
(2010) 08 P&H CK 0396

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 19293 and 19331 of 2009

Balbir Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 13, 13(1), 13(8), 13(9), 69

Citation : (2011) 161 PLR 338 : (2011) 2 RCR(Civil) 251 : (2010) 1 SLR 289

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common judgment, two petitions, viz. (1) Civil Writ Petition No. 19293 of 2009 titled as "Balbir Singh and Ors. v. State of Punjab and Ors. Civil Writ Petition No. 19293 of 2009" and (2) Civil Writ Petition No. 19331 of 2009 titled as "Kashmiri Lal and Ors. v. State of Punjab and Ors. Civil Writ Petition No. 19331 of 2009" shall be decided together.

2. For facility of reference, the facts are being gathered from Civil Writ Petition No. 19293 of 2009.

3. In the present writ petition, a prayer has been made that the order (Annexure P-20) dated 19th October, 2009 passed by Respondent No. 1-Financial Commissioner, Co-operation, Punjab, be quashed, whereby the order (Annexure P-15) dated 24th December, 2008 passed by the Registrar, Cooperative Societies, Punjab was set aside. Petitioners are the employees of Dinanagar Marketing-cum-Processing Society Ltd., Dinanagar (hereinafter referred to as, "the Society"), which statedly is a Cooperative Society registered under the provisions of Punjab Cooperative Societies Act, 1961 (hereinafter referred to as, "the Act"). Balbir Singh-Petitioner No. 1 was appointed as a Manager on 1st August, 1992; Raj Singh-Petitioner No. 2 as an Accountant on 10th August, 1992; Shanti Saroop-Petitioner No. 3 as a Salesman on 1st July, 1993; Inderjit Singh-Petitioner No. 4 as a Salesman on 30th May, 1993; Tarsem Lal Petitioner No. 5 as a Peon on 1st June, 1992 and Shallinder Singh Petitioner No. 6 as a Salesman on 9th

September, 1994. It is pleaded in the writ petition that the Employees Union of Cooperative Marketing-cum-Processing Societies had given a representation to the Registrar, Cooperative Societies, Punjab requesting that various Cooperative Societies established in the State of Punjab be amalgamated with the Punjab Cooperative Supply & Marketing Federation Ltd., Chandigarh (hereinafter referred to as, "the MARKFED"). In pursuance of the representation submitted, it is stated that a meeting was held on 24th August, 2006 under the chairmanship of the Financial Commissioner, Cooperation, Punjab, Chandigarh. The decision of the meeting, it is stated, is reflected in letter (Annexure P-2) dated 14th September, 2006, which reads as under:

Subject: To amalgamate the Cooperative Marketing Societies in the Markfed. Memo Representation was received from the Employees Union of the Marketing Societies in which they requested to merge the Marketing Societies with the Markfed, Punjab. This was considered in the meeting Chaired by the Financial Commissioner (Cooperation) on 24.8.2006 in which a decision had been taken that those Marketing Societies which want to merge with the Markfed should pass the resolution u/s 13(1) of the Act and they can send the resolution along with their letters to the Markfed. After that, Markfed by getting it approved from the General Body will send the same to this office for approval.

This is for your information and further action.

Sd/-

Addl. Registrar

(G), For Registrar, Cooperative Societies, Punjab, Chandigarh

4. It is stated that in pursuance of the letter (Annexure P-2) issued by the Registrar, Cooperative Societies, Punjab, Chandigarh, a General House meeting of the Society was held on 7th October, 2006 and a unanimous resolution (Annexure P-5) was passed. The resolution stated that since business of the Society was decreasing day by day and the financial position, of the Society was deteriorating, and resultantly, employees of the Society were not getting salaries for the last so many months therefore, it would be in the interest of all if the Society is merged with the MARKFED. The resolution further stated that after the merger, the whole responsibility of lending/borrowing transactions shall be of the MARKFED. It is stated that about 27 Societies passed the resolutions. The matter regarding merger was also placed before the MARKFED, with which the Societies were to be merged. For the amalgamation/merger to take place, it was decided that both the sides would voluntarily agree to such a proposal. When the proposal was put-up before the MARKFED, relying upon the resolution passed on 6th March, 2007, it came to a conclusion that it will not be in the interest of the MARKFED to merge the Societies, however, it left the proposal regarding merger to the discretion of the Registrar, Cooperative Societies, Punjab, who may pass the order u/s 13(8) of the Act. The resolution, which forms Item No. 5 of the agenda of the meeting of the MARKFED, reads as under:

Resolved and approved the merger/amalgamation of 27 member Cooperative Marketing Societies, as mentioned at Annexure "A" with the agenda note, in Markfed. The matter may be further taken up with the office of Registrar, Cooperative

Societies, Punjab for further necessary action as per Section 13(8) of the Punjab Cooperative Societies Act, 1961. The terms & conditions of merger of these CM Ss may be decided by the Managing Director, Markfed. In case any other CMS comes forward for their merger with Markfed, the request of such CMS may be considered keeping in view the overall viability and availability of vacancies in Markfed as it may, not be-possible to absorb all the employees in future.

5. It will be necessary here to notice Section 13 of the Act, which provides for amalgamation; transfer of assets and liabilities and division of Cooperative Societies:

13. Amalgamation, transfer of assets and liabilities and division of cooperative societies - (1) A cooperative society may with the previous approval of the Registrar and by a resolution passed by a two thirds majority of the members present and voting at a general meeting of the society:

(a) transfer its assets and liabilities in whole or in part to another cooperative society provided the cooperative society to which the assets and liabilities are to be transferred also passes a resolution in the aforesaid manner to accept such assets and liabilities in whole or in part, as the case may be;

(b) divide itself into two or more cooperative societies

(2) Any two or more cooperative societies may, with the previous approval of the registrar and by a resolution passed by a two-thirds majority of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new cooperative society.

(3) The resolution of a cooperative society under Sub-section (1) or Sub-section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) When a co-operative society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors, and notwithstanding any bye-laws or contract to the contrary," any member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in Sub-section (4) shall be deemed to have assented to the proposal contained in the resolution.

(6) A resolution passed by a cooperative society under this section shall not take effect until, either-

- (a) the assent thereto of all the members and creditors has been obtained; or
 - (b) all claims of members and creditors who exercise the option referred to in Sub-section (4) within the period specified therein have been met in full.
- (7) Where a resolution passed by a co-operative society under this Section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding any thing contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.
- (8) Where the Registrar is satisfied that it is necessary in the interest of the co-operative society or co-operative societies that -
- (i) any co-operative society be divided to form two or more cooperative societies;
 - (ii) One or more co-operative societies be amalgamated to form a new co-operative society; or
 - (iii) two or more co-operative societies be amalgamated to form a new cooperative society, then notwithstanding anything herein before contained, the Registrar may, after consulting the financing institution if any provide for-
- (a) the division of that co operative society into two or more co-operative societies: or
 - (b) the amalgamation of the society or societies-
- (i) With any other co-operative society or
 - (ii) to form a new co-operative society; with such constitution including representation on the committee, property rights, interests, liabilities, duties and obligations, as may be specified in the order.
- (9) No order shall be made under subsection (8), unless-
- (a) a copy of the proposed order has been sent under certificate of posting to the society or societies concerned and the creditors;
 - (b) The Registrar has considered the objections received from the society or societies concerned or from any member or creditor of such society or societies within such period, being not less than fifteen days from the date of posting of the proposed order, as may be specified by the Registrar in this behalf in the proposed order.
- (10) The Registrar may, after considering the objections referred to in Sub-section (9), make such modification in the proposed order as he may deem fit and the order may contain such incidental, consequential and supplemental provisions as the Registrar may deem necessary to give effect to the same.
- (11) A member or creditor who had objected to the proposed order under Sub-section (9), shall have the option of withdrawing his share, deposits or loans, as

the case may be, on an application which shall be made to the society to which his shares, deposit or loan stands allocated by virtue of the order under Sub-section (8), within a period of thirty days of the date of such order.

(12) Save as provided in Sub-section (11), the order passed by the Registrar under Sub-section (8) shall be final and where as such an order involves the transfer of any assets and liabilities the same shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the society in which these are vested under that order without any further assurance.

6. A perusal of Section 13 of the Act reveals that for a voluntary merger u/s 13(1) of the Act, a Cooperative Society, with the previous approval of the Registrar, has to pass a resolution by a two-third majority of the members present and voting at a general meeting of that Society. In case, this is not done and it is in the interest of a Cooperative Society or Cooperative Societies, the Registrar can take a decision u/s 13(8) of the Act. Section 13(9) of the Act provides the procedure, when merger is to be ordered by the Registrar u/s 13(8) of the Act.

7. It is stated that due procedure was followed by the Registrar, Cooperative Societies, Punjab to cause merger of the societies u/s 13(8) of the Act.

8. Mr. Dharamvir Sharma, Senior Advocate assisted by Ms. Mamta Rani, Advocate, appearing for the Petitioners has drawn my attention to a letter (Annexure P-12) dated 6th November, 2008, wherein a notice was issued u/s 13(9) of the Act to say, that, indeed Registrar had followed the procedure to merge the societies u/s 13(8) of the Act. To fortify this, learned senior counsel has also drawn my attention to the notice (Annexure P-13) dated 8th November, 2008 published in the newspaper u/s 13(9)(a) of the Act. It will be,; necessary to reproduce the relevant portion of the notice, which reads as under:

The Registrar, Cooperative Societies, Punjab, Chandigarh is satisfied that it is necessary and in the interest of the above Cooperative Marketing Societies and Markfed that these Marketing Societies to amalgamate into Markfed u/s 13.8 of Punjab Cooperative Societies Act, 1961 and whereas the proposed order of amalgamation shall be subject to the following terms and conditions:...

Thereafter, the Registrar, Cooperative Societies, Punjab, on 24th December, 2008, passed an order (Annexure P15) regarding merger of 27 Societies with the MARKFED, the relevant portion of which reads as under.

From the above mentioned societies, Sh. Ajit Singh Babbehali, Chairman of the Gurdaspur Cooperative Marketing Society Ltd. District Gurdaspur filed a representation in writing on 21.11.2008 taking objection regarding the merger of this society in the Markfed. Along with this, the other elected committee members of this society had requested in writing that if this society is also merged like other marketing societies in the Markfed in accordance with the

earlier general body, then they have no objection. In this way, the representation filed by Sh. Ajit Singh Babbehali, Chairman was rejected without consideration. Besides the above, no other objection is received regarding the merger of the above noted cooperative marketing societies in the Markfed from any party.

9. Out of 27 Societies, 23 accepted the merger u/s 13(8) of the Act, however, members/office bearers of 4 Societies preferred revision petitions before the Financial Commissioner, Cooperation, Punjab, Chandigarh, who, vide impugned order (Annexure P-20), had set aside the merger of those four Societies with the MARKFED. The reasoning given in the impugned order (Annexure P-20) reads as under:

I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me. As per the factual position that has emerged after a perusal of the revision petitions, written statements, replication etc. and the documents attached with the same, it is quite obvious that there is vast variation in the total membership of the general bodies of the societies in question and the members who have passed the resolutions in question. It is clear in the case, Amrik Singh v. Registrar and Ors. that a formal inquiry held into the complaint filed by the Petitioner established that there was no meeting of the general body of the society, rather the interested persons got signatures of some members by going from house to house and by starting a new proceedings register. A perusal of the resolutions passed in the case of the Gurdaspur society and the Dina Nagar society also reveals that very few members have signed the resolutions, out of which many are working as secretaries of the primary agricultural service societies. Some of the persons, who are stated to have signed the resolutions, have given affidavits that they never signed the resolutions. In the case of the Dina Nagar society, the proceedings register of the relevant period was not handed over to MARKFED, rather an FIR was registered against the employees of the society. It is very clearly established, therefore, that the basic step in the proposed amalgamation, i.e. passing a valid resolution by the general body of the society is totally vitiated, rather it gives the impression that the whole process has been orchestrated by the vested elements in furtherance of their own personal gains. I do not find any reason to agree with the plea taken by the learned Counsel for the Respondents that an individual member of the society has no right to challenge the amalgamation order. In case a patent illegality or irregularity is being committed by some vested interests, any member of the society can challenge the same in his individual capacity. I also do not agree with the contention of the learned Counsel for the employees that since they have become regular employees of MARKFED and assigned specific duties, the amalgamation order could not be annulled. The legality of the whole process has to be gone into before deciding whether the amalgamation effected is in order or not ? Further, even if some of the Petitioners became members of the societies at later date, it does not mean that they have no right to look after the interest of the society of which they are members now. The preliminary objections made by

the counsel for the Respondents are, therefore, without any basis. It may be worthwhile to mention here that the sole objective of the Cooperative Movement is to encourage the formation of cooperative societies of certain individuals, who come together on a common platform in furtherance of their economic interest. It is the duty of the State to give support to such ventures so that the cooperative societies are in a position to look after the interest of their members. It is imperative that more and more persons are brought under the ambit of the Cooperative Movement. The net result of passing the amalgamation order of these societies with MARKFED shall imply that the societies shall cease to have independent existence, which is contrary to the cooperative principles, internationally accepted and widely acclaimed.

The Financial Commissioner, Cooperation, Punjab referred to the factual position to say that the resolutions, on the basis of which merger had been ordered, were fabricated and no valid resolution was passed by the general body of the Society. A reference has also been given regarding registration of an FIR. It is further stated that merger of these Cooperative Societies will defeat the laudable objective, which is enshrined in the cooperative movements.

10. Mr. Sharma has stated that the order passed by the Financial Commissioner gives an impression that he was of the view that the merger of Societies had been ordered u/s 13(1) of the Act. It is submitted that the entire scheme, before passing of the order (Annexure P-15) by the Registrar, envisaged passing of the order u/s 13(8) of the Act. It is stated that thus, it was not open for the Financial Commissioner to examine the validity of the resolutions. It is further canvassed that once the MARKFED had not passed any resolution for merger of the Societies, the resolutions passed by the Societies ceased to operate. Furthermore, the MARKFED in its resolution, specifically stated that if the Registrar so desires he can proceed u/s 13(8) of the Act, considering the overall viability and availability of vacancies in the MARK-FED, as MARKFED had come to a conclusion that it was not possible to absorb all the employees in future.

11. Ms. Jagdeep Bains, Advocate appearing for the Petitioners in Civil Writ Petition Mo. 19331 of 2009 titled as has forcibly contended that since the Societies were suffering losses and salaries of the employees were not being paid, to make them financially viable, merger was the only solution and therefore, in the interest of all, Registrar, Cooperative Societies, Punjab, Chandigarh had passed the order u/s 13(8) of the Act.

12. Mr. J.S. Puri, Additional Advocate General, Punjab has stated that from a perusal of letter (Annexure P-2) and the subsequent events, it is apparent that right from the initial proposal, the merger sought to be made was u/s 13(1) of the Act, which is a voluntary merger between the two Societies. It is stated that once, the MARKFED came to a conclusion that it would saddle them with a liability, make the organization unviable and would cause financial burden, it had rightly taken a decision not to merge the Societies. Secondly, it is submitted that order (Annexure P-15), which was assailed before the Financial Commissioner,

does not satisfy the necessary ingredients of Section 13(8) of the Act. Mr. Puri has submitted that both the present petitions have been filed by the employees, who are interested in their career prospects only and want to become employees of a better managed organization, therefore, they have no locus-standi to file a writ petition, as the paramount consideration for them is not the betterment or welfare of the Society but their own welfare. It is further submitted by Mr. Puri that the Act does not envisage making any organization a mammoth, rather the principles of Cooperative Societies state that it is at the grassroots level a Cooperative Society should operate for the welfare of its members. Counsel for the State has stated that it is the interest of the Cooperative Society or its members, which is paramount, and not that of its employees.

13. Mr. Amandeep Singh Manaise, Advocate appearing for the private Respondents, has submitted that the resolutions passed and relied upon by the Registrar, Cooperative Societies, Punjab, are fabricated and false documents. Learned Counsel has further stated that the entire procedure was farce, as no general meeting of the Society was held and members were also not allowed to project their views.

14. After hearing counsel for the parties, the vital question which arises for consideration of this Court is to determine as to whether the order (Annexure P-15) has been passed u/s 13(1) or Section 13(8) of the Act. Section 13(8) of the Act prescribes that the Registrar, Cooperative Societies has to record his satisfaction that it is necessary in the interest of a Cooperative Society or Cooperative Societies. I have perused order (Annexure P-15) thoroughly. No such satisfaction has been recorded by the Registrar and it is nowhere stated in the order that it is necessary in the interest of the Cooperative Society or Cooperative Societies. Even this Court cannot become oblivious of the fact that application of mind should be apparent in the order and the reasons are to be stated as to why it is necessary in the interest of a Cooperative Society or Cooperative Societies. Yet, not even a formal line has been mentioned in the order that it will be in the interest of Cooperative Societies. The order (Annexure P-15) has been passed mechanically and in a stereotype manner. A perusal of the order (Annexure P-15) further reveals that the Registrar was of the view that since resolution had been passed and there was no objection, therefore, merger was to be ordered and the objections filed by the private Respondents were to be rejected. The tenor and reasoning of the order reveals that it has been passed u/s 13(1) of the Act. Very conveniently, the Registrar, Cooperative Societies, Punjab could not make a distinction between Sections 13(1) and 13(8) of the Act.

15. Counsel for the Petitioners have relied upon a judgment rendered by a Single Bench of this Court in "The Amritsar Central Cooperative Bank Ltd. Amritsar v. Deputy Registrar (E) Cooperative Societies Punjab and Anr. 1 2009 (4) SCT 174, to contend that where an order of suspension or order of issuance of a chargesheet in disciplinary proceedings, is passed by the Cooperative Society against an employee, no revision u/s 69 of the Act is maintainable. A perusal of

the judgment reveals that an argument was raised that no revision petition can be filed at the instance of the employee, whose suspension order has been passed under Rule 19(iv) of the Service Rules. Another argument raised was that u/s 69 of the Act, revision is maintainable only against those orders, which have been passed by the authority under the Act, against which the remedy of appeal has not been provided. Necessary import of the judgment is that if orders are passed by the Society, they cannot be assailed in a revision. The judgment, in clear terms, states that against any order passed by any authority under the Act, revision is maintainable.

16. Therefore, this judgment is not applicable to the facts and circumstances of the present case. Therefore, since order (Annexure P-15) does not fulfill necessary ingredients prescribed u/s 13(8) of the Act and resolution passed by the MARKFED was not for voluntary merger, the order (Annexure P-15) along with order (Annexure P-20) is hereby set aside and the matter is remanded back to the Registrar, Cooperative Societies, Punjab to pass a fresh order, after hearing the necessary parties.

17. With the observations made above, present writ petition is disposed of.