THE MAHARASHTRA STATE COOPERATIVE HOUSING FINANCE CORPORATION LTD. A

v.

PRABHAKAR SITARAM BHADANGE

(Civil Appeal No. 1488 of 2017) B

MARCH 30, 2017

**[A. K. SIKRI AND R. K. AGRAWAL, JJ.]**

*Maharashtra Cooperative Societies Act, 1960 – s.91 – Jurisdiction of – Cooperative Court to decide 'service dispute' under the Act – Respondent was in the services of the appellant Corporation – He was dismissed from service on the ground of misconduct – Respondent approached the Cooperative Court challenging the order of dismissal – Appellant-corporation filed application for rejection of petition filed by respondent on the ground that the Cooperative Court set up under the Act did not have jurisdiction to entertain and decide the service dispute between the employer and employee, inasmuch as the dispute in question did not touch upon the business of the society and was not covered by provisions of s.91 – Held: Specific powers given to the Cooperative Court under the provisions of s.91 are of limited nature – Clearly disputes between the cooperative society and its employees are not covered u/s.91 – Dispute in question does not come within the scope of 'management or business of a society' u/s.91(1) – Therefore, the Cooperative Court did not have jurisdiction to entertain the claim filed by the respondent – Petition filed by respondent before the Cooperative Court not maintainable.* C D E F

*Maharashtra Cooperative Societies Act, 1960 – s.91(1) – Expression 'management or business of a society' – Discussed.*

**Allowing the appeal, the Court**

**HELD: 1.1 On perusal of provisions of s.91, a firm conclusion is arrived at, that service dispute between the employees of a cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word *'officers'* is used is altogether different, namely, election of the committee or its officers. Thus, the word *'officers'*** G H

A **has reference to elections. It is in the same hue expression *'officer'* occurs second time as well. [Para 11] [731-C]**

**2. The expression 'business of the society' would not cover the service matters of employer and employee. It is crystal clear that dispute in question does not come within the scope of**
B **'business of the society'. Also, the dispute cannot be treated as dispute relating to 'management of the society'. Thus, clearly the dispute raised by the respondent is not covered within the meaning of Section 91 of the Act and, therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed**
C **by the respondent. [Paras 12-14] [731-D, E; 732-E; 733-C]**

**3. The provisions of Section 91 of the Act spells out the specific powers that are given to the Cooperative Court and those powers are of limited nature. The disputes between the cooperative society and its employees are not covered by the said provision. As a consequence, it is held that the petition filed**
D **by the respondent before the Cooperative Court is not maintainable. It would however, be open to the respondent to file a civil suit. [Paras 16 and 18][733-G; 734-F]**

*Deccan Merchants Coop. Bank Ltd. v. Dalichand Jugraj Jain* **[1969] 1 SCR 887**; *Coop. Central Bank*
E *Ltd. v. Addl. Industrial Tribunal* **(1969) 2 SCC 43 : [1970] 1 SCR 206**; *Morinda Coop. Sugar Mills Ltd. v. Morinda Coop. Sugar Mills Workers' Union* **(2006) 6 SCC 80 : [2006] 3 Suppl. SCR 473 – relied on.**

*Pralhad Vithalrao Pawar v. Managing Director,*
F *Kannaded Sahakari Sakhar Karkhana Ltd. & Anr.* **1998 (3) Mh.L.J. 214**; *Executive Committee of Vaish Degree College, Shamli & Ors. v. Lakshmi Narain & Ors.* **(1976) 2 SCC 58 : [1976] 2 SCR 1006**; *Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner & Ors.* **(2007) 11 SCC 756 : [2007] 1 SCR 1007**;*Dharappa v. Bijapur*
G *Coop. Milk Producers Societies Union Ltd.* **(2007) 9 SCC 109 : [2007] 5 SCR 729**;*Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad & Ors.* **(1979) 3 SCC 123**; *R.C. Tiwari v. M.P. State Cooperative Marketing Federation Ltd. & Ors.* **(1997) 5 SCC 125 –**
H **referred to.**

**Case Law Reference**

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|---|---|---|
| **1998 (3) Mh.L.J. 214** | **referred to** | **Para 5** |
| **[1976] 2 SCR 1006** | **referred to** | **Para 7** |
| **[2007] 1 SCR 1007** | **referred to** | **Para 9** |
| **[2007] 5 SCR 729** | **referred to** | **Para 9** |
| **[1969] 1 SCR 887** | **relied on** | **Para 13** |
| **[1970] 1 SCR 206** | **relied on** | **Para 13** |
| **[2006] 3 Suppl. SCR 473** | **relied on** | **Para 13** |
| **(1979) 3 SCC 123** | **referred to** | **Para 14** |
| **(1997) 5 SCC 125** | **referred to** | **Para 17** |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1488 of 2017.

From the Judgment and Order dated 21.01.2014 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 7324 of 2013.

M.Y. Deshmukh, Yatin M. Jagtap, Advs. for the Appellant.

Amol B. Karande, Adv. for the Respondent.

The Judgment of the Court was delivered by

**A. K. SIKRI, J.** 1. The appellant, Maharashtra State Cooperative Housing Finance Corporation Limited (hereinafter referred to as the 'Corporation'), is a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the 'Act'). The respondent had joined the services in the appellant Corporation in the year 1975 as an Inspector. He was promoted to the post of Branch Manager (Class-I) in the year 2000. For certain acts of misconduct allegedly committed by the respondent, he was put under suspension vide orders dated July 11, 2003. Thereafter, a charge-sheet was served upon him and the departmental inquiry conducted, which resulted in dismissal order dated April 28, 2006 passed by the Corporation, dismissing the respondent from service. His departmental appeal having dismissed, the respondent approached the Cooperative Court at Aurangabad, which is set up under the Act, on April 19, 2007 challenging the orders of dismissal from service as well as the order rejecting the departmental

A appeal by filing Dispute No. 61 of 2007. On receiving the notice in the said dispute petition, the Corporation filed an application for rejection of the petition of the respondent on the ground that the Cooperative Court set up under the Act did not have the jurisdiction to entertain and decide the service dispute between the employer and the employee, inasmuch as the dispute in question did not touch upon the business of the society B and was not covered by the provisions of Section 91 of the Act. The Cooperative Court dismissed the said application holding that it had the requisite jurisdiction to decide the dispute. Order of the Cooperative Court was challenged by the appellant before the Cooperative Appellate Court in the form of an appeal. This appeal was dismissed confirming C the orders of the Cooperative Court. Further challenge was laid by the appellant by filing a writ petition before the High Court of Judicature at Bombay, Aurangabad Bench. This writ petition has also been dismissed vide judgment dated January 21, 2014. Present appeal assails the said judgment of the High Court.

D 2. From the aforesaid, it becomes clear that the issue that needs to be decided is as to whether the Cooperative Court established under the Act has the requisite jurisdiction to decide '*service dispute*' between a cooperative society established under the Act and its employees.

3. Section 91(1) of the Act, scope whereof is to be examined, E reads as under:

> "91. Disputes. – (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its F officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Cooperative Court if both the parties thereto are one or the other of the following –
>
> G (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society or the official assignee of a deregistered society;

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(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under Section 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transaction in respect of which restrictions have been prescribed under Section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the liquidator of such a society or deregistered society or the official assignee of such a deregistered society."

4. As the plain language of Section 91 suggests, primarily those disputes which pertain to the constitution of the society or the elections, management or business of society, etc., are to be decided by the Cooperative Court. Such disputes are normally between the members of the society or between the society and its members. However, this Section also uses the expression *'it's officers'* and on that basis, it is argued by the respondent that disputes of employees/officers with the management and the society can also be covered, more particularly, the dispute regarding termination of the officer, which is the subject matter of the petition filed by the respondent. It is further argued that in any case disputes pertaining to '*management or business of a society*' are wide enough to cover the dispute between the society as an employer and its employees.

5. Before the High Court it was argued by the counsel for the respondent that the respondent was not claiming reinstatement as he had attained the age of superannuation when the dispute was filed. Therefore, while challenging the resolution of the respondent dismissing his services, the respondent was seeking compensation for wrongful dismissal. It was, thus, argued that since reinstatement was not claimed, the award of compensation was within the jurisdiction of the Cooperative

A Court. This contention of the respondent is accepted by the High Court relying upon its earlier Division Bench judgment in the case of ***Pralhad Vithalrao Pawar*** v. ***Managing Director, Kannaded Sahakari Sakhar Karkhana Ltd. & Anr.***[1] The rationale behind this view taken in the aforesaid judgment by the High Court was that the remedy under Section 91(1) of the Act is a substitute for the remedy which could have been B available before the Civil Court as the forum created under Section 91 is a substitute for the Civil Court and created under a special legislation. Since the Civil Court has the jurisdiction to award damages, the Cooperative Court would be vested with same powers as its substitute. The High Court also held that the respondent herein was working as the C Manager with the appellant Corporation and, therefore, was not *'workman'* within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The submission of the learned counsel for the appellant was that, no doubt the Cooperative Court was the substitute of the Civil Court, but, at the same time, it was the creature of the statute and only limited powers were conferred upon the Cooperative Court and not all the D powers of the Civil Court. These powers pertained to the nature of disputes which were categorically delineated under Section 91 of the Act. According to the learned counsel, the Cooperative Court was vested with the jurisdiction to decide only those disputes which touch upon the business of the society and since it was not a dispute pertaining to the E business of the society or the election of committee or its officers, and was an employer-employee dispute, Section 91 did not give any power to the Cooperative Court to decide such disputes which arise between the employer and the employee.

6. Learned counsel for the respondent, on the other hand, adopted F the afore-noted reasons as given by the High Court. His submission was that the word *'officer'* occurring in Section 91 would include disputes between the management and its officers, i.e. employees. He also submitted that the disputes relating to *'management'* of a society should be read widely to include service disputes as well.

G 7. We may state at the outset that it was conceded at the Bar that if the employee of a cooperative society is covered by the definition of *'workman'* within the meaning of the Industrial Disputes Act, 1947 and claims a relief of reinstatement, in that event the Cooperative Court will not have jurisdiction to entertain such a claim, inasmuch as, relief of reinstatement cannot be granted by the Cooperative Court. Such a relief

H [1] 1998 (3) Mh.L.J. 214

can only be granted by the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act having regard to the fact that special and complete machinery for this purpose is provided under the provisions of the Industrial Disputes Act, the jurisdiction of the Civil Court stands ousted. This is so held by this Court consistently in a number of judgments[2]. These observations are made on the premise that even if it is accepted that the Cooperative Court established under the Act is a substitute of a Civil Court, the jurisdiction of the Civil Court to grant relief would not go beyond the jurisdiction which has been vested in the Civil Court. When admittedly the Civil Court does not have jurisdiction to grant any such relief and its jurisdiction is barred in view of the law laid down in the aforesaid judgment, as a *fortiorari*, the jurisdiction of the Cooperative Court shall also stand barred. We may also clarify one more aspect. Contract of personal services is not enforceable under the common law. Section 14, read with Section 41(e) of the Specific Relief Act, 1963, specifically bars the enforcement of such a contract. It is for this reason the principle of law which is well established is that the Civil Court does not have the jurisdiction to grant relief of reinstatement as giving of such relief would amount to enforcing the contract of personal services. However, as laid down in the cases referred to above, and also in ***Executive Committee of Vaish Degree College, Shamli & Ors.*** v. ***Lakshmi Narain & Ors.***[3], there are three exceptions to the aforesaid rule where the contract of personal services can be enforced:

(a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;

(b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal; and

(c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.

8. Even when the employees falling under any of the aforesaid three categories raise dispute *qua* their termination, the Civil Court is

[2] Uttar Pradesh Warehousing Corporation Ltd. v. Chandra Kiran Tyage, 1970 1 LLJ 32; Dr. S.B. Dutta v. University of Delhi, 1959 SCR 1236 and S.R. Tewari v. District Board, Agra 1964 1 LLJ 1

[3] (1976) 2 SCC 58

A not empowered to grant reinstatement and the remedy would be, in the first two categories, by way of writ petition under Article 226 of the Constitution or the Administrative Tribunal Act, as the case may be, and in the third category, it would be under the Industrial Disputes Act. An employee who does not fall in any of the aforesaid exceptions cannot claim reinstatement. His only remedy is to file a suit in the Civil Court B seeking declaration that termination was wrongful and claim damages for such wrongful termination of services. Admittedly, the appellant Corporation is not a *'State'* under Article 12 of the Constitution. The respondent also cannot be treated as a Government/public servant as he was not under the employment of any Government. He was also not C *'workman'* under the Industrial Disputes Act as he was working as Manager with the appellant Corporation.

9. In the aforesaid conspectus, we have to examine as to whether this power which is available with the Civil Court to grant damages is now given to the Cooperative Court under Section 91 of the Act. We D may also mention at this stage that some of the States have statutes which contain provisions regarding management and regulations of the cooperative society, where specific machinery under these State Cooperative Societies Acts is provided for resolution of employment disputes as well, between the cooperative societies and its employees, that too by excluding the applicability of labour laws. No doubt, in such E cases, the disputes between the cooperative societies and it employees, including the workmen, would be dealt with by such machinery and the general Act, like the Industrial Disputes Act, would not be applicable (See ***Ghaziabad Zila Sahkari Bank Ltd.*** v. ***Addl. Labour Commissioner & Ors.***[4] and ***Dharappa*** v. ***Bijapur Coop. Milk*** F ***Producers Societies Union Ltd.***[5]). Pertinently, in the instant case, Section 91 specifically excludes the disputes between the cooperative society as employer and its '*workmen*'. Ultimately, the outcome depends upon the powers that are given to the Cooperative Court or the stipulated tribunal created under such Acts. It is in this hue we have to find out as to whether Section 91 of the Act at hand empowers Cooperative Courts to G decide such disputes.

10. A reading of the provisions of Section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Cooperative Court which need to be satisfied:

[4] (2007) 11 SCC 756

H [5] (2007) 9 SCC 109

(i) the first requirement is that disputes should be *'disputes touching'* the constitution of the society or elections or committee or its officers or conduct of general meetings or management of society, or business of the society; and

(ii) the second requirement is that such a dispute is to be referred to the Cooperative Court by *'enumerated persons'* as specified under sub-section (1) of Section 91.

11. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word *'officers'* is used is altogether different, namely, election of the committee or its officers. Thus, the word *'officers'* has reference to elections. It is in the same hue expression *'officer'* occurs second time as well.

12. It was, however, argued by the learned counsel for the respondent that disputes touching the *'management or business of a society'* would include the dispute between the management of the society and its employees.

13. There are plethora of judgments of this Court holding that the expression *'business of the society'* would not cover the service matters of employer and employee. In ***Deccan Merchants Coop. Bank Ltd.*** v. ***Dalichand Jugraj Jain***[6], this Court interpreted somewhat similar clause and held that it covered five kinds of disputes. It becomes clear from the following discussion:

> "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 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."

[6] (1969) 1 SCR 887

A Likewise, in ***Coop. Central Bank Ltd.*** v. ***Addl. Industrial Tribunal***[7], the Court held that the expression *'touching the business of the society'* would not cover the disputes pertaining to alteration of conditions of service of workman.

These judgments were taken note of in ***Morinda Coop. Sugar*** B ***Mills Ltd.*** v. ***Morinda Coop. Sugar Mills Workers' Union***[8], where scope of Section 55 of the Punjab Cooperative Societies Act, 1961 came up for consideration. That section provided for reference of dispute to arbitration *'if any dispute touching the constitution, management or the business of a cooperative society arises'*. Following the aforesaid judgments, the Court gave limited meaning to the aforesaid expression C and held that the suit filed by the Workers' Union of the cooperative society claiming dearness allowance on the wages *plus* fixed allowance in accordance with the Third Wage Board Report was maintainable in the Civil Court, and such a dispute was not covered by the provisions of Section 55 of the Punjab Cooperative Societies Act, 1961.

D The reading of the aforesaid judgments make it crystal clear that dispute of this nature does not come within the scope of 'business of the society'.

14. We now advert to the question as to whether such a dispute can be treated as dispute relating to '*management of the society*'. On E this aspect as well, there is a direct judgment of this Court in ***Gujarat State Cooperative Land Development Bank Ltd.*** v. ***P.R. Mankad & Ors.***[9] wherein the expression '*management of the society*' was assigned the following meaning:

> "35. We will now focus attention on the expression "management F of the Society" used in Section 96(1) of the Act of 1961. Grammatically, one meaning of the term 'management' is: "the Board of Directors' or "the apex body" or "Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society". In this sense it may not include the G individuals who under the overall control of that governing body or Committee, run the day-to-day business of the Society, (see *Words and Phrases*, by West Publishing Co., Permanent Edn., Vol. 26, p. 357, citing *Warner and Swasey*

[7] (1969) 2 SCC 43
[8] (2006) 6 SCC 80
H [9] (1979) 3 SCC 123

*Co.* v. *Rusterholz D.C. Minn* [41 F Supp 398, 505] . Another meaning of the term "management", may be: 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control, the affairs of a Society'.

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr Dholakia. The use of the term "management" in such a wide sense in Section 96(1) appears to us, to be very doubtful."

It, thus, clearly follows that the dispute raised by the respondent is not covered within the meaning of Section 91 of the Act and, therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed by the respondent.

15. The learned counsel for the respondent referred to the judgment of this Court in the case of ***R.C. Tiwari*** v. ***M.P. State Cooperative Marketing Federation Ltd. & Ors.***[10]. However, a close scrutiny of the said judgment would reveal that the power of the Registrar to deal with the dispute of dismissal from service of the employee was recognised having regard to Section 55 of the M.P. Cooperative Societies Act, 1960 which gave specific power to the Registrar to determine conditions of employment in societies, including deciding the disputes regarding terms of employment, working conditions and disciplinary actions taken by the society arising between the society and its employees. Therefore, that judgment would be of no help to the respondent.

16. It may be noted that the High Court, in the impugned judgment, has itself proceeded on the basis that if the dispute relates to reinstatement, the Cooperative Court will not have any jurisdiction. The main reason for conferring jurisdiction upon the Cooperative Court in the instant case is that the Cooperative Court has replaced the Civil Court and, therefore, powers of the Civil Court are given to the Cooperative Court. However, the High Court erred in not further analysing the provisions of Section 91 of the Act which spells out the specific powers that are given to the Cooperative Court and those powers are of limited nature. Our aforesaid analysis leads to the conclusion that the disputes between the cooperative society and its employees are not covered by the said provision. We may hasten to add that if the provision is couched in a language to include

[10] (1997) 5 SCC 125

A such disputes (and we find such provisions in the Cooperative Societies Acts of certain States) and it is found that the Cooperative Society Act provides for complete machinery of redressal of grievances of the employees, then even the jurisdiction of the Labour Court/ Industrial Tribunal under the Industrial Disputes Act shall be barred having regard to the provisions of such a special statute *vis-a-vis* general statute like the Industrial Disputes Act {See – ***Ghaziabad Zila Sahkari Bank Ltd.***[11]}.

17. In ***Gujarat State Co-operative Land Development Bank Ltd.*** v. ***P.R. Mankad & Ors.***[12], an employee working as Additional Supervisor was removed from service by giving one month's pay in lieu of Notice under the Staff Regulations. He had issued a notice under the Bombay Industrial Relations Act, 1946, as he was an employee as defined under section 2(13) of the said Act. One of the questions that was considered by this Court was whether a dispute raised by the said employee for setting aside his removal from service on the ground that it was an act of victimization and for reinstatement in service with back wages was one *'touching the management or business of the society'*, within the contemplation of the Co-operative Societies Act. This Court held that the expression *'any dispute'* referred to in section 96 of the Gujarat Co-operative Societies Act, 1961 did not cover a dispute of the kind raised by the respondent employee against the bank.

18. As a result, this appeal is allowed, the order of the High Court is set aside and the Division Bench judgment, on which reliance is placed by the High Court in the impugned judgment, is overruled. As a consequence, it is held that the petition filed by the respondent before the Cooperative Court is not maintainable. It would, however, be open to the respondent to file a civil suit. Needless to mention, in such a civil suit filed by the respondent, he would be at liberty to file application under Section 14 of the Limitation Act, 1963 in order to save the limitation.

No costs.

Ankit Gyan Appeal allowed.

[11] Refer Footnote 4
[12] (1979) 3 SCC 123