
(2002) 01 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16689 of 1999

The Rawalwas Khurd Cooperative Credit and Service Societies and Others APPELLANT

Vs

Commissioner and Secretary to Government, Cooperation Department, Haryana, Chandigarh and Another RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 27

Citation : (2002) 2 RCR(Civil) 682

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Asha Nand Sharma, for the Appellant; Palika Monga, A.A.G. and S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The Society and its Committee-members are the petitioners. They are aggrieved by the order dated May 6, 1999 passed by the Commissioner and Secretary to Government, Haryana, Department of Cooperation. A few facts as relevant for the decision of this case may be briefly noticed.

2. On October 31, 1996, the second respondent was ordered to be appointed as the Salesman. Some of the members of the Managing Committee of the Society made a complaint to the Assistant Registrar that the appointment was illegal. Vide order dated October 14, 1997, Mr. Prem Parkash Gupta, purporting to be the Deputy Registrar, Cooperative Societies, Hissar "rescinded the resolution." He passed this order after taking into account the report sent by the Assistant Registrar, the financial condition of the Society, and the departmental instructions.

3. The second respondent felt aggrieved. He filed an appeal before the Registrar. Notice of the appeal was given to all concerned including the Petitioner-Society. On consideration of the matter, he found that the requisite notice was not "issued

for the meeting of the Managing Committee of the Society." he further found that "Shri Prem Parkash Gupta who passed the impugned order in this case was promoted as full-fledged Deputy Registrar vide orders dated 18.11.1997 and the impugned order was passed on 14.10.1997." On this basis, he held that he was not competent to pass the order. Despite this finding, he dismissed the appeal filed by the second respondent on the ground that "the irregularity committed while appointing the appellant cannot be sustained in the eyes of law. Therefore, I rescind the resolution dated 31.10.1996 passed by the managing committee of the Society."

4. The second respondent was aggrieved by this order. He filed a revision petition before the Commissioner. Vide order dated May 6, 1999, the revision petition has been accepted. The penultimate paragraph is relevant. It reads as under:-

"I have heard the argument of Ld. counsel for parties and have perused the original record made available on file. I agree with the arguments made by Ld. counsel for petitioner that Sh. Prem Parkash was working as Asstt. Registrar, Cooperative Societies and was not full-fledged Deputy Registrar, Cooperative Societies at the time of passing the order. Therefore, I accept the revision petition and set aside the order dated 6.4.98 passed by the Registrar, Cooperative Societies, Haryana and order dated 14.10. 97 of Deputy Registrar, Cooperative Societies, Hisar."

5. The petitioners are aggrieved by the above order. It is alleged that the first respondent has not given any reason for setting aside the order passed by the Registrar. It has been categorically averred that 15 days' notice was required under Rule 110 of the Haryana Cooperative Societies Rules, 1989. It had been found that the notice had not been given. Thus, the view taken by the Registrar was in conformity with the provisions of law. It has been set aside without considering the matter.

6. The second respondent has filed a reply. Relying upon the provisions of Section 36, the respondent maintains that the appointment was in accordance with law. It is maintained that the impugned order is legal and valid.

7. Counsel for the parties have been heard. On behalf of the petitioners, it has been contended that the second respondent had been appointed without following the required procedure. Notice as required under the provisions of the Rules was not issued. Applications for the post were not invited. The second respondent was appointed without allowing any opportunity to others to compete. The Registrar vide his order dated April 6, 1998 had found the appointment to be illegal. He had rescinded the resolution dated October 31, 1996. The Commissioner had accepted the revision petition without assigning any reasons. Thus, the impugned order is vitiated.

8. On the other hand, Mr. S.S. Dalai, counsel for the second respondent has submitted that the Society had not filed any appeal etc. before the Registrar. The second respondent was the aggrieved person. He had filed a revision petition. It

was rightly accepted by the Commissioner. Still further, it has also been contended that the Registrar had not given any notice to the second respondent in accordance with the provisions of section 27(2). Thus, the impugned order is legal and valid.

9. Admittedly, the Registrar had found that 15 days' notice as contemplated under the Rules had not been given. He had, thus, rescinded the resolution dated October 31, 1996 passed by the Managing Committee of the Society. The Commissioner has not found that the requisite notice had been given. In fact, he has only affirmed the finding of the Registrar that Mr. Prem Parkash Gupta was an Assistant Registrar and was, thus, not competent to pass the order. No reason for setting aside the order dated April 6, 1998 passed by the Registrar has been given.

10. Mr. Dalai submits that notice for recession of the resolution had to be given to the second respondent u/s 27. Is it so?

11. A perusal of Section 27 shows that the Registrar is competent to suspend a resolution passed by a Managing Committee if in his opinion, the said resolution is "in excess of the powers conferred by the Act, rules or bye-laws or the execution of the resolution will be contrary to the interest of the society or the interest of the members thereof or is likely to cause waste or damage of the funds of the society." For the purpose of rescinding the resolution, the Registrar has to give "the committee or sub-committee as the case may be, an opportunity of being heard." The Act does not contemplate the grant of opportunity to the employee. Thus, the contention raised on behalf of the second respondent that a notice was required to be given to him, cannot be accepted.

12. In fact, it appears that u/s 27, the Registrar can proceed even suo-motu. It is not necessary that there should be any petition before him for passing an order.

13. Irrespective of the above, it is clear that the Commissioner has given no reason for setting aside the order passed by the Registrar. Thus, the order dated May 6, 1999, a copy of which is at Annexure P.5 with the writ petition cannot be sustained. It is, consequently, set aside.

14. The writ petition is, accordingly allowed. The matter is remanded for a fresh decision after hearing the parties. The parties through their counsel are directed to appear before the Commissioner on February 8, 2002. In the circumstances, the parties are left to bear their own costs.