

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WA.No.812 of 2014 IN WP(C).32053/2009

AGAINST THE JUDGMENT IN WP(C) 32053/2009 of HIGH COURT OF KERALA
DATED 31-01-2014

APPELLANTS/PETITIONERS:

1. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SUPERINTENDING ENGINEER
HARBOUR ENGINEERING DEPARTMENT
SOUTH CIRCLE KAMALESWARAM, THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI.C.S.MANILAL

RESPONDENT/RESPONDENT:

KOLLAM LABOUR CONTRACT CO-OPERATIVE SOCIETY LTD.
NO.Q.1004, ROOM NO.29, STADIUM COMPLEX
KOLLAM, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.M.SASINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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Dated this the 6th day of April, 2015.

J U D G M E N T

Antony Dominic, J.

The appellants filed W.P.(C).No.32053/2009 challenging Exts.P-4 to P-6 and P-11 and to declare that the Arbitrator contemplated under Sec. 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act'), does not have any jurisdiction to consider and decide upon the dispute raised by the respondent against the State. The learned Single Judge by judgment under appeal dismissed the Writ Petition. It is aggrieved by the judgment, this appeal is filed.

2. We heard the learned Government Pleader appearing for the appellants and the learned counsel appearing for the respondent-Society.

3. Briefly stated facts of the case are that pursuant to the notice published by the appellants inviting tenders for the work of construction of quay wall, auction hall and gear shed for the Fishing Harbour Project at Vizhinjam, tenders were submitted by various parties

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including the respondent. The tender submitted by the respondent was accepted and Ext.P-3 is the agreement that was entered into between the parties. According to the respondent, the work was executed and thereafter they raised certain monetary claims arising out of the executed work. They finally raised an arbitration dispute under Sec. 69 of the Act.

4. Before the Arbitrator, the appellants raised a dispute regarding the maintainability of the arbitration under Sec. 69 of the Act, as according to them, by virtue of clauses 24 and 46 of the agreement, arbitration proceedings are excluded unless otherwise decided by the Government. It was also contended that Sec. 69 of the Act does not permit arbitration proceedings against the State. The Arbitrator considered the maintainability as a preliminary issue and passed Ext.P-4 order rejecting the objection regarding the maintainability of the dispute. Thereafter, Ext.P-5 award was also passed by the Arbitrator.

5. Not satisfied with the award, both sides filed appeals before the Tribunal and in Ext.P6 judgment, the Tribunal set aside the award of the Arbitrator and remanded the matter back to him for reconsideration. Challenging Exts.P-5 & P-6, appellants filed W.P.(C). No.215/2008 before this Court. During the pendency of the Writ

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Petition, Arbitrator passed Ext.P9 order upholding the objection raised by the appellants regarding the maintainability of the dispute. According to the appellants, in view of Ext.P-9 order of the Arbitrator, they got the Writ Petition dismissed as withdrawn as per Ext.P-10 judgment. The respondent filed an appeal against Ext.P-9 before the Tribunal and the Tribunal by Ext.P-11 judgment held the arbitration dispute maintainable and directed the Arbitrator to pass final award. This is the background in which the Writ Petition was filed by the appellants challenging Exts.P-4 to P-6 and P-11. As we have already stated, the learned Single Judge has dismissed the Writ Petition and hence this appeal.

6. Two contentions are raised. First is that clauses 24 & 46 of Ext.P-3 agreement between the parties excluded arbitration unless the Government takes a decision to the contrary. Therefore, according to the learned Government Pleader, by agreement, Sec. 69 stands excluded. Second contention raised is that arbitration under Sec. 69 is permissible only against a person and since the State is not a person, dispute under Sec. 69 cannot be raised and that the remedy, if any, is only before a Civil Court.

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7. We have considered the submissions made. In so far as the first contention relying on clauses 24 & 46 of the agreement is concerned, these provisions provide that notwithstanding anything contained in the notice inviting tender or elsewhere, any dispute that may arise between the parties will not be referred for Arbitration unless the Government takes a decision to the contrary. This therefore means that the Government has the freedom to refer or not to refer dispute between the parties to an Arbitrator for resolution of dispute. Though the learned Government Pleader contended that in view of those provisions of the agreement the provision under Sec. 69 cannot be invoked by the respondent, we find ourselves unable to accept this contention. Sec. 69(1)(f) of the Act, being relevant, provide that notwithstanding anything contained in any law for the time being in force, if a dispute arises between the Society and a person, other than a member of the Society, with whom the Society has or had business transactions, such a dispute is to be resolved in terms of the said provision. This section also provide that if the dispute is a monetary dispute the same shall be resolved by the Registrar and in case of a non-monetary dispute, the same shall be resolved by the Co-operative Societies Arbitration Court constituted under Sec. 70A of the Act. These

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statutory provisions do not contemplate either expressly or otherwise that parties to an agreement can contract out of Sec. 69 of the Act. In a situation like this, where monetary disputes are to be resolved by the Registrar, we are inclined to think that what stands excluded by clauses 24 & 46 of the agreement between the parties are only reference of disputes for arbitration under the Arbitration and Conciliation Act, 1996. If that be so, the first contention raised by the learned Government Pleader relying on clauses 24 & 46 cannot be accepted and is only to be rejected and we do so.

8. The second contention raised by the learned Government Pleader is that the dispute to be resolved under Sec. 69 of the Act can only be by or against a person and not by or against the Government and according to him if the Society has a monetary claim, the remedy of the Society is only before a civil court. In support of this contention, the learned Government Pleader also placed reliance on the judgments in Moti Lal and others v. The Government of the State of Uttar Pradesh and others reported in AIR (38) 1951 Allahabad 257 and Ramrichpal Agarwalla and others v. The State of West Bengal reported in AIR 1958 Calcutta 257.

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9. In our view, the correctness of the contention of the learned Government Pleader will have to be tested in the light of the provisions contained in Sec. 2(i) which defines dispute, Sec. 69(1)(f) and Sec. 100 of the Act. These provisions are extracted below for reference.

Section 2(i).

2. Definition.- In this Act, unless the context otherwise requires-

(a) x x x x

(i) "dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not".

Section 69(1)(f).

69. Disputes to be decided by Co-operative Arbitration Court and Registrar.-

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises -

(a) x x x x

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person."

Section 100.

"100. Bar of jurisdiction of courts.- No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act."

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As per Sec. 2(i) of the Act, dispute means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not. Therefore, to be a dispute, it must be touching upon anyone of the aspects mentioned in the section and should be capable of being the subject of litigation and it also includes a claim in respect of sum payable to or by a society. Sec. 69(1)(f) of the Act starts with a non-obstante clause shows that a dispute between the society and a person, who is not a member of the society with whom the society had business transactions is also covered by the said section. It is also stated in Sec. 69(1)(h) of the Act that the monetary dispute shall be decided by the Registrar and no other court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Sec. 100 of the Act also shows that in respect of matters for which provision is made in the Act, jurisdiction of the civil or revenue court stands excluded.

10. A combined reading of Sec. 2(i) of the Act with the provisions of Sec. 69 discloses that in respect of any matter touching upon the business, constitution, establishments or management of a

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society which is capable of being the subject of litigation including the claim for sum payable by a society is a dispute and that if such is a monetary one and with a person, who is not a member of the society, is to be adjudicated by the Registrar and no other court shall have jurisdiction to entertain any suit or proceedings in respect of such a dispute. The exclusion of jurisdiction provided in Sec. 69(1)(f) of the Act is further clarified and reiterated in Sec. 100 of the Act also.

11. Having thus seen the effect of the statutory provisions, let us now see the facts of this case. The respondent is a Labour Contract Co-operative Society. The society has entered into a contract with the appellants for the execution of the works made mention of in Exts.P-1 to P-3. Arising out of the execution of the award, the respondent-society made various monetary claims against the appellants and it was that dispute which gave rise to this controversy. These facts therefore show that the disputes raised by the society which touch upon the business of the society is one which is capable of being subject of litigation, and is a claim in respect of amounts payable to the society. It therefore squarely falls within the ambit of Sec. 2(i) which defines the dispute. If the controversy is a dispute as stated in Sec. 2(i), then in view of language of Sec. 69 of the Act which starts with a non-obstante

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clause, it is to be adjudicated by the Registrar as provided under the said section. This is all the more so, in view of the fact that even according to the Government, the remedy available to the respondent is before a civil court. In this context, we cannot also ignore the fact that acceptance of the contention raised by the learned Government Pleader would lead to a situation where in view of Sec. 100 of the Act, the respondent-Society will be left without any remedy.

12. For all these reasons, we are unable to accept the contention raised by the learned Government Pleader that the State being not a person a dispute cannot be maintained, has any relevance to be addressed or answered.

The appeal fails and accordingly dismissed.

ANTONY DOMINIC,
Judge.

ALEXANDER THOMAS,
Judge.

bkn/-