

Shamrao Vithal Co-Operative Bank Ltd vs Kasargod Pandhuranga Mallya on 21 October, 1971

Equivalent citations: 1972 AIR 1248, 1972 SCR (2) 162, AIR 1972 SUPREME COURT 1248, 1972 4 SCC 600, 1973 (1) SCJ 145, 1972 2 SCR 162

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, K.S. Hegde

PETITIONER:

SHAMRAO VITHAL CO-OPERATIVE BANK LTD.

Vs.

RESPONDENT:

KASARGOD PANDHURANGA MALLYA

DATE OF JUDGMENT 21/10/1971

BENCH:

KHANNA, HANS RAJ

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KHANNA, HANS RAJ

HEGDE, K.S.

CITATION:

1972 AIR 1248

1972 SCR (2) 162

ACT:

Multi-Unit Co-operative Societies Act, 1942--Word 'Control' in s 2(1) of Act--Whether passing of award under s. 54 of Bombay Co-operative Societies Act, 1925 is comprehended within word 'control'.

HEADNOTE:

The appellant was a co-operative society registered in Bombay under the Bombay Co-operative Societies Act, 1925. The head office of the appellant was in Bombay and it had a branch in Mangalore. As the objects of the appellant were not confined to one State it was governed by MultiUnit Cooperative Societies Act, 1942 a Central Act. The appellant made a claim under s. 54 of the Bombay Act in respect of a transaction which took place in Mangalore against the respondent who was a resident of Kasargod and was a member of the appellant society. Both Mangalore and

Kesaragod were at the relevant time in Madras Presidency. The Deputy Registrar of Co-operative Societies Bombay gave an award regarding that claim. The award was sought to be executed as a decree in the Court of Subordinate Judge, Kesaragod. The respondent took an objection to the execution on the ground that the Deputy Registrar of Bombay had no jurisdiction to pass the award and the same could not be executed as a decree in the courts in Kerala. Upholding the objection the Subordinate Judge dismissed the execution application. The High Court affirmed the decision. In appeal by special leave before this Court the appellant contended that since it was registered in Bombay State it was the Bombay Act which would govern the appellant society for purposes of registration, control and dissolution as laid down in s. 2(1) of the Central Act. The word 'control' it was urged comprehends within itself the adjudication of a claim made by the society against its members, and in the circumstances the award under, s. 54 of the Bombay Act made by the Deputy Registrar Co-operative Societies Bombay did not suffer from any legal infirmity.

HELD, : As the objects of the appellant society were extended to the Presidency of Madras it should in view of sub s. (1) of s. 2 of the Central Act be deemed to have been registered under the law in force in the Presidency of Madras relating to co-operative societies. The law which was then in force was the Madras Co-operative Societies Act, 1932. Under s. 51 of that Act a dispute between the appellant and the respondent in respect of its dealings relating to its Mangalore branch would normally have to be adjudicated upon by the Registrar appointed under the Madras Act. The fact that for the purpose of control the appellant society was governed by the Bombay Act would not justify a departure from the above normal rule. [166 B-E]

The word 'control' is synonymous with superintendence, management, or authority, to direct restrict or regulate. Control is exercised by a superior authority in exercise of its supervisory power. Adjudication of disputes in a judicial or quasi-judicial function and it would be unduly straining the meaning of the word 'control' to hold that it also covers the adjudication of disputes between a co-operative society and its members. There is a clear distinction between jurisdiction to decide a dispute which is a judicial power, and the exercise of control which is an administrative power, and it would be wrong to treat the two as identical or equate one with the other. [166 F-G]

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Panchshila Industrial Co-operative Societies (Multi-unit) v. Gurgaon Central Co-operative Bank Ltd., Gurgaon, [1971] 2 S.C.C. 500, distinguished.

Since, as held above, the dispute between the parties could only be adjudicated upon in accordance with the provisions of the Madras Act the Registrar under the Bombay Act lacked inherent jurisdiction to decide the dispute and it was not a

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1312 of 1967. Appeal by special leave from the judgment and decree dated' October 22, 1962 of the Kerala High Court in Appeal Suit No.804 of 1969.

B. R. Naik and K. Rajendra Chowdhary, for the appellant. The respondent did not appear.

The Judgment of the Court was delivered by Khanna, J. This is an appeal by special leave against the judgment of Kerala High Court affirming an appeal, the order of the Lower Court whereby the appellant Bank's application for execution of an award made under the Bombay Co-operative Societies Act, 1925 (hereinafter referred to as the Bombay Act) was dismissed.

The appellant is a Co-operative Society registered in Bombay under the Bombay Act. The Head Office of the appellant is in Bombay and it has a branch in Mangalore. As the objects of the appellant were not confined to one State, it was governed by Multi-Unit Co-operative Societies Act of 1942 (herinafter referred to as the Central Act). The appellant made a claim under section 54 of the Bombay Act in respect of a transaction which took place in Mangalore against the respondent who is a resident of Kasaragod, and was a member of the appellant society. Both Mangalore and Kasaragod were at the relevant time in Madras Presidency. The Deputy Registrar of Co-operative Societies, Bombay gave an award regarding that claim. The award was sought to be executed as a decree in the Court of Subordinate Judge, Kasaragod. An objection to the execution of the decree was raised by the respondent on the ground that the Deputy Registrar of Co-operative Societies, Bombay had no jurisdiction to pass the award and the same could not be executed as a decree in the Courts in Kerala. This objection was upheld by the Subordinate Judge and he dismissed the execution application. On appeal, the decision of the learned Subordinate Judge was affirmed by the High Court. It was not disputed before the High Court that the appellant was governed by the provisions of the Central Act.-

The contention raised on behalf of the appellant was that the passing of an award came within the expression 'control' occurring in .sub-section (1) of section 2 of the Central Act. This contention ,did not find favour with the High Court and in the result, the appeal was dismissed. We have heard Mr. Naik on behalf of the appellant. No one has appeared on behalf of the respondent. Before dealing with the argument advanced on behalf of the appellant, it would be apposite to reproduce section 2 of the Central Act. The same reads as under :-

"2. (1) A co-operative society to which this Act applies which has been registered in any State under the law relating to co-operative societies in force in that State shall be deemed in any other State to which its objects extend to be duly registered in that other State under the law there in force relating to co-operative societies, but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of

registration, control and dissolution to the law relating to co-operative societies in force for the time being in the, State in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a State other than in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the State in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that State.

(3) The Registrar of Co-operative Societies of the State in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the State".

According to sub-section (3) of section 1, the Central Act "applies to all co-operative societies with objects not confined to one State incorporated before the commencement of this Act under the Co-operative Societies Act, 1912, or under any Act relating to co-operative societies in force in any State, and to all co-operative societies with objects not confined to one State to be incorporated after the commencement of this Act."

As the objects of the appellant society were not confined to one State, it was not disputed before the High Court that it is governed by the provisions of the Central Act. Plain perusal of sub-section (1) of section 2 reproduced above makes it manifest that if the objects of a co-operative society registered in State 'A' extend to State 'B', the Society shall be deemed to be registered in State 'B' under the law in force in State 'B' relating to co-operative societies. Despite this deemed registration in State 'B' for, three purposes, namely, registration, control and dissolution,, the society shall be subject to the law relating to co-operative, societies in force in State 'A'. Sub-section (2) makes it obligatory on a co-operative society which establishes a branch or place of business in a State other than that in which it is actually registered to furnish within the prescribed time to the Registrar of the cooperative societies of the State in which such branch or place of business is situated, a copy of its by-laws and to submit such return and supply such information as the Registrar might require in respect of a co-operative society actually registered in that State. Sub-section (3) gives a limited control to the Registrar of Co-operative Societies of the State in which a branch or place of business of a co- operative society is established by authorising him to exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in that State.

The contention which has been advanced on behalf of the, apellant society by its learned counsel, Mr. Naik, is that as the appellant was registered in Bombay, it is the Bombay Act which govern the

appellant society for purposes of registration, control and dissolution. It is not disputed that the adjudication of a claim by the appellant against its members does not fall, under the head 'registration' or "dissolution". What is, however, urged is that the word 'control' comprehends within itself the adjudication of a claim made by the society against its members. Such a, claim having been made by the appellant against the respondent, the same could, according to the learned counsel, have been adjudicated upon under section 54 of the Bombay Act. The award made by the Deputy Registrar of Co- operative Societies, Bombay in the circumstances, the counsel submits, did not suffer from any legal infirmity.

There is, in our opinion, no force in the above contention because we do not agree with the underlying- assumption of the above argument that the word 'control' comprehends within itself .the adjudication of a claim made by a co- operative society against its members. The appellant society, as would appear from the resume of facts given above, established a branch in Mangalore ,and had dealings there with the respondent who was a resident of Kasaragod. As the objects of the appellant society were extended to the Presidency of Madras, it should, in view of subsection (1) of section 2 of the Central Act, be deemed to have .been registered under the law in force in the Presidency of Madras relating to co-operative societies. The law which was then in force, according to Mr. Naik, was the Madras Co- operative Societies Act, 1932 (hereinafter referred to as the Madras Act). Clause, (f) of section 2 of that Act defines a registered society to mean a society registered or deemed to be registered under that Act. Section 51 of the Madras Act provides inter alia that if .,any dispute touching the business of a registered society between a member and the society arises, such dispute shall be referred to the Registrar for decision. Registrar has been defined in clause (g) of section 2 of the Madras Act to mean "a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes a person on whom all or any of the powers of a Registrar under the Act have been conferred". It would, therefore, follow that a dispute between the appellant and the respondent in respect of its dealings relating to its Mangalore branch would normally have to be adjudicated upon by the Registrar appointed under the Madras Act. The fact that for the purpose of control, the appellant society was .governed by the Bombay Act would not, in our opinion, justify a departure from the above normal rule. The word 'control' is ,synonymous with superintendence, management or authority to direct, restrict or regulate (See p. 442 of Words and Phrases (Vol 9) Permanent Edition). Control is exercised by a superior authority in exercise of its supervisory power. Adjudication of disputes is a judicial or quasi-judicial function and it would, in our opinion, by unduly straining the meaning of the word 'control' to hold that it also covers the adjudication of disputes between a co-operative society and its members. There is a clear distinction between jurisdiction to decide a dispute which is a judicial power and the exercise of control which is an administrative power and it would be wrong to treat the two as identical or equate one with the other.

Reference has been made on behalf of the appellant to the case of Panchshila Industrial Co-operative Societies (Mult Unit) v. The Gurgaon Central Co-operative Bank Ltd., Gurgaon(1). In that case, Deputy Registrar of Co-operative Societies, Rohtak had given an award in favour of the respondent bank which was a co-operative society governed by the provisions of Punjab Cooperative Societies Act. The appellant filed an appeal against that award before the Central Registrar. The Central Registrar dismissed the appeal on the ground that he was not the appropriate appellate

authority in respect of the said award. On appeal to this Court, the decision of the Central Registrar was affirmed. It was held that the dispute between the parties fell within section 55 of the Punjab Co-operative Societies Act and those provisions were not affected by the Central Act. It would appear from the above that the question involved in that case was entirely different and the appellant can derive no assistance from it.

Argument has also been advanced that there was no inherent lack of jurisdiction in the Deputy Registrar appointed under the Bombay Act for adjudicating upon the dispute between the parties and that it was at the best a case of lack of territorial jurisdiction. We find ourselves unable to accede to this contention because we are of the opinion that there was inherent lack of jurisdiction in the Registrar appointed under the Bombay Act for dealing with the dispute arising out of the dealings of the Mangalore branch of the appellant society with the respondent. The dispute between the parties as would appear from what has been discussed above, could only be adjudicated upon in accordance with the provisions of the Madras Act.

The appeal consequently fails and is dismissed. As no one has appeared on behalf of the respondent, we make no order as to costs.

G.C.

Appeal dismissed.

(1) [1971] (2) 2.S.C.C. 500.