

(1999) 12 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11448 of 1999 and C.M. Nos. 19144 and 24262 of 1999

Harpal Singh

APPELLANT

Vs

Additional Secretary-cum-Additional Registrar, Co-operation,
Punjab and others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Citation : AIR 2000 P&H 113 : (2000) 1 CurLJ 261 : (2000) 3 ICC 140 : (2000) 2 PLJ 16 : (2000) 3 PLR 108 : (2000) 2 PLR 54 : (2000) 2 RCR(Civil) 207

Hon'ble Judges : JAWAHAR LAL GUPTA, J and A.S.GARG, J

Advocate : M. S. Kang, A. G. Masih, AAG, Punjab (for Nos. 1 to 4) and R. K. Joshi (for Nos. 6 and 7), Advocates for appearing Parties

Judgement

JAWAHAR LAL GUPTA, J.—Election for constitution of the Managing Committee of the Tanda Ram Sahaey Coop. Agri Service Society Ltd. was held on August 5, 1998. The petitioner along with eight others were declared elected. Aggrieved by this election, Tirath Singh respondent No. 6 filed an election petition. The Deputy Registrar, Cooperative Societies, Hoshiarpur accepted the election petition vide order dated January 21, 1999. Aggrieved by this order, Harpal Singh the present petitioner filed an appeal. It was heard by the Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar. Vide order dated March 12, 1999, a copy of which has been produced as Annexure P. 3 with the writ petition, the Joint Registrar accepted the appeal. The order passed by the Deputy Registrar was set aside. Respondent No. 6 filed a petition before the State Government. Vide order dated March 24, 1999, the Additional Secretary, Cooperation (Appeals), Punjab accepted the appeal with the following observations :

"Heard Joint Registrar, Jalandhar to give an opportunity to the petitioner and after fair hearing, dispose of the case as per law. Parties to appear before JRCS on 8499. Order P3 stayed till then.

Peshi Assistant (Cooperation) for Financial Commissioner/Deputy Secretary,

Cooperation (Appeals) Pb. Chandigarh".

2. The petitioner was not even given a notice. The order in his favour was stayed without the grant of any opportunity. The case was remanded for a fresh decision. He was naturally aggrieved. He filed a petition before the Additional Secretary. Vide order dated May 31, 1999, it was again rejected with the observation that on a reading of S. 69, "it is clear that the Registrar and the Government can suo motu and on an application made by the party issue notice to other party. It is abundantly clear that the Registrar may issue notice to the other party but no mandatory nature is inherent. Hence the issuance of notice is not compulsory". The prayer for review of the order was rejected. Hence this petition.

3. The petitioner complains that the Additional Secretary to the Government has acted illegally, arbitrarily and against the basic norms of fair play. He submits that the order passed by the Additional Secretary is wholly illegal and against the elementary rules of natural justice.

4. The claim made on behalf of the petitioner has been controverted by counsel for respondent No. 6. Mr. A. G. Masih, learned AAG, Punjab, appearing for the State Government and its officers has been very fair. He is unable to support the order.

5. Section 69 of the Punjab Cooperative Societies Act, 1961 provides as under :

"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 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."

6. A perusal of the above provisions shows that the Government as also the Registrar can even suo motu call for and examine the record of any proceedings. Still

further, it is also clear if it appears that any order "should be modified, annulled or revised", the authority has the power to do so. However, S. 69 categorically provides that such an order can be passed only "after giving persons affected thereby an opportunity of being heard." In the present case, even if it is assumed that the Additional Secretary was satisfied that the order passed by the Joint Registrar required to be modified, annulled or revised, he could not have passed any such order without giving the petitioner an opportunity of being heard. This opportunity was admittedly not afforded in the present case. The action was totally illegal and cannot be sustained.

7. Mr. R. K. Joshi, counsel for respondent Nos. 6 and 7 submits that the directions had been given vide order dated March 24, 1999 as the crossobjections filed by the 6th respondent had not been decided. Assuming it to be so, the fact remains that the Additional Secretary had stayed the operation of the order passed by the Joint Registrar. He had asked the Joint Registrar to hear the sixth respondent and dispose of the case as per law. The interest of the present petitioner was prejudicially affected even by the stay of the operation of the order Annexure P.3. The entire order was passed without even giving him any opportunity. It was patently contrary to the plain language of S. 69. Even when the apparent mistake was pointed out, the authority did not relent. It persisted and declined the petitioners request. We cannot uphold the orders impugned in this petition.

8. Even if S. 69 did not expressly provide for an opportunity to the affected party, we think it would still be bound to act in conformity with the principles of natural justice. An order affecting a party to a dispute cannot be passed without following the basic rules of fairplay.

9. Resultantly, the orders dated March 24, 1999 and May 31, 1999 passed by the Additional Secretary, Cooperation, are set aside. Since the Additional Secretary has already expressed his opinion in rather emphatic terms (though contrary to the plain language of the Statute), we consider it appropriate to remand the case to the Financial Commissioner (Cooperation) for a fresh decision after hearing both the sides. Counsel for the parties are agreed that they would appear before the Financial Commissioner (Cooperation) Mr. K. S. Janjua, IAS, on January 11, 2000. The officer would proceed further in accordance with law.

10. The writ petition is, accordingly, disposed of.

Order accordingly.