
(1992) 01 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12381 of 1991

Binpalka Co-operative Agricultural Service Society Ltd.

APPELLANT

Vs

Commissioner(Appeals), Jalandhar Division

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Citation : (1993) PLJ 20 : (1993) 2 RRR 1 : (1992) 3 SCT 395

Hon'ble Judges : A.L.Bahri, J and V.K.Bali, J

Advocate : M.C. Beri, DAG Punjab., M.S. Kang, Advocate., Advocates for appearing Parties

Judgement

A.L. Bahri, J.—The question involved in this petition is as to whether the State Government in the exercise of powers under Section 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter called "the Act") entertain a revision petition against voluntary bifurcation of the two societies and further deciding to transfer one of the employees to a particular Society.

2. The Binapalka Cooperative Agricultural Service Society Ltd., Binpalka (hereinafter called as "the Binpalka Society") and respondent No. 3, the Bhogpur Jadid. Cooperative Agricultural Service Society Ltd., Bhogpur Jaid (hereinafter called "the Bhogpur Society") were amalgamated on October 1, 1978. The amalgamated Society continued working as such till 1989. After obtaining prior approval of the Registrar, Cooperative Societies, and passing a resolution the amalgamated Society was again bifurcated into two : the petitionersociety and respondent No. 3Society. In the resolution passed on October 9, 1987, it was mentioned that the Secretary of the Society Shri Gurnam Singh, under suspension, on his reinstatement, shall be given employment in the Bhogpur Society. The aforesaid Gurnam Singh moved a revision petition under Section 69 of the Act. The State Government allowed the revision petition and directed that Gurnam Singh shall stand allocated to the Binpalka Society vide order dated January 12, 1989 Annexure P2. Review petition was filed which is Annexure P3. However, it was rejected on February 14, 1991, copy of the order is Annexure

P4. These two orders under challenge in this writ petition, inter alia, on the ground that the State Government had no power to exercise jurisdiction under Section 69 of the Act and that Gurnam Singh had accepted the resolution aforesaid allocating him to the Bhogpur Society. The stand of Gurnam Singh in the written statement filed is that an appeal was maintainable against the order of the Registrar bifurcating the Society into two societies and the State Government was competent to pass the order allocating him to the Binpalka Society, instead of Bhogpur Society. The Bhogpur Society has also contested the writ petition.

3. After hearing counsel for the parties we are of the view that the order dated January 12, 1989 Annexure P2 was passed without jurisdiction and is liable to be quashed. Section 69 of the Act reads as under :

"69. Revision. The State Government and the Registrar may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit."

4. From perusal of the aforesaid provision it is apparent that any order passed on the application of a party to a reference against which no appeal was maintainable under Section 68 of the Act could be challenged qua its legality or propriety and the State Government could modify, annul or revise the same. Learned counsel for Gurnam Singh respondent referred to Section 13 of the Act and contended that the order of bifurcation of the Societies was passed thereunder which order was revisable under Section 69 of the Act. There is no merit in this contention. Section 13 of the Act reads as under :

"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 twothirds 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 twothirds majority of the members

present and voting at a general meeting of such society, amalgamate themselves and form a new cooperative society.

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

(4) When a cooperative society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and, notwithstanding any byelaws 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 subsection (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 or all the members and creditors has been obtained ; or

(b) all claims of members and creditors who exercise the option referred to in subsection (4) within the period specified therein have been met in full.

(7) Where a resolution passed by a cooperative society under this section involves the transfer of any assets and liabilities, the resolution 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 transferee without any further assurance.

(8) Where the Registrar is satisfied that it is necessary in the interest of the cooperative society or cooperative society that :

(i) any cooperative society be divided to form two or more cooperative societies; or

(ii) one or more cooperative societies be amalgamated to form a new cooperative society; or

(iii) two or more cooperative societies be amalgamated to form a new cooperative society,

then, notwithstanding anything hereinbefore contained, the Registrar may, affect consulting the financing institution, if any, provide for :

(a) the division of that cooperative society into two or more cooperative societies; or

(b) the amalgamation of the society or societies :

(i) with any other cooperative society, or

(ii) to form a new cooperative society, with such constitution including representation on the committee, property rights, interest, 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 with in 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 subsection (9), make such modification in the purposed 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 subsection (9) shall have the option of withdrawing his share, deposits or loans, as the case may be, on an application which shall made to the society to which his share, deposit or loan stands allocated by virtue of the order under subsection (8) within a period of thirty days of the date of such order.

(12) Save as provided in subsection (11), the order passed by the Registrar under subsection (8) shall be final and where 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."

5. From perusal of the aforesaid provision, it is clear that a society could be bifurcated in two manners; firstly under orders of the Registrar and secondly after obtaining prior approval of the Registrar by passing resolution by the society concerned itself. Present is a case which falls under section 13(1)(b) of the Act as aforesaid. The bifurcation of the society was made after obtaining prior approval of the Registrar and by passing the resolution. If that is so, such bifurcation is not under any order of the Registrar which could be revised. Further reference was made to subclause (i) of subsection (8) of Section 13 of the Act that the order of the Registrar could fall thereunder. We are afraid, this contention again cannot be accepted. This section contemplates an order to be passed by the Registrar on his satisfaction that any cooperative society be divided into two or more such cooperative societies. As already stated above, no order under subsection (8) of Section 13 of the Act was passed. What has been shown during arguments is an order of the Registrar dated November 2, 1987 which has been passed after noticing the fact that the society was bifurcated by

passing resolution by the society itself after obtaining prior approval of the Registrar and hence the registration of the society was cancelled and on splitting the two new societies were ordered to be registered under the provisions of the Act, which is entirely different from bifurcating the registered societies as contemplated under Section 13 of the Act, by the Registrar. The State Government had no jurisdiction to pass order dated January 12, 1989 Annexure P2 and is void. Accordingly order dated February 14, 1991 Annexure P4 cannot be sustained in law.

6. Gurnam Singh was, no doubt, earlier to amalgamation, an employee of the Binpalka Society, however, on amalgamation his status as such ceased and for all intents and purposes he became an employee of the amalgamated society. Thereafter his amalgamated society was bifurcated. It was upto the society concerned to decide to which newly formulated society his services were to be allocated. In the resolution passed on October 9, 1987 which has been reproduced in para 2 of the written statement, his services were allocated to the Bhogpur Society. Gurnam Singh has no locus standi, as an employee, to challenge this resolution, muchless by filing revision under section 69 of the Act. Furthermore, Gurnam Singh consented to the passing of the aforesaid resolution and accepted it. He could not challenge it subsequently.

7. For the reasons recorded above, this writ petition is allowed, the impugned orders Annexure P2 and P4 are quashed. There will be no order as to costs.