

PETITIONER:
SAHKARI SAMITIYAN VYAVASTHAPAKUNION ETC.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 01/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (3) 292 1996 SCALE (2)795

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS. 4174-75 OF 1996
[Arising out of SLP (C) Nos. 14778-79 of 1995]
J U D G M E N T

K. Ramaswamy, J.

Leave granted in all the special leave petitions.

These appeals arise from the judgment and order dated May 9, 1991 passed in Writ Petition No.1018-20 of 1979 by a Division Bench of the Rajasthan High Court. The facts are fairly not in dispute.

Paid Secretaries were recruited by the Rajasthan Credit Co-operative Institutions Cadre Authority Limited [for short, the 'Cadre Authority Society'] constituted under Section 4 [1] of the Rajasthan Co-operative Societies Act, 1965 [for short, the 'Act']. They were appointed in the respective District Co-operative Banks initially under Recruitment and Service Conditions of the Managers of Agriculture Credit Cooperative Societies Rules, 1977 [1977 Rules] and thereafter under Agriculture Cooperative Credit Societies Service Rules, 1969 [for short, the '1969 Rules'] by the Managers of the District Cooperative Banks and were sought to be posted to the Primary Agriculture Credit Cooperative Societies [for short, the 'PACS'] fastening liability of their salary on the PACS who have challenged the validity of the constitution of Cadre Authority Society and also the power of the Registrar of the Cooperative Societies [for short, the 'Registrar'] to make the rules calling upon PACS to contribute to the Manager's Salary Fund under Central Cooperative Bank Rules, 1969 [for short, the "Bank Rules"]. The Division Bench has held that the Cadre Authority Society cannot be registered as a cooperative society under Section 4 of the Act, the Bank Rules are ultra vires the powers of the Registrar under Rule 41 of the Cooperative Societies Rules, 1966 [for short, the "Rules"].

S/Shri R.K. Jain, Rajiv Dhavan and Jitendra Sharma, learned senior counsel appear for these Unions and Managers.

Pending these appeals, pursuant to the permission granted by this Court, the Government framed the Conditions of Service of the Managers/Assistant Managers of the Agricultural Credit Cooperative Societies Rules, 1995 and placed the same on record. The appellants are not agreeable to those Rules. Consequently, the learned counsel have contended that under Section 4 [1], Cadre Authority Society is a society regulating facilitation of disbursement of the loans by the PACS in terms of cooperative movement for which PACS came to be registered under the Act. The Cadre Authority Society came to be registered pursuant to the recommendation made by Datey Committee which has gone into the credit structure and proper utilization of the loans to the agriculturists made available by the State Government and distributed through the State Central Cooperative Credit Bank to the District Societies who in turn distribute the loans to PACS. For their coordination, supervision and proper utilization thereof the Managers\Assistant Managers [hereinafter referred to as the paid Secretaries] are competent persons to work as liaison between the PACS and their members and the District Banks and Central Bank. The Registrar under Rule 41 of the Rules read with Section 147 [2] and Section 148 [2] (xxx) of the Act is empowered to regulate the service conditions of paid Secretaries and to prescribe qualifications. Consequently, the Cadre Authority Society registered under Section 4(1) of the Act is a valid society. It is also contended that the 1969 Rules prescribe the mode of recruitment, method of appointment and control of the Managers. Bank Rules prescribe the amounts collected from PACS to pay their salaries. Therefore, the PACS are bound to contribute towards the salary and allowances of the paid Secretaries. Shri Jitendra Sharma further contended that they are the members of the PACS and that, therefore, the PACS are bound by the Bank Rules. Shri Aruneshwar Gupta, learned counsel appearing for the State contended that the Registrar has no power to make Bank Rules nor has he power to direct the PACS to contribute for the salary and allowances of the paid Secretaries. The High Court, therefore, was right in recording the findings in that behalf.

The question, therefore, is: whether the appellants are right in their contentions? With a view to appreciate the contentions, the first question that arises is: whether Cadre Authority Society could be a cooperative society registered under Section 4(1) of the Act. Section 4 [1] reads thus:

"4 [1]. Societies which may be registered and classified under this Act: Subject to the provisions of this Act, a Cooperative Society which has its objects and accordance with the cooperative principles, or a cooperative society established with the object of facilitating the operations of such societies, may be registered under this Act".

The marginal note indicates that the classified societies are to be registered under the Act. Subject to the provisions of the Act, a cooperative society which has its object the promotion of the economic interests of "its members" in accordance with the cooperative principles, or a cooperative society established with the object of "facilitating the operations of such societies", may be registered under the Act. The Cadre Authority Society,

admittedly, does not come under the first limb of Section 4 [1]. The contention is that since the object of the Cadre Authority Society is to facilitate the operations of the PACS, it is a cooperative society registered under the Act. In support thereof, Sri Jain placed the model bye-laws as part of the record. The model bye-laws would indicate that membership of a society consists of A Class members, viz., individuals who are above the age of 18 years and B Class members, viz., institutions who are admitted as members of the society. The institutions are lending societies. One of the objects is to recruit paid Secretaries to the District Cooperative Societies. At this stage, it is necessary to mention that the cooperative structure is built upon three-tier system, viz., PACS consisting of individual members, at the grass-root level within the area of operation of that society, the District Cooperative Societies and the Central Cooperative Bank. It is not in dispute that the District Cooperative Societies and the Central Cooperative Bank got the Cadre Authority Society which is not a lending institution, registered and the paid Secretaries, who are otherwise a third agency, recruited by it. They are appointed by the Managers of the District Cooperative Societies and are transferred by them to the PACS within the area of the operation of the District Bank. It would, therefore, be clear that it does not come as a society to facilitate the PACS in funding them for disbursement of loan to the members of PACS.

The question is: whether the PACS are bound to take the services of the paid Secretaries? Rule 41 of the Rules reads thus:

"41. Officers and employees of cooperative societies. - [1] Notwithstanding anything contained in the bye-laws of society no Cooperative society shall appoint any person as its paid officer or employee in any category of service, unless he possess the qualifications and furnishes the security if so specified by the Registrar from time to time, for such category of service as the society, or for the class of society to which it belongs. The conditions of service of the employees of the societies shall be as specified by the Registrar. [2] No co-operative society shall retain in service any paid officer or employees, if he does not acquire the qualifications or furnish the security as is referred to in sub-rule [1] within such time as the Registrar may direct. [3] The Registrar may for special reasons, relax in respect of any paid officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish. [4] Where in the course of an audit under Sec.68 or an inquiry under Sec.70 or an inspection under 71 or Section 72 it is brought to the

notice of the Registrar that a paid officer or servant of a Society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion, there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary on the interest of the society direct the committee of the society pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him.

[5] On receipt of a direction from the Registrar under sub-rule [4], the committee of the society shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

[6] The Registrar may direct the committee to extend from time to time the period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar whose decision thereon shall be final.

[7] If the committee fails to comply with the direction issued under servant under suspension from such date and for such period as he may specify in the order and thereupon the paid officer or servant, as the case may be, shall be under suspension."

It would thus be clear that notwithstanding anything contained in the bye-laws of the Society, PACS shall not appoint any person as its paid officer or employee in any of the categories of service unless the concerned officer/employee is possessed of the prescribed qualifications and security specified by the Registrar is furnished in that behalf to the Society. The conditions of the service of the employees of the Society shall be specified by the Registrar. The Society would retain the paid officers or employees only on fulfillment of the conditions prescribed by the Registrar. The paid officers or employees are the employees governed by the Act, Rules and the bye-laws of the Society over which the Society has had disciplinary power and jurisdiction, subject to the control, supervision and directions of the Registrar.

Section 147 [2] of the Act empowers the Government to authorise the Registrar to exercise their power under the Act subject to such conditions, if any, as may be specified in that behalf in the notification. By virtue thereof, sub-section [2] of Section 148 gives power to the Registrar to make rules. Clause [xxx] of the said sub-section [2] gives

power to the Registrar to prescribe qualifications of a Manager, Secretary, Accountant or any other officer or an employees of the society and the conditions of their service including discipline and control. It would thus be clear that the Manager, Secretary, Accountant or any other officer or employee shall be of the Society; the conditions of service including discipline and control shall be in accordance with the rules made by the Registrar under Rule 41 of the Rules. In other words, the Registrar, as a delegate of the Government is empowered to prescribe qualifications of the officers or employees of the Society, viz., PACS, District Cooperative Societies or the Central Cooperative Bank, as the case may be, and the respective Societies require them to appoint the officers or employees, i.e., Manager, Secretary, Accountant or any other officer or employee over whom they have disciplinary and controlling power. Under its own bye-laws, the respective Societies have the power to make appointment under the rules made by the Registrar in that behalf.

The question, therefore, emerges: whether the paid Secretaries appointed by the District Cooperative Societies, recruited and controlled by the Cadre Authority Society are the officers or employees of the Society, i.e., PACS? It is seen that there is a dichotomy in the operational structure. The Society is a unit by itself with its members managed by the committee elected under the provisions of the Act, the Rules and the bye-laws for specified period. It is empowered to have control and to maintain discipline over its officers and employees. The paid Secretaries are admittedly not the officers appointed to the Society and by the Society. They are officers appointed by the District Cooperative Society by its Manager, 'Manager' is defined under the 1969 Rules to mean "the manager appointed under these rules and who shall be Chief Executive and paid employee of the society. Manager shall have no relation with the services of the Bank employees. Due to getting salary from the Managerial fund at Bank level he shall not be entitled for any benefits which are being given to Bank employees. And Society shall not appoint any person as Manager". A paid Secretary is not, therefore, a Manager appointed by the PACS. It is seen that the structure of the employees is indicated in Section 148 [2] (xxx) as Manager, Secretary, Accountant or any other officer or employee of the society. Therefore, in addition to the said establishment, there cannot be any paid Secretary to the Society i.e., PAC. Obviously, therefore, the Societies have objected that they cannot be fastened with the liability to contribute fund under Bank Rules for payment of the salary of Surveillance Officer appointed by the District Cooperative Society and to be controlled by the Cadre Authority society. It would, therefore, be clear that they are outside the scope of the Cadre of PACS.

The question, then is: whether the Registrar as a delegate of the Government, can make rules in that behalf or create a fund under the Bank Rules? It is seen that the power under Rule 41 is limited only to prescribing the qualifications and conditions of service of the officers and employees enumerated in clause (xxx) of sub-section [2] of Section 148. He, therefore, has no power to make rules governing appointment of paid Secretaries and to create a fund under Bank Rules for payment of salaries to them and to fasten the liability on the PACS. The Registrar travelled beyond the power delegated to him under the Act. We have come across Section 69A of the Maharashtra Cooperative Societies Act which, as amended by the statute, gives such a

power for creation of a Society as recruitment agency to make appointment of such recruited candidates to the Primary Cooperative Societies and posting them to the primary societies. Statute also fastened the liability on the primary societies to contribute certain percentage towards salary and allowances of such paid Secretaries. Making the Bank Rules or the creation of a fund would, therefore, be beyond the powers of the Registrar under Rule 41 read with Section 148 [2] (xxx) of the Act. The High Court, therefore, was clearly right in its findings that Cadre Authority Society is not a society registrable under Section 4 [1] of the Act and that the Registrar has no power under Rule 41 to make Bank Rules.

The contention of Shri Jitendra Sharma that they are members of PACS under 1977 Rules cannot be given countenance for the reason that 1977 Rules stood superseded by 1969 Rules. Admittedly, they are not members nor are they appointed as officers or employees of the PACS. When we called upon the counsel to produce any order of appointment given to the paid Secretaries by any of the PACS, he conceded that he did not have any such letters. Therefore, they cannot be declared to be members or officers or employees of the PACS. Thus considered, we are of the firm opinion that the view taken by the High Court is not vitiated by any error of law.

The appeals are accordingly dismissed but in the circumstances, without costs.