(1996) 08 MAD CK 0079

In the Madras High Court

The Special Officer, Ambur Co-operative Sugar Mills Ltd. APPELLANT

Vs

The Special Tribunal for Co-operative cases and Others RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1961 — Section 3, 71

Citation : (1996) 2 MLJ 544

Hon'ble Judges : N. V. Balasubramanian, J

Bench : Division Bench

Judgement

N. V. Balasubramanian, J.—A short, but an interesting question of law arises in the writ petition on the scope of Section 71 of the Tamil Nadu Co-operative Societies Act, 1961 (hereinafter referred to as ''the Act'').

2. The petitioner, a co-operative society, had a High Speed Diesel Oil Consumer Bunk to supply diesel and other lubricants to the lorry contractors and other vehicles of the Mills. It was found that there was a stock deficiency of the diesel and other lubricants and hence, the petitioner initiated an enquiry u/s 65 of the Act to determine the stock position of the high speed diesel oil and other lubricants. In the enquiry so conducted, it was found that there was a stock deficiency of 9621 litres valued at Rs. 13,565.51 for the period from 1.10.1976 to 30.9.1977, and again 492 litres valued at Rs. 713.40 for the period from 1.10.1977 to 18.5.1978, and the enquiry report also stated that the stock deficiency was due to the wilful negligence of duty by the respondents 2 to 4. On the basis of the enquiry report, certain surcharge proceedings u/s 71 of the Act were initiated against the respondents 2 to 4. The Joint Registrar (Joint Registrar of Sugar (Co-operation) authorised one Narayanavelu, Co-operative Sub Registrar (Arbitration and Execution) Vellore to enquire into the matter and pass such orders as may be appropriate. The authorisation was done u/s 71(1) of the Act.

3. The Co-operative Sub Registrar so authorised, initiated the surcharge proceedings against the respondents 2 to 4 and passed an award against the

respondents 2 to 4 directing that a sum of Rs. 3173.44 be recovered from the respondents 2 to 4.

4. The respondents 2 to 4 preferred separate appeals before the Special Tribunal for the co-operative cases, Madras and contended that the co-operative Sub Registrar had no pecuniary jurisdiction in cases involving a sum of Rs. 3,000, or more, and inasmuch as the award passed by the Sub Registrar exceeded a sum of Rs. 3,000, the award itself was liable to be set aside. The Special Tribunal accepted the contentions raised on behalf of respondents 2 to 4 and held that the Co-operative Sub Registrar had no pecuniary jurisdiction to entertain the claim and to pass the award exceeding the monetary limit of Rs. 3,000. Since the respondents 2 to 4 succeeded on the question of jurisdiction of the Sub Registrar to conduct the inquiry, the Special Tribunal did not decide the question on the merits of the case. In this view of the matter, the Special Tribunal allowed the appeals preferred by the respondents 2 to 4 with certain directions given to the Joint Registrar to authorise a Deputy Registrar to inquire into the matter and pass appropriate orders.

5. Mr. Balasubramanian, learned Counsel for the petitioner submitted that the order of Special Tribunal holding that the Co-operative Sub Registrar has no pecuniary jurisdiction to entertain the claim and pass orders is erroneous in law. According to him, the power of the Co-operative Sub Registrar to inquire into the matter is derived by virtue of Section 71 of the Act on the basis of special authorisation given by the Registrar. Learned Counsel for the petitioner submitted that since the power to conduct enquiry by the Co-operative Sub Registrar is derived on the basis of specific authorisation given by the Joint Registrar, it is not necessary for him to invoke the powers granted by the Government which alone restricts the power of the Sub Registrar not exceeding a sum of Rs. 3,000. Mr. Balasubramanian also relies on a decision of the High Court of Bombay in the case of The Telangkhedi Co-operative Dairy Society Ltd. and Others Vs. The Deputy Registrar, Co-operative Societies, Nagpur and Others, .

6. Mr. V. Kalyanaraman, learned Counsel appearing for the respondents 2 to 4, on the other hand submitted that the jurisdiction of the Co-operative Sub Registrar is limited to a sum of Rs. 3,000 by virtue of the Government Order, and it is not open to the Joint Registrar to invest him with a power to enquire into a matter exceeding the pecuniary jurisdiction of Rs. 3,000. Learned Counsel for the respondents 2 to 4 submitted that what cannot be done directly, cannot be done indirectly and hence, the order of the authorisation by the Joint Registrar is invalid in law and therefore, the order of the Special Tribunal that the Co-operative Sub Registrar has no jurisdiction to enquire into the matter involving a sum of Rs. 3,000 or above is legally correct and no interference is called for in the present proceedings.

7. I have carefully considered the respective contentions advanced by and on behalf of the petitioner as well as the respondents 2 to 4. Section 3 of the Tamil Nadu Co-operative Societies Act, 1961 empowers the Government to appoint a

person as Registrar of a Co-operative Society for the State of Tamil Nadu and it also empowers the Government by general or special order to confer on any other person or persons any of the powers of the Registrar under the Act. By virtue of the powers conferred on the Government, a notification was issued by the Government in G.O.Ms. 5292, Industries, Labour and Cooperation (Co-operation), dated 5th November, 1963 which vests the Joint Registrar, Deputy Registrar and Sub Registrar with the powers of the Registrar of Co-operative Societies, and the notification, in so far as it is relevant for the purpose of the case, reads as under:

In exercise of the powers conferred by Section 3 of the Madras Co-operative Societies Act, 1961 (Madras Act 53 of 1961), and in supersession of all previous notifications on the subject issued under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932) and the Travancore-Cochin Co-operative Societies Act, 1951 (Travancore-Cochin Act X of 1952), the Government of Madras hereby confers on the officers specified in column (1) of the Table below, the powers of a Registrar specified in the corresponding entries in column (2) thereof, under the said Act.

Table.

Officers

Powers

Joint Registrars

:All the powers of a Registrar under the said Act.

Deputy Registrar

: All the powers of the Registrar under the said Act except those referred to in Setions 12,69(c), 70, 72, 85, 88, 90, 97 and 114.

Co-operative Sub registrars

: All the powers of a Registrar under Sections 26(3) (4) and (5), 58(1), 62, 64, 65, 66, 68(1), 71, 73 and 91.

Provided that u/s 71 and Clause (1) of Section 73, the Co-operative Sub Registrars shall exer cise the powers of a Registrar only in respect of cases involving a sum not exceeding Rs. 3,000.

Chief Audit Officers and District Co-operative Audit Officers xxxxxx Extension Officers (Co-operation): xxxxxx In regard to the delegation of powers u/s 62, to the Chief Audit Officer, District Cooperative Audit Officer and Co-operative Sub Registrars, the Registrar of Co-operative Societies is requested to issue executive instructions prescribing the types of societies in respect of which the net profits may be declared by these categories of officers.

It is significant to notice that by virtue of the said notification, a Joint Registrar, a

Deputy Registrar or a Co-operative Sub Registrar are all given powers of a Registrar conferred u/s 71 of the Act, but, in the case of Co-operative Sub Registrar, his power to perform the duties of the Registrar u/s 71 of the Act is limited to cases not exceeding sum of Rs. 3,000.

8. In this background, it is necessary to consider the provisions of Section 71(1) of the Act. Section 71(1) of the Act, in so far as it is material reads as under:

Where in the course of an audit u/s 64 or an inquiry u/s 65 or an inspection u/s 66 or Section 67 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer of servant of the society has misappropriated or fraudulently retained any money or other property or being guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to this Act, the rules or the by-laws, the Registrar himself, or any person specially authorised by him in this behalf, or his own motion or on the application of the committee, liquidator of any creditor or contributory may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misapplication of funds, fraudulent, retainer, breach of trust or wilful negligence as the Registrar or the person authorised as aforesaid thinks just.

Under Section 71 of the Act, the powers to be exercised by the Registrar are of two kinds, one is the suo motu power, and other is the power of authorisation Under suo motu power, the Registrar can on his own motion, or on an application may inquire into the conduct of such persons or other matters specified u/s 71 of the Act. The suo motu power to be exercised u/s 71 of the Act is exercised on the basis of the Government Notification by (1) a Joint Registrar; (2) a Deputy Registrar; and (3) a Cooperative Sub Registrar in cases involving a sum not exceeding Rs. 3,000, and those persons are empowered to perform the function of Registrars within the meaning of Section 71 of the Act. Secondly, the Registrars are also empowered to authorise specially any other person to conduct an enquiry contemplated u/s 71 of the Act. In other words, the Joint Registrars or the Deputy Registrars of the Sub Registrars exercising the powers of the Registrar are empowered to authorise any person specially, and the only restriction on such authorisation is that such an authorisation should be within the pecuniary jurisdiction of the person so authorising the power. The authorisation in terms of Section 71 of the Act literally can be in favour of any person, as Section 71 uses the expression, ''any person'', but from the nature and scope of the functions expected to be performed u/s 71 of the Act, it should, in the context of Section 71 of the Act, can mean only a Joint Registrar, a Deputy Registrar or a Sub Registrar. Hence, a Joint Registrar exercising powers of the Registrar is empowered to authorise any person including a Sub Registrar to inquire into the matter specified u/s 71 of the Act. But, it is not necessary u/s 71 of the Act that a Sub Registrar, when so authorised, should be also a Registrar notified u/s 3 of the Act, and the only restriction is that the case authorised should be within the pecuniary jurisdiction of the Registrar authorising the same. The Section does not postulate that the case authorised should also be within the pecuniary jurisdiction of the person to whom the authorisation is given. Viewed from that angel, a Joint Registrar can authorise another Joint Registrar, a Deputy Registrar or a Sub Registrar to perform the functions u/s 71 of the Act. Since there is no pecuniary jurisdiction fixed for a Joint Registrar to grant authorisation, there is no infirmity in granting the authorisation in favour of the Sub Registrar to enquire into the matter. Needless to state that where there is a valid authorisation, there is a valid conferment of power and the authorisation so made is within the power of the Joint Registrar u/s 71 of the Act.

9. The contention raised by Mr. Kalyanararnan, counsel for the respondents 2 to 4 is that u/s 3 of the Act, the Government has authorised a Co-operative Sub Registrar to enquire into the matter not exceeding a sum of Rs. 3,000, and if such a Sub Registrar with a limited jurisdiction is authorised by the Joint Registrar, it will create an unlimited jurisdiction in favour of the Sub Registrar and the authorisation is against the provisions of the notification, and, in effect, it would be against the provisions of the Act, as the notification issued is a part of the Act. The contention raised by the counsel for the respondents 2 to 4 is attractive but, I am not able to agree with the contention raised by the learned Counsel. It is seen that a Joint Registrar or a Deputy Registrar can exercise powers of the Registrar u/s 71 of the Act, and their jurisdiction is unlimited in so far as their pecuniary jurisdiction is concerned. Though the pecuniary jurisdiction of the Sub Registrar is clamped by virtue of Government Notification upto Rs. 3,000 u/s 3 of the Act, the Joint Registrar can authorise any person to enquire into the matter specified u/s 71 of the Act. The power of authorisation given u/s 71 of the Act is entirely different from the powers conferred by the State Government on the Co-operative Sub Registrar as a Registrar of the Act. The power of the Co-operative Sub Registrar u/s 71 of the Act is derived by the special authorisation given by the Joint Registrar, and there is no monetary limit imposed u/s 71 of the Act restricting the powers of the Sub Registrar, when so authorised u/s 71 of the Act. Therefore, the competency of the Sub Registrar to inquire into the matter u/s 71 of the Act should be judged solely on the language of Section 71 of the Act, and not with reference to monetary ceiling limit imposed in the notification issued u/s 3 of the Act. If the contention of learned Counsel for the respondents 2 to 4 to the effect that the authorisation should be in favour of any Joint Registrar or Deputy Registrar in cases involving a sum exceeding Rs. 3,000 is accepted, the expression, ''any person specially authorised by the Registrar'' in Section 71 of the Act would virtually be rendered otiose, as the power of authorisation can be exercised only in favour of any other Registrar as notified u/s 3 of the Act. As already seen, the Joint Registrar and the Deputy Registrar have unlimited pecuniary jurisdiction to exercise the powers as a

Registrar for the purposes of Section 71 of the Act, and it is not necessary for a Joint Registrar, or a Deputy Registrar to have an authorisation from another Joint Registrar to perform the functions as the Registrar under that Section. Hence Section 71 of the Act, in effect contemplates a person other than a Joint Registrar or Deputy Registrar to perform the functions of the Registrar, and in the context, scheme and structure of the section, it connotes a Sub Registrar. It is well to remember that the person so authorised would be exercising the powers as a delegatee of the Registrar and the person so delegated need not be confined to a Registrar within the meaning of Section 3 of the Act.

10. It cannot also be stated that the Joint Registrar has no power to delegate the power of the Registrar to the Co-operative Sub Registrar. The power of authorisation is expressly provided for by the statute, and when there is a statutory authorisation to authorise any other person, it cannot also be said that the Joint Registrar has exceeded the power of delegation vested in him. In De Smith''s Judicial Review of Administrative Action under the head, ''Failure to Exercise a Discretion'', at page 301, Prof.De Smith states as under:

The maxim delegatus non protest delegare does not enunciate a rule that knows no exception; it is a rule of construction to the effect that, a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negatived by any contrary indications found in the language, scope of object of the statute.

11. The question that has been raised by Mr. Kalyanaraman is that it will create an anomalous situation when the Sub Registrar was not authorised by the Government to perform the function of the Registrar in cases not exceeding a sum of Rs. 3,000, but, he would be performing the same function as a Registrar by virtue of authorisation given by the Joint Registrar. The argument on the face of it is attractive, but on a deeper consideration, it is not acceptable. The power given u/s 3 of the Act by the Government on the Sub Registrar to perform the function as the Registrar is entirely different from the powers conferred on him by virtue of Section 71 of the Act. The Co-operative Sub Registrar on the basis of the Government notification can suo motu exercise the power of a Registrar for the purposes of Section 71 of the Act. However in cases exceeding a monetary limit of Rs. 3,000, unless there is a specific authorisation by the Joint Registrar or a Deputy Registrar, the Co-operative Sub Registrar cannot assume the powers of the Registrar. In other words, the Co-operative Sub Registrar can suo motu perform the function of a Registrar u/s 71 of the Act in cases involving a sum of Rs. 3,000 or less, but where it is a case exceeding a sum of Rs. 3,000 unless there is a specific authorisation by a Registrar, Co-operative Sub Registrars do not assume jurisdiction to enquire into the matter provided for u/s 71 of the Act. The source of the power granted u/s 3 of the act is different from the authorisation made u/s 71 of the Act, and since the source of power is different, I do not accept the contention that there is a conflict between the authorisation

granted u/s 71 of the Act and the notification issued u/s 3 of the Act. I, therefore, hold that the Co-operative Sub Registrar was properly clothed with authority to exercise the powers u/s 71 of the Act on the basis of authorisation given in his favour by the Joint Registrar.

12. Further, it must also be remembered that at the point of time when the Registrar, Joint Registrar or Deputy Registrar authorised the Co-operative Sub Registrar to enquire into the matter u/s 71 of the Act, the situation would be a fluid one, and it would not have been possible to determine the precise amount of loss or deficiency caused to a particular Co-operative Society for the purpose of levying the surcharge on a particular employee. It is only on the basis of the enquiry report u/s 65 of the Act, the Registrar is authorising the Sub Registrar to enquire into the matter by initiating the surcharge proceedings u/s 71 of the Act. At that point of time, the situation would be uncertain with reference to each employee, though the total quantum of loss might have been determined and it may not be possible to determine precisely with reference to each of the employee the amount of actual loss or even proportionate amount of the liability that may be borne by the employees concerned. It is only on the basis and on the conclusion of the final enquiry report, the precise amount of liability amount for the concerned employee will be known. The authorisation to conduct the enquiry u/s 71 is already given and after the final determination, if it is found that there is a liability exceeding a sum of Rs. 3,000 for some of the employees, the entire proceedings would become fruitless. In this view of the matter, I also hold that the authorisation given by the Registrar in favour of the Sub Registrar is valid in law.

13. Hence, I find that the order of the Special Tribunal holding that the Co-operative Sub Registrar does not have pecuniary jurisdiction to entertain the claim exceeding a sum of Rs. 3,000 is not correct in law and I set aside the order. Since the Tribunal has not gone into the question on merits of the case, I direct the Tribunal to take up the cases on its file and dispose of on merits in accordance with law. With this direction, the writ petition is allowed. There will be no order as to costs.