(1964) 07 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1594 of 1963 and Civil Miscellaneous No. 3302 of 1964

Gurdev Singh APPELLANT

Vs

The Punjab State and Others RESPONDENT

Date of Decision : 31-07-1964

Acts Referred:
Punjab Land Revenue Act, 1887 — Section 78

Citation : (1964) 07 P&H CK 0002

Hon'ble Judges : Dua, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : H.L. Sihal and S.S. Sundha alia, for the Appellant; D.N. Awashty, for the Respondent

Final Decision : Allowed

Judgement

Dua, J.—Gurdev Singh petitioner claims to be the Sarpanch of the Gram Panchayat in village Mandi and also a member of the official Panchayat Samiti at Phillaur; he also claims to be the Chairman of the Statutory Marketing Committee of Phillaur. He became a member of the Sntlej Co-operative Multi-purpose Society Ltd. Phillaur which is stated to be a body corporate with limited liability registered under the Punjab Co-operative Societies Act. The face value of the shares of the Society is stated to be Rs. 100/- each and the petitioner claims to hold shares worth Rs. 2,800/- He was also appointed Honorary Secretary of the Society on 7th July 1954. This office is stated to be distinct and separate from the office of Cashier which was held by one Shri Jarnail Singh, son of Shri Balkar Singh, On 26th September 1956, the name of the Society was changed into Phillaur Co-operative Marketing Society Ltd., which also continued to be registered under the Co-operative Societies Act with limited liability. The District Co-operative Whole-sale Society, Ltd., with its head office at Jullundur, is stated to handle the sale and distribution of Fertilizers and seeds for the whole of Jullundur district. This whole-sale Society is stated to have green a sub-agency to the Phillaur Marketing Co-operative Society Ltd., on 26th September 1956 of which the petitioner was the manager. During the period of six years i.e. from 1956 to 1962, there were numerous checkings of the accounts of the Society by the Sub-Inspector, Inspector and the Assistant Registrar of the Co-operative Societies in accordance with the rules. It is further pleaded that the Registrar under the rules also conducts an annual audit and checking of the accounts of all the Co operative Societies. On 3rd June 1962, the petitioner relinquished the charge of the office of manager and was elected a Director of the Phillaur Co-operative Marketing Society. In February, 1962 or a little earlier, the Assistant Registrar''s office found a sum of Rs. 34,181.15 P. due from the said Society on account of sale of fertilizer etc. The petitioner asserts that he has now come to know that the Assistant Registrar of Co-operative Societies made demands for the payment of this amount from the Society as a body Corporate and the same was not paid by the Society. The petitioner also claims to have now learnt that on 14th August 1962 the Directors of the Society were served with notices to repay the amount to the Society, and the Tehsildar, Phillaur, was directed to recover the said amount. On J 1th February- 1963 Shri Ujagar Singh, Assistant Registrar, Co-operative Societies, directed the Revenue Assistant, Jullundur, to take steps to recover these dues from all the Directors vide Annexure ''A'' but the full recovery could not be made. The petitioner, according to his averments, was never served or informed about such demand against him jointly with other Directors On 3rd June 1963 Mrs. B.K. Rai, Assistant Registrar, Jullundur, directed the Collector at Jullundur to recover Rs. 32.753.19 Paise from the petitioner as arrears of land revenue; in pursuance of this direction the Tehsildar on 30th June 1963 ordered the recovery of the amount from the petitioner. It is in these circumstances that the present writ petition has been been filed.

In the return, a preliminary objection has been raised that the impugned order is revisable and that the petitioner could, therefore, go up in revision u/s 69 of Punjab Act 25 of 1961. I having failed to avail of this alternative remedy, this Court should, according to the objection, not go into the merits of the controversy. The petitioner is also stated to possess a right to institute of civil suit u/s 78 of the Punjab Land Revenue Act, 1887. This is stated to be another ground why this Court should not interfere. The petitioner is also stated to be alienating his property to defeat this claim after obtaining a stay order from this Court; this and the belated nature of the petition have also been urged as a preliminary objection to this Court going into the merits of the controversy. The other objections have, however, not been pressed before me.

2. On the merits, the main point which has been stressed is that the petitioner has as a matter of fact admitted his liability and has actually paid a substantial portion of the amount claimed. That he has paid a substantial portion is not defined by the petitioner, but he has submitted that his admission was under some sort of a threat. In any case, the petitioner has stressed the point that the liability of the petitioner was also limited to five times the value of the share held by him in the society.

3. The learned counsel for the petitioner has placed reliance principally on section 67 of the Punjab Co operative Societies Act 25 of of 1961, which lays down that all sums due from a co-operative society or from an officer or member or past member of a co-operative society as such, to Government, including any costs awarded to Government under any provision of this Act, may, on a certificate issued by the Registrar in this behalf be recovered in the same manner as arrears of land revenue. The petitioner contends that the amount due which is now being sought to be realised as arrears of land revenue is not due to to Government but is due to the Co-operative Society and secondly that it is certainly not due under any provision of the Act. The respondents have on the other hand contended that the Jullundur Society was really acting as an agent of the Government and the amount is principally due to the Government on account of sale of fertilizer and that u/s 67 any amount due to the Government from a Co-operative Society etc. can be realised as arrears of land revenue; the expression" under any provision of this Act" is applicable only to the costs awarded to Government and sought to be realised and not to other sums which can be realised under this section.

4. The question in my opinion, is of first impression and of considerable importance, for it is likely to arise quite frequently in this State. This should, in my opinion, be authoritatively settled by a larger Bench.

5. In this case I also find that the petitioner has placed on the record a further pleading described as replication with which are attached certain annexures; to this replication the respondent has also placed on the record a further reply. They have been placed on the record without any order of the Court and the office also seems to have accepted them without carrying to notice that there is no order of the Court permitting filing of these further pleadings. This matter will also be determined by the larger Bench. In the circumstances I direct that the papers be placed before my Lord the Chief Justice for passing necessary orders of giving me the assistance of another Judge under clause (xx) proviso (b) read with clause (xviii), Para 1, Chapter 3-B, High Court Rules and Orders, Vol V. Steps may be taken to secure necessary orders without undue delay so that this petition may be disposed of in the month of August, 1964.

ORDER

Dua and Mahajan, JJ.

6. (3rd September, 1964) - This writ petition has been placed before us pursuant to my reference order dated 31st July. 1964. The necessary facts are given in my referring order which need not be restated again. One fact which may be noticed to have since happened is the death of the petitioner Gurdev Singh, but his legal representatives have, with the ex parte permission of a learned Single Judge of this Court, been brought on the record in place of the deceased.

7. The question which falls for determination is whether the petitioners can be called upon u/s 67 of the Punjab Co-operative Societies Act, 1961 (Punjab Act

No. 25 of 1961) (hereinafter called the Act) to pay the amount and failing payment, this amount can be recovered through the Tehsildar. We have been taken through the scheme of the Act and it is very strongly urged on behalf of the petitioners that the claim is not justified under any of the statutory provisions. Section 2 of the Act, which is the definition section, defines "co-operative society" as a society registered or deemed to be registered under the Act and "co-operative Society with limited liability" to mean a co-operative society the liability of whose members is limited by its bye-laws to the amount, if any, unpaid on the shares individually held by them or to such amount as they may individually undertake to contribute to the assets of the society, in the event of its being wound up (clauses ''c'' and ''d'' respectively). "Bye-Laws" under clause (a) means the registered bye laws for the time being in force. It may be pointed out that the society in question is a co-operative society with limited liability. Section 30 of the Act renders registration of a co-operative society to be a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. Sections 48 to 54 occur in Chapter VII headed ''''Audit, Inquiry, Inspection and Surcharge''. u/s 48, the Registrar has to audit or cause to be audited by a person authorised by him by a general or special order in writing in this behalf, the accounts of every co-operative society at least once in each year. Such audit must include an examination of overdue debts, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society. The person auditing the accounts, is entitled to have free access to the books accounts, papers, vouchers, stock and other property of such society and also to verify its cash balance and securities. The directors, mangers. administrators and other officers of the society are under an obligation to furnish to the person auditing the accounts all such information as to its transactions and working as may be required. The Registrar or the person authorised by him to audit the accounts is also empowered to summon at the time of audit any officer, agent, servant or member, past or present, who are believed to be able to give valuable information relevant to the audit and also to require the production of any book or document or any cash or securities belonging to the society by any officer, agent, servant or member in possession thereof and in the event of discovering serious irregularities to take them into custody. Incomplete accounts of a society can also be required by the Registrar or such authorised person to be written up at the expense of the society. Audit fee due from the co-operative society is expressly made recoverable in the same manner as is provided in section 67. This provision is noteworthy for it is section 67 on which the respondents have placed considerable, if not main, reliance in support of the impugned demand. Section 49 provides for inspection of co-operative societies and for the purpose of inspection, the Registrar or any person authorised by him is entiled to have access to all books accounts, papers, vouchers, securities etc. and also in the event of discovering serious irregularities to take them into custody. Similarly u/s

49 every officer or member is under an obligation to furnish such information with regard to the working of the society as the Registrar or the authorised person may require. Section 50 contemplates enquiry by the Registrar on his own motion or on the application of a majority of the committee or of not less than one third of the members He can also direct other person authorised by him in writing to hold such an enquiry into the constitution, working and financial condition of a co-operative society. The enquiry officer is similarly entitled to have free aceess for the purposes of examination to the books, accounts etc, and other properties etc. belonging to or in the custody of the society and may summon any person in possession or responsible for their custody to produce the same at any place within the district in which the society has its registered address. He may. also require the officers of the society to call a general meeting at such time and place at the headquarters of the society to consider such matters as he may direct and on refusal or failure by the officers to comply with such requirement himself to call such a meeting; this he can do notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the society. He is further empowered to summon for examination on oath any person reasonably believed to have known-ledge of the affairs of the society to appear before him at any place at the headquarters of the society or in any branch thereof. Any meeting called under this section is to possess all the powers of a general meeting called under the bye laws and the proceedings are regulated by such bye-laws. A brief summary of the report of the enquiry held under this section has to be communicated by the Registrar to the society as also to the financing authority, if any, to which the society is affiliated and to the persons or authority, if any, at whose instance the enquiry is made. u/s 5(sic), the Registrar is empowered on the application of a creditor of a society to inspect or direct some person authorised by him in writting to inspect the books of the society. But no such inspection should be made unless the applicant satisfies the Registrar that the debt claimed is then due and that he has demanded payment there of and has not received satisfaction within a reasonable time; and further that he deposits as security for the costs of the proposed inspection with the Registrar as required by him. The result of inspection has to he communicated to the creditor. Section 52 which provides for the costs lays down that where an enquired is held u/s 50 or an inspection is made u/s 5(sic), the Registrar may apportion costs, or such part of the costs, as he may think fit between the society the members or creditor demanding an inquiry or inspection, and the officers or. former officers and the members or past members of the society. Under the proviso, no order of the apportionment of the costs is to be made under this section unless the society or the person made liable has had a reasonable opportunity of being heard. The Registrar has of course to state in writing under his own hand the grounds of apportioning the costs. Section 53 provides for the recovery of costs awarded u/s 52 on application to a Magistrate having jurisdiction in the place where the person liable actually and voluntarily resides or carries on business : costs are recoverable as if they were a fine imposed by such Magistrate. Section 54 dealing with surcharge lays down that if

in the course of an audit, inquiry- inspection or the winding up of a co-operative society, it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property of the society, the Registrar may sue mote or on application of the committee liquidator or the creditor, inquire himself or authorize any person by an order in writing in this behalf to inquire into the conduct of such delinquent person. Period for holding such inquiry has been fixed as six years from the date of the impugned act or omission. The Registrar may, after giving the delinquent person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent as the Registrar may consider just and equitable. Then comes Chapter VIII headed "Settlement of Disputes". Section 55 deals with disputes which may be referred to arbitration and excludes the jurisdiction of Courts to entertain any suit or other proceeding in respect of the disputes mentioned therein touching the constitution, management or the business of a co-operative society amongst members, past members and persons claiming through them and even through deceased members, or between such members and the society, its committee or any officer, agent or employee etc or between the society, or its committee and any past committee etc. or between the society and any other co-operative society and also between a society and liquidator of another society etc. For the purposes of this provision, the following are to be deemed to be disputes falling hereunder:

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs etc. of a deceased member, whether or not such debt or demand be admitted.

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the latter''s default whether or not such debt or demand is admitted, and

(c) any dispute arising in connection with the election of any officer of the society. The decision of the Registrar on the question where a dispute referred him is one touching the constitution, management or the business of a co-operative society has been made final, not open to question in any Court. Section 56 empowers the Registrar to decide the dispute himself or transfer it for disposal to another authorized person or to refer it of an arbitrator. Chapter IX deals with the winding up of co-operative societies. Section 57 provides for the contingencies under which the Registrar may issue an order directing a co-operative society to be wound up. Section 58 makes provision for the appointment of a liquidator and section 59 retinues the powers of the liquidator.

Chapter X eels with the execution of awards, decrees, orders and decisions. Notwithstanding anything contained in Chapter VIII or any other law in force, section 62 provides for enforcement of a charge; and the mode provided by this section is also without prejudice to any other mode of recovery provided by the Act. Service of notice in the prescribed manner is however, a condition precedent to the making of an order under this section. Execution of decisions, awards and orders made by the Registrar or arbitrator under sections 54, 56, 62 and 68 is provided by section 63; they are to be deemed to be decrees of a civil Court on a certificate signed by the Registrar or a duly authorized person; they can also be executed by sale etc. by the Registrar or his subordinate duly empowered. Section 64 authorises execution of orders of the liquidator u/s 59 as arrears of land revenue. Section 65 provides for attachment before award in certain contingencies. Section 67 which has figured prominently in the arguments deals with the recovery of sums due to Government from co-operative societies or from officers, members or past members thereof as such, "including any costs awarded to Government under any provision of this Act." These sums are recoverable as arrears of land revenue on a certificate issued by the Registrar in this behalf. Sums so recoverable from a co-operative society by Government may be realised, first, from the property of the society; secondly from members including past members and estate of deceased members. The amount so recoverable is not to exceed the limit of the members'' liability in case of a society, the liability of the members of which is limited. Chapter XI deals with Appeals and Revisions and Chapter XII with Offences and Penalties. Section 80 in Chapter XII excludes the operation of the Companies Act, 1956 to co-operative societies, and section 81 contains a saving provision in regard to societies registered under the earlier Acts.

8. The petitioner has contended that the Act provides a complete machinery for settlement of disputes. Those provisions have not been utilised, nor has any enquiry u/s 54 been held. u/s 67, only the amounts due to the Government under the Act are recoverable; the amount in dispute, according to this argument, is not due under the Act. In any case, no notice having been given to the petitioner while determining the amount due, this determination is vitiated for non-compliance with the rules of natural justice. In this connection, it has been pointed out that the power conferred on the Registrar to determine the amount is arbitrary and, therefore, unconstitutional. It has lastly been urged that the petitioner''s liability can in no case exceed five times the value of his shares. In support of the argument of violation of rules of natural justice, our attention has been drawn to Shivji Nathubhai Vs. Union of India (UOI) and Others, and Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, .

9. On behalf of the respondents, Shri Awasthy has urged that the distribution of fertilizers by the society was done on behalf of the Government as its agent and. therefore, the amount due in this account is due to the Government. Since this distribution was by virtue of the operation of the Act, the amount due must

necessarily be deemed to be an amount due under the Act. The learned counsel has primarily relied on Annexure R. 3 which is a copy of an extract from the audit note of Phillaur Co-operative Marketing Society Ltd. for the year ending 30th June, 1959 in which various irregularities have been noticed and Gurdev Singh''s conduct has been adversely commented upon. The counsel has also referred to Annexure ''R. 8'', a copy of a letter dated 14th August 1962 from the Assistant Registrar Co-operative Societies to all the Directors of the Phillaur Marketing Society in which it is pointed out that the society was not justified in withholding sale proceeds of Government fertilizers supplied to the society through the District Whole Sale Co-operative Society, Ltd., Jullundur. In this document a sum of Rs. 235,55.90 np. is stated to be due on account of outstanding cash sale recoverable according to the statements of the Phillaur Co-operative Marketing Society supplied to the District Whole Sale Society and Rs. 10,625.25nP were due on account of cost to stock outstanding against The society the details of which had not yet been supplied to the Whole Sale society. The amount comes to Rs. 34, 181.15 nP. In this letter, this amount is demanded within 15 days failing which a presumption would be raised that the Government money had been misutilised and there was no satisfactory explanation to render for the same. Annexure ''R'' 15(b) has also been referred to by Shri Awasthy, learned counsel for the respondent. This is a memorandum dated 8th July, 1961 from the Assistant Registrar Co-operative Societies to Gurdev Singh in which Rs. 34,858.67 nP. are stated to be outstanding.

10. In our opinion, this petition must succeed on the short ground that the amount which is being claimed has not been determined in accordance with any provision of the Act after giving proper notice to the petitioner to show cause against it. Reference to the admission to Gurdev Singh is meaningless because indisputably a sum of Rs. 31,000/- was paid by Gurdev Singh after, March, 1961, when the alleged admission is stated to have been made. The amount which is being claimed from the petitioner is certainly on account of misconduct and this amount cannot possible be determined by the Registrar except strictly in accordance with the provisions of the Act. It is noteworthy that in case of a number''s liability being enforced for contribution towards the liabilities of the co-operative society of which he is a member, the liability must be limited to five times the value of his shares. It is clear that the amount in question is not being enforced on this basis. The only other basis is the liability to make good the loss suffered by the co-operative society on account of the petitioner''s is conduct. For that purpose, the respondents have completely failed to point out any provision of the Act which would justify the determination of the amount by a unilateral action on the part of the Registrar. The admission, as I have already pointed out is far from helpful and in any case, on the basis of such admission, on order can be passed which would justify enforcement through the coercive process meant for recovery of arrears of land revenue. There is thus merit in the petitioner''s grievance justifying interference by this Court on writ side.

11. Before parting, however, I cannot help observing that this case illustrates the

deplorableness in the working of co-operative societies in this State. This particular co-operative society has been run and supervised by the authorities concerned in a highly unsatisfactory manner, disclosing their indifference and inefficiency. Annexure ''R-14'' shows that on 10th October, 1962 the Deputy Registrar, Co operative Societies, had written to the Inspector, Marketing Societies, Phillaur, pointing out that on 3rd June, 1962, Shri Gurdev Singh had been appointed as a Director when he was the biggest defaulter and had also embezzled many amounts. An explanation was called from the Inspector; we of course do not know what action was taken against the Inspector concerned. This would certainly not have been so if the officers supervising the functioning of the society had been duly vigilant and had performed their duties diligently, conscientiously and with a sense of responsibility, expected from public officers entrusted with the important task of watching and guiding the working of co-operative societies in rural areas. It is also not clear if the rural inhabitants concerned were made properly to understand the various bye-laws of the co-operative societies, which from the records shown to us, appear to be printed only in English language. In such circumstances, the responsibility of the officers would obviously be all the greater. A. mismanaged co-operative society like the one before us can do immense harm to the State financially, and instead of educating the villagers in rural areas on true lines and imbibing in them the right spirit of co operative venture, it may induce them to be dishonest thereby discrediting the entire co-operative system which even our Constitution recommends for cottage industries vide Article 43. It is, however, hoped that the authorities concerned would see that in future co-operative departments are manned by persons of undoubted integrity, honesty and efficiency and the material literature relating to the co operative societies is made available to their members in the language they can understand and read. It would be a farce to have such literature only in English language, particularly when the officers do not take pains to properly inform the rural inhabitants about the bye-laws and their implications and about the purpose of co operative institutions.

12. For all the foregoing reasons, we allow this petition and quash the impugned orders but without costs.

