

(2002) 01 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13434 of 2000

Shri Raminder Singh and Another	Vs	APPELLANT
The Special Secretary Cooperation (Appeals), Punjab and Others		RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 55

Citation : (2002) 2 RCR(Civil) 684

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Satinder Khanna, for the Appellant; K.K. Bheniwala, Balwinder Singh and D.K. Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners are the son and widow of Hardev Singh. The said Hardev Singh was the Secretary of the Ghudani Kalan Cooperative Agricultural Service Society Ltd. The petitioners are aggrieved by the award as also the subsequent orders by which Hardev Singh was held liable to pay an amount of Rs. 27,000/- along with interest and costs to the Society-the 4th respondent. A few facts as relevant for the decision of this case may be briefly noticed.

2. The Society raised a dispute for the recovery of Rs. 27, 939.21P from Ram Nath who was working as a Salesman. This dispute was referred to the Arbitrator. On March 24, 1994 the Arbitrator gave an award against Ram Nath-the 5th Respondent. Ram Nath filed an appeal. He claimed that he had deposited Rs. 27,000/- out of the sale proceeds with Hardev Singh, the then Secretary of the Society. He had produced the receipt executed by Hardev Singh. Thus, the award was not tenable. The Appellate Authority considered the matter. Vide order dated march 20, 1996 the Appellate Authority set aside the award and ordered a fresh consideration of the matter by impleading Hardev Singh. The matter was

then considered afresh by the Arbitrator. He recorded evidence. Vide award dated November 4, 1997 the Arbitrator viz. the Assistant Registrar, Co-operative Societies, Samrala, held that Ram Nath had deposited a sum of Rs. 27,000/-. Only Rs. 939.21P is outstanding against him. It was further ordered that interest and principle amount shall be recovered from Hardev Singh, the Ex-Secretary of the Society. A copy of the award has been produced as Annexure P-2 with the writ petition. Aggrieved by the award of the Arbitrator, the petitioners filed an appeal. It was dismissed by the Appellate Authority vide order dated February 1, 1999. A copy of this order has been produced as Annexure P-3 with the writ petition. The petitioners filed a revision petition. It was dismissed by the Special Secretary, Cooperation (Appeals) (exercising the powers of the State Government) vide order dated July 25, 2000. A copy of the order is at Annexure P-4 with the writ petition.

3. The petitioners challenge the orders at Annexures P-2 to P-4. It is alleged that the matter was not covered by the provisions of Section 55 of the Punjab Co-operative Societies Act, 1961. The reference to the Arbitrator was untenable and that the award was violative of the principles of natural justice. Thus, the petitioners pray that the award as well as the orders passed by the Appellate and the Revisional Authorities, copies of which are at Annexures P-2 to P-4, be quashed. The claim made by the petitioners has been controverted by the Society-respondent No. 4 as well as the 5th respondent by filing detailed written statements. Counsel for the parties have been heard.

4. Mr. Khanna, learned counsel for the petitioners, has contended that the dispute among the parties is not covered by the provisions of Section 55 of the Act. He further contends that the Appellate Authority could not have remanded the case for a fresh decision by impleading Hardev Singh, the predecessor in interest of the present petitioners, as a party. Lastly, it has been contended that the report of the Hand-writing Expert could not have been relied upon by the Arbitrator as well as the other authorities without affording the petitioners an opportunity to cross-examine the Expert. The claim made on behalf of the petitioners has been controverted by the counsel for the respondents.

5. The three questions that arise for consideration are:-

1. Is the present dispute not covered by the provisions of Section 55 of the Act?
2. Can the petitioners be allowed to challenge the order passed by the Appellate Authority on March 20, 1996?
3. Is the action of the authorities in relying upon the report of the Hand-writing Expert violative of the principles of natural justice?

6. Regarding - 1

Mr. Satinder Khanna contended that it is only a dispute between the Society and an employee that can be referred to an Arbitrator. A triangular dispute is outside the purview of Section 55 of the Act. Is it so?

Section 55 of the Act inter-alia provides that "any dispute touchingbusiness of a Co-operative Society-and-any officer, agent or employee" can be "referred to the registrar for decision ...". A perusal of the provision clearly shows that any dispute between the Society and any officer, agent or employee can be the subject matter of reference to an arbitrator.

Mr. Khanna contends mat the use of the singular word "employee" excludes the plural viz. "employees". This contention cannot be accepted. It is a well recognised principle of interpretation that singular shall include the plural. It is not only a dispute between the Society and an employee which can be referred, but even a dispute in which the Society and a group of employees have a contest can be the subject matter of reference. Equally, even a triangular contest in which the two employees may have contesting claims against the Society can be referred to an Arbitrator u/s 55 of the Act. The plain language of the provision does not warrant a restrictive interpretation.

Mr. Balwinder Singh has referred to the decision of a learned Single Judge of this Court in Bhagwan Dass v. State of Haryana and Ors. 1996(2) RrR 502. In this cases it was held that a tripartite dispute can be referred to an Arbitrator u/s 55 of the Act. I find no reason to take a contrary view.

Resultantly, the first question is answered against the petitioners. It is held that the present dispute could be the subject matter of arbitration in proceedings initiated u/s 55 of the Act.

7. Regarding - 2

Mr. Khanna contended that the Registrar having made the reference u/s 55 of the Act at the instance of the Society against Ram Nath, he could not have ordered that Hardev Singh be impleaded as a party. On this basis it was contended that the entire proceedings against the petitioners are vitiated.

. It deserves notice that vide order dated March 20, 1996 the Appellate Authority had set aside the award given by the Arbitrator on March 24, 1994. The petitioners are raising an argument against the order dated March 20, 1996. No plea to that effect has been raised in the writ petition. Even a copy of the order has not been produced. What were the reasons recorded by the Appellate Authority? What precise directions were given? There is no answer. Even at the hearing a copy of the order has not been shown to the Court. In this situation, it is difficult to appreciate the contention that the order passed by the Appellate Authority was illegal.

It is the case pleaded which has to be proved. In the present case, the copy of the order having not been produced and no challenge thereto having been made in the petition, the contention as sought to be raised cannot be accepted.

There is another aspect of the matter. The petitioners had a grievance against the action of the Appellate Authority in ordering, as was suggested by the counsel for the petitioners, that Hardev Singh be impleaded as a party. Hardev

Singh had the opportunity to challenge that order. He chose not to. In fact, it appears that he took his chance. Sat on the fence. Participated in the proceedings. Adduced the evidence and at the completion of the trial when the Arbitrator gave an award against him, he has chosen to raise a plea against the order.

In the circumstances of the case, it is clear that the petitioners should be estopped from raising a challenge to the order at this stage. Even otherwise, the challenge as now sought to be raised is highly belated. The order was passed in March 1996. The present writ petition was filed in September 2000. More than four and a half years have already elapsed. The petitioners cannot be permitted to raise the challenge at this belated stage,

Mr. Khanna contends that the petitioners had raised the issue even before the Arbitrator. A challenge was made at the time of filing the appeal against the award. Assuming it to be so, the fact remains that Hardev Singh had taken his chance before the Arbitrator. It was only after that the plea was raised in appeal.

In view of the above, even the second question is answered against the petitioners. It is held that they cannot be permitted to challenge the order dated March 20, 1996 after the lapse of more than four years. By their conduct they are estopped from challenging it.

8. Regarding - 3

Mr. Satinder Khanna contends that the report of the Hand-writing expert could not have been relied upon by the Arbitrator or the other authorities as the Expert had not appeared and the petitioners were not afforded an opportunity to cross-examine the said Expert. Thus, the action was violative of the principles of natural justice. The claim made on behalf of the petitioners has been controverted by the counsel for the respondents.

Admittedly, Ram Nath had sought the opinion of the Hand-writing Expert. He had produced the report. It had been taken on record. Hardev Singh had not raised his little finger to either object to its admission or to claim that the Hand-writing Expert should be summoned for cross-examination. Equally, Hardev Singh had not even sought an opportunity to adduce any evidence in rebuttal so as to show that the document viz. the receipt did not bear his signatures. If it was the petitioners case that the receipt produced by Ram Nath indicating the payment of Rs. 27,000/- to Hardev Singh was not a genuine document, the least that could be done was to produce some Expert to say that the signature were not of Hardev Singh. Hardev Singh never took such a plea. Having failed, the petitioners are trying to take refuge behind technical pleas. Hardev Singh having not sought any opportunity to either cross-examine the Expert or to object to the report, the petitioners cannot now be permitted to say that the report could not have been relied upon. The complaint of violation of the principles of natural justice is clearly an afterthought calculated to subterfuge the findings recorded by the Arbitrator. The right opportunity for raising an objection to the admission

of the report was at the time when it was produced. Nobody had, admittedly, raised a little finger till the award was given by the Arbitrator. The calculated game plan has unfortunately misfired. The petitioners have to thank themselves.

9. No other point has been raised.

10. In view of the above, there is no merit in this petition. It is, consequently, dismissed,

11. At this stage, Mr. Khanna has made a prayer that the petitioners may be given an opportunity to make the payment in ten equal monthly instalments. Counsel have been heard on this aspect.

12. The petitioners shall pay Rs. 10,000/- per month. The deposit shall be made by 10th of every month. In case of default in any instalment, the whole amount shall become due and shall become recoverable by the Society in accordance with law. The last instalment would include the total amount as may be due from the petitioners.

13. In the circumstances, there will be no order as to costs.