
(2012) 01 SHI CK 0110
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1303 of 2008

Smt. Parmila Devi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 72, 73

Citation : (2012) 01 SHI CK 0110

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, Judge

1. Petitioner was enrolled as a member of respondent No. 3-Society bearing No. 1125-R-3590. She was owner of truck No. HP 23-9943. The truck was enrolled with respondent No. 3-Society for carrying the cement. Petitioner sold her truck to respondent No. 4 on 07.07.2003. Thereafter, respondent No. 3-Society permitted the respondent No. 4 to ply the truck on the basis of priority number (Gatta) allocated to the petitioner. Petitioner approached the Assistant Registrar Co-Operative Society, Bilaspur under Sections 72 and 73 of the H.P. Co-operative Societies Act, 1968 (hereinafter referred to as "the Act" for convenience sake) for retention of Gatta in her favour. The Assistant Registrar, Co-operative Societies, Bilaspur dismissed the case of petitioner vide order dated 22.09.2007. Petitioner preferred an appeal before the Joint Registrar (Marketing), Co-operative Societies, Himachal Pradesh, Shimla. He also dismissed the same on 30.06.2008.

2. Mr. Deepak Kaushal, learned counsel for the petitioner has strenuously argued that respondent No. 3 could not permit respondent No. 4 and thereafter respondent No. 5 to ply the truck on the priority number, i.e., Gatta allotted to his client against truck No. HP 23-9943. He then argued that the petitioner was required to be permitted to retain the priority number.

3. Mr. Vikas Rathore, learned Deputy Advocate General has argued that now the amendment has been carried out in the byelaws of the respondent No. 3-Society, pursuant to which, the member/truck owner has the right to sell his membership and Gatta to any person who is eligible to become member of the society. It is also provided that whenever a member intimates to the society that he/she has sold his truck alongwith Gatta, then Society will transfer his/her Gatta to other eligible person after taking affidavit from him/her and in case he/she does not own any other vehicle, other than sold vehicle, then he/she shall also mandatorily give in writing to surrender his/her membership. He also argued that there is no illegality in the orders dated 22.09.2007 and 30.06.2008.

4. Mr. Dinesh Thakur, Advocate appearing on behalf of respondent No. 3 has argued that once the truck has been sold, there is no illegality in the action of respondent-Society to permit initially respondent No. 4 and thereafter respondent No. 5 to ply the truck on the basis of the priority number initially allotted to the petitioner.

5. Mr. Tarlok Chauhan, learned counsel for respondent No. 4 has also argued that his client has sold the truck to respondent No. 5 on 29.05.2006.

6. Mr. Surinder Saklani, learned counsel for respondent No. 5 has strenuously argued that his client has purchased the Gatta (priority number) from respondent No. 4 and is plying his truck bearing registration No. HP 23-B-5279.

7. I have heard the learned counsel for the parties and gone through the pleadings carefully.

8. Respondent No. 3-Society is duly registered under the Himachal Pradesh Co-operative Societies Act. It has framed its own byelaws to run the affairs of the society. Respondent No. 3-Society is maintaining a system in local parlance called Gatta. This Gatta system is nothing but a priority number given to a member of the respondent-Society. The priority number is allocated to the member of the society who owns a truck to transport cement. On the basis of priority number and truck number, the work of carriage of cement is given to a particular truck. Every day, a new list of trucks is prepared by rotation so that every truck owner could get business in fair and equitable manner. Petitioner sold the truck to respondent No. 4 on 07.07.2003. Respondent No. 3-Society has permitted the respondent No. 4 to ply the truck on the basis of the priority number allotted to the petitioner. The Court is of the considered view that respondent No. 4 was not a member of respondent No. 3-Society at the time when he purchased the truck from the petitioner on 07.07.2003. The priority number ought to have been cancelled and the respondent No. 4 could not be permitted to ply the truck on the basis of priority number allocated to the petitioner. Respondent No. 4 has further sold the priority number (Gatta) to respondent No. 5 on 29.05.2006. Respondent No. 3-Society has further permitted the respondent No. 5 to ply the truck No. HP-23-B-5279 on the basis of the priority number which was initially allotted to the petitioner. Respondent

No. 5 is plying the truck No. HP-23-B-5279. Respondent No. 5 was also not a member of the respondent No. 3-Society at the time when he purchased the Gatta.

9. In the appellate order dated 30.06.2008, there is a reference to the order passed by this Court in C.W.P. No. 1113 of 2007, whereby a committee of three I.A.S. Officers was constituted vide order dated 12.11.2007 to make suggestions for running the affairs of respondent No. 3-Society smoothly, more particularly, with regard to the allocation of work of transport to its members. The committee met on 04.12.2007 and has made the recommendations, pursuant to which the amendments were carried out in the byelaws of the respondent No. -3-Society on 03.07.2008.

10. Now, as per the amendment carried in the byelaws, it is open to the member/truck owner to sell his membership and Gatta to any person who is eligible to become member of the Society and the member has to intimate to the Society that he has sold his truck alongwith Gatta and it is open to the Society thereafter to transfer his Gatta to other eligible person after taking affidavit from him. Clause 59 of the amended byelaws also provides that whenever Society decides to add new trucks, fresh application shall be invited from all eligible persons residing within the area of operation of the Society by giving vide publicity. The existing members having only one truck may also be eligible to apply for second vehicle and in case number of application received is more than the number of new trucks required, then the same shall be decided by draw of lots under the Chairmanship of Assistant Registrar, Co-operative Societies or S.D.M., Bilaspur in the presence of applicants. These byelaws are prospective in nature and cannot effect the transaction which had already taken place. Respondent No. -3-Society was also directed to file a supplementary affidavit vide order dated 12.07.2011. The supplementary affidavit was filed, which is at page 73 of the paper-book. According to the averments made in this affidavit, respondent No. 4 has only sold the priority number to respondent No. 5 on 29.05.2006. The transaction dated 07.07.2003, whereby the petitioner has sold the truck to respondent No. 4 and further, action of the respondent No. 4 selling the priority No. to respondent 5 on 29.05.2006 has happened before the amendment was carried out in the byelaws on 03.07.2008. The priority number was given only to the truck owner, who was the member of the society. Once the petitioner has sold the truck to respondent No. 4, the priority number was to be cancelled by respondent No. 3.

11. In the instant case, respondent No. 3-Society, as noticed above, has permitted initially respondent No. 4 to ply the truck on the basis of priority number allocated to petitioner and thereafter permitted respondent No. 5 to ply the truck. The priority number was a privilege given to a member of the Society, who owned a truck. The selling of the priority number by respondent No. 4 to respondent No. 5 on 29.05.2006 was contrary to the letter and spirit of the Co-operative Societies Act and was also against the basic spirit of Co-operative movement. The privileges which were given to the members could not be

transferred for monetary benefits by respondent No. 3-Society. Petitioner could also not seek retention of the priority number once she has sold the truck to respondent No. 4 after purchasing new truck.

12. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is disposed of with a direction to respondent No. 3-Society to cancel the priority number (Gatta) of respondent No. 5. The pending application(s), if any, also stands disposed of. No costs.