Babu Ram vs Co-Operative Seeds Store And Ors. on 12 January, 1954

Equivalent citations: AIR1954ALL490, AIR 1954 ALLAHABAD 490

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Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This is a petition by one Babu Ram under Article 226, Constitution of India directed against the Co-operative Seeds Store, Sakit, district Etah, the District Co-operative Officer, Etah the Registrar, Co-operative Societies, Lucknow, the Collector of Etah, the State of Uttar Pradesh, and Damodar Das Attra. Babu Ram petitioner alleged that he was a member of a registered society known as the Co-operative Seed Store, Sakit, district Etah which has been impleaded in these proceedings as opposite party No. 1. It, however, appears from the counter-affidavit that there is no registered society of the name of the Sakit Co-operative Seed Store, Sakit, district Etah.

There is, in fact, a registered society known as the Co-operative Sahkari Sangh Sakit, district Etah, and this registered sooiety hereinafter referred to as Sangh owns a Co-operative Seed Store, Sakit, district Etah, under which name the business of the seed store is carried on by the Sangh. This averment in the counter-affidavit is not met in the rejoinder affidavit and in spite of the fact that there is this error in the petition, no attempt was made on behalf of the petitioner to amend the petition, and correct the name of opposite party No. 1. The relief is sought particularly against opposite party No. 1 and this failure to amend the petition and implead the correct party is, therefore, by itself a sufficient ground for the dismissal of the petition.

2. Since the petition was, however, heard by me on merits, I deal with the remaining points raised in it. For the purpose of dealing with the petition on merits, I assume that wherever the petitioner has referred to the Sakit Co-operative Seed Store, Sakit, district Etah, as a registered society, he intended to refer to the Sangh. The petitioner's case is that in his capacity as a member of the Sangh, he borrowed 25 maunds of wheat seed after executing a contract bond in the year 1951 under which he was required to repay the quantity borrowed with an extra 25 per cent. on 31-5-1951. The grain borrowed was not returned by the agreed date and the time agreed upon was not extended. There was a condition that, in case the petitioner did not give back the grain within the agreed time, he would be liable to pay a penalty which was to be determined by the provincial Marketing Federation.

The petitioner in his affidavit did not mention that the rate of penalty was ever prescribed by the Provincial Marketing Federation in accordance with the terms of the bond but the counter-affidavit shows that the rate of penalty was fixed by the Provincial Marketing Federation by letter No. C-2 65/11/16 Seed dated 21-6-1950, issued by the Registrar Co-operative Societies U. P. who was the President of the Provincial Marketing Federation. The penalty was levied in accordance with the rate laid down in this letter, and the contention in the affidavit of the petitioner that the realisation of penalty without its being fixed by the Provincial Marketing Federation was illegal consequently has no force.

It appears that having fixed the penalty, attempts were made to realise the price of the wheat seed and the extra quantity of wheat seed and penalty payable by the petitioner by issuing processes for realisation of the amount found due as arrears of land revenue. Various proceedings were taken and the petitioner was at one stage arrested and later on he was released. The present stage at which the petition has been moved, is, however, one when no proceedings for realisation of the amount are at present pending.

At this stage, the intention is to refer the dispute to the Registrar, Co-operative Societies Uttar Pradesh in accordance with Rule 115 of the rules framed under the Co-operative Societies Act, so that the Registrar may proceed in accordance with Rule 116. This reference is being made on the ground that a dispute has arisen touching the business of the Sangh which is a registered Society and this dispute is between the Sangh and a member of the society viz., the petitioner. The petitioner by this writ petition has sought a declaration that the rules framed under the Co-operative Societies Act, 1912, be declared ultra vires, null and void and a writ of mandamus or other suitable writ be issued restraining the opposite parties from proceeding under the Arbitration Rules framed under the Co-operative Societies Act of 1912.

There is another prayer for the issue of a writ of mandamus or other suitable writ restraining the opposite parties from proceeding under the provisions of Land Revenue Act for the realisation of the dues payable by the petitioner. It appears that the main prayer which is sought by the petitioner at this stage is a declaration that the rules framed under the Co-operative Societies Act, 1912, are ultra vires. In this connection it does not appear to be necessary to consider the validity of all the rules. The only relevant rules that apply to the dispute at present are Rules 115 and 116 and consequently I have confined the case to the consideration of the validity of these two rules only.

Learned counsel for the petitioner drew my attention to Rules 133 to 137 which relate to appeals, revisions or reviews against orders of the Registrar or award of arbitrators and the procedure to be followed in enforcing awards of arbitrators or decision of an Assistant Registrar or the Registrar and contended that some of these rules are also ultra vires. I do not consider it appropriate to go into the validity of these rules at this stage, as no question has at present arisen which would be governed by any of these rules.

The only question at present is whether a reference can be made to the Registrar of the dispute that exists between the Sangh and the petitioner and whether that dispute can be dealt with in accordance with Rule 116 framed under the Co-operative Societies Act, 1912. Learned counsel

submitted that Rules 115 and 116 are ultra vires of the State Government as they are not within the scope of the powers granted to the State Government by Section 43 of the Co-operative Societies Act, 1912 and further that they amount to a delegation of too much power to the Registrar and are also contrary to the provisions of the Indian Arbitration Act.

The power of the State Government to frame rules is given in general terms in Sub-section (1) of Section 43 and is a very wide power. Sub-section (2) of Section 43 lays down that in particular and without prejudice to the provisions of the foregoing power granted under Sub-section (1), such rules may provide for a number of matters which are enumerated in Clauses (a) to (1) in that section. Clause (1) is the relevant clause which permits the State Government by rule to provide that "any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and the enforcement of the decisions of the Registrar or the awards of arbitrators."

Having examined Rules 115 and 116 of the rules framed under these provisions, I have failed to find, any provision which goes beyond the scope of the express power mentioned in Clause (1) of Sub-section (2) of Section 43 of the Act. Rule 115 prescribes that the dispute shall be referred to the Registrar and shall be decided either by the Registrar or by arbitration. Clause (1) had distinctly conferred power on the State Government to make the rule prescribing that the dispute be referred to the Registrar to be either decided by himself or referred to arbitration. Learned counsel, when called upon to show what part of this rule was beyond the scope of Clause (1), failed to point out any particular portion of this rule.

Rule 116 lays down that, on receipt of a reference, the Registrar may 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 nominat-ted by each of the parties to the dispute and the third by the Registrar who shall appoint one of the arbitrators to act as chairman. Clearly the provisions of this rule are also fully covered by the provisions of Clause (1) of Sub-section (2) of Section 43 of the Act. The option to the Registrar to decide the dispute himself given by the rule is also mentioned in Clause (1). Similarly, a reference to arbitration by the Registrar mentioned in the rule is also clearly laid down in Clause (1).

Learned counsel's argument was that the rule could not give the power to be exercised arbi-trarily by the Registrar to choose whether he should himself decide the dispute or refer it to one arbitrator or two arbitrators or three arbitrators. Here again Clause (1) of Sub-section (2) of Section 43 shows that the legislature itself under the rule making power gave such discretion to the Registrar as the rule making power itself laid down that the rule should prescribe that the dispute shall be referred to the Registrar for decision, or if he so directs, to arbitration. The rule making power itself laid down that the discretion to refer to arbitration should be that of the Registrar and not that of the State Government. It is the same discretion that has been granted by Rule 116.

When the Registrar was given the power to decide the dispute himself or at his discretion to make a reference to arbitration, the power granted to him, to further decide whether there shall be one or two or three arbitrators is also well within the scope of the Act and it cannot be said that the power is very arbitrary. In this connection it may be noticed that even Section 4, Arbitration Act lays down that parties by an agreement can nominate a person who may be authorised to nominate an arbitrator to settle their dispute. In this case, the statute has nominated the Registrar and authorised him to nominate the arbitrator or arbitrators. The statute, therefore, lays down a provision which is very much in line with the scheme of the Indian Arbitration Act and the power granted to the Registrar cannot be said to be so wide as to invalidate the rule.

3. Learned counsel's further argument was that Rule 116 was inconsistent with the provisions of the Indian Arbitration Act and was, therefore, void. Firstly, he has not been able to point out any provisions of the Indian Arbitration Act between which and Rule 116 there might be any inconsistency. Secondly, even if there had been any inconsistency Section 46 Arbitration Act would indicate that in cases where the arbitration is under any enactment for the time being in force and not under the Indian Arbitration Act, a special provision made under the enactment would prevail over general provisions of the Indian Arbitration Act, and except for the inconsistent portions, the rest of the Indian Arbitration Act would apply to such arbitration. Consequently, even if there had been any inconsistency, such inconsistency would not make the provisions of the U. P. (?) Co-operative Societies Act or rules made thereunder invalid. The effect only would have been that the inconsistent provisions of the Indian Arbitration Act would not have applied to such arbitration.

The question is, however, immaterial because, as I have said above, learned counsel has not pointed out where the inconsistency exists. Consequently, Rules 115 and 116 of the U. P. (?) Co-operative Societies Act, 1912, are valid and cannot be declared ultra vires, null and void. On this ground, the first and the third prayer mentioned in the petition must fail. So far as the second prayer is concerned that a writ of mandamus or other suitable writ be issued restraining the opposite parties from proceeding under the provisions of Land Revenue Act for the realisation of the said dues, it appears that this prayer need not be considered at this stage as no proceedings under the provisions of Land Revenue Act are at present threatened and if any such proceedings are taken, it will be open to the petitioner to challenge those proceedings.

4. The petition consequently fails and is dis missed with costs to opposite parties nos. 2 to 5 who are represented by the learned Standing Counsel; opposite parties nos. 1 and 6 being un represented,