

(2014) 11 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : CWP No. 4294 of 2013

Solan District Truck Operators Transport Cooperative Society Ltd. APPELLANT

Vs

Harjinder Singh RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 72, 93, 94, 94(1)

Citation : (2014) 11 SHI CK 0015

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ajay Mohan Goel, Advocate for the Appellant; Neeraj Gupta, Advocate, Virender Kumar Verma, Meenakshi Sharma and Rupinder Singh, Additional Advocate Generals, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The petitioner-Society in this writ petition has claimed the following relief:-

"That this Hon"ble Court may kindly be pleased to issue a writ of Certiorari quashing orders dated 22.7.2011 (Annexure P5), 2.4.2012 (Annexure P7), 6.10.2012 (Annexure P7), 14.2.2013 (Annexure P11), 16.4.2013(Annexure P12) issued by respondents No. 2 to 5 directing the petitioner-Society to issue token for plying a truck in favour of the respondent No. 1."

2. The respondent No. 1 sold his truck bearing registration No. HP-13-274 with its token (Gatta) in the year 2004. Thereafter, he purchased a truck in the year 2005 and asked for a token which was refused by the petitioner-Society. The respondent No. 1 resorted to the remedy under Section 72 of the H.P. Cooperative Societies Act, 1968 (for short "the Act") by filing a reference petition before the Assistant Registrar Cooperative Societies, Solan. The Assistant Registrar allowed this petition vide order dated 22.07.2011 which came to be challenged by the petitioner by way of an appeal before the Deputy Registrar(Consumer) Cooperative Societies, Himachal Pradesh, who vide his

orders dated 02.04.2012 dismissed the appeal. The petitioner thereafter filed revision petition before the Registrar, Cooperative Societies which came to be adjudicated and dismissed by the Additional Registrar (Administration) vide his decision dated 06.10.2012.

3. The petitioner thereafter filed a revision/review petition before the State Government which too was dismissed by the Special Secretary (Cooperation) to the Government of Himachal Pradesh vide his decision dated 14.02.2013 on the ground of maintainability. Relevant portion of the order reads thus:-

"At the outset the arguments on the issue of maintainability of both the Counsels representing the parties were heard. The Ld. Counsel for the respondent Society argued that the petitioner Society has already availed the remedy of revision petition under Section 94 of the Act before the lower court, thus, instant revision petition is not maintainable and deserves to be dismissed. The learned Counsel for the petitioner Society could not put forth any substantial arguments in support of the issue of maintainability of present petition.

It has been revealed that the orders assailed has been passed in revision by the Additional Registrar, Cooperative Societies (Administration) under Section 94(1) & (2) of the H.P. Co-operative Societies Act, 1968. As per the provisions contained in the Cooperative Societies Act there is no remedy of second revision/review or appeal, thus, this revision/review petition is not maintainable accordingly the same is dismissed."

4. Since the impugned order has not touched the merits of the case, therefore, the only question required to be determined, in these proceedings, is as to whether the findings recorded by the Special Secretary (Cooperation) regarding interpretation of Section 94 of the Act are in accordance with law or not.

5. A similar question came up for consideration before a learned Division Bench of this Court in CWP No. 9391 of 2012 decided on 20.11.2013, titled Daulat Ram versus State of H.P. and Others, in which the provisions of Section 94 of the Act were interpreted in the following manner:-

"2. We are of the considered view that the authority below erred in correctly and completely construing and interpreting the provisions of the Statute. Power vested with the State Government, under Section 94 of the Act, is distinct and separate from the revisional powers vested with the Additional Registrar, Cooperative Societies. We find that amplitude of Section 94 is wide enough and would take in its sweep, powers of calling or entertaining petitions other than the one in which appeal is preferred under Section 93 of the Act. In exercise of its revisional jurisdiction, the authority can call for and examine any record of inquiry or inspection under the Act or the proceedings of any person subordinate to him, acting on his authority. The revisional authority can also call for proceedings of the "Registrar or any person subordinate to him". Such revisional power is to be exercised if the order is perverse, erroneous or illegal and can modify, annul or reverse any order passed by the Registrar. Revision petition

against an order passed by the Assistant Registrar Cooperative Societies, would lie under Section 94 of the Act."

6. In view of the aforesaid authoritative pronouncement of this Court in Daulat Ram's case (supra) regarding scope of Section 94 of the Act, which is otherwise binding upon this Court, the impugned order dated 14.02.2013 cannot be sustained. The learned Division Bench has already held that amplitude of Section 94 is wide enough and would take in its sweep, powers of calling and entertaining petitions other than the one in which appeal is preferred under Section 93 of the Act. The revisional Court in exercise of its jurisdiction can call for and examine any record of inquiry or inspection under the Act or the proceedings of any person subordinate to him, acting on his authority. The revisional authority can also call for the proceedings of not only the Registrar but any other person or authority subordinate to him.

7. In this view of the matter, the order dated 14.02.2013 passed by the Special Secretary (Cooperation) is unsustainable and is accordingly set aside.

8. Since the revisional authority (Special Secretary, Cooperation) has not touched the merits of the case, it is deemed appropriate that he now be directed to decide the case on merits and accordingly the parties through their counsel are directed to appear before him on 01.12.2014 and it is expected that the case will be decided expeditiously and in no event later than by 31.12.2014.

9. The petition is disposed of in the aforesaid terms, so also all the pending applications, if any.