

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5088 of 2016
Sunil Khadse Vs. Vidarbha Co-op. Marketing Society Ltd., Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.S.S.Ghate, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 19, 2019

None appears for the petitioner. By this writ petition, the petitioner has challenged order dated 28/10/2015, passed by the Maharashtra State Co-operative Appellate Court under the provisions of the Maharashtra Co-operative Societies Act, 1960, whereby appeal filed by the respondent society has been allowed and it has been held that the dispute sought to be raised by the petitioner against the respondent society before the Appellate Court under Section 91 of the aforesaid Act, was not maintainable.

2) The petitioner was working as Plant Engineer with the respondent society and there was a resolution passed by the Board of Directors of the respondent society, whereby salary increments payable to the petitioner were withheld. Being aggrieved by the said action taken by the respondent society, the petitioner approached the Co-operative Appellate

Court under Section 91 of the aforesaid Act, raising dispute. The petitioner made following prayers before the Co-operative Court in the said dispute.

“1. Declare that the resolution of the Board of Directors of the Opponent Societies dated 15.10.97 against the disputed is illegal and be set aside.

2. To order the Opponent Societies that to allowed and to pay the salary increment from the dated 1.4.97 payable to the disputant.

3. Any other relief which may be deem fit and proper be also granted in favour of the disputant.”

3) The Co-operative Court, by its judgment and order dated 30/04/2014, allowed the said dispute raised by the petitioner and directed release of the increments that were withheld. Operative portion of the order passed by the Co-operative Court reads as follows :

“1. The dispute is allowed.

2. The opponent do release the due increment dated 01/04/1997 to the disputant and accordingly do pay the amount to the disputant as per rules.

3. The opponent do pay costs of the dispute to the disputant and shall be its own.”

4) Aggrieved by the same, the respondent society filed an appeal before the Co-operative Appellate Court and the principal ground of challenge raised before the Appellate Court was that the petitioner could not have maintained the dispute under

Section 91 of the aforesaid Act and that, therefore, the order passed by the Co-operative Court was without jurisdiction. The Co-operative Appellate Court accepted the contentions raised on behalf of respondent society and gave findings in favour of the respondent society in paragraph No.25 of the impugned order, which read as follows :

“Considering the ratios relied upon by the society I am of the considered opinion that these ratios are perfectly made applicable to the case in hand. The subject matter of the dispute does not touches to the expression “touching the business of the society” hence the dispute of the nature is not maintainable under sec. 91 of the MCS Act and the Co-operative Court has no jurisdiction to try and decide the disput. I have gone through the observation made by the trial court and found that the trial court has not properly consider the expression the business of the society and arrived at incorrect conclusion. Hence, I answer to this point in the negative.”

5) On this basis, the appeal was allowed and the order passed by the Co-operative Court was set aside and it was held that the dispute raised by the petitioner stood dismissed for want of jurisdiction.

6) None has appeared on behalf of the petitioner when the writ petition is called out for hearing.

7) The learned counsel for respondent society submitted before this Court that the view adopted by the Co-operative Appellate Court was correct in law

and that the challenge sought to be raised in the present writ petition deserved to be rejected, because the question of jurisdiction under Section 91 of the aforesaid Act in such a situation is no more *res integra*. The learned counsel invited attention of this Court to the judgment of the Hon'ble Supreme Court in **Maharashtra State Co-operative Housing Finance Corporation Ltd. Vs. Prabhakar Sitaram Bhadange 2017(6) Mh.L.J.365**. In the said judgment, the Hon'ble Supreme Court was concerned with an identical situation where an employee of a co-operative society raised dispute under Section 91 of the said Act. While considering the question as to whether the Co-operative Court would have jurisdiction in case of such service dispute between the employee and the Co-operative Society, the Hon'ble Supreme Court held as follows :

“10. A reading of the provisions of section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Co-operative Court which need to be satisfied :

(i) the first requirement is that disputes should be ‘dispute 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 Co-operative 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 co-operative 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 'officers' 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 Co-op. Bank Ltd. Vs. Dalichand Jungraj Jain*, 1970 Mh.L.J. (S.C.) 1 = (1969) 1 SCR 887, 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 Rules and its bye-laws."

Likewise, in *Co-op. Central Bank Ltd. VS. Addl. Industrial Tribunal*, (1969) 2 SCC 43, 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 Co-op. Sugar Mills Ltd. Vs. Morinda Co-op. Sugar Mills Workers' Union*, (2006) 6 SCC 80, where scope of section 55 of the Punjab Co-operative 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 co-operative 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 co-operative 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 Co-operative 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 *Gujrat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and ors* (1979) 3 SCC 123 wherein the expression 'management of the society' was assigned the following meaning :

“35. We will now focus attention on the expression “management of he 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. vs. Rusterholz D.C. Minn* [41 F Supp 398, 505]. another meaning of the term “management”, may be : ‘the act or acts of meaning 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 Co-operative Court does not have the jurisdiction to entertain the claim filed by the respondent.”

8) The above quoted portion of the said judgment of the Hon’ble Supreme Court makes it abundantly clear that the Co-operative Appellate Court was justified in allowing the appeal and holding that the dispute raised by the petitioner could not be entertained.

9) In view of the above, there is no merit in the present writ petition and accordingly, it is dismissed.

JUDGE