

(1982) 10 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10362 of 1975

Raghunandan Prasad Pandey and Others

APPELLANT

Vs

The Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 05-10-1982

Acts Referred:

Post Office Act, 1898 — Section 53

Citation : (1982) 10 AHC CK 0065

Hon'ble Judges : K.N. Singh, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : D.P.S. Chauhan and V.S. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

B.D. Agarwal, J.—This petition is directed against the order of the District Assistant Registrar, Co-operative Societies, Banda, dated December 30, 1974 and the order of the U.P. Co-operative Societies Tribunal, dated June 24, 1975.

2. The Attara Sahkari Kraya Vikraya Sahkari Samiti Ltd. Banda is a Co-operative Society registered under the provisions of the U.P. Co-operative Societies Act, 1965. The society owns a Rice Mill and it undertakes the processing of paddy belonging to its members and acts as the agent for the produce on their behalf. For the year 1974-75 the Society entered into an agreement with the Firm M/s. Lakhan Singh Narbada Prasad for the processing of the paddy. The agreement was executed on February 15, 1974. The committee of management had passed a resolution for the purpose earlier on December 28, 1973. In the carrying out of the agreement there was certain loss incurred by the Society. A notice was issued to the Petitioners which was followed by an order of the District Assistant Registrar, Co-operative Societies, Banda, dated December 30, 1974 whereby he expressed the view that the loss incurred was to the tune of Rs. 8923.08 and the Petitioners were directed to pay the same as surcharge. The matter was taken in appeal to the Tribunal which recorded the finding dated June 24, 1975 to the effect that the amount of loss incurred was Rs. 5166.52 instead. Aggrieved

against the surcharge thus imposed, the Petitioners filed this petition.

3. Learned Counsel for the Petitioners raised two-fold arguments in the main:

(i) notice to show cause is required under Sub-section (1) of Section 68 of the U.P. Co-operative Societies Act, 1965 as well whereas in this case the only notice to show cause given was on September 25, 1974, which is under Sub-section (2) of Section 68;

(ii) according to Sub-section (1) of Section 68 there is to be inter alia, wilful negligence causing deficiency in the assets of the society and there is no such finding recorded either by the District Assistant Registrar or by the Tribunal above, mentioned.

4. Before proceeding to comment upon these contentions, it is necessary to reproduce the relevant provisions contained in Section 68(1) and (2) of the U.P. Co-operative Societies Act, 1965 which reads as under:

68. Surcharge (1) if in the course of an audit, inspection or the winding up of a co-operative society it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may of his own motive or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf to inquire into the conduct of such person:

Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this Sub-section.

(2) Where an inquiry is made under Sub-section (1) the Registrar may, after affording the person concerned a reasonable opportunity of being heard, made an order of surcharge requiring him to restore the property or repay the money or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such an extent, as the Registrar may consider just and equitable.

5. In relation to the contention (i), our attention has been drawn to Sub-section (2) of Section 68. According to that, where an enquiry is made under Sub-section (1) the Registrar has to afford the person concerned a reasonable opportunity of being heard before making an order of surcharge. There is no dispute that such opportunity is required at the stage when the Registrar has made an order under Sub-section (1) to the effect that the enquiry is to be made. The question is whether such opportunity or notice is required at the earlier stage of the Registrar making an order to the effect that the enquiry is to take place. It is significant that in Sub-section (1) there is no provision made expressly for such

opportunity or notice being given to the person concerned nor can such requirement be read into this by necessary implication. Indeed placed in juxta position with Sub-section (2), Sub-section (1) as framed clearly suggests the negative namely, that no such opportunity at that stage is contemplated. The principles of natural justice are not contained in a straight jacket. No opportunity, it would appear, is called for at every stage of the enquiry. We, therefore, do not find merit in this contention.

6. In relation to the contention No. (ii), the learned Counsel for the Petitioners may be said to stand on sound footing. An analysis of Sub-section (1) of Section 68 shows that the surcharge may be imposed on one or more of the following conditions being satisfied:

(i) any person entrusted with the management of the society or who has been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, Rules or the Bye-laws;

(ii) any such person has caused any deficiency in the assets of the society by breach of trust or wilful negligence;

(iii) any such person has misappropriated or fraudulently retained any money or other property belonging to such society.

7. In the instant case there is no averment by the Respondents to the effect that the Petitioners made or caused to be made any payment contrary to the Act, Rules or Bye-laws. It is also not alleged that the Petitioners or any of them misappropriated or fraudulently retained any money or other property belonging to the society. Reliance placed by the learned Standing counsel would seem to be exclusively on the provision relating to the person concerned having caused deficiency in the assets of the society by wilful negligence. There is no element of breach of trust attributed to any of the Petitioners. In relation to wilful negligence, the words " wilful " and "wilfully" have been frequently used in many statutes and have come up for judicial consideration in the courts time and again. In *Ramachandra Narasimha Kulkarni Vs. State of Mysore*, , in the context of Section 53 of the Indian Post Office Act, 1898, after a review of the authorities the Supreme Court observed that not infrequently the word " wilful " or " wilfully " has been used to mean that the act had been done with a bad purpose or without justifiable excuse or stubbornly, obstinately or perversely.

8. In the show cause notice issued on September 25, 1974 in the instant case, there appears no charge made to wilful negligence against the Petitioners. The order made by the District Assistant Registrar Co-operative Societies, Banda, dated December 30, 1974, is also silent in relation to any act of the wilful negligence. The District Assistant Registrar seems indeed to have had in view Rule 115 of the U.P. Co-operative Societies Rules, 1965, according to which in the conduct of the affairs of the Co-operative Society, every member of the committee of management shall exercise prudence and diligence of an ordinary man of business, shall not perform any act contrary to the provisions of the Act,

Rules and Bye-laws of the Society and shall not default in the performance of the duties entrusted under the Act, Rules or Bye-laws of the society. Assuming that there was lack of exercise of due prudence and diligence on the part of the Petitioners in this case, there is no liability for surcharge imposed u/s 68 merely on that account. The existence of wilful negligence may not be inferred on the mere footing that the Society suffered loss to the tune of Rs. 5166.52 as the Tribunal seems to have thought in this case. The order made by the Tribunal does not indicate the basis for arriving at this finding except that there is a reference made to the balance sheet of the Society of the relevant year. The relevant content of the balance sheet are explained in the affidavit accompanying the petition which are not countered specifically on the other side. The decision taken to enter into an agreement for proceeding with M/s. Lakhan Singh Narbada Prasad was under a resolution passed by the Committee of Management and there is no finding recorded to the effect that the Petitioners individually or collectively were guilty of wilful negligence in the matter of this agreement being entered into or the same being operated upon. It was also submitted for the Petitioners that there is no case of any deficiency caused in the assets of the society. The question is whether the order of surcharge could be passed u/s 68 against the members of the Committee of Management for the loss suffered by the society in carrying out the trade or business concerned. Assuming that upon the facts and circumstances of a case, it is possible to do so, for which we need express no opinion herein, the existence of wilful negligence or breach of trust or misappropriation etc., as the case may be, in accordance with Sub-section (1) of Section 68 remains indispensable.

9. In view of the discussion made above, the order made by the District Assistant Registrar, Co-operative Societies, Banda, dated December 30, 1974 and the order passed by the U.P. Co-operative Societies Tribunal dated June 24, 1975 are liable to be set aside and are hereby quashed accordingly. The Petitioners are entitled to their costs.