

(2011) 11 MAD CK 0116

Madras High Court

Case No: Writ Petition No. 26174 of 2001

The Special Officer, Ambur Co.

Operative Sugar Mills,

Vadapudupet, Vellore District

APPELLANT

Vs

The Special Officer, Vellore

District Co operative Central

Bank, Vellore, The Special

Officer, Vellore District Co.

operative Sugar Mills, Ammudi,

Vellore District, The Special

Tribunal for Co.operative cases,

Madras. (Principal District Judge,

Vellore) and The Deputy

Registrar, Arbitrator,

Thiruppattur

RESPONDENT

Date of Decision: Nov. 8, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: T.S. Sivagnanam, J

Bench: Single Bench

Advocate: S.N. Ravichandran, for the Appellant; R. Parthiban for R1 and M/s. G. Thilagavathy for R2 No Appearance for RR3-4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice T.S. Sivagnanam

1. The petitioner is a co-operative society (Sugar Mill) and the relief sought for in the writ petition, is to quash the order passed by the third respondent Tribunal dated 18.06.2001, confirming the award of the fourth respondent dated 08.04.1994.

2. The petitioner society as well as the second respondent society have their accounts with the first respondent bank and all transactions of both the societies are carried out through their respective accounts maintained with the first respondent bank. On 23.2.1985, the first respondent bank wrongly debited a sum of Rs.3,43,677.72ps. for the money payable by the second respondent society. This error was not deducted by the petitioner for nearly five years and it came to their knowledge only on 12.03.1990. After which, action was taken and the error was rectified on 19.06.1990 and the first respondent bank credited the said amount to the petitioner's account. Thereafter, the petitioner claimed compound interest at the rate of 18% per annum for the five year period and made a claim of Rs.5,33,036/- . Since the first respondent failed to accept the claim, the petitioner raised a dispute before the fourth respondent u/s 90 of the Tamil Nadu Co-operative Societies Act, 1983, (Act) and claimed a sum of Rs.7,66,125/- . The dispute was taken on file by the fourth respondent as ARC No. 1799/92-93. The fourth respondent passed an award dated 08.04.1994, awarding a sum of Rs.1,48,403/- with interest at 12% p.a. from 20.06.1990, to be paid by the second respondent society to the petitioner. Not satisfied with the said award, the petitioner preferred an appeal to the Co-operative Tribunal, the third respondent, u/s 152 of the Act. The Tribunal by its judgment and decree dated 18.06.2001, confirmed the award and dismissed the appeal filed by the petitioner. Challenging the award passed by the fourth respondent as confirmed in appeal by the third respondent, the petitioner has preferred this writ petition.

3. The learned counsel for the petitioner submitted that the first respondent ought to have been directed to compensate the loss, by paying compound interest and the respondents 3 & 4 erred in not awarding interest for the period during which the money was enjoyed by the second respondent. Further, it is submitted that the petitioner was fully justified in claiming compound interest, since the second respondent is a sugar mill doing commercial activity.

4. The learned counsel appearing for the first respondent contended that the claim made by the petitioner, is hopelessly barred by limitation and the dispute itself ought not to have been entertained. In this regard, the learned counsel placed reliance on the decision of this Court in The Kattabettu Industrial Co-operative Tea Factory Limited Vs. V. Radhakrishnan and Others, .

5. The learned counsel appearing for the second respondent submitted that the amount awarded by the fourth respondent has been paid in full to the petitioner and the orders impugned do not suffer from any irregularity and therefore, this Court should not interfere with the award and the judgment of the Tribunal.

6. Heard the learned counsels for the parties and perused the materials available on record.

7. In the dispute raised by the petitioner u/s 90 of the Act, the fourth respondent framed five questions for consideration namely, whether the authority/court has jurisdiction; whether the claim is barred by limitation; whether respondent No. I can be impleaded as a party and held liable to compensate; whether petitioner is entitled for the claim, and if so, the quantum to which; and whether the respondent No. II is to compensate and if so, the quantum to which.

8. Since all parties to the dispute agreed that the fourth respondent had jurisdiction and taking note of the directions issued by the Registrar of Co-operative Societies and the Director of Sugar, issue No. 1 was decided holding that the fourth respondent has jurisdiction. On issue No. 2, the Arbitrator opined that since the account is a running account, the question of limitation does not arise. On issue No. 3, the Arbitrator came to the conclusion that the first respondent bank is not a necessary party to the dispute since they have already credited the said amount to the petitioner's account on 19.06.1990. On issue No. 4, the Arbitrator took note of the fact that the petitioner is a big concern with enormous transactions and the reconciliation of the bank passbook is done every month with the first respondent bank and the branch is located in the ground floor of the administrative office of the petitioner mill, they have been provided with the monthly statement of accounts and no steps were taken to identify the discrepancy for more than five years and therefore, for the period from 22.02.1985 to 12.03.1990, they cannot claim any interest and even when they approached the Sugar Federation, the petitioner did not mention about any interest claim and therefore, the said issued was decided against the petitioner. With regard to issue No. 5, relating to the compensation, the Arbitrator after assessing the material available, held that the retention of the money by the second respondent was unintentional and since the second respondent volunteered to bear interest of Rs.1,48,403/-, the Arbitrator directed payment of the said amount with interest at 12% per annum with effect from 20.06.1990.

9. Not satisfied with the award, the petitioner preferred an appeal before the Tribunal, claiming that they should be paid compound interest at 18% for the period from 25.02.1985 to 30.06.1992. The Tribunal after elaborately considering the issue and upon perusal of the records, held that the claim for compound interest was not justified and not established with proper evidence before the Arbitrator and the petitioner having located the discrepancy only during 1990, approached the Sugar Federation for settlement and with the active involvement of the first respondent bank, the amount was settled, held that there are no grounds made out by the petitioner to interfere with the reasoned award passed by the Arbitrator.

10. Admittedly, the petitioner in this writ petition, has not challenged the impugned proceedings on any technical grounds, such as violation of principles of natural justice, improper procedure or such other matters. The award of the Arbitrator is a reasoned award after considering the contentions of all parties. The Tribunal also

re-appreciated the claim took note of all the facts and materials placed before it and confirmed the award by a detailed judgment. Thus, in the absence of any perversity or irregularity either in the award or in the judgment of the Tribunal, this Court while exercising jurisdiction under Article 226 should not re-appreciate the evidence which was placed before the Arbitrator and the Tribunal and come to a different conclusion than what has been arrived at. As noticed about, there is no perversity in the concurrent findings recorded by the respondents 3 & 4 warranting any interference by this Court. Though the Arbitrator held that the claim is not barred by limitation, yet after going through decision of this Court in the case of The Kattabettu Industrial Co-operative Tea Factory, referred supra, it appears that the Arbitrator's decision on the question of limitation appears to be incorrect. In the said case, a dispute was raised before the Registrar u/s 90 to realise an amount from the respondent therein on the allegation that there was deficiency in stock of materials of the society when the respondent therein was incharge of the affairs of the society. The said claim was resisted on the ground of limitation. The society contended that the claim having been made within a period of six years from the date of the audit report, the same is not barred by limitation. This Court while considering the said question took note of an earlier decision of this Court in Muthammal vs. Secretary, Kolathur B & C.W. Ltd., Co-operative Society (1976) 2 MLJ 157 held as follows:-

6. After hearing the counsel of both sides, I feel the point is covered by the decision of this Court reported in Muthammal vs. Secretary, Kolathur B.&C.W. Ltd., Co-Operative Society (1976) 2 M.L.J 157. In that case His Lordship was considering similar provision of Tamil Nadu Co-Judgment, His Lordship held thus:

The view of the Tribunal that the claim under Sec. 73 is not barred by time in view of Rule 56, as it has been filed within 3 years from the date of audit report and that in any event, the claim is in time in view of Section 25(1)(b) which keeps alive the liability of the deceased member for a period of two years, is in my view erroneous. On the facts there could be no doubt that the claim filed against the petitioners on 16th August, 1972 is beyond the period of 3 years provided for in Rule 56. The claim is based on the act or omission said to have taken place when the deceased Ex-President was functioning as the President, for the period 1st April, 1966 to 31st March, 1969. Therefore, the last date before which the act or omission could have taken place can only be on 31st August, 1969. Therefore, the arbitration claim having been filed more than three years before that last date before which the act or omission could have taken place, it is clearly out of time as per Rule 56(1). Both the arbitrator as well as the Co-operative Tribunal have proceeded on the basis that the limitation will begin to run under Rule 56 only from the date of the audited report from which the society came to know about the act or omission of the EX-President. I do not see how, the date of the audit report will be material for interpreting Rule 56. The rule says that the limitation will begin "from the date on which the act or omission took place"..... The date of act or omission took not in any

sense be equated to the date of the report by the auditor. Even if the said report forms the basis for taking action against the Ex-President that cannot be taken to be the date from which the period of limitation is to be reckoned. If that was the intention the proviso "would have used the expression" from the date of knowledge of the act or omission with reference to which the dispute arose took place". I am therefore of the view that the date of audit report cannot be material for the purpose of reckoning the period of limitation and it cannot have the effect of extending the period of limitation prescribed under Rule 56, which has relevance only to the date on which the act or omission took place.

[*Italics supplied*]

7. The provisions of Section 90 Sub-Sec.(9)(a)(ii) is also similar to 1961 Act except for the period of limitation. The limitation begins not on the basis of audit report but has to be computed from the date of Act or omission of the parties..

8. In this case, the deficiency has been found by the authorities themselves in the year 1981, i.e., on 22.06.1981 when notice was issued and proceedings was also taken against the then Managing Director. If limitation is to be computed from that date, the claim was hopelessly barred by limitation. There cannot be any reference regarding a claim that is barred under the earlier Act.

11. In the light of the above referred decision, the finding of the Arbitrator on the ground of limitation appears to be incorrect.

12. Be that as it may, the second respondent having paid the petitioner's society a sum of Rs.1,48,403/- together with interest 12% per annum from 20.06.1990, and in the absence of any perversity or illegality in the award passed by the fourth respondent and confirmed by the third respondent Tribunal, this Court is not inclined to interfere with the concurrent findings of the respondents 3 & 4. Accordingly, the writ petition fails and it is dismissed. No costs.