
(1989) 11 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8182 of 1989

Major Singh Brar and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 15-11-1989

Acts Referred:

Citation : (1991) 2 ILR (P&H) 312

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : B.S. Khoji, for the Appellant; M.S. Bedi, for Respondent No. 4, S.S. Aulakh, for Respondent No. 6, Charu Tulli, for Respondent Nos. 1 to 3 and I.S. Saggu, for the Respondent

Judgement

G.R. Majithia, J.—The Petitioners have impugned the order of Respondent "No. 1 passed in revisions filed u/s 69 of the Punjab Co-operative Societies Act, 1961 (for short "the Act").

2. The only submission raised by Mr. B.S. Khoji, learned Counsel for the Petitioners, is that Respondent No. 1 allowed Respondent No. 4 to file written arguments and placed on record in the absence of the Petitioners counsel and he was influenced by those written arguments while deciding the revision petitions. In order to appreciate the submission raised, it is necessary to state the few relevant facts.

3. Dispute between Talwandi Bhai Co-operative Marketing Society Limited and the Petitioners was referred to the arbitrator. The arbitrator rendered the award on August 13, 1984. Appeals were preferred against the award of the arbitrator and these were disposed of by the Joint Registrar, Co-operative Societies, Ferozepur, by an order dated April 4, 1986. The awards were upheld. The Petitioners challenged the appellate order in revision before Respondent No. 1. The arguments were heard on September 28, 1988 and the case was adjourned for orders to October 13, 1988. Respondent No. 4, namely, Talwandi Bhai Co-operative Marketing Society Limited, in whose favour the award was made, was

represented by a counsel before Respondent No. 1. The counsel did not reach in time and the arguments were heard in his absence and the judgment was reserved. The counsel for Respondent No. 4 moved an application before Respondent No. 1 that he may be given an opportunity of hearing. The counsel was directed to file written arguments and he complied with the same. Written arguments were filed and were taken note of by Respondent No. 1 while disposing of the revision petition filed by the Petitioners. The order indicates that the revisional authority was influenced by the reasoning given in the appellate order and also by the detailed arguments made in the written submissions filed by Respondent No. 4.

4. The learned Counsel for the Petitioners submits that the revisional authority directed Respondent No. 4 to file written arguments in his absence. Not only he directed Respondent No. 4 to file written arguments, but took those arguments into consideration while passing the impugned order.

5. Rules of natural justice require that the parties to the lis must be heard at one time and one party must not be heard in the absence of the other. He submits that the impugned order is violative of principles of natural justice.

6. I find force in the submission made by the learned Counsel for the Petitioners. Quasi judicial authority, while exercising his powers, must do so in accordance with the principles of natural justice. He must hear both sides at one time and must not hear one side in the absence of the other. I am not expressing any opinion on the point that infringement of the rules resulted in injustice. I am only dealing with the infringement of the rule that justice must not only be done but must also manifestly appear to be done, and am dealing with the matter from what the Courts have held in the past that it is important not only that justice should be done, but also that it should be seen to be done, and that a person who is fasten with a liability should know that there has been no actual injustice. It is preferable that he should go free rather than that that rule should be infringed.

7. It will be useful to refer to the following observations in a judgment reported as Errington and Ors. v. Minister of Health 1935 (1) Kings Bench Division 249, where it was observed as under:

In my judgment it is true to say that an order made by a quasi-judicial officer based on materials which are not the materials referred to in para 4 of the First Schedule is an order which is not within the powers of the Act, having regard to the proposition which has been established in common law that a quasi-judicial officer in exercising his powers must do it in accordance with the rules of natural justice, that is to say, he must hear both sides and must not hear one side in the absence of the other.

8. The ratio of the judgment rendered in R. v. Stafford Borough Justices (1962)1 All ELR 540, is equally attracted to the facts of the present case. The Applicant was charged with the larceny of a coat and a scarf. He was tried by the Jury. Just

as the justices were retiring, a folded bit of paper containing a note was handed over by the justices' clerk to the Chairman and the Chairman took it with him into the retiring room. The Applicant's solicitor took exception to the action of the clerk and brought to the notice of the Chairman that he wished to know what was contained in the note and that nothing contained therein was to the prejudice of the Applicant. The matter was disposed of by Lord Parker, C.J. who spoke for the Bench, with the following observations: --

The question remains: Is this a case in which the Court in its discretion should quash the conviction? It has always been a principle of our law that justice should manifestly be seen to be done. Here was a document whose contents were unknown, handed up to the justices at the moment of their retirement. In fact, we now know that it was a thoroughly improper note. The Applicant could not know what was in it; he was not allowed to see it. The answer which he got from the Chairman of the justices when they retired was, I should have thought, calculated to whet his appetite to see it, and it certainly gave no innocent explanation of the note. In those circumstances, taking the whole matter together, it seems to me that this is a case in which the Court in its discretion ought to quash the conviction. Indeed, it comes directly within the principle enunciated by Devlin, J. in giving judgment in *R. v. East Kerrier, JJ.* (1952) 2 All E.R. 146, 147. I have come to the conclusion that not only was this conduct on behalf of the clerk and of the Chairman of the justices thoroughly improper, but that it is a case in which the Court ought to quash the conviction.

9. Respondent No. 1 acted illegally in permitting written arguments to be placed on record at the instance of Respondent No. 4 in the absence of the Petitioners' counsel. In fact, the dispute was between the Petitioners and Respondent No. 4. Respondent No. 4 was to justify the award of the arbitrator. The Petitioners were aggrieved against the award and the appellate order. It was just and fair that after the written arguments had been placed on record, the counsel for the Petitioners was given an opportunity to meet those arguments. Respondent No. 1 acted in violation of the principles of natural justice which per se invalidates the order passed by him. Resultantly, the order of Respondent No. 1 passed in Case No. FZR-37, FZR-38, FZR-39 and FZR-40/1986 (*Major Singh Brar and Anr. v. Joint Registrar, Co-operative Societies, Ferozepur and Ors.*) on November 3, 1988, is quashed.

10. It has been brought to my notice that Mr. N.S. Rattan, I.A.S., who passed the order u/s 69 of the Act exercising powers of the State Government has since been transferred and Mrs. Harsimrat Gill, I.A.S. has succeeded him. The parties through their counsel are directed to appear before the Commissioner of Appeals exercising the powers of the State Government u/s 69 of the Act on December 6, 1989, on which date, with the consent of the parties' counsel, a date will be fixed for arguments. No order as to costs.