

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 25345 of 2012 (P)

PETITIONER:

KERALA STATE CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD.,
STATUE JUNCTION, THIRUVANANTHAPURAM-695 001
REP.BY ITS MANAGING DIRECTOR.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OP. SOCIETIES (GENERAL)/
ARBITRATOR, KASARAGOD - 672 001.
2. K.KARUNAKARAN, S/O.KARIYAMBU, KALATHUNKAL HOUSE,
NJANIKKADAVU P.O., PADNEKAD, HOSDURG,
KASRGOD DISTRICT - 672 006.

R2 BY ADVS. SRI.T.K.VIPINDAS
SMT.P.K.PRIYA
SRI.K.V.SREE VINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN
R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 25345/2012

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE GO (MS)NO.129/2000/CO-OP DATED 5/9/2000

EXT.P2:- TRUE COPY OF THE ORDER DATED 31/3/2010 IN ARC NO.84/2008

EXT.P3:- TRUE COPY OF THE EXECUTION PETITION FILED IN ARC NO. 84/2008 DATED 22/2/2011

EXT.P4:- TRUE COPY OF THE SAID JUDGMENT IN WPC 31279/2011 DATED 27/6/2012

EXT.P5:- TRUE COPY OF THE OBJECTION DATED 12/10/2012 GIVEN BY THE PETITIONER.

EXT.P6:- TRUE COPY OF THE ORDER NO.E.P.216/2012 DATED 29/9/2012

RESPONDENT'S EXHIBITS:

EXT. R2(a) TRUE COPY OF THE COMMUNICATION DATED 6.5.2011 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM TO THIS RESPONDENT

EXT. R2(b) THE TRUE COPY OF THE JUDGMENT IN WPC 31279/2011 DATED 27.6.2012

EXT. R2(c) TRUE COPY OF THE REGISTERED LAWYER NOTICE DATED 13.10.2012 ISSUED BY THE PETITIONER

EXT. R2(d) TRUE COPY OF THE COUNTER AFFIDAVIT OF SECOND AND THIRD RESPONDENTS IN WPC 31279/2011

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.25345 of 2012 P

Dated this the 26th day of November, 2015

JUDGMENT

The petitioner is the Apex Co-operative Agricultural and Rural Development Bank having its Head Office at Thiruvananthapuram, with branches across the State. In its Regional Office at Kasaragode, the second respondent's wife, Smt.Syamala worked from 16.06.1995 to 18.11.2005 as a Sweeper on daily wage basis. Later, having been afflicted with cancer, she could not continue in service. She died on 15.03.2007.

2. In the course of time, the second respondent, being the husband and legal representative, filed A.R.C. No.84/2008 before the Registrar of Co-operative Societies, the first respondent, claiming that his wife, the erstwhile employee of the petitioner Bank, was entitled to

regularisation of service in terms of Exhibit P1 Government Order and consequentially, for the arrears of salary and other service benefits. Then, the first respondent passed Exhibit P2 order dated 31.03.2010 directing regularisation of the second respondent's wife and also the payment of consequential benefits to the second respondent.

3. Soon after his obtaining Exhibit P2 order, the second respondent filed Exhibit P3 execution petition, which was not initially numbered, it seems, on the grounds that no proper court fee was paid. At that juncture, the second respondent approached this Court and invited Exhibit P4 judgment, in compliance with which the executing authority numbered the application and took up the matter.

4. Despite Exhibit P5 objections filed by the petitioner, the first respondent passed Exhibit P6 order authorising the Joint Registrar to execute Exhibit P2 order.

Aggrieved, the petitioner Bank has filed the present writ petition questioning both Exhibit P2 primary order and also Exhibit P6 order in execution.

5. The learned counsel for the petitioner has submitted that ever since the amendment of Section 69 of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity); i.e., from 2003, all service disputes of whatever nature shall be adjudicated upon by the Arbitration Court, but not by the Registrar. In that context, he has placed reliance on **P.S.Ravendran v. State of Kerala and Others**¹.

6. Faced with a specific question why the petitioner has not raised the objection concerning the jurisdiction either before the primary authority or before the executing authority, both of whom have been incidentally the same, the learned counsel has submitted that, first, it is a pure question of law that can be raised at any point of time; second, once a quasi-judicial authority, or even, for that

¹ (2007 (3) KHC 780)

matter, a judicial authority has inherently lacked jurisdiction, consent of the parties does not confer jurisdiction. Thus contended the learned counsel for the petitioner that Exhibit P2 and consequential Exhibit P6 are non est as being ultra vires of the first respondent. In support of his submissions, he has also placed reliance on **Chief Engineer, Hydel Project and Others v. Ravinder Nath and Others**², **Cantonment Board and Another v. Church of North India**³ and **Kerala State Co-operative Agricultural and Rural Development Bank Ltd. v. State of Kerala**⁴ (an unreported judgment).

7. Per contra, the learned counsel for the second respondent with equal vehemence has submitted that the objection on the part of the petitioner Bank suffers from the vice of delay and laches. In elaboration, he has submitted that though the second respondent initiated proceedings in

² (2008) 2 SCC 350

³ (2012) 12 SCC 573

⁴ W.P.(C)No.19579/2015 dated 28.09.2015

2010, till recently, until Exhibit P6 order was passed by the first respondent, the petitioner had never raised any objection concerning the jurisdiction of the authority.

8. The learned counsel, placing reliance on the judgments of the High Court of Madras in **G.Ashokan v. The District Collector** and **R.Lakshmi v. The Chief Engineer (Personnel)**, has further contended that despite the death of the employee, her legal heirs are eminently entitled to take up the issue of service benefits, including regularisation. According to him, the benefits claimed by the second respondent are in the nature of property—estate—as has been constitutionally contemplated under Article 300A of the Constitution.

9. The learned counsel for the second respondent, in the alternative, has submitted that the issue whether Exhibit P1 Government Order applies to the claim of the second respondent's wife, the deceased employee of the

petitioner Bank, does not partake the character of a service dispute, as has been stipulated under Section 69(2)(d) of the Act.

10. Heard the learned counsel for the petitioner and the learned counsel for the second respondent, as well as the learned Government Pleader, apart from perusing the record.

Issues:

I. Whether the first respondent has the inherent jurisdiction to decide the issue of regularisation of the service of the second respondent's wife and incidentally the conferment of other service benefits?

II. Whether the petitioner is permitted to raise the jurisdictional objection at this point of time, belatedly?

Issue No.I:

11. At the outset, it is apposite to observe that the jurisdictional issue, as has been rightly contended by the learned counsel for the petitioner, goes to the root of the

matter. It is, therefore, essential for me to address whether the first respondent has the necessary jurisdiction to adjudicate the dispute raised by the second petitioner.

12. According to the learned counsel, as per Section 69(2)(d) of the Act, the dispute raised by the second respondent, covered by Exhibit P2 order, is a service dispute. Section 69(2)(d) reads to the following effect:

“Any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Section 80, including their promotion and inter se seniority.”

13. It needs no much cogitation on my part, because earlier this Court, per a learned Single Judge in **Cheranallur Service Co-operative Bank Ltd. v. State of Kerala and Others**⁵, has held, relying on the judgment of a learned Division Bench in W.A.No.2057/2008, that the words “including their promotion and inter se seniority” are not meant to be exhaustive or restrictive, but only

⁵ 2012 (3) KHC 834

explanatory of what has already been included. According to their Lordships, dismissal from service is indisputably in connection with the employment. I am in respectful agreement with the said interpretation of the provision.

14. Further, in P.S.Ravendran (supra), a learned Division Bench of this Court has categorically held that in any matter concerning service dispute, the Registrar or the Joint Registrar, even while exercising their powers under Rule 176 of the Kerala Co-operative Societies Rules, 1969, cannot have any jurisdiction in the light of the exclusionary provision under Section 69 of the Act. The said judgment is also an authority for the proposition that what has been raised by the second respondent, which resulted in Exhibit P2 order, is nothing but a service dispute.

15. Without fear of contradiction, I may place on record that the issue of regularising the employees' services or claiming any residuary service benefits is a service

dispute and is eminently amenable to the jurisdiction of an Arbitrator under Section 69 of the Act. Thus, the contentions of the learned counsel for the second respondent stand repelled.

16. Having regard to the nature of Exhibit P2 order and also the consequential Exhibit P6 order in execution, I am of the opinion that the dispute raised by the second respondent inescapably is a service dispute. That said, I further hold that the natural corollary to the above proposition is that the first respondent has been denuded of any jurisdiction to decide on any service dispute, at least from the date of amendment to Section 69 of the Act—02.01.2003.

Issue No.II:

17. The next moot question is whether the petitioner is permitted to raise the issue at this juncture, it having not raised the same before the first respondent either at the

time of the said authority passing Exhibit P2 or subsequently Exhibit P6 order.

18. In Ravinder Nath (supra), the Hon'ble Supreme Court, having referred to various previous precedents, has emphatically held as follows:

“Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, first appellate or the second appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the trial court, the first appellate court and the second appellate court are liable to be set aside for that reason alone and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the respondent-plaintiffs, if any, arising out of the labour jurisprudence.”

19. In Cantonment Board (supra), the Hon'ble Supreme Court has reiterated the same proposition of law.

20. Recently, this Court in Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (supra), considering a similar issue, has held as follows:

“Once it is a question of inherent lack of power, even an order said to have been implemented earlier by oversight or even willingly would not come in the way of the petitioner Bank's assailing subsequent proceedings. Such course of action is permissible on the premise that there can be no estoppel against the statute. Any other interpretation of the issue to the effect that in the face of the petitioner Bank's implementing Ext.P3 it is estopped from questioning Ext.P7 amounts to conferring jurisdiction on an authority by consent which, as is well established, is impermissible. In this regard, it is instructive to refer to the decision of the Hon'ble Supreme Court in Harshad Chiman Lal Modi. Their Lordships have observed that so far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. The Apex Court has emphatically laid down that where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.”

21. Culling out from the above precedential instances having binding force, I am of the considered opinion that the petitioner cannot be prevented from raising the issue of jurisdiction on the premise that it has not been raised at an earlier point of time. It is a pure question of law going to the root of the matter.

22. The issue of inherent jurisdiction, without doubt, can be raised at any stage even as a defence in execution proceedings and collaterally, too. In the facts and circumstances, this Court cannot but set aside both Exhibits P2 and P6 orders of the first respondent.

23. That stated, this Court is conscious of the fact that the second respondent—being the husband of a Sweeper on daily wage basis, who died long back due to cancer—has been, for long, seeking the redressal of his grievance. The delay in his getting the relief, provided he is entitled to, cannot entirely be attributed to him. It seems to me that a major portion of the blame may have to be shared by the petitioner Bank, which ought to have raised the jurisdictional objection at the earliest.

24. Be that as it may, what ought to have been done is different from what must have been done: one admits of exceptions and the other none. All is said and done, so long

as the law permits, the petitioner could not be thwarted from exercising its rights. In other words, the petitioner Bank is eminently entitled to raise its objection as regards the authority's inherent lack of jurisdiction. And it did. It cannot be found fault with.

25. As an ameliorative measure, this Court—though it is a little premature—expects the Arbitration Court, if the second respondent chooses to approach it, to decide the issue as expeditiously as possible. The learned counsel for the second respondent has submitted that this Court may as well direct the first respondent to transfer the proceedings to the Arbitration Court as had been originally contemplated when the amendment was effected to Section 69 of the Act.

26. In reply, the learned counsel for the petitioner has submitted that once the Court declares a proceeding to be null and void, it may not be inclined to send those

proceedings to the Arbitration Court and, then, require the said court to take cognizance of the case.

27. It is, however, open for the second respondent to approach the appropriate forum without further lapse of time. This Court, as a result, is not inclined to issue any direction in that regard but is hopeful that this aspect—condoning the delay—will also be considered by the learned Arbitration Court taking into account the attendant circumstances.

With the above observations, the writ petition stands allowed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'