) between the society or its managing committee and any past or present officer, agent or servant of the society;

* * * such dispute shall be referred to the Registrar:

Reading the relevant provisions of Section 48, it is clear that a dispute between the Society and its Managing Committee and any officer or servant of the Society, which must have included a dispute of this kind, was referable to the Registrar for his decision under Clause (c) of Sub-section (1) of Section 48, had the words in the brackets in Sub-section (1) been not there. But in express language a dispute regarding disciplinary action by the Society or the Managing Committee against the paid servant of the Society has been excluded from the category of disputes between the Society or its Managing Committee and any servant of the Society which can be referred for decision to the Registrar. Such being the position, it was conceded by Mr. Basudeva Prasad, learned Advocate appearing for opposite party No. 1, and in our opinion rightly, that the dispute could not be referred to the Registrar u/s 48 of the Act.

5. Counsel for opposite Parity No. 1. however, submitted that the dispute could be referred under bye-law 26 or 34 of the Bye-Laws of the Jamshedpur Co-operative Flying Club Ltd., framed by the Club and registered by the Registrar u/s

11 of the Act. In our opinion, the argument which has appealed to the Registrar and was accepted by him is not sound and must be rejected. Section 66 of the Act, Sub-section (1) of which, as usual, confers powers on the State Government to make rules in general terms to carry out all or any of the purposes of the Act, enumerates by way of illustration in Sub-section (2) different matters which may be provided in such rules. Reference has been made to Clause (vii) of Sub-section (2) of Section 66 of the Act in the impugned order of the Registrar and to Clause (vi) here in this Court by learned Counsel for opposite party No. 1. We shall, therefore, read both these clauses-

(2) In particular and without prejudice to the generality of the foregoing power, such rules may -

* * * * * (vi) prescribe the matters in respect of which a society may or shall make bye-laws, and the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making alteration or abrogation;

(vii) prescribe the manner in which managing committees and sub-committees thereof shall be constituted, and provide for the appointment, suspension and removal of the members of managing committees and other officers, and for the procedure at meetings of managing committees and for the powers to be exercised and the duties to be performed by managing committees and other officers;

* * *

Clause (vii) merely says that the rules may prescribe the manner in which the Managing Committees can provide for the appointment, suspension and removal of the members of the Managing Committee and other officers.

It does not say that such rules may provide for appointment, suspension etc., of the servants of the Society. And that is the reason that learned Counsel instead of relying on Clause (vii) of Sub-section (2) of Section 66 of the Act made reference to Clause (vi) which is a general provision enabling the Government to frame rules to prescribe the matters in respect of which a Society may or shall make bye laws. In accordance with Clause (vi) of Sub-section (2) of Section 66 of the Act, Rule 15 has been framed and incorporated in the Rules. Clause (g) of Sub-rule (1) of Rule 15 says-

(1) A registered society shall subject to the provisions of the Act and these rules, make bye-laws in respect of the following among other matters, namely:

* * * (g) the mode of appointment, suspension and removal of the members of the managing committee and of the officers of the society, and the duties and powers of the committee and its officers;

* * * *

It would be again noticed that in accordance with the matter which can be

prescribed under the rules under Clause (vii) of Sub-section (2) of Section 66 of the Act, Clause (g) of Sub-rule (1) of Rule 15 speaks about the mode of appointment, suspension and removal of the members of the Managing Committee and of the officers of the Society. It does not speak about the servants of the Society. In that regard, we have to refer to Rule 33 which runs as follows:

33. Appointment of paid employees.- (1) The appointment of a paid employee in any registered society shall be subject to such conditions as to qualifications, designation, scale of pay and travelling allowances, furnishing of security, compulsory contribution, contribution to provident fund grant of leave, salary, increment, transfer, punishment suspension, removal or dismissal as may, from time to time, be determined by the Registrar by general or special order.

(2) A registered society aggrieved by any order of the Registrar under Sub-rule (1) may, within sixty days of the receipt of such order, prefer an appeal against the order to the State Government and the decision of the State Government thereon shall be final.

This rule merely says that the appointment of a paid employee in any registered Society shall be subject to such conditions as to the matters enumerated in Sub-rule (1) including suspension, removal or dismissal as may from time to time be determined by the Registrar by general or special order. The determination of the conditions either by general or special order is subject to the right of the registered Society aggrieved by the order of the Registrar to prefer an appeal against the order to the State Government under Sub-rule (2). It could not be, and it is not, the intention of Rule 33 to confer any power or jurisdiction on the Registrar to entertain a dispute of disciplinary action taken by the Managing Committee against its paid servants. Only conditions could be imposed by the Registrar by general or special order; but the power to impose such conditions cannot embrace within its limits power to sit in appeal against the particular order of dismissal of the Managing Committee passed against its paid servant. It is difficult to accept the contention put forward on behalf of opposite party No. 1 that a power expressly excluded by Section 48 of the Act has been conferred on the Registrar either under Rule 33 of the Rules or by bye-law 26 or 34 of the Bye-Laws framed by the Society in question to which we are going to refer presently.

6. In bye-law 26 have been enumerated powers and duties of the Managing Committee, one of which in Clause (ii) is-

to appoint, suspend, punish or dismiss all salaried servants of the Club, subject to the general or special orders of the Registrar, Cooperative Societies and the Director General of Civil Aviation, issued from time to time in this behalf;" This power is clearly referable to Rule 33 of the Rules and to nothing else. The use of the expression "subject to the general or special orders of the Registrar, Co-operative Societies ...issued from time to time in this behalf" as a matter of construction must be referable to Rule 33 of the Rules, which by use of a similar

expression speaks about the determination of certain conditions as to qualifications etc. of the paid employee or his punishment, suspension, removal or dismissal from service. Clause (ii) of bye-law 26 cannot have a different meaning from the one which we have given to Rule 33 of the Rules. No appeal lies to the State Government against the decision of the Registrar given u/s 48 of the Act. It is difficult to imagine that a dispute which has been expressly excluded from being referred to the Registrar u/s 48 was intended to be covered by Rule 33. Sub-rule (2) of this rule gives a right to appeal only to the registered Society aggrieved by the order of the Registrar to the State Government and not to the paid employee. On a parity of reason, it is not possible to accept the argument put forward on behalf of opposite party No. 1 that bye-law 26 (ii) confers such a power on the Registrar. Bye-law 34 has been framed in too general a term to be capable of being interpreted to mean that this bye-law provides for reference to the Registrar a dispute which is expressly excluded by Section 48 of the Act. Bye-law 34, in our opinion, provides, as a matter of abundant caution, for reference of disputes that cannot be decided by the general meeting or by arbitration to the Registrar, Co-operative Societies, Bihar, which could be referred to him u/s 48 of the Act.

7. In our opinion, therefore, the view taken by the Registrar, Co-operative Societies, Bihar, opposite party No. 2, in his impugned order is erroneous. It must be held that opposite party No. 1 has no right to move the Registrar in the matter of his dismissal by the Managing Committee of the Club and the Registrar has no power to entertain his application and to decide the dispute. We accordingly allow the application and grant a writ to the petitioners in the nature of a writ of prohibition and restrain the Registrar, Co-operative Societies, Bihar, from proceeding any further in dispute No. 7A of 1967. We shall make no order as to costs.