

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2047 OF 1997

Jalgaon Taluka Krishak Sahakari
Kraya-Vikraya Sangh Ltd., Jalgaon,
106, Baliram Peth, Near Mamlatdar
Kacheri,
Tal. and Dist. Jalgaon,
through its Chairman

-- PETITIONER

VERSUS

Narayan Ramdas Nehate,
Age-62 years, Occu-Agriculturist,
R/o Kiran Niwas, Opposite Natraj
Theatre, Jalgaon,
Dist. Jalgaon

-- RESPONDENT

Mr.Ajinkya Deshmukh h/f Mr.A.V.Hon, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2018

ORAL JUDGMENT :

1. The petitioner/Co-operative Society is aggrieved by the order dated 19/02/1997 by which the Co-operative Appellate Court has allowed the appeal bearing No.237/1984 filed by the respondent and has concluded that the Co-operative Court has the jurisdiction to entertain the claim of the respondent / employee for damages on account of pre-mature termination, u/s 91 of the Maharashtra Co-operative Societies Act, 1960.

2. I have heard the learned Advocates for the respective sides. A short issue is raised in this petition as to whether the claim of the respondent for damages was maintainable u/s 91 of the Co-operative Societies act ?

3. It is admitted by the litigating sides that the respondent was a Manager on the date of his termination which is 12/11/1988. A resolution was passed by the petitioner/Society that he should be terminated from service. The respondent claims that he would have retired on 30/04/1992 after attaining the age of superannuation on completing 58 years of service. It is also admitted that he has only claimed damages to the extent of the monthly salary that he would have earned from November 1988 till April 1992.

4. The Learned Division Bench of this Court, in the matter of Maharashtra Co-operative Housing Finance Society Ltd., Bombay and others Vs. V.S.Loni and another [AIR 1984 Bombay 419], has concluded that when the claimant is not a workman u/s 2(s) of the I.D.Act and claims damages against the employer, the claim was maintainable u/s 91 of the Act. In paragraph No.24 and 27, the learned Division Bench has concluded as under :-

24. The following is also to be found in para 37 of the judgment:

"A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression 'any dispute', a dispute from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression 'touching the management of the Society' used in [S. 96\(1\)](#) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it."

We have no hesitation in holding that what the Supreme Court has said in Gujarat State Co-operative Bank's was that a dispute involving a claim for reinstatement in service of an employee of a Co-operative Societies was nether touching the business of the society nor was touching the management of the society. The claim, such as the one made by the respondent in the instant case namely the claim for damages on the allegation that the society has wrongfully terminated his services cannot be said to be outside the ambit of the term "management" in [S. 91](#) of the Co-operative Societies Act. A society or for that matter any institution must work through human beings and in the case of a Co-operative Societies the management of the society must be carried on through and with the help of the employees of the society. The employment of persons itself may not be a part of the business of the society; it may not be even touching

the business of the society but employing persons is necessarily a part of the management of the society and therefore when a dispute involves a claim which could be granted by an authority under the [Co-operative Societies Act](#) that dispute must be held to be touching the management of the Co-operative Societies. It will be total misunderstanding of the judgments governing the field to hold that a claim made by an employee of a Co-operative Societies for wages could not be included in the dispute under [S. 91](#) of the Co-operative Societies Act. Clause (a) of [S. 91\(1\)](#) of the Co-operative Societies Act includes "any past or present servant". If the interpretation suggested by Mr. Rane is accepted these words will be rendered redundant. For the same reasons we are of the opinion that a claim arising out of a contract between a Co-operative Societies and its employees or a claim based upon a breach of the said contract which could have been taken cognizance of by a civil court can also form a dispute touching the management of a society under [S. 91](#) of the Co-operative Societies Act.

25. We may, however, briefly refer to the judgment of the Division Bench of this Court in *W. S. Pasarkar v. Ashok Sahakari Sakhar Karkhana Ltd., Shrirampur* (Spl. Civil Appln. No. 1734 of 1969 decided on 10th Jan 1974 : Reported in 1978 UCR (Bom) 57 by S. K. Desai J. (with Sawant J.)). The petitioner before the Division Bench was a medical practitioner whose services had been determined by the respondent Co-operative Societies. He had raised a dispute asking for reinstatement in service or in the alternative damages on the ground of wrongful

dismissal. The Division Bench held that a Civil Court was certainly not entitled to grant reinstatement or pass an order regarding the payment of the disputant's back salary on the footing that he continued to be in service. The Division Bench further observed :

"But a Civil court undoubtedly can proceed and would have the jurisdiction to decide that the termination was improper inasmuch as reasonable notice was not given and thereafter proceed to award the claimant damages for such improper termination, which damages, it is now well settled, would be equivalent to his emoluments and benefits during the period of such reasonable notice."

This relief was certainly one which a Civil Court was entitled to award and to that extent it fell within the ambit of [S. 91](#) of the Co-operative Societies Act.

26. Proceeding further the Division Bench noted that even for the main activity of the society which was manufacture of sugar the society would be required to engage services of several employees some of whom would be concerned with rendering maintenance and repair service to the machinery. The Division bench noted that such an employee would directly touch the main business activity or sphere of employment would directly touch the main business activity of the society. This necessarily led to the result that such an employee's purported wrongful dismissal may give rise to a dispute touching the business of the society within the meaning of [S. 91](#) of the Co-operative Societies Act. We have shown earlier how the Supreme Court in Gujarat

State Co-operative Bank's case had laid down the law which is directly in conflict with what has been mentioned in the judgment of the Division Bench. The law of the Supreme Court is to be found in paragraph 32 of its judgment read with para 14 (ii). To that extent the view of the Division Bench must be held to be incorrect. However, on a proper analysis of the judgments in the field and the relevant provisions of the Act, we are of the opinion that a dispute between an employee of a Co-operative Societies and the society which would be normally entertained by a Civil Court would be a dispute touching the "management", though not the "business" of a Co-operative Societies.

27. We may now summarize our findings briefly as follows :--

(1) A claim which is not entertainable by a Civil Court under S. 9 of the Civil P. C. cannot also be entertained by a Registrar or other authority under S. 91 of the Co-operative Societies Act. Such a claim will include a claim by an employee for reinstatement in the service of his previous employer and/or a claim by an employee for alteration of the conditions of service. Such a claim could only be entertained and decided by the adjudication authorities under the relevant Industrial Law.

(2) Any dispute, therefore, involving such a claim is not one touching the management or the business of a society.

(3) A question such as the payment of wages on account of the termination of the services by a Co-operative Societies will also not be the subject-matter of a dispute touching the "business" of a Co-operative Societies (See para 32 read with para 14 (ii) of the judgment of the Supreme Court in Gujarat

State Co-operative Bank's case).

(4) However, a claim based upon contract between the employees of a Co-operative Societies and the society or claims for damages arising out of breach of such contracts can be part of a dispute touching the "management" of a Co-operative Societies within the meaning of [S. 91](#) of the Co-operative Societies Act. Hence such a claim can be entertained and decided by the machinery provided under the Act.

This petition must, therefore, fail. Rule is accordingly discharged with costs. The Co-operative Court will naturally not be able to give the relief of reinstatement claimed by the petitioner before it.

5. The Hon'ble Apex Court has considered an almost identical case in the matter of Maharashtra State Co-operative Housing Finance Corporation Ltd., Vs. Prabhakar Sitaram Bhadange [AIR 2017 SC 1647]. In the said case, the Management was a Co-operative Society and the respondent was a Manager. It was conceded that he was not a workman. In paragraph Nos.7 and 8, the Hon'ble Apex Court has concluded that a wrongful termination leading to a claim for damages cannot be entertained u/s 91. It was held in paragraph Nos. 10 to 14 as under :-

"10. A reading of the provisions of [Section 91](#) would show that there are two essential requirements for conferment of exclusive

jurisdiction on the Cooperative Court which need to be satisfied:

(i) the first requirement is that disputes should be 'disputes touching' the constitution of the society or elections or committee or its officers or conduct of general meetings or management of society, or business of the society; and

(ii) the second requirement is that such a dispute is to be referred to the Cooperative Court by 'enumerated persons' as specified under sub- section (1) of [Section 91](#).

11. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word 'officers' is used is altogether different, namely, election of the committee or its officers. Thus, the word 'officers' has reference to elections. It is in the same hue expression 'officer' occurs second time as well.

12. It was, however, argued by the learned counsel for the respondent that disputes touching the 'management or business of a society' would include the dispute between the management of the society and its employees.

13. There are plethora of judgments of this Court holding that the expression 'business of the society' would not cover the service matters of employer and employee. [In Deccan Merchants Coop. Bank Ltd. v. Dalichand Jugraj Jain](#), this Court interpreted somewhat similar clause and held that it covered five kinds of disputes. It becomes clear from the following discussion:

“Five kinds of disputes are mentioned in sub-section: 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.”

Likewise, in [Coop. Central Bank Ltd. v. Addl. Industrial Tribunal](#)[7], the Court held that the expression ‘touching the business of the society’ would not cover the disputes pertaining to alteration of conditions of service of workman.

These judgments were taken note of in [Morinda Coop. Sugar Mills Ltd. v. Morinda Coop. Sugar Mills Workers’ Union](#)[8], where scope of [Section 55](#) of the Punjab Cooperative Societies Act, 1961 came up for consideration. That section provided for reference of dispute to arbitration ‘if any dispute touching the constitution, management or the business of a cooperative society arises’. Following the aforesaid judgments, the Court gave limited meaning to the aforesaid expression and held that the suit filed by the Workers’ Union of the cooperative society

claiming dearness allowance on the wages plus fixed allowance in accordance with the Third Wage Board Report was maintainable in the Civil Court, and such a dispute was not covered by the provisions of [Section 55](#) of the Punjab Cooperative Societies Act, 1961.

The reading of the aforesaid judgments make it crystal clear that dispute of this nature does not come within the scope of 'business of the society'.

14. We now advert to the question as to whether such a dispute can be treated as dispute relating to 'management of the society'. On this aspect as well, there is a direct judgment of this Court in [Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad & Ors.](#)[9] wherein the expression 'management of the society' was assigned the following meaning:

“35. We will now focus attention on the expression “management of the Society” used in [Section 96\(1\)](#) of the Act of 1961. Grammatically, one meaning of the term ‘management’ is: “the Board of Directors’ or “the apex body” or “Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society”. In this sense it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day business of the Society, (see Words and Phrases, by West Publishing Co., Permanent Edn., Vol. 26, p. 357, citing Warner and Swasey Co. v. Rusterholz D.C. Minn [41 F Supp 398, 505] . Another meaning of the term “management”, may be: ‘the act or acts of managing or governing by direction, guidance, superintendence,

regulation and control, the affairs of a Society’.

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr Dholakia. The use of the term “management” in such a wide sense in [Section 96\(1\)](#) appears to us, to be very doubtful.”

It, thus, clearly follows that the dispute raised by the respondent is not covered within the meaning of [Section 91](#) of the Act and, therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed by the respondent.”

6. There is no dispute that the employee has claimed damages from the employer contending that he was wrongfully retired prematurely in November 1988 and he would have attained the age of superannuation in April 1992. In the Maharashtra State Housing Finance case (supra), the respondent alleged wrongful termination and he claimed damages for such wrongful termination. After considering catena of judgments of the Hon'ble Apex Court and by overruling the judgment of this Court in the matter of Pralhad Vithalrao Pawar Vs. Managing Director, Kannaded Sahakari Sakhar Karkhana Ltd., and another [1998 (3) Mh.L.J. 214], it was concluded that such a claim for damages by a Manager arising out of his wrongful termination would not be covered by Section 91 of the

M.C.S.Act.

7. In view of the above, this petition is allowed. The impugned judgment of the Appellate Co-operative Court dated 19/02/1997 is quashed and set aside. Appeal No.237/1984 is therefore dismissed and the judgment of the Co-operative Court dated 11/03/1994 concluding that the dispute raised by the respondent was not maintainable u/s 91, is sustained.

8. It needs to be recorded that the respondent herein has approached the Co-operative Court under legal advise in 1988. As such, in the event he prefers a suit for claiming damages against the petitioner, the time spent by him in preferring Case No.J/437/88 before the Co-operative Court, Jalgaon till the passing of this order, would be excluded and his suit would be considered on its own merits, provided it is filed within 4 (four) weeks from today.

9. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)