

(2016) 10 SHI CK 0040
In the High Court Of Himachal Pradesh
Case No : LPA No. 21 of 2016

Solan District Truck Operators Transport Cooperative Society Ltd. APPELLANT

Vs

Sh. Harjinder Singh RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

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

Citation : (2017) AIRCC 417 : (2017) LatestHLJ(HP) 128

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Sandeep Sharma, J.

Bench : Division Bench

Advocate : Mr. Romesh Verma and Mr. Varun Chandel, Additional Advocate Generals and Mr. J.K. Verma and Mr. Kush Sharma, Deputy Advocate Generals, for the Respondent Nos. 2 to 5; Mr. Neeraj Gupta, Advocate, for the Respondent No. 1; Mr. Sunil Mohan Goel, Advocate, fo

Final Decision : Dismissed

Judgement

Sandeep Sharma, J. - This Letters Patent Appeal is directed against judgment and order dated 2.12.2015 passed by the learned Single Judge in CWP No. 1841/2015, whereby petition preferred by the appellant-Society (herein after referred to as "Society"), came to be dismissed (for short, "impugned judgment"). From the perusal of the facts, it appears that respondent No.1 namely Harjinder Singh, who is a member of the society, filed a reference petition under Section 72 of the HP Cooperative Societies Act, 1968 (herein after referred to as "Act"), before the Assistant Registrar Cooperative Societies, Solan, averring therein that he is the founder member of the society, sold his truck with prior intimation and understanding with the Society that on purchase of a new truck, he would be given a new token number, purchased the same in the year 2005, was not allotted token number. Though similarly situated persons who were admittedly junior members, were allotted token numbers.

2. Society by way of reply, refuted the claim put forth on behalf of respondent

No.1 by stating that no intimation whatsoever was given by respondent No.1 to the Society with regard to sale of truck bearing registration No. HP-13-274 along with token, thus lost his membership because he sold his truck which was a pre-condition to become member of the Society. Apart from above, Society also claimed before the Assistant Registrar Cooperative Societies that the respondent No. 1 sold his truck in the year 2004 i.e. before allotment of work to the Society vide order dated 15.2.2005 by the Deputy Commissioner, Solan and as such the token as claimed by the respondent No.1 can not be granted to him at this stage. Society also raised objections that the reference was time barred as the same was filed after five years and as such same deserved to be dismissed on the ground of delay only.

3. Assistant Registrar Cooperative Societies allowed the said reference vide order dated 22.7.2011, wherein he passed following directions :

"Keeping in view the facts and circumstances narrated herein above and after going through the record adduced before me, I am convinced that Sh. Harjinder Singh is a registered member of the Respondent Society and he plied his vehicle through the society till May, 2005 after which he sold his vehicle with token. However, he purchased new vehicle but the society did not allot new token to him. But his membership has not been cancelled by the respondent society till date and he has casted his vote in the election of the society held on 05.04.2011 being member of the society. The counsel for the respondent failed to prove that the petitioner has been expelled from the membership of the society as the respondent society has not adopted the proper procedure for expulsion of his membership. Further, the respondent has adopted "Pick and Choose" method by allotting new token to some members who had also sold their vehicles with token. Therefore, ex-parte decision is announced against the respondent and the Respondent Society is directed to allot new token to the petitioner and provide work to his Vehicle on priority basis. The present petition is disposed of in terms of the foregoing submissions."

4. Society being aggrieved and dissatisfied with order passed by Assistant Registrar Cooperative Societies filed an appeal under Section 93 of the Act which came to be registered as Appeal No. 13/2011, was dismissed by the appellate authority vide order dated 2.4.2012 and Society being further aggrieved with aforesaid rejection of the appeal preferred a revision under Section 94 of the Act, which was transferred to the Deputy Registrar (Consumer) Cooperative Societies, who vide order dated 6.10.2012 rejected the revision and upheld the order passed by the appellate authority with the direction to the Society to allot new token number to respondent No.1 and provide work to his truck within 15 days from the receipt of the order. It also emerged from the record that the Society being not satisfied by the aforesaid order passed by Deputy Registrar (Consumer) Cooperative Societies, preferred a revision/review petition under Section 94 of the Act before the Special Secretary (Cooperation), who rejected the same on the ground of maintainability. Special Secretary (Cooperation) to the

Government of Himachal Pradesh concluded that the orders assailed before him were passed in revision by the Additional Registrar (Administration) Cooperative Societies under Section 94(1) and (2) of the Act and as such there was no provision of second revision/appeal, accordingly, he dismissed the revision petition vide order dated 14.2.2013.

5. It further emerges from the record that subsequent to the dismissal of the revision petition by the Special Secretary (Cooperation), Society filed a writ petition bearing CWP No. 4294/2013 before this Court. A Coordinate Bench of this Court vide judgment dated 21.11.2014 while setting aside order dated 14.2.2013 passed by Special Secretary (Cooperation), directed the said authority to decide the case on merits on or before 31.12.2014. Subsequent to the aforesaid judgment passed by this Court, Special Secretary (Cooperation) passed fresh order dated 31.12.2014 in revision/review petition filed under Section 94 of the Act whereby revision petition was dismissed on merits.

6. Mr. Sunil Mohan Goel, Counsel representing the Society forcibly argued that the impugned judgment passed by the learned Single Judge is not sustainable in the eye of law as the same is not based upon the correct appreciation of the facts as well as law available on record as such the same deserves to be set aside. Mr. Goel further contended that the learned Single Judge has fallen in grave error while coming to the conclusion that respondent No.1 was member of the Society for all intents and purposes, which finding is contrary to the record, respondent No.1 had lost his membership immediately after sale of his truck by him and no token, if any, could be allotted to him. Mr. Goel further contended that respondent No.1 sold his truck along with token number allotted to him for consideration to other person, as a result of which, the purchaser became member of the Society in place of respondent No.1 hence the finding of the learned Single Judge that the respondent No.1 is member of the Society being contrary to law and record deserves to be set aside. Mr. Goel further submitted that the learned Single Judge as well as the authorities below miserably failed to take note of the fact that the reference petition under Section 72 of the Act was filed by respondent No.1 after a delay of more than five years that too without there being any cogent explanation on record which itself suggests that he was not aggrieved by any act of the Society from 2005 till filing of the petition i.e. 2011. Mr. Goel further contended that the learned Single Judge as well as the authorities below failed to appreciate the resolution dated 5.12.2008 passed by the General House of the Society, whereby it was resolved that new token numbers would be allotted to those persons who were already having one truck in operation with the Society.

7. While referring to resolution dated 5.12.2008, Mr. Goel forcefully contended that a bare perusal of resolution referred to herein above, clearly suggests that any member who sells his vehicle and violates bye-law 5(iii), his membership would be cancelled. While concluding his arguments, Mr. Goel stated that since respondent sold his truck along with token number to some other person, his

membership was cancelled in terms of the resolution dated 5.12.2008 and as such impugned judgment passed by learned Single Judge whereby he upheld the orders passed by the authorities below deserves to be set aside.

8. Mr. Neeraj Gupta, Advocate duly assisted by Mr. Ajeet Jaswal, Advocate supported the judgment passed by the learned Single Judge. Mr. Gupta while referring to the judgment of the learned Single Judge vehemently argued that the same is based on correct appreciation of documents as well as law made available on the record by the respective parties. While inviting attention of this Court to the judgment, Mr. Gupta forcefully contended that each and every aspect of the matter has been dealt with meticulously by the learned Single Judge while deciding the writ petition as preferred by the Society and as such present appeal deserves to be dismissed. Mr. Gupta while refuting the contentions put forth on behalf of the Society that the Courts below failed to take note of the resolution dated 5.12.2008, strenuously argued that the authorities below as envisaged under the Act, while adjudicating the controversy at hand, specifically dealt with aforesaid resolution. Mr. Gupta further contended that once it stands proved on record that resolution dated 5.12.2008 was not passed in conformity with the bye-laws, authorities below as well as learned Single Judge of this Court rightly came to the conclusion that the Society had no authority to deny registration and allotment of token, if any, in favour of respondent No.1 and as such there is no illegality or infirmity in the judgment passed by the learned Single Judge. While concluding his arguments, Mr. Gupta forcefully contended that the resolution dated 5.12.2008 was rightly not considered by the authorities below since the same was not passed in accordance with the provisions as contained in the bye-laws of the Society as well as Act. In the aforesaid background, Mr. Gupta prayed for dismissal of the present appeal by upholding the judgment passed by the learned Single Judge.

9. We have heard the learned counsel for the parties and also gone through the records of the case carefully.

10. From the pleadings and contentions having been made on behalf of the respective parties, it becomes clear that respondent No.1, who was a member of the Society, sold his truck with token number to some other person, and accordingly, his membership was cancelled in terms of resolution dated 5.12.2008 (annexure P-10), wherein it was resolved that any member, who sells his vehicle and violates bye-law 5(iii), his membership would be cancelled. Now, the question which remains to be decided by this Court is whether membership, if any, of the respondent No.1 could be cancelled by the Society in terms of Resolution dated 5.12.2008 or not. It is undisputed before us that respondent No.1 herein was a member of the Society for all intents and purposes prior to cancellation of membership. Society framed bye-laws (annexure P-2). Bye-law 5 provides as under:

"5. Subject to the provisions of Bye-laws any individual shall be admission as a member of the society if he is.

(i) over 18 Years in age and of sound mind.

(ii) of good characters.

(iii) subject to the provisions of Act and Rules and Bye-Laws, any individual should be owner of truck carrier and who is hereditary resident of area of operations, having ancestral land and also duly recommended by the truck operators union in the area of the society shall be eligible for admission as a member of the Society.

(iv) The numbers of the trucks per member should be at most of three trucks per member."

11. Similarly, Bye-law 6 provides for the categories of persons who are not eligible for admission as member of the Society. Bye-law 6 provides as under:

"6. No individual shall be eligible for admission as a member of the Society if:-

(i) He has applies for bankruptcy, or

(ii) He has been declared as a insolvent, or

(iii) He has sentenced for any offence involving dishonesty or moral turpitude 5 years preceeding the date of his admission as member."

12. Bye-law 13 provides for the expulsion of a member from the society. Bye-law 13 reads as under :

"13. (a) A member may be expelled for one or more of the following reasons :-

(i) Ceasing to reside in the area of operation of the society.

(ii) Failure to pay the share money or operation of the society.

(iii) Conviction of criminal offence involving dishonesty or moral turpitude.

(iv) An application for bankruptcy.

(v) An action which may be held by the general body on account of dishonesty or contrary to the interest, reputation and stand objects of the society.

(b) A person shall cease to be member of the society in one or more of the circumstances :-

(i) Death

(ii) Ceasing to hold at least one share.

(iii) Withdrawal after six months notice to the Secretary of the Society provided the share/shares held by the member are disposed of it accordance with by law 11 & 12.

(iv) Permanent insanity

(v) Declaration of bankruptcy."

13. A close scrutiny of the facts as have been discussed in detail, clearly indicates that respondent No. 1 was a member of the Society in terms of bye-law 5 till the time, he was owner of the truck, which he allegedly sold to some other person along with token in the year 2004. But if clause 6 of the Bye-laws is read in its entirety, wherein conditions/circumstances have been detailed in which one can not be admitted as a member of society, admittedly, respondent No. 1 does not fall in any of the categories as mentioned in this clause. Similarly, perusal of Bye-law 13 (a) and (b) nowhere suggests that a member who sells his truck can be expelled. Since in the present case, the specific stand of the Society is that the respondent No.1 ceased to be a member of the Society as he had sold his truck to another person along with token, but the bye-laws nowhere provides that person who sells his truck to any person would invite expulsion.

14. In the present case, society vide resolution dated 5.12.2008, resolved that the person who becomes vehicle-less after selling his truck to somebody else, or violates the conditions of bye-law 5(iii), would be expelled and his membership would be cancelled. This Court, while examining aforesaid decision taken in resolution dated 5.12.2008 was unable to find any condition in the bye-laws of the Society which provides for cancellation of the membership on account of selling of truck by its member. As such, this court really finds it difficult to accept the contention put forth on behalf of the Society that since respondent No.1 sold his truck, his membership was rightly cancelled in terms of resolution dated 5.12.2008. It is well settled that bye-laws are always framed by a society providing therein complete mechanism to run the affairs of the society smoothly. Once, under the bye-laws, specific conditions have been incorporated for membership as well as expulsion, no member can be expelled on the strength of resolution that too without carrying out any effective amendment in the bye-laws. It is undisputed that before passing resolution dated 5.12.2008, Society had never carried out any amendment to bye-laws by adding/providing therein the condition for expelling the members on account of selling of vehicles, if any. Though, this Court after perusing the bye-laws which have been annexed along with the writ petition, is fully convinced that the membership of respondent No.1 could not be cancelled on the strength of resolution dated 5.12.2008, as same does not appear to be passed in accordance with the bye-laws as well as the Act and Rules. It emerges from the orders passed by the authorities below and the judgment passed by the learned Single Judge that resolution dated 5.12.2008 was passed by the Society in the meeting of its General House wherein 482 members were present out of 1135 members, meaning thereby that necessary quorum was not complete to take any decision, especially decision with regard to expulsion of members of the Society. A careful perusal of order passed by the Assistant Registrar Cooperative Societies Solan in reference petition under Section 72 of the HP Cooperative Societies Act, 1968 clearly suggests that the Society resolved to expel its 113 members including the respondent No.1 from membership vide resolution No. 9 dated 5.12.2009 whereas, as per Rule 23 of the HP Cooperative Societies Rules, 1971, when a committee of the cooperative

society decides to bring resolution for expulsion of any member, consideration of such resolutions shall be included in the agenda for the next general meeting and notice thereof shall be given to the member against whom such resolution is proposed to be brought calling upon him to represent in the general meeting to be held not earlier than a period of one month, from the date of such notice and to show cause against expulsion to the general body of the members. Rule 23 of the HP Cooperative Societies Rules, 1971 reads as under :

23. Procedure of expulsion of members.-(1) Where any member of a society proposes to bring a resolution for the expulsion of any other member, he shall give a written notice, thereof, to the Chairman of the society. On receipt of such a notice, or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such a resolution is proposed to be brought, calling upon him to represent at the general meeting to be held not earlier than a period of one month from the date of such notice, and to show cause against expulsion to the general body of members.

(2) After hearing the member, if he is present, or after taking into consideration any written representation which he might have made, the general body of members shall proceed to consider the resolution.

(3) When a resolution passed in accordance with sub-rule(1) is sent to the Registrar, or otherwise brought to his notice, the Registrar may consider the resolution, and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval by the Registrar.

15. But, in the present case, it clearly emerges from the record that the Society while passing aforesaid resolution wherein decision with regard to cancellation of the membership of respondent No.1 along with other 113 members was taken, miserably failed to comply with Rule 23 of the Rules, 1971 because at no point of time, intimation, if any, with regard to aforesaid discussion in the meeting was sent to respondent No.1. Apart from the above, this Court was unable to find on record any document, placed by the society to suggest that it had issued any show cause notice, if any, to respondent No.1 before cancelling his membership in terms of the resolution dated 5.12.2008 and as such this court sees no illegality or infirmity in the judgment passed by learned Single Judge as well as the orders passed by the authorities below.

16. At the cost of repetition, it may be mentioned again that this Court carefully perused clauses 13(a) and (b) of the bye-laws of the Society relating to termination of the members from the society and found that there is no provision in the aforesaid bye-law of the Society which provides that a member would be deemed to be expelled automatically after selling his vehicle. Though the Society by way of placing resolution dated 5.12.2008 made an attempt to demonstrate

that the aforesaid bye-law No. 13 (a) and (b) was amended vide resolution dated 5.12.2008, wherein condition was incorporated that a member would be expelled automatically if he sells his vehicle and becomes vehicle-less. At this stage, it may be observed that no resolution providing therein a condition for expulsion/cancellation of the membership can be passed by a Society without carrying out amendment in the bye-laws, wherein admittedly it has been not provided that member would be expelled automatically, if he sells his vehicle and becomes vehicle-less. Apart from the above, this court perused bye-law 46 of the Society which reads as under :

"46. No amendment to these bye-laws shall be carried out save in accordance with the resolution passed at a general meeting of which due notice of the intention to discuss the amendment has been given provided that no such resolution shall be valid unless it is passed by majority of the members present at the general meeting at which not less than two-third of the members for the time being of the society are present.

Provided further that modle bye-laws or amendments previously approved by the Registrar may be adopted by a majority at a general meeting with an ordinary quorum."

17. Aforesaid bye-law clearly provides that amendment, if any, in bye-laws of the Society can be effected only in the general house meeting. In the present case, as emerges from the records, only 482 members of the society were present out of 1135 members when this resolution No. 8 dated 5.12.2008 was allegedly approved by the Society. This Court after careful perusal of the aforesaid bye-law 46, is fully convinced that the resolution No. 8 dated 5.12.2008 was not approved by 7rd members of the Society as provided in bye-law 46 of the Society and as such same was rightly declared void ab initio as per mandatory provisions of bye-law 46 of the Society by learned Single Judge while dismissing the petition preferred by the Society.

18. Society has placed no document on record to demonstrate that resolution dated 5.12.2008 was approved by the Registrar Cooperative Societies in terms of Section 11 of the Act.

19. Apart from above, this Court viewed the matter from another angle also. In the present case, it is undisputed that the truck was sold by respondent No.1 in 2004 to some other person along with token and thereafter he kept on participating in the meetings of the Society, rather he voted in the election of the Society. It is not understood how decision, if any, taken vide resolution dated 5.12.2008 could be made applicable by the Society on a member who had sold his truck in 2004. Perusal of resolution dated 5.12.2008 nowhere suggests that the same was to be made applicable retrospectively and as such membership of respondent No.1, who sold his truck in 2004 can not be cancelled/expelled in terms of resolution dated 5.12.2008. Hence, this court has no hesitation to conclude that there is no illegality or infirmity in the findings returned by the

learned Single Judge that it stands proved on record that till date respondent No. 1 is a member of the Society and he is legally entitled to all the privileges enjoyed by other members of the Society in terms of bye-laws framed by the society on its registration.

20. From the discussion made herein above, we have no hesitation to conclude that the Society had no authority to cancel the membership of respondent No.1 in terms of resolution dated 5.12.2008, which was admittedly not passed in accordance with bye-laws of the Society as well as provisions contained in the Act and Rules as discussed in detail herein above. Apart from above, it is settled principle of law that the questions of facts can not be gone into in writ proceedings.

21. The apex Court, in case titled Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, held that question of fact cannot be interfered with by the Writ Court. It is apt to reproduce paragraph 18 of the said judgment herein.

"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant"

22. This Court in a series of cases, being CWP No. 4622 of 2013, titled as M/s. Himachal Futuristic Communications Ltd. v. State of H.P. and another; LPA No. 23 of 2006, titled as Ajmer Singh v. State of H.P. and others, decided on 21st August, 2014; LPA No. 125 of 2014, titled as M/s. Delux Enterprises v. H.P. State Electricity Board Ltd. & others, decided on 21st October, 2014; and LPA No.143 of 2015, titled Gurcharan Singh (deceased) through his LRs v. State of H.P. and others, decided on 15th December, 2015, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, has held that question of fact cannot be interfered with by the Writ Court.

23. However, such findings can be questioned if it is shown that the Tribunal/ Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned findings.

24. This Court in LPA No.485 of 2012, titled as Arpana Kumari v. State of H.P. and others, decided on 11.08.2014, has held that orders passed by the Authorities cannot be challenged in a writ petition unless the orders are made

without jurisdiction or are passed in breach of mandatory provisions of law or have caused miscarriage of justice. It is apt to reproduce paragraphs 3 and 4 of the said judgment hereunder :

"3. The Writ Court after examining all the orders and the averments contained in the writ petition came to the conclusion that the orders made were legal one and had been passed by the competent Authorities while exercising the jurisdiction vested with them. While going through the impugned judgment, it also came to our notice that when the Writ Court was about to dismiss the writ petition, learned counsel for the writ petitioner-appellant sought permission to withdraw the writ petition with liberty to file a civil suit, which prayer was declined by the Writ Court.

4. The orders, impugned in the writ petition, have been passed by the Authorities under the provisions of H.P. Tenancy and Land Reforms Act, 1972, cannot be made subject matter of the writ petition unless the orders are made without jurisdiction or having been passed in breach of the mandatory provisions of law or have caused miscarriage of justice. In the instant case, the Authorities below have recorded a finding of fact that the writ petitioner/appellant has violated the provisions of the H.P. Tenancy and Land Reforms Act, 1972. Thus, the writ petition was not maintainable."

25. Having said so, there is no merit in the appeal filed by the Society and same is dismissed, along with pending applications, if any. Judgment passed by the learned Single Judge is upheld.