

# **Damodar Das vs Co-Operative Seeds Store, Sakit And ... on 16 December, 1952**

**Equivalent citations: AIR1953ALL465, AIR 1953 ALLAHABAD 465**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **ORDER**

1. This is an application under Article 226 of the Constitution by a member of the Co-operative Seeds Store, Sakit, District Etah, in which the prayer is as follows:

"A writ of mandamus or other suitable writ, order or direction be issued to the opposite parties restraining them from taking any steps to recover the amount of Rs. 6,289/9/6; or a suitable writ or direction be issued referring the matter for decision to the Registrar or the arbitrators to be named by him."

2. The opposite parties in the application are: (1) The Co-operative Seeds Store, Sakit, District Etah; (2) The District Co-operative Officer, Etah; (3) The Registrar Co-operative Societies, Lucknow; (4) The Collector of Etah, and; (5) The State of Uttar Pradesh.

3. The relevant facts are these: The applicant is a member of the Co-operative Seeds Store, Sakit, and in his capacity as such he borrowed 200 maunds of wheat and 10 maunds of barley on 7-11-1950. The main terms of the agreement of loan were that the applicant was to return the quantity of grain borrowed together with 25 per cent. by the 31-5-1951. If this total quantity of the grain was not returned by the 31-5-1951, or within such period as might be extended the applicant was to be liable to pay the price of the grain with a penalty up to 50 per cent. per annum till the date of recovery of the amount. The actual amount of the penalty was to be determined by the Provincial Marketing Federation.

Before the expiry of the period fixed for the return of the grain, the applicant made an application to the District Co-operative Officer, Etah, for extension of time till the 30th June. 1951. The applicant states that such extension was granted to him. He goes on to say that within this extended period he sent 250 maunds of wheat and 12 maunds and 20 seers of barley to the Co-operative Seeds Store, Sakit, but when the grain reached the Seeds Store the person in charge of it refused to accept it saying that the godown had been closed owing to the rainy season, and so the wheat and barley came back to the applicant. It is alleged that on 12-12-1951, the applicant received a letter from the District Co-operative Officer, Etah, informing him that the applicant had incurred the penalty provided for in the agreement and should pay the price of the grain with the penalty. He was told that in default the money would be realised through the Collector as arrears of land revenue.

Subsequently, a requisition was sent by the District Co-operative Officer to the Collector for the recovery of Rs. 6,289/9/6 from the applicant as arrears of land revenue and in compliance with this requisition the Collector attached the amount in the hands of the Superintending Engineer, P. W. D. out of a sum of about Rs. 40,000/- which the Superintending Engineer had to pay to the applicant in lieu of certain work done by the applicant for the State Government as a contractor. This attachment took place on 10-3-1952.

The applicant offers to deposit in the godowns of the Co-operative Seeds Store the quantity of the grain borrowed by him with an additional 25 per cent. or to pay its price. But he disputes his liability to pay any penalty or interest on the ground that he had sent the grain to the Co-operative Seeds Store within the extended time allowed to him. According to him it was the fault of the Seeds Store that it did not accept the grain offered by the applicant. It is also stated that the amount of the penalty has not been determined by the Provincial Marketing Federation. He disputes the power of the District Co-operative Officer to determine the amount of penalty.

4. On 21-3-1952, the applicant applied to the Registrar, Co-operative Societies, to refer the applicant's case to arbitration or to act as an arbitrator himself. In reply the Registrar informed the applicant that the seed which the latter had borrowed belonged to the Government and the Co-operative Development Union, Sakit, had been looking after the distribution. It was stated that the Seeds Store was acting only as an agent of the Government and it was not necessary to obtain awards in respect of Government dues as such dues could be recovered by the Collector. The Registrar did not refer the dispute to arbitration as required by Rule 116 of the Rules framed under the Co-operative Societies Act, 1912. On these allegations the applicant makes the prayer as stated above.

5. A counter-affidavit has been filed by the Head Assistant of Co-operative Societies, U.P., Lucknow. Neither the District Co-operative Officer, Etah, nor any office bearer of the Co-operative Seeds Store, Sakit, has filed a counter-affidavit. Sri S. B. Lal, the Head Assistant has no personal knowledge of the extension of time which the applicant alleges in his affidavit. In the counter-affidavit all what is stated about this alleged extension of time is that there was nothing on the record to show that the petitioner applied for extension of time upto 30-6-1951.

Further the counter-affidavit goes on to say that no grain was ever sent to the Seeds Store by the applicant within the extended time. This implies that there was an extension of time. The allegation that the officer in charge of the Seeds Store refused to accept the grain on the ground that the Seeds Store was closed on 26-6-1951, is also denied. Further, it is asserted that the matter could not have been referred to arbitration under the Co-operative Societies Act and the Rules framed thereunder as the dues were those of the Government and were recoverable as arrears of land revenue.

6. We have before us a copy of the bye-laws of the Sakit Co-operative Society. Sub-clause (2) of clause (4) of the said bye-laws shows that one of the objects of the society is to arrange for the supply of improved seeds.

7. Learned Standing Counsel has produced before us a certified copy of the deed of agreement which was entered into between the petitioner and the Seeds Store, Sakit, at the time that he borrowed the grain in dispute. The important point to be noted is that this deed of agreement is between the petitioner and the Co-operative Society, Sakit. The lender is the Co-operative Society and not the Government. The contention on behalf of the opposite parties that the Government was the lender to the petitioner is completely negated by this deed of agreement. The Government may have lent the seeds to the Co-operative Society, but qua the petitioner it was the Co-operative Society which was the lender. The dispute which has arisen in the present case is thus between the petitioner as a member and the Co-operative Seeds Store at Sakit. Rule 116 provides: "The Registrar on receipt of a reference shall either decide the dispute himself, or refer it for decision to an arbitrator or to two joint arbitrators appointed by him or to three arbitrators, of whom one shall be nominated by each of the parties to the dispute and the third by the Registrar who shall also appoint one of the arbitrators to act as Chairman." The duty cast upon the Registrar by Rule 116 is a mandatory one. Rule 115 provides: "Any dispute touching the business of a registered society (i) between members or past members of a society or persons claiming through a member or past member, (ii) or between a member or a past member or persons so claiming and the society or its committee or any officer of the society, (iii) between the society or its committee and any officer of the society, and (iv) between two or more registered societies, shall be decided either by the Registrar or by arbitration and shall for that purpose be referred in writing to the Registrar." Explanation 3 to Rule 115 provides: "The business of a society includes all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers of a society."

8. Having regard to the terms of Rule 115 and specially to those of Explanation 3 thereof, there is no room for any doubt that the dispute which has now arisen between the applicant and the Co-operative Seeds Store, Sakit, is a dispute touching the business of the society. We express no opinion as to the merits of the case, the allegations and the counter allegations, but we are clear in our mind that the Registrar did not comply with the statutory obligation cast upon him by Rules 115 and 116. As a result of this the applicant is not able to get an adjudication of his claim. As the recovery is being made from him as arrears of land revenue in accordance with Section 44, Co-operative Societies Act, it is not possible for him to seek his redress in a civil Court. His only remedy was to have the matter adjudicated by means of an arbitration, but the Registrar has declined this. His refusal to refer the matter to arbitration was against law.

9. The proper order in the above circumstances to pass is to require the Registrar to decide or refer the matter to arbitration in accordance with Rules 115 and 116.

10. The application is allowed and we direct the Registrar, Co-operative Societies, U. P. Lucknow, to act in accordance with Rule 116 of the Rules framed under the Co-operative Societies Act 1912, in respect of the dispute referred to him by the petitioner, Damodar Das Attra, by his letter, dated the 21st March, 1952, by which he requested the Registrar either to arbitrate in the dispute or to appoint some other person for the purpose. The applicant shall get his costs from the opposite party.