

(2005) 11 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 217 of 2005

Ashok Kumar

APPELLANT

Vs

H.P. State Cooperative Housing Federation Ltd. and Another

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 2(12), 3, 3(2), 3(3), 72

Citation : (2006) 1 ShimLC 252

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; U.S. Rathore and J.K. Verma, D.A.G., for the Respondent

Judgement

V.K. Gupta, C.J.—This case presents a saga of events which demonstrate as to how the public interest came to be totally jeopardized and the manner in which the functionaries of the State Government have been consistently failing to discharge their statutory obligations.

2. The petitioner suffered an award passed against him u/s 72 read with Section 73 of the H.P, Cooperative Societies Act, 1968 (1968 Act, for short). This award was passed against the petitioner in the year 1995. In 1996 the petitioner challenged this award by filing a statutory appeal u/s 93(1)(h) of the 1968 Act. Since the impugned award in this case was passed by the Registrar, the appeal in terms of Sub-section (2) (a) of Section 93 (supra) was filed before the Government.

3. The Additional Secretary in the Department of Cooperation, Government of Himachal Pradesh was seized of this appeal and despite 9 years having elapsed since the filing of the appeal, the appeal has not been disposed of so far.

Respondent No. 1, the Cooperative Housing Federation feeling aggrieved in the delay in disposal of the said appeal (because apparently the amount which it claimed against the petitioner having been held up), it approached the Principal

Secretary (Cooperation), Government of Himachal Pradesh for transfer of the aforesaid appeal and the Principal Secretary vide order passed on 14th July, 2005 transferred the appeal cases of various parties including the petitioner herein, from the files of aforesaid Additional Secretary to himself for disposal. The petitioner filed an application before the Principal Secretary for revocation of the aforesaid transfer order but vide order dated 13th August, 2005 the Principal Secretary rejected the said application and by affirming his order passed on 14th July, 2005 decided to take up the transferred appeal for arguments before himself.

4. Replies have been filed by both the respondents separately.

5. The reply filed by respondent No. 2 makes an interesting reading. It touches upon three crucial aspects of vital public importance:

(1) A statutory appeal was pending before an Additional Secretary to the Government for as much as 9 years without it being disposed of. The pendency of this appeal for 9 years did patently and intently jeopardize gravely public interest in as much as for this period or 9 years public money forming the subject matter of the award remained blocked and a person against whom an award had been passed by the Arbitrator had succeeded in practically frustrating the result of the award for this long period of 9 years.

(2) The State Government perhaps has not either formulated any policy or has not framed statutory Rules or Guidelines whereby Authorities of the State Government have been prescribed or specified who would be competent to take up and decide appeals filed before the State Government u/s 93(2)(a) of 1968 Act. This indeed is pathetic if the averments in the reply of respondent No. 2 with respect to this aspect have any bearing. These averments are contained in para 5 of the reply which I reproduce herein below for ready reference:

That the contents of this para are admitted to the extent that the appeal u/s 93 and Revision u/s 94 of the Act lie to the State Government in such cases where an order in appeal has been passed by an Officer in exercise of the powers of Registrar under the Act. The appeals are generally addressed to the Secretary (Cooperation) to the Government of H.P. if an order have been passed of the level of Assistant Registrar, Cooperative Societies in exercise the powers of Registrar. Such appeals are normally heard/ decided by the Under Secretary/ Joint Secretary/ Additional Secretary at the Government level. But in all appeals in which impugned orders are passed by the Additional Registrar, or Registrar Cooperative Societies, H.P. such appeals are heard/decided by the Secretary (Cooperation) to the Government of H.P. himself. However there is no bar under the law to hear and decide the appeals/ petitions by the Secretary (Cooperation) even if an impugned order has been passed by the subordinate Officer of the Department i.e. other than the Additional Registrar, Cooperative Societies/ Registrar Cooperative Societies. Hence the then Principal Secretary (Cooperation) was competent to hear and decide the, appeal of the petitioner because both the

authorities at the Government level as mentioned above, enjoy same powers of the State Government and such cases can be heard by either of these authorities. At present the following appeals/ revision cases are pending adjudication before the Additional/Principal Secretary (Cooperation) to the Government of H.P.

i. Principal Secretary (Cooperation) = 16

ii. Additional Secretary (Cooperation) = 84

As already mentioned, all appeals preferred against the orders of Assistant Registrar in exercise of the powers of Registrar are heard and decided by the Additional Secretary. There are few cases in which orders are passed by the Additional Registrar or the Registrar, Cooperative Societies. This is the main reason for having larger number of appeal cases with the Additional Secretary (Cooperation).

(3) Irrespective of whether there is any provision in 1968 Act for the transfer of Appeals from one Officer of the State Government to another, admittedly in this case no notice was issued by the Principal Secretary to the opposite parties before the order dated 14th July, 2005 was passed by him transferring the appeal cases from the file of the Additional Secretary to himself.

6. These are the three issues crying for this Court's attention.

7. I take up the third issue as the first point for Court's consideration.

8. It is a cardinal principle of law that no party to a litigation can be condemned unheard and that no order adverse or otherwise should be passed in pending litigation qua a party without notice to him and without affording an opportunity of hearing to him. This legal principle is squarely applicable to even such matters where a party to a litigation seeks the transfer of a lis from one forum to another. Had respondent No. 2 been aware of this cardinal principle of law, he would not have violated this basic legal norm by passing the transfer order dated 14th July, 2005 at the back of the petitioner and other five parties whose appeal cases were ordered to be transferred by him. He should have issued notices to all the six parties and afforded them an opportunity of hearing and thereafter he could have passed appropriate orders on the transfer applications filed by respondent No. 1 on its merits. By not doing so respondent No. 2 has committed an irregularity which should best have been avoided.

9. That brings me to the connected issue of 1968 Act not containing any provision with respect to the transfer of an appeal case from one Authority to another exercising the power of the Government u/s 93(2)(a) of the Act. This also brings to the fore the second aspect of the case, viz., whether the Government has framed Rules or Regulations or formulated any policy decision prescribing or specifying the Authorities in the Government who would be competent to hear and dispose of the appeals filed with the Government u/s 93(2)(a) (supra). Para 5 of the reply filed by respondent No. 2 suggests that

perhaps the Government has not formulated any policy guideline nor has framed Rules or Regulations specifying or prescribing the Authority in the Government who would be competent to hear and dispose of the statutory appeals filed with the Government u/s 93(2)(a) of 1968 Act. Apparently ad hoc arrangement seems to be in existence with the Government whereby and wherein arbitrarily, whimsically and capriciously, from time to time and perhaps on case to case basis the Authorities are prescribed, or without even prescribing the Authorities, the Appeals are taken up either by the Additional Secretary or by the Principal Secretary or other Officers, Actually para 5 of the reply (supra) also perhaps indicates apathy on the part of the Government in understanding the true scope and intent of Clause (a) of Sub-section (2) of Section 93 of 1968 Act which unambiguously specifies that the decision or order is made by the Registrar the appeal shall lie to the State Government. The word "Registrar" has been defined in Section 2(12) of 1968 Act to mean and include the Registrar of Cooperative Societies appointed u/s 3 and any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar have been conferred or imposed under the said Act. Sub-sections (2) and (3) of Section 3 of the 1968 Act empower the State Government to appoint by general or special order persons for the specific purpose of assisting the Registrar for the discharge of obligations under the 1968 Act. A combined reading of Section 2(12), Section 3(2) and (3) and Section 93(2)(a) of 1968 Act clearly suggests that whenever a decision has been taken or an order has been passed by a Registrar, the appeal shall always lie to the State Government. Whether the decision has been taken or the order has been passed by a person holding substantively the regular post of Registrar, or by a person inferior in rank to the Registrar but enjoying the power of the Registrar, the fact remains that the appeal lies to the State Government and it is the statutory duty of the State Government to ensure that the Authorities are specified who would be competent, in fully demarcated areas and as per well defined parameters, to hear and decide all such appeals. To my persistent queries, Mr. J.K. Vienna, learned Deputy Advocate General appearing for the State did not bring to my notice any Rule, Regulation or Policy decision on the subject. It is high time that this sorry state of affairs is brought to an end and the State Government is directed by this Court to formulate a policy, either by taking recourse to framing statutory Rules, or otherwise by executive order, precisely specifying the Authorities who would be competent in all situations to hear and dispose of the appeals filed u/s 93(2)(a) of the 1968 Act.

10. This brings me to the last issue involved in this case, indicated as the first issue in the earlier part of this judgment. Why did the State Government allow a situation to occur whereby a statutory appeal against a statutory award involving public money was allowed to linger on for as much as 9 years? Who was the person to be blamed or held responsible for this sad state of affairs? Para 5 of the reply of respondent No. 2 (supra) suggests that the Additional Secretary had only 84 appeal cases pending before him and yet he failed to perform the statutory duty of deciding the petitioner's appeal case finally for as much as 9

years. Does the State Government propose or contemplate initiating action against the person responsible for this lapse? This Court shall be expecting the State to respond to this query.

As far as granting any relief to the petitioner in this petition is concerned, I feel that even though order dated 14th July, 2005 was passed by respondent No. 2 without notice to the petitioner and, therefore, this order should be treated to be bad in law, since now the petitioner is before this Court and at this stage issuance of any notice to the petitioner would be a ritualistic formality, I hold that no useful purpose shall be served by quashing or setting aside that order and that the, appeal case of the petitioner and respondent No. 1 shall now be heard and disposed of by respondent No. 2 before 31st December, 2005. Under the circumstances, I cannot grant any relief to the petitioner in this petition.

With a view to ensuring that public interest does not suffer in future. I direct respondent No. 2 to process the observations and directions contained in this judgment and inform this Court on the next date, through his personal affidavit, as to what steps has the Government taken, or it proposes to take, to ensure that with respect to all the three issues covered by me in this judgment the public interest does not suffer in future. Respondent No. 2 shall file his affidavit of compliance on or before the next date.

List on 19 December, 2005 for the aforesaid limited purpose.

CMP No. 344 of 2005

In view of the order passed in the main matter, interim order dated 7.10.2005 is vacated and the application is disposed of.