

(1978) 06 BOM CK 0038
In the Bombay High Court
Case No : First Appeal No. 296 of 1971

Shetkari Sahakari Sakhar Karkhana Limited, Sangli	APPELLANT
Vs	
Narhari Balkrishna Tulpule	RESPONDENT

Date of Decision : 26-06-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Maharashtra Co-operative Societies Act, 1960 — Section 164, 91, 91(1), 91(1)(a), 91(3)
Payment of Wages Act, 1936 — Section 15

Citation : (1979) MhLj 210

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : S.G. Page, for the Appellant; V.B. Joshi and A.C. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—The respondent Narhari Balkrishna Tulpule filed on July 28, 1969 in the Court of the Joint Civil Judge, Senior Division, Sangli Special Civil Suit No. 46 of 1969, claiming the following reliefs: -

(1) That the compulsory retirement of the plaintiff-respondent on August 1, 1966 was illegal, unjust and inconsistent with the Rules.

(2) That the defendant should be ordered to pay Rs. 16,172 with interest and costs, the particulars of which are as under :

(i)

Rs. 1,400

Notice pay of one month.

(ii)

Rs. 6,300

Gratuity in consideration of retirement.

(iii)

Rs. 3,262

Compensation for 70 days leave refused.

(iv)

Rs. 210

Deducted as house rent from August 1966 to February 1967 at the rate of Rs. 30 p. m.

(v)

Rs. 5,000

Consideration for making a hydrolic vacuum pump.

Rs. 16,172

2. The above reliefs were claimed by the respondent-plaintiff, making allegations which may be briefly summarised as under :-

3. The plaintiff claimed to be an expert and experienced engineer, specially requisitioned for erecting the sugar factory of the appellant-defendant and appointed for the same from July 1, 1957. The plaintiff did the major portion of the work of erection. His services were terminated by the defendant suddenly by a notice dated July 27, 1966 with effect from August 1, 1966.

4. The plaintiff was getting Rs. 1,400 p. m. as the Chief Engineer and Factory Manager of the. defendant. The plaintiff was superannuated on account of completion of the age of 58 years, though he was not at all governed by any rule of superannuation, as he was a superior officer and he was perfectly hale and hearty, physically and mentally fit to work even after August 1, 1966. According to the plaintiff, as the rules of superannuation did not apply to him, the superannuation was ultra vires the society, unjust and illegal.

5. It is unnecessary to refer to the other allegations made by the plaintiff as the main and only question in the above first appeal, on which I allow the appeal, is whether the civil Court had jurisdiction to entertain the suit having regard to the mandatory provisions of sections 91 and 164 of the Maharashtra Co-operative Societies Act, 1968.

6. The society, besides denying their liabilities, contended that the rules which were applicable to all the employees were applicable even to the plaintiff and further in the absence of the notice u/s 164, the Civil Suit was liable to be dismissed; and as the only forum for adjudication of such disputes, including

disputes with regard to illegality of termination or termination ultra vires the rules of employment of the society, was the one set up under sections 91 and 91A of the Maharashtra Co-operative Societies Act, 1960, which no doubt came into force subsequent to the filing of the suit by Maharashtra Act No. III of 1974, the suit was liable to be dismissed with costs.

7. The learned Joint Civil Judge, Senior Division, overruled the legal contentions raised by the appellant society taking a view which was inconsistent with Full Bench decision of this Court and the plain provisions of sections 91 and 164 of the Maharashtra Co-operative Societies Act, 1960 and also a Division Bench decision of this Court with regard to section 70 of the Bombay Co-operative Societies Act, 1925 which was in pari materia with section 164.

8. The law governing the jurisdiction of the civil Court u/s 9 of the Code of Civil Procedure, 1908 was fully considered and authoritatively laid down in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and was summarised as follows:-

"(1) Where the statute gives a finality to the orders of the special tribunals the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Court would normally do in a suit. Such provision, however, does not exclude these cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the civil Court is not readily to be inferred unless the conditions above set down apply."

(See also in this connection, *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*,)

9. Applying the said principles to the facts of the present case, it is patent that the learned Joint Civil Judge acted without jurisdiction in proceeding to entertain the suit and pass the decree against the appellant ignoring the mandatory provisions of section 91 of the Maharashtra Cooperative Societies Act, 1960, which in so far as is material to the claims made by the respondent are as follows :-

"91, (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office-bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of 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 nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

... ..

(3) Save as otherwise provided under sub-section (3) of section 93 (with which we are not concerned in the present case), no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)."

10. The present dispute was a dispute to which on one side there was a past officer of the society and on the other side the society. The dispute concerned the termination of the services of the plain tiff-respondent and the claims made by him for various allowances and deductions as part of his dues from the society as the officer of the society and on the ground that no rules of employment governed him and, therefore, for a declaration that the termination was illegal.

11. In my opinion, such a case would certainly fall within sub-section (1) of section 91 and clause (a) thereof, inasmuch as it is a dispute touching the management or business of the society between the society and its employee. Whether the rules were there or not and whether the acts done by the society

were ultra vires the service Rules or not, the termination of the services would be incidental and consequential to the management and business of the society; and hence, the dispute must squarely fall within the scope of section 91 (1) (a) and the jurisdiction of the civil Court was clearly barred by the exclusive provisions contained in sub-section (3).

12. All the claims which the respondent had made in the suit could be adjudicated upon a dispute, if he had referred the dispute u/s 91, as anything touching the constitution of the society also falls within the scope of section 91 (1). Moreover, when no other statutory or labour law entitles the plaintiff to claim the above reliefs in any other special Court or Tribunal and there are no rules governing the plaintiff-respondent's employment, as contended by him, the ordinary law of master and servant would apply and termination would at the worst be only a breach of the contract of employment, which would certainly fall within the scope of the words "touching the management or business of the society" contained in section 91 (1).

13. The learned Judge, therefore, failed to interpret the mandatory provisions contained in section 91. He was also wrong in not following the Full Bench decision of this Court in *Farkhundali Nanphav v. V. B. Potdar* 1962 N L J 106 : 63 Bom. L R 985, which was a decision under the corresponding provisions contained in section 54 of the old Bombay Co-operative Societies Act, 1925, where it was laid down, in the context of the Central Act, namely, the Payment of Wages Act, 1936, that it was open to an employee of a Co-operative Society to proceed against the society in respect of his claim for wages either under the Payment of Wages Act, 1936, by making an application u/s 15 of the Act or u/s 54 of the Bombay Co-operative Societies Act, 1925, by making an application to the Registrar in this behalf. The provisions contained in section 54 were not as explicit as the provisions contained in section 91 (3), which, in terms, lay down that no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1), which necessarily excluded the jurisdiction of the Civil Court in the present case. As stated already, no other statute conferred any right to claim in civil Court or before any other forum.

14. The learned Judge was also wrong in not applying the Full Bench decision in *Rambhau v. President, Vinkar Co operative Society Ltd.* 1966 Mh. L J 1 : 67 Bom. L R 877, to the effect that section 91 of the Maharashtra Co-operative Societies Act, 1960, does not operate as a bar to a dispute between a Co-operative Society and its employee in regard to a demand for a change in the terms of employment or for reinstatement of the employee, being decided under the C. P. and Berar Industrial Disputes Settlement Act, 1947, or the Industrial Disputes Act, 1947. In that case, in view of the special provisions contained in these Acts, the Division Bench observed at page 891 as follows:-

"The position, therefore, is that the dispute referred to the Registrar under sub-section (1) of section 91 must be such as a civil Court can take cognizance of and try. Like a civil Court, the Registrar cannot grant any relief outside the

contract of employment. He cannot, therefore, try any matter in which a demand is made for a change in the conditions of service or for reinstatement of an employee whose services had been terminated. By and large, the Co-operative Societies Act and the Industrial Disputes Act provide for the settlement of different classes of disputes."

15. In other words, the Full Bench impliedly laid down that whatever the Civil Court could decide could be referred u/s 91 of the Maharashtra Co-operative Societies Act, 1960 to the Registrar. No Statute Industrial or Labour Law is pointed out to me under which the plaintiff could claim the reliefs before Civil Court or any other forum. The learned Judge misconstrued that decision to mean that in spite of the provisions of section 91, the civil Court still had jurisdiction merely because there was a prayer for a declaration that the termination was ultra vires. Such a declaration could be given even by the Registrar in accordance with the ratio in the said Full Bench and, therefore, the jurisdiction of the civil Court was clearly barred by the provisions of section 91 (3). See in this connection *G I Rly. & Co-operative Bank Ltd., v. B. M. Karanjia* 45 B L R 676.

16. In arriving at his conclusion, the learned Joint Civil Judge purported to follow the comment in the Commentary of the late K. S. Gupte on the Maharashtra Co-operative Societies Act, 1960, 1964 Edition, based on a decision of the Co-operative Tribunal in *D. D. Patil v. Shetkari Sahakari Sangh Ltd.*, Volume 12 (Part I) of Selected Decisions of the Bombay Co-operative Tribunal, page 160.

17. That case, in my opinion, was wholly irrelevant to the facts of the present case, inasmuch as in that case, it was conceded on the appellant's behalf before the Co-operative Tribunal that the amendments which he was challenging were passed by the General Body of the Sangh and approved by the Registrar of Co-operative Societies in accordance with section 16 of the Bombay Co-operative Societies Act. The Tribunal rightly laid down that if the appellant felt aggrieved by the amendments so approved, his remedy was by way of an appeal to the State Government u/s 64 (1) of the Bombay Co-operative Societies Act and he cannot challenge the validity of those amendments by preferring a dispute u/s 54 of the Act.

18. That decision was perfectly justified, because u/s 54 the dispute had to be referred to the Registrar and where the Registrar had approved the bye-laws, it would be against the principles of natural justice to ask the Registrar to decide or refer the dispute, u/s 91 particularly when an alternative remedy was provided under the Act itself for an appeal to the State Government against the order of the Registrar.

19. There is no analogy between that case and the facts of the present case, which plainly falls within the ambit of section 91 (1) (a) of the Maharashtra Co-operative Societies Act, 1960, as already stated above. The plaintiff had no other remedy under that Act or under any other Law. The learned Judge was, therefore, wrong in applying the ratio of that decision of the Tribunal to the facts

of the present case.

20. The learned Judge was also further wrong in ignoring the mandatory provisions of section 164 of the Maharashtra Co-operative Societies Act, 1960, which are as follows :-

"No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of the months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

21. It is well settled that the object of the notice required by the section is to give the Registrar an opportunity to examine the claims of non-members or other persons against the society and to make amends or settle them, if so advised, without litigation, similar to the provisions which are contained in the Civil Procedure Code, 1908, in section 80.

22. In Dharwar Urban Co-operative Bank Ltd. v. Ramchandra 39 Bom. L R 249, a Division Bench of this Court, dealing with section 70 of the Bombay Co-operative Societies Act, 1925, which was identical in wording with section 164 of the Maharashtra Co-operative Societies Act, 1960, following the decision of the Privy Council in Bhagchand Dagadusa v. The Secretary of State for India 54 Indian Appeals 338, held that section 70 was also express, explicit and mandatory and it admitted of no implications or exceptions. The Division Bench also referred to an earlier decision of this Court in Maruti v. Namdev Co-operative Society 37 Bom. L R 68, where another Division Bench had followed the ratio in Bhagchand's case.

23. The learned Judge appears to have taken a view different from these decisions, which were binding on him, on the basis that as the claim was, inter alia, for a declaration that the termination was ultra vires, the claim did not touch the management or business of the society. This was, in my opinion, wholly wrong as the termination, whether ultra vires or not, must necessarily touch the management and business of the society within the meaning of section 164 of the Maharashtra Co-operative Societies Act, 1960.

24. It must, therefore, follow that the plaintiff's suit was liable to be dismissed, firstly because no notice u/s 164 was served on the Registrar, as admitted by the respondent-plaintiff, and secondly because the civil Court had no jurisdiction u/s 9 of the CPC to entertain the present suit.

25. In the result, the above first appeal is allowed, the judgment and decree passed by the learned Joint Civil Judge, Senior Division, Sangli, on September 2, 1970 are set aside; and the plaintiff's suit is dismissed with costs throughout. The appeal allowed with costs.