

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1574 of 2024

IA NO: CAN 1 OF 2024

IA NO: CAN 2 OF 2024

Member Secretary & Project Director, Sunderban Development Board

Vs.

The West Bengal State Co-operative Marketing Federation Ltd. & Ors.

For the Appellant : Mr. Pradip Kumar Roy, Sr. Adv.
Mr. Partha Sarathi Pal, Adv.

For the Respondent Nos. 1 : Mr. Malay Kr. Roy, Adv.
and 2

For the Respondent No. 4 : Mr. Srijan Nayak, Adv.
Mr. Ankit Sureka, Adv.
Mr. Biplab Das, Adv.

For GAHN : Mr. Sukanta Chakraborty, Adv.
Mr. Anindya Halder, Adv.

Hearing Concluded on : February 12, 2025
Judgement on : April 11, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed an order dated April 10, 2024 passed in WPA 12905 of 2019 by which, learned Single Judge, directed the appellant to make payment of a sum of Rs. 20,66,315/- to West Bengal State Co-operative Marketing Federation Limited (BENFED) within four weeks. Learned Single Judge has allowed BENFED to realise its margin and to make payment within

a fortnight thereafter to Global Agri Horti Nursery (GAHN). Learned Single Judge has also directed payment of interest.

2. Learned Senior Advocate appearing for the appellant has contended that, the appellant challenged the order of the Co-operative Appellate Tribunal dated August 16, 2018 affirming the award dated March 8, 2016 passed Dispute Case No. 11/RCS of 2012 by the Registrar Co-operative Societies by way of a writ petition being WPA 8995 of 2019 which was dismissed for default. BENFED had also filed a writ petition being WPA 12905 of 2019 challenging the same order dated August 16, 2018 of the Co-operative Tribunal in which the impugned order was passed. He has submitted that, application for restoration as well as an application for condonation of delay are pending in WPA 8995 of 2019.

3. Learned Senior Advocate appearing for the appellant has submitted that, a writ petition directed against an order of the Tribunal is not maintainable as neither a judicial order nor a quasi-judicial order is amenable under Article 226 of the Constitution of India.

4. Referring to the merits of the case, learned Senior Advocate appearing for the appellant has contended that, a work order was issued by BENFED to GAHN on December 28, 2001 for supply of

Moog seeds. GAHN had submitted two bills with BENFED for payment on January 14, 2002 and January 15, 2002. Alleging that, BENFED had not made payment of the supplies GAHN raised a dispute under the West Bengal Co-operative Societies Act, 2006 being Dispute Case No. 11/RCS of 2012 in which, the appellant was made a party.

5. Learned Senior Advocate appearing for the appellant has contended that, there is no privity of contract between his client and GAHN. He has referred to the definition of 'dispute' appearing in Section 4 (25) of the Act of 2006 and contended that, claimant in the dispute case being GAHN is not a person having a transaction with the appellant for a dispute case to be raised within the parameters of the Act of 2006. He has also referred to Section 102 (1) (d) of the Act of 2006 in this regard. He has contended that, a dispute case under the Act of 2006 can be initiated by against a co-operative society provided there exists a transactional relationship between the parties. He has pointed out that, appellant is not a co-operative society and did not have any contractual dealings with GAHN that would warrant invocation of the Act of 2006. Consequently, since no dispute case would be raised validly, as against the appellant, the award that has been passed in such dispute case is void ab initio.

6. Learned Senior Advocate appearing for the appellant has contended that, the claim of GAHN is barred by limitation. He has contended that, the alleged cause of action arose in 2002 when GAHN had supplied the consignment and submitted its bills in 2002 itself. He has pointed out that the dispute case was filed in 2012 well outside the prescribed period of limitation.

7. Learned Senior Advocate appearing for the appellant has contended that, the awarded case was not disposed of within the stipulated period of six months from the date of initiation. Therefore, according to him, the award passed was also invalid on such score.

8. Learned Senior Advocate appearing for the appellant has contended that, the Moog seeds supplied under the agreement were grossly sub-standard and not conforming to the prescribed standard quality and were unfit for agricultural use. He has contended that, his client received widespread complaints from farmers regarding poor quality seeds which promoted a high level enquiry by the Agricultural Department. He has referred to a complaint lodged by small and marginal farmers with regard to the defective seeds under false certification claims. He has pointed out that, an independent enquiry was undertaken which established

the substance of the complaints of sub-standard quantity of the Moog seeds supplied by GAHN.

9. Learned Senior Advocate has relied upon ***All India Reporter 2015 SC 3623 (Jogendrasinhji Vijaysinghji vs. State of Gujarat), 2015 Volume 5 Supreme Court Cases 423 (Radhey Shyam and Another vs. Chhabi Nath and Others)*** and ***2003 Volume 6 Supreme Court Cases 675 (Surya Dev Rai vs. Ram Chander Rai and Others)*** in support of his contentions.

10. Learned advocate appearing for GAHN has submitted that, the appeal is not maintainable. He has contended that, the contentions raised by the appellant are hit by the principles of res judicata since, the appellant filed another writ petition challenging the same order of the Tribunal which was dismissed for default on February 7, 2024. Such writ petition has not been restored till date.

11. Learned advocate appearing for GAHN has contended that, a writ of certiorari can be issued against an order passed by an inferior Tribunal. In support of such contention, he has relied upon ***2023 SCC OnLine SC 996 (Central Council for Research in Ayurvedic Sciences and Another vs. Bikartan Das and Others)***.

12. On the issue of limitation, learned advocate appearing for GAHN has contended that, the claim in the disputed case was not barred by limitation. He has pointed out that, GAHN submitted two bills dated January 14, 2002 and January 15, 2002 amounting to Rs. 20,66,315.50/-. The Principal Secretary had issued a letter dated May 24, 2005 to the appellant accepting the quality of the seed supplied. BENFED had acknowledged the liability by letters dated December 13, 2007, January 19, 2009, May 11, 2011 and May 26, 2016. The dispute case had been filed in 2012 well within the period of limitation.

13. Learned advocate appearing for GAHN has relied upon Section 52 of the Act of 2006 on the issue of limitation. He has contended that, the closure of the transaction became complete once the goods sold undisputedly and the controversy as to supply of seeds came to an end by virtue of the letter dated May 24, 2005. According to him, the claim is well within the period of limitation as extended by Section 18 of the Act of 1963.

14. Learned advocate appearing for GAHN has contended that, the appellant issued order in favour of BENFED for supply of 67,266.0 Kg Moog seed by a letter dated December 21, 2001 for delivery to its 22 growth centres. Such work order had specifically mentioned that BENFED shall procure the seeds from third party

and that the third party shall send seeds directly to different growth centres of the appellant. BENFED shall have to forward the bills of GAHN to the appellant for payment. BENFED on the basis of the order dated December 21, 2001 of the appellant had issued further order for supply in favour of GAHN wherein the two orders of the appellant were specifically mentioned.

15. Learned advocate appearing for GAHN has relied upon Section 40 of the Indian Contract Act, 1872. He has contended that, BENFED authorised GAHN to employ third person to perform the promise of BENFED which GAHN did. Consequently, the appellant is liable to pay BENFED who in turn should have to pay GAHN. He has also relied upon Section 70 of the Indian Contract Act, 1872 and contended that, GAHN did not intend to sell the good gratuitously. Appellant has utilized the benefits of the moog seeds supplied and therefore is liable to pay for the same. BENFED had forwarded two bills dated 14, 2002 and January 15, 2002 of GAHN to the appellant requesting for release of payment as GAHN had never intended to supply the moog seeds gratuitously.

16. Learned advocate appearing for GAHN has relied upon **2022 Volume 8 Supreme Court Cases 42 (ONGC Ltd. vs. Discovery Enterprises (P) Ltd.), 2024 Volume 4 Supreme Court Cases 1 (Cox & Kings Ltd. Vs. SAP India (P) Ltd.)** and **2013**

Volume 1 Supreme Court Cases 641 (Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and Others) on the issue that the appellant is both a necessary and proper party in the arbitration proceedings.

17. Learned advocate appearing for GAHN has contended that, any claim against third parties can be adjudicated upon by the Registrar under the provisions of Section 102 of the West Bengal Co-operative Societies Act, 2006. In this regard, he has drawn the attention of the Court to the provisions of Section 102 of the Act of 2006 as also the ratio laid down in **Discovery Enterprises (P) Ltd. (supra)** and **2023 SCC OnLine Cal 5713 (Vikram Constructions vs. Anustup Co-operative Housing Society Ltd.)**.

18. Learned advocate appearing for GAHN has contended that, High Court can modify the award passed in a dispute case while disposing of a mandamus appeal. In support of his contention he has relied upon Order 41 Rule 33 of the Code of Civil Procedure, 1908, and Rule 53 of Rules of the High Court relating to the application under Article 226 of the Constitution of India.

19. Learned advocate appearing for BENFED has submitted that, the order of the Co-operative Tribunal dealing with an order of the Registrar acting under the Act of 2006 is amenable to writ jurisdiction. In support of such contention, he has relied upon

2017 SCC OnLine Cal 10207 (Haji Hanif Hakam vs. Debt Recovery Appellate Tribunal at Kolkata & Ors.).

20. Learned advocate appearing for BENFED has relied upon **AIR 1967 Calcutta 310 (Union of India vs. Lal Chand and Sons)** and **AIR 1962 Supreme Court 779 (State of West Bengal vs. M/s B. K. Mondal and Sons)** on the applicability of Section 70 of the Contract Act.

21. Appellant had issued a work order in favour of BENFED for the purpose of procuring moog seeds. BENFED had engaged GAHN for the purpose of supply thereof. GAHN has claimed that it duly supplied such moog seeds to BENFED and submitted bills with BENFED for payment. Both BENFED and GAHN has contended that BENFED forwarded such bills of GAHN to the appellant for payment and that, appellant did not pay the same.

22. So far as the status of the appellant is concerned, it has been admitted at the bar and also independent of that, appellant is not a co-operative society while BENFED is one.

23. GAHN has raised disputes with regard to the supply of moog seeds to BENFED and the appellant before the Registrar, Co-operative Society, under the provisions of the Act of 2006. Parties have referred to various provisions of the Act of 2006 which provide for resolution of disputes within the framework thereof.

The relevant provisions are Section 4 (25) and 102 which are as follows:-

“4 (25) “dispute” means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society”

“102. Disputes to be filed before Registrar.- (1) Any dispute concerning the management or business or affairs of a co-operative society other than the dispute relating to election in a co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises-

(a) Among members, past members and persons claiming through members and deceased members or then sureties: or

(b) Between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the co-operative society, its board or any officer, agent or employees of the co-operative society or liquidator, past or present; or

(c) Between the co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the co-operative society; or

(d) Between two co-operative societies or between a co-operative society and a liquidator of another co-operative or between liquidator of two different co-operatives or between a co-operative society and any person having transaction with it or between a co-operative society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(4) Any civil court or any Consumers' dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed."

24. Section 4 (25) of the Act of 2006 has defined a dispute to mean any matter capable of being the subject matter of civil litigation and includes a claim in respect of any sum payable to or by a co-operative society.

25. Subsection (1) of Section 102 has allowed any dispute concerning the management or business or affairs of a co-operative society other than the dispute relating to election in a co-operative society conducted by the Co-operative Election Commission and disciplinary action taken by co-operative society against its paid employee regarding the terms and conditions of

the service to be filed before the Registrar for settlement if it arises amongst the persons delineated in sub-section (a) to (d) thereof.

26. Sub-section (2) of Section 102 has laid down a period of limitation within which, the dispute relating to recovery of money shall be filed before the Registrar. It has prescribed a period of limitation of 3 months from the date of which the cause of action arises.

27. Sub-section (3) of Section 102 of the Act of 2006 has allowed the Registrar to admit any dispute after the period of limitation provided in sub-section (2) if the applicant can show sufficient cause for not filing the dispute within the period of limitation.

28. Sub-section (4) of Section 102 of the Act of 2006 has ousted the jurisdiction of Civil Court or any Consumer Dispute Redressal Forum to try any dispute as mentioned in sub-section (1) of Section 102 of the Act of 2006.

29. Sub-section (5) of Section 102 of the Act of 2006 has prescribed the procedure of the filing a dispute before the Registrar.

30. Admittedly, appellant is not any of the persons delineated in sub-section 102 (1) (a) to (d) of the Act of 2006. It is an authority within the meaning of Article 12 of the Constitution of India.

31. *Discovery Enterprises (P) Ltd. (supra)* has considered the provision of the Arbitration and Conciliation Act, 1996. It has considered the issue as to whether a company within a group of companies which is not signatory to an arbitration agreement could nonetheless be bound by it.

32. Admittedly, neither the appellant nor BENFED can be said to be a company and more certainly, appellant and BENFED cannot be said to come within “a group of companies”.

33. *Chloro Controls India Private Limited (supra)* has considered the applicability of “Group of Companies” doctrine in an arbitration governed under the Arbitration and Conciliation Act, 1996. It has expressed the view that, the “Group of Companies” doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transaction involving multiple parties and multiple agreements.

34. *Cox & Kings Ltd. (supra)* has considered a factual matrix governed under the Arbitration and Conciliation Act, 1996. It has considered the definition of parties under Section 2 (1) (h) read with Section 7 of the Act of 1996. It has expressed the view that, the definition of parties under the Act of 1996 includes both the signatory as well as non-signatory parties.

35. There are fundamental differences between resolution of dispute through arbitration under the aegis of the Arbitration and Conciliation Act, 1996 and the resolution of dispute under the West Bengal Co-operative Societies Act, 2006. Arbitration under the Act of 1996 is voluntary. It is at the instances at least two parties, voluntarily agreeing to refer their disputes to arbitration, in writing. The Act of 2006 mandates a compulsory reference of disputes delineated in Section 102 (1) between the persons specified in Section 102 (1) (a) (d) thereof. Sub-section (4) of Section 102 of the Act of 2006 ousts the jurisdiction of the Civil Courts and Consumer Disputes Redressal Forum to adjudicate any dispute mentioned in sub-section (1) of Section 102.

36. It is trite law that, a statutory authority can take such action as empowered by the statute or not at all. Under Section 102 of the Act of 2006, a dispute falling within the categories of persons delineated in Section 102 (1) (a) to (d) can be referred to the Registrar of the Co-operative Society for decision. Registrar acting under the provisions of the Act of 2006 can decide such disputes as are permitted under Section 102 and between such parties as such Section 102 provides.

37. In the present case, GAHN and BENFED comes within the purview of “any person having transaction with it” as appearing in

Section 102 (1) (d) of the Act of 2006. As noted above, appellant before us is not a co-operative society and it did not refer any dispute to arbitration in respect of any transaction between it and BENFED. So also BENFED did not refer any dispute between it and the appellant to the Registrar for decision under Section 102 of the Act of 2006.

38. In our view, the GAHN being a person having transaction with BENFED, which is a co-operative society, is entitled to approach the Registrar for settlement of the disputes, in terms of Section 102 (1) (d) of the Act of 2006 which it did. In such proceedings therefore, GAHN could not have made the appellant a party as, appellant does not come within the purview of Section 102 (1) (d) of the Act of 2006.

39. There is no privity of contract between the appellant and GAHN. There is no jural relationship between the appellant and GAHN. Issue of Section 40 and Section 70 of the Indian Contract Act, 1872 could not be decided by the Registrar, Co-operative Society in view of the appellant not falling within Section 102 (1) (d) of the Act of 2006 vis-à-vis GAHN and the appellant not being a co-operative society.

40. Registrar, Co-operative Society acting under the provisions of the Act of 2006 passed an award against the appellant in a

proceeding initiated by GAHN which was sought to be implemented by the Tribunal. Judgment of the Tribunal was affirmed by the impugned judgment and order.

41. In our view, Registrar did not have jurisdiction over a proceeding against the appellant before us as the appellant did not come within the purview of any of the persons delineated under Section 102 (1) of the Act of 2006. Consequently, its order as affirmed by the Tribunal and concurred to by the impugned judgment and order cannot be sustained.

42. *Jogendrasinhji Vijaysinghji (supra)* has considered the issue of maintainability of Letters Patent appeals against orders of the learned single judge exercising jurisdiction under Article 226 and 227 of the Constitution of India. In the facts and circumstances of the present case, the learned single judge has exercised jurisdiction under Article 226 of the Constitution of India.

43. *Radhey Shyam and Another (supra)* has discussed the scope of jurisdiction under Article 226 and 227 of the Constitution of India. It has held that the scope of jurisdiction under Article 227 is distinct from that of Article 226.

44. *Surya Dev Rai (supra)* has dealt with the effect of amendment to section 115 of the Code of Civil Procedure, 1908 on

the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. It has held that such amendment cannot and does not in any manner affect the jurisdiction under Articles 226 and 227 of the Constitution of India.

45. *Central Council for Research in Ayurvedic Sciences and Another (supra)* has explained the meaning nature and scope of a writ of certiorari under Article 226 of the Constitution of India. It has held that, a writ of certiorari under Article 226 of the Constitution of India can be issued against a tribunal to confine the inferior tribunal within its jurisdiction so as to avoid the irregular exercise or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute.

46. In *Haji Hanif Hakam (supra)* an interim order had been passed on the grounds that the Debts Recovery Tribunal had interfered with the possession of a Receiver in respect of immovable properties, appointed by a civil court.

47. *Lal Chand and Sons (supra)* and *M/s B. K. Mondal and Sons (supra)* have considered the applicability of section 70 of the Indian Contract Act, 1872 in a suit filed for price of goods sold and delivered.

48. In view of the discussions above, impugned judgment and order to the extent that it directs the appellant to pay any sum to BENFED, is set aside. Direction on BENFED to pay the GAHN, is however not interfered with.

49. MAT 1574 of 2024 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

50. I agree.

[MD. SHABBAR RASHIDI, J.]