(1975) 07 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 911 of 1973

Major Singh and Sakinder Singh — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 01-07-1975

Acts Referred:

Citation : (1976) PLJ 195 : (1984) RRR 457

Hon'ble Judges : Gurnam Singh, J

Advocate : Mr. J.S. Mavi, Advocate., Advocates for appearing Parties

Judgement

Gurnam Singh, J.

1. Dhandoli Kalan Cooperative Agricultural Service Society No. 3 (hereinafter referred to as Society) became defaulter and was brought under liquidation. Shri Bhag Singh Ganger was appointed as a liquidator and he vide order dated 9.12.1972, duly endorsed by Assistant Registrar, Cooperative Societies, Sangrur, on 14.12.1972 exercising the powers of Registrar, Cooperative Societies, Punjab, order Major Singh and Sakinder Singh petitioners and Harminder Singh and Joginder Singh, respondents Nos. 4 and 5, respectively, to pay Rs. 6,82,825/ as debts and liquidation expenses as members and Secretary towards the assets of the Society. Major Singh and Sakinder Singh petitioners filed an appeal against the order dated 14.12.1972 before the State of Punjab through Deputy Secretary, Cooperative Department, alleging the same to be illegal, without jurisdiction, void and against the principles of natural justice and equity. Their main grounds are that they were not given an opportunity to defend themselves before fixing the liability against them and requiring them to make payment of the entire amount of Rs. 6,82,825/0 and that the order of declining to entertain the appeal was wrong because under law an appeal against the order of the Registrar lies to the Government.

2. The Assistant Registrar, Cooperative Societies, Sangrur, respondent No. 2 filed his affidavit stating that notices to both the petitioners, Sh. Harminder Singh respondent No. 4 and Joginder Singh, respondent No. 5 were issued by the

liquidator under registered covers on 16.11.1972, that Sikander Singh petitioner and respondent No. 4 refused to receive the notices and that Shri Joginder Singh, respondent No. 5 accepted the service of the notice. No comments were given regarding respondent No. 1 having declined to entertain the appeal wrongly for lack of jurisdiction.

3. Sikander Singh petitioner in his affidavit stated that the petitioners were never a party to the winding up process or in the liquidation proceedings and were never issued any notices nor were given any opportunity to defend at any stage. Even if the replay filed by respondent No. 2 be accepted as correct, it is not established that Major Singh petitioner received any notice from the liquidator before the order, copy of which is annexure B, was passed by him. The proceedings for determining liability of each member of the Society to pay are quasi judicial in nature and therefore, it is incumbent upon the liquidator to issue notices to the members of the Society to show cause as to why they should not be held liable. In 1972 P.L.R. 376 Tara Chand and others v. The State of Haryana and others, it has been held :

"that since the liability to pay of each member has to be determined, the proceedings for determination are quasijudicial in nature and it is incumbent upon the liquidator to issue a notice to the members to show cause why they should not be saddled with the liability proposed. If the member does not object, the liability can be fastened on him, but if he raises an objection that objection has to be gone into and decided. It is not permissible to the liquidator to pass an order of contribution against a member without issuing such a notice to him."

4. Earlier in A.I.R. 1954 Punjab 268, Dharam Pal v. the Jagadhhri Thatera Cooperative Society, it was held that a notice was necessary to be issued to a member before determining his liability. Shri Bhag Singh, respondent No. 3, the liquidator has not cared to file any return to the petition nor appealed personally in the Court and therefore, the return filed by respondent No. 2 is of no help on this point.

5. Moreover, the order, copy of which is annexure B, of the liquidator, duly endorsed by the Registrar is not a speaking order and does not give any indication that notices were issued to the members before the order was passed. The order is also silent about the individual liability of the members. Thus this order cannot be said to be a speaking order. It is arbitrary to the core and cannot be upheld and is liable to be quashed.

6. The petitioners in paras Nos. 13 and 14 of the writ petition alleged that they filed an appeal against the order dated 14.12.1972 before respondent No. 1 but he declined to entertain the same and that the ruling cited as "1967 P.L.R. Note 59" was held to be not applicable to the facts of the case. No comments were given regarding para No. 13 and para No. 14 was denied for want of knowledge, by respondent No. 2. Respondent No. 2 in his affidavit stated that powers under section 59 of the Cooperative Societies Act have been delegated to the Assistant

Registrar vide Punjab Government Notification dated 19.11.1969. Bhag Singh Ganger, respondent No. 3, had acted as a liquidator in this case. Vide section 59(2) of the same Act the powers of the liquidator are subject to the control of the Registrar. The order, copy which is annexure B, made by the liquidator has been approved by the Assistant Registrar, Cooperative Societies, Sangrur, exercising the powers of Registrar, Cooperative Societies, Sangrur. An order passed by a liquidator of a Cooperative Society under clause (b) of subsection (2) of section 59 of the Cooperative Societies Act is required to be submitted by him to the Registrar for approval because the latter is authorised to modify such order or refer it back to the liquidator for further enquiry or action. In the instant case the order of the liquidator, copy of which is annexure B, was approved by the Registrar. Such order is appealable under section 68 of the Cooperative Societies Act. Since the order was approved by the Registrar, so it will be deemed to be his order in the eyes of law and the appeals to the Government. Thus the order of the Deputy Secretary, Cooperative Department, copy of which is annexure A, is liable to be set aside.

7. The result is that this petition is accepted with costs and the orders, copies of which are annexures A and B are quashed. The liquidator will, however, be at liberty to redetermine the matter after notice to the members of the Society. Counsel fee is assessed as Rs. 100/.

