

(1999) 09 PAT CK 0169

Patna High Court

Case No: C.W.J.C. No. 368 of 1998 (R)

Bihar Co-operative Bank
Employees Union

APPELLANT

Vs

Ranchi-Khunti Central
Cooperative Bank limited and
Others

RESPONDENT

Date of Decision: Sept. 30, 1999

Citation: (2000) 4 PLJR 179

Hon'ble Judges: A.K. Ganguly, J

Bench: Single Bench

Advocate: Anil Kumar Sinha, Samir Prasad and T.N. Verma, for the Appellant; D.N. Sinha, for the Respondent

Judgement

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A.K. Ganguly, J.

In this writ petition the petitioner Union has challenge the legality of the order dated 3.11.999 issued by the Managing Director Ranchi-Khunti Central Co-operative bank Limited (hereinafter called the said bank which was issued on the basis of the resolution taken by the Administration the said Bank by which house rent allowance of the members of the petition union has been reduced. The grievance of the petition Union is that by the said resolution it was resolved that the excess amount paid to the members of the petitioner union will be recovered from their salary. Being aggrieved by the said resolution, the same has been challenged in this writ petition on various grounds.

2. When the matter was taken up for hearing at the admission stage. Learned counsel for the respondent Bank mispreliminary objection as to the attainability of this writ petition, inter after the ground that under the provision, of Section 48 of the Bihar Co-operator Societies Act, 1935 (hereinafter the said Act) there is a self contained mechanism for resolution of dispute under the provision of the said Act.

Learned counsel for the respondent Bank urged that u/s 48 (1) (c) of the said Act, any dispute between the society of its Managing Committee and any servant of the society touching the business the society should be resolved in the manner provided u/s 48 of the said Act. As such the impugned cannot be challenged by filing this writ petition without exhausting the said remedy.

3. Learned counsel for the petitioner, however, contested the said proposition, inter alia, by contending that by section 48 (1) of the said Act itself certain disputes have been taken out of the purview of the said section and the dispute raised in the instant case also is one in the excepted category. Learned counsel for the said Bank, however, seriously questioned the said contention raised by the petitioner.

4. Therefore, in order to appreciate the rival contentions, the provisions of section 48 (1) of the said Act are set out below: 48 (1). If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of society) arises:

(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member of deceased member, or sureties of members, past members or deceased member, whether such sureties are members, or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) Between the society and any other registered society; or

(e) between a financing bank authorized under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society. Such dispute shall be referred to the Registrar:

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of section 32 or section 63.

5. Learned counsel for the petitioner has fairly contended that if this court holds that the dispute raised in the present writ petition is covered u/s 48 (1) of the said Act, then of course this writ petition is not maintainable. Therefore, it is necessary to decide, as a preliminary issue, whether the dispute raised in this writ petition is covered u/s 48 (1) of the said Act.

6. It is no doubt true that section 48(1) of the said Act does not cover all disputes inasmuch as some of the disputes have been expressly taken out from the purview of section 48 of the said Act. The dispute which has been taken out from the purview

of the said Act is a dispute regarding the disciplinary action taken by the society or its managing committee against a paid servant of the society.

7. The expression "disciplinary action" has a well known connotation in service jurisprudence. By "disciplinary action" is meant an action whereby the employer punishes an employee on the ground of proved misconduct in order to enforce discipline in the organization. Such disciplinary action is normally not general in nature but it is an action on specific and proved charges in respect of individual employees on the ground of misconduct and in accordance with the prescribed procedure and the rules which permit reasonable opportunity to the employee to defend himself against such an action.

8. Therefore, when a general policy decision for reduction in the rate of house rent allowance is taken, the same cannot be equated with disciplinary action.

9. But the learned counsel for the petitioner submitted that such a step, namely, reduction in the house rent allowance would also be included within the sweep of disciplinary action and in support of the said contention he has relied on a few judgments.

10. The first judgment on which the learned counsel relied is the judgment of this Court in the case of [Bihar State Co-operative Marketing Union Ltd. Vs. The Registrar, Co-operative Societies and Another](#), . in the said judgment the learned Judges of the Division Bench held that the word "dispute" in section 48 does not include within its ambit service condition of the employees of the society. In the said case the point of dispute was the question of promotion from the post of Cashier to the post of Accountant. The learned Judges held that the question of promotion being a matter relating to service condition of the employees is out of the purview of section 48 of the said Act.

11. The next decision on which reliance was placed by the learned counsel for the petitioner was in the case of the [The Bihar State Co-operative Bank Ltd. Vs. The Registrar, Co-operative Societies and Another](#), . In that case the dispute was about the seniority amongst its employees. In that case also the learned Judges of the Division Bench held that the question of seniority amongst the employees is a dispute over which the Registrar has no jurisdiction u/s 48.

12. Learned counsel for petitioner further relied on a Full Bench decision of Patna High Court in the case of [Tisco Oriya Co-operative Credit Society Ltd. Vs. The Assistant Registrar, Co-operative Society and Another](#), . In that case the question was about the dismissal an employee of the Co-operative Society without a show cause notice and the question was whether such a dispute we included within section 48 (1) of the said Act. The learned Judges of the Full Bench held in paragraph 6 of the said judgment that a dispute of the above nature is excluded from the purview sub-section (1) of Section 48 of the said (sic In the said Full Bench judgment in Tisco Oriya Co-operative Credit Society (supra) the learned Judges held that

decision of the Division Bench of the High Court in the case of Bihar State Co-operative Marketing Union Limited (supra) was arrived at without follow. the earlier binding decision of Patna High Court in the case of Ramashanka Tewari vs. Gopal Banerjee reported 1971 B.L.J.R., 671. The said earlier judgment of the Division Bench of Patna High Court has held that the word "business" in the Bihar Act has not used in a narrow sense and a wide interpretation has to be given to it.

13. Learned counsel for the respondent Bank, on the other hand, relied another Full Bench decision of Patna High Court in the case of Chandeshwar Prasad vs. The State of Bihar reported in 1987 PLJR,, 159. While construing section 48 of the said Act, the learned Judges held that powers given u/s 48 are judicial in nature and power exercised by the Registrar u/s 48 is a power of a Court and within the meaning of the word "dispute" u/s 48, the election dispute would also be included.

14. Learned counsel also relied on a Supreme Court judgment in support of his submission. The said decision is in the case of [M/s. Electrical Cable Development Association Vs. M/s. Arun Commercial Premises Cooperative Housing Society Ltd. And Another](#), . In the said case section 91 of the Maharashtra Cooperative Societies Act came under consideration. The learned Judges of the Supreme Court while construing section 91 of the said Act held that a claim by a society together with some members for ejectment of a licensed upon revocation of the license is a dispute falling within section 91 of the said Act. Such ejectment proceeding is maintainable despite pending proceeding under Bombay Rent Act.

15A. Reference may be made to the decision of the Supreme Court in the case of [R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others](#), . In the said case the provisions of section 64 of the MP. Co-operative Societies Act, 1960 came up for consideration. Considering section 64 of the said Act, the Supreme Court came to the conclusion that the dispute relating to disciplinary matter of an employee of a Cooperative Society is also covered by section 64. The exact wording of section 64 of the said Act is set out below :

Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred to the Registry by any of the parties to the dispute.

16. Considering the said section, the Supreme Court held that the "expression" dispute relating to the management or business of the society is a very comprehensive one and the learned Judges of the Supreme Court held that such terms must be given a very wide meaning. In the said judgment the learned Judges held that in view of the special provision u/s 64 of the Act, reference u/s 10 of the Societies Act is excluded and the learned Judges came to the conclusion that the judgment of the Supreme Court in the case of [Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others](#), has no application to the facts

of that case.

17. Learned counsel for the petitioner, however, wanted this Court to follow the two Division Bench judgments of this Court in the case of Bihar State Co-operative Marketing Union Limited (supra) and the Bihar State Co-operative Bank Limited (supra). Learned counsel further urged that the first of these two decisions of the Division Bench has been affirmed by the Full Bench of this Court in the case of Tisco Oriya Cooperative Credit Society Ltd. (supra). Therefore, this Court should put a narrow interpretation of the word "business" occurring in section 48 of the said Act and hold that the present dispute over reduction in the rate of house rent allowance is outside the purview of section 48 of the said Act.

18. But it is difficult for this Court to come to the aforesaid finding. It is wrong to assert that the Division Bench judgment in the case of Bihar State Cooperative Marketing Union Limited (supra) has been affirmed by the Full Bench in Tisco Oriya Co-operative Credit Society Limited (supra). On the other hand the Full Bench questioned the correctness of the Division Bench judgment. In paragraph 2 of the Full Bench judgment in Tisco Oriya Co-operative Credit Society (supra) Chief Justice Untwalia (as His Lordship then was) speaking for the Full Bench recorded that the Division Bench judgment in Bihar State Co-operative Marketing Union Limited (supra) has not noted the earlier Division Bench judgment in the case of Ramashankar Tewari (supra). In paragraph 2 at page 209 of the report, while referring to the Division Bench judgment the following observation has been made by the learned Chief Justice :

It is unfortunate that the attention of the Bench was not drawn to any of the three earlier decisions of this Court on the point out of which one decision had considered the decision of the Supreme Court in the case of [Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others](#), .

In the said paragraph 2 the learned Chief Justice further held as follows:

In the circumstances, one could say that if the attention of the Bench deciding the case of [Bihar State Co-operative Marketing Union Ltd. Vs. The Registrar, Co-operative Societies and Another](#), was not drawn to the earlier decisions and especially the one reported in 1971 BLJR 671, the earlier decision was binding and not the later.

19. Therefore, the learned Chief Justice in the said Full Bench judgment followed the previous Division Bench judgment of this Court in the case of Ramashankar Tiwary (supra) and held, on a comparison of the language of the said Act and Maharashtra Co-operative Societies Act, which was considered by the Supreme Court in the case of [Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others](#), , that there is a difference between the phraseology of those two sections in two different Acts. The learned Chief Justice held in paragraph 5 of the said Full Bench judgment that the word business in section 48 of the Bihar Act has been used in a

wider sense to cover even at fairs of the society.

20. In Ramashankar Tewari (supra) a Division Bench of this Court consisting of Chief Justice Untwalia (as His Lordship then was) and Justice S. Sarwar Ali (sic) strung section 48 of the said Act held of a comparison with the provisions of Section 91 of Maharashtra Co-operative Societies Act, 1960 that "a wider meaning has got to be given to section 48 of the Bihar Act so as to bring within its "the affairs of the society". Therefore the learned Judges held "that the matter" relating to the affairs of the society can be a dispute within the meaning of subsection (1) of Section 48 of the said Act (See para 4, pages 473-474 of the report).

21. Therefore, in view of the Full Bench judgment in Tisco Oriya Cooperative Credit Society Limited (supra) and also the well considered view of the Division Bench in Ramashankar Tiwary (supra) this Court is of the opinion that the word "business" in section 48 of the said Act will also include "affairs of the society" and so construed the matter relating to reduction in the payment of within the expression of the word "business" of the society and obviously it is within the ambit of the word "dispute u/s 48 of the said Act.

22. In coming to the finding that the word "business" must be given a wide interpretation, this Court is not only relying on the judgment of the Full Bench and the Division Bench pointed out above but also on the judgment of the Supreme Court in the case of R.C. Tiwari (supra) where in paragraph 3 of the judgment the learned Judges held that the dispute resolution clause in the Co-operative Societies Act is a very comprehensive as has been repeatedly held by the Supreme Court (para 3 page 127 of the judgment).

23. On the question of following the precedent, this Court sitting singly and having regard to the judicial discipline in the matters of following the precedent, judgment in the case Ramashankar Tiwary (supra) which is affirmed by the Full Bench in Tisco Oriya Co-operative Credit Society Ltd., (supra) and need not follow the two Division Bench judgments in the case of Bihar State Cooperative Marketing Union Limited (supra) and the Bihar State Co-operative Bank Limited (supra). Apart from that there exists judicial opinion in support of the stand that where there is a conflict between the two contrary decisions rendered by the Benches of equal strength, even of Supreme Court, the High Court can follow the one which, according to it, is better in point of law. Reference in this connection may be made to the views of Chief Justice S.S. Sandhawalia (as His Lordship then was) while delivering the Full Bench decision in Punjab High Court in the case of [Indo Swiss Time Limited Vs. Umrao and Others](#), .

24. There is also another difficulty on the part of this Court to give a narrow construction of the word "business" occurring in section 48 of the said Act by excluding various affairs of the Society apart from one relating to disciplinary action of the employees which has been statutorily excluded from the section itself. This is because of the cardinal principle of statutory construction expressed in latin maxim

"expressio unius exclusio alterius." The said principle means Express enactment shuts the door to further implication". Explaining this principle further in Caries on Statute law, Seventh Edition, the learned author said as follows at page 259 :

If there be any one rule of law clearer than another, it is this, that, where the legislature have expressly prescribed one or more particular modes of dealing with property, such expression always excludes any other mode, except as specifically authorised.

Explaining the same dictum Maxwell on the Interpretation of Statutes (12th Edition) has stated at page 293 as follows :

By the rule usually known in the form of this Latin maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class : expresses facia cess-are taciturn.

25. Therefore, u/s 48 of the said Act, a dispute regarding "disciplinary action" taken by the Society or its managing committee against a paid servant of the Society is one which, even though touches the business of the society, has been expressly excluded by the statute. Therefore, applying the principle of "expression units exclusion apterous", this Court holds that all other disputes touching the business or affairs of the society must be construed to be included within the ambit of section 48 of the said Act. Since the Full Bench has given the word "business" a wide construction so as to include within it, the affairs of the society, this Court holds that the dispute relating to reduction of house rent allowance is one which touches the business and affairs of the society. As the same has not been expressly excluded, it is included within the ambit of section 48 of the said Act and the petitioner must exhaust the remedy provided u/s 48 before coming to this Court.

26. It has been held by the Full Bench of this Court in the case of Chandeshwar Prasad (supra) that the power of the Registrar u/s 48 of the said Act is a judicial power. Therefore, there is no reason why the said self contained machinery, in the Act for dispute resolution be bye passed and this writ petition should be filed. In that view of the matter, this Court holds that the instant writ petition is not maintainable and as such it is dismissed on this preliminary question but not on merits. The parties are given opportunity to raise dispute u/s 48 of the said Act. If such a dispute is raised within a period of one month from today, the authority concerned will examine the same without insisting on the period of limitation, if any, and thereafter decide the same in accordance with law and as early as possible preferably within a period of six months from the date of filing of the dispute. This Court, however, observes that till the dispute is decided under the provisions of section 48 of the said Act, the recovery from the salary of the employees of the concerned Society of excess amount of house rent allowance already paid shall remain stayed. The question of recovery will depend upon the outcome of the dispute. There will be no order as to cost.