

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

W.P. No. 4660 of 2009

and

M.P.No. 2 of 2009

R.Narayanasamy

... Petitioner

Vs

1.The Deputy Registrar of Coop. Societies,
Tiruvannamalai Circle, Tiruvannamalai
Thiruvannamalai District.

2.The Special Officer,
Aruthirappattu Primary Agricultural Coop. Bank
Aruthirapattu Village & Post,
Thiruvannamalai District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings in Dispute No.92/2008-09, dated 25.01.2009 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : M/S.T.Girija
Government Advocate

For R2 : Mr. M.S.Palaniswamy

ORDER

This writ petition has been filed, challenging the order passed by the first respondent in Dispute No.92/2008-09 dated 25.01.2009, on the ground that the first respondent has no power to deal with the disputes under Section 90 of the Tamil Nadu Co-operative Societies Act.

2.It is stated in the affidavit filed in support of this writ petition that the petitioner is the Secretary of the second respondent Society for the past several years. The second

respondent raised a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act ('Act' in short) before the first respondent against the petitioner with regard to the alleged loss sustained by the second respondent bank in respect of the interest amount paid to a depositor for the alleged non-account of the deposit amount of Rs.56,000/-. According to the petitioner, the first respondent initiated enquiry under Section 81 of the Act and appointed an enquiry officer, who, after due enquiry, submitted his report. After receipt of the enquiry report, the first respondent has not initiated proceedings under Section 87 of the Act, but passed the impugned proceedings under Section 90, whereby the petitioner was asked to pay a sum of Rs.1,26,905/- to the second respondent bank. With these factual background, the present writ petition has been filed by the petitioner.

3.The learned counsel for the petitioner submitted that the petitioner is neither a member nor a past member of the second respondent Bank and he never received any amount by way of loan or advance from the second respondent. Hence, there could not be any claim against the petitioner under Section 90 of the Act. It is his further submission that the first respondent ought to have invoked the provisions under Section 87 of the Act for the alleged irregularities based on the enquiry report under Section 81, but without taking such recourse, initiated arbitration proceedings under Section 90 of the Act and passed the impugned order. Thus, the learned counsel relied upon the order of this Court dated 09.01.2009 in WP.Nos.23696 and 19680 of 2008 [P.Periyannan and N.Dhandapani v. the Deputy Registrar of Co-op. Societies, Krishnagiri Circle and others] in support of his submissions and prayed to set aside the impugned order passed by the first respondent.

4.After going through the aforesaid order relied on the side of the petitioner, the learned Government Advocate appearing for the first respondent and the learned counsel for the second respondent have no serious objection in granting such relief to the petitioner. However, they sought liberty to initiate appropriate proceedings under Section 87 of the Act against the petitioner.

5.Heard both sides and perused the documents placed before this Court, more particularly, the order of this Court dated 09.01.2009 passed in WP.Nos.23696 and 19680 of 2008, wherein, at paragraphs 7 to 10, it is observed and held as under:

"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 Commer. 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."

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.

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."

6.Following the aforesaid order, which holds good in respect of the petitioner herein, who admittedly an employee of the second respondent Bank, this writ petition stands allowed by setting aside the impugned proceedings dated 25.01.2009 passed by the first respondent in Dispute No.92/2008-09. However, this order shall not stand in the way of the Co-operative Society to initiate proceedings under Section 87 of the Act as against the petitioner on the basis of the report, if any, under Section 81 of the Act, if so advised. It is also made clear that since the writ petition is of the year 2009 and the same has been kept pending till now, the issue regarding limitation will not arise. No costs. Consequently, connected Miscellaneous Petition is closed.

vsi2

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Registrar of Coop.
Tiruvannamalai Circle, Tiruvannamalai
Thiruvannamalai District.

2.The Special Officer,
Aruthirappattu Primary Agricultural Coop.Bank
Aruthirapattu Village
Thiruvannamalai District.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.3394
+1cc to the Government Pleader, S.R.No. 3273

W.P. No. 4660 of 2009

VBA (CO)
GN(06/05/2019)