
(1985) 11 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1279 of 1985

Harmel Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-11-1985

Acts Referred:

Citation : (1986) 1 LLR 606 : (1986) PLJ 63 : (1986) Rent LR 84 : (1985) RRR 126

Hon'ble Judges : I.S.Tiwana, J

Advocate : Mr. J.P.S. Sandhu, Advocates., Mr. R.S. Mongia, Mr. Kuldip Singh, Senior Advocate,, Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. The petitioners who are respectively Member and President of the Bariwals Cooperative MarketingcumProcesssing Society (hereinafter referred to as the Society), impugn the order of the Additional Registrar Cooperative Societies, Punjab, dated February 15, 1985 (Annexure P. 4) whereby the Society has been reclassified as a "D" Class Society instead of "C" Class Society which it concededly was prior to the passing of the impugned order. This order is stated to have been passed by the Additional Registrar in the purported exercise of the powers under section 69 of the Punjab Cooperative Societies Act, 1961 (for short, the Act). In order to appreciate the stand of the petitioners, the following facts deserve to be taken notice of.

2. Prior to the passing of this order, an order dated April 19, 1984 (Annexure P1/A) was passed by the Assistant Registrar, Cooperative Societies, Muktsar and it reads as follows :

"On the bare perusal of the balance sheet of the Society it is proved that the whole assets of the Society have been misappropriated. This time the liquidated assets of the Society cannot be more than Rs. 10,000/-. Secondly, no interest is being taken by the Board of Directors or the employees of the Society in the

affairs of the Society. From the above impression I feel that the Society is not capable of doing any work. Therefore, I classify the same as "D" Class Society.'"

As a result of this order two showcause notices were issued by the Additional Registrar; one dated November 16, 1984 (Annexure P. 1) to Harmel Singh petitioner and the other dated December 21, 1984 (Annexure P. 2) to the President of the Society. Vide Annexure P. 1, it was sought to be communicated to Harmel Singh petitioner that since he had been selected as a Member of the Board of the MARKFED (Punjab State Cooperative Supply and Marketing Federation Ltd. Chandigarh) as a representative of the society which has since been classified as a "D" Class Society, why shouldn't he be ceased to be a member of the Board of the MARKFED. Concededly no final order has been passed in pursuance of this notice so far.

3. Vide notice Annexure P. 2, it was communicated to the President of the Society that since the Assistant Registrar while passing order Annexure P1/A had failed to give the Society an opportunity of hearing, the same was being afforded to it and it should come and clarify its position with regard to its working and performance as a MarketingcumProcessing Society before the passing of the impugned order. Petitioner Mehar Singh, the President of the Society represented vide Annexure P. 3 that the order of the Assistant Registrar Annexure P1/A was non est and ineffective as the same had been passed without affording any opportunity of hearing to the Society. For this stand of his he placed reliance on a judgment of this Court in C.W.P. No. 2945 of 1970 (Shri Karam Singh and another v. The Registrar Cooperative Societies, Punjab, Chandigarh and others (decided on September 10, 1971, wherein it has been firmly ruled that the decision to change the classification of the Society is quasijudicial in nature and it has far reaching consequences, one of these being that its representatives lose the office of the Directorship of a Cooperative Bank or any other Central or Apex Society and before this could be done it is incumbent on the authority reclassifying the Society to issue a notice calling upon the Society to show cause as to why its classification be not changed. After considering this reply submitted by Mehar Singh on behalf of the Society, the impugned order Annexure P. 4 was passed by the Additional Registrar. The fact that Annexure P. 4 has been passed in pursuance of Annexure P. 2, is not disputed by Mr. Khoji, learned counsel for the respondent.

4. The primary submission of Mr. Kuldip Singh, learned Senior Advocate for the petitioners is that the action of the Additional Registrar in passing the order Annexure P. 4 cannot be justified or sustained under section 69 of the Act in the purported exercise of which jurisdiction this order is stated to have been passed. Having heard the learned counsel for the parties at some length I find that the abovenoted contention of Mr. Kuldip Singh must prevail.

5. Section 69 of the Act deals with the revisional jurisdiction of the Registrar and the Government. It lays down that any of these two authorities can suo motu or on an application of a party to a reference can call for and examine the record of

any proceedings in which no appeal under section 68 of the Act lies to the Government or the Registrar for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed. While examining this aspect of the matter the Government or the Registrar may modify, annul or revise the order the validity of which is being examined by the Government or the Registrar. This of course has to be done by these authorities only after giving the persons to be affected an opportunity of being heard. It is the accepted position in the case in hand that prior to the passing of the order Annexure P1/A no hearing of any sort was afforded to the Society by the Assistant Registrar as has been laid down in Karam Singh's case (supra). What is sought to be contended by Mr. Khoji, however, is that the notice Annexure P. 2 issued by the Additional Registrar in compliance with the latter mentioned words of section 69 of the Act which say that when the revisional authority exercises its jurisdiction under this section it has to give an opportunity of being heard to the persons likely to be affected, is good enough an opportunity to validate the order of the Assistant Registrar. In a nutshell, what Mr. Khoji contends is that the hearing given by the revisional authority instead of the original authority, is good enough a compliance of the principles of natural justice and the order of the original authority can be validated or sustained as a result of the subsequent hearing I find it difficult to accept this proposition of law particularly when there are no facts and circumstances which justify the order of the original authority. It has repeatedly been laid down (Shrimati Pari and another v. State of Punjab and others, (1966) 68 PLR 844, and Hazara Singh and another v. The Punjab State and others, 1969 CLJ (Pb. & Hyna. 96) that a hearing given by the appellate or the revisional authority can be no substitute for the hearing which is required to be given by the original authority passing an order. In other words, the subsequent hearing cannot validate the order of the original authority. As has already been pointed out above, the Assistant Registrar did not afford any opportunity to the Society before the passing of the order Annexure P1/A, classifying the Society as "D" Class Society instead of "C" Class. In the light of that the Additional Registrar could not uphold the order of the Assistant Registrar as a result of the hearing afforded by him.

6. In view of the discussion above, the impugned order of the Additional Registrar, Annexure P. 4, has essentially to be set aside. While recording this conclusion I am of the view that the order of the Assistant Registrar, Annexure P. 1/A is equally unsustainable and that too is set aside. For clarification's sake it may be stated here that the passing of this order would, of course, not debar the authorities under the Act from proceeding into the matter afresh, if they so choose. I, however, pass no order as to costs.