

CALCUTTA HIGH COURT

Co-operative Milk Societies Union Ltd

Vs.

State of W.B

Matter No. 224 of 1957

(P.B. Mukharji, J.)

03.03.1958

ORDER

P.B. Mukharji, J.

1. This is an application under Article 226 of the Constitution. It raises the short but interesting point whether the dispute of the workers of a co-operative society with their employers can be referred to an Industrial Tribunal under the Industrial Disputes Act. Statutory conflict between the Bengal Co-operative Societies Act, 1940 and the Industrial Disputes Act, 1947 was debated at the Bar which statute should prevail is the problem posed. It is a point of first impression.

2. Its determination may be prefaced by a short account of some simple facts. The applicant is the Co-operative Milk Societies Union Ltd., a society registered under the Bengal Co-operative Societies Act. The respondents are the Fourth Industrial Tribunal, the Co-operative Milk Employees and Workers' Union which is a registered trade union under the Indian Trade Union Act, 1926 and the Government of West Bengal. The object of this society is promotion of the common interest of its members in accordance with the co-operative principles like thrift, self-help, mutual aid among persons of moderate means with needs and interests common among its members, for the betterment of conditions of living and better methods of production. The Co-operative Milk Employees and Workers' Union is a trade union formed by the servants of the applicant society. By an order, dated 25th April, 1957 the Government constituted the Fourth Industrial Tribunal and referred to it certain disputes mentioned in that order between the applicant Society and its servants for adjudication by the Tribunal. The disputes actually referred to for adjudication are (1) wages and wage scales and (2) dearness allowance.

3. The only objection of the applicant is that the Industrial Tribunal has no jurisdiction to try a dispute between a Co-operative society registered under the Co-operative Societies Act and its workmen. The argument is that the Bengal Cooperative Societies Act of 1940 is a special statute relating to co-operative societies the object of which as appearing in the preamble is inter alia:

"To make further provision for the formation and working of co-operative societies and for the promotion of thrift, self-help and mutual aid among persons of moderate means

with needs and interests in common to the end that better conditions of living and better methods of production and business may thereby result."

4. It is contended that this Act makes a special provision for settlement of disputes of this particular type of societies formed for these particular objects. Section 86 of the Bengal Co-operative Societies Act, 1940 provides:

"Any dispute touching the business of a cooperative society (other than a dispute regarding disciplinary action taken 'by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely, -

(a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society;

or

(b) a member, past member or person claiming through a member, past member or deceased member of the society;

or

(c) a surety of a member, past member or a deceased member of the society, whether such surety is or is not a member of the society;

or

(d) any other co-operative society or the liquidator of such society."

On the basis of this section it is urged that the dispute within the meaning of Section 86 of the Act shall be referred to the Registrar. Therefore, the Registrar is said to be the only authority to which reference of the dispute can be made and the Industrial Tribunal under the Industrial Disputes Act has no jurisdiction to entertain such a reference in respect of such a dispute.

5. Section 87 of the Act thereafter goes on to Provide:

(1) On receipt of a reference under S.' 86 the Registrar shall, subject to the rules:

(a) decide the dispute himself;

or

(b) transfer it for disposal to any person authorized by the State Government to exercise the powers of the Registrar in this behalf; or

(c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

(2) Subject to the rules, the Registrar may withdraw any reference transferred or referred under sub-section (1) and may deal with it himself in the manner provided in such rules."

On the basis of these two sections 86 and 87 it is also contended that the persons who can settle a dispute in a co-operative society under this Act is either the Registrar himself or a person to whom the Registrar transfers the dispute for adjudication provided that person is authorised by the State Government to exercise the powers of the Registrar in that behalf,

or one or more arbitrators appointed by the Registrar of the co-operative societies. It is, therefore, said that there is no scope for a reference to some other authority like the Industrial Tribunal under a different statute like the Industrial Disputes Act.

6. The argument is further fortified by reliance on the doctrine of *generalia specialibus non derogant*. It is argued that the Bengal Co-operative Societies Act, 1940 is the special statute exclusively dealing with co-operative societies and disputes in relation thereto. Mr. Sen Gupta appearing on behalf of the applicant contends that the Industrial Disputes Act is a general Act dealing with industrial disputes generally. Therefore, his argument is that a general statute dealing with industrial disputes generally should not be allowed to override specific provisions relating to settlement of disputes in respect to specific organizations like co-operative societies registered under the Bengal Co-operative Societies Act, 1940 which makes a special provision in this respect. There is considerable force in that argument and it requires a careful analysis not only because of the importance of the problem raised but also because this is a case of first impression.

7. Normally I would be prepared to hold in this case that disputes relating to co-operative societies were not intended to be referred to an Industrial Tribunal under the Industrial Disputes Act. The principle of co-operative societies is, as the name implies, one of co-operation and working together. The dominant idea is a common share in a common pool and the notion of employer and an employee is far less marked than it is in other establishments. As the preamble of the statute clearly indicates, the whole idea is to promote thrift, self-help and mutual aid among persons of moderate means with common ends and interests. It was not intended for big industries with large questions of labor involved. But this general attitude to co-operative societies under the Bengal Co-operative Societies Act, 1940 cannot be allowed to override conclusions that might be reached on a proper interpretation of the sections of the Act. It is, therefore, necessary to interpret the relevant provisions of the Bengal Co-operative Societies Act.

8. Sections 86 and 87 of the Bengal Co-operative Societies Act, 1940 appear in Ch. IX of that statute under the chapter heading "settlement of disputes". There is no doubt that they provide a complete self-contained code for settlement of disputes. But the kind of dispute that is intended to be referred to the Registrar has to be determined by the actual language used in Section 86 of the Act. It is not any and every dispute that is to be referred to the Registrar under Section 86. There is a limitation of the kind of dispute which can be referred to the Registrar. The significant words limiting the nature and type of dispute is contained in the expression "touching the business of a co-operative society" in Section 86 of the Act. It is, therefore, clear that the dispute has to touch the business of the co-operative society. Now a co-operative society can do many kinds of business which may certainly include businesses of industrial nature. Can a dispute between the co-operative society and its own workmen be said to be a dispute touching the business of a co-operative society. Strictly speaking, dispute between a co-operative society and its workmen does not relate to the actual business of a co-operative society and therefore does not touch the business of the co-operative society. Consequentially however a dispute between the co-operative society and its workmen may ultimately touch or affect the businesses of the co-operative society, I am inclined to think that the remote and the consequential result should not be included within the expression "any dispute touching the business of a co-operative society." I

am persuaded to accept that construction by the further consideration of the fact that a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society is expressly excluded from the purview of Registrar's jurisdiction by this section 86 of the Act. Legislature therefore did not intend that dispute regarding disciplinary action by the society against its paid servant should be settled by the Registrar. But then this singular exclusion of dispute regarding disciplinary action might be argued to impliedly include all other disputes such as industrial disputes, on the principle of 'expressio unius est exclusio alterius', specially when Section 86 (a) of the Act expressly refers to the society and its servant as disputing parties.

9. But the key to the solution of this problem appears in the definition of the word "dispute" in section 2 (j) of the Bengal Co-operative Societies Act, 1940 which provides :

"'dispute' means any matters capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by aco-operative society whether such claim be admitted or not."

The limitation in that definition is "capable of being the subject of civil litigation." Now here the dispute referred to the Industrial Tribunal is "wages and wage scales and dearness allowances". Wages, wage scales and dearness allowances do not appear to be fit or proper matters, capable of being the subject of civil litigation. What will toe the wage scale in an establishment cannot appropriately be the subject of a civil litigation. What should be the general wages or what should be the dearness allowances equally do not appear to be matters capable of being the subject of civil litigation. In that view, it appears that the express limitation of the 'dispute' in the Bengal Co-operative Societies Act excludes the present disputes which have been referred to the Industrial Tribunal from being the subject of settlement by the Registrar of the Co-operative Societies.

10. But the difficulties of the interpretation do not end here. "Dispute" as defined in section 2(j) of the Bengal Co-operative Societies Act is expressly said to include "a claim in respect of any sum payable to or by a co-operative society, whether such claim be admitted or not." Now a sum payable to or by a co-operative society surely can be the subject of a civil litigation and therefore it appears difficult to appreciate why that was specially included. It has therefore been argued by Mr. Sen Gupta that a claim for a particular wage or clearness allowance is ultimately a claim for a sum payable by a co-operative society and hence is a dispute within the meaning of the Bengal Co-operative Societies Act.

11. In interpreting the expression "a claim in respect of any sum payable to or by a co-operative society" appearing in section 2 (j) of the Bengal Co-operative Societies Act, 1940, I am of the opinion that the claim for fixing wages and wage scales generally and dearness allowances cannot be described as a "claim in respect of any sum which is payable," The question of "pay ability" of "a sum" in the context of that particular definition seems to be individual debt or individual sum of money and does not appear to include claims for a general wage scale and clearness allowances as a matter of collective bargain between labor and employer.

12. I am, therefore, of the opinion on a proper construction of the definition of the word "dispute" in section 2 (j) of the Bengal Co-operative Societies Act that neither of the two conditions (1)

"subject of civil litigation" and (2) "any sum payable" is satisfied in the present dispute which has been referred to the Industrial Tribunal.

13. I have given the most anxious thought to the argument based on the doctrine of conflict between general statutes and special statutes. It is necessary to say here that the definition of the word "dispute" in the Bengal Cooperative Societies Act was amended by section 2 of the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 being West Bengal Act XII of 1947 by introducing the words "whether such claim be admitted or not." Now that Act became law by receiving the assent of the Governor-General and publication in the Calcutta Gazette on the 12th February 1948. The Industrial Disputes Act however became law on the 11th March, 1947. It is therefore clear that the amendment of the definition of the word 'dispute' in the Bengal Co-operative Societies Act was made subsequent to the passing of the Industrial Disputes Act. I draw from this the necessary conclusion that if the Legislature wanted to exclude disputes between a co-operative society under the Bengal Co-operative Societies Act and its workmen from the operation of the Industrial Disputes Act, 1947, then it would have said so expressly when it was making those amendments. Not having done so I can only come to this conclusion that it was not intended that an industrial dispute between a co-operative society and its workmen should come under Section 86 of the Bengal Co-operative Societies Act. I, therefore, hold on a proper interpretation that the Industrial Disputes Act is the special statute relating to the settlement of all industrial disputes whether they relate to co-operative societies or other establishments. From that point of view and from the point of view of industrial disputes the Industrial Disputes Act is the special statute and the Bengal Co-operative Societies Act is the general statute. So long as the dispute is industrial within the meaning of the words "industrial dispute" under the Industrial Disputes Act, that Act has the exclusive jurisdiction. The preamble to the Industrial Disputes Act says that it makes "provision for the investigation and settlement of industrial disputes and for certain other purposes". The questions relating to wages and wage scales and dearness allowances of this Co-operative Milk Societies' Union Ltd. satisfy the definition of an industrial dispute as enacted in the Industrial Disputes Act. In coming to that conclusion I am also fortified by the fact that there are many large co-operative societies which are much bigger than many of the smaller industrial establishments and I see no reason why settlement of industrial disputes should not therefore be left to the care of the Industrial Disputes Act.

14. The Supreme Court in *D. N. Banerjee v. P. R. Mukherjee*¹, applied the Industrial Disputes Act to a municipality under the Bengal Municipal Act. It was held there that the definitions in the Industrial Disputes Act included also disputes that might arise between municipalities and their employees in branches of work analogous to the carrying out of a trade or a business. On a parity of reasoning, I should hold and I do, that so long as the dispute is an industrial dispute it is governed by the Industrial Disputes Act although the industrial dispute is between a co-operative society under the Bengal Co-operative Societies Act and its workmen and notwithstanding provisions for settlement of disputes in sections 86 and 87 of the Bengal Co-operative Societies Act.

15. Learned counsel for the applicant then raised an argument on the basis of conflict between exclusive State and concurrent Federal Legislative jurisdictions. The Bengal Co-

¹ AIR 1953 SC 58

operative Societies Act is a State Act the subject coming under 'entry 32 of the State List 2' of the

7th Schedule of the Indian Constitution. The industrial Disputes Act is a Federal Act. It does not come under any of the exclusive entries in List I of the Union List of the 7th Schedule of the Constitution but comes under entry 22 of List 3 of Concurrent List of the 7th Schedule of the Indian Constitution relating to "trade unions; industrial and labour disputes" I have given reference to the entries in the Constitution List, although strictly speaking both those Acts were prior to the Constitution and therefore the Government of India Act, 1935, is applicable to them. But it makes no difference because on this point the Legislative lists under the Government of India Act make the same provision as the Legislative Lists in the Constitution. Where these three lists come in conflict, the general principle is List 1 has priority over Lists 3 and 2 and List 3 has priority over List 2. No doubt it is true that the Legislature of a State has the exclusive power to make laws for the State in respect of any of the matters enumerated in List 2 of the 7th Schedule and as such the legislative competence of the State Legislature of Bengal in passing the Bengal Co-operative Societies Act is unquestioned. So far as the concurrent list 3 is concerned, the Constitution provides that notwithstanding anything in clause 3 of Article 246, parliament and subject to clause 1 of Article 246, the Legislature of any State have the power to make laws in respect of any matters enumerated in List 3. From that point of view, the power of the Federal Legislature to enact the Industrial Disputes Act is also unquestioned. The preference or the overriding effect of the federal statute over the State Statute in the concurrent field of legislation is ensured by Article 254 of the Constitution which provides that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of clause 2 of Article 254 the law made by parliament whether passed before or after the law made by the Legislature of such State or the existing law shall prevail and the law made by the Legislature of the State shall to that extent be repugnant and void. The applicant's position therefore does not improve by reference to the respective legislative competence of Parliament and State Legislature. In this respect the only case where the state law prevails in the State over the federal law is when it has been reserved for the consideration of the President and has received the President's assent. This result is expressly produced by Sub-clause (2) of Article 254 which provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. That position, however, does not arise here. When argument was made at the Bar on this particular point, I pointed out to the learned counsel for the applicant that from one point of view the whole of this branch of the argument was irrelevant because according to the construction that I have adopted of both the Bengal Cooperative Societies Act and the Industrial Disputes Act there is no repugnancy or conflict at all. I shall Prefer to adopt, where possible, a construction which harmonises statutes within the respective legislative competence of the State Legislature and Federal Parliament to the one that creates a conflict or repugnancy.

16. It remains now for me to conclude with reference to the question whether such construction, which I have reached, is within the policy of these respective statutes. Policies of statutes are relevant for their proper construction. But within the broad framework of the main purpose and policy of the statute construction is largely, fundamentally and primarily a matter of interpretation of the words used in the statutes. Ideas of policy gathered from extraneous sources,

extraneous to the text of the statute and its Preamble are neither conclusive nor convincing if the actual language subject to interpretation leaves no room for doubt. It may just as well be that though on a construction the result is that industrial disputes between the co-operative society under the Bengal Co-operative Societies Act and its workmen comes under the Industrial Disputes Act, it may not have been intended in fact to happen.

17. Co-operative Societies are a subject of great social importance in the context of Indian economic development. Special provisions are, therefore, made in the statute which mark them out from other establishments. Joint Stock Companies and institutions. I have already referred to the preamble and a brief reference to other provisions of the statute will make the picture clearer. The control of the State Government over the co-operative societies is large and extensive. Although some of the provisions of the Bengal Co-operative Societies Act may have a familiar ring of the analogous provisions of the Indian Companies Act a bare scrutiny even cannot fail to show their fundamental difference. Section 24 of the Bengal Co-operative Societies Act gives power to the State Government to depute its servant to manage the affairs of a Cooperative Society. Section 39 restricts the Society's power to lend. Section 40 restricts Society's powers to transact business with non-members. Debts due to Co-operative Societies are specially made a first charge under section 47 of the Act. The investments of the Co-operative Society are not free but limited as provided under sections 55 and 56 of the Act. What is more important is the provision contained in section 57 of the Act which limits distribution of profits. In fact, it is said there that no distribution of profit shall be made in the case of a Co-operative Society with unlimited liability. It is also provided there that save as expressly laid down in that section, no Part of the funds of a Cooperative Society shall be divided by way of dividend and bonus or otherwise among its members. Section 64 of the Act protects the share or interest of a member from attachment. Section 68 puts restriction on transfer of share or interest. Section 129 of the Act gives the Registrar power to enforce performance of obligations. Section 133 of the Act bars jurisdiction of civil and revenue courts. I have already referred to Sections 86 and 87 of the Act which make special provision for settlement of disputes under the aegis of the Registrar. Elaborate rules have been framed under section 140 of the Act. Rule 54 provides for minimum paid staff to be employed by Co-operative Society. Rules 119 to 128 provide for settlement of disputes and appointment of Arbitrators.

18. It may very well be an arguable thesis from these Provisions that the inarticulate policy under the Co-operative Societies Act was to have its disputes settled not under the Industrial Disputes Act but under its own scheme. On the construction, however, that I have made, I have come to the conclusion that even if that be so. that policy has not been articulated in the language of the Act or its relevant sections and from that point of view it will be for the Legislatures concerned, tooth State and Federal, to apply their attention to any possible change in the law in order to put the Co-operative Society on the footing that they wished it to be placed. But this court is not concerned with such policy which the words and language of the text of the Statute have failed to effectuate.

19. For these reasons, the application must fail. I, therefore, discharge the Rule and dismiss this application but make no order as to costs.

Application dismissed.

