
(2011) 01 SHI CK 0110
In the High Court Of Himachal Pradesh
Case No : CWP No. 3829 of 2010

Narinder Singh and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 37, 93, 94

Citation : (2011) 01 SHI CK 0110

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this petition, the Petitioners who are the members of the Managing Committee of the Lalri Cooperative Agriculture Service Society (hereinafter referred to as the "Society") have challenged the order, Annexure P/1 whereby the Additional Registrar, Cooperative Societies, Dharamshala quashed the amendment made in the bye-laws of the Society and issued show cause notice based on such order.

2. Briefly stated, the facts of the case are that as per the bye-laws of the Society, the value of each share was Rs. 10/-. In a meeting of the General House allegedly held on 12.3.2008, this value was increased from Rs. 10/- to Rs. 1000/-. It is not disputed that this amendment to the bye-laws was duly accepted by the Assistant Registrar, Cooperative Societies. Thereafter, elections to the Managing Committee were held and only people who had shares worth Rs. 1000/- and more were permitted to contest and take part in the elections. The Petitioners were duly elected. It appears that some persons including the Respondents Nos. 5 and 6 had filed representations before the various authorities under the Cooperative Societies Act against the amendment in the bye-laws. When no action was taken on their representations, they filed a Writ Petition and this Writ Petition being CWP No. 1811 of 2009 was disposed of on 23.11.2009 with a direction that the authorities to whom the representation was

made shall decide the same and take a consequential decision within a period of eight weeks from 23.11.2009. It appears that such decision was not taken and thereafter, a Contempt Petition was filed. After the Contempt Petition was filed, the Respondents passed the order, Annexure P/1 dated 21st June, 2010. According to the Petitioners, this order has been passed in a hot haste and was only passed as a result of the pressure exerted due to the filing of the Contempt Petition.

3. It would be pertinent to mention here that thereafter, on 21.6.2010 itself, the Additional Registrar, Cooperative Societies also passed another order that in view of his order dated 21.6.2010 holding that the amendment to the bye-laws was not proper, the election itself was not proper and, therefore, this Managing Committee was required to be superseded. The Additional Registrar, Cooperative Societies sought approval of the Registrar to supersede the Managing Committee. On the next day, i.e., 22.6.2010, the Registrar, Cooperative Societies not only gave his approval to the same but further directed the Additional Registrar to appoint an administrator to lookafter the functioning of the Society. Subsequently, show cause notice dated 24.6.2010 was issued to the members of the Managing Committee as to why the Managing Committee of the Society should not be superseded.

4. As far as the show cause notice is concerned, such show cause notice is virtually meaningless since both the Additional Registrar as well as the Registrar have already taken a decision to supersede the Managing Committee and appoint an administrator.

5. A preliminary objection has been raised that this petition is not maintainable since the Petitioners have an alternative efficacious remedy available to them.

6. Sh. Ashok Sharma, learned Counsel for the Petitioners submits that in fact, there is no efficacious remedy available to the Petitioners since the Additional Registrar has already taken a decision to supersede the Managing Committee and the show cause notice is only an eye wash. Any action to supersede a Committee has to be in consonance with Section 37 of the H.P Cooperative Societies Act, 1986 (hereinafter referred to as the "Act"). Any order passed u/s 37 is appealable in terms of Section 93 (e) of the Act. Section 94 of the Act further provides that in case the order has been passed by the Additional Registrar, an appeal shall lie to the Registrar and in case the order has been passed by the Registrar then the appeal shall lie to the Government.

7. In the present case, the Additional Registrar, Cooperative Societies had already taken a decision to supersede the Managing Committee and the Registrar has not only approved this decision but has also given a further direction that an administrator be appointed to lookafter the affairs of the Society. An alternative remedy is only efficacious if the person who avails of such remedy can get some relief. The Petitioners definitely cannot get relief from the Additional Registrar or the Registrar of the Cooperative Societies. However, the order of the Registrar

dated 22.6.2010 is also appealable order since it has been passed u/s 37 of the Act and appeal lies to the State Government. The Petitioners have an alternative efficacious remedy of approaching the State Government.

8. Therefore, the present petition is rejected as being pre-mature and liberty is given to the Petitioners to file an appeal u/s 93 of the Act to the State Government. If such appeal is filed on or before 20.1.2011, the same shall be deemed to be within limitation. To protect the interest of the Petitioners, it is directed that till this appeal is disposed of by the State Government, the Managing Committee shall not be superseded and no administrator shall be appointed and the Managing Committee shall continue to function. It is however, made clear that if the Petitioners try to unnecessary delay the proceedings then the Respondents shall be at liberty to approach this Court for vacation of this part of the order.

9. The petition is disposed of in the aforesaid terms. No order as to costs.