

(2020) 10 SHI CK 0169

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2607 Of 2020

Om Prakash & Ors

APPELLANT

Vs

State Of H.P And Ors

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 12
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11(5)
Himachal Pradesh Cooperative Societies Act, 1968 — Section 37, 37(1), 37(1A), 37(1A)(1)

Citation : (2020) 10 SHI CK 0169

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Sudhir Thakur, Karun Negi, Ashwani Sharma, J.S. Guleria, Sanjeev Bhushan, Rajesh Kumar, J.L. Bhardwaj

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. Through, the extant writ petition, the writ petitioners, cast, a challenge, upon, Annexure P-5, annexure whereof embodies echoings, vis-à-vis, a show cause notice, becoming issued, upon, the Members, of, the Managing Committee, of, the Cooperative Society concerned, wherethrough, an, explanation, became elicited, from them, (a) vis-à-vis, whether there being any necessity for further statutory action(s), or, order(s), being made, against them, for, the breaches, as became unfolded, in the afore show cause notice. Also, through the impugned Annexure, the Assistant Registrar concerned, through exercising powers, conferred upon him, under Section 37(1-A), of the Himachal Pradesh Cooperative Societies Act, 1968, (hereinafter for the sake of brevity referred to as "the Act") proceeded, to, suspend the Managing Committee, and, also further ordered, hence for, ensuring smooth, and, efficient functioning, of, the Society, qua rather, the appointment, of, one Shri Hans Raj Sharma, Block Inspector Cooperative Societies, Kunihar, to, work, as, an Administrator, of, the Society, being, an,

imperative necessity, rather, till the conclusion, of, the proceeding, qua wherewith, a, show cause notice, was issued, upon, the members, of, the Cooperative Society concerned.

2. Before this Court proceeds, to delve, into the merits of the case, it is deemed fit, to, seek the assistance, of, the learned counsels, appearing for, the contesting parties, vis-à-vis, the maintainability, of, the extant writ petition, before this Court, (a) conspicuously given, their undisputedly, occurring, a, statutory bestowment, upon, the writ petitioners, to, make, a challenge, upon, the impugned Annexure, through a revision, being preferred, thereagainst, before the revisional authorities concerned, (b) whereupon, hence the afore statutory remedy, working as an obstacle, qua the writ petitioners, to, invoke the extraordinary writ jurisdiction, of, this Court.

3. The learned counsel, for, the respondents placed, heavy reliance, upon, a judgment, rendered by the Hon'ble Apex Court, in case titled, Thansingh Nathmal and ors. versus The Superintendent of Taxes, Dhubri, reported in, AIR 1964, Supreme Court 1419. Moreover, the learned counsel for the respondents, also placed reliance, upon, judgments, rendered by the Hon'ble Apex Court, in case titled, Union of India and another vs. Kunisetty Satyanarayana reported in (2006) 12 Supreme Court Cases, 28, and, in case titled, Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha, reported in (2012), 11, Supreme Court Cases 565, (i) wherein, trite expostulations of law, are, embodied, hence, barring the exercise, of, extraordinary writ jurisdictions, by, the High Court, upon, evident availabilities, of, befitting, alternative thereto, statutory remedies, vis-à-vis, the aggrieved, for, the, latter therethrough(s) making onslaught(s) qua the unwarranted action(s), or, qua the invalidly made, order(s), as the case may be, as become(s) rather taken or made, by the statutory authorities concerned. However, the existence of the afore bar, against, the exercise, of, writ jurisdiction, by, the High Court, is, yet with, an, exception, inasmuch as, (ii) qua upon evident exponentially exceptional case(s), the High Court proceeding, to, exercise, writ jurisdiction(s), dehors, availability, to, the aggrieved, to, recourse the prescribed alternative statutory remedy(ies), for, his/her/it, therethrough, impugning the, unwarranted acts, or, void ab initio, order(s), as become, taken or made, hence by the statutory authority(ies) concerned. The further exception thereto, is obviously, upon, failure, of, the statutory authority(ies) concerned, to, adopt the mandated procedural course(s), or statutory streams, or upon, their failure to, exercise the jurisdiction(s), vested upon them, under the relevant statute, (iii) thereupon, the writ court, becoming, validly empowered to issue, a, writ of, mandamus, upon, the derelict or indolent, statutory authority concerned, for, its proceeding(s), to, act or perform, its, statutory obligations or duties, as become, statutorily encumbered, upon him, or it.

4. Contrarily, the learned Senior Counsel, appearing on behalf of the writ petitioners, has placed heavy reliance, upon, a verdict, rendered by this Court, in

CWP No.341 of 1993, case titled Ajmer Singh vs. The Hamirpur Distt. Coop. Marketing Consumers Federation Ltd. & ors, decided on 20.10.1994, (a) wherein, it has become expounded, vis-à-vis, there being, no bar, to, the exercise, of, writ jurisdiction, by the High Court, vis-à-vis, matters appertaining, to, Cooperative Societies concerned. The afore made reliance, by the learned Senior Counsel, for, the writ petitioners, upon, judgment (supra), rendered by this Court, is, a heavily misplaced reliance, thereon(s), (a) as the learned Senior Counsel, for the writ petitioners, has become unmindful, vis-à-vis, therein, this Court being beset with the conundrum, whether, the, Cooperative Society(ies), being an authority, under Article 12, of, the Constitution of India, or, (b) whether the said authority, discharging public duties, and, whether hence, the, exercise of writ jurisdiction, being available, to be invoked, by the writ petitioners, therein. However, the principle, for fixing the apt ratio deci dendi therefrom, is, comprised, in the factum, of, there occurring completest similarities, inter se the facts, of, the afore judgment, and, the facts at hand. However, reiteratedly, a close reading, of, the factual matrix, as, borne therein, does not unfold, vis-à-vis, their occurring any apt, factual compatibility, inter se the factual matrix borne therein, vis-à-vis, the facts at hand, nor hence, the afore judgment, operates, as, the apt guiding principle, for deciding the lis, at hand, nor, the aforesaid judgment (supra), becomes, the, apt ratio, deci dendi, for rendering an adjudication, vis-à-vis, a controversy, appertaining, to, the existence, of, an alternative remedy, qua, the writ petitioners, hence as become(s) consistently pronounced, in, judgment(s) (supra) (c) rather to, operate, as a, bar against the invocation, of, the writ jurisdiction by the writ petitioners. Moreover, since after this Court, in, judgment (supra) concluding, vis-à-vis, the amenability, of, Cooperative Society(ies), to, the exercising thereon, of, writ jurisdiction, by this Court, it vis-à-vis, the imposition, upon him, of, a, blatantly unlawful, penalty, inasmuch as, it breaching, the statutory, canon, borne in Rule 11 (5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, became constrained, to grant the, espoused relief to the petitioners therein. Since, the afore evident, blatant breaching(s), as made by, the respondent(s) therein, did constrain, this Court, in, judgment (supra), to, hence proceed, to, de hors existence, of, an alternative remedy, if any, available to the writ petitioners, therein, hence quash the order imposing, an unlawful penalty, upon him, hence obviously, therefrom, evident culling(s), emerge(s), inasmuch, as, (d) the afore evident breach, of, an unbreachable statutory canon, falling within the exception, to, the, exercise, of, writ jurisdiction, (e) even when, an alternative statutory remedy(ies), are, available, vis-à-vis the aggrieved, and also, the afore evident breach, falling within the arena, of, the afore exception, appertaining, to, an, evidently exponential exceptional circumstance, (f) hence the writ Court proceeding, to, invoke its extraordinary writ jurisdiction, de hors, the aggrieved petitioners, holding an efficacious thereto, hence an alternative statutory remedy, and de hors, the, apposite Cooperative Society, (g) rather holding, the, apt legal firmament(s), of, an, instrumentality(ies), or, agency, or, other authorities contemplated, under Article 12, of, the Constitution of India. Even though the

Cooperative Societies concerned, are mothered by the apposite statute, and, hence acquire an, apt statutory firmament, and, though, hence, become instrumentally(ies) or other authorities, of, the State, upon, their manifestly discharging public duties or public function(s), and also when, a, mandamus, can become issued, upon, the Cooperative Societies concerned, (h) yet, the issuance of, a, mandamus, upon, the latter, is, confined, upon their breaching any positive statutory obligation, or their omitting, to, mete prompt adjudication, upon, the lis appertaining to the functioning, and, management, of, the Cooperative Societies concerned, (i) whereupon also, an apposite therewith mandamus, rather for awakening, the, slumbering statutory authorities, being validly renderable, upon them.

5. Be that as it may, if, the, impugned show cause notice, does make evident displays, qua, (i) hence, the, statutory authority, making blatant breaches or visiting transgression(s), vis-à-vis, the domain(s), of, the apposite, statutory provision(s), (ii) thereupon, this Court, would dehors, an, alternative statutory remedy, being available, for recouring to, the writ petitioners, hence proceed to construe it, as, an exponentially exceptional circumstance, and, whereafter, it would proceed, to, make an interference, with the impugned order.

6. A, reading, of, sub-section (1) thereof, discloses, qua it, empowering, the Registrar concerned, to, upon (a), any Cooperative Society(ies) or any member thereof, persistently making defaults, or being negligent, in the performance of the duties, imposed upon him/her/it, (b) or his committing any act, which is, prejudicial, to, the interest, of, the society, or its members, (c) thereupon, the Registrar, after giving, an, opportunity, to, the members to state their objections, if any, make, rather make, order(s) for (i) removal of the committee, (ii) and, also his becoming empowered, to, order fresh election to the committee, (iii) to remove, the defaulting member, and, getting the vacancy filled up, for the remaining period, of, the outgoing member, according to the provisions, of, this Act, Rules and bye -laws. However, the afore statutory empowerment invested, in the Registrar, under, sub-section 1 of Section 37 of the Act, is not to be read in segregation, nor independently, from sub-section 1-A thereof, (iv) especially, when the opening, of, sub-section 1-A, commences with the phrase, "where", the Registrar, while, proceeding, under Section 1 of Section 37, of, the Act, whereupon, the afore opening phrase thereof, does unveil, qua, a pointed statutory contemplation, and, prescription, qua the inter se dependence, of, section 1, and, of sub, section 1-A, of Section 37, of the Act.

7. In the afore endeavor, it also becomes incumbent, upon, this Court, to, discern from the impugned show cause notice, whether, its falling, within the domain, of, the statutory provisions, borne in Section 37 of the Act, provisions whereof, stands extracted hereinafter :

37. Supersession of Committee :-

(1) If, the opinion of the Registrar, a committee of any co-operative society or

any member thereof persistently makes default or is negligent in the performance of the duties imposed on it of him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society or its members, the Registrar may, after giving such committee or member, as the case may be, an opportunity to state its objections, if any, by order in writing-

(a) remove the committee, and-

(i) order fresh election to the committee, or

(ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified, in the order which period may at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period does not exceed five years; or

(b) remove the member and get the vacancy filled up for the remaining period of the out going member, according to the provisions of this Act, the rules and the bye-laws.

(1-A) Where the Registrar, while proceeding to take action under sub-section (1) is of the opinion that suspension of the committee or any member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend, such committee or member, as the case may be, and where the committee is suspended, make such arrangements as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided that if the committee or member or suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term:

(2) The Registrar may fix such remuneration for the administrator, as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3) The administrator shall, subject to the control of the Registrar and to such instructions as he may from time to time given, have power to perform all or any functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.

(4) The administrator shall, at the expiry of his term of office, arrange for the constitution of new committee in accordance with the bye-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which it is indebted.

(6) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years as the Registrar may fix and the said period shall commence after the expiry of the term of the committee from which he is removed.

The section provides for the removal of the committee of a co-operative society,

if it mismanages its affairs. It also provides further for the appointment of an administrator in place of expelled management, till a new committee is elected.

8. Reiteratedly, a, conjoint reading of both the afore, statutory provisions, would enable, this Court to make, discernment(s), vis-à-vis, the impugned show cause notice, visibly, visiting blatant, and, manifest transgression(s), qua the provisions, of, sub-section 1, of, Section 37, and, of, sub-section 1-A thereof, (i) whereupon, this Court, would become constrained, to, dehors, the availability, of, an alternative statutory remedy, to the writ petitioners, hence invoke its extraordinary writ jurisdiction.

9. After making, the, afore interpretation(s), thereof, inasmuch as qua, the inter se, interdependence, of, sub-section 1, and, of, sub-section 1-A, of, Section 37 of the Act, thereof, (i) it becomes enjoined, upon this Court, to, further gather from a cumulative or combined reading, of, both the afore statutory provisions, qua theirs, making unfoldings, vis-à-vis (a) even, when the elicited response, to, the show cause notice, is, awaited, from the member(s) concerned, nor also when any decision thereon, is, taken by the Registrar concerned (b) whether, hence the Registrar concerned, becomes empowered, to, proceed, to, yet make, an order, hence suspending the managing committee, of, the petitioner society, and, to also till the conclusion, of, the statutory proceedings, as become commenced, through, the mandate, of, sub- section 1, of, Section 37 of the Act, rather appoint an administrator, for, managing the affairs, of, the society.

10. If the answer, to, the afore works, qua the petitioners, thereupon, this Court would construe, the impugned show cause notice, to be, gripped with, a, blatant, vice of, therethrough(s) apparent breaches, becoming visited qua, the apposite statutory provisions, and, (i) hence would also proceed, to, despite the availability, of, an alternative statutory remedy, hence construe, it, as, an, exponentially exceptional circumstance, for its, thereafter, dehors, the availability, of, the, afore statutory remedy, hence make an order, for, quashing, of, the impugned, Annexure.

11. However, if, the answer, to the afore conundrum, is, against the writ petitioners, hence evidently, it would work, as, obstacle, against them, and, hence this Court, would relegate, the petitioners, to, the alternative statutory remedy, of, it casting a challenge, thereagainst, before the statutory authority concerned.

12. In gathering, an, apt, answer, vis-à-vis, the afore legal conundrum, this Court makes an incisive reading, of, sub-section 1-A, of, Section 37, of, the Act, whereupon it discerns vis-à-vis the word's, "while" proceeding to, take action, occurring, within, sub-section 1-A, of, Section 37 of the Act, and also, the words, "during the period of proceedings", as become borne therein, rather providing the clue or the beacon of light, for, adjudging the meritworthiness, or for adjudging the legal validity, of, the impugned Annexure. Both, the afore statutory coinage(s), do, necessarily acquire connotation(s) vis-à-vis, their being, imbued,

with, an apt, statutory sub judice parlance, and, the afore sub judice proceeding(s), rather arising from invocation, of, sub-section 1, of, Section 37, of, the Act, (i) and, during pendency whereof, the statutory authorities concerned, become vested, through, sub-section 1-A, of, Section, 37, of, the Act, to suspend the managing committee and, also, to, appoint, an, Administrator, for ensuring, the, smooth functioning, and, management of the affairs, of, the, society, till, the proceedings, drawn under sub-Section 1, of, Section 37 of the Act, are completed. Obviously, when consonant therewith orders, are, hereat made, (ii) thereupon, the afore apposite statutory provisions become neither blatantly transgressed nor any patent breaches become visited upon them (iii) nor hence, the writ jurisdiction, is, available to be invoked by the petitioners, given theirs holding(s), an, alternative statutory remedy, to, impugn the show cause notice. In other words, during the phase or during the era, of, pendency of proceedings, drawn, under sub-section 1, of Section 37, of the Act, the legislature, has, through engrafting sub-section 1-A, of Section 37, of the Act, devised therethrough, a, special mechanism, to, obviate occurrences within the afore phase or era, hence of defalcation, of, the money(s) of the society, and also, management, of, the affairs, of, the society concerned. The afore interim mechanism, obviously operates, hence in the interregnum inter se, the, proceedings, drawn, under sub-Section 1, of, Section 37, of, the Act, and, hence may terminate, upon, closure thereof. Moreover, since the show cause notice, is, issued, through proceedings, drawn, under sub-Section, 1, of, Section 37, of the Act, hence upon the Society concerned or its members, and also, when upon satisfactory explication(s), vis-à-vis, the ascribed purported misdemeanor(s), becoming meted by the Society or its member(s), as the case may be, (iv) thereupon, the afore show cause notice, embodying therein, the scribed therein(s) allegations against the society or its members, rather may become dropped, (iv) whereupon(s), with, the, afore show cause notice, hence begetting adherence vis- à-vis, the solemn principle, of, audi alteram palteram, and, reiteratedly, with the action taken, under, sub-section 1-A of, Section 37, of the Act, being for, ensuring obviations, of, all, menaces embodied therein, (v) and, also, when the, statutory mechanism contained, in, sub-section 1-A, of, Section 37, of the Act, is, curative in nature, thereupon, all the consonant therewith(s) restings, thereon(s), in, the show cause notice, cannot be construed to be statutorily flawed, (vi) as thereupon, the afore, holistic object behind engraftment, of, sub-section 1-A, of Section 37, of the Act, would become untenably frustrated.

13. Reiteratedly, since the order, of, appointment, of, an administrator, also occurs in the impugned show cause notice, and also, when the afore order, is, made, within the ambit, of, empowerment(s), conferred upon, the Registrar concerned, through, a, mandate, borne in, sub-section 1-A, of, section 37 of the Act, (i) thereupon, also in the afore making(s), in, the apposite impugned show cause notice, no breaches, or, transgression(s), hence become visited qua the apposite statutory provisions, of, Section 37, of, the Act.

14. Moreover, the salient statutory purpose, behind engraftment, of, sub-section 1-A, of, section 37, of, the Act, is, to ensure that, procrastinated delays, at the instance of any, of, the litigant(s), hence with, an, oblique motive, hence becoming blunted. Moreover, the aggrieved from the afore delays, is, protected, through, deployments, of, the afore devised statutory mechanism, embodied, in, sub-section 1- A, of Section 37, of the Act, for, hence ensuring that the negligent managing committee, or any, of, its members, become(s) precluded, through, hence its/theirs suspension and also, through, an appointment of, an, interim administrator, from, its/theirs rather further causing defalcation(s) in the money(ies), of, the society, and also, mismanaging, the, affairs of the society.

15. In summa, the afore holistic purpose, behind the engraftment, of, sub-section 1-A, of, section 37, of, the Act, cannot be strived to be benumbed, merely, on account, of, pendency, of, action, taken, under, sub-Section 1, of the Act by the Registrar concerned, after his eliciting objections, vis-à-vis, the show cause notice, as become(s) issued, by the Registrar concerned, vis-à-vis, the society concerned, or the member concerned, reiteratedly through, the, latter recouring, the mandate, of, sub section 1, of, Section 37 of the Act. More so, emphatically, when, for all, the aforestated reasons, the mere pendency, of, response(s), to, the show cause notice, by the errant managing committee concerned, or, the errant members concerned, cannot work(s), as, any valid/ legal, or statutory obstacle, against the Registrar concerned, to, recourse, the, mandate, of, sub section 1-A, of, Section 37 of the Act. Consequently, the afore, holistic object, behind the engraftment, of, section 1-A, of Section 37 of, the Act, cannot be either scuttled or jeopardized, through, the writ petitioners, endeavoring to, annul, the interim appointment, of, an administrator, as made during the pendency, of, proceedings, as become commenced, through, the issuance, of, a, show cause notice, made under sub-section 1, of Section 37, of the Act, upon the petitioners society, hence by the Registrar nor the petitioners, can seek, an order, for, quashing the suspension, of, the managing committee. Moreover, there is no necessity, of, any show cause notice, being issued upon the petitioners society, before the afore action being taken under, sub-section 1-A, of, Section 37, of the Act, as this Court, for, all the aforestated reasons, has refuted, the contentions, as made by the petitioners, that, even prior, to, the action being taken, under, sub-section 1-A, of, Section 37, of the Act, a, show cause notice was enjoined, to be served upon the petitioner(s) society.

16. Consequently, the extant writ petition, is, dismissed, as not maintainable.

17. However, the challenge, before the statutory authorities concerned, by the writ petitioners, would become confined only, vis-à-vis, the officer concerned, lacking the credibility or the integrity, to, work, as, an, impartial administrator, of, the Society concerned, (i) as any, omnibus leverage(s), to the writ petitioner(s), to constitute, the, fullest onslaught, upon the show cause notice, would erode and whittle, the vigour, of all, the afore reasoning(s), as become, made by this Court.

18. Upon, the, afore apposite motion, being made before the revisional authority, it shall after receiving evidence, from, the petitioners, vis-à-vis, his/her-it lacking, the, apposite credential(s), (i) thereupon, the revisional authority, shall make, a, decision, thereon(s) within four weeks thereafter, and, shall also take appropriate action against him, and, shall also proceed, to, appoint, a, new administrator. Furthermore, to ensure that the proceedings, drawn, under sub-section 1, of, Section 37, of the Act, do not, become inordinately procrastinated, and also, for ensuring that, the, administrator, whose appointment, is, only, an, interim measure, does not stall, the managing(s), of, the, affairs, of, the, society, by, a democratically elected body, (ii) thereupon, the Registrar concerned, is, also, directed to, within, eight weeks hereafter, hence make, a, decision, after receiving, objections, if any, if not, already, upon, the show cause notice, drawn, under, sub-Section 1, of the Act.

19. Moreover, given the scale, and, level of corruption, in the Cooperative Society(ies) concerned, as become unfolded, through various motions, being directed, against, blatant illegalities, and, irregularities, hence made or committed, by the managing committee(s) concerned, of, the Cooperative Society(ies) concerned, (i) and, also when the authority(ies) concerned, in performing, their statutory duties, hence are indolent, (ii) thereupon, the Registrar, is, directed, to, through, conceiving mechanism(s), hence ensure, that, all, the, afore statutory, deviations and misdemeanors, in the performance, of, the duties, and, functions, of, both, the managing committee(s), of, the Cooperative Society concerned, and, of the statutory authorities concerned, hence become halted or paused, (iii) rather, for, ensuring, that, all the statutory authorities concerned, carry forward the spirit, behind, the, engraftment, of, the Act, and, he/she/it, shall also ensure, the smooth functioning(s), of, the Cooperative Societies concerned. The Registrar, is, also, directed, to, keep, a constant, vigil, vis-a-vis, the working(s), of, all the statutory authorities concerned, inasmuch as, theirs meteing prompt adjudication(s), upon, the lis(s) pending before them.

20. All pending applications are disposed of.