

BOMBAY HIGH COURT

C.P. Khanna

Vs.

V.K. Kalghatgi

Special Civil Appln. No. 1987 of 1969

(Patel and Chitale, JJ.)

10.09.1969

JUDGMENT

Patel, J.

1. This is an application which the petitioner has filed even before the Officer on Special Duty has made any order under Section 91 of the Maharashtra Cooperative Societies Act (hereinafter referred to as the Act) and referred the dispute to arbitration as required by it for arresting the proceedings. In short the petitioner wants to smother any proceedings at all before the Officer on Special Duty and wants this Court to go into the question of merits without permitting the said Officer to apply his mind to the proceedings.

2. Facts as alleged by the petitioner are as follows :

Respondent No. 5 is a member of the Society Respondent No. 4 and as such holds two flats Nos. 10 and 11 in the building of the Society. The petitioner says that respondent No. 5 agreed to transfer to him his interest in the flats, his share holdings etc., for Rs. 70,000 which he paid to him. The agreement is of March 1, 1967, They jointly gave intimation to respondent No. 4 and requested that the petitioner be admitted as member. The request was turned down. For building the flats loan was obtained from respondent No. 6 and installments had to be paid. The petitioner paid the installments for some time but as he was not admitted to its membership he did not thereafter pay the installments. Respondent No. 4 therefore filed a dispute before respondent No. 1 of which notice was given by respondent No. 1 to the petitioner. In this case respondent No. 4 claims dues payable in respect of flats Nos. 10 and 11 and is filed against respondent No. 5 and the petitioner. The petitioner wants the proceedings to be quashed on the ground that this is not a dispute which can be decided under the provisions of the Act. This question cannot be decided by us, The Registrar or the officer must do it.

3. Mr. Naik, for the petitioner, however says that this is not the question that he proposes to raise. He says that he wants to challenge the vires of Sections 91 to 96 and 163 of the Act. His contention as now formulated is that the provisions for compulsory arbitration in the disputes between a Society and a third person even under limited circumstances offends Articles 14 and 19 (1) (f) of the Constitution of India. In amplifying this ground he contends that there is no justification for requiring compulsory arbitration in the case of Societies. The procedure provided makes it from procedural aspect a very unreasonable provision, He says that the Registrar is given an absolute and unqualified discretion under Section 91 to decide whether or not a matter referred to him is a dispute, that the dispute may be referred to nominees who may not be trained personnel and may not know law and that no particular procedure is prescribed under the Act and the rules. On the other hand, he says that in the case of other litigants who are not connected with the Society, the procedure of civil Courts with all safeguards gives a proper opportunity to the parties to litigate their cases.

4. What Article 14 prohibits is class legislation. It does not mean that all are entitled to equal treatment. It only means that two persons similarly situated must be treated alike. Reasonable classification for purposes of legislation and treatment is permissible. However, the conditions for the validity of such classification are that there must be intelligible differentia which distinguishes the group of persons or things from those that are left out, and, there must be rational nexus between the classification and the object to be achieved.

5. That in a welfare State co-operative institutions play an important part cannot be denied. Different authors define 'Co-operation differently. Facy's definition, based on socio-economic aspect is: Co-operative Society is an association for the purpose of joint trading originating among the weak and conducted always in unselfish spirit on such terms that all who are prepared to assume the duties of membership may share in its rewards in proportion to the degree in which they make use of their association (Facy, Co-operation at Home and Abroad). In Co-operation in Finland, the writer says, "A Co-operative Society is a union of persons established according to the principles of equality number of whose members is unlimited and the purpose of which is, by the joint performance of economic acts, to improve the financial position of its members or the conditions under which they carry on their profession, by means of either self-help or self-help with Government support, provided that all profits made by the joint action shall be distributed in proportion to which each member has taken part in the business and not in proportion to the capital invested." This describes the fundamentals of a co-operative society and no wonder that in every country in the world great emphasis is laid on co-operative ventures. The provisions of the Act are oriented to achieve these objectives.

6. Under the circumstances, there is no reason, therefore, why co-operative societies should not be treated as a class by themselves, Though the ideal is unselfishness, this cannot be achieved in practice. In order that such co-operative ventures must succeed, it is also necessary that such ventures be given reasonable protection in every possible manner. Thus provisions are made to see that its funds are not frittered away by providing careful supervision of its transactions and

providing a procedure for early settlements of disputes. In order to ensure early settlement of disputes provisions are made for compulsory arbitration in matters connected with the business of the societies between the society and its members or its officers etc., or society and a stranger in very limited circumstances. As we have said earlier the purpose to be achieved is to protect the co-operative movement and to see that its resources are not frittered away by wasteful litigation.

7. Under Section 91 disputes have to be referred to arbitration only in limited number of cases viz., those between a Society and (1) its office bearers, past or present, its agent or servant or nominee or their successors, (2) a member, past member or a person claiming through them and (3) a person who has been granted loan by the Society or with whom the Society has or had transactions under Section 45 and any person claiming through such a person. Section 45 of the Act covers (1) such persons and such transactions in respect of which restrictions have been placed by the rules enacted under the Act, (2) surety of a member, past member or a person other than a member who has been granted a loan by the society, and (3) other societies or the liquidator appointed under the Act. Inclusion of the first and second set of persons and their transactions cannot possibly be objected to for the obvious reasons that if these were not protected, interested office bearers of a Society might successfully evade the provisions of the Act. So far as the third set is concerned, having regard to the scheme of the Act their inclusion also cannot be objected to.

8. We now come to the procedure to be adopted in these matters. The first thing to be considered is the question of determination by the Registrar whether there is a dispute. Section 91 (1) requires any of the parties to refer its dispute with the other to the arbitrator, and by Section 91 (3) the decision of the Registrar on the question whether a dispute exists is made Section 93 provides that if the Registrar is satisfied that any matter referred to him is a dispute, he has to decide the matter either himself or refer it to a nominee or a board of nominees. By subsection (3) he is given power, when complicated questions of law or facts arise, to require a party to approach a civil Court and stay the action for some time, If the party fails to approach the civil Court, he has to order hearing to proceed. The relevant Rule in connection with this subject is Rule 75. It enables the Registrar, before deciding the question, to call for any copies of documents and other statements or record. This shows that he has to apply his mind to the matter and not mechanically make an order. He has to decide whether prima facie there is any substance in the matter, whether there is any legal bar and whether that is a matter triable under the provisions of the Act. If he is satisfied on these, then he has to either decide the dispute or refer it to an arbitrator. There is a right of appeal and revision to higher officers or the Government against the order made by the subordinate officers under Section 154. Having regard to the nature of the matter to be considered this is a sufficient safeguard, since the real dispute is to be gone into fully by himself or nominee after a reference is made. It is wrong, therefore, to say that the Registrar is given unanalyzed power and discretion to refer or not, the dispute to a nominee or entertain it himself, Same thing could be said of a Court when it registers or refuses to register the plaint. In actual working we have rarely seen any injustice being done, and when that

happens the Government interferes and in the last resort the High Court does.

9. Now as to the procedure for actual trial of disputes. Section 92 provides periods of limitation in special cases and as to the rest provides that the limitation Act will be applicable. Under Section 94 the Registrar or his nominee is required to follow the prescribed procedure and is given power of a Civil Court for summoning and enforcing attendance of witnesses, requiring parties and witnesses to give evidence on oath and compel them to produce documents. Sub-sec. (3) gives to the Registrar or his nominee powers similar to those in Order I, Rule 10 of the Code of Civil Procedure, power to add or substitute parties and power to strike off the name of a party, and clause (d) thereof is similar to Order 2, Rule 2 of the Code. Rule 77 (1) requires the nominee to decide the dispute within two months and gives the Registrar power to withdraw the same from that nominee and refer it to another in case of delays, Rule 77 (2) requires the nominee to record the evidence of the parties and the witnesses and decide the dispute upon consideration of the oral evidence and all documents that may be produced before him. Rule 77 (3) enables him to hear a dispute ex parte if a party fails to appear upon summoning. If there are more than one nominee by Rule 77 (4) the decision of the majority is to prevail. Rule 78 requires summonses to be issued to the parties requiring their and witnesses' attendance and production of books not less than fifteen days before hearing. Rule 78 (2) provides for the mode of service of summons. Rule 78 (3) requires a return to be made by the person serving the summons stating the particulars of service. By Rule 78 (4) power is given to the officer issuing the summons, to examine the person serving the summons, and, make inquiry of proper service. Finally, Section 97 provides an appeal against the decisions in such disputes to the Tribunal. The Tribunal is constituted under Sec, 149 of the Act which consists of experienced members of the judiciary or Advocates of standing, and under the section the Tribunal has all the powers of an appellate Court under Section 97 and Order 41 in the First Schedule of the Civil Procedure Code.

10. The above examination reveals that the inquiry of the dispute is to be judicial as evidence has to be recorded and there is the safeguard of a proper appeal and of the supervision of the High Court under Article 227 of the Constitution. The procedure is stricter than that of civil Courts and it has the salutary effect of cutting down unnecessary technicalities of which plenty of advantage is taken by all concerned in all litigations in civil Courts. Experience has been that so far, Advocates of some standing were appointed as nominees. Now it seems special officers who are full-time employees are also appointed for this purpose. The disputes are heard very quickly though even there sometimes some seasoned litigants succeed in delaying the proceedings. The safeguard of appeal really ensures just decisions of the disputes. Speaking for ourselves, if such procedure is adopted in civil Courts, probably, the litigants will be more happy with quicker and satisfactory results and the present delays and wasteful expenditure could be avoided, We have been dealing with matters decided under the Act and we are satisfied that the standards of decisions are as good as, if not better, than those in civil Courts. We are not satisfied that the procedure is so inadequate as to hold that it is unreasonable. There is a nexus between the object to be achieved in the making of classification and the provisions made.

11. That an exception in favour of co-operative societies can be made has been decided by the Supreme Court in *Mannalal Jain v. State of Assam*¹, In our view, therefore, Sections 91 to 96 of the Act and the rules framed thereunder prescribing special procedure do not in any manner offend Article 14 of the Constitution.

12. A faint suggestion was made that these provisions affect the rights of the person to property and were hit by Article 19 (1) (f). This is too specious an argument to need any effective answer. The same thing happens when a decree is passed by the Court in a suit, inasmuch as the decree may direct the defendant to hand over the property to the plaintiff and pay the plaintiff certain amount. It could not be suggested that because the Court is entitled to adjudicate disputes and determine the rights to property between two litigating parties Article 19 (1) (f) of the Constitution would be offended.

13. We are not prepared to hear Dr. Naik on the question as to whether or not the reference made by the Society amounts to a dispute within the Act. It lies properly within the authority of the Registrar or Assistant Registrar, as the case may be, to decide this question. There is no reason why this Court should be flooded by this kind of applications without even offering an opportunity to the officers concerned to apply their minds to the facts and circumstances of the case.

14. We, therefore, reject the application.
Application dismissed.