
(1990) 05 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 140 of 1978

The Bilaspur District Co-operative Marketing and Consumers Federation Ltd.

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 2 ShimLC 159

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : M.C. Mandhotra, for the Appellant; M.S. Chandel, Asstt. A.G. for Respondents Nos. 1, 2, 4 and 5 and A.K. Goel, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—The Petitioner is a District Co-operative Marketing and Consumers Federation which had in its employment one Shri V.D. Kalia as its Secretary. Kalia is the third Respondent in the present petition under Article 226 of the Constitution. The State of Himachal Pradesh, its Secretary (Co-operation), the Registrar and the Deputy Registrar, Co-operative Societies, Himachal Pradesh, are the other Respondents. A charge sheet was served upon Kalia by the Petitioner-Society containing as many as 26 charges. His services were terminated by an order of November 6, 1969. Kalia filed an appeal against the order of termination which lay to the Deputy Registrar. The appeal was allowed on February 16, 1970, and the order of termination was set-aside. The Petitioner-society assailed the order of the Deputy Registrar in a petition for revision. On September 21, 1971, the Registrar allowed the revision by his order of which a copy is Annexure-PE to the writ petition.

2. By an order of August 8, 1978 (Annexure-PL) the State Government has set aside the order of the Registrar dated September 21, 1971. It has been mentioned in the order of the State Government that it was a case of review u/s

94(1) of the Himachal Pradesh Co-operative Societies Act, 1968, (for brief, "the Act"), which had been initiated by the State Government suo moto against the order of the Registrar dated September 21, 1971. The view taken, by the State Government is that reasonable opportunity had not been afforded to Kalia to defend himself before the order of termination of his services had been passed. In its operative portion the Secretary (Co-operation), who had passed the order, says that:

...I hold that to extent (?) reasonable opportunity was not afforded to Shri Kalia and set-aside the order passed by the Registrar Co-operative Societies in appeal (?). The Federation would be free to take disciplinary proceedings afresh after following the prescribed procedure and affording reasonable opportunity to Shri Kalia.

3. In the present writ petition, which was filed in this Court on August 14, 1978, the ground raised in the forefront is that there was no justification for the State Government to have reviewed or revised the order of the Registrar, Co-operative Societies, after the lapse of eight years and that too suo moto.

The petition was heard at more occasions than one and its hearing was deferred from time to time on the request of Counsel for the parties to enable an out of court settlement between the Petitioner-Society and its erstwhile Secretary, namely, Respondent Kalia. Nothing, however, came out of their efforts.

4. Shri M.C. Mandhotra has appeared on behalf of the Petitioner-Society. He has urged that a review of the order of the Registrar, upholding the order of termination of the services of Kalia, was not possible beyond a period of three months from the date of service of the order of the Registrar upon the parties. In other words, no prayer for review could be entertained by the State Government beyond a period of 90 days of the date when a copy of the order was served upon Kalia.

5. Alternatively, it has been urged that there was no justification for the State Government to have reopened the case suo moto and reviewed the order of the Registrar at its own after a lapse of nearly eight years.

6. Section 94 of the Act, dealing with review and revision, is in the following terms:

94. Review and Revision.--(1) The State Government except in a case in which an appeal is preferred u/s 93 may call for and examine the record of any inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may at any time,-

(a) review and order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made

under this Act or the proceedings of any person subordinate to him or acting on his authority and if it appears to him that any decision, order of award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit:

Provided that, before any order is made under Sub-sections (1) and (2), the State Government or the Registrar as the case may be shall afford to any person likely to be affected adversely by such orders an opportunity of being heard.

Provided further that every application under Sub-sections (1) and (2), to the State Government or the Registrar, as the case may be, shall be made within ninety days from the date of the communication of the order sought to be reviewed or revised.

7. A perusal of the provisions would show that the period of 90 days mentioned in the second proviso relates to an application for review made by a party to the proceedings culminating in the order. Shri A.K. Goel, appearing for the third Respondent, has rightly pointed out that even this period of limitation was introduced, by adding the second proviso, with effect from May 19, 1981, by H.P. Act No. 13 of 1981.

On facts, therefore, it is not possible to sustain the plea that the period of 90 days for making a review of the order would be attracted in the instant case.

The argument aforesaid failing, Shri Mandhotra urged that in any case the power of review could only have been exercised by the State Government, albeit suo moto, within reasonable time and that the absence of any period of limitation for exercise of such power suo moto would not enable the State Government to do so at any time nor could it do so arbitrarily, after considerable delay, to the detriment of one or the other party to the order under review. The submission is unexceptionable and deserves to be accepted. The exercise of power of review must be made within a reasonable period of the date of the order sought to be reviewed. Else, it would bring in an element of uncertainty and leave the parties to the order unprotected and completely at the mercy of the reviewing authority which may choose to exercise the power of review at any time, at its pleasure, arbitrarily. The repository of a power of review, which, apparently, can be exercised without any restriction as to limitation, suo moto, is to act reasonably both as regards the exercise of the power on facts as also as respect the time that has elapsed from the date when the order, sought to be reviewed, was passed. This is implicit in conferment of a discretionary power of the nature vested in the State Government u/s 94.

8. Whether the power of review has been exercised within a reasonable time or not would, naturally, depend upon the circumstances obtaining in a case. No inflexible rule can be laid down in the matter.

9. What then are the circumstances of the present case?

The Petitioner-Society has asserted (in paragraph 12 of the petition) that inspite

of the fact that the decision of the Registrar was given as far back as the year 1971, the State Government, on account of political pressure, suo moto issued a notice for the review of the order of the Registrar dated September 21, 1971. It is further asserted in the same paragraph that the effect of the order is that the Petitioner had been burdened with all the arrears etc. of the third Respondent Shri Kalia from the date he was removed from service i.e. from 1969 to 1978 and pressure would be put upon the Petitioner to pay the arrears to him.

10. Replies have been filed in the writ petition on behalf of the State Government as also the third Respondent. What has been averred in reply to the assertions made in paragraph 12 of the petition by the State Government is that:

...the averments made in this para are admitted except that no political pressure was exercised and the Federation (Petitioner) has been ordered to take disciplinary proceedings afresh after following the prescribed procedure and affording reasonable, opportunity to Shri V.D Kalia...

11. The third Respondent (Shri V.D. Kalia) in her reply says that:

the contents of para 12 of the writ petition are correct to this extent that the order contained in Annexure PL is legal and valid. It cannot be attached on any ground whether factually or legally. There is no infirmity attached to it...

12. It is obvious from the aforesaid averments contained in the affidavits exchanged between the Petitioner and the contesting Respondents that no justification whatsoever has been put forward by the State Government in particular, for taking suo moto action and reviewing an order passed in 1971 after several years in the year 1978. Neither the state Government nor the third Respondent have, in effect, controverted the assertion of the Petitioner that the quashing of the order would result in tremendous financial impact on the Petitioner.

13. The circumstances aforesaid clearly indicate that the exercise of the power of review by the State Government after several years of the passing of the order, which it chose to review, was made without application of mind to the question whether the order should be reviewed after a lapse of such a long period. Such an order cannot be upheld.

14. The petition is allowed. The order of the State Government dated August 8, 1978, contained in Annexure-PL to the writ petition is quashed. Parties are, however, left to bear their own costs of the petition.