**(1984) 07 PAT CK 0026**

**In the Patna High Court**

**Case No :** Civil Writ Jurn. Case No. 373 of 1977

Uma Shankar Sharan Shrivastava — APPELLANT

Vs

Bihar State Co-operative Marketing Union Ltd., Patna and Another — RESPONDENT

**Date of Decision :** 30-07-1984

**Acts Referred:**

**Citation :** AIR 1985 Patna 46 : (1985) PLJR 19

**Hon'ble Judges :** S. Shamsul Hasan, J;Hari Lal Agrawal, J

**Bench :** Division Bench

**Advocate :** Rameshwar Prasad and Amarendra Kumar Sinha, for the Appellant; Rama Raman, for the Respondent

**Final Decision :** Allowed

## Judgement

H.L. Agrawal, J.—This writ application arises out of a proceeding instituted against the petitioner u/s 48 of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter to be referred to as ''the Act'') in which an award for Rs. 18,365.16 has been made against the petitioner by the Joint Registrar, Cooperative Societies, Bhagalpur, on appeal.

2. The question that has been raised for our decision on behalf of the petitioner is that the claim was barred u/s 40 of the Act, and, therefore, the award should be quashed.

3. The relevant facts of the case shortly stated are as follows : --

Petitioner, at the relevant time, was Depot Managerat Masrakh. Sidhwalia and Banmankhi under the Bihar State Cooperative Marketing Union Ltd., Patna, from 12-7-1958 to 15-10-1966. While he was posted at Masrakh, on physical verification on 30-6-1959, a shortage of 33 tons 11 qunts. of coal valued at Rs. 1,516.04 was found and while he wasat Banmankhi, a shortage of 122 tons 1 quintals of coal valued at Rs. 7,242.97 was found in the year 1961. Further, a shortage of 122 tons of coal valued at Rs. 5,798/-was reported after the petitioner made over charge there on 10-8-1966. The value of the total shortage, therefore, came to Rs. 14.555.01. The Marketing Union filed a claim for the said amount along with interest thereon. The Board of Directors of respondeni No. I, made a reference to the Assistant Registrar of Co-operative Societies, Purnea for proceeding against the petitioner u/s 48 of the Act for making an award against him. The Assistant Registrar absolved the petitioner from all the liabilities by his order dt. 2-4-1971. vide annexure-1.

4. Then an appeal was filed by respondent No. 1 before the Joint Registrar, Co-operative Societies at Bhagalpur, who by his order dt. 13-11-1971 (annexure-2) allowed the appeal and held the petitioner liable for the amount mentioned above. The petitioner''s revision petition before the Registrar, Cooperative Societies, Bihar, Patna, was wilhdrawn, vide annexure-3, as not maintainable.

5. While admitting this application, this court had stayed the operation of the order contained in annexure-2. Although no counter-affidavit has been filed on behalf of the respondent, a long application for vacating the order of ad interim stay was filed stating the facts. The said application was rejected after directing the petitioner to furnish sureties to the extent of Rs. 9,000/-

6. As already indicated above, the main argument made on behalf of the petitioner was that the nature of the demand fell under the mischief of Section 40 and not u/s 48 of the Act and, therefore, six years limitation would apply in this case.

7. In order to understand the argument, it is necessary to examine the ambit and scope of both the provisions of Sections 40 and 48 of the Act.

8. Section 40 deals with the liability of a person who has taken part in any organisation or management of the society as well as of its past or present officer. It is for making an order requiring him to contribute such sum to be determined by the Registrar as appears to him that such person has

(a) made any payment which is contrary to law or to the rules or bylaws of the society or is against the directions or instructions of the financing bank for which the society is acting as agent under Sub-section (3) of Section 16 or

(b) by reason of his culpable negligence or misconduct, involved the society or the financing bank for which it is acting as agent under Sub-section (3) of Section 16 in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have-been brought into account, or

(d) misappropriated or fraudulently retained any property of the society or of the financing bank for which it is acting as agent under Sub-section (3) of Section 16.

These liabilities have been described as ''Surcharge'' in the very heading of Section 40.

 

9. Section 48, on the other hand, deals with certain kind of ''dispute'' and reads as follows : --

Section 48(1) :-- If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises : --

(a) amongst members, past members, persons claiming through members, past members pr deceased ''members, and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or (c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) between the society and any other registered society; or,

(e) between a financing bank authorised under the provisions of Sub-section (1) of Section 16 and a person who is not a member of a registered society.

10. The stand of the respondents was that the claim of the respondent No. 1 was covered by Section 48 of the Act as it was a dispute touching the business of the society and was not a case of surcharge within Section 40 of the Act.

Mr. Rama Raman, who appeared for the respondents, took the same stand. But on examination of the ambit of Section 48 of the Act, it is difficult to accept his contention. It is wetl-known proposition of law that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision (Generalia specialibus non derogant). Section 48 of the Act, no doubt, speaks of disputes touching the business of a society, but, at the same time, that dispute must arise under any of the conditions or circumstances mentioned in the various clauses of that section. The only clause, which speaks of a dispute touching the case of a servant of the society is clause (b) and that also says that the dispute relating to the servant of the society must be between a member or his successor, on the one hand, and the servant, on the other hand. In other words, the scope of the dispute contemplated u/s 48 is entirely different from the kind of dispute with which we are concerned in this case.

I may usefully refer to the case of Purnea Ministerial Government Officers'' Co-operative Society Ltd. v. Abdul Quddus 1963 BLJR 969 where also it was held that a reference made to an Assistant Registrar for an award u/s 48 of the Act being not a dispute within the meaning of Section 48, the Assistant Registrar had no jurisdiction to make the award and, therefore, it was barred by limitation u/s 63 of the Act. Therefore, it is clear that every claim or demand cannot he put under the cover of Section 48 of the Act. Here the respondent society held the petitioner liable for shortage of properties put under his custody and charge which allegedly arose by reason of his negligence or misconduct. The matter is, therefore, fully covered by Clause (b) of Section 40(1) of the Act and not u/s 48. Once this position is understood then the period of six years limitation has got to apply. The very proviso to Sub-section (I) of Section 40 lays down that no order shall be passed under this Sub-section in respect of any ''act or omission'' mentioned in clauses (a) to (d) except within six years of the date on which such act or omission occurred.

11. We have seen that the reference was made to the Assistant Registrar in the year 1968, and the order was passed by the Joint Registrar (annexure-2) on 15-11-1972 on appeal with respect to shortages which, in any case, occurred prior to 15-10-1966.

In support of above view, I may refer to a Bench decision of this court in the case of Madhav Prasad Singh v. the Assistant Registrar, Co-operative Societies, Biharsharif Circle (CWJC 82/79) dt. 6th July, 1984. In the order annexure-2 also, it is clearly mentioned that the physical verification at Masrakh was made on 30-6-1959. It is further stated therein that at Banmankhi, it was done on 30-6-1961 for which Rs. 7,242,97 has been claimed. These two claims, in any case, were apparently barred by time when the reference was made. With respect to the last item of claim for Rs. 5,796,00, it was determined on verification of the stock on 19-8-1966, vide annexure-2. Without going into the question as to when the ''act or omission'' in question, was done, it must be held that the award is barred as having been made beyond the period of six years even from the date of verification. The proviso providing the period of limitation speaks of passing of the order within the period of six years, unlike the periods fixed in the Limitation Act for initiating an action or starting a proceeding within the prescribed periods of limitation. It is something like the limitation fixed ''under the new Criminal PC for taking cognizance by a Magistrate. The date of instituting a criminal proceeding either by way of a first information report, or a petition of complaint is not relevant here. The relevant date is when the Magistrate takes cognizance for the offence.

12. Since the application must succeed on the question of limitation itself, it is not necessary to examine any other point in the matter.

13. The result of the above discussion is that this application is allowed and the order contained in annexure-2 is hereby quashed, but without any costs.

S. Shamsul Hasan, J.

I agree.

 