

Nayagarh Co-Operative Central Bank ... vs Shri Narayana Rath And Ors. on 8 August, 1975

Equivalent citations: AIR1975SC1895, (1975)2SCC445, 1975(7)UJ611(SC), AIR 1975 SUPREME COURT 1895, 1975 2 SCC 445 1975 (11) CO-OP LJ 223, 1975 (11) CO-OP LJ 223, 1975 (11) CO-OP LJ 223 1975 2 SCC 445, 1975 2 SCC 445

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Bench: A.C. Gupta, R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

A.C. Gupta, J.

1. These three appeals by special leave arise out of three proceedings under Section 68 of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as the Act).

2. The appellant in all these appeals, Nayagarh Co-operative Central Bank Ltd., is registered as a co-operative society under the Act and has among its objects raising funds of for financing co-operative societies registered under the Act and affiliated to it, besides carrying on the general business of a bank. Three such co-operative societies had applied to the appellant bank for loans and on the recommendation of the first respondent in these appeals, who at the relevant time was employed as Secretary of the Bank, various sums were advanced to these co-operative societies Rs. 61,420/- to Krishna Prasad Co-operative Society, Rs. 3,52,490/- to Singhapara Co-operative Society, and Rs. 1,32,315/- to Kaijhar Gram Panchayat Co-operative Grain Golla Credit and Thrift Society. Attempts to recover the loans advanced to the aforesaid societies having failed, the appellant Bank referred the disputes concerning the said transactions to arbitration under Section 68 of the Act praying an award in case for the sum advanced with interest, the claim was made in each case against the indebted society, its office bearers and the first respondent in the appeals before us, jointly and severally.

3. The allegations on which the first respondent was made a party to these proceedings under Section 68 of the Act are similar in all the three cases. It was said that:

...It was the responsibility of the Secretary of the Bank to examine the loan application and recommend to the committee for consideration. He has misutilised his power and position of his office and mischievously recommended for sanction of the loan applied by the reciltrant office bearers of...(these societies). The plaintiff (appellant Bank) has got sufficient reasons to believe that he (first respondent) has

also connived with the management of the society in their irregularities and helped in misappropriation of funds so as to achieve his selfish motive.

The first respondent filed three writ petitions before the Orissa High Court for quashing the proceedings against him on the ground that the appellant Bank had no jurisdiction to initiate disputes against him under Section 68 of the Act and also alleged that the said proceedings! were malafide. The High Court found that the allegations against the first respondent could not form the subject matter of a dispute under Section 68 of the Act and, on this view, quashed the three disputes which were pending before the Assistant Registrar, Co-operative Societies, Khurda Circle, Khurda, in so far as they related to the 1st respondent. The validity of this decision is challenged before us by the appellant Bank.

4. Section 68 so far as it is relevant for the purpose of these appeals reads:

68" Dispute which may be referred to arbitration: (1) Notwithstanding anything contained in any law for the time being in force, any dispute touching the Constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by a society or its committee against a paid servant of the society, shall be referred to the Registrar if the parties thereto are among the following, namely:

(a) the society, its committee, post Committee, any past or present officer, any past or present agent, any past or present servant or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society; or

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

(c) A surety of a member, past member or a deceased member whether such surety is or is not a member of the society; or

(d) any other society or the liquidator of such society.

Explanation I-

A claim in respect of any sum payable to or by a society by or to a person or society or a liquidator mentioned in Clauses (a) to (d) shall be a dispute touching the business of the society within the meaning of this section even in case such claim is admitted & the only point in issue is the ability to pay and the manner of enforcement of payment.

For the present purposes Section 68 requires two conditions to be satisfied, (i) that the dispute must be one touching the business of a society other than a dispute regarding disciplinary action taken by

the society against a paid servant, and (ii) that the dispute must be one involving parties who are among those mentioned in the section. Here the parties concerned are among those listed in this section, and the dispute also touches the business of the society, the nature of the dispute being as stated in explanation 1. Prima facie therefore the requirements of Section 68(1) are satisfied in these cases.

5. The first respondent however contends that the disputes so far as he is concerned are not such as are contemplated in Section 68(1) We do not propose to consider the merits of this contention because of Sub-section (4) Section 68 which says.:

(4) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the Constitution, management or the business of a society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

In view of the provisions of Section 68(4) we think that this is a matter which the Registrar must decide before the writ jurisdiction of the High Court is allowed to be invoked.

6. Accordingly we allow the appeals and set aside the order quashing the disputes pending before the Assistant Registrar, Khurda Circle, Khurda. The Assistant Registrar will try to dispose of these proceedings within six months from the date when this order is communicated to him. In the circumstances we make no order as to costs.