
(1970) 02 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 174 of 1968

Suraj Bhan Tayagi

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 20-02-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 02 P&H CK 0058

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : C.L. Lakhanpal and I.S. Vimal, for the Appellant; G.C. Mittal, for Respondent No. 5., for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—Suraj Bhan Tayagi has filed this petition under Articles 226 and 227 of the Constitution of India, praying for the issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the order of the Joint Secretary to Government, Haryana, Co-operative Department, Chandigarh, Respondent No. 2, dated 18th November, 1968, by which the orders of the Assistant Registrar. Cooperative Societies, Ambala, and that of the Cane Commissioner, Haryana, exercising the powers of Registrar, Cooperative Societies, were set aside (copy Annexure "F" to the petition).

2. The Petitioner was Secretary of the Mustafabad Cane Growers Society, Limited, Mustafabad (hereinafter referred to as the Mustafabad Society). It is alleged in the petition that elections to the managing committee of the Mustafabad Society were due to take place. Some members of the outgoing managing committee expected the Petitioner to render them some illegal assistance. On being disappointed in their expectations, the members of that Committee obtained a letter of resignation from the Petitioner from the Secretaryship of the Society on 11th July, 1966, by coercion and unlawful methods. The Petitioner, on 14th December, 1966, made an application to the

Cane Commissioner, Punjab, Chandigarh, u/s 55 of the Punjab Co operative Societies Act, 1961 (hereinafter referred to as the Act), for referring the dispute for decision u/s 56 of the Act. The dispute was referred to arbitration and the Assistant Registrar, Co-operative Societies, acting as arbitrator, gave an award favourable to the Petitioner on 9th August, 1968, by which it was held that the Petitioner did not tender his resignation voluntarily and of his free will, and that the dues on account of his emoluments be paid within 3 days of the date of the award. (Copy of the award is Annexure "B" to the petition).

3. Feeling aggrieved from the award, an appeal u/s 68 of the Act was preferred by the Mustafabad Society, but the same was dismissed by the Cane Commissioner exercising the powers of the Registrar, on 8th October, 1968 (copy Annexure "C" to the petition. Still dissatisfied a revision was filed u/s 69 of the Act which was allowed by the Joint Secretary to Government of Haryana, Development Department on 18th November, 1968 (copy Annexure "P" to the petition) It is the legality and correctness of this order of the revisional authority which has been challenged by way of this petition on the grounds stated therein.

4. Respondents Nos. 1 to 4 have been served but there is no representation on their behalf nor have they filed any written statement. Only Mustafabad Society, Respondent No. 5, has chosen to contest this petition and a written statement has been filed in which it is asserted that the impugned order of Respondent No. 2 is perfectly legal and within jurisdiction.

5 . It was contended by Mr. Lakhanpal, learned Counsel for the Petitioner, that the dispute between the Petitioner and the Mustafabad Society could legally be referred for decision u/s 55 of the Act. It was also contended by the learned Counsel that the dispute between the parties was clearly covered by the word "business" of the Society, According to the learned Counsel the impugned order of Respondent No. 2 dated 18th November, 1968, is illegal and the revisional authority has exercised jurisdiction which was not vested in him. On the other hand, Mr. G. C. Mittal, learned Counsel for Respondent No. 5, contended that the dispute between the parties did not touch the constitution, management or the business of a co-operative society and as such it could not be referred to the Registrar for decision. It was also contended that only those disputes which are referred to in Clauses (a), (b), and (c) of Sub-section (2) of Section 55, could be referred for decision as they are the only disputes which touch the constitution, management or business of a co-operative society. Section 55 of the Act is in the following terms:

55. Disputes which may be referred to arbitration.

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises -

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

(b) between a member, past member or persons claiming through a member, past member and deceased member and the society, its committee or any officer, agent or employee of the society, or liquidator past or present, 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, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society, such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;

(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, whether such debt or demand is admitted or not ;

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching 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." Sub-section (1) of Section 55 provides that any dispute touching the constitution, management or the business of a co-operative society arising between the persons and parties mentioned in Sub-clauses (a) (b) (c) and (d), shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such disputes under sub Clauses (a),(b) and (c) of Sub-section (2) certain disputes have been specified which shall be deemed to be disputes touching the constitution management and business of a co operative society. On the contention of Mr Mittal the question that arises for consideration is whether the disputes referred to in Sub-section (2) are the only disputes which shall be deemed to be the disputes touching the constitution, management or the business of a co-operative society and only those disputes could be referred to the Registrar for decision under Sub-section (1) of Section 55.

6. After giving my thoughtful consideration to the entire matter, I find myself unable to agree with the contention of Mr. Mittal. Under Clause (3) of Section 55

it is provided that if any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a cooperative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court. If the disputes referred to in Clauses (a), (b) and (c) of Sub-section (2) of Section 55 are the only disputes touching the constitution, management or the business of a society which could be referred for decision, then there was no need for the legislature to have invested the Registrar with the power of deciding the question whether a dispute referred to is or is not a dispute touching the constitution, management or the business of a cooperative society. The purpose of specifying some disputes in Sub-section (2), seems to be that so far as those disputes are concerned, they must be referred to the Registrar for decision as they shall be deemed to be the disputes touching the constitution, management, or the business of a cooperative society, but this does not mean that there can be no other dispute touching the constitution management or the business of a cooperative society. If this interpretation is put then Clause (c) of Sub-section (1) of section (1) of Section 55 shall become redundant and meaningless. The scope of Sub-section (2) is not to limit the scope of the disputes touching the constitution, management or the business of a cooperative. Thus I have no hesitation in holding that it is not only the disputes which are mentioned in Clauses (a) (b) and (c) of Sub-section (2) that can be referred to the Registrar for decision but there may be many other disputes which could be referred to the Registrar for decision, but they should be touching the constitution, management or the business of a cooperative society.

7. The next question that arises for consideration is whether the dispute in the present case touches the business of a cooperative society or not. It is not disputed that the Petitioner was the Secretary of the Society. The matter that was referred for decision was whether the Petitioner has actually tendered his resignation of his own free will or not or whether the same was obtained by practising unlawful, and coercive methods on him. The word "business" has not been defined in the Act but the consensus of judicial decisions is that it should not be given a restricted meaning. In a Full Bench decision of the Madras High Court in *M.S. Madhaya. Rao v. D.V.K. Surva Rao*, Member of the Pithapuram Co-operative Bank Pithapuram it was observed thus -

We may now proceed to consider the meaning of the expression "dispute touching the business of a registered society". The words "touching the business of a society" must be given their full import. Here we should bear in mind that the object of the legislation, which brought into existence these corporations for a definite purpose, was not only to confer complete autonomy on them in matters of internal administration but as part and parcel of the same scheme to set up a forum to settle what may be generally referred to as their internal disputes finally and without interference by the ordinary Courts of the land. The word "touching" does not present much difficulty, as its dictionary meaning is "in reference or relation to, respecting, regarding, or concerning" thus indicating

that the disputes need not directly arise out of the business of the society; but that it is enough that it should have reference or relation to or concern the business of the society. The word "touching" was clearly not intended to restrict the meaning of the word "business", it was designed to enlarge its scope. The disputes were not to be restricted to matters arising from and out of the business of the society, but were also extended to matters which are in some way concerned or related to the business of the society. The word "business" is used in different senses in different contexts. The dictionary meaning of the word includes "activity, occupation, function and a person's business includes the work to be done on his behalf". Vide Shorter Oxford English Dictionary, page 239. In some Acts, for example, the Companies Act, Section 4 the word "business" is used in a wider sense than the mere trade. Under the income tax law, it may mean trade or occupation.

8. In a full Bench decision of the Bombay High Court in *Farkhu-dali Nannhay v. V. B. Potdar*(2), where a question arose whether a scheme in regard to wages made by servant of co-operative society, touches the business of the society or not, it was observed thus:

(4) In regard to the first point, the argument advanced is that the payment of wages or any sum due to an employee cannot be said to relate to the business of a cooperative society. Dealing with the matter, apart from authority, it seems to us that there is no substance in this argument. The nature of business, which a society does is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. The word "touching" is also very wide and would include any matter which relates to, concerns or affects the business of the society.

1. AIR 1954 Mad. 108 2. *Farkhundali Nannhay Vs. V.B. Potdar and Another*,

Every society must necessarily employ some servants for the purpose of carrying on its business. The payment of wages or any sum due to them under law is therefore part of the business of the society. In any case, there can be no doubt that such payment would touch the business of the society.

9. In an earlier case before the Bombay High Court, in *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, , the word "business" came in for judicial interpretation where in it was observed thus:

The question that arises for determination is whether the disputes between the Respondent and the Petitioner company as they appear from his letter to the Registrar of Co-operative Societies dated 7th July, 1941 and his further letter dated 26th January, 1942 are disputes touching the business of the Petitioner company. It has been argued on behalf of the Petitioners that it is not the business of the Petitioner company to employ or dismiss servants. The employment and dismissal of servants is merely a machinery to carry out the objects of the Petitioner company; and the objects of the Petitioner company are

as set out in their bye-laws:

(a) To raise funds by means of issuing shares, borrowing money accepting money on deposit at interest or otherwise; (b) to lend money to shareholders at interest with security; and without interest and security in so far as advances from Sir Lawless Hepper Relief Fund are concerned (c) to invest moneys or funds of the bank not required for object (b): (d) to encourage thrift, self-help and cooperation; (e) to prevent shareholders falling into permanent indebtedness and to assist them financially in times of difficulty and to help them to get out of debts, and (f) to help, maintain. and promote the aims and objects of Sir Lawless Hepper Relief Fund. It is argued that employing or dismissing servants does not touch any one of these objects. The Petitioner company undoubtedly has to carry out these objects and it can only carry them out through the agency of various persons. In doing so, it has to employ servants; it has got to enter into contracts with servants; and it has to dismiss servants. It is therefore contended that if the grievance of a servant dismissed by the Petitioner company is that he was wrongfully dismissed or that he was entitled to damages, that is not a question which comes within the purview of Section 54. Bombay Co-operative Societies Act because it does not touch the business of the Petitioner company.

I do not think that it would be right to give a restricted meaning to the words "touching the business of a society" used by the Legislature in Section 54 of the Act. The word "business" is a very wide term and certainly it is not synonymous with the objects of a society. The expression "touching the business of a society" would mean affecting the business of a society or relating to the business of a society; and, it cannot be said that when a company employs or dismisses a servant, it does not do something which relates to its business. It is true that it is not one of the objects of the company to employ or dismiss servants; but it is something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business. The very fact that Section 54 refers to disputes between a society and its servants indicates that disputes of the nature raised by the Respondent in this case should be decided by the Registrar of Co-operative Societies. It would be difficult otherwise to imagine what other kind of disputes there could be between the society and its servant which would form the proper subject-matter of a dispute within the meaning of Section 54, Bombay Co-operative Societies Act. Mr. Daphtary has suggested that there may be cases where an officer of a bank does something which is contrary to the rules or where he is in possession of the funds of the company. But then that would narrow down the definition of the term "servant" so as to include only high and important officials of the company and menial servants would not be included in the category at all. If there is no warrant for restricting the meaning of the word "business" there is certainly less warrant for restricting the meaning of the word "servant" used in the Section 54 Bombay Co-operative Societies Act,

No contrary decision was cited by Mr. Mittal, learned Counsel for respondent No.

5, pronouncing that a restricted meaning to the word "business" should be given. In the light of the judicial decisions referred to above with which I am in respectful agreement, the question that needs determination is whether the dispute between the parties in the instant case is a dispute touching the business of the co-operative society. The Petitioner admittedly was the Secretary of the Society. He was neither dismissed nor retrenched or superseded. The actual dispute that arose between the parties was whether he had tendered the resignation of his own free will or because of the coercion employed by the members of the committee. Clause (c) of Sub-section (1) talks of disputes between the society or its committee, and between any past committee, any officer, agent or employee, present or past, or nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society. If the dispute of the Petitioner does not fall u/s 55 of the Act, then it would be difficult to imagine what other kind of disputes between the society and its employees past or present would come within the purview of Section 55. No restricted meaning can be imposed on the word "business" and the dispute between the Petitioner and the Mustafabad Committee is covered by clause "c" of Sub-section (1) and falls in the definition of "business" of the society. Mr. Mittal relied on a Division Bench decision of this Court in *The Jullundur Transport Co-operative Society Vs. The Punjab State and Another*, and a Single Bench decision in *Messrs Bhatinda Central Co-operative Bank Ltd. Bhatinda v. The State of Punjab* (1969) 71 P.L.R. 752) but both those decisions do not help the contesting Respondent. These decisions are on the question whether a dispute that arises between the parties, if falls within the ambit of the Industrial Disputes Act, should be referred under the provisions of that Act or this Act, and it was held that the proper forum in such cases is to approach the appropriate authority under the Industrial Disputes Act. It was never the case of Respondent No. 5 before any of the appropriate authorities nor was it ever contended before me by Mr. Mittal that the dispute was triable by an appropriate authority under the Industrial Disputes Act and as such could not be referred for decision to the Registrar. Thus I have no hesitation in holding that the dispute between the parties was rightly referred for decision to the arbitrator and the decision of the revisional authority to the contrary cannot legally be sustained.

10. It was next contended by Mr. Lakhanpal that the order of the Registrar referring the dispute for decision to the arbitrator, was not revisable by Respondent No. 2 u/s 69 of the Act. On the other hand Mr. Mittal, learned Counsel for Respondent No. 5, contended that mere reference of a dispute by the Registrar to the arbitrator was not sufficient to disentitle Respondent No. 5 from challenging the reference u/s 69 of the Act. The facts on which there is no dispute between the parties are that the reference was made by the Cane Commissioner exercising the powers of the Registrar, Co-operative Societies, Respondent No. 3, to the Assistant Registrar, Co-operative Societies, Ambala, who decided the same as an arbitrator u/s 56 of the Act, that Respondent No 5 submitted to the arbitration and appeared before the arbitrator, that at no stage

before the arbitrator or in appeal before the Cane Commissioner an objection was raised to the effect that the dispute between the parties could not legally be referred to the arbitrator, that even in grounds of revision no such objection with regard to jurisdiction was taken and that it was for the first time during the course of arguments, that an objection about jurisdiction was raised before the revisional authority.

11. Sub-section (3) provides that if any question arises whether a dispute referred to the Registrar u/s 55 of the Act is or is not a dispute touching 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. From the tenor of Sub-section (3) it is clear that the Registrar is the final authority to decide whether a dispute is or is not a dispute touching the constitution, management or the business of a society. The proper authority before whom Respondent No. 5 could raise an objection and challenge the legality of the reference was the Registrar but admittedly this was not done; rather Respondent No. 5 submitted himself to the jurisdiction of the arbitrator after the reference. Mr Mittal contended that Respondent No. 5 could not raise an objection earlier as no notice was issued to Respondent No. 5 by the Registrar before making a reference. This seems to be an argument of despair. Under Sub-section (3) it is not required that any notice should have been given to Respondent No. 5 before making the reference; still he could have, after coming to know about the reference, approached the Registrar and challenged the same on the ground that the dispute between the parties did not touch the constitution, management or business of the Society, but for the reasons best known to the Society it did not do so. As earlier observed, the arbitration award was challenged on merits before the appellate authority and even in the grounds of revision no objection challenging the legality of reference was taken. In my view, under section 69 of the Act, there was no power with the revisional authority to have for the first time entertained the contention of Respondent No. 5 challenging the legality of the award on the ground that the dispute between the parties did not touch the constitution, management or business of the Society and was not covered by the provisions of Section 55 of the Act. The only appropriate and proper authority was the Registrar who could have dealt with this matter and such a point having not been raised before him could not be raised for the first time before the revisional authority. It is the decision of the Registrar which is final under Sub-section (3) of Section 55 of the Act and that being so no appeal or revision lay against such an order. A somewhat similar question about the interpretation of Sub-section (3) of Section 50 of the Act of 1955 (now Sub-section (3) of Section 55) came up for consideration before A. N. Grover J. (as he then was) in *The Pacca Bagh Co-operative Thrift and Credit Society, Jullunder City through Shri Alfred David its president v. The Registrar, Co-operative Societies, Punjab at Jallundur* (C. W. 943 of 1957). (Civil Writ No. 943 of 1957 decided on 26th August, 1958) wherein it was observed thus:

The position of the Respondentes is that the Registrar has already given a

decision by means of the memorandum mentioned before and that his decision is tantamount to saying that there is no dispute between the parties on which a decision can be given and that the Registrar's decision is final under the provisions of Sub-section (3) of Section 50 of the Act. It is apparent from the tenor of the memorandum that the view of the Registrar is that there is no dispute on which a decision can be given. If that is so, his decision on this question has been declared to be final by the statute and it cannot be set aside by certiorari unless it has been given in quasi-judicial proceedings. Keeping in view the well-known principles which have been laid down for the purpose of deciding whether certain proceedings are of an administrative nature or are quasi-judicial it must be held that while determining whether a certain dispute exists within the meaning of Section 50 of the Act, the Registrar does not act in a quasi-judicial capacity. There is no provision that he should hear the parties or record the evidence or even record any reasons for coming to the conclusion that no dispute exists which can be referred for a decision under the provisions of Section 51 of the Act. The Registrar cannot be regarded as acting in a quasi-judicial capacity when he is to make up his mind whether a matter referred for decision is a dispute or not for the purposes of Section 50 of the Act. That decision has to be given by him on the facts and circumstances brought to his notice and there is nothing to show that he must give an opportunity at that stage to the parties to appear before him in order to enable him to come to such a decision. Moreover, an examination of the provisions of Section 50 of the Act in their entirety shows that no right of appeal or revision has been given against the decision of the Registrar given under Sub-section (3) of the aforesaid section. This strengthens the view that the decision given under Sub-section (3) as to whether the matter referred is a dispute or not is not such a decision as is given by a quasi-judicial tribunal. In this case the order of the Registrar cannot be quashed by certiorari. This is also a complete answer to the contention raised on behalf of the Petitioner that no opportunity of hearing was given by the Registrar for the purpose of deciding whether the dispute between the parties was such a dispute as was covered by the provisions of the Act.

In this view of the matter, in my considered opinion, there is no escape from the conclusion that a party having not challenged the reference earlier before the Registrar, could not legally do so subsequently in revision.

12. No other point was urged.

13. For the reasons recorded above, I allow this petition and quash the impugned order of the Joint Secretary to Government, Haryana, Co-operation Department, Chandigarh, dated 18th November, 1968 (copy Annexure "F" to the petition) and send back the case to the revisional authority for decision of the revision on merits. Before hearing the petition, the appropriate authority shall issue notice to the parties concerned. The Petitioner shall have his costs from Respondent No. 5. Counsel fee Rs. 100-.