
(2010) 04 SHI CK 0102
In the High Court Of Himachal Pradesh

Managing Committee

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 3(1), 39, 93

Citation : (2010) 04 SHI CK 0102

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The petitioner is aggrieved by the order passed by the Registrar Co-operative Societies, Shimla in appeal u/s 93 of the Himachal Pradesh Cooperative Societies Act, 1968 (herein after referred to as the "Act") challenging the order passed by the Assistant Registrar, Cooperative Societies, Hamirpur on 5th September, 2006 superseding the Managing Committee of the petitioner herein.

2. By an order dated 5.9.2006, Annexure P-2, the Assistant Registrar Cooperative Societies, Hamirpur exercising the powers of the Registrar superseded the management of the petitioner Society on number of grounds as contained in the order. According to Notification No. Cop-F(7)-1/75 dated 24/25th October, 1977, the State Government conferred the powers of Registrar in Assistant Registrars on various places including Hamirpur. The notification reads:

In exercise of the powers conferred u/s 3(1) of the Himachal Pradesh Cooperation Societies Act, 1968 (Act No. 3 of 1969), the Governor, Himachal Pradesh, is pleased to appoint District Cooperative and Supplies Officers, Bilaspur, Chamba, Hamirpur, Kulu, Kangra, Dehra, Kinnaur, Lahaul & Spiti, Mandi, Simla, Solan, Sirmour and Una, as Assistant Registrars to assist the Registrar, Cooperative Societies, Himachal Pradesh, and is further pleased u/s 3(2) of the said Act to confer on these officers the powers of the Registrar, Cooperative Societies in respect of Primary Cooperative Societies exercisable by him u/s 37 of

the Himachal Pradesh Cooperative Societies Act, 1968.

Powers u/s 37 of the Act superseding the management of the petitioner society have been exercised by the Assistant Registrar exercising the powers of the Registrar.

3. The petitioner preferred an appeal u/s 93 of the Act before the Additional Secretary (Cooperative) to the Government of Himachal Pradesh, who heard the appeal partly and granted an interim injunction on the orders of supersession. The case was transferred to the Registrar Cooperative Societies under the amended provision of Section 93 of the Act on the ground that henceforth all orders passed by the Assistant Registrar would be appealable to the Registrar. Amongst other grievances made by the petitioner in this Writ Petition including the challenge to the amendment of the statutory provisions confirming appellate powers, one of the other ground urged is that since order of supersession Annexure P-2 was passed by the Assistant Registrar, who at the relevant point of time was exercising the powers of Registrar, the appeal can not be heard by the Registrar. Learned Counsel submits that an officer of the same rank can not hear an appeal from the order of another officer occupying the same post. In these circumstances, the appeal should have been decided by the Additional Secretary or Secretary to the Government of Himachal Pradesh who was the appellate authority and higher in hierarchy to the officer, who has passed the order of supersession.

4. This submission of the petitioner requires to be accepted. It is undisputed before me that by the notification noticed above, the Assistant Registrar, Hamirpur was exercising the powers of the Registrar Cooperative Societies. In these circumstances, the natural consequence which would follow is that an order of the Registrar is not appealable before another Registrar. Appellate powers are always exercised by a superior authority and not a co-ordinate authority. In these circumstances, the order Annexure P-4 is quashed and set-aside. A direction is issued that the appeal preferred by the petitioner shall be heard and decided either by the Additional Secretary or Secretary (Cooperative) to the Government of Himachal Pradesh as may be nominated by the Government. The appeal shall be heard on the material already on record placed by the petitioner and the respondents. Needless to say that the appeal shall be disposed of on or before 30th November, 2010. The parties to appear before the Secretary (Co-operative) on 24th May, 2010. I have not pronounced anything on the legality of the amendment carried out in the Rules. Writ Petition disposed of. There is no order as to costs.