

PETITIONER:
DR. KUMAR BAR DAS

Vs.

RESPONDENT:
UTKAL UNIVERSITY & OTHERS

DATE OF JUDGMENT: 03/12/1998

BENCH:
Sujatsa V. Manohar, K. Venkataswami, M. Jagannadha Rao

JUDGMENT:

M. Jagannadha Rao.J.

The appellant, Dr. Kumar Bar Das has filed this appeal against the judgment of the High Court of Orissa dated 30.9.1993 in O.J.C. No. 1910 of 1990. By that judgment, the High Court dismissed the said writ petition filed by the appellant challenging the orders of the Chancellor of the Utkal University dated 21.5.1990. The Chancellor, by the said order, had set aside the appointment of the appellant dated 3.2.1990 as Professor of Economics (State Bank of India Chair) (hereinafter called SBI Chair), holding that the recommendation of the Selection Committee dated 29.2.1984 was invalid. The said order was passed by the chancellor on a representation filed by the 5th respondent, Dr.(Mrs.) Bedabati Mohanty. The Chancellor, after setting aside the appointment of the appellant further directed that the Vice-Chancellor/Syndicate shall re-advertise the post and conduct the selection afresh to fill up the vacancy to the post of Professor (SBI Chair). The 5th respondent, being aggrieved by the order of the Vice-Chancellor dated 21.5.1990 in so far as it directed re-advertisement, filed OJC No. 2144 of 1990. The High Court, by the same common judgment, while upholding the order of the Chancellor to the extent it set aside the appointment of the appellant allowed the 5th respondent's writ petition OJC No. 2144 of 1990 and directed that she, being the next person in the panel prepared by the selection committee, be appointed as Professor of Economics (State Bank of India Chair).

The appellant, therefore, filed a separate SLP(Civil) No.....(CC 7855 of 1998) questioning the judgment of the High Court dated 30.9.1993 in OJC No. 2144 of 1990 to the extent it set aside the orders of the Chancellor directing re-advertisement and directing the appointment of the 5th respondent. There is also an application for condonation of delay. In that SLP notice had not been issued but it has been posted before us.

Santosh Hegde, J.

These appeals are against the judgment and order dated 19.4.1983 passed by the High Court of Punjab & Haryana in Civil Writ Petition Nos.2621 and 2622 of 1976. The appellant who was the petitioner before the High Court, filed the aforesaid writ petitions challenging an order made by the second respondent herein appointing the 3rd respondent as an arbitrator under the provisions of the Punjab Cooperative Societies Act, 1961 (for short 'the Act') which petitions came to be dismissed by the Full Bench of the High Court, following an earlier Full Bench judgment of the same High Court which is since reported as Mam Raj v. State of Haryana & Ors. (AIR 1982 P&H 211).

In these appeals, it is contended by the appellant that the provisions of Section 55(l)(b) of the Act are not applicable with regard to any dispute arising between an employee of a Cooperative Society and another Cooperative Society and the dispute in the instant case being between

Shahbad Farm Cooperative Marketing cum Processing Society Ltd. (for short the Shahbad Society) and an employee of Nalvi Cooperative Agricultural Service Society (for short the 'Nalvi Society'), such dispute could not have been referred to an arbitrator under the provisions of the Act.

In support of his contention, the appellant has sought to place reliance on a judgment of this Court in Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors, (1969 1 SCR 887). In our opinion, the ratio laid down in the said judgment is not applicable to the fact of this case. The dispute in that case was in relation to a property leased by a member of the Society to the Society and the question was whether such a dispute comes under the purview of the arbitration clause provided for in the Act. There, it was held by this Court that though the person who leased the property to the Society was a member of the Society, the nature of the dispute was such that it did not pertain to the management and business of the Cooperative Society. In the instant case, the appellant though was employed by the Nalvi Society as a salesman was, in fact, a member of the Shahbad Society. The dispute in question was with reference to so much amount collected by the appellant which was payable to the Shahbad Society. Therefore the claim of the Shahbad Society is certainly

the one pertaining to the management and business of the Shahbad Society. Therefore, in our opinion, the dispute squarely falls within Section 55 of the Act. It is unfortunate that the appellant in his special leave petition did not disclose this fact that he was a member of the Shahbad Society. On the contrary, he had only highlighted the fact that he was an employee of the

Nalvi Society and, as such, fee dispute between him and the Shahbad Society could not come under Section 55 of the Act. It is only after a counter was filed on behalf of the Shahbad Society that it has come on record that the appellant is also a member of the Shahbad Society. To this extent it should be said that the appellant was not fair to this Court in presenting his case. It has also come on record that the arbitrator has already passed an award against the appellant and it is only by virtue of the interim order passed by this Court that that award is not yet executed.

At any rate, we have come to the conclusion that in view of the fact that the appellant is a member of the Shahbad Society and as a member any amount due from him to the Society, would come within the purview of the dispute touching upon the management and business of the Society. We find no merit in these appeals and the same are dismissed with costs.