

MHCO120000232024



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE AT PUNE

Dispute No.23/2024

Mr. Gulabrao Bajirao Gawade & Others

-----Disputants

V/s.

The Malegaon Sahakari Sakhar Karkhana Ltd.

----- Opponent

ORDER BELOW EXH. 13

(Dictated and Pronounced on 21/08/2024)

1] This is an application filed by opponent karkhana under Order 7 Rule 11 of the Code Of Civil Procedure, 1908 for rejection of plaint. Mainly on the ground that, the disputant has specifically pleaded in the dispute application that, the government of Maharashtra had appointed the Indalkar Committee for deciding staffing pattern for the co-operative sugar factories. It is also averred that the committee submitted its report to the government. The government accepted the report. As per this report, the co-operative sugar factories can only appoint 583 employees (280 permanent and 303 seasonal). It is averred that the government has implemented the staffing pattern suggested by the committee. The government by exercising powers under Sec.79A of the M.C.S.Act, 1960, issued an order dated 13/03/2020 and directed all the sugar factories to follow the pattern suggested by the committee.

2] However, the opponent karkhana from 25/12/2023 has recruited 404 employees. Therefore, now 499 excess employees are working in the opponent karkhana. The decision of the karkhana is contrary to the government directives.

3] Thought the disputants have challenged validity of the resolution No.6 in fact the disputants have filed the present dispute for enforcement of government direction under Sec.79A of the M. C. S. Act, 1960 for implementation of the Indalkar Committee report on staffing pattern. It is also transpired that the disputants have already filed complaints with the Commissioner of Sugar and Registrar on the grounds of alleged violation of direction under Sec.79A of the M. C. S. Act, 1960. The complaint is subjudice before the Hon'ble Sugar Commissioner. Hence, the present dispute is not maintainable before this court. Hence, it is necessary to reject the plaint on the grounds of maintainability.

4] Disputants has filed their reply to this application at Exh-19 and objected this application on the ground that, the disputants have filed the present dispute for declaration and injunction interalia praying that, the so called resolution No.6 shown to have been passed in the managing committee meeting of the opponent karkhana dated 23/12/2023 is illegal, null and void and karkhana be restrained from acting upon, giving effect and implementing the said resolution.

5] It is the case of the disputants that, there are already excess employees in the opponent karkhana than staffing pattern. Further Hon'ble Regional Joint Director, Sugar Pune (RJD) time to time directed karkhana to strictly follow the provisions of staffing pattern, service rules, government orders and circulars while taking such policy decisions. Further, the letters received from the employees union are not provided to the disputants or enclosed with the said agenda notice of the meeting dated 23/12/2023. Further, the notice of the meeting is not served upon the disputants in time as per bye-laws. Further, if any decision is opposed or objected by the committee members then it should be recorded in the minutes of meeting and objection upon confirmation is also to be recorded. Further, as per bye-laws all the posts has to be filed

by giving advertisement and therefore the managing committee is not authorized to recruit employees contrary to staffing pattern and without giving advertisement.

6] It is further case of the disputants that, no any information, documents and note of the said subject No.6 is provide to the committee members and karkhana deliberately withhold all the information about the same from committee members in spite of oppose the disputants for holding meeting without providing documents and without considering the suggestion of the disputants to hold meeting after six to seven days by providing all necessary materials and documents to all committee members and not to take any policy decision, the said subject No.6 is shown to have been passed without any discussion and without keeping anything before the committee and therefore said resolution is illegal and bad in law. Further, in spite of objection of the disputant the karkhana recruited more than 300 employees as per said resolution.

7] Further, there should be proper procedure to be followed while recruiting employees as per bye-laws and selection should be proper. However, in the present matter everything is done by giving go by to all the procedure in one stroke and within few minutes and that too without supplying necessary materials and without any discussion. Further, there are already excess employees in the karkhana than staffing pattern and there is unnecessary huge financial burden and there would be loss. Further, it would affect upon the cane rate and cane payment of the members and therefore said decision is illegal.

8] It is also pointed out that there were 679 employees out of which about 95 employees are excess than staffing pattern. Still about 404 new employees are recruited from 25/12/2023 and therefore now there are 499 excess employees in the opponent karkhana and there is financial burden of about 700 lacs per year.

9] Therefore, it is not the only case that the said decision is contrary to staffing pattern but the said decision is contrary to bye-laws and taken without following due procedure of law and therefore, it is illegal. The complaints about the same are filed with RJD or any letter is issued on the point by RJD that does not mean that the said subject matter is pending before the Commissioner of Sugar or RJD. As registering authority of the karkhana the disputants have filed complaint with them.

10] It is submitted that, the disputants have challenged the resolution of managing committee of the opponent karkhana in the present matter. As per provisions of Sec.91 of the M. C. S. Act, 1960, only co-operative court have jurisdiction to try, entertain and decide the validity and legality of the same. Therefore, it cannot be said that, the dispute is not maintainable under Sec.91 of the M. C. S. Act, 1960. Therefore, the application is liable to be rejected.

11] Heard Ld. Adv. Shri. A. Y. Inamdar for the disputant at length.

12] Heard Ld. Adv. Shri. P. M. Maindargi for applicant / opponent karkhana at length.

13] Before deciding the present application, let's look at the law of the subject – order 7 rule 11 of the C.P.C. is the provision under consideration here. Order 7 rule 11 provides an opportunity to the opponents to present threshold challenge to the maintainability of the suit/ dispute and avoid being subjected to the trial. While deciding the application for seeking rejection of the plaint under order 7 rule 11 of the C.P.C., the court has to confine itself to the averments in the plaint and cannot travel beyond that. The court is not supposed to scrutinize, appreciate the evidence or taste the evidence set up by the defendants. This is simply because the Court, cannot conduct mini trial and taste the case meticulously at the initial stage. The court has to, therefore, confine itself to the examination of plaint/dispute application alone.

14] Rejection of plaint can be sought on many grounds; one of them plaint, suit/dispute is barred by law [Order 7 Rule 11 (d) of C.P.C.] this ground is canvased by opponent in the present case.

15] From plain reading of the dispute application, it is pleaded by the disputant that, disputants are the managing committee members of the opponent karkhana. The staffing pattern for the sugar factories was approved by the government on 09/06/2004 and at that time there are excess employees in the opponent karkhana than new staffing pattern. The state government approved the Indalkar Committee report and directions are issued under Sec.79A of the M. C. S. Act, 1960 on 13/03/2020 to implement the Indalkar Committee report. This order of state government is binding upon the opponent karkhana. The opponent karkhana by giving go by to the staffing pattern recruited new employees as per managing committee meeting dated 04/05/2020 and 20/10/2022 also the promotion was given and post are increased.

16] The agenda notice for the meeting dated 04/05/2020 and 20/10/2022 has no subject in respect of recruitment or promotion of the employees.

17] Opponent karkhana has issued the agenda notice for the managing committee meeting to be held on 23/12/2023. The subject No.6 in the same is to be discussed and take decision upon the point raised in the letters received from the employees union however, so called letters was not enclosed to the agenda notice. Therefore, the subject was vague and the disputant by letter dated 19/12/2023 asked entire information about the subject No.6 and the so called letters received from the employees. The agenda of meeting dated 23/12/2023 is served to the disputant on 19/12/2023 which is not served prior to 7 days hence, the service of agenda is against the bye-laws.

18] The opponent karkhana by letter dated 20/12/2023 intimated to the managing committee members the information as regards to subject No.6 is to be given in the meeting dated 23/12/2023.

19] The opponent karkhana illegally recruited the employees in contravention of staffing pattern as per resolution No.6 passed in the managing committee meeting dated 23/12/2023. The disputants has taken objection and also forwarded the copies of the objection to the officers of the co-operative department.

20] The disputant prays for setting aside resolution No.6 passed in the managing committee meeting dated 23/12/2023.

21] It is admitted fact that, opponent karkhana is a co-operative society registered under the provisions of the M. C. S. Act, 1960 and the disputants are the member and also a members of the managing committee of the opponent No.1 karkhana. As such parties to this dispute is squarely covered under Sec.91 of the M. C. S. Act, 1960. Subject matter of this dispute is resolution No.6 passed in the managing committee meeting dated 23/12/2023.

22] Ld. Adv. For the opponent relied upon the ratio in the case of N. V. Shrinivasa Murthy & Ors. V/s. Mariyamma (dead) by proposed LR's & Ors. Reported in (2005) 5 Supreme Court Cases 548. Wherein Hon'ble Apex Court held that, it is impermissible to omit to claim a relief warranted on fact and claiming other reliefs to get around bar of limitation.

With due respect to the ratio it is held that, this ratio is not helpful to the opponent, as in the case before there lordship the plaintiff omits to challenge the sale deed dated 05/05/1953 and the cause of action was shown to be arose on 25/03/1987 when the plaintiff claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. This omission is due to bring the suit with in

limitation. In the case in hand the disputant has not omitted any relief with a view to bring this dispute within limitation.

23] In view of the statement made by the disputant in the dispute application, the dispute is not seen to be barred by any law also Ld. Adv. For opponent has not point out any of the specific provision of law under which this dispute is barred.

24] In view of above discussion it is held that, from the statement made in the plaint / dispute application this dispute is not bar by law, also dispute discloses the cause of action in para No.19 of the dispute application. Accordingly, I proceed to pass following order.

ORDER

- 1] Application Exh-13 filed by opponent under Order VII Rule 11 of the C.P.C. is rejected.
- 2] No order as to cost.

Date:21/08/2024

Place: Pune

(A.S.Wanve)
Judge,
Co-operative Court No.2,Pune