

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.38511 of 2004

and

WPMP.No.46036 of 2004

P.S.Viswanathan

... Petitioner

Vs.

1. The Deputy Registrar of
Cooperative Societies,
Gobichettipalayam,
Erode District
2. The Special Officer,
K.544, Gobichettipalayam Agricultural
Producers' Cooperative Marketing
Society Ltd.,
36, Modachur Road,
Gobichettipalayam 638 476

3. T.Arjunan

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the arbitration proceedings in ARC.No.933 of 2004 dated 06.12.2004 pending on the file of the first respondent and quash the same.

(The prayer is amended as per Order dated 13.09.2017 by DKKJ)

For Petitioner : M/s.S.Kamadevan

For Respondents : Mrs.T.Girija,

Government Advocate For R1

: Mr.M.Liagat Ali for R2

: R3 Disd vide court order

O R D E R

The petitioner was originally appointed as clerk in the second respondent society and thereafter promoted as Senior Assistant and further promoted as Superintendent and also as

Accountant. Finally, he is holding the post of Manager incharge. The second respondent has initiated departmental proceedings against the petitioner for the loss caused to the second respondent society. And simultaneously, the second respondent has appointed an Officer to enquire under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 to investigate the affairs into the loss sustained to the society. The enquiry report is yet to be submitted. Subsequently, the second respondent issued a show cause notice to the petitioner on 20.07.2004 stating that why action under Section 90 of the said Act. While being so, the second respondent has filed a petition also under the said Section and the petitioner has received a summon dated 06.12.2004. Challenging the said summon, the petitioner has filed the present writ petition before this Court.

2. The learned counsel for the petitioner would submit that Section 90 of the said Act would not attract the present case. Therefore, the proceedings initiated by the second respondent under Section 90 of the above Act is without jurisdiction and hence, the writ petition filed by the petitioner is maintainable for challenging the jurisdiction of the first respondent to entertain the petition filed under Section 90 of the said Act.

3. The learned Government Advocate would submit that though the petitioner has challenged the summon, under the provisions of the Act, the petitioner can very well adjudicate the matter before the first respondent by raising the issue of jurisdiction under Section 90 of the Act. Hence, the writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the respondents and perused the materials available on record.

5. The point for consideration before this Court is whether the impugned summon issued by the first respondent, having jurisdiction, under Section 90 of the said Act. The petitioner has been issued a charge memo, to which explanation has also been given. Pursuant to that, an enquiry officer has been appointed to enquire into the matter and the report is yet to be submitted by the enquiry officer. Simultaneously, another proceedings has been initiated by the second respondent under Section 90 of the said Act. Both the proceedings are for recovery of the very same loss sustained to the society. Therefore, the respondents cannot initiate two proceedings for very same cause of action against the petitioner. Secondly, the learned counsel for the petitioner submitted that the same issue was already raised before this Court in the earlier occasion and this Court has considered the scope of Section 90 of the said Act to entertain such petition in the case of Villupuram District Central Cooperative Bank Limited represented by its

Special Officer Vs. R.Santhanam in WP.Nos.3684 of 2004 dated 19.08.2008, wherein the Division Bench of this Court has held that Section 90 of the said Act providing for settlement of disputes will not include a dispute between a servant of a Cooperative Society and its Management and therefore, no dispute can be referred to the Registrar under Section 90 of the said Act and consequently, no appeal will lie to the Tribunal under Section 152. It is also useful to extract the Paragraph 24 in W.P.No.17805 of 1994 in the case of P.Eswaramoorthy and others Vs. R.J.B.Leoraj and others reported in 2008 (4) LW 883, wherein the Division Bench of this Court has rendered as follows.

"24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:-

a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Cooperative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152.

b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority under Section 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted under Section 75 (3) of the 1983 Act. Therefore, the employees of a Cooperative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Cooperative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court / Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in Somasundaram Vs. Liyakat Ali (1997 (1) CTC 4 = 1998 (2) LLJ 719) may not be a good law. The employees

therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either under Section 153 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar under Section 156 of the Cooperative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P.Sathasivam, J. (as he then was) in K.Radhakrishnan Vs. Additional Registrar (2000 (ii) CTC 147) upholding the right of revision under Section 153 has laid the correct position of law. Likewise, the judgment of P.Sathasivam, J. (as he then was) in The Management of Madras Atomic Power Project Employees' Consumers (Cooperative Stores Limited, Kalpakkam rep. by its Special Officer Vs. The Deputy Commissioner of Labour (Appeal) Madras - 6 and 2 others (2000 (III) CTC 738 = 2000 (2) LLJ 1451 holding that Section 90 of the 1983 Act is not available for employees of Cooperative Societies against the orders of termination has been correctly decided."

6. Yet another decision of this Court in W.P.Nos.23696 & 19680 of 2008 dated 09.01.2009 in the case of P.Periyannan & N.Dhandapani Vs. The Deputy Registrar of Cooperative Societies, Krishnagiri Circle and another, wherein this Court has held in Paragraphs 7, 8, 9 and 10 as follows.

"7. Mr.V.T.Gopalan, learned senior counsel was requested by this Court to assist. The learned senior counsel has taken this Court through Sections 81, 87 and 90 of the Act. He would submit that an enquiry under Section 81 of the Act is absolutely necessary for initiating any proceedings under Section 87 of the Act. But for raising a dispute under Section 90 of the Act, no such enquiry need be conducted under Section 81 of the Act. However, he would submit that a dispute as provided in Section 90 of the Act would not embrace within its ambit a monetary claim from a servant of the society. He would further submit that a dispute relating to the business of the registered society would not include within its ambit, a dispute

relating to amount recoverable from a servant or an employee of the co-operative society.

8. The learned senior counsel placed reliance on the following judgment of the Hon'ble Supreme Court as well as this Court.

(i) The Hon'ble Supreme Court while dealing with an analogous provision in D.M.Co-op. Bank V.Dalichand (AIR 1969 SC 1320) has held as follows:-

"17.Five kinds of disputes are mentioned in sub-sec. (1); first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws."

(ii) In the Co-opera. C.B.Ltd., V. The A.I.T., A.P (1969 (2) SCC 43) wherein while dealing with a similar provision, the Hon'ble Supreme Court has held as follows:-

"7. It would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society....."

(iii) In Gujarat State Co-op Land Devl. Bank Vs. P.R.Mankad (1979 (3) SCC 123) the Hon'ble Supreme Court after referring to the above two judgments in paragraph No. 28 has held as follows:-

"28. The dispute was raised by the second respondent by writing an approach letter to his employer, the appellant, as required by the Bombay Industrial Relations Act. In substance, it was an industrial dispute. It was not restricted to a claim under the contract or agreement of employment. The Civil Court cannot grant the reliefs claimed by the second respondent. As rightly submitted by Mr.Rama Reddy, if a Court is incapable of granting the relief claimed, normally, the proper construction would be that it is incompetent to deal with the matter."

(iv) In Madras Atomic Power Project Employees Consumers Co.op Stores Vs. Deputy Commr. of Labour (2000 (III) CTC 738), His Lordship P.Sathasivam, J., (as he then was) after referring to the above cited judgments and several other judgments has held that a dispute between the Co-operative Society and a servant of the society cannot be equated to a dispute touching the business of the society as defined in the Tamil Nadu Co-operative Societies Act.

(v) Recently, in a batch of writ petitions, a Division Bench of this Court in P.Eswaramoorthy & 15 others Vs. R.J.B.Leoraj & 10 others (2008 (4) L.W.883) has held as follows:-

"Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a co-operative society and its management. Therefore, no dispute can be referred to be Registrar or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152."

Para 9: A survey of all the above, judgments would keep things beyond any doubt that there can be no dispute referred to the Registrar under Section 90 of the Act against an employee of the Co-operative society. In the cases on hand, the disputes have been referred under Section 90 of the Act against the petitioners who are employees of the respective societies. Thus, the impugned proceedings

passed as against the petitioner in both the writ petitions are without jurisdiction and therefore, they are liable to be quashed.

Para 10: In the result, both the writ petitions are allowed and the impugned proceedings are quashed. However, this order shall not stand in the way of the respective Co-operative society to initiate proceedings under Section 87 of the Act as against the petitioners on the basis of report, if any, under Section 81 of this Act if so advised. No costs. Consequently, connected miscellaneous petitions are closed."

7. But, the learned Government Advocate has relied upon the decision of this Court in the case of M.MV.Alagappan and another Vs. Karaikudi Cooperative House Building Society Ltd., rep by its Special Officer, Karaikudi and another reported in (2008) 3 MLJ 716, wherein this Court has dismissed stating that the petitioner has to approach the authority concerned under Section 90 of the said Act. Therefore, in the light of the said Judgment, writ petition is not maintainable.

8. By considering the aforesaid facts of the case, it is an admitted fact that the second respondent herein has initiated proceedings under Section 81 of the said Act and also filed a petition under Section 90 of the said Act for the very same relief which is unsustainable in law in the light of the decision cited supra, therefore, the impugned summon issued by the first respondent is liable to be quashed.

9. In view of the facts and circumstances of the case and in the light of the decisions of this Court cited supra, the impugned summon issued by the first respondent is quashed. Accordingly, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

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To

1. The Deputy Registrar of
Cooperative Societies,
Gobichettipalayam,
Erode District
2. The Special Officer,
K.544, Gobichettipalayam Agricultural
Producers' Cooperative Marketing
Society Ltd.,
36, Modachur Road,
Gobichettipalayam 638 476

+1cc to M/s.S.Kamadevan, Advocate sr.no.66572

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