

Gujarat State Co-Operative Land ... vs P.R. Mankad And Ors. on 23 January, 1979

Equivalent citations: AIR1979SC1203, [1979(38)FLR353], (1979)0GLR701, (1979)3SCC123, [1979]2SCR1023, AIR 1979 SUPREME COURT 1203, 1979 LAB. I. C. 592, 1979 2 SCR 1023, (1979) 2 SCR 1025 (SC), 38 FACLR 353, 1979 SCC (L&S) 225, (1979) 2 SCJ 365, (1979) 1 LAB LN 527, 1979 (3) SCC 123, (1979) 2 SERVLR 128, (1979) 20 GUJ LR 701

Author: R.S. Sarkaria

Bench: O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. The appellant is the Gujarat State Cooperative Land Development Bank Ltd. (hereafter referred to as the Bank). It is a Society registered under the Bombay Cooperative Societies Act, 1925, as applicable to the erstwhile State of Saurashtra. According to the appellant's writ petition, it is doing banking business. It has 127 Branches spread all over the State of Gujarat. One of its Branches is in Dasada, Surendranagar District. The Head Office of the Bank is at Ahmedabad.

2. The second respondent, Babu Bhai Negracha, was serving as an Additional Supervisor in the Dasada Branch of the Bank. His services were terminated by an order, dated February 21, 1962, by giving him one month's pay in lieu of notice under Staff Regulation No. 15.

3. The Gujarat Cooperative Societies Act, 1961, came into force from May 1, 1962, and the appellant-Bank, being a Society, under the Cooperative Societies Act, came to be governed by the said Act.

4. By Notification. No. BIR-1362-5-H, dated March 2, 1963, published in the Gujarat Gazette in March 1963, the Government of Gujarat directed under Section 2(4) of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) that all the provisions of the said Act shall apply with effect from March 15, 1963 to the business of banking by Cooperative Banks in the Saurashtra and Kutch areas of the State, registered and deemed to be registered under the Gujarat Cooperative Societies Act, 1961.

5. Aggrieved by the termination of his service, the second respondent approached the appellant's Dasada's Branch by a letter, dated August 20, 1962, stating that since his services were terminated

illegally by way of victimisation, he should be reinstated in the service.

6. Thereafter, the second respondent filed an application in the Labour Court at Rajkot, alleging that his service had been illegally and maliciously terminated as an act of victimisation on account of his trade union activities. He prayed for setting aside the order of his termination of service and for reinstatement with full back wages.

7. The Bank filed a written statement, raising a preliminary objection that the Bombay Industrial Relations Act, 1946, under which the application was made by the respondent, was not applicable to its case, as it was a Cooperative Society governed by the Gujarat Cooperative Societies Act, under which only the Registrar or his nominee had jurisdiction to decide the dispute, and the Labour Court had no jurisdiction to entertain and decide the application of the second respondent.

8. By its Order, dated June 11, 1963, the Labour Court overruled this objection and held that it had jurisdiction to hear the application.

9. The Bank then filed a writ petition under Article 226 of the Constitution in the High Court to challenge the Order of the Labour Court. The High Court by a common judgment dated August 25, 1967 dismissed the writ petition, but in view of the importance of the question of law involved, granted a certificate of fitness for appeal to this Court.

10. On the strength of that certificate, the Bank has come in appeal before us against the aforesaid judgment of the High Court.

11. In this Court on January 22, 1969, the Bank made an application for leave to urge as additional ground, namely, that the Bank is not doing banking business, i.e. accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise as defined in Section 5, Clauses (b) and (c) of the Banking Companies Act, 1949; and that this being the true position, the Notification No. DIR-1362-IV-H dated March 2, 1963, published in the Gujarat Government Gazette dated March 7, 1963, under Section 2(4) of the Bombay Industrial Relations Act, 1946 (Bombay Act XI of 1947) is not applicable to the appellant. This application was strenuously opposed by Shri Ram Reddy, who is assisting the Court as amicus curiae on behalf of respondent 2, who has not been able to appear and defend himself in this appeal.

12. We have declined permission to raise this new plea for the first time in this Court, for these reasons: (i) It is much too belated; (ii) It stands in direct contradiction to the position taken by the appellant in its writ petition and the affidavit in support thereof filed in the High Court. Therein, the appellant had categorically pleaded: "The petitioner is a Society registered under the Bombay Cooperative Societies Act, 1925 (Bombay Act VII of 1925)...and is engaged in the business of banking." (iii) It is not a purely legal plea but a mixed plea of law and fact, and cannot be determined on the basis of material already on the record.

13. We, therefore, take it that the appellant is a Cooperative Society engaged in the business of banking and, as such, the Bombay Industrial Relations Act, 1946 is applicable to it by virtue of the; aforesaid Notification dated March 2, 1963, issued by the State Government under Section 2(4) of that Act.

14. The arguments of Mr. Dholakia, appearing for the appellant, may be summarised as follows:

(i) The case is governed by the Gujarat Cooperative Societies Act, 1961 (hereafter called the Act of 1961) and not by the Bombay Cooperative Societies Act, 1925 (hereafter referred to as the Act of 1925).

(ii) The phrase "any dispute touching...the business of the Society", particularly the word "touching" therein, is of very wide amplitude. It would comprehend any matter which relates to, or concerns or affects the business of the Society. Every society, ex-necessitate employs some servants for the purpose of carrying on its business. That being so, the payment of wages, appointment and removal of its servants under law is a part of the business or "touches" the business of the Society. (Reliance for this argument has been placed on Farkhundali Naunhay v. V.B. Potdar .

(iii) Even if contention (ii) is not accepted, the dispute raised by the respondent, Babu Bhai Negracha is one "touching the management of the Society". The expression 'management' takes in the entire staff or establishment of servants which run the/affairs of the Society.

(iv) Once it is held that the dispute between the Society and its past servant, Babu Bhai Negracha, touches the "business" or the "management" of the Society, or both, within the meaning of Section 96, the Registrar or his nominee, alone, shall have jurisdiction to adjudicate such dispute by compulsory arbitration; and the non-obstante clause in the Section shall bar the determination of that dispute by the Industrial Tribunal or the Labour Court under the Bombay Industrial Relations Act.

15. As against the above, Mr. Rama Reddy, amicus curiae, submitted as under:

(i) Since the services of the second respondent were terminated on February 21, 1962, before the Act of 1961 came into force, the Act relevant for this discussion is the Act of 1925.

(ii) Irrespective of whether the Act of 1925 or the Act of 1961 governs the appellant-Society, the expression "any dispute" commonly occurring in Section 54 of the Act of 1925 and Section 96 of the Act of 1961, is restricted in its scope to a dispute of a civil nature which is capable of being resolved by the Registrar or his nominee, and does not take in an industrial dispute between the Society and its workmen which under the B.I.R. Act is triable by the Labour Court/Industrial Tribunals, only.

(iii) B.I.R. Act is a special law, dealing with the special subject of industrial disputes, which in their nature are essentially different from ordinary Civil disputes between an, employer and his employee governed by the Law of Contract, B.I.R. Act provides for a special machinery for adjudication of industrial disputes. As against this, the Cooperative Societies Act of 1925/or of 1961 is a general enactment and it must yield to the B.I.R. Act whenever the provisions of the latter by their language are clearly applicable to a dispute. Reference has been made to Jullundur Transport Cooperative Society Ltd. v. Punjab State .

(iv) The scope of the expression "any dispute touching the business of the Society", occurring in Section 54 of the Act of 1925/or Section 96 of the Act of 1961 is limited to disputes directly relating to the actual trading or commercial activities of the Society. This expression does not take in a dispute between the Society and its employee relating to, the conditions of his employment, which will include the termination of his employment. This point is concluded by the decision of this Court in Cooperative Central Bank Ltd. v. Additional Industrial Tribunal, Hyderabad , which follows the ratio of its earlier decision in Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jungraj Jain [1969] 1 S.C.R. 885. In view of these decisions, the ratio of Farkhundali's case (ibid) decided by the Bombay High Court, is no longer good law.

(v) The expression "management" in Section 96 of the Act of 1961, means "the Board of Directors", or "the Board of Trustees" or the "Managing Committee" or "Executive Body" which has the overall control of the affairs and business of the Society, and it does not include the individual workers or employees, individual workmen or employees of the Society who carry on the day-to-day administration of the Society; nor will it take in matters touching the service conditions of the servants of the Society such as their appointment to service or their discharge, removal from service and their wages. A dispute of the kind raised by the second respondent, therefore, will not fall within the purview of the phrase "any dispute touching the management of the Society" used in Section 96.

16. Before appreciating the contentions canvassed on both sides, it is necessary to notice the relevant provisions of the Act of 1925 and the Act of 1961.

17. The relevant part of Section 54 of the Act of 1925, reads thus:

(1) (a) If any dispute touching the Constitution or business of Society arises between members or past members of the Society or persons claiming through a member or a past member or between members or past members or persons so claiming and any officer, agent or servant of the Society or its Committee, and any officer, agent, member or servant of the Society past or present, it shall be referred to the Registrar for decision by himself or his nominee....

The corresponding Section 96 of the Act of 1961 lays down:

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a Society shall be referred in the prescribed form...if the parties thereto are from amongst the following:

(a) a Society, its Committee, any past Committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the Society, or the Liquidator of the Society....

18. A comparison between the portions of the two Sections, extracted above, brings out two points of difference. Firstly, in Section 54, there is no non-obstante clause, while Section 96(1) begins with the words "Notwithstanding anything contained in any other law for the time being in force". Secondly, while in Section 54, the word 'management' does not occur, in the corresponding Section 96(1) of the, 1961 Act, the word 'management' has been inserted in-between the words 'constitution' and 'business'.

19. It is significant to note that the phrase "any dispute touching the constitution...or business of the Society" is a common feature of both the aforesaid Sections. We emphasise this fact, because it is this common feature, rather than the points of difference between the two Sections, that holds the key to a correct solution of the problem before us.

20. From a conspectus of the decisions cited at the Bar, we may devise two broad tests to determine the points in controversy in the instant case. First, whether the expression "any dispute" spoken of in Section 54 of the Act of 1925, and Section 96 of the Act of 1961, is one which is capable of being resolved by the Registrar or his nominee under the relevant Cooperative Societies Act ? Second, whether a dispute raised by a servant against his employer, the Cooperative Society, for setting aside his removal from service on the ground that it was an act of victimisation and for reinstatement in service with back wages, is one "touching the management or business of the Society" within the contemplation of the said provisions ?

21. As regards the first test, it is to be noted that the expression "any dispute" has not been defined in the Acts of 1925 and 1961. The term "dispute" means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other. The word "any" prefixed to "dispute" may at first glance, appear to give the expression "any dispute" a very wide amplitude covering all classes of disputes, whatever be their nature. But the context of these provisions, the object and scheme of the Acts of 1925/1961 show that the Legislatures never intended to give such a wide scope to this expression. The related provisions and the scheme of the Acts unerringly indicate that the expression "any dispute" has been used in a narrower sense limited to contested claims of a civil nature, which could have been decided by civil or revenue courts, but for the provisions with regard to compulsory arbitration by the Registrar or his nominee, found in Section 54 of the Act of 1925/96 of the Act of 1961. The first indication of this being the right construction, is discernible in Sub-section (2) of Section 96 which states that when any question arises whether for the purposes of Sub-section (1) a matter referred to for decision is a dispute or

not, the question shaft he considered by the Registrar, whose decision shall be final. This means, it is incumbent on the Registrar to decide as a preliminary issue, whether the dispute is of a kind under Sub-section (1) of Section 96 falling within his jurisdiction. If this preliminary issue is found in the negative, he will have no further jurisdiction to deal with the matter.

22. A further clue to the interpretation of "any dispute" used in Section 96(1) is available in Section 97(1) which prescribes periods of limitation for disputes of the kind specified in its Clauses (a) and (b), referred to the Registrar under Section 96. Sub-section (2) of Section 97 which is in the nature of a residuary provision, states that the period of limitation in the case of any dispute other than those mentioned in Sub-section (1) which are required to be referred to the Registrar under Section 96, shall be regulated by the provisions of the Indian Limitation Act, "as if the dispute were a suit, and the Registrar as Civil Court". The last clause of Sub-section (2) which has been underlined, unmistakably shows that only disputes of a civil nature which could be the subject of civil suits triable by ordinary civil courts, will fall within the scope of the expression "any dispute" used in Section 96(1).

23. Another definite pointer to the above being the right construction of "any dispute" is available in Sub-section (3) of Section 98 which provides:

Notwithstanding anything contained in Section 96, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and' a claimant or between different claimants, is one involving complicated question of law or fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in Sub-section (1).

24. It is noteworthy that this sub-section is substantially in the same terms as the proviso to Sub-section (1) of Section 54 of the Act of 1925, extracted earlier.

25. The proviso to Sub-section (1) of Section 54 of the Act of 1925 corresponding to Sub-section (3) of Section 98 of the Act of 1961 unmistakably shows that the compulsory arbitration by the, Registrar, on a reference under Section 96, is only a substitute for adjudication of disputes of a civil nature normally tried by civil courts.

26. Further indication regarding the nature of disputes which the Registrar may determine, is furnished by Section 166(1) which provides:

166(1). Bar of jurisdiction of Courts: Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of-

(a) ...

(b) any dispute required to be referred to the Registrar, or his nominee, or board of nominees, for decision.

27. It will be seen that Section 166, in terms, bars the jurisdiction only of Civil or Revenue Court, and not of the Labour Court or any Industrial Tribunal constituted under the B.I.R. Act or Industrial Disputes Act to adjudicate industrial disputes. It is clear that the Legislature never intended to oust the jurisdiction of the Labour Court or the Industrial Tribunal to determine claims and industrial disputes which cannot be adjudicated by the ordinary Civil Courts.

28. Now, let us turn to the nature of the dispute raised by the second respondent. Is it a dispute relating to a right which he could establish by filing a suit in a Civil Court?-assuming for the moment that nothing in the relevant Cooperative Societies Act is a bar to such a suit. The answer must be in the negative. The respondent is not claiming a civil right arising from the contract of employment with the appellant-Bank. What he is claiming is not enforcement of any term of the contract of his employment on the part of his employer. He is alleging that his services have been terminated unfairly and Vindictively because of his legitimate trade union activities, as an act of victimisation. The relief claimed by him is of reinstatement in service with back wages. The rights and reliefs which he is claiming could not be determined and granted by a Civil Court in a suit. As Luding Teller puts it, "a Court of Law proceeds on the footing that no power exists in the Courts to make contracts for people and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties had made." (Quoted with approval in *Rohtas Industries Ltd. v. Brijnandan Pandey* [1956] S.C.R. 800. The rights claimed by the second respondent are those which are conferred on workmen and employees under the Bombay Industrial Relations Act, to ensure social justice. Such rights which do not stem from the contract of employment can be enforced only in the Labour Court constituted under the B.I.R. Act. The Labour Court is competent to grant the relief of reinstatement claimed by the respondent, while in view of Section 21(b) of the Specific Relief Act, then in force, the Civil Court was not competent to grant that relief.

29. The dispute was raised by the second respondent by writing an approach letter to his employer, the appellant, as required by the Bombay Industrial Relations Act. In substance, it was an industrial dispute. It was not restricted to a claim under the contract or agreement of employment. The Civil Court cannot grant the reliefs claimed by the second respondent. As rightly submitted by Mr. Rama Reddy, if a Court is incapable of granting the relief claimed, normally, the proper construction would be that it is incompetent to deal with the matter.

30. The matter can be looked at from another angle, also. The law of industrial disputes or industrial relations is a special law dealing with rights and obligations specially created by it. As against this, the provision in Section 54 of the Act of 1925/Section 96 of the Act of 1961 is a general provision. In accordance with the maxim *generalia specialibus non derogant*, therefore, nothing in these general provisions can derogate from B.I.R. Act and the Cooperative Society Act must yield to the special provisions in the Bombay Industrial Relations Act whenever a dispute clearly comes within the language of the latter Act.

31. In the light of the above discussion, the conclusion is inescapable that the expression "any dispute" referred to in Section 54 of the 1925 Act/Section 96 of the 1961 Act, does not cover a dispute of the kind raised by respondent 2 against the appellant-Bank.

32. Coming now to the second test, it may be observed that to a part of it, the pronouncement of this Court in Cooperative Central Bank Ltd. v. Additional Industrial Tribunal, Hyderabad (ibid), furnishes a complete answer, wherein the interpretation of this very phrase "touching the business of the Society" occurring in Section 61 of Andhra Pradesh Cooperative Societies Act, 1964, which largely corresponds to Section 96 of the Gujarat Act, 1961, came up for interpretation. The subject-matter of the dispute was divided into three issues. The first issue comprised a number of service conditions including inter alia salary, scales and adjustment or dearness allowance, conveyance charges, provident fund and gratuity, etc.

33. It was contended on behalf of the Bank that the effect of Section 61 and other provisions of Andhra Pradesh Cooperative Societies Act was to exclude the jurisdiction of the Industrial Tribunal to deal with such disputes under the Industrial Disputes Act. After noticing a number of decisions and after referring to the previous decision of this Court in Deccan Cooperative Bank, the Court negated the contention with these observations:

The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself.... The word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employee, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society.... Thus it is clear that in respect of the dispute regarding the alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Cooperative Bank Ltd., Civil Appeal No. 358 of 1967 dated 29-8-68, AIR 1969 SC 1320 (supra) therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with under Section 62 of the Act and must therefore, be held to be outside the scope of Section 61.

34. The observations quoted above, negate contention (ii) advanced by Mr. Dholakia.

35. It however, remains to be considered whether the dispute raised by the second respondent in the present case, comes within the purview of the expression "touching the management of the Society"

used in Section 96(c) of the Act of 1961.

36. In this connection, it may be noticed that just as in Section 96(1), in Section 61 of the Andhra Pradesh Corporation Societies' Act, 1964, also, which came up for consideration in Cooperative Central Banks' case before this Court, the term management does occur in the collocation of words "constitution, management or business". But no specific argument seems to have been then raised that a dispute between the Society and its former servants relating to the conditions of service, comes within the purview of the expression 'touching the management of the Society'. Perhaps, it was taken for granted that if the dispute was not comprehended by the expression "business of the Society", it would not be covered by the words "management of the Society", either. Although there is little discussion in the judgment about the ambit and import of the expression "management", yet in conclusion, it was clearly and emphatically held that the dispute in that case was "outside the scope of Section 61.

37. We will now, focus attention on the expression "management of the Society" used in Section 96(1) of the Act of 1961. Grammatically, one meaning of the term 'management' is: 'the Board of Directors' or 'the apex body' or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society'. In this sense, it may not include the individuals who under the over-all control of that governing body or Committee, run the day-to-day business of the Society. (see Words and phrases, by West Publishing Co. Permanent Edition, Vol. 26, page 357, citing, Warner & Swasey Co. v. Rusterholz D.C. Minn. 41 F. Supp. 398, 505. Another meaning of the term 'management', may be: 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society.'

38. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholakia. The use of the term 'management' in such a wide sense in Section 96(1) appears to us, to be very doubtful.

39. Be that as it may, what has been directly bidden "out-of-bounds" for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the connotation of 'management'. A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression "any dispute", a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs, such as reinstatement in service with back wages, which are not enforceable in a Civil Court, is outside the scope of the expression "touching the management of the Society" used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.

40. Learned counsel for the appellant tried to argue as a last resort that the relief sought by the second respondent could be granted by the Registrar by relaxing or moulding the Staff Regulations and Bye-laws which lay down conditions of service governing the employees of the Society. It is pointed out that under the Act of 1961, the Registrar has the power to amend or modify such Regulations and Bye-laws.

41. We find no merit in this contention, also.

42. A similar argument was advanced before this Court in Cooperative Central Batik's Case, *ibid*, and was repelled *inter alia*, with the reasoning that the bye-laws of the Bank, containing the conditions of service were in the nature of a contract between the Bank and its employees and a change of such bye-laws, embodying the conditions of employment, "could not possibly be directed by the Registrar where, under Section 62(4) of the (ANDHRA) Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws". It was further observed that a dispute referred to the Registrar can even be transferred for disposal to a person who may have been invested with powers in that behalf, or may be referred for disposal to an arbitrator. But neither the Registrar nor his nominee will be competent to grant the relief requiring a change in the service conditions of the employees, under Section 62 of the Andhra Act. Such a relief could be granted only by the Industrial Tribunal which under the Industrial Disputes Act, has the jurisdiction even to vary contracts of service between an employer and employees. This reasoning is applicable *mutatis mutandis* to the instant case.

43. For all the foregoing reasons, the appeal fails and is dismissed with costs. In token of our gratitude for the valuable assistance rendered to us by Shri Rama Reddy as *amicus curiae*, we direct that an honorarium of Rs. 1500/- be paid to him, which shall be taxed as costs awarded against the appellant.