

ALLAHABAD HIGH COURT

Kailash Nath Halwai

Vs.

Registrar Co-operative Society

Special Appeal No.194 of 1957. against judgment and order of G. Mehrotra J.

(Raghubar Dayal and B. Upadhy, JJ.)

07.05.1957. 06.10.1959

JUDGMENT

Raghubar Dayal, J.

1. This is a special appeal against an order of Mr. Justice Mehrotra dismissing the appellant's writ petition under Article 226 of the Constitution.
2. The appellant was employed by the Consumers Co-operative Society, Kydganj, Allahabad, as a Manager of one of the shops run by the Society. The appellant deposited Rs. 3,000/- for security. He claimed this amount and a sum of Rs. 355/- as his dues from the Society. The Society urged certain claims of its own against the appellant and ultimately referred the dispute with respect to its claim against the appellant to the Registrar in view of Rule 115 of the Rules framed under Section 43 of the Co-operative Societies Act 1912. The Registrar made over the dispute to the arbitrator. The arbitrator gave his award holding that the appellant should pay Rs. 895/11/- as principal, Rs. 233/- as interest and Rs. 15/- as other charges to the Society. He also awarded future interest on the amount of the principal from the date of the judgment at the rate of 6 1/4 per cent. per annum.
3. The appellant then preferred an appeal to the Registrar Co-operative Societies, U. P. Lucknow. One of the grounds in the memorandum of appeal was that in view of the provisions of Section 43(2)(1) of the Co-operative Societies Act, 1912 no reference to arbitration could be made. This appeal was dismissed by the Assistant Registrar, Co-operative Societies, U. P., Lucknow. Thereafter the appellant filed the writ petition which was dismissed by the order under appeal.
4. Learned counsel for the appellant raised three contentions in this Courts. The first is that the appellant was not an Officer of the Society; the second is that Rule 115 was ultra vires of the Legislature in so far as it provided that the dispute between the Society or its Committee and any

officer of the society touching its business shall be decided either by the Registrar or by arbitration and shall for that purpose be referred in writing to the Registrar as it went beyond the rule-making power conferred on the Government under Section 43 sub-sec. (2) clause (1); the third point is that a reference to the arbitrator of a dispute between the society and an officer who had ceased to be an officer of the society could not be made under Rule 115.

5. We did not allow the learned counsel to make submissions on the third point which was not taken before the learned Judge and which was not even mentioned in the petition. It is nowhere stated in the petition that the appellant had ceased to be the officer of the society prior to the making of the reference. We agree with the learned Judge that the appellant was an officer of the society.

6. The contention of the appellant on the second point is that the word 'officer' includes such a person who could guide the policy of the society. Support for such a contention is sought from the definition of the word 'officer' in clause (d) of Section 2 of the Co-operative Societies Act, 1912. That clause states :

"2(d) 'Officer' includes a chairman, secretary, treasurer, member of committee or other persons empowered under the rules or the by-laws to give directions in regard to the business of the society."

The expression 'officer' is not exhaustively defined by this clause. It only mentions what persons would be included in that term, of course, in addition to the persons who would ordinarily answer that description. The word 'officer' would ordinarily mean a person holding some office, and it is not open to much argument that the appellant, as the Manager of one of the shops run by the society, was holding the office of a Manager and was thus an officer of the Society. Further, 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 and, therefore, the appellant comes within what is stated in clause (d) of Section 2 of the Act. We, therefore, agree with the learned Judge that the appellant was an officer of the Society.

7. The relevant portion of Section 43 of the Act is :

"43(1) The local Government may, for the whole or any part of the province 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-

.....

.....

(1) 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.

.....

It is contended for the appellant that a dispute between a society and an officer does not come within the provisions of clause (1). The contention has force and we agree with it. Clause (1) may contemplate :

- (1) a dispute between the members of the society inter se;
- (2) a dispute between the past members of the society inter se;
- (3) a dispute between persons claiming through a member or past member;
- (4) a dispute between a member or past member;
- (5) a dispute between persons claiming to be a member or a past member;
- (6) a dispute between any of the persons mentioned against nos. (1) to (5) as one party and (a) the committee or (b) an officer as the other.

This seems to exhaust all the possible disputes and does not include a dispute between the society and an officer of the society. The contention for the respondent that a dispute between a Committee and an officer is also contemplated by the provisions of clause (1) necessitates the introduction of the word "between" after the word "and" and before the words "the committee" and also reading the word "or" between the words "committee" and "officer" as "and". In that case it would be impossible to contemplate a dispute between the members of the society and the committee or any officer to come within the purview of this clause. It is obvious that such an interpretation could not have been contemplated by the legislature as it is essentially in the interest of the members and the society that any dispute between them be disposed of more simply and quickly than is possible under the ordinary procedure for a suit. If the word "and" is to be read as "or" as suggested by the learned Junior Standing Counsel, we are unable to give any meaning to the expression "or between a member or past member or person so claiming or the committee or any officer". Further a dispute between a committee and an officer is not necessarily a dispute between the society and an officer. We are, therefore, of opinion that the provisions of clause (1) do not include a dispute between a society committee and an officer.

8. In this connection we have been referred to the cases reported in (*Babu Ram v. Co-operative Seeds Stores*¹) and *Debi Dat Joshi v. B. Co-operative Development Union*² They are not to the point. The validity of Rules 115 and 116 was considered in the first case with reference to a dispute between a person claiming to be a member and a registered society. In the 1956 all. LJ 950 the question considered was whether the case of an Ex-Officer was covered by rule 115. In considering this question it was stated that Rule 115 covered a dispute between a society and an

officer.

9. It is further contended for the respondent that clause (1) of sub-section (2) of Section 43 is not exhaustive with respect to the extent of the rule-making power of the Government under sub-section (1) of section 43 which empowers the local Government to make rules to carry out the purposes of this Act. This is correct but there is nothing in the Act which deals with the determination of any dispute between a society or a committee and officers of the society. It is not, therefore, possible to say that a rule with reference to a dispute between the Society and an officer is to carry out the purposes of the Act.

¹1954 All LJ 344: AIR 1954 All 490

²1956 All LJ 950

The preamble of the Act says that the Act is enacted as it was expedient further to facilitate the formation of the co-operative societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means. This object of the Act does not cover the object of simplifying the procedure for the settlement of disputes between the society and its officers. This object may cover the case of a dispute between two different societies as held in *Salaried Employees Co-operative Housing Society Ltd. v. Reg. Co-operative Societies*³ In our opinion it does not cover the case of any dispute between the society and an employee of the society. The employment is by the society but it is really a matter independent of what is provided for by the Co-operative Societies Act. The relationship between the society and the employee is that of a master and servant, and any dispute arising between them in the absence of any express provision in the Act is to be governed by the ordinary law.

10. We are, therefore, of opinion that Rule 115 is void so far as it provides for the reference of a dispute between the society and an officer of the society to the Registrar or by him to the arbitrator, and that the dispute between the society and the appellant with respect to the society's claim against him could not have been referred to the arbitrator.

11. It is further contended for the respondents that the appellant did not take the objection about the validity of the reference before the arbitrator, and that therefore he cannot be granted the relief of certiorari quashing the award of the arbitrators. This contention finds support from the case *Panna Lal Binjraj v. Union of India* It was observed there at p. 412:

"If they acquiesced in the jurisdiction of the Income-tax Officer to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court."

Paragraph 5 of the counter affidavit stated inter alia

"There is nothing on the record to show that the petitioner did not agree to this arbitration. In fact, he appeared before Sri P. Singh, who was appointed the sole Arbitrator to hear the

above dispute between the parties and put his case before him."

This statement can mean only this that the appellant had not protested against the jurisdiction of the arbitrator to decide this dispute. The appellant did not file any rejoinder affidavit to state that he had raised the objection. The award of the arbitrator, annexure B to the affidavit accompanying the petition makes no mention that any such objection was raised for the appellant. In the circumstances we hold that the appellant did not question the jurisdiction of the arbitrator to decide this dispute and that, therefore, he is not competent to raise this question now in a petition under Article 226 of the Constitution. The fact that he raised this objection in this appeal to

³1953 All LJ 460 : AIR 1954 All 31

⁴AIR 1957 SC 397

the Registrar, Co-operative Societies, U. P. Lucknow against the award does not affect this question. An objection to jurisdiction should have been taken in the first instance.

12. In view of the above, we dismiss the appeal and make no order about costs.
Appeal dismissed.