

U. P. Cooperative Cane Union Federation Ltd. and Another

Vs

Liladhar and Others

Civil Appeal No. 433 of 1977

(D. A. Desai, P. N. Shinghal JJ)

27.08.1980

JUDGMENT

DESAI, J. –

1. How technical plea of want of jurisdiction has pushed a petty employee from pillar to post since April 1964 and pilloried him with cost presumably unbearable by him, is shockingly demonstrated in this case.
2. First respondent joined service as a petty employee in Cane Development Department of the U. P. State Government somewhere in 1949. On the formation of the U. P. Cooperative Central Union Federation Ltd. (hereinafter referred to as 'the first appellant'), services of the first respondent stood transferred and were put at the disposal of the appellant and he was styled as Supervisor. At the relevant time he was rendering service under the second appellant, District Cooperative Sugar-cane Development Society Ltd. (now designated as Zila Sahkari Ganna Vikas Samiti Ltd.), Budayun, a federating unit of the first appellant and was incharge of manure godown. He was suspended from service with effect from October 18, 1958. A prosecution was launched against him for embezzlement of funds of the second appellant in that he failed to account for 293 1/2 bags of ammonium sulphate entrusted to him as keeper to manure godown. The case ultimately resulted in the acquittal of the first respondent by the High Court. Disciplinary proceedings were commenced against him on the same charge and ultimately he was dismissed from service on April 4, 1964. First respondent filed a suit being O. S. No. 30/64 in the Court of Civil Judge, Budayun, inter alia, for a declaration that the order dismissing him from service was invalid and void and for a further declaration that he continued to be in service and for arrears of pay till the date of the suit. In the written statement filed on behalf of defendants (present appellants) a number of contentions were raised but only one may be noticed for the present appeal. The contention was that the dispute involved in the suit was between an employee of a Cooperative Cane-Growers' Society and the Society and, therefore, Civil Court had no jurisdiction to entertain the suit but the plaintiff must approach the Registrar of Cooperative Societies for reference of dispute to arbitration. The trial Court decreed the suit as per judgment dated May 24, 1967, and granted the declaration prayed for. The appellants preferred an appeal being Civil Appeal 9 of 1967 to the Court of District Judge, Budayun, who allowed the appeal holding that the Civil Court had no jurisdiction to entertain the suit inasmuch as the dispute was between an officer of a cooperative society and the society and the dispute was touching the business of the society and, therefore, Rule 115 of the Cooperative Societies Rules enacted by the U. P. Government in exercise of the rule-making power conferred by Section 43 of the Cooperative Societies Act, 1912 (hereinafter referred to as 'the 1912 Act') in its application to the U. P. State would be attracted and the dispute will have to be resolved by arbitration by the Registrar. In accordance with this finding the appeal was allowed and the suit was

dismissed. First respondent preferred Second Appeal 582 of 1971 to the high Court of Judicature at Allahabad. The learned single Judge allowed the appeal holding that as the first appellant is governed by U. P. Sugar-cane (Regulation of Supply and Purchases) Act, 1953 ('1953 Act' for short), it being both a Cooperative Society and a Cane-Growers' Cooperative Society and in case of an officer or servant of such cane-growers' cooperative society any dispute between its officers and servants and such society would be governed by Rules 54 and 55 framed under 1953 Act which provide a complete machinery for resolution of disputes and Rule 108 does not encompass dispute arising out of a disciplinary proceeding between such society and its officers and servants and, therefore, in the absence of such provision for compulsory arbitration of such dispute the jurisdiction of the Civil Court is not barred. The learned Judge accordingly allowed the appeal and remanded to suit to the first appellate Court for decision on merits. Hence this appeal by special leave by original defendants.

3. The only contention that falls for consideration in this appeal is whether the Civil Court has jurisdiction to take cognizance of suit arising out of a disciplinary proceeding held by a Cane-Growers' Cooperative Society, governed both by 1912 Act and 1953 Act against its employee or such dispute falls exclusively within the jurisdiction of the Registrar under the Cooperative Societies Act to be resolved by arbitration alone. A brief survey of the relevant provisions is necessary for the effective disposal of this contention.

4. When the suit was filed in the year 1964 the Cooperative Societies Act, 1912, as adopted and applied by U. P. State was in force in U. P. State. The expression 'officer' has been defined in Section 2 (d) of the Act as under :

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, -

(a) 'officer' includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the bye-law to give directions in regard to the business of the society.

Section 43 conferred power on the Local Government to make rules to carry out the purposes of the Act for the whole or any part of the province, on various topics enumerated in various sub-clauses of the section. Clause (1) of Section 43 (2) is relevant. It reads as under :

43. (1) The State Government may, for the whole or any part of the State and for any registered society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may -

(i) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision, or if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or

arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators.

5. Armed with this power the U. P. State enacted what is styled as U. P. Cooperative Societies Rules, 1936. Rule 115 of the Rules reads as under :

115. Any dispute touching the business of a registered society (i) between members or past members of a society or persons claiming through a member or past members, (ii) or between a member or a past member of persons so claiming and the society and the society or its committee or any officer of the society, (iii) between the society or its committee and any officer of the society, and (iv) between two or more registered societies, shall be decided either by the Registrar or by arbitration and shall for that purpose be referred in writing to the Registrar.

Explanation 1. - A dispute shall include claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party.

Explanation 2. - An officer shall include a person appointed for the supervision of the society.

Explanation 3. - The business of a society includes all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers of a society.

This Rule 115 has to be interpreted in the light of Rule 134 which reads as under :

134. A decision of an arbitrator or arbitrators under these rules if not appealed against within the said period and an order of the Registrar shall, as between the parties to the dispute, not be liable to be called in question in any civil or revenue court and shall in all respects be final and conclusive.

6. There is another Act which has a bearing on the topic under discussion styled as U. P. Sugar-cane (Regulation of Supply and Purchases) Act, 1953. It is an Act enacted to regulate the supply and purchase of sugar-cane required for use in sugar factories and gur, rab or khandsari sugar manufacturing units and matters incidental or ancillary thereto. It contemplates setting up of a Sugar-cane Board and provides for its functions and duties and the methods of filling up vacancies and regulating its finances. Section 20 confers power on the Governor to impose by a notification a cess not exceeding the amount prescribed in the section on the entry of sugar-cane into an area specified in such notification for consumption, use or sale there. Section 28 confers power on the State Government to make rules for the purpose of carrying into effect the provisions of the Act. Clause 2 (n) in this behalf is relevant. It reads as under :

28. Power to make rules.-(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of foregoing power, such rules may provide for -

(n) the constitution, operation, management, supervision and audit of Cane-growers'

Cooperative Societies and Councils and the U. P. Cane Unions Federations and conditions relating to recognition of such societies or their federation for purposes of this Act and Rules and control of their staff and finances.

6-A. Armed with this power the U. P. Government enacted the U. P. Sugar-cane (Regulation of Supply and Purchases) Rules, 1954. The relevant rules relied upon are Rules 54, 55 and 108. They may be reproduced in extenso :

54. The power to appoint, grant leave of absence to, punish, dismiss, transfer and control Secretaries, Assistant Secretaries and Accountants of Cane-growers' Cooperative Societies, whether permanent or temporary, shall be exercised by the Federation subject to the general control of the Cane Commissioner who may rescind or modify any order of the Federation :

Provided that the Cane Commissioner may himself exercise any of such powers in case of emergency.

55. Similar powers as stated in Rule 54 may be exercised by the society in respect of the other staff, subject to the regulations made by the Federation and the general control of the Cane Commissioner.

108. Any dispute touching the business of (a) a Cane-growers' Cooperative Society between members, or between members and society, or between two registered societies, or between a society and a factory, or between a Cane-grower and a factory, (b) a council and a Cane-growers' Cooperative Society, or between a council and a factory or between a council and a cane-grower, regarding the payment of contribution to a council by a society or a factory and any other dispute relating to the business of a council, shall be referred to the Cane Commissioner for decision. The Cane Commissioner shall decide it himself or refer it to arbitration. No suit shall lie in a Civil or Revenue court in respect of any such dispute.

7. Having and the survey of the relevant provisions of the Acts and the Rules attention may now be focused on the main and the only controversy in the appeal whether in 1964 when the first respondent as plaintiff filed the suit for a declaration that the order dismissing him from service passed by the first appellant is void and for a declaration that he continues to be in service of the first appellant, in the Civil Court at Budayun, that Court had jurisdiction to entertain the suit or not. First appellant is a Federation of Cane-Growers' Cooperative Societies and second appellant is a federating unit of first appellant. At the relevant time first and second appellants were governed by the 1912 Act as well as by the 1953 Act. Each as a Cooperative, Society would be governed by the 1912 Act and each as a Cane-Growers' Cooperative Society and its federation, for the purpose of regulation of supply and purchase of sugar-cane, would be governed by the 1953 Act.

8. The question is whether the Civil Court would have jurisdiction to entertain a suit in 1964 filed by an employee of a cooperative society against the Cooperative Society for a declaration that the order dismissing him from service is void and for a declaration that he continued to be in service with an alternative prayer for damages ? This contention may be examined first, inter alia, under the provisions of 1912 Act and rules framed thereunder and subsequently whether the application of the 1953 Act will have any impact on the conclusion.

9. We have extracted above the definition of the expression 'officer' in 1912 Act. Undoubtedly, it is an inclusive definition. If only the officers enumerated in the definition are comprehended within the expression 'officer', the first respondent is not an officer in the sense that he was neither a chairman, secretary, treasurer, nor a member of the committee. But the expression 'officer' also embraces such other person empowered under the rules or the bye-laws to give directions in regard to the business of the society. If ejusdem generis canon of construction were to be invoked in construing the expression 'officer', the expression 'other persons' must take colour from the words preceding it and accordingly other persons therein envisaged must have some semblance of comparison in respect of power and authority to give directions with regard to the business of the society with the enumerated persons such as chairman, secretary, treasurer or member of the committee. If every employee of the society were to be an officer it would not be necessary for the legislature to provide that persons other than chairman, secretary, treasurer or member of the committee must be such who must have under the rules or the bye-laws the power to give directions in regard to the business of the society. First respondent was at the relevant time a supervisor in charge of manure godown drawing a salary of Rs. 150 p. m. Nothing has been pointed out to us by the appellants with reference either to the rules or bye-laws that first respondent as supervisor was empowered by any rules or the bye-laws to give directions in regard to the business of the society. First respondent thus not being either chairman, secretary, treasurer or member of the committee, or such other person shown to have been empowered under the rules or the bye-laws to give directions in regard to the business of the society, unquestionably he was not an officer of the society. We are conscious of the fact that the definition widens the etymological meaning of the expression or term including therein that which would ordinarily not be comprehended therein. Firstly, keeping apart the expansive definition by including officers who would otherwise not be comprehended in the expression 'officer', it may be necessary to ascertain whether first respondent, giving the expression 'officer' its ordinary etymological meaning, would be comprehended therein. It may be noticed that the legislature never intended to include every employee or servant of the society within the expression 'officer. There is some element of a right to command in the word 'officer' with someone whose duty it would be to obey. If there is an officer ordinarily there will be someone subordinate to him, the officer enjoying the power to command and give directions and subordinate to obey or carry out directions. It may be that even one who is to carry out directions may be an officer in relation to his subordinates. Thus, what is implicit in the expression 'officer' is made explicit by the latter part of definition which provides that such other person would also be an officer who is empowered under the rules and bye-laws to give directions with regard to the business of the society. If it is contended that a particular person is an officer because he is empowered to give directions with regard to the business of the society, it would be a question of fact in each case whether a particular person is an officer or a servant or an employee. Unless the appellants are in a position to point out that first respondent was an officer in the sense that he had power to command and insist on subordinates to obey his directions with regard to business of the society, it would be difficult to believe that a person designated as supervisor drawing a salary of Rs. 150 and in charge of manure godown would be an officer. In this connection it would be advantageous to refer to Section 43 (g) of the 1912 Act which confers power on the Local Government to make rules providing for the appointment, suspension and removal of the members of the committee and other officer, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers. No rule enacted in exercise of this power was pointed out to us to assert that first respondent would be such officer as contemplated in Section 43 (g).

10. Some illustrative cases were relied upon to point out that a godown keeper would not be an

officer within the meaning of Section 2 (d). In *Cooperative Central Bank v. Trimbak Narayan Shinganwadikar*, an accountant serving in a cooperative bank was held not be an officer of the bank inasmuch as he had no power to give any direction in regard to the business of the society nor was any rule framed empowering an accountant to give directions. He was held to be a servant of the society falling outside the definition of the expression 'officer'. In *Manjeri S. Krishna Ayyar v. Secretary, Urban Bank Ltd*, a legal adviser of a cooperative society was held to be an officer of the society within the meaning of Section 2 (d). In *Kailash Nath Halwai v. Registrar, Cooperative Society, U. P.*, a Division Bench of the Allahabad High Court speaking through Raghubar Dayal, J. (as he then was), held that a manager of a shop run by a cooperative society was an officer of the society on the finding that he was in a position to give directions in regard to the business of the shop, a business which was included in the business of the society. The vital contention in this matter was whether Rule 115 of the U. P. Cooperative Societies Rules, 1936, was ultra vires, and it was so held. However, this decision was specifically overruled by a Full Bench of the Allahabad High Court in *Abu Bakar v. District Handloom Weavers' Cooperative Society, Mau*, in which it was specifically held that Rule 115 of the Rules framed under the Cooperative Societies Act, 1912, is not ultra vires.

11. On a conspectus of these decisions and the definition of the expression 'officer', both expansive definition and its etymological sense, first respondent a supervisor working as a godown keeper could not be styled as an 'officer' of the Cooperative Society.

12. The next limb of the argument is whether Rule 115 enacted in exercise of power conferred by clause (1) of Section 43 (2) confers power to make rules providing for resolution of disputes envisaged by the clause between the parties contemplated by the clause by the Registrar by arbitration. In exercise of this power Rules 115 and 134 have been enacted. When Rules 115 and 134 are read in juxtaposition it becomes clear that if the dispute is one contemplated by Rule 115 and arises between the parties therein envisaged it shall have to be resolved by referring the same to the registrar who will have to get it resolved by arbitration either by himself or by arbitrator or arbitrators appointed by him. Rule 134 provides that a decision of an arbitrator or arbitrators under the rules, if not appealed as therein provided, shall be final as between the parties in dispute and not liable to be called in question in any civil or revenue court and shall in all respects be final and conclusive. If, therefore, the 1912 Act confers power to enact rules and the rules and the rules so enacted are statutory and if the rules provide for certain types of disputes between certain specific parties to be resolved by arbitration and the decision of the arbitrators is made final and conclusive, not correctible by the civil court or unquestionable before the civil court, undoubtedly, the jurisdiction of the civil court in respect of such specified disputes between specified parties enumerated in Rule 115 would be wholly excluded.

13. The question boils down to this : Is a dispute between an employee other than an officer of a cooperative society and the society arising out of a disciplinary proceeding one which would fall within the ambit of Rule 115 ? Clause (iii) of Rule 115 was relied upon by the appellant to urge that such a dispute would be one touching the business of a registered society and it would be one between the society and its committee and any officer of the society. This contention would stand disposed of in view of our finding that the first respondent is not an officer of the society. In order to attract Rule 115 it must be shown (i) that the dispute is the one touching the business of the cooperative society; and (ii) that it is between the society and any officer of the society. Both the conditions have to be cumulatively fulfilled before Rule 115 is attracted which would result in ouster of the jurisdiction of the Civil Court in respect of dispute in view of the provision contained in Rule 134.

14. The first question is, whether a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of a cooperative society is one touching the business of the society. It is unnecessary to dilate upon the aspect in view of the two decisions of this Court.

15. In Deccan Merchants Cooperative Bank Ltd. v. M/s Dalichand Jugraj Jain, Section 91 of the Maharashtra Cooperative Societies Act, 1968, came up for consideration before this Court. After analysing the section and observing that five kinds of disputes are enumerated in sub-section (1) of Section 91, the fifth being disputes touching the business of a society, the court held as under : "It is clear that the word 'business' in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word 'business' has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules, and its bye-laws." Proceeding from this angle the court held that the dispute between a tenant of a member of the bank in a building which has subsequently been acquired by the bank cannot be said to be a dispute touching the business of the bank. In reaching this conclusion, this Court disapproved the view in Kisanlal v. Cooperative Central Bank Ltd., which was relied upon before us. Confirming the view in the Deccan Merchants Cooperative Bank, this Court in Cooperative Central Bank Ltd. v. Additional Industrial Tribunal posed a question to itself whether the dispute between the cooperative society and the employee touches the business of the society in the sense explained by this Court in that case. The Court answered the contention as under : (SCC p. 51, para 7)

Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under Section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word 'business' is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society.

16. Therefore, on the strength of the aforementioned two decisions it has to be held that a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of the society cannot be said to be a dispute-touching the business of the society.

17. To some extent this conclusion can be reinforced by reference by the U. P. Cooperative Societies Act, 1965, which repealed and replaced the Cooperative Societies Act, 1912, in its application to the State of U. P. Section 70 of the 1965 Act provides for settlement of disputes. The relevant portion reads as under :

70. Disputes which may be referred to arbitration. - (1) Notwithstanding contained in any law for the time being in force, if any dispute relating to the constitution, management of the business of a cooperative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises -...

10. It will be crystal clear that while making a statutory provision for resolution of disputes involving cooperative societies by arbitration by the Registrar, the legislature in terms excluded a dispute relating to disciplinary action taken by the society against paid servants of the society from the purview of the compulsory arbitration. It is legislative exposition of the topic under discussion. It must, however, be made distinctly clear that at the relevant time 1912 Act was in force and the contention has to be answered with reference to 1912 Act and the rules framed thereunder. It is, however, difficult to believe that the 1965 Act which repealed and replaced the 1912 Act excluded from the field of operation that which was already included under the repealed Act. On the contrary it would appear that what was implicit in the 1912 Act and the rules framed thereunder that such a dispute did not touch the business of the society and was not within the purview of the compulsory arbitration, was made explicit by expressly excluding it from the field of compulsory arbitration.

19. However, we would rest this judgment on the second limb of the submission in that not only the dispute must be one touching the business of the society but it must be between the cooperative society and its officer. First respondent being shown not to be one of enumerated officers of the society nor a person empowered to give directions in regard to the business of the society under the rules or the bye-laws, he would not be an officer within the meaning of the expression in 1912 Act. Any dispute between an employee not being an officer and the society would not attract Rule 115. In that view of the matter such a dispute would fall outside the purview of Rule 115 and it being a civil dispute the civil court will have jurisdiction to entertain and adjudicate upon the same.

20. The High Court approached the matter from an entirely different angle. The learned Judge held that this case would be governed by the 1953 Act and Rules 54 and 55 enacted in exercise of the powers conferred by Section 28 of the 1953 Act have provided a specific forum, viz., a reference to the Cane Commissioner and appeal to the State Government and as Rule 108 is not attracted the dispute is not required to be referred to arbitration and, therefore, the civil court will have jurisdiction to entertain the suit. With respect, it is difficult to subscribe to this view of the High Court. 1953 Act has been enacted to regulate supply and purchase of sugar-cane required for use in sugar factories gur, rab and khandsari manufacturing units. It envisages setting up of a sugar-cane board and the board was entrusted with the function pertaining to the regulation, supply and purchase of cane for sugar factories and for the maintenance of healthy relation between occupiers, managers, of factories, cane-growers, cooperative societies, etc. The Act also envisaged setting up of a development council and its functions have been enumerated in Section 6. On a survey of these provisions it appears that the Act was enacted to regulate relations between the cane-growers on one hand and sugar factories on the other. The expression "cane-growers' cooperative society" has been defined in Section 2 (f) to mean a society registered under the Cooperative Societies Act, 1912, one of the objects of which is to sell cane grown by its members and includes the federation of such societies registered under Section 8 of the said Act. The appellant is thus a cooperative society and it being a federation of such cooperative societies it is also included in the expression "cane-growers' cooperative society". Section 28 (2) (a) of the Act was relied upon to show that the State Government has power to frame rules amongst others, for the control of the staff and finances. In

exercise of this power Rules 54 and 55 have been enacted. Rule 54 provides that the power to appoint, grant leave of absence, to punish, dismiss transfer and control secretaries, assistant secretaries and accountants of Cane-Growers' Cooperative Societies whether permanent or temporary shall exercised by the federation, subject to the general control of the Cane Commissioner who may rescind or modify any order of the Federation. There is a proviso which is not relevant for the present purpose. Rule 55 confers powers similar to those enumerated in Rule 54 to be exercised by the society in respect of other staff subject to the regulations made by the Federation and the general control of the Cane Commissioner. Shorn of embellishment, Rule 55 confers power on the Federation, namely, the first appellant, to make regulations for appointment, granting leave of absence, punishment dismissal and transfer of the staff other than those enumerated in Rule 54 and these regulations have to be made subject to the general control of the Cane Commissioner. Rule 108 provides for compulsory arbitration of disputes therein mentioned and it is common ground that a dispute of the present nature under examination will not be covered by Rule 108 not being attracted, the civil court will have jurisdiction to entertain the present dispute. The High Court overlooked the fact that 1953 Act but the cane-grower not being a cooperative society it would not be governed by the 1912 Act. A cane-growers' cooperative society would be governed with regard to the provisions for law of cooperative societies by 1912 Act nor supersedes or supplants any provision of it. Therefore, some provisions of 1953 Act cannot override or supersede the provisions of 1912 Act and by mere reference to the provisions of 1953 Act the High Court was in error in totally overlooking and ignoring the provisions in 1912 Act and the rules enacted thereunder.

21. However, in view of our finding that the dispute brought before the Civil Court in this case was not a dispute between a society and its officer and, therefore, one of the conditions for attracting Rule 115 having not been satisfied, the Civil Court will have the jurisdiction to entertain the suit. For these reasons the decision of the High Court is confirmed. Accordingly this appeal fails and is dismissed with costs.

22. As the dispute is very old, we hope that it would be expeditiously disposed of by the learned District Judge to whom the matter was remanded by the High Court.

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