

ALLAHABAD HIGH COURT

Abu Bakar

Vs.

District Handloom Weavers' Co-operative Society

First Appeal No. 456 of 1954, against decree of Civil Judge, Azamgarh in Original
Suit No. 29 of 1962
(V.G. Oak, S.K. Verma and G. Prasad, JJ.)

11.02.1965

JUDGMENT

S.K. Verma, J.

1. A Division Bench of this Court has referred three questions for answers by a larger Bench. This Full Bench has been constituted for that purpose. The three questions referred are these :-

1. Whether R. 115 of the Rules framed under the Co-operative Societies Act is ultra vires the powers of the Government in so far as it authorizes the reference of a dispute between the Society or its committee and any officer of the society to the Registrar to be decided by the Registrar himself or by an arbitrator nominated by the Registrar ?
2. In case the answer to the above question is in the negative, whether the expression 'officer' must be construed as including a past officer ?
3. If so, whether past officer must : be construed as referring only to a person who was an officer of the society until the dispute arose, but had ceased to be an officer before the dispute was referred by the society, or also to a person who was an officer at the time business of the society which gave rise to the dispute had been transacted, but had ceased to be its officer before the dispute arose ?

2. A dispute arose with regard to rendering of accounts between the plaintiffs-appellants and the defendant-respondent No. 1, the District Handloom Weavers' Co-operative Society, Man, district Azamgarh, Defendant-respondent No. 1 referred the dispute to the Registrar who sent it to defendant-respondent No. 2, the District

Cooperative Officer, Azamgarh, for arbitration. On the reference two suits, Nos. 79 and 80 of 1951 and 1952, were registered before the arbitrator, defendant-respondent No. 2. The plaintiff-appellants thereupon filed a suit for a declaration that the District Co-operative Officer was not a validly constituted Tribunal for deciding the dispute between the appellants and defendant-respondent No. 1. The suit was dismissed by the learned Civil Judge of Azamgarh.

3. The case of the appellants was that they were neither members nor officers of defendant-respondent No. 1 and, that, therefore, the reference to the arbitrator was without jurisdiction. A number of pleas were raised in defence giving rise to a number of issues, but we are concerned only with the issue whether the defendant-respondent No. 2 was a competent Tribunal for deciding the dispute between the parties. The defendants respondents relied upon Section 43 of the Co-operative Societies Act and R. 115 framed thereunder. The portions of Section 43 of the Act which are relevant for our purpose are reproduced below :-

"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 purpose 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."

Rule 115 framed under the Co-operative Societies Act reads as follows :-

"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 member, (ii) or between a member or a past member or persons so claiming

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 amount 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."

4. The appellants' contention is that Section 48, Sub-Section (2), clause (1) does not authorize the framing of rules for reference to arbitration of a dispute between the society or its committee and an officer of the society. It has, therefore, been argued that R. 115, at any rate, in so far as it provides for arbitration of a dispute between the society or its committee and an officer of the society, is ultra vires. Learned counsel for the appellants has relied upon *Kailash Nath Halwai v. Registrar Co-operative Society, U.P.*,¹ in which a Division Bench of this Court held that the relationship between the society and its 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. The Bench further expressed the view that Section 43, Sub-Section (2), clause (1) did not authorise the framing of rules for reference to arbitration of a dispute between a society and an officer of the society. In *Salaried Employees Co-operative Housing Society Ltd. v. Registrar Co-operative Societies*,² another Division Bench considered the question whether R. 115, in so far as it provided for arbitration of a dispute between two or more registered societies, was ultra vires. Malik, C.J. while delivering the judgement of the Bench observed as follows :-

"Learned counsel has also contended that R. 115 of the Rules is ultra vires as it is not covered by Section 43, Sub-Section (2), clause (1) of the Cooperative Societies Act, 1912. We are not satisfied that the second contention has any force. Section 43, Sub-Section (1) gives the State Government right to make rules to carry out the purposes at the Act for any registered society or class of

such societies. Sub-Section (2) starts with the words. "In particular and without prejudice to the generality of the foregoing power such rules may". No doubt clause (1) of Section 43, Sub-Section (2) does not deal with cases of disputes between two independent societies and is confined to cases of disputes between a society and its members or past members. But Sub-Section (1) is wide enough to include a dispute between two societies and the rules made thereunder are, therefore, perfectly valid. The reference of the dispute to arbitration and the award given by Tirlok Chand cannot, therefore, be said to be ultra vires or without jurisdiction."

This decision was considered by the Division Bench in 1960 All LJ 20 : AIR 1960 Allahabad 294 (supra). The Bench observed as follows :-

"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. 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 1953 All LJ 460 : AIR 1954 Allahabad 31. In our opinion it does not cover the case of any dispute between the society and an employee of the society."

In other words in Kailash Nath Halwai's case, 1960 All LJ 20 : AIR 1960 Allahabad 294, the Division Bench did not expressly dissent from the view taken by the Division Bench in the carrier case. It left the matter open by saying that a rule authorizing reference of a dispute between two or more registered societies may come within the object of the Act. We are of the view that there is a real conflict between the two Division Bench decisions referred to by us above. It has been argued by the learned

counsel for the appellants that Sub-Section (2) of Section 43 is restrictive of the power conferred by Sub-Section (1) of Section 43 of the Act and that a rule providing for anything not enumerated in Sub-Section (2) of Section 43 of the Act is ultra vires. A mere reading of Section 43, Sub-Section (2), clause (1) will make it obvious that there is no mention therein of a dispute between a society or its committee and an officer of the society, nor is there any mention of a dispute between two or more registered societies. It has, therefore, been contended that R. 115 in so far as it provides for reference to arbitration of disputes not mentioned in Section 43, Sub-Section (2), clause (1), is ultra vires. It has been contended, further, that if Sub-Section (2) of Section 43 had not been there, the position might have been different and it might have been possible to take recourse to the general power conferred by Section 43, Sub-Section (1). The question thus arises is whether Section 43, Sub-Section (2) of the Act is merely illustrative of the power conferred by Section 43, Sub-Section (1) or it is restrictive of that power.

We are of the opinion that the decision of their Lordships of the Privy Council in *Emperor v. Sibnath Banerji*,³ is conclusive on this point. Their Lordships of the Privy Council were considering Section 2 of the Defense of India (Amendment) Act, 1940 and the rules framed there under. The relevant portions of Section 2 of the Defense of India (Amendment) Act, 1940 are as follows :-

"2. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by Sub-Section (1), the rules may provide for, or may, empower any authority to make orders providing for all or any of the following matters, namely :

* * * *

(v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers or with States in India, or to prejudice the maintenance of peaceful conditions in the tribal areas, or to promote feelings of enmity and hatred between different classes of His Majesty's subjects :

* * * *

(x) the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing anything."

The material part of R. 26 framed under Section 2 of the Defence of India Act reads as follows :-

"26. (1) The Central Government or the Provincial Government, if it is satisfied with respect to any particular person that with a view to prevent him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order. His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions, in tribal areas, or the efficient prosecution of the war it is necessary so to do, may make an order,

(a)

(b) directing that he be detained."

In *Keshav Talpade v. Emperor*,⁴ the Federal Court while considering the vires of R. 26 of the Defense of India Rules had observed as follows :-

"We, therefore, reject the main argument addressed to us on behalf of the appellant, and, if there were nothing more in the appeal, we should dismiss it without further discussion. There is, however, another aspect of the case, which was not argued until the Court itself drew the attention of counsel to it; for it seemed to us that it was open to question whether R. 26 itself in its present form was within the rule making powers conferred by the Defence of India Act. If it is not within those powers, then it must be held void and inoperative, either in whole or in part; and the orders made under it will be similarly open to challenge.

* * * *

The Legislature having set out in plain and unambiguous language in para (x) the scope of the rules which may be made providing for apprehension and detention in custody it is not permissible to pray in aid the more general words in Section 2(1) in

order to justify a rule which so plainly goes beyond the limits of para (x); though if para (x) were not in the Act at all, perhaps different considerations might apply..... We are compelled, therefore, to hold that R. 26 in its present form goes beyond the rule making powers which the Legislature has thought fit to confer upon the Central Government and is for that reason invalid."

Their Lordships of the Privy Council did not agree with the view taken by the Federal Court and observed as follows :-

"Their Lordships are unable to agree with the learned Chief justice of the Federal Court on his statement of the relative positions of Sub-Sections (1) and (2) of Section 2, Defense of India Act, and counsel for the respondents in the present appeal was unable to support that statement or to maintain that R. 26 was invalid. In the opinion of Their Lordships, the function of Sub-Section (2) is merely an illustrative one; the rule-making power is conferred by Sub-Section (1), and "the rules" which are referred to in the opening sentence of Sub-Section (2) are the rules which are authorized by, and made under, Sub-Section (1); the provisions of Sub-Section (2) are not restrictive of Sub-Section (1), as indeed is expressly stated by the words "without prejudice to the generality of the powers conferred by Sub-Section (1)". There can be no doubt as the learned Judge himself appears to have thought - that the general language of Sub-Section (1) amply justifies the terms of R. 26, and avoids any of the criticisms which the learned Judge expressed in relation to Sub-Section (2).

Their Lordships are, therefore, of opinion that ILR (1944) Bom 183 , was wrongly decided by the Federal Court, and that R. 26 was made in conformity with the powers conferred by Sub-Section (1) of Section 2. Defense of India Act."

5. If we compare the opening portion of Sub-Section (2) of Section 43 of the Co-operative Societies Act with the opening portion of Sub-Section (2) of Section 2 of the Defense of India Act, we find that in the Defense of India Act the words used were simply these :

"Without prejudice to the generality of the powers conferred by Sub-Section (1), the rules may provide for, or may, empower any authority to make orders providing for all or any of the following matters, namely :"

In Sub-Section (2) of Section 43 of the Co-operative Societies Act the opening words are :

"(2) 'In particular' and without prejudice to the generality of the foregoing power, such rules may -" (the underlining (here into ' ') is ours).

We are of the view that the use of the words "In particular" in Sub-Section (2) of Section 43 of the Co-operative Societies Act makes it obvious that the matters enumerated in that sub-section were merely illustrative of the general power conferred by Sub-Section (1) of Section 43 of that Act. The Legislature considered the rules on matters enumerated in Section 43, Sub-Section (2), clause (1) necessary for carrying out the purposes of the Act. If the Legislature thought that a rule providing for reference to arbitration "of a dispute 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" was necessary for carrying out the purposes of the Act, there appears to be no reason for holding that a rule providing for reference to arbitration of a dispute between the society or its committee and any officer of the society is extraneous to the purposes of the Act and such a rule must be struck down as ultra vires. We should also like to add that the decision of their Lordships of the Privy Council in AIR 1945 PC 156 (supra), was followed by their Lordships of the Supreme Court in *Santosh Kumar v. The State*,⁵ and a Division Bench of this Court took the same view in *Kedar Nath Sethi v. Life Insurance Corporation of India*,⁶ We, therefore, find it impossible to hold that R. 115 in so far as it provides for arbitration of a dispute between a society or its committee and any officer of a society is ultra vires simply because there is no mention of such a dispute in Section 43, Sub-Section (2), clause (1) of the Co-operative Societies Act.

6. In consequence we hold that R. 115 of the Rules framed under the Co-operative Societies Act is not ultra vires.

7. The other question which arises for consideration is whether the word 'officer' in R. 115 also includes a past officer. In the present case the learned Civil Judge who decided the suit held that the appellants were past officers of the society. Whether that finding is correct or not is not a question with which we are concerned. Learned counsel for the appellants railed upon *Debi Dat Joshi v. Barrow Co-operative*

Development Union,⁷ in which Mehrotra, J., expressed the view that clause (iii) of R. 115 of the Rules framed under Rule 13 of the Co-operative Societies Act permits a reference to an arbitrator any dispute touching the business of a registered society between the society and its officers, but it does not contemplate a reference to an arbitrator of any dispute touching the business of the society between the society and a past officer. He felt that, if the framers of the rule had intended that disputes existing between a society and past officers could also be referred to arbitration, they should have used in clause (iii) similar words as in clause (i), such as 'members' and 'past members'.

It is true that the word 'past' has not been used with reference to an 'officer' while it has been used with reference to 'members'. In our view, however, that does not justify the conclusion that the word 'officer' means only a present officer and not a past officer. The interpretation to be put upon the words used in the relevant section and the rule must be consistent with commonsense. An officer of the society or the society or its committee may commit an act giving rise to a dispute subsequently to the officer's ceasing to be an officer. Whenever the act of such an officer is discovered, it will give rise to a dispute. There seems to be no rational basis for holding that such a dispute is not covered by R. 115 of the rules framed under Section 43 of the Co-operative Societies Act. It is possible to contemplate two types of cases. The act which consequently gives rise to a dispute may be committed by the officer or the society or its committee at a time when the officer had not ceased to be an officer of the society, or the act in question giving rise to the dispute may be committed by the officer after he had ceased to be an officer of the society. We are of the view that in the former case R. 115 would apply but not in the latter case. The question really is :

Was the act which gave rise to the dispute committed when the officer was an officer of the society ?

If the answer to this question is in the affirmative then R. 115 would apply irrespective of the fact that the dispute arose after he had ceased to be an officer of the society. In other words the question is :

"Did the cause of action arise when the officer was an officer of the society or had ceased to be an officer of the society ?

We are of the view that if the cause of action arose when the officer was an officer of

the society but the dispute and the reference of the dispute to arbitration was subsequent to his ceasing to be an officer of the society, R. 115 would be applicable.

8. For the reasons given above, our an to the three questions referred to this Full are as follows :-

Question No. 1. - No.

Question Nos. 2 and 3. - The word "officer" includes a past officer if the cause of action arose when he was an officer of the society.

9. Let the papers of this appeal be laid before the Bench concerned with the answers of the Full Bench.

Questions answered.

Cases Referred.

1. 1960 All LJ 20: AIR 1960 All 294
2. 1954 All LJ 460: AIR 1954 All 31
3. AIR 1945 PC 156
4. ILR (1944) Bom 183
5. AIR 1951 SC 201
6. AIR 1961 All 606
7. 1956 All LJ 950