

(1983) 08 KAR CK 0005
In the Karnataka High Court
Case No : W.A. No. 880 of 1983

Sri Padmamba Large Sized Co-operative Society	APPELLANT
Vs	
Labour Court and Another	RESPONDENT

Date of Decision : 09-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 254 (2)
Industrial Disputes Act, 1947 — Section 10, 70, 70 (1), 70 (2) (d)

Citation : (1985) ILR (Kar) 50

Hon'ble Judges : Malimath, Acting C.J.; Venkatachala, J

Bench : Division Bench

Advocate : B. Veerabhadrappe, for the Appellant; R.N. Narasimha Murthy, General for Respondant-1, for the Respondent

Judgement

Malimath, A.C.J.

1. The appellant is a Cooperative Society registered under the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as the Act). The 3rd respondent was a salesman working under the Appellant Society. The 3rd respondent was dismissed from service with effect from 511-1973 by the appellant. The dispute raised by the 3rd respondent was referred by the State Government to the Labour Court to decide as to whether the management was justified in dismissing the workman and as to the relief which the workman is entitled to. The Labour Court made an Award on the 11th of January 1980 holding that the dismissal was not justified and directing reinstatement of the 3rd respondent workman in service with effect from 6th November 1978 with continuity of service and back wages.

2. The appellant challenged the said Award before this Court in W.P. No 8011 of 1980. On the 11th of November 1980 Justice Bopanna, before whom the Writ Petition came up for consideration, allowed the Writ Petition in part quashed the Award and remitted the matter to the Labour Court for fresh consideration after giving opportunity to the appellant to lead evidence in support of its case. The

learned Single Judge repelled the contention of the appellant that the Labour Court had no jurisdiction to adjudicate the dispute referred to it by the State Government u/s 10 of the Industrial Disputes Act. The learned Single Judge held that notwithstanding the amendment of Section 70 of the Act and inclusion of Clause (d) in subsection (2), the jurisdiction of the Labour Court under the Industrial Disputes Act is not ousted. It is the said order of the learned Single Judge that is challenged in this appeal.

3. Sri Veerabhadrappe, learned Counsel for the appellant contended that after Section 70 of the Act was amended and Clause (d) was added to subsection (2) of Section 70, the Arbitrator is entitled to entertain a dispute between the Cooperative Society and its employee in regard to the terms of employment, working conditions and disciplinary action taken by the Cooperative Society. He submitted that Section 70(1) of the Act provides that notwithstanding anything contained in any law for the time being in force, if any dispute touching the Constitution, management or the business of a cooperative society arises, such dispute shall be referred to the Registrar for decision and no Courts shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Subsection (2) provides that for the purposes of subsection (1), the disputes enumerated in the said Clause shall be deemed to be disputes touching the Constitution, management or the business of a Cooperative Society. Clause (d) was added to subsection (2) by the Karnataka Act 19 of 1976, which reads as follows :

"(d) Any dispute between a cooperative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a Cooperative Society."

The amendment came into force with effect from the 20th of January 1976. It is not disputed that Karnataka Act 19 of 1976 received the assent of the Governor on the 7th of March 1976 and was first published in the Gazette (extraordinary) on the 10th of March 1976. It is also not disputed that Karnataka Act 19 of 1976 was not reserved for the assent of the President and that the assent of the President was in fact, not taken in respect of the said amendment. It is also not disputed that so far as the Act is concerned, it has received the assent of the President on the 11th day of August 1959. It is in this background that it was contended by Sri Veerabhadrappe that with effect from 20th January 1976, the date on which Clause (d) to subsection (2) of Section 70 of the Act came into force, the Arbitrator has exclusive jurisdiction u/s 70 of the Act to deal with any dispute between a Cooperative Society and its employee or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a Cooperative Society. He further contended that with effect from the 20th of January 1976 the provisions of the Industrial Disputes Act in this behalf will not be applicable for deciding disputes of the nature covered by Section 70(2)

(d) of the Act.

4. It cannot be disputed that before Clause (d) to subsection (2) of Section 70 was added by Karnataka Act 19 of 1976, the Arbitrator u/s 70 of the Act could not have entertained the dispute falling under Clause (d) of subsection (2) of Section 70 of the Act. That is also clear from the pronouncement of the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 was similar to Section 70 of the Act as it stood before this amendment by Karnataka Act 19 of 1976. After examining the provisions of the Andhra Pradesh Act, their Lordships of the Supreme Court have held that the dispute between a Cooperative Society and its employees in regard to wrongful termination could not be entertained u/s 61 of the Andhra Pradesh, Cooperative Societies Act and that the provisions of the Industrial Dispute Act, for the adjudication of such a dispute can be invoked. In *Chairman, Dharwar Dt. Government Employees Cooperative Bank Ltd. -v.- Marthand Bhimabai Hangal & Another* 1976 (1) KarLJ 102 this Court has held that a dispute regarding gratuity does not fall u/s 70(l) of the Act and the Labour Court has jurisdiction to entertain an application regarding such dispute u/s 33C(2) of the Industrial Disputes Act. A Division Bench of this Court in *Madurai Municipality Vs. M.G. Ethiraj and Others*, has held that a dispute raised by a Secretary of Society who has been dismissed, in relation to the dismissal is not a matter touching the business of the Society and the dispute does not fall within the scope of Section 70 of the Act. It is clear from these decisions that before the Act was amended by Karnataka Act 19 of 1976, a dispute of the nature falling under Clause (d) of subsection (2) of Section 70 of the Act could not have been entertained u/s 70 of the Act and that the workman should have invoked the relevant provisions of the Industrial Dispute Act for adjudication of the dispute. It is therefore, clear that the Karnataka State Legislature amended the Act and introduced Clause (d) to subsection (2) of Section 70 to confer jurisdiction for the first time on the Registrar or his nominee u/s 70 to deal with the dispute of the type mentioned in Clause (d) of subsection (2) of Section 70 of the Act,

5. Sri Veerabhadrappe, Learned Counsel for the appellant, submitted that the State Legislature had the necessary competence to enact law regarding Cooperative Societies under Entry 32 of List II of the VII Schedule of the Constitution. He contended that provision for adjudication of the dispute between the employees and the Society is one of the incidental provisions which could be incorporated in the Act, as the pith and substance of the same falls under Entry 32 of List II of the VII Schedule. It is not the stand of the Learned Advocate General that Clause (d) of subsection (2) of Section 70, which has been introduced by Karnataka Act 19 of 1976 is ultra vires on the ground that it has been enacted beyond the competence of the State Legislature. So we shall assume for the sake of argument that the amendment introduced by Karnataka Act 19 of 1976 is within the competence of the State Legislature. As there are two sets of laws, one made by the Legislature of the State well within its

competence and another law made by the Parliament well within its competence, the question for consideration is as to which law would prevail.

6. Article 254(2) of the Constitution provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by Parliament or any existing law in respect of that matter, then the law made by the Legislature of the State which has been reserved for the consideration of the President and has received his assent, would prevail in that State. Karnataka Act 19 of 1976 was not reserved for the consideration of the President and has not received his assent. The provisions of Clause (2) of Article 254 cannot at all be invoked as both the sets of law do not fall under the concurrent list.

7. The Industrial Disputes Act is an existing law in respect of the matters enumerated in the concurrent list. It is not disputed that it falls under Entries 22 and 24 of List III (concurrent list) of Schedule VII of the Constitution. The Karnataka Cooperative Societies Act, 1959 has been enacted by the State Legislature under Entry 32 of List II (State List) of VII Schedule of the Constitution. Clause (d) of subsection (2) of Section 70 of that Act, which has been added by Karnataka Act 19 of 1976, confers jurisdiction on the Registrar or his nominee to decide disputes regarding wrongful termination of, service between a Cooperative Society and its employee. As the pith and substance falls under Entry 32 of List II of the VII Schedule, the amendment was well within the competence of the State Legislature. As the provisions of the Industrial Disputes Act conferring jurisdiction on the Labour Court to decide industrial dispute are not ultra vires, it is not possible to agree with the contention that the jurisdiction of the Labour Court under the Industrial Disputes Act gets curtailed by the State enacting Section 70(2)(d) of the Karnataka Cooperative Societies Act. A similar question arose for consideration before the Supreme Court in *D.N. Banerji Vs. P.R. Mukherjee and Others*, That was a case in which the employees of the Budge Municipality were dismissed from service. The Municipal Workers' Union raised a dispute which, was referred by the State of West Bengal to the Industrial Tribunal for adjudication under the Industrial Disputes Act. The Tribunal made an award declaring the termination as illegal and directed their reinstatement in service. The Municipality then took up the matter to the High Court at Calcutta under Articles 226 and 227 of the Constitution. The Writ Petitions having been dismissed, the matter was taken up before the Supreme Court. It was contended that the Industrial Disputes Act was not applicable to disputes with municipalities and that even if it did, it is ultra vires. It was contended that if the Industrial Disputes Act applies to the Municipality and their employees, the power to reinstate the dismissed employees will trench on the power to appoint and dismiss conferred on the Chairman and Commissioners of Municipalities under Sections 66 and 67 of the Bengal Municipalities Act. The Supreme Court negated the contention and held that the invasion of the provincial field of legislation does not however, rendered the Industrial Disputes Act of the Central

Legislature invalid having regard to the pith and substance of that Act. It was pointed out that the Industrial and Labour disputes are within the competence of the Central legislature, and do not deal with the local government. Following the decision of the Supreme Court, we have no hesitation in holding that the relevant provisions Of the Industrial Disputes Act cannot either be regarded as ultra vires or inapplicable, merely because the State Legislature has enacted Clause (d) of subsection (2) of Section 70 empowering the Registrar or his nominee to decide the dispute between a Society and its employees. Invoking of the provisions of the Industrial Disputes Act in this case was, therefore, clearly permissible. The reference to the Labour Court u/s 10 was legal and valid. That being the position, it is not possible to agree with the contention of Sri Veerabhadrapa that the Labour Court had no jurisdiction to entertain the dispute referred to it u/s 10 of the Act.

8. It was lastly contended by Sri Veerabhadrapa that the Learned Single Judge was not right in issuing a direction that certain amount of subsistence allowance should be paid to the workman pending disposal of the dispute by the Labour Court. We are inclined to accept the contention of Sri Veerabhadrapa as, in our opinion, this matter should have been left open to the Labour Court to make appropriate directions in this behalf.

For the reasons stated above, while affirming the decision of the Learned Single Judge that the Labour Court has jurisdiction to entertain the dispute, we set aside the direction issued by the Learned Single Judge for payment of subsistence allowance during the pendency of the dispute before the Labour Court.