
(1983) 11 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 554 of 1982

Jai Pal

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 16-11-1983

Acts Referred:

Citation : (1984) PLJ 8 : (1984) RRR 203

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

Advocate : G.S. Sandhu, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J.—The petitioner has been working as Manager of Jhansa Co operative Agriculture and Service Society Ltd; Jhansa, Tehsil and District Kurukshetra, (hereafter the Society). The accounts of the Society for the period July 1, 1975 to June 30, 1977, was audited by the Inspector Audit of the Cooperative Societies, Thanesar and an embezzlement of Rs. 58093.34 was detected. The Society consequently referred the dispute under section 55 of the Punjab Cooperative Societies Act, 1961, (hereafter the Act) against the petitioner as also respondent Nos. 4 to 6 for an amount of Rs. 71,262.60 including Rs. 6689.83 as interest and Rs. 6,478.83 as costs. The arbitration case was decided by the Deputy Registrar who vide award dated August 19, 1980, (P.1) made the petitioner liable to pay Rs. 40,822.65. The petitioner filed an appeal against the award of Deputy Registrar (P.1) which was dismissed by the Joint Secretary (Cooperative) exercising the powers of the Government under section 68/69 of the Act vide order dated June 25, 1981. (P.3). The petitioner has assailed the orders P.1 and P.3 in the present writ.

2. The learned counsel for the petitioner has argued that the embezzlement was detected during the audit and as such the proceedings could be initiated under section 54 of the Act. In view of the fact that the proceedings could be initiated under section 54 of the Act, the dispute could not be referred for arbitration under section 55 of the Act. The impugned order P.1 is liable to be set aside on this ground. The order P.3 upholding the order P.1 in appeal can also be not

sustained. Reliance has been placed on *Pentakota Siramulu v. Cooperative Marketing Society Ltd., Anakapalli and another*, A.I.R. 1965 SC 621. The contention of the learned counsel for the petitioner must prevail.

3. In *Pentakota Sriramulu's* case (*supra*), their Lordships of the Supreme Court examined the implications of sections 49 and 51 of the Madras Cooperative Societies Act, 1932, which provisions are analogous to sections 54 and 55 respectively of the Act. Their Lordships observed:

"In this connection learned counsel relied on a decision of the Madras High Court in *Sundram Iyor v. Deputy Registrar of Cooperative Societies*, I.L.R (1957) Mad. 371 : (A.I.R 1957 Madras 684). There it was held that it was only in case where the provisions of section 49 were inapplicable that recourse could be had to section 51. In case, where a matter fell both within sections 49 and 51, the two provisions were not intended to operate on parallel lines. As section 51 excluded the jurisdiction of civil courts, it must be strictly construed and for that reason, in cases where section 49 was applicable, section 51 would be excluded. Further, it was held section 51 was of a general nature providing for a variety of matter and was almost exhaustive of the parties between whom as well as the disputes that could arise in co operative societies. Section 49 on the other hand dealt with special types of disputes which arise in exceptional circumstances, segregated out of the larger group dealt with under section 51. When there was thus an overlapping of the terms of both the sections the provisions of section 49 alone it was held would be applicable. Based on this line of reasoning, the submission of learned counsel was that the claim in the present case was one `against a person in management of the society" and `for the fraudulent retention of money or other property of the Society" and, therefore, it was completely covered by section 49 and that in consequence the Registrar had no jurisdiction to direct an enquiry by the Deputy Registrar under section 51 of the Act. This argument, however, proceeds on ignoring one further essential requisite for the application of section 49 (1). Besides the two factors to which learned counsel referred and which we have just set out, there is also another condition which has to be satisfied before section 49 (1) could be attracted. The facts giving rise to the charge have to be disclosed in the course of an audit under section 37 or an enquiry under section 38 or an inspection under section 39 or on the winding up of the society. Mr. Ram Reddy while not disputing that unless this condition is also satisfied section 49 would not be attracted, however, submitted that there was an enquiry under section 38 preceeding the supersession and that in consequence the condition was fulfilled. It is true that there was an enquiry conducted into the affairs of the Society under section 38, but that by itself is not sufficient. It has further to be proved that the facts alleged in the claim, and on which it is based, were disclosed at that enquiry. This can be proved or established only if the enquiry report which was submitted to the Registrar was placed before the court and the facts disclosed therein corresponded with the facts alleged in the statement of claim. Mr. Ram Reddy admitted that the enquiry report was not before the court and it is not in the record of the proceedings. It

is not, therefore, possible to say that there is correspondence between the facts disclosed in that report as a result of enquiry under section 38 and those found in the statement of claim which was referred by the Registrar to the Deputy Registrar for arbitration under section 51. The case must, therefore, be held not to fall under section 49 of the Act. There can be no doubt that if section 49 does not apply, subject to the other argument about illegality to which we shall advert, the order of the Registrar proceeding under section 51 is not open to objection. This first point, therefore, has to be rejected."

4. It is obvious from the observations of their Lordships reproduced above that section 51 of the Madras Cooperative Societies Act, 1932 shall not apply in a case which is covered by section 49 thereof. The ratio of this authority, when applied in the context of the Act, would mean that section 55 thereof will not apply to a case which is covered by section 54. It is not disputed that the present case against the petitioner is covered by section 54 of the Act. It would, therefore, be not covered by section 55 of the Act. The reference for arbitration made under section 55 of the Act against the petitioner and others is invalid. The impugned award of the Arbitrator (P.1) and the order passed in appeal by the Government (P.3) in pursuance of an invalid reference under section 55 of the Act are liable to be set aside.

5. In the result, the writ petition is allowed and the impugned award of the Arbitrator (P.1) and the order of the Government (P.3) passed in appeal upholding the award P.1 are set aside. It will be open for the authorities to initiate action for the recovery of the amount under section 54 of the Act. No order as to costs.