

A BIHAR STATE CO-OPERATIVE MARKETING UNION LTD.

v.

UMA SHANKAR SHARAN AND ANR.

AUGUST 18, 1992

B [LALIT MOHAN SHARMA AND DR. A.S. ANAND, JJ.]

C *Bihar and Orissa Cooperative Societies Act, 1935—Sections 40 and 48—Whether remedy under a specific provision excludes remedy under a general provision—Held, where two remedies are available, both continue till the election of one of them, and action commenced accordingly—Section 40 does not therefore exclude Section 48—Plurality of Remedies—Principle of election.*

D During the tenure of respondent 1 as Depot Manager of the Bihar State Cooperative Marketing Union Ltd., a shortage of coal was detected. The appellant-Cooperative Union made a claim for the loss, and a reference was made to the Assistant Registrar, Cooperative Societies under Section 48 of the Bihar and Orissa Cooperative Societies Act 1935. Section 48(1)(c) deals with disputes between the Society and a past or present officer or agent of the Society. Section 40 provides for investigation by the Registrar where upon an audit or enquiry such officer has been found guilty of misappropriation or similar acts. The Assistant Registrar in an enquiry under Section 48 absolved respondent 1. This was reversed by the Joint Registrar and an award made accordingly. The Patna High Court in a writ application under Article 226 by respondent 1 held that since the matter was covered by Section 40, Section 48 could not apply and set aside the award. The High Court relied on the maxim *generalia specialibus non derogant*. The claim under Section 40 was rejected on the ground of limitation under second proviso to Section 40 which prescribe a period of six years.

G Allowing the appeal, this Court,

H HELD : 1. Validity of plural remedies, if available under the law, cannot be doubted. Even if the two remedies are inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. A matter which may attract Section 40 will continue to be governed by Section 48 also if the necessary conditions

are fulfilled. In the present case no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 are available to the appellant for the recovery of the loss. [896C-D] A

*Prem Jeet Kumar v. Surender Gandotra & Ors.*, [1991] Supp. 2 SCC 215 and *Pentakota Srirakulu v. Co-operative Marketing Society Ltd.*, [1965] 1 SCR 186, followed. B

2. The claim of the appellant against respondent 1 is clearly covered by Section 48(1)(c) and therefore was validly referred to the Registrar under Section 48. [895G]

3. The six year rule of limitation in Proviso under Section 40(1) is limited for the purpose of Section 40, and cannot govern a reference under Section 48. Even otherwise, on facts the claim is not barred by limitation. [897B] C

*Purnea Ministerial Government Officers' Co-operative Society Ltd. v. Abdul Quddus*, (1969) 11 BLJR 969, distinguished. D

Matter remitted to the High Court for decision on the remaining issues. [897F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3047 of 1992. E

From the Judgment and Order dated 30.7.1984 of the Patna High Court in Civil Writ Jurisdiction Case No. 373 of 1977.

M.L. Verma and S.K. Sinha for the Appellant. F

A.K. Srivastava for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. The question arising in this case is whether a matter, if it comes within the scope of section 40 of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as the Act) has to be excluded from the purview of Section 48 of the Act. G

2. Special leave is granted.

3. The facts relevant for the decision of this appeal are in a short H

- A compass. The respondent No.1 was Depot Manager under the appellant Marketing Union Limited and during his tenure as such, a shortage of coal was detected. A claim was accordingly made for the said loss by the appellant and a reference was made to the Assistant Registrar, Co-operative Societies respondent No.3, under Section 48 of the Act. The Assistant Registrar absolved the respondent No.1 from the alleged liability and an appeal was filed by the appellant under Section 48(6) of the Act before the Joint Registrar, Co-operative Societies, respondent No.2, who accepted the appellant's case, rejected the defence and made an award accordingly. This was challenged before the Patna High Court by a writ application under Article 226 of the Constitution of India. The High Court held that since the matter was covered by the provisions of Section 40, Section 48 could not apply. Consequently the award was held to be illegal. So far Section 40 was concerned, it was pointed out that the claim had to be rejected on the ground of limitation. Thus without considering the other questions raised by the parties, the High Court allowed the writ petition by the impugned judgment which is under challenge in the present appeal.

4. It has been contended on behalf of the appellant that the provisions of Section 48 are wide enough to embrace the dispute which has been the subject matter of the present case and they cannot be given a narrow interpretation so as to exclude their application to cases which may also be covered by Section 40. In reply reliance has been placed on behalf of the respondent No.1 on the decision in *Purnea Ministerial Government Officer's Co-operative Society Ltd. v. Abdul Quddus*, (1969) B.L.J.R. Vol. 11 969 which has found favour with the High Court.

5. Section 40 pertaining to surcharge, provides that if as a result of an audit or inquiry it appears to the Registrar that any person who has taken part in the organisation or management of the society or any past or present officer of the society has either made a payment contrary to law or has been guilty of misappropriation or of having committed similar acts detailed therein, the Registrar may inquire into the matter and make an order requiring him to contribute an appropriate sum by way of compensation to the assets of the society. The second Proviso to sub-section (1) of the said section says that no such order shall be passed in respect of any act or omission which had occurred more than six years earlier. The provisions of sub-section (1) of Section 48 (omitting the Explanations which are not relevant for the present issue) dealing with Disputes are in the

following terms :

"(1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises—

(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) between the society and any other registered society; or

(e) between a financing bank authorised under the provisions of sub-section (1) of Sec. 16 and a person who is not a member of a registered society;

such dispute shall be referred to the Registrar:

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of Sec. 32 or Sec. 63."

The claim of the appellant against the respondent No.1 is clearly covered by clause (c) of sub-section (1) above and, therefore, could have been validly referred to the Registrar under Section 48. The argument, however, is that since the matter is covered by Section 40, Section 48 should be held to be inapplicable. The High Court agreed and made the following observations :-

A "It is well-known proposition of law that when a matter falls under any specific provision then it must be governed by that provision and not by general provisions (*Generalia specialibus non-derogant*)."

B The High Court has in its judgment assumed that whenever a specific remedy is made available in law the other remedy, more general in nature, necessarily gets excluded.

C 6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. In the present case there is no such problem as no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 must, therefore, be held to be available to the appellant for recovery of the loss.

D 7. Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are fulfilled, is consistent with the decision of this Court in *Prem Jeet Kumar v. Surender Gandotra and others*, [1991] Supp. 2 S.C.C. 215, arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in *pari materia*. The reported judgment followed an earlier decision of this Court in *Pentakota Srirakulu v. Co-operative Marketing Society Ltd.*, [1965] 1 S.C.R. 186. We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be applied to the present case for the reason that Section 40 was attracted.

E 8. So far the question of limitation is concerned it is true that as in the Delhi Act, a period of six years was fixed under the Bihar Act also by second Proviso under Section 40 (1), which reads thus :-

F "Provided further that no order shall be passed under this sub-section in respect of any act or omission mentioned in clauses (a), (b), (c) or (d) except within six years of the date on which such act or omission

H

occurred."

It will be observed that the six years rule of limitation, however, is limited for the purpose of section 40, and cannot govern the reference under section 48. The relevant provision of section 48 is to be found in the Proviso to section 48(1) which has been quoted above. For determining its impact on the present case it is necessary to examine the Proviso closely. Firstly, both the Proviso and section 63 of the Act are concerned only where the claim is against a member. Even if the Proviso be assumed to govern a dispute between the society and its past or present officer or servant it cannot come to the aid of the present respondent No.1 because he was dismissed from service on 15.10.1966 and he was directed to deposit the disputed amount within 30 days therefrom. The dispute was referred for adjudication under section 48 on 12.12.1966 and the reference was registered as Award Case No. 25 of 1968 on 03.08.1968. Thus all these steps were taken within a period of two years. No reliance, therefore, can be placed on either section 32 or 63. The case of *Pumea Ministerial government Officers' Co-operative Society Ltd.* (Supra) is clearly distinguishable. The respondent there was a member of the Society in question and had taken a loan which was the subject matter of the dispute. As was pointed out by the High Court the claim had stood barred by limitation and, therefore, it was held that the reference was incompetent in view of the Proviso to section 48(1). The High Court in the present case was, in the circumstances, not entitled to rely on this decision and its conclusions must be set aside as being erroneous in law.

9. However, since in the judgment it is stated that several other questions were also raised on behalf of the respondent No.1 (who was the writ petitioner) which remained undecided, the case requires reconsideration by the High Court on the remaining points. Accordingly the impugned judgment is set aside and the writ petition is remitted to the High Court for fresh decision in accordance with the observations in the present judgment. The appeal is allowed but in the circumstances without costs.

U.R.

Appeal allowed.