

CASE NO.:
Appeal (civil) 4488 of 2004

PETITIONER:
Morinda Cooperative Sugar Mills Ltd.

RESPONDENT:
Morinda Coop. Sugar Mills Workers Union

DATE OF JUDGMENT: 12/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the appellant under Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code'). The defendant \026Morinda Co-operation Society Workers' Union (hereinafter referred to as the 'Union') as plaintiff filed a suit claiming dearness allowance on the wages plus fixed allowance in accordance with para 317 (ii) of the Third Wage Board Report. The first appellate court reversed the judgment and decree of the trial court, holding that the subject matter of the suit cannot be said to be a dispute touching the business of the society. Accordingly the appeal was allowed. Second Appeal was filed by the defendant (present appellant) contending that the view of the trial court was justified and that of the first appellate court was not justified.

The plaintiff \026Union filed the suit seeking declaration to the effect that the members of the plaintiff \026 Union was entitled to the benefit of the Variable Dearness Allowance (for short the 'VDA') on the basic wages plus fixed allowance in accordance with para 317(ii) of the Third Wage Board Report with a consequential relief for permanent injunction restraining the defendant from withdrawing the payment of VDA from the fixed amount of Rs.150 which was being paid to the members of the Union. Defendant took the stand that since small notice under Section 79 of the Punjab Co-operative Societies Act, 1961 (in short the 'Act') is required, the suit was not maintainable. The trial court on the basis of the pleadings framed five issues which are as follows:

1. Whether the plaintiff is entitled to the declaration as prayed for?
2. Whether the plaintiff is entitled to the injunction as prayed for?
3. Whether the suit is not maintainable in the present form?
4. Whether the plaintiff has no locus standi to file the present suit?
5. Whether the suit is liable to be dismissed on the

ground of non service of notice under the Punjab Co-operative Societies Act?

The trial court held that the defendant has no right to withdraw the VDA in accordance with the recommendations. Issues 1 and 2 were accordingly answered. It was further held that defendant has no right to withdraw VDA and if any clarification for withdrawal of VDA is required, opportunity of hearing was required to be given to the plaintiff and it should have been obtained from the Third Wage Board. The Issues 1 and 2 were accordingly answered. The suit was held to be maintainable as no defect on the form of the suit was pointed out. But on issue No. 4 it was held that service of notice was mandatory.

In the Second Appeal it was urged that the First Appellate Court lost sight of the fact that expression "business of the society" used in Section 79 would necessarily include financial involvements concerning payment of salary and allowance to the plaintiff\026Union. It was further pointed out that disputes of the nature raised touched the constitution, management or business of the cooperatives societies and was required to be referred to "Arbitration" under Section 55(1) of the Act. The High Court after analyzing the Bye law No.5 of the appellant, came to hold that the first appellate court was justified in its conclusion. Accordingly the Second Appeal was dismissed.

Learned counsel for the appellant submitted that the object of the society was to promote economic interest of its members and if the effect of costs involved in production of sugar was the subject matter of adjudication, obviously notice under Section 79 of the Act was mandatorily necessary. It was submitted that the expression "touching business of the society" is wide enough to encompass all aspects which have effect on the economic interest of the members and that is why trial court was justified in its view.

Per contra learned counsel for the respondent submitted that the High Court has analysed the legal position, the objects and has come to the right conclusion by upholding the judgment and decree of the first appellate court.

Sections 55 and 79 of the Act read as follows :

"55. Disputes which may be referred to arbitration \026 (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a cooperative society arises \026

(a) among members, past members and persons claiming through members, past members and deceased members ; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or

legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society:

Such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

2. For the purposes of sub-section (1), the following be deemed to be disputes touching the constitution, management or the business of co-operative society, namely \026

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not:

(b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not:

(c) any dispute arising in connection with the election of any officer of the society.

3. If any question arises whether a dispute referred to the Registrar under this Section is or not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

79. Notice necessary in suits \026 No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left."

The object of Section 55 of the Act is clear. If any dispute touches the constitution, management or business of any cooperative society arising between specified category of members has to be referred to arbitration. Similarly no cooperative society or its officers should be dragged to litigation before the Civil Court in respect of any act touching the business of such a society unless notice required to be given in writing as has been issued to the Registrar of the society. Bye law No. 5 of the Bye Laws of the Appellant, so far as relevant, reads as follows:

"Objects

The objects of the Mills shall be to promote the economic interest of its members and for this purpose to carry on the manufacture of sugar, sugar products and other ancillary products and to make arrangements for their sale and also to take necessary steps and measure for the development of sugarcane and sugar beet. For the purpose of attaining the aforesaid objects, it shall be competent for the Mills :-

xxx xxx

"(d) To Purchase sugarcane of sugar beet preferably from grower members and others and to sell the finished products so manufactured.

xxx xxx

(j) To instal plant & Machinery for utilization of ancillary/bye products and bury raw materials for the same and sell finished products in the course of the utilizing and marketing of the ancillary/bye products.

xxx xxx

(p) To do such other things as are incidental or conducive to the attainment of all or any of the above objects."

The emphasis made by learned counsel for the appellant is that when the object is to promote the economic interest, any thing which has link with the economic interest has to be, per force, taken as touching the business of the society.

This Court in O.N. Bhatnagar v. Smt. Rukibai Narsindas and Others (AIR 1982 SC 1097) observed inter alia as follows:

"In the present case the society is a tenant co-partnership type housing society formed with the object of providing residential accommodation to its co-partner tenant members. Now, the nature of business which a society carries on has necessarily to be ascertained from the object for which the society is constituted, and it logically follows that whatever the society does in the normal course of its activities such as by initiating proceedings for removing an act of trespass by a stranger, from a flat allotted to one of its members, cannot but be part of its business. It is as much the concern of the society formed with the object of providing residential accommodation to its members, which normally is its business, to ensure that the flats are in occupation of its members, in accordance with the bye-laws framed by it, rather than of a person in an unauthorized occupation, as it is the concern of the member, who lets it out to another under an agreement of leave and licence and wants to secure possession of the premises for his own use after the termination of the licence. It must, therefore, follow that a claim by the society together with such member for ejectment of a person who was permitted to occupy having become a nominal

member thereof, upon revocation of licence, is a dispute falling within the purview of Section 91(1) of the Act."

(Underlined for emphasis)

In *Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain* (1969 (1) SCR 887) it was held as follows :

"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 meeting 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 authorized to enter into under the Act and the Rules and its bye-laws."

In *Co-operative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.* [1969 (2) SCC 43] it was held that alteration of the conditions of the service of the workman would not be covered by the expression "touching the business of the society". It was held *inter alia* as follows :

"Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred to decision to the Registrar under Section 61 of the Act. The dispute related to alterations of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society: but the meaning given to the expression "touching the business of the society". In our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the

society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, 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."

(Underlined for emphasis)

When the factual background are tested in the background of principles set out in O.N. Bhatnagar's case (supra), Deccan Merchant's case (supra) and Cooperative Central Bank's case (supra), the conclusions of the First Appellate Court as affirmed by the High Court do not suffer from any infirmity to warrant interference.

The appeal is dismissed. No costs.