
(2008) 03 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1232 of 2005

Kapoor Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 2 ShimLC 82

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Rajinder Dogra, A.A.G., Anil Kumar Jawal, D.A.G., for the Respondent Nos. 1 to 3 and Bhupender Singh Kanwar, for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—A challenge has been laid by way of this petition to the order passed by the Additional Secretary (Co-operation) to the Government of Himachal Pradesh on 26.9.2005.

2. The brief facts necessary for the adjudication of this petition are that the Petitioner was appointed as Accounts Clerk in Respondent No. 4-Society on 30.4.1982. He joined his duties as Accounts Clerk on 1.5.1982. He left his job on 20.6.1983 after handing over the charge to one Shri Madan Lal, Clerk. It appears that there were some shortcomings in the accounts of Respondent-Society, which led to the initiation of arbitration proceedings u/s 72 of the H.P. Co-operative Societies Act, 1968. The award was made by the Arbitrator on 5.9.1989. The Arbitrator (Assistant Registrar Co-operative Societies) came to the conclusion that the dispute did not come fall u/s 72 of the Act but the same was required to be looked into under Sections 67 and 69 of the H.P. Co-operative Societies Act, 1968. The inquiry u/s 69(1) was initiated vide order dated 27.2.1991 issued by the Deputy Registrar, Co-operative Societies (Eastern Division). The inquiry was completed by the Assistant Registrar (Co-operative Societies) on 2.1.1995. The Petitioner admittedly was not associated during the course of the arbitration

proceedings as well as during the course of the inquiry held by the Assistant Registrar Co-operative Societies dated 2.1.1995. The Petitioner was served with notice by the Inquiry Officer u/s 69(2) of the H.P. Co-operative Societies Act, 1968. He filed reply to the show-cause notice. According to the pleadings contained in the writ petition, the Petitioner had primarily stated in his reply to the show-cause notice that he was neither associated with the proceedings before the Arbitrator nor before the Inquiry Officer u/s 69(1) of the H.P. Co-operative Societies Act, 1968. The Deputy Registrar (Cooperative Societies) concluded the surcharge proceedings u/s 69(2) of the H.P. Cooperative Societies Act, 1968, (here-in-after referred to as the Act) vide order dated 28.9.2002. The Petitioner was directed to pay the amount as mentioned in the order of the Joint Registrar. The Petitioner preferred an appeal u/s 93-1(G) of the H.P. Co-operative Societies Act, 1968 against the order passed by the Inquiry Officer during the surcharge proceedings before the Additional Secretary (Co-operation). The Additional Secretary (Co-operation) dismissed the appeal on 26.9.2005. He upheld the order of the lower authority to the effect that the Petitioner was liable to pay a sum of Rs. 15,004.28/ - alongwith interest at the rate of 9% per annum with effect from 20.10.2000.

3. Mr. Ajay Sharma, learned Counsel for the Petitioner has strenuously argued that the proceedings could not be initiated against the Petitioner u/s 69(1) after a lapse of six years. He has elaborated his submissions by stating that his client had resigned from Respondent-Society in the year 1983 and the proceedings u/s 69(1) were initiated only on 27.2.1991. He also contended that his client was neither made a party in the arbitration proceedings nor was he made a party during the inquiry held u/s 69(1) by the Assistant Registrar Co-operative Societies dated 2.1.1995. He also contended that the resolution has been passed by the General House of the Respondent-Society for adjusting the amount and this decision of the society could not be interfered by the authorities under the Co-operative Societies Act, 1968.

4. The learned Additional Advocate General and Shri Bhupender Singh Kanwar appearing on behalf of Respondent No. 4 had supported the judgment dated 26.9.2005.

5. I have heard the parties and perused the record carefully.

6. What emerges from the facts as discussed here-in-above is that the Petitioner joined his duties as Accounts Clerk on 1.5.1982 and has resigned on 20.6.1983 after handing over the charge to one Shri Madan Lal, Clerk. The arbitration proceedings were initiated u/s 72 of the H.P. Co-operative Societies Act, 1968. The Arbitrator passed the order on 5.9.1989. He came to the conclusion that the proceedings u/s 72 were misconceived but he had made the observation that it was open to the Respondent No. 4 to take recourse to Sections 67 and 69. The inquiry u/s 69(1) was initiated after the order passed by the Deputy Registrar, Co-operative Societies on 27.2.1991. This date, i.e. 27.2.1991 is crucial to decide the case. It will be apt at this stage to reproduce Section 69 of the H.P. Co-

operative Societies Act, 1968 in its entirety:

Section 69

Surcharge

(1) 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 the provisions of this Act, the rules or the bye-law or has caused any deficiency in the assets of the society by breach of trust, or willful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his own motion or on the application of the committee, liquidator, or any creditor, inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person:

Provided that no such inquiry shall be held after the expiry of six years from the date on which any act of commission or omission referred to in this Sub-section comes to knowledge.

(2) Where an inquiry is made under Sub-section (1), the Registrar may, after giving the 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 cost or compensation to such extent, as the Registrar may consider just and equitable.

(3) This Section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

The Section gives, wide powers to the Registrar in regard to surcharge which is not restricted only to acts for which a person is criminally liable but also invests the Registrar with powers so as to cover those acts also which involve misappropriation of the funds of co-operative society for the purpose contrary to the Act and rules and bye-laws as well as which involves gross negligence resulting in loss to the society.

7. In the present case the inquiry u/s 69(1) of the Act commenced only on 27.2.1991. The proceedings can commence only as per proviso of Sub-section (1) of Section 69 within a period of six years from the date on which any act of commission or omission comes to knowledge. The Petitioner had submitted his resignation on 20.6.1983. The alleged act on the basis of which the inquiry was initiated took place in the year 1980. The Respondents could not take advantage of the fact that arbitration proceedings were pending u/s 72 of the Act. More over the Petitioner was not arrayed as party in the arbitration proceedings. Thus, it is held that proceedings could not be initiated u/s 69(1) against the Petitioner after the expiry of six years.

8. The other infirmity which has been noticed by the Court in the proceedings initiated against the Petitioner is that he was neither arrayed as party in the arbitration proceedings nor he was served with any notice at the time of initiation of the proceedings against him u/s 69(1) of the Act. It is evident from the language employed in Sub-section (1) of Section 69 that the conduct of a person is to be looked into during the course of the inquiry. The person whose conduct is to be inquired into must be afforded a reasonable opportunity of being heard during the course of the proceedings. The Petitioner has raised a specific plea before the competent authority including the appellate authority that he was not heard during the proceedings initiated u/s 69(1) of the Act. Once the Petitioner has taken this plea, the same was required to be taken into consideration by the authorities. The Petitioner has been seriously prejudiced by the non-compliance with the principles" of natural justice during the pendency of the proceedings.

9. Consequently, the writ petition is allowed in view of the observation made here-in-above. The impugned order dated 26.9.2005 is quashed and set-aside. Parties are left to bear their own costs.