

(1958) 09 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 451 of 1956

The Jullundur Transport Co-operative Society	APPELLANT
Vs	
The Punjab State and Another	RESPONDENT

Date of Decision : 10-09-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : AIR 1959 P&H 34

Hon'ble Judges : I.D. Dua, J; D. Falshaw, J

Bench : Division Bench

Advocate : H.R. Sodhi, for the Appellant; L.D. Kaushal, D.A.G. and Roop Chand, for the Respondent

Final Decision : Dismissed

Judgement

I.D. DUA, J.—This case was referred to a larger Bench by Bishan Narain J., on 29-8-1957 to be heard along with Civil Writ No. 539 of 1956 as the point that arises for decision in this case had already been referred to a Division Bench by the same learned Judge in the other case. The other writ petition (Civil Writ No, 539 of 1956) has today been withdrawn and has, therefore, been dismissed as such.

2. The point which arises for consideration in this case is whether an industrial dispute between a Co-operative Society under the Punjab Co-operative Societies Act" of 1954 and its workmen can under the law be referred to an Industrial Tribunal set up under the Industrial Disputes Act, 1947. The, learned counsel for the petitioner contends that all disputes except disputes regarding disciplinary action taken by a society, touching the constitution or business of the society are to be determined in accordance with the provisions of Section 50 of the Punjab Co-operative Societies Act, 1954 (Punjab Act No. XIV of 1955).

He submits that Section 50 of the said Act being an exhaustive code which lays down a detailed procedure according to which all disputes have to be

determined, it must be so interpreted as to completely exclude the applicability of the Industrial Disputes Act to such disputes even though they fall within the definition of Industrial Disputes as defined in the said Act.

In developing his argument the learned counsel drew our attention to the opening part of the Punjab Co-operative Societies Act, 1954, and argued that this Act being a consolidating and amending Act it should be construed to contain an exhaustive and self-contained code dealing with all the subjects on which provisions have been made in this Act including the determination of disputes between the Society and its servants which, so the counsel argues, must be deemed to include industrial disputes.

3. Section 50 of the Act reads as follows:

"50. (1) If any dispute, other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society, touching the constitution or business of a society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent, or servant of the society past or present, or the liquidator of the society or between the society or its committee and any officer, agent, member, or servant of the society past or present, and the liquidator of the society or between two registered societies or between a society and liquidator of another society or between liquidators of different societies, it shall after due notice in the manner prescribed to all parties concerned be referred to the Registrar for decision by himself or his nominee or if either of the Parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. In case a party fails to nominate an arbitrator, within one month of the service of the due notice, the Registrar shall have the power to do so.

A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a deceased member whether such debts or demands be admitted or not;

Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society.

If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of this section.

(2) Where any dispute is referred under Sub-section (1) for decision by the Registrar's nominee or to arbitration or arbitrators, the Registrar may, at any time, for reasons to be recorded in writing, withdraw such dispute from his

nominee or the arbitrators, as the case may be, and may decide the dispute himself or refer it again to any other nominee appointed by him for decision:

Provided that no such dispute shall be withdrawn except on any of the following grounds;

(i) the Registrar's nominee or the arbitrators have failed to decide the dispute within two months or such further period as may be allowed by the Registrar;

(ii) the proceedings before the Registrar's nominee or any of the arbitrators are vitiated in consequence of corruption or misconduct on the part of the Registrar's nominee or any of the arbitrators, as the case may be.

(3) When any question arises whether for purposes of this section a matter referred for decision is a dispute or not, the question shall be decided by the Registrar whose decision shall be final.

(4) In the case of a dispute involving property which is given as collateral security, it shall be competent to the person deciding such dispute to issue a mortgage award which shall have the same force as a mortgage decree of a competent civil court.

(5) (a) Any party not satisfied with the award given by the Registrar's nominee or by the arbitrators under Sub-section (1) may appeal to the Registrar within two months of receiving notice of the award.

(b) When an award is under consideration, in revision or on appeal, the Registrar may order the court in which such award is pending for execution, to stay the execution proceedings and may call for the file of the case.

(6) The decision given by the Registrar under Sub-section (1) or on appeal under Sub-section (5) and, when no appeal is filed, the decision by the Registrar's nominee or by the arbitrators shall be final and shall not be called in question in any civil or revenue court.

(7) Notwithstanding anything contained in Subsection (8) the Government or the Registrar may either "suo motu" or on the application of a party to a reference revise any decision on the original reference or on appeal, passed by a subordinate authority exercising the powers of the Registrar under this section, or by the Registrar's nominee or by the arbitrators."

4. This section undoubtedly provides that disputes

"touching the constitution or business of a society arising between * * * * the society or its committee and any officer, agent, member; or servant of the society past or present, * * * * shall after due notice * * * * be referred to the Registrar for decision by himself or his nominee or if either of the parties so desires, to arbitration of three arbitrators * * * *".

If the dispute within the contemplation of Section 50 is held to cover the industrial dispute then there can be no doubt that this section would by

necessary implication exclude a reference of industrial disputes between a society and its workmen under the Industrial Disputes Act but in my opinion there is intrinsic evidence in the section itself which shows that the Legislature did not contemplate industrial disputes to be covered by this section.

5. In Sub-section (1) of Section 50 it is provided that a dispute shall include claims by a society for debts or demands due to it from a member or a past member, etc. Such a claim by a society would, according to the argument advanced by the learned counsel for the petitioner, obviously be a dispute touching the constitution or business of the society and would arise between the society and its members. This was in fact not disputed at the Bar.

But the Legislature nevertheless considered it necessary to specifically include such a dispute within the ambit of Section 50. This would show that the disputes contemplated by Section 50 are not intended by the Legislature to cover all kinds of disputes and this provision is not meant to be all embracing as is contended by the learned counsel.

A reading of Sub-section (1) of Section 50 in my opinion clearly shows that though the words "touching the constitution or business of the society" are unqualified and extremely wide and comprehensive, still the Legislature did not intend to include in this expression "industrial disputes" for the adjudication of which the Parliament has enacted the Industrial Disputes Act.

6. The proviso to Sub-section (1) of Section 50 makes the position clearer still. It lays down that

"if the question at issue between a society and a claimant " * * * * * is one involving complicated question of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society." If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar has to take action as laid down in paragraph 1 of Section 50. Indeed this proviso supplies a key to the intention of the Legislature and it almost conclusively suggests that it is only such disputes as are capable of being tried by a regular suit which are covered by the provisions of Section 50.

It has not been suggested by the learned counsel for the petitioner (and it could not be suggested) that an industrial dispute as defined in the Industrial Disputes Act is capable of being tried by a regular suit. It is also significant that there is no provision in the Co-operative Societies Act which excludes the applicability of the Industrial Disputes Act to the industrial disputes which may arise between co-operative societies and their workmen.

Indeed we do not find in the Punjab Co-operative Societies Act even an overriding provision such as are contained in some other special Acts like the Administration of Evacuee Property Act, 81 of 1950 or the Punjab Debtors Protection Act, 2 of 1936 (see Section 11 of this Act).

7. The Industrial Disputes Act had been enacted in the year 1947 and the Punjab Co-operative Societies Act was passed by the Punjab Legislature in 1954; it received the assent of the President on 4-8-1955. If the provisions of this latter Act were intended by the Legislature to override the provisions of the Industrial Disputes Act or to exclude the applicability of the Industrial Disputes Act to the "Industrial disputes" arising between the Co-operative Societies and their workmen then one would have reasonably expected an express and specific provision to that effect in this statute. No such provision, however, exists in the Punjab Act No. 14 of 1955. This omission, in my opinion, is not without significance.

8. Besides, I am also inclined to hold the view that the Industrial Disputes Act is a special enactment dealing with the special subject of industrial disputes and special provisions have been made in this statute for setting up Tribunals qualified for adjudicating upon them. The Punjab Co-operative Societies Act of 1954, when considered in this light, is, on the other hand, a general enactment and its provisions must yield to the provisions of the Industrial Disputes Act whenever the provisions of the latter Act are by their language clearly applicable to a particular dispute. In this view of things, I do not find any inconsistency between the Punjab Act and the Central Act.

They can both co-exist and be enforced without clashing. It is a well known rule of interpretation of statutes that the language of every statute must be construed as far as possible in accordance with the terms of every other law which it does not in express terms modify, vary or repeal. It is not permissible to revoke or alter an enactment by the process of construction when the words in their ordinary meaning may be capable of proper operation without such revocation or alteration.

Repeal by implication is seldom favoured and it may be reasonably presumed that the Legislature does not usually intend to keep on the statute book enactments which are contradictory of or in conflict with each other: the Legislature must also be presumed not to effect an important measure like the repeal or amendment of a law without expressing a clear and unambiguous intention to do so. Such an interpretation unless inevitable should be avoided.

The primary function of the Courts, while interpreting apparently conflicting provisions of different statutes, would thus always be to harmonise such provisions and if reasonably possible to avoid overlapping, conflict, implied repeal or abrogation. Any reasonable construction which offers an escape from implied repeal must be considered to be in consonance with the true intention of the legislature.

9. A similar question came up for consideration before a learned Single Judge of the Calcutta High Court in *Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Others*, where a point was raised with regard to the interpretation of the provisions of the Bengal Co-operative Societies Act No. 21 of

1940. It is true that in that statute the definition of the word "dispute" was confined to the disputes which are "capable of being the subject of civil litigation."

In the Punjab Act there is no definition of the word "dispute", but we find instead the insertion of the proviso in Sub-section (1) of Section 50 which in my opinion serves practically the same purpose which the definition of the word "dispute" does in the Bengal Act. In view of this proviso I am definitely inclined to hold that the reasoning adopted by the learned Judge in the Calcutta case can equally be applied in construing the scope and purpose of Section 50 of the Punjab Co-operative Societies Act. The learned Judge in the Co-operative Milk Societies Union's case (A), while dealing with similar provisions of the Bengal Act observed as follows:

"Sections 86 and 87 of the Bengal Co-operative Societies Act, 1940 appear in Chapter IX of that statute under the chapter heading "settlement of disputes". There is no doubt that they provide a complete self-contained code for settlement of disputes. But the kind of dispute that is intended to be referred to the Registrar has to be determined by the actual language used in Section 86 of the Act. It is not any and every dispute that is to be referred to the Registrar u/s 86. There is a limitation of the kind of dispute which can be referred to the Registrar. The significant words limiting the nature and type of dispute is contained in the expression "touching the business of a co-operative society in Section 86 of the Act. It is, therefore, clear that the dispute has to touch the business of the co-operative society.

Now a co-operative society can do many kinds of business which may certainly include businesses of industrial nature. Can a dispute between the cooperative society and its own workmen be said to be a dispute touching the business of a co-operative society. Strictly speaking, dispute between a co-operative society and its workmen does not relate to the actual business of a co-operative society and therefore does not touch the business of the cooperative society.

Consequently, however, a dispute between the co-operative society and its workmen may ultimately touch or affect the businesses of the cooperative society. I am inclined to think that the remote and the consequential result should not be included within the expression "any dispute touching the business of a co-operative society". I am persuaded to accept that construction by the further consideration of the fact that a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society is expressly excluded from the purview of Registrar's jurisdiction by this Section 86 of the Act.

Legislature therefore did not intend that dispute regarding disciplinary action by the society against its paid servant should be settled by the Registrar. But then this singular exclusion of dispute regarding disciplinary action might be argued to impliedly include all other disputes such as industrial disputes, on the principle of "expressio unius est exclusio alterius", specially when Section 86 (a) of the Act

expressly refers to the society and its servant as disputing parties. But the key to the solution of this problem appears in the definition of the word "dispute" in Section 2 (j) of the Bengal Co-operative Societies Act, 1940 which provides :

"Dispute" means any matters capable of being the subject of civil litigation and includes a claim in respect of any sum "payable to or by a co-operative society whether such claim be admitted or not. The limitation in that definition is "capable of being the subject of civil litigation". Now here the dispute referred to the Industrial Tribunal is "wages and wage scales and dearness allowances". Wages, wage scales and dearness allowances do not appear to be fit or proper matters capable of being the subject of civil litigation. What will be the wage scale in an establishment cannot appropriately be the subject of a civil litigation.

What should be the general wages or what should be the dearness allowances equally do not appear to be matters capable of being the subject of civil litigation. In that view, it appears that the express limitation of the "dispute" in the Bengal Co-operative Societies Act excludes the present disputes which have been referred to the Industrial Tribunal from being the subject of settlement by the Registrar of the Co-operative Societies."

10. The above reasoning, as already stated, would be equally applicable to the present case if the proviso in Section 50 of the Punjab Act can be considered to serve the same purpose which the definition of the word "dispute" served in the Bengal Act. After considering the matter in all its implications I am of the definite opinion that the proviso does serve the same purpose. This proviso does in my opinion provide the key to the solution in the present case just as the word "disputes" did in the case of the Bengal Act.

11. The learned counsel for the respondents has also drawn our attention to a decision of the Industrial Tribunal, Bombay, regarding dispute between South Indian Co-operative Consumers Society, Ltd. v. Their Workmen, reported as 1955 II LLJ 612 (B). There also a similar provision in the Bombay Co-operative Societies Act, 1925, was held not to exclude references of industrial disputes under the Industrial Disputes Act. The reasoning of the Industrial Tribunal in this judgment certainly supports the contention raised by the learned counsel for the respondents and I am inclined to agree with this reasoning.

12. The learned counsel for the appellant has not been able to bring to our notice any decided case supporting his contention. He merely tried to distinguish the Calcutta case and the case of the Industrial Tribunal on the ground that they dealt with different statutes and based his argument on the mere reading and construction of Section 50 of the Punjab Act which he contended was unqualified and comprehensive enough to include industrial disputes.

13. As I have said above, this wide and comprehensive language when taken in the context in which it is used has limitations imposed on it by the section itself. The proviso makes it implicit that the disputes intended by the Legislature to be decided by the Registrar are only those disputes which are capable of being tried

in a regular suit.

In this view of the matter I am positively of the view that there is no conflict between the provisions of the Punjab Co-operative Societies Act and of the Industrial Disputes Act and the reference of the industrial disputes in question can lawfully and properly be adjudicated upon by the Industrial Tribunal. If a dispute falls within the ambit of the provisions of the Industrial Disputes Act then its adjudication must be governed by the provisions of the said Act and there is nothing in the Punjab Co-operative Societies Act which would exclude the operation of the former Act.

14. The result is that the writ petition fails and is dismissed with costs Cost Rs. 50/- to each respondent.

15. It is regrettable that the proceedings before the Tribunal should have remained stayed all this lime. It is in the public interest that industrial disputes should be settled as expeditiously as possible, speedy adjudication of such disputes is of the utmost importance to the cause of industrial peace and progress. The papers may, therefore, be sent back to the Industrial Tribunal without any avoidable delay so that the proceedings may continue without any further obstruction.

D. Falshaw, J.

16. I agree