

(2012) 02 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6156 of 2009

Punjab State Federation of Co-operative Sugar Mills Ltd.	APPELLANT
Vs	
Additional Registrar (D) Cooperative Societies Punjab Chandigarh and Another	RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 114, 115
Punjab Co-operative Societies Act, 1961 — Section 68, 69, 84A, 85(2)(xxxviii)

Citation : (2012) 4 RCR(Civil) 204

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Vikas Singh, for the Appellant; O.P. Dabla, DAG, Punjab and Mr. Harit Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The instant writ petition and two other connected writ petitions* are being disposed of by a common order as common questions of law and fact arise in the three cases. The facts have been taken from CWP No. 6156 of 2009 for convenience. The facts lie in a narrow compass. Respondent No. 2-H.S. Sarangal and two others S.L. Kaushal and Jasbir Singh respondents in connected writ petitions were charge-sheeted for misconduct. Their service conditions with petitioner Sugarfed were governed by the provisions of Common Cadre Service Rules, 1981. Separate show cause notices were issued to them in 2004. Their replies not having been found satisfactory regular inquiry proceedings were initiated by issuing chargesheets. They faced regular enquiry while working at Morinda Cooperative Sugar Mills, Morinda. Sh. K.C. Maini (IAS) retired was the enquiry officer who conducted the enquiry. He submitted enquiry report dated 08.10.2003. The charges were proved. A proposed punishment of dismissal from service was issued to all of them as well as imposition of penalty of making good pecuniary loss caused to the employer from the three defaulters, charged officials, in equal proportion. The Managing Director, Sugarfed vide order

dated 21.02.2005 did not find it a fit case for dismissal from service and instead ordered withholding of one increment with cumulative effect from all three. Besides, he also ordered that a recovery of Rs. 6,98,323/-be made to be shared equally by all three.

2. Aggrieved by the order imposing penalty, the 2nd respondent preferred a statutory appeal before the Board of Directors of Sugarfed in 2006. The three appeals were decided by a common order dated 06.12.2006 (P-2). The appeals were partially accepted by a Sub Committee constituted by the Board of Directors to hear the appeal from amongst the members of the Board of Directors. The Appellate Authority held the petitioners guilty of not following instructions but did not find them guilty of causing any willful loss to the Sugar Mill. In the result, the recovery order did not survive.

3. The Managing Director of Sugarfed dissatisfied with the decision of his own Board of Directors preferred a Revision Petition u/s 69 of the Punjab Cooperative Societies Act, 1961 before the Registrar Cooperative Societies, Punjab. The revision was heard by the Additional Registrar (D) who by order dated 28.08.2008 dismissed the revision petition as not maintainable. He held that a revision petition u/s 69 does not lie against the decision of the BOD-Appellate Authority because the BOD-Appellate Authority is not an authority subordinate to the Registrar Cooperative Societies. The Managing Director was held to be subordinate to the Board of Directors and the bye-laws of the Cooperative Society did not authorize him to challenge the decisions of the BOD and, therefore, the Managing Director could not challenge the decision of his superior statutory authority.

4. On notice having been issued on the petition, the respondents have put in appearance. The Joint Registrar (Farming) Cooperative Societies, Punjab has filed a reply by way of short affidavit stating that the impugned order has been passed in a quasi-judicial capacity and, therefore, respondent No. 1 is only proforma party and not a contesting respondent. Respondent-H.S. Sarangal filed a reply so also for the two other respondents in the connected cases. The only issue which arises for consideration in the present case is whether the revision was maintainable.

5. Mr. Vikas Singh, learned counsel for the petitioner has confined his argument as to the maintainability of the petition and has not delved on the merits of the case at the hearing.

6. I have heard learned counsel for the parties at length and perused the record.

7. Mr. Harit Sharma, learned counsel for respondent No. 2 submits that the order of punishment was passed by the Sub-Committee constituted by the Board of Directors in which there was no nominee of the RCS, Punjab. The final decision rested in the society itself. A revision u/s 69 would be competent only where no appeal lies to the Government u/s 68. The Government in the present case has not acted suo motu or on the application of a party to a reference. There is

absence of both these ingredients in the present case. Mr. Vikas Singh, learned counsel for the petitioner relies on a Full Bench decision of this Court in *Jasbir Singh and others v. Commissioner (Appeals) Jalandhar Division and others*, reported in 2011(3) PLR 545 in which several issues have been thrashed out in the background of both Section 69 of the Punjab Cooperative Societies Act, 1961 and its *pari materia* provision contained in Section 115 of the Haryana Cooperative Societies Act, 1984. He contends that an aggrieved person under both the provisions can apply whether he is or is not a party to the reference. That remedy of revision is barred only in case where appeal against the impugned order lies u/s 68 of the Punjab Act. Both the learned counsel strongly rely on the decision of Full Bench. Mr. Harit Sharma, learned counsel for the respondent No. 2 would rely on the same decision to submit that a remedy of revision whether *suo motu* or otherwise cannot be invoked against an order passed by the society. The said power can be exercised only against the decision or order passed by the authority under the Act or a proceeding arising out of the Act, or the rules framed thereunder. Mr. Sharma, however, submits that the Common Cadre Rules applicable to the parties herein are akin to statutory rules and stand on equal footing and have therefore statutory favour. Para 35 of the Full Bench decision reads as follows :-

35. There are three categories of Service Rules which can be framed to regulate the conditions of service of the employees of the Society. In first category, a registered Society under the Societies Act can frame its own Service rules to regulate the service conditions of its employees. The Rules may be binding between the Society and its employees. The second category of the Rules is those rules which are formulated u/s 85(2) (xxxviii), which empower the Government to frame Service Rules for any Co-operative Society or for class of societies with regard to qualifications for employees of a Society or class of society and the conditions of service subject to which persons may be employed by Societies. Such Rules so framed have the force of Statute and are deemed to be incorporated as a part of the Statute, whereas this principle does not apply to the first category of Rules framed by the Society because those Rules merely govern the internal management, business or administration of a society. They are of the nature of the Articles Of Association of a Company incorporated under the Companies Act. There may be binding between the persons affected by them, but they do not have the force of a statute. But the second category of Rules is the Statutory Rules and they have the force of the statute. Similarly, there is third category of Rules known as Common Cadre Rules. These rules could have been framed u/s 84-A of the Punjab Act which provide that an apex society may *suo motu* and when required to do so by the Registrar shall constitute a common cadre of all, or specified class of employee in the service of that society or in the service of the central societies which are members of the apex society or in the service of the primary societies which are members of the apex society. Sub-section (2) further, provides that when a common cadre of employee is constituted under sub-section (1), the Registrar shall

notwithstanding anything contained in any law for the time being in force or any agreement, settlement or award determine the pay scales and allowances admissible to such employees and Apex Society shall make rules for the regulation of recruitment and conditions of service of such employees with the prior approval of the Registrar. Therefore, the Common Cadre Rules framed under sub-section (2) by the Registrar are also having the statutory colour and stand on the same footing as that of the Statutory Rule.

8. The conclusions of the Full Bench are recorded in Para 54 and are reproduced below :-

54. In view of the above discussion, we reach to the following conclusion :-

(i) The State Government or the Registrar u/s 69 of the Punjab Act and the State Government u/s 115 of the Haryana Act can exercise its suo motu revisional jurisdiction on the application made by an aggrieved person, whether he is or not a party to the reference.

(ii) The remedy of revision is barred only in case where appeal against the impugned order lies u/s 68 of the Punjab Act or u/s 114 of the Haryana Act.

(iii) The remedy of revision is not barred in those cases where aggrieved person has a right of appeal under the Statutory Service Rules or Common Cadre Rules. An aggrieved party can challenge the order of Registrar or Deputy Registrar passed as an Appellate Authority under the Statutory Rules or Common Cadre Rules by filing a revision u/s 69 of the Punjab Act or u/s 115 of the Haryana Act as no remedy of appeal has been provided u/s 68 of the Punjab Act or u/s 114 of the Haryana Act against such order. But, if the appellate order is passed by the official of the Society and not by the Registrar or Deputy Registrar of the Co-operative Society, no revision is maintainable against such an order. The revision is maintainable only against the order passed by the authority under the Act or a proceeding arising out of the Act and the Rules framed thereunder.

(iv) The remedy of revision either suo motu or otherwise cannot be invoked against an order passed by the Society. The said power can be exercised against the decision or order passed by the authority under the Act or a proceeding arising out of the Act or the Rules framed there-under.

(v) The suo motu power of revision cannot be exercised by the State Government or the Registrar, as the case may be, where a revision u/s 69 of the Punjab Act or u/s 115 of the Haryana Act itself is not maintainable either on the ground that against the impugned order an appeal has been provided u/s 68 of the Punjab Act or u/s 114 of the Haryana Act or on any other ground. In case the Government or the Registrar, as the case may be, exercise suo motu power of revision on the application of an aggrieved party or otherwise, it must be specifically so stated in the order itself.

9. Mr. Harit Sharma, learned counsel for respondent No. 2 would rely on the underlined words.

10. Mr. Vikas Singh, learned counsel for the Sugarfed has placed reliance on a Division Bench decision of this Court in LPA No. 732 of 2010 decided on 11.08.2011 titled as The Punjab State Co-operative Milk Producers Federation Limited v. The Registrar, Cooperative Societies, Punjab and others. The Division Bench applying the principles laid down in Jasbir Singh's case (supra) has held as follows :

From these principles, it becomes very much clear that the revisional jurisdiction can be exercised suo motu on the application made by the aggrieved person, whether he is or not a party to the reference. The petitioners being the members of the Society are aggrieved persons as they do not want a dishonest person to be a salesman of the Society. Every member is bound to be affected by the embezzlement committed by the salesman. Therefore, revisional jurisdiction could have been exercised suo motu by the Joint Registrar on the application moved by the petitioners and another member of the Society.

11. Mr. Sharma has further relied on a decision of this Court in Rajinder Singh Vs. The Registrar, Co-operative Societies, Punjab where it has been held that to exercise jurisdiction u/s 69 there must be an order or decision passed in any proceedings under the Act. In the present case, the proceedings had culminated in the society itself by a decision of the sub-committee of the BOD. It was not a proceeding under the Act and, therefore, the Additional Registrar was correct in holding that the revision itself was not maintainable. Para 3 of the judgment may be quoted :-

3. The argument of the learned counsel for the petitioner is that the Registrar Cooperative Societies had no jurisdiction to entertain the revision petition much less restrain the petitioner from performing his duties as a Director as he had been duly elected from Zone No. 3 in pursuance to the election programme settled by the Deputy Registrar exercising the powers of the Registrar. We find merit in this contention. It is by now well settled that an elected representative cannot be restrained from functioning till his election is set aside in an election dispute properly raised in accordance with the Rules governing such disputes. Reference in this regard can be made to a decision of this Court in Satish Mohindroo and Others Vs. Assistant Registrar, Cooperative Societies and Others, . Moreover, the revision petition itself was not maintainable u/s 69 of the Act. A petition can be entertained by the State Government or the Registrar as the case may be for the purpose of examining legality or propriety of any decision or the order passed in any proceedings under the Act. There was no order passed by an authority which was challenged before the Registrar nor were any proceedings pending, the propriety of which could be examined by him. What was sought to be challenged in the revision petition was the election programme approved by the Deputy Registrar exercising the powers of the Registrar and not the election of the petitioner as a Director. In this view of the matter, the order of the Registrar restraining the petitioner from performing his duties as an elected Director of the Bank is without jurisdiction.

12. Mr. Sharma contends and which has not been able to be refuted by the learned counsel for the petitioner is that the Common Cadre Rules applicable to the respondent stop short of the final punishment order. There is no provision in the Common Cadre Rules which enables any one, including an aggrieved person, to carry an appeal, revision or review either to the Registrar, Cooperative Societies or the State Government. There is no medium in the rules to take forward the matter for further judicial or quasi judicial review. In LPA No. 732 of 2011 the decision was rendered in the light of the fact that the Registrar's nominee was on the Board of Directors that took the decision which became subject matter of challenge. Therefore, it could be construed as a decision under the act and, therefore, an appeal lay to the State Government. The case is distinguishable on this point of fact. In CWP No. 19790 of 2008 titled as The Amritsar Central Cooperative Bank Ltd. Amritsar v. Deputy Registrar (E) Cooperative Societies, Punjab and another, the learned Single Judge of this Court held that even in Gurnam Kaur Vs. State of Punjab etc., , the Full Bench of this Court had observed that a revision u/s 69 of the Act lies against the order passed by the subordinate authorities under the Act.

13. In my considered opinion, the above said decisions squarely cover the controversy involved in the instant petition. In the present case also, the suspension order and the order of issuance of charge sheet were not passed by any authority under the Act or in any proceedings thereunder. Those orders were passed by the Society under the Service Rules. The chapter stood closed there. The two judgments relied upon by learned counsel for the respondent do not support the case of respondent No. 2, particularly in the facts and circumstances of the instant case. In both the cases, revision petition was filed against the order passed by the Appellate Authority i.e. Deputy Registrar/Assistant Registrar, which was an authority under the Act. In the instant case, the suspension order and the order of issuance of charge sheet were passed by the officers of the Society, therefore, against those orders, revision u/s 69 of the Act was not maintainable. Thus, the order dated 29.9.2008, passed by respondent No. 1 is wholly without jurisdiction and the same is liable to be quashed.

14. In the light of the legal framework and the judicial pronouncements rendered by the Full Bench of this Court, the Division Bench and Single Bench decisions are well, I am of the considered view that neither Sugarfed nor its Managing Director were competent to challenge the decision of the Sub-Committee of the Board of Directors in which no order can be said to have been passed inviting revisional jurisdiction u/s 69 of the Act especially when there was no nominee of the RCS present and deciding. I see no legal infirmity in the finding of the Court below that the revision u/s 69 was not maintainable.

15. The present petition and connected writ petitions are accordingly dismissed. No costs. A copy of this order be placed on the files of other connected cases.