(1988) 07 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 335 of 1976

Dev Raj — APPELLANT

Vs

Bhatyat Vikashnagar Sahakari Upbhokta Bhandar and Others — RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1988) 2 ShimLC 179

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; M.S. Guleria, Asstt. A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—Dev Raj had approached this Court in the year 1976 for redress in respect of an order adverse to him passed in arbitration proceedings under the provisions of the Himachal Pradesh Co-operative Societies Act and the Rules framed thereunder.

2. Dev Raj was appointed as a salesman in the Bhatyat Vikashnsgar Sahkari Upbhokta Bhandar Samiti, Chowari, Via Bakloh, District Chamba, (for brief, "the Samiti") on March 16, 1967. He took charge on March 22, 1967, and resigned on December 31, 1969, but was relieved on March 7, 1970. During this period he was found to have defaulted in making deposits of certain amounts for which he had made cash sales of the goods belonging to the Samiti. He was also found responsible for not accounting for some stocks and other goods. A special audit of the accounts of the Samiti was made which discovered these discrepancies. While the special audit was going on Dev Raj was requested to associate himself with the work in order to enable the audit party to find out the true facts. He, however, did not do so.

3. After the special audit, the Samiti took recourse to arbitration proceedings in

respect of the liability of Dev Raj. The proceedings were held before the Registrar Co-operative Societies (Primary), Cbamba District. The attitude of Dev Raj in these proceedings also was not very helpful because all that he was pleading was that he owed nothing to the Samiti. The Arbitrator, namely, the Registrar Co-operative Societies (Primary) on consideration of the facts, as appearing from the special audit report, held that Dev Raj was accountable for. short deposits of the amount of sale proceeds to an extent of Rs. 22,598.46 p. as well as for a sum of Rs. 19,423.62 p. in respect of stocks and other goods as on January 20, 1971. However, he held Dev Raj liable only for a sum of Rs. 19,761.00 P. by making an award to that effect on May 25, 1971. The Registrar took the view that Dev Raj and his sureties were jointly and severally liable for this amount which was ordered to be paid by them by June 24, 1981, failing which interest at the rate of 10% per annum till full recovery and 20% costs thereon was to be charged from time to time. In respect of the remaining losses of the Samiti the Registrar of Co-operative Societies held that the different Managing Committees were responsible therefor.

4. Feeling aggrieved by the aforesaid award, Dev Raj filed an appeal u/s 93 of the Co-opsrative Societies Act, 1968, which was then in force. In the memorandum of appeal he raised several grounds and disclaimed any liability. The appeal was heard by the Deputy Secretary (Cooperation) to the Government of Himachal Pradesh and was disposed of by him by order dated April 7, 1976. The ultimate liability of Dev Raj was found to be of a sum of Rs. 26,015.06 P. Parties were left to bear their own expenses.

5. Shri Chhabil Dass has appeared for Petitioner Dev Raj in this Court. His first submission has been that the award and, consequently, the liability fastened upon Dev Raj, was not sustainable as there was no evidence led in support of the claim of the Samiti before the arbitrator. His submission further is that an award founded solely on the special audit report is not sustainable in law. The plea that the award was not founded on any evidence, other than the report of the special audit, was not raised on behalf of the Petitioner either in the memorandum of appeal or urged on his behalf before the Deputy Secretary (Co-operation) who disposed of the appeal by order dated April 7, 1976. In the proceedings under Article 226 of the Constitution I am not inclined to permit the Petitioner to raise this plea for the first time. Apart from it, special audit report itself was a piece of evidence which could be relied upon by the arbitrator.

6. The second submission, which Shri Chhabil Dass made, was that the arbitrator had not followed the procedure enjoined upon him under Rule 91 of the Himachal Pradesh Co-operative Societies Rules, before its amendment in the year 1976. Sub-rule (2) of Rule 91, as it stood at the relevant time, was in these terms:

(2) The person deciding the dispute u/s 73 shall frame issues, hear the parties and witnesses who attend, and make a record of their statements. On the basis of such evidence and after consideration of any documentary evidence that may be produced by either party he shall give a decision or award, as the case may

be, in accordance with justice, equity and good conscience, The decision or award shall be reduced to writing, announced to the parties and filed in the office of the Registrar.

7. It has been seen earlier that the evidence upon which the Samiti has relied was documentary in character, being the special audit report. There was no oral evidence led either by the Samiti or by Dev Raj himself. It cannot, therefore, be said that the arbitrator had committed any error in not recording any evidence for, admittedly, no witnesses had attended the proceedings. True it is, that it does not appear from the award that issues were actually framed by the arbitrator, yet, the absence of any specific issue having been framed by the arbitrator, will not render his decision invalid because there is nothing on the record of the present writ petition suggesting that any objection was taken by the present Petitioner before the arbitrator or, thereafter, in appeal that he had, in any manner, suffered on account of non-framing of issues by the arbitrator. The Petitioner has failed to satisfy me, on the material on the record of the present writ petition, that he was prejudiced in any manner by the arbitrator''s failure to frame any issue. The decision in the arbitration proceedings is, therefore, not liable to be set aside on this ground.

8. The third submission, which was made by Shri Chhabil Dass, was that the arbitrator having held that the ultimate liability of Petitioner Dev Raj was only to an extent of Rs. 19,761 (in the operative portion of the award dated May 25, 1971), and having held the different Managing Committees liable for the remaining losses caused to the Samiti, it was not open to the Appellate Authority to enhance this liability to Rs. 26,015.06P. after having absolved the Petitioner-Appellant from the liability of payment of any amount by way of expenses, as had been directed by the arbitrator. This, according to the submission of Shri Chhabil Dass, was not permissible for the reason that the Samiti had not assailed the award of the arbitrator by filing an appeal. The submission seems to be well founded.

9. As noticed earlier, even after having observed that the liability of Petitioner Dev Raj was for a total sum of Rs. 33,022.08 P. partly on account of the shortage in the amount of sale proceeds, having not been deposited by him, and partly on account of not accounting for stock and credit sale the arbitrator had held Dev Raj liable for payment of only a sum of Rs. 19,761 in the operative portion of the award by saying that he awarded that amount to be paid by Dev Raj. The Samiti did not assail this award. The Appellate Authority worked out the additional liability of Dev Raj on account of some entries which were found by it to exist in the books of accounts of the Samiti which were produced at the appellate stage. This was plainly contrary to law. In the absence of any challenge on the part of the Samiti to the liability of Dev Raj, as found in the award, by way of an appeal, it was not open to the Appellate Authority, to enhance the liability of Dev Raj by itself scrutinizing the original record produced before it.

10. In paragraph 9 of the order passed by the Appellate Authority are mentioned

amounts which were deposited by Dev Raj after the award against him, on different dates. The total of these amounts, which have been mentioned in succeeding paragraph 10 as well as 12 of the appellate order dated April 7, 1976, comes to Rs. 7,007 02 P. for which the Appellate Authority has given credit to Dev Raj, The liability of the Petitioner would, therefore, not exceed a sum representing the difference between Rs. 19,761.00 P. and Rs. 7,007,02 P. The Appellate Authority, as seen earlier, has left the parties to bear their own expenses.

11. The petition stands partly allowed by holding that the Petitioner will be liable to the Samiti for a sum representing the difference of Rs. 19,761.00 P. and Rs. 7,007.02 P. If the Petitioner has already deposited any amount, out of this liability, in pursuance of the interim order passed by this Court, credit shall be given to him to that extent before effecting further recovery from him.

12. Parties are left to bear their own costs in the present petition.

