

(1959) 04 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. No. 4132 of 1956

Sita Ram

APPELLANT

Vs

Shahganj Consumers Co-operative Stores Ltd., Allahabad and
Others

RESPONDENT

Date of Decision : 01-04-1959

Acts Referred:

Citation : AIR 1960 All 289

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is a petition under Article 226 of the Constitution praying for the quashing of an order made by Mr. H. R. Sahai, Deputy Registrar, Co-operative Societies, Allahabad, functioning as sole arbitrator between the petitioner Sita Ram and Shahganj Consumers Co-operative Stores Ltd. Allahabad, respondent No. 1 by which he allowed the claim of the aforesaid Co-operative Society against the petitioner for a sum of Rs. 5207/11/3 with interest at six per cent, from 6-5-1952.

2. The petitioner's case as alleged in the affidavit supporting the petition is this. He was employed as a shop Manager of a shop by the Shahganj Consumers Co-operative Stores Limited Allahabad. According to him he was merely a servant of the Society and not an officer. It appears that the Society accused the petitioner of having embezzled a large sum of money. The matter was referred to the Deputy Registrar of Co-operative Societies, Allahabad, respondent No. 2 under Rule 115 of the U. P. Co-operative Societies Rules 1936. The petitioner at first appeared before the arbitrator but after one or two hearings absented himself. He sent a telegram to the arbitrator requesting him not to continue the arbitration proceedings as he did not recognise him as an arbitrator but the arbitrator ignored this request and continued the proceedings ex parte.

After hearing the evidence produced on behalf of the Society he allowed the claim to the extent of Rs. 5207/11/3 with interest as stated above. Learned counsel for the petitioner contended that the proceedings before the arbitrator were entirely without jurisdiction as no reference could be made regarding a dispute between the Society and the petitioner who was "its servant. Learned counsel relied upon the statement in the petitioner's affidavit that he was a Shop Manager appointed by the Society on monthly salary for selling food grains in a shop run by the Society. Learned counsel contended that a Shop Manager could not be an officer. He relied upon the definition of the word "officer" in Section 2(d) of the Co-operative Societies Act of 1912 read with Expl. 2 of Rule 115 of the U- P. Co-operative Societies Rules. Section 2(d) Is as follows:

"Officer includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the byelaws to give directions in regard to the business of the society."

3. It is noteworthy that Clause (d) says that an officer "includes" a chairman and so on and not that it means a chairman. There is a difference between includes and means. The first is ordinarily illustrative, the second exhaustive. Thus the Categories enumerated in this clause are not exhaustive.

4. The respondents in their counter affidavit have denied that the petitioner was a servant of the Society. They assert that he was a Shop Manager and that a dispute between him and the Society could be referred to arbitration. There appears to be a dispute as to the exact status of the petitioner. In my view the question whether a person is or is not an officer of a Co-operative Society depends upon all the relevant facts of each case and no absolute principle can be laid down which would cover every case. In the present case the petitioner has not proved that he was dot an officer of the Society. This contention must, therefore, fail.

5. As this was the only point urged in favour of the petitioner, the petition might have been dismissed. But while perusing the order of the arbitrator I noticed that the petitioner had been discharged from service on 6-5-1952 whereas the order appointing the arbitrator was made on 15-1-1954. It would, therefore, appear that the petitioner was not an officer of the Society on the date when the dispute was referred to arbitration. Under Rule 115 a dispute between the Society and any officer of the Society may be decided, by arbitration, but not a dispute between the Society and a past officer. This rule does make a provision for the settlement of the dispute by arbitration between the Society and past members but there is no similar provision relating to past officer. I am fortified in this opinion by a judgment of Oak, J. in Madho Lal v. Registrar Co-operative Societies, Writ Petn. No. 2527 of 1956 (All) in which the learned Judge held that no reference to arbitration could be made under Clause (3) of Rule 115 concerning a dispute between a past officer and the Society.

6. Learned Junior Standing Counsel pointed out that the petitioner has not raised

this point in his petition nor had it been argued by learned counsel. He therefore contended that the petition ought not to be allowed on a point not urged by a party. I do not agree. If the reference to arbitration was totally incompetent, the subsequent award is entirely without jurisdiction. This Court cannot, after having noticed the lack of jurisdiction, stand by and permit the enforcement of an award which is on the face of it without jurisdiction and void.

7. In the result, though I do not have much sympathy with the petitioner who is suspected of having embezzled the funds of the Society, I have no option but to allow this petition and to quash the order of Sri H. R. Sahai dated 15-11- 1950. There shall be no order as to costs.