
(2013) 09 P&H CK 0500

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20065 of 2013

Surinder Singh and Others

APPELLANT

Vs

Special Secretary Co-operation and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 173 PLR 327

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioners have challenged orders dated 22.10.2012, 17.12.2012 and 01.07.2013 and have prayed for direction to allow them to function as office bearers/members of the Managing Committee of the Society. In short, the petitioners and respondent Nos. 7 to 10 are the elected members of the Managing Committee of the Jaimalwala Multipurpose Cooperative Agricultural Service Society Limited, Jaimalwala (for short "Society") registered under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the "Act"). On account of a complaint made by respondent Nos. 7 to 10 against the petitioners to the Deputy Registrar, Cooperative Societies, Moga, about distribution of fertilizer fraudulently, a show cause notice was issued to them, to which they filed reply and the Assistant Registrar, Cooperative Societies, Baghapurana, passed the following order on 22.10.2012:--

As such I, Nirvair Singh, Asstt. Registrar, Cooperative Societies, Baghapurana, exercising the powers of the Registrar, Cooperative Societies, Punjab, Chandigarh, removed/dismissed Sh. Surinder Singh, the then President, now Committee Member from the Managing Committee u/s 27(1)B of the Punjab Cooperative Societies Act, 1961 for the charges of loss by passing the resolutions and taking the authorization to distribute the fertilizer, issue bills and attest cheques and by this have given benefit to his committee members by giving the fertilizer in more quantity of lower rate and giving fertilizer of lower rate to 12

members of the society in higher rate and also hold him ineligible to participate in the election of the managing committee for coming two years u/s. 27(7) of the Punjab Cooperative Societies Act, 1961. Sh. Kuldeep Singh, Committee Members now President is removed/dismissed from the managing committee u/s. 27(1)-B of the Punjab Cooperative Societies Act, 1961 for the charge of putting the members of the society to loss by taking 13 bags of fertilizer at old rate (Rs. 600/-) and taking 14 bags of DAP fertilizer of Rs. 770/- and taking personal benefit and hold him ineligible to participate in the election of the managing committee for coming two years u/s. 27(7) of the Punjab Cooperative Societies Act, 1961, Sh. Nirbhai Singh, Committee Members and Kikar Singh committee member in connivance with above committee members have passed resolution against the interest of the members and the society and on this charge of helping the above committee members for personal gain hold them ineligible to participate in the election of the managing committee for the coming 3 years u/s. 27(7) of the Punjab Cooperative Societies Act, 1961 and from now being committee members censure them to remain in the interest of the members and the society.

2. The petitioners challenged the order of the Assistant Registrar by way of appeal u/s 68 of the Act before the Joint Registrar, Cooperative Societies, Ferozepur Division, Ferozepur, which was dismissed vide his order dated 17.12.2012, with the following conclusion:--

After hearing the arguments of the learned counsels and perusing the record available on the file, I have come to the conclusion that:--

1. The action taken by the Assistant Registrar, Cooperative Societies, Baghapurana for ceasing the appellants on the basis of the charges leveled against the above said members of the Managing Committee was under law.

2. The appellants being committee members by selling lesser rate fertilizer at higher rates and giving the remaining D.A.P. to their relations have misused their powers and also caused financial loss to the society.

Keeping in view the above, I, Raj Kumar Gautam, P.C.S.-1, Joint Registrar, Cooperative Societies, Ferozepur Division, Ferozepur inclined with the arguments of the learned counsel for the respondents, therefore, dismiss the appeal of the appellants and upheld the order dated 22.10.2012 of the Assistant Registrar Cooperative Societies, Baghapurana. Order reserved on 11.12.2012 is written today i.e. 17.12.2012.

3. The petitioners further filed revision u/s 69 of the Act before the Special Secretary, Cooperation, Punjab, which too has been dismissed on 01.07.2013 with the following observations:--

6. I have heard the arguments put forth by the counsels and perused the record available on the file. The very fact that a resolution has been passed by the committee whereby fertilizer was to be delivered to the members of the society

in the presence of the petitioners being the President and Vice President respectively implied that all transactions would be fair and transparent. However, in actual practice as per record and evidence it proved to be otherwise and the petitioners ended up to be the main beneficiaries. This reveals the true intent behind the passing of the resolution.

7. The judgment cited by the learned counsel for the petitioners is not strictly applicable in the instant case. The quantum of punitive action is as per the gravity of the irregularity committed by each members. Therefore, I am of the view that there are no cogent reasons to differ with the orders of the Joint Registrar dated 17.12.2012 as well as the order of the Assistant Registrar dated 22.10.2012. I uphold the same and dismiss the revision petition.

4. Since the action has been taken for removal against the petitioners, it would be relevant to refer to the provisions of Section 27 of the Act, which deals with the removal or suspension of Committee or members thereof. Section 27 of the Act is reproduced here-as-under:--

SECTION - 27

27. Removal or suspension of committee or member there of.--(1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed on it or him by Act or the rules or bye-laws, made thereunder or commits any act which is prejudicial to the interests of the society or its members, or makes default in the implementation of production or development programmes undertaken by the co-operative society, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing -

(a) remove committee, and appoint a Government servant as an administrator to manage the affairs of the society for a period not exceeding one year as may be specified in the order;

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act and rules and bye-laws made thereunder,

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and where the committee is suspended, make such arrangements as he thinks proper for management of the affairs of the society till the proceedings are completed.

Provided that if the committee or member so suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term.

(3) The administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any Officer of the society and take all such actions as may be required in the interest of the society.

(4) The Registrar may fix the remuneration payable to the person appointed as administrator and the amount of such remuneration and other costs, if any incurred in the management of the society shall be payable from its funds.

(5) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and byelaws framed thereunder.

(6) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing bank to which the society is indebted.

(7) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years as the Registrar may fix.

5. Counsel for the petitioners has mainly argued that since the society has been indebted to the financial bank, it was mandatory for the officials respondents to comply with the provisions of Section 27(6) of the Act, which provides that before taking any action u/s 27(1) in respect of a cooperative society, the Registrar is required to consult the financial bank to which the society is indebted.

6. Admittedly, no such consultation has been done before the impugned order was passed which has been maintained in appeal and revision under the Act.

7. In support of his submission, counsel for the petitioners has relied upon two decisions of the Supreme Court in the cases of *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, and *Veerpal Singh Vs. Registrar, Co-operative Societies U.P. and Others*, .

8. It is contended that in the Tamilnadu Co-operative Societies Act, 1961, Section 72(6) is *pari materia* with Section 27(6) of the Act, which has been interpreted by the Supreme Court to be a mandatory provision in *Joint Registrar of Co-operative Societies, Madras and others*" case (*supra*). Similarly, he has referred to Section 35 of the Uttar Pradesh Co-operative Societies Act, 1966, and submitted that the same has been held to be mandatory in *Veerpal Singh*"s case (*supra*).

9. On the other hand, counsel for the respondents has submitted that the question as to "whether Section 27(6) of the Act is mandatory or directory" has been categorically decided by the Division Bench of this Court in the case of *Kartar Singh and Others Vs. State of Punjab and Others*, , while even referring to the decision of the Supreme Court in *Joint Registrar of Co-operative Societies, Madras and others*" case (*supra*).

10. I have heard learned counsel for the parties and perused the record.

11. The main question involved in this petition is as to "whether the provisions of Section 27(6) of the Act are mandatory or directory?"

12. In Joint Registrar of Co-operative Societies, Madras and others" case (supra), the following two points were argued before the Supreme Court:--

(i) Whether the Registrar before taking action u/s 72 must have an audit made u/s 64 and inquiry held u/s 65 and an inspection made u/s 66 of the Act and must also give an opportunity for rectification of the defects which may come to light as a result of such audit, inquiry or inspection?

(ii) What is the scope of interference by the High Court with the Order of a Registrar made u/s 72 of the Act?

13. Thus, it was not the question posed before the Supreme Court about the nature of the provisions, which was also not the question involved in Veerpal Singh's case (supra). However, it was a precise question before this Court in Kartar Singh and others" case (supra), which was posed in the beginning of the judgment in the following words:--

Whether the provisions of sub-section (6) of section 27 of the Punjab Cooperative Societies Act, 1961, are mandatory or directory in nature-is the spinal issue which has necessitated the admission of this writ petition for a hearing by the Division Bench?

While answering this question, it was observed as under;-

8. As has already been noticed, section 27 is a detailed and exhaustive one and it cannot be generally said that every provision therein, whether procedural or substantive, must be held to be mandatory so as to render any and every infraction of its numerous provisions as fatal. What calls for pointed notice is that the substantive power of removal and suspension is contained in sub-sections (1) and (2) and the remaining sub-sections are of lesser significance and of consequential and procedural nature. It can fairly be said that sub-section (6) falls in this latter category.

9. Coming to a closer examination of sub-section (1) of section 27 (to which sub-section (6) is a procedural gloss), it is manifest that the power of removal is vested in the Registrar. However, it is not wholly unguided and his opinion and decision to remove the committee or any member thereof has to be rested on the surer foundation of the under mentioned criteria:

(i) Persistent defaults in the performance of the statutory duties under the Act and the Rules;

(ii) Persistent negligence in such performance;

(iii) Commission of any act which is prejudicial to the interest of the society or its members and

(iv) default in the implementation of the production and development programmes.

If in the opinion of the Registrar any of the aforesaid four conditions is satisfied he is entitled to invoke his powers to remove the committee or a member but this is to be only done after giving either of them a reasonable opportunity to object thereto. After considering such objections if the Registrar is satisfied he can by an order, in writing, remove the committee or any member thereof. It would thus be plain that the core provision therein is sub-section (1) conferring the power and the manner of its exercise for removing the committee or its members. Even the power of suspension under sub-section (2) is relatively subservient and consequential to the exercise of the power under sub-section (1). It can, therefore, be safely assumed that the substantive and the significant provision is sub-section (1) whilst sub-section (6) is merely subsidiary and ancillary thereto.

10. Now advertent to sub-section (6) it would appear that its provisions would not be inflexibly applicable always. They are attracted only where a Co-operative Society is in fact indebted to a financing bank. In a case in which such a society may not be so indebted at all it is obvious that Sub-section (6) would not come into play at all. Equally one may visualize that apart from a total absence of indebtedness there may be only a marginal one. Supposing a Society merely owes a paltry amount to a financial bank, would this fact make the financing institution so vitally interested in the issue, or the opinion of the Bank become so vital that the basic exercise of power u/s 27(1) should stand vitiated, thereby. The answer would prima facie appear to be in the negative.

14. Further, the decision in Joint Registrar of Co-operative Societies, Madras and others" case (supra) was also taken into consideration and it was observed as under:--

17. In fairness to Mr. H.S. Mattewal, the learned counsel of the petitioner, reference may be made to Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, , on which some reliance was sought to be placed by him. I am, however, unable to see how the said case advances the stand of the petitioner and indeed a closer analysis would show a contrary effect. Therein, the Joint Registrar acting u/s 72 of the Madras Co-operative Societies Act, 1916, had suspended the Committee of a Co-operative Society. The learned Single Judge of the Madras High Court quashed the order of the Registrar primarily for the violation of Sections 64, 65 and 66 of the Act. This, in turn, was upheld by a Full Bench of the Madras High Court. Their Lordships of the Supreme Court, however, on an appeal preferred by the Joint Registrar Cooperative Societies allowed the same and reversed the judgments of the Full Bench and the learned Single Judge and upheld the suspension of the Committee by the Joint Registrar. It was observed as follow:--

.....We do not consider that would be the correct approach in construing S. 72

which is meant for superseding the Committee as a whole when its working discloses such irregularities or improprieties as would justify its super-session. Normally it would be expected that only that Committee would be superseded whose functioning has been found to be highly defective. The object of super session apparently is to appoint a Special Officer or a managing committee in order to set the working of the society right. It is not difficult to envisage a situation where maladministration by a committee has so adversely affected the functioning of the society that it is essential in the interests of the society itself to give temporarily the control of its affairs to a neutral authority.....

It deserves highlighting that the provisions of Section 72(1) of the Madras Co-operative Societies Act and those of Section 27 of the Act, which we are called upon to construe, though having some similarity, are not in pari materia. An analysis of the judgment in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, would disclose that the issue whether consultation with the financing bank was mandatory or directory, was not even remotely before their Lordships nor any such finding has even remotely been arrived at. The whole question was whether the provisions of Sections 64, 65 and 66 of the Act were attracted to the exercise of the power u/s 72. There is only a passing reference by their Lordships that before acting u/s 72(1) there is no other requirement prescribed by the Legislature except that of consultation with the financing bank under sub-section (6). In this context, one has to recall the celebrated dictum of Lord Halsbury in *Quinn v. Leathern*, (1901) A.C. 495, that a decision is only an authority for what it actually decides and its ratio, and not every observation found therein nor what logically follows from the various observations made in it. Following the same it was authoritatively observed in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, , that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

15. Ultimately, in para 21 of the judgment, it was held that "the answer to the question posed at the out-set therefore is that Section 27(6) is directory in nature".

16. Thus, this question is no more res integra as has been authoritatively decided by the Division Bench of this Court. Thus, I do not find any reason to deviate from the decision rendered by this Court in *Kartar Singh and others*" case (supra). Consequently, the-present writ petition is hereby dismissed being denuded of any merit.