(2013) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1146 and 1302 of 2010

Balbir Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 172 PLR 57

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : D.V. Sharma and Ms. Shivani Sharma, for the Appellant; Aman Bahri, Addl. A.G., Punjab for State, Mr. Ashwani Prasher for Respondent No. 3, Mr. A.S. Manaise for Respondent No. 4 and Mr. H.S. Bedi for Respondent Nos. 4 to 10 in LPA No. 1302 of 2010, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of two Letters Patent Appeals No. 1146 and 1302 of 2010 as according to learned

counsel for the parties, the issue involved therein is similar. Briefly, the facts as narrated in the appeals, which are relevant for the adjudication of

the dispute, be noticed. The facts are being taken from LPA No. 1146 of 2010. The appellants are the employees of The Dinanagar Cooperative

Marketing-cum-Processing Society Ltd., Dinanagar (hereinafter referred to as ""Cooperative Society""), which is a registered Cooperative Society

under the provisions of the Punjab Co-operative Societies Act, 1961 (for short ''the Act''). A representation was given by the Employees'' Union

of Cooperative Marketing-cum-Processing Societies to the Registrar, Cooperative Societies, Punjab, requesting for amalgamation of their

Cooperative Societies with the Punjab Cooperative Supply and Marketing Federation Limited, Chandigarh (for short ""the MARKFED""). In pursuance of the representation which had been submitted by the Employees'' Union, a meeting was held on 24th August, 2006 under the

Chairmanship of the Financial Commissioner, Cooperation, Punjab, and a decision was taken to merge the Cooperative Societies with the

MARKFED. The Registrar, Cooperative Societies on 14th September, 2006 (Annexure P-2) passed the following order:-

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 24.08.2006 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 alongwith 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.

2. As a consequence thereof, a General House Meeting of the Cooperative Societies was held on 7th October, 2006 and a unanimous resolution

(Annexure P-5) was passed approving the amalgamation of the Cooperative Societies with MARKFED due to decreasing business of the

Cooperative Societies. It was further resolved that after the merger, the whole responsibility of lending/borrowing transactions shall be of the

MARKFED. The aforesaid resolutions were passed by 27 Societies. The matter was placed before the MARKFED relating to the merger. The

MARKFED did not accept the proposal of voluntary merger, however, it opined that a proposal relating to the merger shall be left to the

discretion of the Registrar, Cooperative Societies u/s 13(8) of the Act. The resolution passed by the MARKFED reads thus:-

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 Co-operative Societies Act, 1961. The terms & conditions of merger of these CMSs 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.

3. At this stage, it would be appropriate to refer to Sub-sections (1), (8) and (9) of Section 13 of the Act which are material for the purposes of

resolving the present controversy. The relevant provision reads thus:-

Amalgamation, transfer of assets and liabilities and division of Co-operative Societies:-

13(1) A co-operative 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 part to another co-operative society provided the co-operative 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 co-operative societies.

(2) to (7) xxxxxx

(8) Where the Registrar is satisfied that it is necessary in the interest of the co-operative society or cooperative societies that-

(i) any co-operative society be divided to form two or more co-operative societies; or

(ii) one or more co-operative societies be amalgamated with any other cooperative society; or

(iii) two or more co-operative societies be amalgamated to form a new co-operative 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 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 sub-section (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) to (12) xxxxxx.

4. Sub-sections (1) to (7) of Section 13 deals with the voluntary amalgamation, transfer of assets and liabilities and division of Co-operative

Societies whereas Sub-sections (8) to (12) of Section 13 of the Act has given power to the Registrar, Co-operative Societies to order compulsory

amalgamation or division of Co-operative Societies or Co-operative Society. u/s 13(1)(a) of the Act, the Co-operative Society may be

amalgamated with another Co-operative Society where two thirds majority of the member present and voting at a general meeting of the Society

agree to transfer its assets and liabilities in whole or part to another Cooperative Society. The previous approval of the Registrar is also required to

be obtained and similar resolution is to be passed by the Society to which the assets and liabilities are to be transferred. Clause (b) of Subsection

(1) of Section 13 of the Act, provides for division of Society into two or more Co-operative Societies.

5. A reading of Section 13(8) of the Act shows that the Registrar, Co-operative Societies is empowered to pass an order of amalgamation or

division of Co-operative Societies or a Co-operative Society. The Registrar, Co-operative Societies under these provisions is required to be

satisfied that it is essential or desirable in the interest of the Society or Societies that two or more Societies be amalgamated or any Society should

be divided to form two or more Societies. Sub-section (9) of Section 13 of the Act provides the procedure where the Registrar of Co-operative

Societies directs merger or division of Co-operative Societies u/s 13(8) of the Act.

6. A notice as required u/s 13(9)(a) of the Act was directed to be served on the necessary parties. The relevant portion thereof 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......

7. Thereafter, the Registrar, Cooperative Societies, Punjab, in exercise of powers u/s 13(8) of the Act passed an order for merger of the

Cooperative Society with the MARKFED. The said order was passed on 24th December, 2008 (Annexure P-15) regarding merger of 27

Societies with the MARKFED. The relevant portion thereof 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.

8. It may be noticed that out of 27 Societies, 23 Societies had accepted the merger u/s 13(8) of the Act whereas members/office bearers of 04

societies preferred revision petitions before the Financial Commissioner, Cooperation, Punjab, who adjudicated the same vide order dated 19th

October, 2009 (Annexure P-20). The Financial Commissioner while accepting the revision petitions held that the merger of the Cooperative

Society with the MARKFED was not in accordance with the proposed amalgamation, i.e., passing a valid resolution by the general body of the

Society and merger would result in defeating the objective enshrined in the Co-operative movement. The appellants feeling aggrieved by the order

of the Financial Commissioner approached this Court by way of civil writ petition No. 19293 of 2009 impugning the aforesaid order.

9. Learned Single Judge while disposing of the writ petition on 18th August, 2010, noticed that the Financial Commissioner had erred in passing

the order on 19th October, 2009 by treating the same to be u/s 13(1) of the Act whereas the merger had taken place u/s 13(8) of the Act. The

learned Single Judge held that the necessary ingredients as prescribed u/s 13(8) of the Act relating to recording of satisfaction by the Registrar that

the merger was necessary in the interest of the Co-operative Society or Co-operative Societies had not been recorded. The learned Single Judge

set aside the order of the Financial Commissioner and remanded the matter back to the Registrar, Cooperative Societies to pass a fresh order after

hearing the necessary parties. This order of learned Single Judge has been assailed in this Letters Patent Appeal.

10. Learned counsel for the parties are ad idem that the amalgamation of Co-operative Societies be taken to be one u/s 13(8) of the Act as has

been held by the learned Single Judge. Accordingly, there is consensus between them that the order of learned Single Judge be upheld qua the

appellants to that extent. However, the Registrar, Cooperative Societies, Punjab, may be directed to pass a fresh order and till then status quo

existing as on today be maintained. It was further agreed that the affected and necessary parties may be allowed to submit any additional ground

before the Registrar, Cooperative Societies, Punjab. The present Letters Patent Appeals, thus, stand disposed of in the above terms. It is,

however, directed that the Registrar, Cooperative Societies shall make sincere efforts for the disposal of the petition and pass a fresh order within

a period of three months from the date of receipt of certified copy of the order after affording necessary opportunity to the concerned parties and

status quo shall be maintained by the parties till the matter is adjudicated by the Registrar, Cooperative Societies.