

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 520 OF 2017**

The Chairman of
Betki Khandola Co-op. Milk Society,
Shri Ajit R. Phadte,
54 years of age,
Son of R. Phadte,
Betki, Ponda-Goa.

.... Petitioner

V e r s u s

Shri Harichandra Bhuto Ghadi,
major in age,
resident of H. No.53,
Manmollem vaddo,
Betki, Marcela, Ponda-Goa.

.... Respondent

Shri A. D. Bhobe with Ms. S. Bhobe, Advocates for the Petitioner.
Shri Umesh N. Palkar, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
RESERVED ON 3RD OCTOBER, 2017
PRONOUNCED ON: 7TH OCTOBER, 2017.

ORDER:

On 12/7/2017 a notice for final disposal was issued in this petition. The petition is accordingly being disposed of finally.

2. The petitioner is a Co-operative Milk Society. The respondent was working as a secretary with the petitioner as a permanent employee. According to the respondent, the chairman and the other members of the

managing committee started harassing him and raising doubts as to his integrity. This according to the respondent was with the ulterior motive to remove him from service. The respondent went on sick leave on 11/12/2005 and was under medical treatment till 30/12/2005. On account of his sudden sickness he was required to hand over the keys to one of the employees of the petitioner which was in turn handed over to the chairman of the petitioner. According to the respondent although he submitted the requisite application along with proof, the chairman and the members of the committee started raising doubts and sought explanation and leveled serious allegations against him. It is the material case that on 1/1/2006, when the respondent went to join the duty, he found that a newly recruited person Mr. Sopan Naik was working in his place and the petitioner was not allowed to join the duties.

3. In such circumstances the respondent approached the learned Assistant Registrar of Cooperative Societies (Registrar's nominee) with a dispute under the Goa Co-operative Societies Act 2001 (Act for short) seeking a declaration that the termination of the respondent is illegal and void and for reinstatement.

4. The petitioner resisted the claim inter alia on the ground that the proceedings as framed and filed under the Act are not competent. It was

contended that the respondent was not performing his duties properly and was not maintaining the cash book and was unauthorizedly withdrawing money and retaining the same. According to the petitioner the respondent has tendered resignation which has been accepted by the Managing Committee on 12/3/2006.

5. The parties led evidence and the Registrar's nominee by a judgment and order dated 20/12/2011 allowed the dispute filed by the respondent in the following terms:

“The Dispute filed by the disputant is hereby allowed. The Resolution passed by the Managing Committee of the Opponent Society on 12/3/2006 to accept the resignation of the Disputant along with the letter dated 20/3/2006 are hereby quashed and set aside.

The Opponent are directed to reinstate the Disputant in the service of the Society with continuity from 20/3/2006 and further to pay 50% of the salary from 20/3/2006 till reinstatement in the services.

The Opponent should comply with the said direction within a period of 3 months from the date of receipt of this order.

No order as to cost.”

6. The petitioner challenged the same before the Cooperative Tribunal in Co-operative Appeal No.12/2012 (Tribunal for short). The

learned Tribunal by a judgment and order dated 28/6/2016 has dismissed the appeal. Hence this petition.

7. I have heard Shri Bhobe, the learned counsel for the petitioner and Shri Palkar, the learned counsel for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record and impugned orders passed.

8. The only contention raised on behalf of the petitioner is that the dispute as framed and filed before the Registrar's nominee was not maintainable under section 83 r/w section 86 of the Act. It is submitted that the Registrar's nominee could not have directed reinstatement and the dispute of the present nature cannot be entertained by the authorities under the Act. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Maharashtra State Co-operative Housing Finance Corporation Limited Vs. Prabhakar Sitaram Bhadange (2017) DGLS (SC) 353.**

9. On the contrary, it is submitted by Shri Palkar that the dispute would be one touching the management or business of the society within the meaning of section 83 of the Act and thus, the dispute has rightly been entertained. It is submitted that the decision in the case of **Prabhakar**

Bhadange (supra) is distinguishable on facts, inasmuch as, in that case the respondent was proceeded departmentally in which a charge sheet was served on him and the respondent was dismissed on proved misconduct, which is not in this petition.

10. The learned counsel submits that the petitioner has subjected themselves to the jurisdiction of the Registrar's nominee and thus now they cannot be permitted to contend the the Registrar's nominee had no jurisdiction. For this, reliance is placed on the decision of the Supreme Court in the case of **Inder Sain Mittal Vs. Housing Board, Haryana and others** (2002) 3 SCC 175. in order to submit that once there is a participation in the proceedings, the right to object to the jurisdiction would be defeated.

11. I have carefully considered the rival circumstances and the submissions made and I find that the petition has to succeed on a short ground.

12. In the case of **Prabhakar Bhadange**, the employee of the appellant Maharashtra State Co-operative Housing Finance Corporation (Ltd.) was dismissed on proved misconduct. The concerned employee approached the Co-operative Court under section 91 of the Maharashtra

Cooperative Societies Act 1961 (which is pari materia with section 83 of the Goa Cooperative Societies Act). The appellant Corporation sought rejection of the petition on the ground that the Co-operative Court set up under the Act, did not have jurisdiction to entertain and decide a service dispute between an employer and employee, inasmuch as the dispute in question did not touch upon the business of the society and was not covered by the provisions of Section 91 of the Act. The Co-operative Court dismissed the said application holding that it had the requisite jurisdiction to decide the dispute. The appellant/Corporation unsuccessfully challenged the said order initially before the Co-operative Court and thereafter before the High Court and the matter reached the Supreme Court. The Supreme Court after examining the scope of section 91(1) of the Maharashtra Cooperative Societies Act inter alia held that section 91 envisages, primarily those disputes which pertain to the Constitution of the society or the elections or management or business of the society which are to be decided by the Cooperative Court. In para 11 of the judgment the Supreme Court has held that service disputes between the employees of the cooperative society and the management of the society are not covered by the aforesaid provision. In my considered view, the ratio as laid down in the case of **Prabhakar Bhadange** would apply with equal force to the present case where the dispute is between the employee as to his termination by the society. The contention on behalf of the respondent that

the case of **Prabhakar Bhadange** would be distinguishable, in my considered view cannot be accepted. It is not material whether the termination or dismissal is on account of proved misconduct or otherwise. The question essentially is of the jurisdiction of the authorities under the Act to entertain a service dispute and to direct reinstatement and/ or to give any other consequential relief.

13. The reliance on behalf of the respondent on the decision in the case of **Inder Sain Mittal (supra)** is equally misplaced. That was a case arising under the Arbitration Act 1940. It was held that if the party has participated in the proceedings before the arbitrator, the right to object to the arbitral award on the ground of jurisdiction would be defeated. Even in that case, it was held that the objection based on breach of the mandatory provisions of law can be raised even after participation in the proceedings, as there can be no estoppel against a statute. Here is a case where there is basic lack of jurisdiction in the Registrar's nominee to entertain a service dispute which cannot be cured by the parties submitting to the jurisdiction of the Registrar's nominee. It is trite that the parties cannot confer jurisdiction even by express consent- let apart be submitting to the jurisdiction-when there exists none.

14. In such circumstances the petition has to succeed. It is however made clear that this Court has not examined the merits of the challenge to the termination and in the event the respondent takes recourse to appropriate remedy in this regard as may be available in law, the same shall be decided on its own merits. In the result the petition is allowed. The impugned order passed by the Registrar's nominee and the one passed by the Tribunal are hereby set aside. The dispute filed by the petitioner is hereby dismissed. In the circumstances the parties to bear their own costs.

C. V. BHADANG, J.

Ap/