

(2000) 09 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9075 of 2000/-

S. Harmandar Singh and another

APPELLANT

Vs

Co-operation Minister, Punjab Civil Secretariat, Chandigarh
and others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Citation : AIR 2001 P&H 27 : (2000) 2 PLJ 599 : (2001) 2 RCR(Civil) 291

Hon'ble Judges : S.S.SUDHALKAR, J and MEHTAB S.GILL, J

Advocate : Ms. Jagdeep Bains, D. V. Sharma (for No. 1); Anil Sharma, Dy. Advocate General, Pub. (for Nos. 2 to 6 and 8); Ms. Jasleen Sawhney (for No. 9) and R. S. Rai (for Nos. 10 and 11), Advocates for appearing Parties

Judgement

MEHTAB S. GILL, J.—Petitioners have filed a writ under Article 226 of the Constitution of India for setting aside the notice dated April, 27, 2000 (Annexure P8) and the order dated June 20, 2000 (Annexure P9) passed by respondent No. 3 the Registrar, Cooperative Societies, Punjab, vide which, the Punjab State Federation of Consumer Cooperative Wholesale Stores Ltd. (hereinafter referred to as CONSTOFED) has been amalgamated with the Punjab State Cooperative Supply and Marketing Federation Ltd., Chandigarh (hereinafter referred to as MARKFED). It has been averred that petitioner No. 1 is a member of the Raikot Cooperative Agricultural Service Society, Tehsil Raikot, District Ludhiana. Petitioner No. 2 is a member of the Noor Mahal Cooperative MarketingcumProcessing Society, Tehsil Phillaur, District Jalandhar. Both these Societies are members of respondent No. 11MARKFED. The petitioners were elected to the Board of Directors of MARKFED on July 20, 1995 as per the provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the Act). Their tenure as Directors of the MARKFED had expired on July 20, 2000. Respondent No. 7CONSTOFED is a registered Society under the Act.

2. It has been further averred that on December 14, 1999, a meeting took place as to the future of Public Sector Undertakings under the Chairmanship of the

Chief Secretary, Punjab and was attended by the Financial Commissioner, Development, Principal Secretary, Finance, Principal Secretary, Industries and Commerce, Managing Director, PSIDC, Principal Secretary, Cooperation, Registrar, Cooperative Societies and the Director, Institutional Finance and Banking. As per Agenda Item No. 5 of the meeting. It was discussed that the Boards and Corporations where there are financial liabilities, they need to be merged with other organizations, the relevant portion of which is reproduced as under :

"Item No. 5: Merger of Corporations/PSUs which have similar kind of activities.

This item was discussed in detail and it was felt that Boards and Corporations need to be merged with each other where there will be a substantial gain by such merger. No merger should take place for the sake of merger or where such a merger will weaken the new entity. It was also felt that before such merger, a detailed analysis may be carried out as to how much of staff will be

rendered (sic) shall be may be closed down and how many posts will be abolished. The policy regarding redeployment of surplus staff may also be worked out simultaneously along with this analysis. The strategic advantage of such merger in terms of financial and operational benefits may be worked out."

3. It has been further averred that on December 17, 1999, a meeting was called by the Honble Cooperation Minister, Punjab Civil Secretariat, Chandigarh (respondent No. 1) and a discussion took place regarding merger of MARKFED AND CONSTOFED. In the meeting, a number of objections were raised by the Managing Director of MARKFED, which are annexed with the petition as Annexure P2. These objections are reproduced as under :

(i) "That merger of 2 Cooperatives should only be done if it make sound economic sense, not on emotional grounds;

(ii) It appears that the 50 odd employees of Constofed and 500 odd employees of Cooperative Marketing Societies will not have any work in Markfed. So there is no need to take them over, especially since Markfed is already overstaffed;

(iii) That Markfed has run into losses and a meagre profit of Rs. 17 lakhs in the present has occurred only because ex gratia and bonus was not given to officers and was given to employees only with a ceiling. Markfed cannot afford to pay salaries of the staff;

(iv) The value of property being transferred to Markfed is only notional. It cannot sell at prices indicated because people like to pay for land partly in unaccounted money. The M.D. of Constofed should make efforts to sell the land to Govt. bodies like Banks, Insurance Companies and Hudco etc.;

(v) M.O. Constofed may offer a VRS package to the employees and payments may be made from funds generated by (iv) above;

(vi) The department may consider closure of such institutions that are unable to

pay salaries.

(vii) The RCS should make a reference to C.S. for waiving of Government dues especially share capital. Similar reference should also be made to NCDC for Constofed."

4. It has been further averred that CONSTOFED was put under liquidation vide order dated April 17, 2000. Respondent No. 5 the Joint Registrar, Cooperative Societies (M.S.), Chandigarh was appointed as a Liquidator. Under Section 50 of the Act, respondent No. 3 the Registrar, Cooperative Societies, Sector 17, Chandigarh, ordered an enquiry into the affairs of CONSTOFED, which was conducted by Shri R. S. Palne, Joint Registrar, Cooperative Societies (M.S.), Chandigarh, who submitted his report on June 1, 2000. Copy of the report of the Liquidator, CONSTOFED, dated June 1, 2000 is annexed with the petition as Annexure P3.

5. On April 27, 2000, respondent No. 3 the Registrar Cooperative Societies, Punjab, issued a notice dated April 27, 2000 (Annexure P8) under Section 13(9) of the Act, which reads as under :

Whereas, Registrar, Cooperative Societies, Punjab is satisfied that it is necessary and in the interest of Cooperative Societies to amalgamate Markfed and Constofed, i.e. to merge Constofed into Markfed under Section 13.8 of Punjab Cooperative Societies Act, 1961.

A notice is hereby given to the Creditors of Markfed and Constofed to raise objections, if any. The objections must reach the office of Registrar, Cooperative Societies, Punjab, Chandigarh either on or before 2152000 at 5.00 p.m.

Sd/ Registrar, Cooperative Societies, Punjab, Chandigarh."

6. It has been further averred that the notice was not served on its members nor was the matter placed before the Board of Directors, it did not contain any detail of the properties and the liabilities of the concerned Societies.

7. Learned counsel for the petitioners has reproduced Section 13 of the Act in the petition. When we went through it, it came out that the reproduction of the aforesaid Section did not pertain to it, but was, in fact, reproduced from the Haryana Cooperative Societies Act, 1984. This fact was pointed out to the learned counsel for the petitioners and we showed our displeasure to her that such a grave error has been made in the reproduction of the Section in the petition and advised her to be more careful in future while drafting petitions.

8. It has been further averred that no Annual General Body meeting of MARKFED has been called for the last five years, though it was to be held each year. The MARKFED

has approximately 3000 Cooperative Agricultural Service Societies and Cooperative Marketing Service Societies as its Members. As per Byelaw 27(xii), the Managing Director has to arrange to convene meetings of the General Body

and also to maintain a proper record of such meetings after consultation with the Chairman of Board of Directors. Notice dated April 27, 2000 Annexure P8, was not placed before the Managing Director of MARKFED or before the Board of Directors so that a General Body meeting could be called. Respondent No. 3 the Registrar, Cooperative Societies, Punjab, vide order dated June 30, 2000 (Annexure P9) ordered the amalgamation of CONSTOFED with MARKFED under Section 13(8) of the Act, the relevant portion of which is reproduced as under :

"Whereas I, Suresh Kumar, IAS, Registrar, Cooperative Societies, Chandigarh after considering the proposal and objection raised thereto, am satisfied that it is necessary in the interest of two Cooperative Societies, namely, Constofed and Markfed, to amalgamate Constofed with Markfed, exercising the powers conferred upon me under Section 13(8) of Punjab Cooperative Societies Act, 1961 do hereby order the amalgamation of CONSTOFED with MARKFED."

9. Respondent No. 6 Swaranjit Singh, Liquidator, CONSTOFED, Punjab, Chandigarh, who was appointed under Section 58 of the Act, held his own enquiry and subsequently, gave his finding to respondent No. 3 the Registrar, Cooperative Societies, Punjab, Chandigarh.

10. Notice of motion was served upon the respondents. The respondents have filed their respective written statement.

11. We have heard learned counsel for the petitioners and the respondents and gone through the writ petition and the annexures attached therewith.

12. At the very outset, learned counsel for respondent No. 11 MARKFED and the State argued that the petitioners have no locus standi to file the petition as they are not the members of MARKFED and their terms had expired as Directors of MARKFED on July 20, 2000. Faced with this contention, learned counsel for the petitioners has pleaded that in the interest of the creditors, share holders and the members of the Cooperative Societies, the writ petition may be treated as Public Interest Litigation. In support of her contention, learned counsel for the petitioners has placed reliance upon the authorities cited in Daman Singh v. State of Punjab, AIR 1985 SC 973 and Lawyers initiative through Sh. R. S. Bains, Advocate v. State of Punjab through its Chief Secretary, AIR 1996 Punj and Har 1.

In Daman Singhs case (supra), their Lordships of the Supreme Court have observed as under (Para 10):

".The very philosophy and concept of the Cooperative movement is impregnated with the public interest and the amalgamation of Cooperative Societies when such amalgamation is in the interest of the Cooperative Societies is certainly in the public interest or can only be to secure the proper management of the societies."

13. Keeping in view the law laid down by the Supreme Court in the case cited above, we concur with the argument advanced by the learned counsel for the petitioner. We, therefore, hold that such like petitions including the present one,

can be treated as Public Interest Litigation.

14. The impugned notice dated April 27, 2000 (Annexure P8) and the impugned order dated June 30, 2000 (Annexure P9) were passed under the hand and seal of respondent No. 3 the Registrar Cooperative Societies, Punjab, Chandigarh. The said respondent passed an order of winding up of the affairs of CONSTOFED. The order is dated April 17, 2000, which is attached with the written statement of respondents 3 to 5 as Annexure R4/2. The order dated April 17, 2000 is reproduced as under :

"Whereas as an enquiry into the constitution, working and financial position of the Punjab State Federation of Consumers Cooperative Wholesale Stores Ltd., Chandigarh (CONSTOFED) has been conducted by Sh. Karam Singh Palne, M. D. Housefed under Section 50 of the Punjab Cooperative Societies Act, 1961.

Whereas the Enquiry Officer has reported that Constofed has suffered heavy losses and is unable to repay the loan advanced by the State Government, the Punjab State Cooperative Bank and the Central Cooperative Bank Ltd., Ropar to the aforesaid Constofed.

Interest on these loans is also overdue from Constofed; and

Whereas it does not seem possible to improve the affairs of the Constofed, I, Suresh Kumar, I.A.S., Registrar, Cooperative Societies, Punjab, Chandigarh, in exercise of the power under Section 57(i) of the Punjab Cooperative Societies Act, 1961, order the winding up the affairs of the

Punjab State Federation of Consumer Cooperative Whole Sale Stores Ltd., Chandigarh with the immediate effect and further appoint Sh. Sharanjit Singh Bham, Joint Registrar (M/S) in H.O. as Liquidator of the Constofed under Section 58 of the Act *ibid*.

Sd/

Suresh Kumar,

I.A.S.

Registrar

Cooperative Societies,

Punjab, Chandigarh."

15. The Liquidator appointed by the Registrar, Cooperative Societies, Punjab, Chandigarh (Respondent No. 3) submitted his report on June 1, 2000 (Annexure P3) in which he requested that the order of liquidation should be reviewed and CONSTOFED should be allowed to function. On the recommendation of the Liquidator, the Registrar, Cooperative Societies, Punjab (Respondent No. 3) under his own hand and seal passed another order dated June 28, 2000 Annexure R4/4, which is attached with the written statement filed by Respondents 3 to 5 in

which he has said that CONSTOFED should be allowed to continue to exist. The order dated June 28, 2000 is reproduced as under :

"Whereas CONSTOFED was brought under winding up vide this office letter No. Stores/V/145/443640 dated 17/4/2000 and Shri Sharanjit Singh Bham, Joint Registrar (Milk Supply) was appointed as Liquidator.

Whereas the Liquidator of CONSTOFED has passed a resolution dated June 1, 2000 requesting that the order of Liquidation should be reviewed and CONSTOFED should be allowed to function. Whereas after considering the request of Liquidator of CONSTOFED, I, Suresh Kumar, IAS, Registrar, Cooperative Societies, Punjab, Chandigarh, exercising the powers conferred upon me under Section 57(3), am of the opinion that CONSTOFED should be allowed to continue to exist. I do hereby cancel the order of winding up of CONSTOFED issued vide this office letter No. Stores/V/145/443640 dated April 17, 2000. (Emphasis supplied).

Sd/

Suresh Kumar,

I.A.S.

Cooperative Societies,

Punjab, Chandigarh."

16. Respondents 3 to 5 in para 7 of the written statement have also stated that the opinion of winding up has been received from the Liquidator, who gave his opinion for reconsideration of the order of winding up and for acceptance of the proposal for revival of CONSTOFED and consequently, the order dated June 28, 2000 was passed by the Registrar, Cooperative Societies, Punjab, Chandigarh, under Section 57(3) of the Act, who allowed CONSTOFED to exist and accordingly, the order of winding up of CONSTOFED issued on April 17, 2000 was cancelled.

17. A very piquant situation has arisen in this case that the same officer, i.e., Shri Suresh Kumar, I.A.S., who was then the Registrar, Cooperative Societies, Punjab, passed an order dated April 17, 2000, Annexure R4/2, whereby the Liquidator was appointed. The Liquidator submitted his report on June 1, 2000, whereby he recommended that the order of winding up of CONSTOFED should be reviewed and it should be allowed to function. On his recommendation, the Registrar allowed CONSTOFED to continue to exist (Annexure R4/4).

18. Vide order dated April 27, 2000 (Annexure P8) notice of amalgamation of CONSTOFED with MARKFED was ordered by the same officer under his hand and the seal of Registrar, Cooperative Societies, Punjab, Chandigarh. Another order was passed dated June 30, 2000 (Annexure P9) whereby he amalgamated CONSTOFED with MARKFED. On one hand, he passed the order that CONSTOFED should be allowed to exist on the report of the Liquidator, while on the other

hand, he passed order dated June 30, 2000 (Annexure P9) for the amalgamation of CONSTOFED with MARKFED. Thus, the two contradictory orders were passed by the same officer in his capacity as Registrar, Cooperative Societies.

19. Shri R. S. Rai, learned counsel for MARKFED argued that without getting CONSTOFED into existence, it could not be merged in MARKFED, but nowhere, it has been mentioned either in the annexures or written statements filed by the other respondents that CONSTOFED was being revived so that it could be merged with MARKFED. The orders which have been passed by respondent No. 3 the Registrar Cooperative Societies, Punjab, after the report of the Liquidator, clearly show that he

wanted to put life into CONSTOFED to see whether the organization could turn out to be a viable proposition or not.

20. Learned counsel for the Respondents has placed reliance upon the judgments cited in Daman Singh v. State of Punjab, AIR 1985 SC 973 and Mota Singh v. The State of Punjab, 1979 Punj LJ 129 (Full Bench). In the cases cited above, there is no difference of opinion as to the propositions of law laid down therein, but in the present case, as already discussed above, an awkward situation has come into being where the same authority under his own hand and seal is passing two contradictory orders.

21. For the reasons recorded above, we allow the writ petition and quash the notice dated April 27, 2000 Annexure P8, order dated June 30, 2000 Annexure P9 and also Annexures R4/2 dated April 17, 2000 and R4/4 dated June 28, 2000. It is also made clear that this order of ours will not debar respondent No. 3 the Registrar, Cooperative Societies, Punjab, Chandigarh from starting the process de novo in accordance with the Act.

Petition allowed.