

PENTAKOTA SRIRAKULU

v.

THE CO-OPERATIVE MARKETING SOCIETY LTD.

August 28, 1964

(P. B. GAJENDRAGADKAR, C.J., J.C. SHAH AND N. RAJAGOPALA
AYYANGAR JJ.)

Co-operative Societies—Moneys earned by alleged illegal transactions—Retention by members of management—Claim—If “a dispute touching the business of the society”—Whether claim could be made—Proceedings whether under s. 51 or s. 49—Madras Co-operative Societies Act, 1932, (Mad. 6 of 1932) ss. 49, 51.

The appellant was the President of a Co-operative Marketing Society constituted mainly for the purpose of enabling its members to obtain credit facilities and to arrange for the sale of agricultural products at reasonable prices. On complaints, an enquiry was instituted into the affairs of the society by the Registrar of Co-operative Societies and as a result, the committee, then in management of the society was, after due notice to show cause and a hearing, superseded by the Registrar. A special officer was appointed to take charge of the affairs of the society and this officer filed a claim before the Registrar, *inter alia*, against the appellant. The main item of the claim was commission stated to have been actually earned by the society on the sales effected by it of jaggery belonging to its producer-members but which was not credited to the society. It was alleged that while on paper the transactions entered into between the members of the society and the purchasers showed sales at the prices fixed by law, in reality, higher prices were charged. The society was entitled to charge commission on the sales effected through it. As regards this it was stated that commission was earned on the entire price at which gur was sold, and while the amount of commission payable on the basis of controlled prices was credited to the society, the commission earned in respect of the extra price which its members obtained was, it was stated, not brought to the credit of the society in its accounts but appropriated by members of the management. On receipt of the claim, the Registrar appointed, under s. 51(2) of the Madras Co-operative Societies Act, the Deputy Registrar of Co-operative Societies to act as an arbitrator to adjudicate the claim. Thereupon, the appellant filed a petition in the High Court for the issue of a writ of prohibition under Art. 226 of the Constitution, prohibiting the Deputy Registrar from dealing with the claim which he was directed to try. The Single Judge allowed the petition. On appeal by the respondent the Division Bench allowed the appeal and dismissed the writ petition. On appeal by special leave, it was contended by the appellant, that (1) the Registrar should have proceeded under s. 49 and not under s. 51 of the Act, (2) the dispute about the retention of money belonging to the Society by the appellant was not “a dispute touching the business of the society”, and (3) the transaction of sale which gave rise to the commission alleged to be improperly retained was illegal and that therefore the society could not, in law, make a claim on the basis of such an illegal transaction.

HELD : (i) The case did not fall under s. 49 of the Act. If s. 49 did not apply, subject to other arguments about the illegality of the order of the Registrar, proceedings under s. 51 was not open to objection. [192D].

Besides the factors that the claim was one “against a person in management of the society” and “for the fraudulent retention of money or other

property of the society", there was also another condition which had to be satisfied before s. 49(1) could be attracted. The facts giving rise to the charge had to be disclosed in the course of an audit under s. 37 or an enquiry under s. 38 or an inspection under s. 39 or on the winding up of the society. [191 G-H]

Sundaram Iyer v. The Deputy Registrar of Co-operative Societies, I.L.R. (1957) Mad. 371, referred to.

(ii) The claim made before the arbitrator was "a dispute touching the business of society". It could not be disputed that the sale of the produce belonging to the members of the society was part of the business of the society, and then the charging of the commission would equally be the business of the society; and [192 G-H]

(iii) No illegality attached to the contract between the appellant and the society; that was perfectly legal. It arose out of his position as the President of the Society and he was in law, bound to account for the moneys he received on behalf of the society. [193 C]

Kedar Nath Motani v. Prahlad Rai, [1960] 1 S.C.R. 861; followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 193 of 1962.

Appeal by special leave from the judgment and order dated August 18, 1959, of the Andhra Pradesh High Court in Writ Appeal No. 111 of 1957.

A. V. V. Nair and P. Ram Reddy, for the appellant.

Naunit Lal, for the respondent No. 1.

K. R. Chaudhuri and B. R. G. K. Achar, for respondent No. 2.

The Judgment of the Court was delivered by

Ayyangar J. The appellant was the President of the Anakapalli Co-operative Marketing Society Ltd.—a Society constituted mainly for the purpose of enabling its members to obtain credit facilities and to arrange for the sale of agricultural products at reasonable prices. There were complaints regarding the working of the Society and accordingly an enquiry was instituted into its affairs by the Registrar of Co-operative Societies, Madras at a time when Anakapalli, now in Andhra Pradesh, was in the State of Madras. As a result of the facts disclosed in the inquiry the Committee then in management of the Society was, after due notice to show cause and a hearing, superseded by order of the Registrar dated February 15, 1952, such supersession being authorised by s. 43 of the Madras Co-operative Societies Act (Act 6 of 1932) hereinafter called the Act. A special officer was appointed to take charge of the affairs of the Society and this officer filed a claim before the Registrar, *inter alia*, against the appellant. The amount claimed was Rs. 13,000 and odd and details were given as to how this sum was made up. The main item of the claim was commission stated to have been actually

earned by the Society on the sales effected by it of jaggery belonging to its producer-members but which was not credited to the Society. On receipt of this claim the Registrar appointed, under s. 51(2) of the Act, the Deputy Registrar of Co-operative Societies, Visakhapatnam to act as an arbitrator to adjudicate the claim.

Immediately this order was passed the appellant filed a petition in the High Court of Andhra Pradesh for the issue of a writ of prohibition under Art. 226 of the Constitution, prohibiting the Deputy Registrar from dealing with the claim which he was directed to try. The learned Single Judge who heard the petition allowed the petition and granted the appellant the relief he sought. The Co-operative Society took the matter in appeal to the Division Bench of the High Court which allowed the appeal and dismissed the writ petition. Thereafter the appellant moved this Court for special leave (certificate of fitness having been refused by the High Court) and has preferred the present appeal.

Before advertng to the arguments addressed to us by Mr. Ram Reddy, learned counsel for the appellant, it is necessary to state a few facts concerning the transactions which have given rise to these proceedings. The Co-operative Society of which the appellant was the President till November, 1951, held a licence under the Madras General Sales Tax Act for doing business as a Commission Agent and the Society was earning commission¹ on the turnover of the sales effected of the agricultural produce of its members and others. In October, 1950 the Government of India promulgated the Gur Control Order fixing the maximum price at which gur could be sold in different States. The prices fixed varied from State to State. The prices fixed for sale at Anakapalli, then in the State of Madras, were somewhat lower than those which had been fixed in other States. This gave occasion for the members of the Society to sell their jaggery at higher prices than fixed because there was demand for jaggery from merchants at prices higher than the controlled price. It was alleged that while on paper the transactions entered into between the members of the Society and the purchasers showed sales at the prices fixed by law, in reality, higher prices were charged. As stated already, the Society was entitled to charge commission on the sales effected through it. As regards this it was stated that commission was earned on the entire price at which the gur was sold, and while the amount of commission payable on the basis of controlled prices was credited to the Society, the commission earned in respect of the extra price which its members obtained,

was, it was stated, not brought to the credit of the Society in its accounts but appropriated by members of the management. These were the allegations and it is on the basis of these allegations that the claim against the appellant and others had been made. Their correctness have yet to be tested in the arbitration proceedings.

When this claim was made, *inter alia*, against the appellant viz., of not bringing into the Society's accounts moneys due to the Society and which had been earned through sales effected by the Society, he filed, as narrated before, a writ petition and there raised three points challenging the legality of the reference to the Deputy Registrar to enquire into and determine the claim. The first was that the transaction on the basis of which the claim was said to have arisen was illegal being contrary to the Gur Control Order issued by the Central Government under the Essential Supplies Act and such an illegal transaction could not fall within the words "Dispute touching the business of the Society" which alone could be referred to arbitration under s. 51 of the Act; the second was that the reference by the Registrar of the dispute to the arbitration of the Deputy Registrar was illegal as contrary to natural justice, because (a) the Deputy Registrar had conducted an enquiry which had resulted in the supersession of the management of the Society under s. 43 of the Act, and (b) the Deputy Registrar being a subordinate of the Registrar could not be expected to act fairly in this matter; and lastly, that the Registrar should, in this case, have proceeded under s. 49 of the Act and not under s. 51, the former being more advantageous to him, in that he could challenge any final order against him by resort to the civil courts, whereas an award under s. 51 was subject to departmental appeals and could not be questioned in a civil court. The learned Single Judge rejected the second and the third points but upheld the first. His reasoning was that the transaction of sale above the controlled price was illegal, that illegality was a bar to a claim for accounting by the Society against its officer or agent, notwithstanding that the contract of agency itself was not illegal. On appeal the learned Judges of the High Court have, as stated earlier, rejected all the three points urged on behalf of the appellant.

Mr. Ram Reddy, learned counsel for the appellant raised before us three points. The first of them was that the Registrar should have proceeded under s. 49 and not under s. 51 of the Act. Section 49, which learned counsel says, was attracted to the case runs, to quote only the material provision:

"49. (1) Where in the course of an audit under section 37 or an inquiry under section 38 or an inspection under section 39 or the winding up of a society, it appears that any person who has taken part in the organization or management of the society or any past or present officer of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society, the Registrar may, of his own motion or on the application of the committee or liquidator or of any creditor or contributory, examine into the conduct of such person or officer and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retention or breach of trust as the Registrar thinks just.

(2) The order of the Registrar under sub-section (1) shall be final unless it is set aside by the District Court having jurisdiction over the area in which the headquarters of the society are situated or if the headquarters of the society are situated in the City of Madras, by the City Civil Court, on application made by the party aggrieved within three months of the date of receipt of the order by him."

and s. 51—the other provision—runs :

"Arbitration :

Disputes: 51. If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises—

- (a)
- (b)
- (c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant, of the society, or
- (d)

Explanation.—A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not,

is a dispute touching the business of the society within the meaning of this sub-section.

(2) The Registrar may, on receipt of such reference,—

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the State Government with powers in that behalf, or

(c) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.”

In this connection learned Counsel relied on a decision of the Madras High Court in *Sundaram Iyer v. The Deputy Registrar of Co-operative Societies*.⁽¹⁾ There it was held that it was only in case where the provisions of s. 49 were inapplicable that recourse could be had to s. 51. In cases where a matter fell both within ss. 49 and 51, the two provisions were not intended to operate on parallel lines. As s. 51 excluded the jurisdiction of civil courts, it must be strictly construed and for that reason, in cases where s. 49 was applicable, s. 51 would be excluded. Further, it was held s. 51 was of a general nature providing for a variety of matters and was almost exhaustive of the parties between whom as well as the disputes that could arise in cooperative societies. Section 49 on the other hand dealt with special types of disputes which arise in exceptional circumstances, segregated out of the larger group dealt with under s. 51. When there was thus an overlapping of the terms of both the sections the provisions of s. 49 alone it was held would be applicable. Based on this line of reasoning, the submission of learned counsel was that the claim in the present case was one “against a person in management of the Society” and “for the fraudulent retention of money or other property of the Society” and, therefore, it was completely covered by s. 49 and that in consequence the Registrar had no jurisdiction to direct an enquiry by the Deputy Registrar under s. 51 of the Act. This argument, however, proceeds on ignoring one further essential requisite for the application of s. 49(1). Besides the two factors to which learned counsel referred and which we have just set out, there is also another condition which has to be satisfied before s. 49(1) could be attracted. The facts giving rise to the charge have to be disclosed in the course of an audit under s. 37 or an enquiry under s. 38 or an inspection under s. 39 or on the winding up of the Society. Mr. Ram Reddy, while not disputing that unless this condition is also satisfied s. 49 would not be attrac-

ted, however submitted that there was an enquiry under s. 38 preceding the supersession and that in consequence the condition was fulfilled. It is true that there was an enquiry conducted into the affairs of the Society under s. 38, but that by itself is not sufficient. It has further to be proved that the facts alleged in the claim, and on which it is based, were disclosed at that enquiry. This can be proved or established only if the enquiry report which was submitted to the Registrar was placed before the Court and the facts disclosed therein corresponded with the facts alleged in the statement of claim. Mr. Ram Reddy admitted that the enquiry report was not before the Court and is not in the record of these proceedings. It is not, therefore, possible to say that there is correspondence between the facts disclosed in that report as a result of the enquiry under s. 38 and those found in the Statement of Claim which was referred by the Registrar to the Deputy Registrar for arbitration under s. 51. The case must, therefore, be held not to fall under s. 49 of the Act. There can be no doubt that if s. 49 does not apply, subject to the other argument about illegality to which we shall advert, the order of the Registrar proceeding under s. 51 is not open to objection. This first point, therefore, has to be rejected.

The next contention of learned Counsel was that the dispute about the retention of money belonging to the Society by the appellant was not "a dispute touching the business of the Society." The argument was that the expression "business of the society" included only what was legally permissible as the legitimate business of the Society and since the business activity out of which the claim against the appellant was alleged to arise involved a contravention of the Gur Control Order it was not "a dispute touching the business of the society. We are unable to agree with this submission. In so far as it impinges on the third point urged by learned counsel based on the maxim *Ex turpi causa non oritur actio* we shall deal with it in considering that submission. But that apart, we do not see any basis for the argument that the claim made before the arbitrator was not a dispute touching the business of the Society. It could not be disputed that the sale of the produce belonging to the members of the Society was part of the business of the Society, and then the charging of commission for those sales and the crediting of the Society's accounts with that commission would equally be the business of the Society. Apart, therefore, from the question of illegality raised by reason of the sale being at prices in excess of the controlled price, it is not capable of argument that the failure on the part of the appellant to credit

to the Society the full amount of commission due on the sales effected by him on behalf of the Society and the resistance by him of that demand, would not be a dispute touching the business of the Society. This objection is clearly without substance and must be rejected.

The last of the points urged by learned counsel was that the transaction of sale which gave rise to the commission alleged to be improperly retained was illegal and that therefore the Society could not, in law, make a claim on the basis of such an illegal transaction. We see no substance in this point either. No illegality attached to the contract between the appellant and the Society; that was perfectly legal. It arose out of his position as the President of the Society and he was, in law, bound to account for the moneys he received on behalf of the Society. The fact that he entered into illegal transactions would have no bearing on the right of the Society to make the claim for an account of the commission due to the Society which he unjustly withheld. We consider the reasoning of the learned Judges of the Division Bench rejecting this argument to be correct. Moreover this matter has been examined by this Court in a decision reported as *Kedar Nath Motani v. Prahlad Rai*⁽¹⁾ and in view of this decision learned counsel for the appellant did not himself press this point very seriously.

Before parting with this case, however, there is one matter to which it is necessary to advert. The learned Judges, after allowing the appeal of the Society, stated in their judgment :

“Lastly, we must observe that this Court is averse to lend its helping hand to persons who want to defraud others. Even assuming that any error of law was committed by Tribunals, that would not be a ground for invoking the extraordinary jurisdiction of this Court under Art. 226 of the Constitution, when it is not in furtherance of justice but tends to encourage dishonesty.”

Mr. Ram Reddy pointed out to us that the correctness of the allegations made in the claim filed before the arbitrator have yet to be decided and there was, therefore, no justification for the learned Judges assuming that the facts stated therein were proved and that the appellant had been guilty of fraud or dishonesty in his conduct of the business of the Society. We see force in this complaint of learned counsel. In the circumstances, we would add that, having regard to the stage at which the matter was before the Court, the learned Judges were in error in making

(1) [1969] 1 S.C.R. 861.

these observations. It is clear that they did not intend to prejudice the appellant in his defence before the Deputy Registrar in the arbitration proceedings under s. 51 of the Act but it is possible that it might have such an effect. What we have said earlier must suffice to dispel any such apprehension or effect.

The appeal fails and is dismissed with costs, one set.

Appeal dismissed