

(1979) 04 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 486 of 1977-G

Ravindranatha Pillai

APPELLANT

Vs

Kerala Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 04-04-1979

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 101(1)

Citation : (1979) 04 KL CK 0005

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : S. Parameswaran and R. Nithyanandan, for the Appellant; K. Chandrasekhara Das, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran, J.—This writ petition was heard and the judgment was dictated on 23rd February 1979; however, as clarifications on certain points were felt necessary the judgment was not signed, and the matter was ordered to be reposted; this judgment is now pronounced after having heard the matter further today.

2. The Petitioner is a member of the Aroor Village Service Co-operative Society of which the second Respondent is the Secretary. The Society initiated arbitration proceedings against the Petitioner for realising amounts alleged to have been due from him to it. The Arbitrator (the Assistant Registrar of Co-operative Societies) passed an ex parte award fixing the liability of the Petitioner. Revision Petition No. 27 of 1974 against the award preferred by the Petitioner was dismissed by the first Respondent, the Kerala Co-operative Tribunal. Ext. P-1 is the copy of the revision memorandum dated 15th November 1974, and Ext. P-2 is the copy of the common judgment of the 1st Respondent dated 11th December 1976 disposing of Revision Petition No. 27 of 1974 along with Revision Petition Nos. 28 and 29 of 1974.

3. In Revision Petition No. 27 of 1974, with which alone we are concerned in this writ petition, the question of law raised by the Petitioner related to the non-compliance with the procedure prescribed in Rule 67(4)(b) of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the Rules, by the Arbitrator while passing the ex parte award which gave rise to the revision. Rule 67(4)(b) reads as follows:

In the absence of any party to the dispute duly summoned to attend, the dispute may be decided ex parte.

The contention of the counsel for the Petitioner was that it was without duly summoning the Petitioner that the ex parte award was passed. He submitted that the manner in which notice to the party was to be issued is as laid down in Section 104 of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the Act, which reads as follows:

Service of notice. -- Every notice or order issued or made under this Act may be served on any person, by properly addressing it to the last known place of residence or business of such person preparing and posting by registered post a letter containing the notice or order and, unless the contrary is proved, such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course.

4. The Tribunal in paragraph 14 of its judgment, raised in Revision Petition No. 27 of 1974, rejecting the contention of the Petitioner has observed as follows:

Section 104 starts with the words "every notice or order issued or made under this Act may be served on any person". The legislature has used the word "may be served". It does not use the words "shall be served". The usage of the words "may be served" according to me, contemplates an alternate method and it does not set down the only method. If that was the only method to serve summons the legislature should have used the words shall be served.... On my part I am of the opinion that Section 104 does not set down the only method under which summons could be served on the parties appearing before an Arbitrator.

5. Sri S. Parameswaran, the counsel for the Petitioner, submitted that though the same power as that of a civil court under the CPC is seen to have been conferred on the Tribunal, the Registrar, the Arbitrator etc., with respect to matters enunciated in Section 98 of the Act, it is not seen to have been prescribed therein the procedure to be followed when a person has to be summoned or his attendance enforced for examining him on oath by virtue of Clause (a) of Sub-section (1) of that section. He went on to argue that as a matter of fact the section is silent on the procedure to be followed while exercising the powers enumerated therein, presumably for the reason that the framers of the Act thought that it could be left to be provided in the Rules that would be framed in accordance with Section 109 of the Act. It is also pointed out that unlike Clause (e) of Sub-section (1) of Section 101 of the Kerala Land Reforms Act, which enables the Land Tribunal and the Land Board to exercise such powers as may be

prescribed besides the powers specifically stated in the section, there is no provision in the Act for enlarging the powers of the Arbitrator by making rules to embrace matters which have not been specifically mentioned in Section 98 of the Act. According to him, the main object behind the provision contained in Section 98(1)(a) is to clothe the Tribunal, the Registrar, the Arbitrator etc., with power to summon witnesses who would be required to be examined before them, not so much for conferring an authority on them to issue notices to the Respondents in proceedings before them.

6. It has to be noticed that in spite of the Tribunal having the general powers conferred under Sections 98 and 104 of the Act, the rule makers thought it worthwhile to provide for a specific rule, namely, Rule 110 of the Rules, with respect to the manner in which processes, notices or summons directed to be given to any party by the Tribunal are to be served. Rule 110 of the Rules reads as follows:

Service of notice etc. -- All processes, notices, or summons directed to be given to any person shall be in writing under the signature of the Secretary of the Tribunal with seal affixed thereto and shall be served in the manner provided in the CPC for the issue of a notice of summons under that Code by a Civil Court. Every process sent by post shall be registered prepaid for acknowledgment. An acknowledgment containing the signature of the persons served or an endorsement by postal authorities to the effect that the notice or summons was refused shall unless the contrary is proved, be deemed to be sufficient to hold that the notice or summons was duly served.

In contrast to Rule 110 appearing in Chapter XII of the Rules dealing with appeals, revisions and reviews, what is contained in Sub-rule (2) of Rule 67, appearing in Chapter IX dealing with settlement of disputes, reads as follows:

(2) The Registrar or the person deciding the dispute or the Arbitrator shall have power to administer oaths, to require the attendance of all parties concerned and of witnesses and to require the production of all books and documents relating to the matter of the dispute.

For whatever reason it might be, there appears to be no rule prescribing the method in which notices to Respondents in proceedings before the Arbitrator are to be served as has been provided in Rule 110 of the Rules in regard to notices to Respondents in appeals, revisions and reviews before the Tribunal. We have, therefore, necessarily to fall back upon Section 104 of the Act which provides for the manner in which notices or orders issued or made under the Act are to be served. Even assuming that Section 98, though not expressly, by necessary implication, permits the Tribunal, the Registrar and the Arbitrator to follow the same procedure as is prescribed in the CPC in the matter of service of notices to the parties in proceedings before them, unless the procedure as prescribed in Order V, CPC (Order XVI being applicable to witness only) and the relevant provisions in Chapter II of the Civil Rules of Practice, Kerala, dealing with

processes, are observed, it could not be said that the party concerned was duly summoned to derive authority for the Arbitrator to decide the matter ex parte, invoking Rule 67(4)(b) of the rules. On a careful consideration of the conspectus of the Act and the Rules, there appears to be no justification for interpreting the expression "may be served" used in Section 104 of the Act to mean "in any manner in the discretion of the Arbitrator". Service of notice in proceedings before the Arbitrator should be either by registered post as contemplated in Section 104 of the Act or by the method prescribed under Order V, CPC and Chapter II of the Civil Rules of Practice, Kerala, stretching the ambit of the provisions in Section 98 of the Act to that extent. In any event, unless there is proof of service of notice on the Respondent, either presumptive or otherwise, it cannot be said that the Respondent has been "duly summoned" to enable the Arbitrator to decide the dispute ex parte under Rule 67(4)(b) of the Rules. In this case, the submission of the counsel is that no notice of the arbitration proceedings was served on the Petitioner; there appears to be no mention in Ext. P-2 judgment that notice, by whatever method it might be, had already been served on the Petitioner. The Tribunal, while holding that service of notice by registered post u/s 104 of the Act was not mandatory, does not appear to have examined whether notice as a matter of fact had been served on the Respondent before the Arbitrator. A decision without service of notice on the Petitioner not only violates the spirit of the statutory provision, but also amounts to negation of the principles of natural justice.

7. For the foregoing reasons the writ petition is allowed quashing the ex parte award passed by the Arbitrator and Ext. P-2 judgment passed by the first Respondent Tribunal in so far as they relate to the subject-matter of revision petition No. 27 of 1974 is concerned, and directing the Arbitrator to go into the matter afresh and pass appropriate orders after due service of notice on the Petitioner. In the circumstances of the case there will be no order as to costs.

Carbon copy of this judgment will be granted to the Government Pleader free of charge and the counsel for the Petitioner and the counsel for the second Respondent on usual terms if applied for in that behalf.