

Virendra Pal Singh And Ors. vs District Assistant Registrar, ... on 2 May, 1980

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Bench: O. Chinnappa Reddy, V.R. Krishna Iyer

JUDGMENT

O. Chinnappa Reddy, J.

1. The Civil Appeal, the Special Leaves Petitions and the Writ Petitions were heard together. There were some points common to all the cases and some special only to a few of the cases. It is unnecessary to state the facia of any of the cases in detail. Before the passing of the U.P. Cooperative Societies Act 1965, the Cooperative Societies Act 1965, the Cooperative Societies Act 1912 was in force and various Cooperative Societies including Cooperative Banks were registered under that Act. In 1965 the U.P. Cooperative Societies Act 1965 was passed to consolidate as and amend the Jaw relating to Cooperative Societies, in Uttar Pradesh. The statement of objects and reasons shows that the effort was to reorient the policy of the State towards cooperation and to adopt cooperative techniques in various spheres of development activity. Experience had shown that it was also necessary to introduce some provisions to entrust additional function and responsibilities to Cooperative Societies but in the same time it was necessary to give proper guidance and exercise effective supervision and control. It was expressly stated that one of the principal objects of the Act was to enable the weaker section of the public to benefit from Cooperatives. Therefore, provision was made for State aid to Cooperative Societies in various forms while at the same time providing for a proper machinery for supervision and guidance.

2. 'Cooperative Society' is defined as meaning a Society registered or deemed to be registered under the Act. An 'apex society', 'apex level society' or 'State level Cooperative Society' is defined as meaning U.P State Cooperative Land Development Bank Ltd. and such other State level Cooperative Banks, including any other Central Cooperative Society with an area of operation covering the whole of Uttar Pradesh and fulfilling certain prescribed conditions. A 'Central Society' or 'Central Cooperative Society' is defined as meaning a 'Cooperative Society' which has other Cooperative Societies' as its ordinary members and is not a primary Cooperative Society'. A primary Society is defined as a 'Cooperative Society' whose ordinary membership is not open to any other 'Cooperative Society'. A Credit Society' is defined as a Society which has as its primary object the raising of funds to be lent to its members. A 'financing bank' or 'central bank' is defined to mean a 'Cooperative

Society' whose main object is to land money to Cooperative Societies which are its ordinary members. 'Committee of Management' is defined to mean the Committee of Cooperative Society' by whatever name called to which the management of the affairs of the Society is entrusted under Section 29 of the Act.

3. Chapter II of the Act deals with 'Registration of Cooperative Societies'. Chapter III deals with "Members of Cooperative Societies and their Rights and Liabilities". Chapter IV deals with 'Management of Societies'.

4. Section 28 of the Act vests the final authority of a 'Cooperative Society' in the 'general body of its members in general meeting'. Section 29 provides for the vesting of the management of every 'Cooperative Society' in a Committee of management constituted in accordance with the Act, Rules and bye laws. Section 34 provides for the nomination of members by the Government to the Committee of Management in the case of certain 'Cooperative Societies'. Section 29 further provides that where the term of office of a Committee has expired and for any reason the election of the members of the Management Committee has not taken place, the Registrar is empowered to appoint an administrator for the management of the affairs of the Society. Section 30 provides for the election of a Chairman who shall be responsible for the control, supervision and guidance of the affairs and business of the Society. Section 31 provides that there shall be a Secretary for every 'Cooperative Society' (except in the case of an Apex Society) to be appointed and removable by the Society subject to the provisions of Sections 121 and 122. The emoluments and conditions of service of the Secretary are to be prescribed in the bye-laws of the Society. Where a service for the post of Secretaries common to any class of Cooperative Societies is created under Section 122A, their recruitment, appointment, removal and other conditions of service of persons appointed to such posts shall be governed by the provisions of that section and the rules made thereunder. The Secretary is to be the Chief Executive Officer of that 'Cooperative Society', and subject to the control and supervision of the Committee of management he is responsible for the sound management of the business of the Society and its efficient administration; he is to carry on the authorised and normal business of the Society; he is subject to the provisions of the bye laws of the Society : he is to operate its accounts and to sign and authenticate all documents for and on behalf of the Society; he is to be responsible for the proper maintenance of the books and the records of the Society; he is to convene the meetings of the general body, the Committee of management and the Sub-Committees; he is also to perform such other duties and exercise such other powers as may be imposed or conferred on him under the rules and the bye-laws of the Society. Section 35 provides for the supersession or suspension of the Committee of management by the Registrar in case of persistent default or negligence in the performance of the duties of the committee or the commission of acts prejudicial to the interest of the Society etc. The Registrar is also empowered to appoint an Administrator or Administrators to be incharge of the affairs of the Society Section 37 empowers the Registrar to seize the books and records of a Cooperative Society' where he is satisfied that such books or records are likely to be tampered with or the funds and property of the Society are likely to be misappropriated or misapplied. Section 38 empowers the Registrar to remove any officer of a 'Cooperative Society' who has contravened or omitted to comply with any provisions of the Act, the rules or the bye-laws. Chapter V deals with "Privileges of Cooperative Societies". Chapter VI deals with "State Aid to Cooperative Societies", Chapter VII with "properties and Funds of Cooperative

Societies"; Chapter VIII with "Audit, Inquiry, Inspective and Surcharge"; Chapter IX with "Settlement of Disputes"; Chapter X with "Winding up and Dissolution of Cooperative Societies"; Chapter XI with "Cooperative Farming Societies"; Chapter XII with "Executions of Awards and Orders"; Chapter XIII with "Appeal and Review"; Chapter XIV with "Offences and Penalties"; and Chapter XV with "miscellaneous and Transitional Provisions".

5. Section 121 enables the Registrar to frame regulations to regulate the emoluments and other conditions of service including the disciplinary control of employees in a 'Cooperative Society' or a class of 'Cooperative Societies'. The regulations are required to be published in the Gazette,

6. Section 122 empowers the State Government to constitute an authority or authorities, in the prescribed manner, for the recruitment, training and disciplinary control of the employees of 'Cooperative Societies', or class of Cooperative Societies, and to require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. The regulations made by the authority or authorities are subject to the approval of the State Government and, after such approval are required to be published in the Gazette. Section 122A of the Act provides that notwithstanding anything contained in the Act, the State Government may by rules provide for the creation of one or more services of such employees of such Cooperative Societies or class of Cooperative Societies as the State Government may think fit, common to such Cooperative Societies and prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service. On the creation of such service all existing employees are deemed to have been provisionally absorbed in the service but the employees are given the option to be or not to be in such service. In case they decide not to be in such service, they are entitled to be paid certain compensation on their issuing notice of determination of service.

7. In exercise of the powers conferred by Section 122 of the Act the U.P. Cooperative Societies Employees Service Regulation 1975 were made on December 31, 1975 by the UP. Cooperative Institutional Service Board with the previous approval of the State Government. By Regulation 5 it is provided that recruitment for all appointments in a 'Cooperative Society' shall be made through the Board. In the case of certain specified posts, however, recruitment is to be made by a Selection Committee constituted in the prescribed manner. Regulation 15 expressly prohibits any appointment being made except in the manner provided for in the regulations. Other regulations deal with various conditions of service while Regulation 24 prescribes the age of retirement of an employee of a Cooperative Society as 58 years.

8. In exercise of the powers conferred by Section 122A of the Act the 'Cooperative Banks Centralised Service Rules 1976' were made with effect from August 19, 1976. The rules provide for the creation of a Cadre authority and an administrative Committee. The Secretary/Managing Director of the Apex Bank is to be Member Secretary of the Committee. The administrative Committee is vested with the power to make appointments in respect of the members of the service and to make regulations relating to the recruitment and conditions of service of the members. Provision is made for the screening and absorption of existing employees of the banks. The member Secretary is invested with various powers and responsibilities amongst which are the exercise of control over the members of

the service and the power to transfer a member of the service from one bank to another subject to the prior approval of the Committee.

9. It was strenuously contended by the learned Counsel for the petitioners in some of the cases that the U.P. Cooperative Societies Act 1965 in so far it was sought to be made applicable to Cooperative Banks was beyond the competence of the State Legislature. The argument was that while the subject "Cooperative Societies" was included in entry 32 of List II, "Banking" was a distinct entry by itself in List I of the 7th Schedule (entry 45) and therefore, the State Legislature was incompetent to legislate in regard to Banking by 'Cooperative Societies'. There is no substance whatever in this submission. Entry 43 of List I is 'Incorporation, regulation and winding up of trading corporations, including banking, insuring and financial corporations but not including co operative societies. Entry 44 is "Incorporation, regulation and winding up of corporations whether trading or not, with objects not confined to one State, but not including universities". Entry 45 is "Banking". Entry 32 of List II is. "Incorporation, regulation and winding up of corporations, other than these specified in List I, and universities, unincorporated trading literary, scientific, religious and other societies and associations; co-operative societies".

10. We do not think it necessary to refer to the abundance of authority on the question as to how to determine whether a legislation falls under one entry in one list or another entry in one list or another entry in another list. Long ago in *Prefulla Kumar Mukherjee and Ors v. Bank of Commerce Ltd, Khulna* 74 2A, 23 the Privy Council was confronted with the question whether the Bengal Money Lenders Act fell within entry 27 in List II of the Seventh Schedule to the Government of India Act 1935 which was 'money lending', in respect of which the Provincial Legislature was competent to legislate, or whether it fell within entries 28 and 38 in the List I which were 'Promissory notes' in and 'banking' which were within the competence of the Central Legislature. The argument was that the Bengal Money Lenders Act was beyond the competence of the provincial Legislature in so far as it dealt with promissory notes and the business of banking. The Privy Council upheld the vires of the whole of the Act because it dealt in pith and substance, with money lending. They observed :

Subjects must still overlap, and where they do the question must be asked what in pith and substance in the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, such beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.

Examining the provisions of the U.P. Co-operative Societies Act in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with "Cooperative Societies". That it trenches upon banking incidentally does not take it beyond the competence of the State Legislature. It is obvious that for the proper financing and effective functioning of Cooperative Societies there must also be Cooperative Societies which do banking business to facilitate the working of other Comparative Societies, Merely because they do banking business such Cooperative Societies do not cease to be Cooperative Societies, when otherwise they are registered under the Cooperative Societies Act and are subject to

the duties, liabilities and control of the provisions of the Cooperative Societies Act. We do not think that the question deserves any more consideration and, we, therefore, hold that the UP. Cooperative Societies Act was within the competence of the State Legislature. This was also the view taken in Nagpur District Central Cooperative Sank Ltd. Nagpur and Anr. v. Divisional Joint Registrar, Cooperative Societies Nagpur and Anr. AIR 1971 SC 365 and Sent Sadhu Singh and Ors. v. the State of Punjab and Anr. AIR 1970 PLH 528.

11. Another submission made to us was that the enormous supervisory power vested in the Registrar of Cooperative Societies the Constitution of a centralised service and the plenitude of executive power given to the Secretary of the Society have the effect of converting the so called Co-operative Society into a Subordinate Governmental Institution and therefore the Legislation cannot really be said to be a law in regard to Co-operative Societies so as to fall within entry 32 of List II. We see no force in this submission. It is true that the Registrar is given wide powers of supervision. It is also true that Secretaries are also given vest executive powers. But the supervisory powers given to the Registrar, the executive powers given to the Secretary and the creation of a centralised service have a single object in view, namely, the better working of the Cooperative Societies. It is well known that many of the Cooperative societies, particularly in rural areas, need the guidance of well trained expert officers and it is the function of the Secretary and the other members of the centralised service to afford proper guidance to the ignorant and often illiterate members of the Cooperative Society. The supervisory powers given to the Registrar are with a view to enable him and the officers of his department to keep a vigilant and benevolent eye on the working of the Society so that none may take advantage of the innocent rural folk and so that the Cooperative movements may be a success and a real boon to the weaker sections of the people. The Constitution of a centralised service is perhaps to see that the officials do not acquire any vested interest in the Cooperative Society of a locality. Though Secretaries are vested with vest powers they are subject to the control and supervision of Chairman and the Committee of Management. We are, therefore, unable to agree with the submission that the U.P. Cooperative Societies Act is not a law dealing with Cooperative Societies because wide powers are given to the Registrar of Cooperative Societies and the Secretaries of Societies and because a centralised service has been created.

12. Another argument which was advanced before us was that the Secretaries and other employees of the Cooperative Banks are not liable to be transferred from one bank to another bank. Regulation No. 8(d) of the Cooperative Banks Centralised Service Rules 1976 expressly empowers the Member-Secretary of the Administrative Committee to transfer a number of the service from one bank to another bank subject to the prior approval of the Chairman of the Committee. Once an employee has opted to be a member of the Generalised Service,...if he does not, he has to take his compensation and walkout...he is subject to the Centralised Service Rules and liable to be transferred from one bank to another.

13. In some of the cases it was urged that some persons who had been appointed before the Cooperative Society Employees Service Regulations 1975 were made under Section 122 of the Act, had been illegally discharged by the Administrator. On a perusal of the relevant affidavits and counter-affidavits we find that these appointments were made after the Constitution of the U.P.

Cooperative Institutional Service Board in whom vested the power of recruitment of employees of Cooperative Societies under Section 122 of the Act Pending the making of the U.P. Cooperative Societies Employees Service Regulations prescribing the method of recruitment etc. administrative instructions had been issued to all the Cooperative Societies that appointments to all posts in Cooperative Societies would be made by the Board, If despite the Constitution of the Board and the issuance of administrative instructions some Cooperative Societies chose to make appointments, such appointments have necessarily to be held to be invalid. The fact that regulations had not been made when the appointments were made did not empower the Committee of Management to make the appointments usurping the power of the U.P. Cooperative Institutional Service Board. It appears that such persons as were appointed by the Committee of Management during the inter-regnum were given an opportunity to appear before the U.P. Cooperative institutional Service Board and were screened. Some were selected and some were not.

14. Another question which was raised was that though the age of retirement of employees of some of the Cooperative Societies was originally 60 years under the U.P. Cooperative Societies Employees Service Regulations, the age of retirement has now been made 58 years. We are unable to see any force in this submission. Regulation 24(ii) itself provides that if before the coming into operation of the Regulations the Society had entered into any contract with an employee on the date of his employment whereby he was entitled to continue beyond 58 years, the rule of retirement at the age of 58 years shall not apply and the age of retirement shall be governed by the contract. Therefore, if in any case there is a contract between a Cooperative Society and an employee entered into before the Regulations came into force stipulating the age of retirement as 60 years the Regulation now stipulating the age of retirement as 58 years will not apply to him. We make it clear that this principle does not apply to the members of the Centralised Services. The above discussion covers all the points which were urged before us. In the result the Civil Appeal, the Special Leave Petitions and the Writ Petitions are dismissed with cost.