
(2014) 09 AHC CK 0026

In the Allahabad High Court

Case No : Writ-C Nos. 33548 and 33579 of 2001

Sikta Mahoogarh Sadhan Sahkari Samiti Ltd.

APPELLANT

Vs

Prescribed Authority (Payment of Wages Act)

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64
Minimum Wages Act, 1948 — Section 22-F
Payment of Wages Act, 1936 — Section 1(4), 15
Uttar Pradesh Co-operative Societies Act, 1965 — Section 10, 121, 122, 128, 135
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6-H

Citation : (2014) 10 ADJ 448 : (2015) 1 ESC 291 : (2015) 144 FLR 23 : (2014) 4 UPLBEC 3246

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : K.N. Mishra, Advocates for the Appellant; P. Maurya and V.C. Keserwani, Advocates for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Sri K.N. Mishra, learned Counsel for the petitioner, Sri U.C. Kesarvani, learned Counsel for the respondents, and perused the record.

In both these matters, common question involved is, whether Prescribed Authority, under Payment of Wages Act, 1936 (hereinafter referred to as "Act, 1936") has jurisdiction to entertain claim of an employee of a Co-operative Society or whether remedy to such an employee lie only under section 70 of U.P. Co-operative Societies, Act, 1965 (hereinafter referred to as "Act, 1965") and not under any labour law. In other words, whether Act, 1936 and mode of adjudication of dispute provided therein are available for redressal of grievance to the employees of a Co-operative Society.

Before entering into the controversy on merits, I may place on record brief facts for better understanding of the matter.

2. In Writ Petition No. 33548 of 2001 (hereinafter referred to as "first petition")

one Moti Lal Maurya, an employee of Sikta Mahoogarh Sadhan Sahkari Samiti Limited, Sikta, Post Office Pawanri Kalan-Halia, District Mirzapur (hereinafter referred to as "co-operative society") filed an application under section 15 of Act, 1936 read with section 18 of U.P. Shops and Commercial Establishments Act, 1962 (hereinafter referred to as "Act, 1962") and section 22-F of Minimum Wages Act, 1948, before Prescribed Authority, alleging that his wages have not been paid wrongfully for certain period i.e. from 1.1.1994 to 31.7.1995, which collectively amount to Rs. 31,639.86 and, therefore, the aforesaid amount be directed to be paid along with compensation to the extent of 10 times of unauthorized non payment/illegal deduction. The Co-operative Society filed objection/written statement contesting the application and said that application was not maintainable under Act, 1976.

3. The Prescribed Authority vide order dated 31.8.1998 has held that employee was entitled for payment of Rs. 31639.86 towards unauthorized deduction and 10 times sum towards compensation. It, accordingly, directed cooperative society to pay Rs. 3,48,838.46 to me employee, Moti Lal Maurya. With respect to applicability of Act, 1936 Prescribed Authority has relied on a decision of Rajasthan High Court in Nagpur Central Cooperative Bank Ltd. v. Competent Authority, Wages Act, Bikaner and another, 1994 (69) FLR 209 to hold that cooperative society is a shop and commercial establishment under Act, 1962 and therefore, Act, 1948 is applicable thereupon and that is how it also comes within the jurisdiction of Act, 1936. The order dated 31.8.1998 of Prescribed Authority is under challenge in the first writ petition.

4. The Writ Petition No. 33579 of 2001 (hereinafter referred to as "second petition") also relates to the same parties and claim for wages set up by Moti Lal Maurya, the employee of Cooperative Society, relates to the period 1.8.1995 to 31.7.1996. All other facts are same except that order of Prescribed Authority is dated 16.01.2001 whereby it has allowed payment of Rs. 22,744.62 towards unauthorized deduction and twice the amount as compensation i.e. Rs. 45,489.24, total of which comes to Rs. 68,233.86.

5. In my view, the matter is now covered by the judgment of Apex Court in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, and, therefore, it would not be necessary to delve into various provisions of Act, 1936 and Act 1962 or Act, 1948. The matter can be examined from the angle of sections 70 and 135 of Act, 1965 and the decision of Apex Court in the above case.

6. Sections 70 and 135 of Act, 1965 reads as under:

"70. Disputes which may be referred to arbitration.--(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises:--

(a) among members, past members and person claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased-officer, deceased agent or deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies;

such disputes shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.

(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely-

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;

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

(c) a claim by a society for any loss caused to it by a member, officer, agent or employee including past or deceased member, officer, agent, or employee whether individually or collectively and whether such loss be admitted or not; and

(d) all matter relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office careers .

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

(Emphasis added)

135. Certain Acts not to apply to co-operative societies.--The provisions contained in the Industrial Disputes Act, 1947 (Act XIV of 1947), and the U.P. Industrial Disputes Act, 1947 (U.P. Act XVIII of 1947), shall not apply to Co-operative Societies."

7. Section 135 of Act, 1965 has not been enforced till date.

8. In Ghaziabad Zila Sahkari Bank (supra), the dispute came up for consideration whether the dispute relating to service matter of an employee and employer, which is a Cooperative Society, can be raised under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "Central Act, 1947") or U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "U.P. Act, 1947"). The Court, in para 36 of the judgment, noticed submission as under:

"It was submitted by learned Senior Counsel that, The U.P. Cooperative Societies Act, 1965 has been enacted to further the Cooperative movement in the State of U.P. and for providing for functions and responsibilities of Cooperative Societies and the authorities invested with their supervision, guidance and control. Thus the objects and reasons for the enactment of the said Act is not to regulate the service conditions of the employees of the cooperative societies and the Act only incidentally provides sections 121 & 122 to regulate the terms and conditions of all employees of the Cooperative Societies, Officers, Supervisors and other employees. It was submitted that only those employees who are not covered by the provisions of the U.P. Industrial Disputes Act would fall within the ambit of sections 121 and 122 of the U.P. Cooperative Societies Act. On the other hand, the U.P. Industrial Disputes Act, 1947 has been held to be a special statute in matters of settlement of Industrial disputes arising out of the terms and conditions of service of employees who fall within the definition of workmen, provided they are employed in establishments covered by the said Act. In regard to various establishments which have their own services rules, the U.P. Industrial Disputes Act will still apply to workmen employed therein. Learned Senior Counsel cited various decisions of this Court in the case of Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, ; Life Insurance Corporation of India Vs. D.J. Bahadur and Others, ; Allahabad District Cooperative Limited Vs. Hanuman Dutt Tewari, and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, in support of this contention."

(Emphasis added)

9. Thereafter the Court also considered whether dispute relating to service conditions of employee of Co-operative Societies would be governed by section 70 or not, which was specifically raised in para 39 of judgment, and further elaborated in para 40 and 41 as under:

"41. This is further strengthened by Rule 130(2) which provides that if the Resolution is not covered by section 128 then it becomes operative immediately.

Application of Labour Laws

42. The learned Senior Counsel submitted that the legislature has specifically provided in the provisions of the U.P. Cooperative Societies Act itself that the Labour Laws will apply to the employees of the cooperative societies, in Regulation 103 and in non-enforcement of section 135. The fact that section 135 has not been brought into force indicates clearly that (a) in order to exclude Labour laws there must be statutory exclusion (b) failing such an exclusion Labour Law will apply. In this case, there is a fact that an exclusion however under section 135 has not been brought into force."

10. Thereafter, non-enforcement of section 135 was also considered from para 42 and onwards and in para 56, 61, 62 and 65, the Court said as under:

"56. The present dispute is not "any dispute relating to the constitution, management or the business of a cooperative society" and, therefore, the machinery provided in sections 70 or 128 of the U.P. Cooperative Societies Act would not be available to the employees of the Bank to enforce the settlement."

"61. The general legal principle in interpretation of statutes is that "the general Act should lead to the special Act. Upon this general principle of law, the intention of the U.P legislature is clear, that the special enactment U.P. Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in co-operative societies and its machinery and provisions. The general Act the U.P. I.D. Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the U.P.C.S. Act. This is also clear from necessary implication that the legislature could not have intended "head-on-conflict and collision" between authorities under different Acts. In this regard reference can be made to Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, where this Court observed that:

"Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or

commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does of is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-section (4) of section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under section 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under section 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in section 62(4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under section 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, therefore, it must be held that this dispute is not a dispute covered by the provisions of section 61 of the Act. Such a dispute is not contemplated to be dealt with under section 62 of the Act and must, therefore, be held to be outside the scope of section 61.

62. Further this Court observed in *R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others*, that:

"3. ...He also places reliance on section 93 of the Societies Act which states that nothing contained in the Madhya Pradesh Shops and Establishments Act, 1958, the M.P. Industrial Workmen (Standing Orders) Act, 1959 and the MP. Industrial

Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication, application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or 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. As regards power under section 64, the language is very wide, viz., "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 Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under section 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society for which the Act therein was amended."

Similar view was taken by this Court in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, ; *Allahabad Bank Vs. Canara Bank and Another*, , *State of Punjab Vs. Labour Court Jullunder and Others*, and *U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another*, "

"65. We are therefore of the view that the Asst. Labour Commissioner (ALC)"s jurisdiction was wrongly invoked and his order dated 15.3.2003 under section 6-H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced section 135 (U.P. Cooperative Societies Act) because, in any case the said provision (section 135) had been included in the Act only by way of clarification and abundant caution."

(Emphasis added)

11. It is clear from above judgement that even a dispute relating to service conditions of an employee of Co-operative Society would be governed by provisions of Act, 1965 and Central Act, 1947 or U.P. Act, 1947 would have no application despite section 135 has not been enforced.

12. A Division Bench of this Court (in which I was also a member) in Special Appeal No. 1906 of 2008 (*Brij Bhushan Singh and another v. State of U.P. and others*) and other connected matters decided on 19.12.2008 referring to the Apex Court decision in *Ghaziabad Zila Sahkari Bank* (*supra*) observed as under:

"It is said that section 135 has not been enforced so far but the question as to whether despite of non-enforcement of section 135 of 1965 Act, the Central Act, 1947 or U.P. Act, 1947 would apply to the employees of a cooperative society governed by the provisions of 1965 Act and the rules and regulations framed thereunder came to be considered in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, and it was held that section 135 has been added only by way of clarification and abundant caution and, therefore, where the provisions are contained in 1965 Act, the labour laws and in particular the U.P. Act, 1947 would not be applicable. It is also said that 1965 Act alone would apply in the matter of employment of cooperative societies to the exclusion of all other laws since it is a complete code in itself as regards employment in cooperative societies and its machinery etc. In para 78 of the judgment the Apex Court held:

"It is relevant to mention here that the services of the employees of the Bank are governed by service regulations 1975 framed under the Act of 1965, which provides complete machinery and adjudication. Moreover, the provisions under section 70 of the U.P. Cooperative Societies Act, 1965 is elaborate in this regard, which provides complete machinery that if there is any dispute between the employers and the employees of the Cooperative Society, the matter shall be referred to the Arbitrator as provided under section 70 of the U.P. Cooperative Societies Act, 1965. Section 70 of the U.P. Cooperative Societies Act and section 64 of the M.P. Cooperative Societies Act are pari materia and this Court in the matter of R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, held that Labour Court and Industrial Laws are not applicable where complete machinery has been provided under the provisions of the Cooperative Societies Act and in such view of the matter the Learned Additional Labour Commissioner U.P.; has no jurisdiction to pass orders in the nature it has been passed."

(Emphasis added)

13. The term "Labour laws" includes not only the Industrial Dispute Act, 1947 or U.P. Industrial Disputes Act, 1947 but all other legislations dealing with labour dispute. Learned Counsel for the parties did not dispute this fact that Act 1936, Act, 1948 and Act, 1962, all will come within the term "Labour Laws".

14. In view of the decision of Apex Court in Ghaziabad Zila Sahkari Bank (supra), decision of Rajasthan High Court, relied on by Prescribed Authority, in my view, cannot said to be a validly operating authority on the issue.

15. On behalf of respondent, reliance has been placed on a Division Bench judgment of this Court in District Co-operative Federation Ltd. v. Rafiq and others, 1971 ALJ 874 but there question up for consideration before the Court was, whether Prescribed Authority under Act, 1936 is a "Court" within the meaning of section 70 of Act, 1965, which was answered in negative. In my view, the aforesaid judgment does not help the respondent No. 2 in any manner

in view of decision of Apex Court in Ghaziabad Zila Sahkari Bank (supra) and the issue raised before this Court.

16. Counsel for the respondent relied on another decision of learned Single Judge (Hon"ble M. Katju, J. as His Lordship then was) in Assistant Registrar Co-operative Societies Vs. State of Uttar Pradesh and Others, which is a short decision and it only says that in view of section 1(4) of Act, 1936, the same is not applicable to cooperative societies and remedy lies under U.P. Act, 1947. But the observation that remedy lies under U.P. Act, 1947 cannot said to be true now in view of the Apex Court decision in Ghaziabad Zila Sahkari Bank (supra) whereby it has been held that Labour Laws are not applicable to cooperative societies.

17. Be that as it may, I am clearly of the opinion that issue in question stands covered by judgment of Apex Court in Ghaziabad Zila Sahkari Bank (supra) and therefore, since no Labour Laws would be applicable in respect to service dispute of an employee and cooperative society inter se, Prescribed Authority, under Act, 1936, had no jurisdiction to entertain an application under section 15 and therefore, impugned orders are patently illegal and without jurisdiction. In the result, both the writ petitions are allowed. The orders dated 31.8.1998 and 16.1.2001, impugned in first and second petition respectively, are hereby quashed.

There shall be no order as to costs.