
(2004) 08 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2610 of 1986

Har Kishan Dalal	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : (2005) 1 ILR (P&H) 423

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Prem Singh Kadiyan, for the Appellant; S.K. Dahiya, AAG and Azad Singh, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 22nd February, 1980 passed by the Arbitrator-cum-Inspector, Co-operative Societies and order dated 7th March, 1986 (Annexure P? 3) passed by the Deputy Secretary to Government of Haryana Co-operation in exercise of powers u/s 69 of the Punjab Co-operative Societies Act, 1961 (for brevity, "the Act"). By the impugned order, the Petitioner has been held equally and severally liable for the alleged embezzled amount alongwith two others, namely, Hari Chand, Ex-Cashier and Gurditta Ram, Ex-Secretary.

2. Few facts may be noticed before dealing with the submissions made by learned Counsel for the parties. The Petitioner is an employee of Rohtak Central Co-operative Bank Limited, Rohtak (for brevity, "the Central Bank") and the Kahnaur Co-operative Credit and Service Society Limited, Kahnaur, District Rohtak (for brevity, "the Society") is one of its primary member. On 2nd March, 1976 one Hari Chand, the Secretary of the Society alleged to have deposited a sum of Rs. 935 but the entry made in the cash book of the Society showed the figure of Rs. 8,935. On account of dispute about the deposit of actual amount, a reference u/s 55 of the Act was made to the Arbitrator who happen to be an Inspector of the Co-operative Societies. In his award dated 22nd February, 1980,

he held Shri Hari Chand, Cashier and the Petitioner liable to pay to the Society a sum of Rs. 8,611 alongwith interest and expenses within a period of seven days of that order. In case of failure to deposit the amount within the stipulated period, interest at the rate of 14% was payable. Against the aforementioned award of the Arbitrator, an appeal u/s 68 of the Act was filed before the Assistant Registrar, Co-operative Societies, Rohtak who in his order dated 5th May, 1981 held that apart from Sarvshri Hari Chand and the Petitioner, one Gurditta Ram was also responsible for embezzlement of the amount. Against the order dated 5th May, 1981, the Petitioner as well as Hari Chand Respondent No. 4 filed a revision petition u/s 69 of the Act before the Deputy Secretary, Haryana who remanded the case back to the Appellate Authority with a direction to consider the argument raised by the Petitioner that he was not covered by Section 55 of the Act because he was an employee of the Central Bank and not that of the Society. The Appellate Authority,--vide its order dated 26th September, 1983 held that the Petitioner was not liable which is evident from the operative para of the order which reads as under:

Therefore, after hearing all the parties and examining the record of the society as well as the case file it was found that the cash book had been written by the same person. There is no cutting on the cash book. Therefore, there is no question of writing the figure "8" before a sum of Rs. 935, later on. From the very beginning an amount of Rs. 8,935 was entered into and Rs. 863/33 was shown as cash-in-hand on 27th February, 1976, which had been signed by Shri Hari Singh Cashier in Urdu. After that a sum of Rs. 9,505 was shown to have been recovered from the members, till 2nd March, 1976, which was entered in the cash book. During this period a sum of Rs. 370 was shown to have been returned to members as share money and on 2nd March, 1976 Rs. 8,935 was entered as repayment to C.B. Rohtak and Rs. 1,058/33 was shown as the cash balance, which had been signed by Shri Hari Chand, Cashier and he admits his signatures. There is no cutting or overwriting in the record. According to Bank receipt only a sum of Rs. 935 was deposited.

Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961 were also perused. According to these provisions a case can be referred against member, a past member committee member and a past committee member and an officer of the society.

Therefore, keeping into consideration of the whole aforesaid record and statements etc., I, Bhagwan Singh, Assistant Registrar, Co-operative Societies, Rohtak, exercising the powers of the Registrar Co-operative Societies, Haryana, hereby decide that Shri Har Kishan Dalal, Executive Officer, C.B. Rohtak is not at fault and hold Shri Hari Chand, Former cashier and Shri Gurditta Ram, Former Secretary jointly and severally liable for Rs. 8,000 Principal, Rs. 6,000 interest up to 26th September, 1983 @ p.a., making a total of Rs. 14,000 and order that the amount be recovered from the defaulters within a period of 60 days. If the persons liable for the disputed amount fail to pay the whole amount the same be

recovered through attachment of movable or immovable property of the defaulters or through their arrest or through both of these modes. Interest @ 6% p.a. be recovered till the realization of whole of the principal amount.

3. Hari Chand Respondent No. 4 filed a revision petition u/s 69 of the Act challenging order dated 26th September, 1983 passed by the Appellate Authority which has been accepted by Respondent No. 1 holding that (a) reference in respect of the Petitioner was competent u/s 55 of the Act (Section 102 of the new Act) and there was no illegality on that account; (b) on facts it also held that since he used to recover loan from the members and also used to make entries in the pass books/cash books of the Society, therefore, he could not be absolved from the responsibility. All the three officials, namely, Hari Chand, Ex-Cashier, the Petitioner as well as Gurditta Ram, Ex-Secretary were held equally and severally responsible for the alleged amount. The operative part of the order passed by Respondent No. 1 reads as under:

108. Hearing the arguments of both the parties, I find that the arguments of the counsel for the Petitioner are convincing and Shri Dalal being Supervisory Officer and nominated member of the Society is an officer of the Society and is covered u/s 55 of the Old Act now u/s 102 of the New Act against whom arbitration proceedings can be initiated. The statement of Shri Dalal shows that he used to recover the loan from the members and made entries in the pass book and cash book of the Society. He cannot be absolved from the responsibility just by saying that he is not an employee of the society as he is being paid by the bank. So all the three officials are jointly responsible for the embezzlement of the amount in dispute.

9. In view of the above discussion I set aside the order of the Assistant Registrar Co-operative Societies dated 26th September, 1983 and held Shri Harkishan Dalal, Executive Officer, Shri Chand Ex-Cashier, and Shri Gurditta Ram, Ex-Secretary equally and severally responsible for the alleged embezzled amount.

4. Mr. Prem Singh Kadiyan, learned Counsel for the Petitioner has argued that Respondent No. 1 was not competent to re-open the findings of facts recorded by the Appellate Authority in its order dated 26th September, 1983 because it was to exercise only revisional jurisdiction to find out the "legality and propriety" of the order passed by the Appellate Authority. The learned Counsel has also argued that the Petitioner is not covered by Section 55 of the Act as he was neither an employee or a member of the society and, therefore, no reference to the Arbitrator was competent against him. The learned Counsel has then submitted that there is complete lack of application of mind by Respondent No. 1 inasmuch as it has been observed in the order that the Petitioner was nominated in the managing committee of the Society and he used to make entries in the cash-book/pass book of the Society. Therefore, the learned Counsel has argued that the impugned order Annexure P-3 passed by Respondent No. 1 is liable to be set aside.

5. Mr. S.K. Dahiya and Mr. Azad Singh, learned Counsel for the Respondents have jointly pointed out that there is no illegality in the order Annexure P-3 and the Petitioner has been rightly held liable jointly with two others. The learned Counsel have maintained that findings of fact can be gone into by Respondent No. 1 and there is no bar created by Section 69 of the Act. Both the learned Counsel have argued that reference u/s 55(l)(b) of the Act would be competent and the Petitioner cannot claim that he is not covered by Section 55 of the Act.

6. After hearing learned Counsel for the parties at some length, I am of the view that this petition deserves to be accepted. It would be appropriate to make a reference to Section 55(1) of the Act which reads as under:

55. Disputes which may be referred to arbitration.

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a Co-operative Society arises--(a) among members, past members and persons claiming through members, past members and deceased members ; or (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present ; or

(c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society ; or

(d) between the society and any other Co-operative Society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society Such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

7. A perusal of Section 55(1) of the Act makes it abundantly clear that a reference could be made with regard to dispute touching the constitution, management or the business of a Co-operative Society amongst its past members and the persons claiming through them. The dispute of the nature referred to above can also be sent to the Arbitrator if it exists between a member, past member or the person claiming through a member of the Society, its committee or any officer, agent or employee of the Society etc. It is evident that the provision does not cover a dispute between an agent or employee or the nominee members of the Society and the officer of the Central Society. Respondent No. 1 has conferred assumed jurisdiction on the Arbitrator u/s 55 of the Act by assuming that the Petitioner is a nominee member of the Society. Such an assumption by Respondent No. 1 is not supported by facts and pleadings of the parties in this petition. The aforementioned fact has not been controverted when the Petitioner asserted in sub para (c) of para 11 of the writ petition which reads as under:

(c) That the learned Deputy Secretary had tried to give her own colour to the facts of the case and had gone upto the extent of stating the facts, which were neither here nor there. The Petitioner was never nominated on the managing committee of the Society. He did not convene the meetings of the Committee of the Society nor did he make any entry in any book or the Register of the society. The matter has been rightly dealt with in sufficient details by the Assistant Registrar, Co-operative Societies, Rohtak in his Judgment--Annexure P/2. In revision the Deputy Secretary Co-operation was not expected to give her own findings, without pointing out any illegality or impropriety with the order passed in appeal. The order in Revision deserves to be set aside on this ground as well.

(Emphasis added)

8. The aforementioned assertions made by the Petitioner have not been controverted by the Society--Respondent No. 3 in its written statement. No written statement has been filed by any other Respondent. It has to be accepted as a fact that the Petitioner is not a nominee member of the Society as has been referred to by Respondent No. 1 in paragraphs 8 and 9 of her order which have been reproduced in the preceding paras. No record has been produced before me showing that the Petitioner was ever nominated as a member of the Society. The assumption of facts concerning the Petitioner that he has been a nominee member and making entry in Cash Books/pass book is absolutely figment of imagination of Respondent No. 2, In the absence of these assumed facts, Section 55 of the Act does not cover the Petitioner and no reference concerning dispute between the Petitioner, an officer of the Central Bank and the Society was referable to arbitrator. Therefore, the order Annexure P-3 dated 7th March, 1986 is liable to be set aside and it has to be held that reference against the Petitioner was not competent.

9. The question as to whether Respondent No. 1 is competent to reverse a finding of fact has to be answered by referring to Section 69 of the Act which 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 u/s 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.

10. A perusal of Section 69 of the Act reveals that the revisional power could be exercised by the Government or the Registrar for the purposes of satisfying itself as to the legality or propriety of a decision or order passed. If in the opinion of

the Government or the Registrar such an order is required to be modified, annulled or revised, then it could have been done so after giving the affected person an opportunity of being heard. There is nothing in the provision limiting the power of Respondent No. 1 to decide only the question of law or question concerning jurisdiction. On the contrary the provision is widely worded giving power to the revisional authority to test a decision or order, to find out any illegality or impropriety and modify, annul or revise the same after granting opportunity of hearing. Therefore, the revisional authority would be competent to interfere in a finding of fact if there is an illegality or impropriety in the order. The aforementioned view on the language of the section must be taken because if a finding of fact is perverse and not supported by any evidence or the same is arrived at without following the principles of natural justice or similar other illegalities, then the revisional authority would be competent to interfere and set aside the findings of facts. However, the revisional authority would not be competent to reverse a finding of fact which is supported by evidence merely on the ground that on reappraisal of evidence, another officer exercising powers of Appellate Authority would have taken a different view. In other words, reappraisal of evidence for the purposes of reversing the findings of fact is impermissible. Therefore, Section 69 of the Act cannot be construed to mean that there is a complete bar of the revisional authority to reverse a finding of fact and the argument raised by learned Counsel for the Petitioner is liable to be rejected.

11. For the reasons recorded above, this petition succeeds because the reference u/s 55(1) of the Act has not been found to be competent against the Petitioner and order dated 7th March, 1986, Annexure P-3 is quashed and set aside. Therefore, the Petitioner cannot be saddled with any liability.