
(1988) 07 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 9 of 1977

Vidya Sagar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 25-07-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 17 ILR HP 274

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

Bench : Single Bench

Advocate : Rajiv Sharma, for the Appellant; M.S. Chandel, Assistant A.G. for Respondents No. 1 to 3 and V.D. Khidta and K.D. Shreedhar, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.

1 Vidya Sagar, who has approached this Court for redress in the present petition under Article 226 of the Constitution, was appointed as an Accountant in the Una Sub-Divisional Co-operative and Supply and Marketing Society, Una, in November, 1966. He functioned as such till February 28, 1968. During this period there was some misappropriation of the funds of the Society which led to a claim against Petitioner Vidya Sagar by the Society.

2. The claim which had been made by the Respondent-Society was referred to the arbitration of one Partap Singh, who was then Inspector of the Co-operative and Supplies Department at Dharamshala. Proceedings took place before him whereafter an award was made. Even though the claim of the society against Vidya Sagar was for a sum of Rs. 39,538.45 P., the arbitrator found him liable for payment of a total sum of Rs. 11,178.55 P. (Rs. 8100.55 as principal and the remaining amount by way of interest and costs). The direction in the award, which was made on March 29, 1970, was that this amount shall be paid by Vidya Sagar by April 15, 1970, failing which it may be realised from him through a civil

court by sale of his property.

3. Feeling aggrieved by the aforesaid award, Vidya Sagar preferred an appeal before the Registrar Co-operative Societies, Himachal Pradesh. The appeal was, however, dismissed. Vidya Sagar then filed a petition under the Himachal Pradesh Co-operative Societies Act, 1968, which provided for such a review and revision petition u/s 94. This revision petition was also dismissed by an order passed on November 10, 1976. It is then that Vidya Sagar came to this Court through the present writ petition which was filed on January 6, 1977.

4. The principal submission, which has been made in this Court on behalf of Vidya Sagar, is that the Inspector who functioned as the arbitrator and passed an award against him on March 29, 1970, was not empowered to do so. It is urged that the power of Registrar under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961, which was in force at the relevant time, could not be conferred upon the district Co-operative and Supplies Officer who appointed the fourth Respondent as Arbitrator. Besides, in reality, it was not so conferred upon him. As such, the entire proceedings which the fourth Respondent took in the matter and the award made by him, were nullity. The amount awarded could not, therefore, be realised from the Petitioner.

5. In paragraphs 8 and 10 of the writ petition it has been averred that Partap Singh was appointed as an arbitrator on March 12, 1969, after the Himachal Pradesh Co-operative Societies Act, 1968, had come into force, having been assented by the Governor on February 22, 1969. u/s 73 of this Act arbitration proceedings could only be taken by the Registrar or some one appointed by him who had been vested with powers of the Registrar. Since the D.C.S.O., Hamirpur, who had appointed an Inspector as the arbitrator, was not the Registrar he was not entitled to refer the matter to arbitration or to appoint an arbitrator. Also, that the powers of Registrar were given to the District Co-operative and Supplies Officer on June 4, 1971, through a notification which was not made retrospective in its operation.

6. The averments made in the aforesaid two paragraphs of the petition have been answered in paragraphs 8 and 10 of the reply sworn by the Deputy Secretary (Co-operation) to the Government of Himachal Pradesh on behalf of the first four Respondents, to the petition. What has been stated in these paragraphs is that the appointment of the arbitrator which was made under the Punjab Act was protected u/s 107(2) of the Himachal Pradesh Co-operative Societies Act, 1968, and further that the decision which was given by the arbitrator was in the capacity of Registrar Co-operative Societies. The Petitioner has not filed any affidavit-in-rejoinder controverting the assertions made in this reply.

7. At the time of the hearing of the petition, Shri S. Chandel, learned Assistant Advocate General, appearing for the first four Respondents, has placed before the Court copies of the two notifications which clarify the stand taken in the

return filed on behalf of these Respondents. The first of these is a notification dated March 30, 1965, which was issued in exercise of powers u/s 3(2) of the Punjab Co-operative Societies Act, 1961, and, in its material parts reads thus:

Notification No. S.O. 81-PA/25/61/S dated 30th March, 1965. In partial modification of Punjab Government Notification No. S.O.P.A./25/61/S. 3/63, dated 12th September, 1963, and in exercise of the powers conferred by Sub-section (2) of Section 3 of the Punjab Co-operative Societies Act, 1961 (Punjab Act No. 25 of 1961), the Governor of Punjab is pleased to confer on the Assistant Registrars, Co-operative Societies the powers of the Registrar, exercisable under Sections 8, 9, 10, 11, 13, 25, 28, 42, 48, 48, 50, 51, 52, 55, 56, 57, 58, 60, 63(a), 65, 66, 67, 68, 73, 82(2) "and 83 of the Punjab Co-operative Societies Act 1961 and Rules 8, 10, 12, 13, 27, 38, 39, 43(1), 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 65, 67, 68, 69 and 70 and Rules I(b) and (c) and 3(1), (2) and (3) of Appendix-C of the Punjab Co-operative Societies Rules, 1963.

The Second is a notification of October 28, 1967 which is in the nature of corrigendum to the above notification dated March 30, 1965, and has been issued by the Government of Himachal Pradesh. It reads thus:

GOVERNMENT OF HIMACHAL PRADESH CO-OPERATIVE DEPARTMENT
CORRIGENDUM Shimla-4, the 28th October, 1967

No. 10-10 6/60-Co-op-II.--The words "Assistant Registrar, Co-op. "Societies" appearing in Government of Punjab Notification No. S.O. 81-PA/25/61 Section 3/65, dated the 30th March, 1965 (copy enclosed) shall be substituted by District Co-op. and Supplies Officers.

By order, B.S. SINGH, Secretary (Co-operation to the Himachal Pradesh Government.

8. From these notifications it is clear that the power of a Registrar, which was exercised by him, inter alia, under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961, which had been conferred upon the Assistant Registrars of Co-operative Societies, was conferred by the State of Himachal Pradesh on the District Co-operative and Supplies Officers through notification of October 28, 1967.

9. It is not in dispute that the Registrar of Co-operative Societies was competent to appoint an arbitrator for going into a dispute of the nature in which Petitioner Vidya Sagar and the Society (fifth Respondent) were involved. The power of the Registrar is conferred upon the District Co-operative and Supplies Officers through the notification dated October 28, 1967. When, on March 12, 1969, Co-operative and Supplies Officer, Hamirpur, appointed the fourth Respondent, (Inspector Partap Singh) as an arbitrator, he was exercising power of a Registrar which had been conferred upon him by the aforesaid notification dated October 28, 1967. In this view of the matter the appointment of Partap Singh, Inspector, as arbitrator cannot be said to be invalid in law.

10. The above submission failing, Shri Rajiv Sharma, who has argued the case on behalf of Petitioner Vidya Sagar with precision, made Anr. submission and it is this; the case of the Respondent-Society is that in consequence of an audit made in respect of the affairs of the Society, it was discovered that some amount had been misappropriated and embezzled by Petitioner Vidya Sagar. For the recovery of that amount resort to arbitration proceedings were taken u/s 55 of the Punjab Co-operative Societies Act, 1961. For recovery of the amount, allegedly embezzled or misappropriated by an employee of the Society, when such misappropriation or embezzlement is discovered in the course of an audit, proceedings could be undertaken u/s 54 of the Act. The same having not been done, resort to the provision of Section 55 could not be had by the Society as proceedings under that provision could not be taken by it in law. Section 54 is in the following terms:

54. Surcharge-(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person:

Provided that no such inquiry shall be held after expiry of six years from the date of any act or omission referred to in this Sub-section.

(2) Where an inquiry is made under Sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs of compensation to such extent, as the Registrar may consider just and equitable.

11. In paragraph 12 of the petition it has been averred that an audit into the accounts of the Society could be made by the Registrar or a person who had been appointed as an Auditor by him. Since no Auditor had been appointed by the Registrar, the report given by the Inspector (Audit) could not be taken into account.

12. In the reply which the Respondents have given to these averments in paragraph 12 of the counter affidavit sworn by the Deputy Secretary (Co-operation) to the Government of Himachal Pradesh, the audit of the accounts made in the instant case has been justified as being in order. The award [Annexure "A" to the petition] starts by saying that it was in respect of recovery of misappropriated and embezzled amount of the sum belonging to the society.

On these averments, it is clear that the matter falls squarely within the ambit of Section 54 of the Punjab Co-operative Societies Act.

13. In the case of Jai Pal v. The State Haryana and Ors. (1984 PLR 8) a learned Single Judge of the Punjab and Haryana High Court had occasion to deal with controversy of a similar nature. There too, the plea taken was that the alleged action attributed to Petitioner Jai Pal fell within the ambit of Section 54 of the Punjab Co-operative Societies Act and as such, recourse to proceedings u/s 55 of the Act could not be had. The learned Judge considered the ambit of these provisions and relying upon the principle laid down by the Supreme Court in Pentakota Srirakulu Vs. The Co-Operative Marketing Society Ltd., , held that the proceedings u/s 55 were liable to be quashed as being without jurisdiction. The objection to proceedings u/s 55 had been taken for the first time before the High Court.

14. On facts, the case of Jai Pal is indistinguishable from the present case. Following, therefore, the decision in Jai Pal's case it must be held that the Award of the arbitrator and the orders passed in appeal and review, in consequence of proceedings u/s 55, are without jurisdiction. These, therefore, deserve to be and are hereby quashed. If the Respondents can do so in law, they may proceed against the Petitioner in accordance with the relevant statutory provisions.

15. In sum, the writ petition is allowed. The proceedings for recovery which are under challenge in the present petition are quashed. However, parties are left to bear their own costs.