

(2015) 07 KL CK 0136

In the High Court Of Kerala

Case No : Writ Petition (C) No. 126 of 2014 (M)

T.N. Sivasankaran

APPELLANT

Vs

The Tirur Co-Operative Agricultural and Rural Development
Bank Ltd. and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69

Citation : (2015) 07 KL CK 0136

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : M. Ramesh Chander, Senior Advocate, Aneesh Joseph and Dennis Varghese, for the Appellant; V.G. Arun and T.R. Harikumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anu Sivaraman, J—The petitioner was appointed as Junior Supervisor in the 1st respondent Co-operative Society. He was placed under suspension on 14.1.2006, on allegations that he had issued 30 incorrect utilization certificates with regard to grant of loans by the society. Memo of charges dated 24.7.2007 was also issued to him. He had submitted his reply on 15.8.2007, pointing out that during relevant period, he had issued 1785 utilization certificates and the mistake committed in a few of them was not intentional and that the action taken against him may be withdrawn. However, the society decided to go ahead with the disciplinary enquiry and an Advocate was appointed as the Enquiry Officer. The petitioner was issued with a notice to appear before the Enquiry Officer on 17.12.2007. On that day, he appeared and submitted a written statement of defense. The enquiry was thereafter posted to 2.1.2008. The petitioner did not appear on that date. It is stated that the enquiry was adjourned to 8.2.2008, 14.2.2008 and 22.2.2008. The petitioner alleges that there was no sitting on any of these days and the petitioner was also not set ex-parte. He was not notified regarding the further postings of the enquiry. However, by communication dated

3.5.2008, the Chairman of the Disciplinary Committee informed the petitioner that the enquiry had been completed against him and a report submitted finding him guilty. Though petitioner submitted a reply, the Disciplinary Committee dismissed him from service with effect from the date of suspension by Ext. P1 order.

2. Against the order imposing the penalty of dismissal with effect from the date of suspension, petitioner preferred an appeal before the Managing Committee which was dismissed by Ext. P2 order. The petitioner thereupon, challenged the orders before the Co-operative Arbitration Court. Ext. P3 award was passed on 6.2.2012 holding that, the Enquiry Officer had conducted the enquiry without proper notice to the petitioner. It was found by the Co-Operative Arbitration Court on going through the proceedings of the enquiry that there was no sitting on 8.2.2008, 14.2.2008 and 21.2.2008. Thereafter, it was found that the Enquiry officer proceeded to issue a report without even considering the written objections preferred by the petitioner. The Co-Operative Arbitration Court found that, the enquiry proceedings were vitiated and also that the enquiry report was illegal and perverse. On these findings, the Arbitration Court directed the reinstatement of the petitioner with all other service benefits including back wages.

3. Aggrieved by Ext. P3 award of the Arbitration Court, the society took up the matter in appeal before the Cooperative Tribunal. By Ext. P4 order, the Tribunal reversed the findings of the Arbitration Court and held that the delinquent had been present in the enquiry in its sitting on 17.12.2007, and the posting of the enquiry to 2.1.2008 was announced in the presence of the petitioner and therefore, he cannot claim ignorance of such posting. It was held that the Arbitration Court was not correct in holding that the Enquiry Officer conducted the enquiry without giving proper notice. On the assumption that the petitioner who was working as supervisor in the society had knowledge about the directions contained in Annexure A5 letter, the Tribunal interfered with the finding of the Arbitration Court that the enquiry report was perverse. However, the Tribunal held that the award of punishment of dismissal with effect from date of suspension was harsh in the facts and circumstances of the case. The Tribunal found that the 1st respondent bank had no case that the plaintiff had misappropriated its funds by falsifying accounts. It was noticed that the society had not adduced any cogent evidence or brought out any circumstances to show that the petitioner issued false utility certificates after receiving bribes from the loan applicants. It was also found that no loss had been occasioned to the society due to the action of the petitioner. The punishment awarded by the Society was therefore interfered with and was reduced as compulsory retirement from 12.7.2008, the date of the dismissal order. The findings of the Co-operative Tribunal in Ext. P4 order, to the extent they interfere with the findings of the Arbitration Court are challenged by the petitioner herein.

4. We have heard Sri M. Ramesh Chander, learned senior counsel appearing for

the petitioner and Sri T.R. Hari Kumar, learned counsel appearing for the respondents. Notice to the respondents 3 and 4 had been dispensed with.

5. It is contented on behalf of the counsel for the petitioner that, the proceedings of the Enquiry Officer are wholly vitiated and are illegal as being violative of principles of natural justice. The enquiry was first posted to 17.12.2007. On that day, the petitioner had appeared and submitted his written objections. The enquiry then stood posted to 2.1.2008, on that day the petitioner admittedly did not appear. Thereafter, the case stood posted to 8.2.2008, 14.2.2008 and 21.2.2008. On all these days, it appears from the proceedings on the enquiry which were referred to by the Arbitration Court, that, there was no sitting and the enquiry did not proceed. However, thereafter, without intimating any fresh date for the enquiry and without even setting the petitioner ex-parte, it appears that the enquiry report was finalized. The petitioner has a specific case that his written objections which were duly submitted before the Enquiry Officer was also not taken into account by the Enquiry Officer.

6. Before the Co-operative Arbitration Court, the Enquiry Officer was examined as D.W. 2. He admitted that the enquiry did not take place on three postings after 3.8.2008. In answer to the question whether notice was issued to the petitioner thereafter, the Enquiry Officer replied that he did not find it necessary. He also admitted that the petitioner had not been declared ex-parte and his written statement was not marked. Confronted with the question as to whether, the petitioner had been examined as a witness, the Enquiry Officer answers that the said statement in the report was a mistake. It was on these admitted facts that the Co-operative Arbitration Court held that the petitioner had not been given a proper opportunity to put forth this case before the Enquiry Officer.

7. Thereafter, the Arbitration Court proceeded to consider the legality of the report to the Enquiry Officer. The Co-operative Arbitration Court found that the allegation in the charge memo regarding the number of utilization certificates issued by the petitioner itself was wrong, since two of the alleged certificates were not issued by the petitioner at all. With regard to Ext. P4 communication issued by the Regional Manager of the Kerala State Co-operative Agricultural and Rural Development Bank to the Secretary of the defendant bank, the Secretary as DW 1, had deposed that D4 is only a letter and there is no evidence to show that the petitioner had seen it. The Arbitration Court also noticed that there was no evidence before the Enquiry Officer to show that loan amounts were not utilized by the loanees as certified by the petitioner. The findings of the Enquiry Officer were therefore found to be perverse and the reinstatement with back wages was ordered.

8. However, in Ext. P4 order, the Tribunal held that on 17.12.2007, the enquiry had been adjourned to 2.1.2008 for evidence in the presence of all concerned. It was found that enquiry was being adjourned and the next date was announced in the presence of the parties. In the view of the above finding, it was held that, it can be assumed that the petitioner who did not appear before the Enquiry Officer

on the subsequent posting dates did not want to adduce evidence in the enquiry. The findings of the Arbitration Court, on that ground were interfered with. With regard to the further finding regarding the knowledge of the petitioner about the instructions for issuing utilization certificates, the Tribunal held that "there are circumstances to hold that the petitioner was aware of the instructions which were issued by the Secretary of the apex society to Secretary of the primary CARD Banks". However, on the ground that no loss had been caused to the respondent and no misappropriation or corruption was alleged against the petitioner, the penalty was reduced to compulsory retirement from 12.7.2008.

9. The findings of the Co-operative Tribunal, with regard to the enquiry are contained in paragraph 10 of Ext. P4. It is the admitted case of the parties that after the enquiry was posted on 2.1.2008; there was no sitting on three subsequent postings. Even thereafter, the petitioner was not set ex-parte. But the Enquiry Officer proceeded to prepare and submit the report without considering the written objections preferred by the petitioner. It is submitted by the learned Counsel for the respondent society that it had preferred an I.A. before the Arbitration Court pointing out that the court has to decide the validity of the enquiry proceedings first as a preliminary issue before going into the legality and propriety of the punishment imposed. It is stated that if the Arbitration Court decided to go into the merits of the charges framed against the petitioner, the employer may be given an opportunity to adduce fresh evidence to establish the charges against the petitioner.

10. It is seen from the perusal of the provisions of the Co-operative Societies Act and the rules made therein, that if a dispute under Section 69 is raised before the Co-operative Arbitration Court, the Court shall have the power to decide such dispute. Section 70 (A)(3) of the Kerala Co-operatives Societies Act provides that the Government shall make rules for regulating the procedure and disposal of business of the Co-operative Arbitration Court. It is noticed that though the rules are provided in Chapter 11 of the Kerala Co-operative Societies Rules with regard to execution of decisions, awards and orders, no separate rules regulating the procedure of the Co-operative Arbitration Court have been framed by the Government. Rule 67 of the Kerala State Co-operative Societies Rules relates to reference of disputes, payment of expenses and decisions on disputes. It reads as follows:--

67. Reference of disputes, payment of expenses and decisions on disputes

(1) The reference of any dispute to the Co-operative Arbitration Court and to the Registrar under Section 69 of the Act shall be in writing.

(2) the application shall be accompanied by a list of relevant records on which the dispute is based and a receipted challan to evidence, payment of the fees fixed under clause (a) of sub rule (7) for deciding the dispute. In the case of an application, filed for and on behalf of a society, a certified copy of the resolution adopted by the committee resolving to file the application, shall also be filed.

(3) Non-monetary disputes are to be filed before the Cooperative Arbitration court and monetary disputes are to be filed before the Registrar.

(4) Government shall constitute such number of courts as required to deal with the non-monetary cases [The Presiding Officer of the court shall be an Advocate having [not less than 7 years] bar experience and [who shall be appointed by government for a period of three years] as per the terms and conditions fixed by Government. The presiding officer shall be assisted by a secretary not below the rank of an Assistant Registrar of Co-operative Societies.

(5) The Co-Operative Arbitration Court or he Registrar or the person deciding the disputes for the Arbitrator shall have power to administer oaths, to require the attendance of all parties concerned and of witnesses and to require the production all books and documents relating to the matter of the dispute.

(6) The Co-operative Arbitration Court, the Registrar or the person deciding the dispute or the arbitrator may of his own motion or on the application of any party to the dispute, inspect any property which is the subject matter of the dispute on giving notice to both the parties to the dispute or summon and examine any person as witness or issue commissions for examination of witness whose evidence the co-operative Arbitration Court or Registrar or the person deciding the dispute or the Arbitrator, as the case may be, feels necessary for disposing of the dispute.

(7)(a) The Co-Operative Arbitration Court or the Registrar or the person or the Arbitrator deciding the dispute shall record a brief note in English or in the vernacular language of the evidence of the parties to the disputes and witnesses who attend, and upon the evidence so recorded and after consideration of any documentary evidence produced by the parties a decision or, awarded, as the case may be shall be given in accordance with justice, equity and good conscience. Such decision or award shall be reduced to writing and pronounced at once or on some future date of which due notice shall be given to the parties.

(b) In the absence of any party to the dispute, duly summoned to attend, the dispute may be declared ex-parte.

(8)(a) The award or any order passed by the Co-operative Arbitration Court or the Registrar shall be forwarded to the plaintiff and the respondents concerned.

(b) The award or any order passed by the Arbitrator under sub-section (4) of Section of the Act shall be forwarded to the Registrar in duplicate along with all the papers and proceedings of the disputes.

(9) The case records will also contain a case diary written in hand by the authority deciding the dispute, specifying the date or dates on which the case was taken up for consideration, noting the action taken on each such date. The name of persons examined and documents exhibited, with the relevant dates shall also be noted therein. The parties concerned may, on production of the required number of copying sheets, be given copies of the decision or the award

or the order from the office of the Co-Operative Arbitration Court, or office of the Registrar, before whom the application was presented under sub-rule (1) above.

(10) The fees for deciding the disputes shall be as follows:

(1) Monetary disputes;--

50 paise for every claim of Rs. 10 or part thereof, subject to a minimum of Rs. 75 and a maximum of Rs. 750 upto Rupees one lakh and Rs. 1500 for value above rupees one lakh.

(2) Non Monetary disputes : Rs. 1500

1. The fees shall be paid in advance into the nearest Government Treasury. All petitions and applications presented under this rule shall bear court fee stamps as required under the Kerala Court Fees and Suit Valuation Act, 1959 (10 of 1960)

2. The Co-operative Arbitration Court or the Registrar or such other persons deciding the dispute or the Arbitrator shall have power to direct any party to the dispute to pay the costs of the other party with interest in appropriate cases and the interest awarded on the amounts decreed shall not exceed the contract rate from the date of the suit to the date of realization of the amount.

(11) In the proceedings before the Co-Operative Arbitration Court or Registrar or such other person deciding the dispute or the Arbitrator, legal practitioners shall not be entitled, as a matter of right, to appear to represent parties.

(12) The Government shall assess the business of the Presiding Officer of the Co-operative Arbitration Court periodically.

11. No rule or binding provisions has been brought to my notice requiring the Co-operative Arbitration Court to first decide on the maintainability of validity of the enquiry proceedings as a preliminary issue and then proceed to give further opportunity for the defendant to adduce fresh evidence. Therefore the order passed by the Arbitration Court cannot be said to be bad in law.

12. In any view of the matter, I am of the opinion that the action of the Tribunal in substituting its view for that of the Arbitration Court is not warranted under the facts and circumstances of the instant case. After examining the pleadings and the materials on record, the Arbitration Court had come to the conclusion that the petitioner had not been given a proper opportunity to substantiate his case before the Enquiry Officer. His absence on 2.1.2008 at the enquiry has resulted in his being declared to have not participated in the enquiry willfully. Without even setting the petitioner ex-parte, the Enquiry Officer had proceeded to find him guilty as charged. It is also been brought to the notice of this Court that all the other employees including the Secretary of the Society, who were also charge sheeted for the same offense had all retired during the pendency of the enquiry proceedings, and no action was taken against them. It appears that the petitioner was singled out since he continued in the service and the entire

responsibility has been cast on him and he is inflicted with the punishment of compulsory retirement. The finding of the Tribunal that the petitioner, who was working as a supervisor had knowledge about the directions contained in Annexure A5 letter regarding the method of issuance of utilization certificates, does not appear to be supported by any material.

13. In the above view of the matter, I am of the opinion that the interference by the Tribunal in Ext. P3 order of the Cooperative Arbitration Court was not warranted. However, in view of the facts and circumstances of the case, I am of the considered opinion that the back wages ordered in Ext. P3 Award should be limited to 25% of the back wages. Since the writ petitioner has crossed the age of superannuation, the benefits due to him will be computed and disbursed to him by the 1st respondent. The writ petition is disposed of accordingly. No costs.