

(2016) 06 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : CWP No. 1113 of 2007.

Vishal Bansal - Petitioner @HASH State of H.P. and Others

Date of Decision : 15-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRHP 1934

Hon'ble Judges : Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. B.C. Negi, Senior Advocate, with Mr. Pranay Pratap Singh, Advocate, for the Petitioner; Mr. V.S. Chauhan, Additional Advocate General, for the Respondent Nos. 1 to 3; Mr. Dinesh Thakur, Advocate, for the Respondent No. 4; Mr. Surinder Saklani, Advocat

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J. - By way of present writ petition, the petitioner has prayed for the following reliefs:

"a. That the impugned order dated 13.09.2006 Annexure P/7 passed by the Ld. Additional Registrar, Cooperative Societies and order dated 10.07.2007 Annexure P/15 passed by Joint Secretary Cooperative Society may kindly be quashed and set aside.

b. That order passed on the application under Order 1, Rule 10 Annexure P/12 may kindly be quashed and set aside.

c. That respondents No. 4 & 5 may be directed to allot the work to the petitioner in accordance with the bye-laws of the society as is being allotted to other situated members of the society.

d. That respondents No. 4 and 5 may be directed to immediately stop illegal GATTA system evolved by the respondent society.

e. That the respondents No. 4 & 5 may be directed to grant damages for wrongful denied work to petitioner.

f. Record of the case may be called for.

g. Any other order, this Hon"ble Court deems fit and proper, may kindly be issued in favour of the petitioners and against the respondents.

h. That the petition may be allowed with cost."

2. Facts as are necessary for the adjudication of the present petition are enumerated here-in-below. The petitioner filed a petition under Section 72 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as "1968 Act") against Bilaspur District Truck Operators Transport Society Ltd. (Regd.), Barmana, District Bilaspur, H.P., on the ground that he was a member of the said society and had purchased a TATA truck of 1995 model bearing registration No. HP-24-3927, which stood attached with the said society since the year 1995. Membership of the respondent-society was opened in the year 1998 and vide membership No. 157/954, he became the member of said society on 24.05.1998 as per the provisions and bye laws of the society and he continues to be a member of the said society. In the said capacity of his, he was being allotted the work of transportation as per the procedure being followed by the society without any hindrance or obstruction, which was abruptly stopped by the society w.e.f. 08.05.2006. The procedure being followed by the respondent-society for allotment of work was based on queue system which was followed by a call (pukar) and volunteers from the queue volunteered for the work. This call (pukar) was made two three times a day as per the demand made by ACC with whom the trucks of the respondent-society were attached. Case of the petitioner was that he was in queue since 2006 and had volunteered for call (pular) every time, but no work was being allotted to him though the same was being allotted to other members of the society and even to those who were not even members of the said society. It was further averred by him that this was being done on the basis of the oral directions issued by the President of the respondent-society. According to the petitioner, he was neither defaulter nor he was suffering from ineligibility for grant of work and, therefore, according to him, he was being discriminated by the petitioner-society in the matter of allotment of work. In these circumstances, he filed the petition under Section 72 of the 1968 Act, wherein he inter alia prayed that the respondent-society be directed to allot work to him as per the bye laws of the society as was being allotted to other similarly situated members of the society.

3. Respondent-society filed reply to the said petition. In the preliminary objections, it was submitted on behalf of the respondent-society that the petitioner had not approached the authority with clean hands and had tried to mislead the authority by making false and frivolous allegations. According to the respondent-society, the truck of the petitioner bearing registration No. HP-24-3927 was attached vide membership No. 157/958. Petitioner had sworn an affidavit dated 29.05.2006 duly attested by Executive Magistrate, Bilaspur, as per which, the membership with regard to truck No. H.P. 24-3927 commonly known as "Gatta" was sold by him, i.e. petitioner to one Sh. Paramjeet Singh

Thakur and the petitioner had averred in his affidavit that he has no objection for transferring the Gatta of the said vehicle and having the same registered in the name of Sh. Paramjeet Singh Thakur, who was owner of vehicle bearing registration No. HP 24B-6122. It was further mentioned in the reply that the father of the petitioner Sh. Chuni Lal Bansal was member of Managing Committee and he had been assigned the work of Office Incharge of the society. According to the respondent-society, the father of the petitioner had taken the original record pertaining to his and his relatives vehicle illegally and now taking advantage of this fact that the society was not in possession of any record, the petitioner had filed frivolous petition in spite of the fact that he knew very well that he had sold Gatta of his truck in favour of Sh. Paramjeet Singh Thakur and accordingly on the strength of the Gatta so sold to Sh. Paramjeet Singh Thakur, another truck of Sh. Paramjeet Singh Thakur had been entered against the said Gatta sold by the petitioner to him. On merit, the stand of the respondent-society as enumerated in paragraphs No. 5 of the reply is quoted herein below:

"....The truck in question earlier owned by petitioner was being allotted works normally and in the meanwhile the Gatta of the truck vide which, the truck was registered with the respondent No. 1 Society was sold to one Sh. Paramjeet Singh Thakur and another truck bearing No. H.P. 24B-6122 was registered vide Gatta number, which was earlier allotted to the petitioner. Since Sh. Chuni Lal was the Office Incharge, he orally acted upon this new arrangement made by the petitioner and one Sh. Paramjeet Singh Thakur and all the concerned were informed that the Gatta of truck bearing NO. H.P. 24-3927 was transferred and a new truck belonging to Sh. Paramjeet Singh Thakur bearing No. HP 24B-6122 has been allotted the said Gatta. Since then, the truck belonging to Sh. Paramjeet Singh Thakur is being allotted the work in normal manner as was earlier being allotted to Truck bearing No. HP 24-3927."

4. In rejoinder, which was filed by the petitioner to the reply filed by the respondent-society, it was inter alia averred by him that the petitioner had brought to the notice of the authority before selling Gatta to Sh. Paramjit Thakur on 29.05.2006 that he had already purchased a Gatta along with truck No. HP-11-2513, which Gatta also belonged to the respondent-society. According to the petitioner, this Gatta was purchased by him on 25th May, 2006 and application to this effect was duly presented to the respondent-society, but the President of the said society insisted that an affidavit be filed and accordingly, the same was also filed before the authority concerned. Thus, according to the petitioner, it was only after having purchased Gatta along with truck No. HP-11-2513 that petitioner sold his Gatta on 29.05.2006.

5. In response to the said rejoinder, a sur-rejoinder was filed by the respondent-society, in which it was mentioned that at no point of time, petitioner brought to the notice of the respondent-society that he had purchased a Gatta along with truck bearing registration No. HP-11-2513. According to the society, the said truck bearing No. HP-11-2513 along with its Gatta was earlier owned by one

Smt. Vidya Devi, W/o Sh. Lekh Ram, who had sold the same along with its Gatta to one Sh. Baldev as was apparent from affidavit dated 02.07.2005 and said Sh. Baldev Kumar had also submitted an affidavit of Smt. Vidya Devi dated 07.07.2006 in which it was stated that she had sold her truck to Sh. Baldev Kumar. It was further mentioned that as per the contents of the affidavit, the truck bearing registration No. HP-11-2513 also stood transferred in the name of Sh. Baldev Kumar. Thus, according to the society, it was not understood as to how Smt. Vidya Devi could have had transferred the truck in the name of the petitioner which she had already sold to Shri Baldev Kumar. Thus, the stand of the society was that Gatta which was initially issued to the petitioner, now stood registered in the name of Paramjeet Thakur and on the strength of the same, work was being allowed to Sh. Paramjeet Thakur. Similarly, as far as Gatta of Smt. Vidya Devi is concerned, the same had been transferred in the name of Sh. Baldev Kumar and work was being allotted to Sh. Baldev Kumar on the strength of the said Gatta.

6. This was followed by a supplementary affidavit filed by the petitioner, in which he refuted the stand of the respondent-society and reiterated that no Gatta had been transferred by Smt. Vidya Devi in favour of Sh. Baldev Kumar.

7. Response to the said supplementary affidavit was filed by the society, in which it was mentioned that as per the records of the society, truck bearing No. HP-11-2513 was sold by Smt. Vidya Devi to Sh. Baldev Kumar along with Gatta and the factum of petitioner having purchased truck bearing No. HP-11-2513 along with Gatta was never brought to the notice of replying respondents and rather it was for the first time that it came to their knowledge from an affidavit which was annexed along with the rejoinder filed by the petitioner to the reply.

8. On the basis of the materials so produced by the respective parties before it, Additional Registrar (Administration) Cooperative Societies, H.P. vide its decision dated 13.09.2009 dismissed the petition filed by the present petitioner by holding as under:

"I have heard the counsels for the petitioner as well as for the respondents. I have also perused copies of affidavits brought on record by the petitioner/respondents in support of their pleas. It is observed that petitioner suppressed material facts of the case in the petition by not disclosing that membership with regard to Truck NO. HP24-3927 known as Gatta had been transferred in the name of Paramjeet Singh Thakur. Respondent have brought on record copy of the affidavit executed by the petitioner before Executive Magistrate Bilaspur (HP) on 29.05.2006 to the above effect. Petitioner filed rejoinder to reply of the respondents in which transfer of Gatta/Membership to Sh. Paramjeet Singh Thakur was admitted. In the rejoinder it was further submitted that petitioner had purchased another Gatta/Membership alongwith truck No. HP 11-2513 from one Smt. Vidya Devi. Copy to the affidavit allegedly executed by Smt. Vidya Devi on 25.05.2006 was brought on record in support above claim. In sub-rejoinder, respondents refuted above claim of the petitioner. Copy of another affidavit dated

28.08.2006 executed by Smt. Vidya Devi was also presented. In this affidavit Smt. Vidya Devi stated that affidavit dated 25.05.2006 was got signed from her fraudulently by the petitioner Sh. Vishal Bansal and that the same may not be taken into consideration. I am inclined to reply on the affidavit dated 28.08.2006 of Smt. Vidya Devi due to the following reasons.

(a) Petitioner had not disclosed all these materials facts in petition dated 01.06.2006.

(b) Signatures of Smt. Vidya Devi on the affidavit point towards her being illiterate/nearly illiterate so that chances of getting her signatures on the affidavit without true knowledge of contents cannot be ruled out.

(c) Petitioner has annexed with the supplementary affidavit a certificate from Registering & Licencing Authority, Arki, Distt. Solan dated 19.08.2006, wherein it has been certified that ownership of vehicle No. HP-11-2513 still stands in the name of Smt. Vidya Devi. This proves that vehicle alleged to have been sold on 25.08.2006 had not been transferred in the name of the petitioner till 19.08.2006, while normally vehicle are required to be registered in the name of purchaser within a period of one month. Disputed affidavit date 25.05.2006 was not utilised by the petitioner for getting the vehicle transferred/registered in his name. This generates suspicion about the purpose for which affidavit was got executed.

Signatures of Sh. Vishal Bansal appended on affidavit dated 25.05.2006 apparently differ from signatures appended on present petition dated 01.06.2006. Some one has apparently impersonation and allegation of getting affidavit dated 25.05.2006 executed from Smt. Vidya Devi fraudulently is not considered relevant here but reliability of the petitioner certainly gets impaired.

In view of the above, it is concluded that the petitioner has transferred Gatta/Membership in respect of Truck NO. 24-3927 owned by him in the name of Sh. Paramjeet Singh Thakur while there is no satisfactory evidence of purchase of another Gatta/Membership by the petitioner so that he has been rightly denied allotment of work by the respondents. This petition is accordingly dismissed."

9. Feeling aggrieved by the said decision of the authority, the petitioner preferred revision petition under Section 94 of 1968 Act.

10. Vide its decision dated 10.07.2007, the revisional authority dismissed the revision so filed by the present petitioner (reflected in decision dated 10.07.2007 as Appeal No. 62 of 2006) by holding as under:

"Undisputedly, it was admitted by the petitioner in his rejoinder filed before the Additional Registrar, Co-operative Societies that the "gatta" of Truck No. HP-24-3927 was sold to Shri Paramjit Singh Thakur dated 29.05.2006, which information was provided by the Respondent Society. As regards the Pint No. (ii), the Affidavits furnished by Smt. Vidya Devi, owner of the Truck were contradictory. Records reveal that at one point of time, through an Affidavit of

Smt. Vidya Devi and Baldev Kumar dated 2.7.2005. Vehicle No. HP-11-2513 along with "gatta" was sold by Smt. Vaidya Devi to Shri Baldev Kumar and upon such information, the work was assigned by the Respondent Society to Shri Baldev Kumar. Later on, as per information with the Respondent Society that the "gatta" of Truck No. HP-24-3927 owned by the Petitioner was transferred to Shri Paramjit Thakur, he started getting work in respect of Vehicle No. HP-24B-6122 owned by him. The Affidavits, being contradictory, and taking into account that the transfer of names in the R.C. is procedural and takes time, the reliance upon the first affidavit and first information is natural and the Society is not at fault in acting upon accordingly."

It is against the said two decisions passed by the authorities concerned that the present petition has been filed.

11. Replies were filed to the writ petition on behalf of the respondents. However, no rejoinder to the replies has been filed by the petitioner nor any rejoinder was intended to be filed by the petitioner when the matter was taken up for arguments and accordingly, the matter was heard on the basis of the material available on record.

12. During the pendency of the revision petition, one Shri Baldev Kumar (respondent No. 6) had also moved an application under Order 1, Rule 10 of the Civil Procedure Code to be impleaded as party in the revision petition, which application of his was allowed vide order dated 18.06.2007. Petitioner has also laid challenge to the said order in the present petition.

13. According to the petitioner, the orders passed by the authorities in his petition under Section 72 of the 1968 Act as well in his revision petition filed under Section 94 of the 1968 Act were not sustainable in the eyes of law.

14. Mr. B.C. Negi, learned Senior Counsel representing the petitioner submitted that both the authorities below have failed to appreciate that the petitioner being member of the respondent-society was entitled to be allotted the work of transportation of cement etc. in his capacity as member of the said society. According to him, the factum of petitioner having sold his Gatta to Shri Paramjeet Singh Thakur was totally irrelevant because the petitioner had the entitlement to be allotted the work on the strength of his being member and till the time he continued to be member of the society, he was entitled to be allotted the work. According to Mr. Negi, this very important aspect of the matter has been overlooked by both the authorities below. Mr. Negi contended that the system of Gatta had no legal sanctity and therefore, transfer of Gatta allotted by the society to the petitioner, by him to Sh. Paramjeet Singh Thakur could not have been made basis by the respondent-society to deny the allotment of work of transportation of cement etc. to the petitioner.

15. Mr. Negi further submitted that the factum of petitioner not being able to satisfactorily explain as to in what circumstances he has purchased the Gatta/truck from Smt. Vidya Devi as the same was allegedly previously sold by her to

Baldev Kumar was also of no relevance. The allotment of the work was solely dependent upon a person being member of the society and because it was not the case of the respondent-society that the petitioner had ceased to be a member of the society on his transferring/selling of Gatta in favour of any other person, allocation of work could not have been stopped in his favour by the respondent-society. Accordingly, Mr. Negi argued that keeping in view this aspect of the matter, the orders passed by the authorities concerned which were challenged in the writ petition were not sustainable in the eyes of law.

16. Mr. Negi further argued that revisional authority had also erred in allowing the application filed by Sh. Baldev Kumar to be impleaded as party in the revision petition. According to Mr. Negi, said Sh. Baldev Kumar was neither a necessary nor a proper party and the revisional authority erred in allowing the said application of his to be impleaded as party respondent in the revision petition.

17. Mr. Negi submitted that even otherwise *dominus litis* is that of the petitioner and this very important aspect of the matter has also been overlooked by the revisional authority while allowing the application of Shri Baldev Kumar to be impleaded as party respondent in the revision petition. Therefore, he prayed for quashing of the said order also passed by the revisional authority.

18. Learned counsel for the respondents defended the orders passed by the authorities concerned and submitted that there was neither any infirmity nor any illegality with the orders which had been passed by the authorities below dismissing the original petition and revision petition of the present petitioner. According to them, the authorities had rightly come to the conclusion that there was no merit in the submissions of the petitioner that the respondent-society had arbitrarily denied the transportation work to him. It was submitted on behalf of the respondents that the case which in fact was being put forth by the petitioner both in the revision petition as well as in the present writ petition was totally different from the case which was initially put forth by the petitioner in the petition filed by him under Section 72 of the 1968 Act. According to the respondents, once the statutory authority found no merit in the petition filed by him under Section 72 of the 1968 Act, then the petitioner took a summer salt and laid challenge to Gatta system in the revision petition.

19. It was further submitted by the respondents that the petition filed under Section 72 of the 1968 Act was rightly dismissed by the authority concerned because the petitioner had not approached the said authority with clean hands and had suppressed material facts. It was not disclosed by the petitioner at the time when he filed the said petition that he had already sold his truck along with Gatta in favour of Shri Paramjeet Singh Thakur. Therefore, according to the respondents, there was no infirmity with the order passed by the authority dismissing the initial petition filed by the petitioner under Section 72 of the 1968 Act.

20. Similarly, according to them, the order passed by the revisional authority was also based on material produced on record by the parties and the conclusions arrived at by the revisional authority were duly supported and borne out from material on record. Further, as per the respondents, the petitioner cannot be permitted to take those grounds in the revision petition or in the writ petition which were not initially taken by him in the petition filed under Section 72 of the 1968 Act. Accordingly, they prayed that as there was no merit in the petition, the same be dismissed with costs.

21. I have heard the learned counsel for the parties and also gone through the documents produced on record by the respective parties.

22. This Court on 12.11.2007 had passed the following order:

"The controversy in this petition basically revolves around the prevalence of Gatta system as a mode or basis for giving work and allotment of business to the truck owners by respondent No. 4-Society for carriage of cement from the factory. Before we proceed any further in this matter, we would like to have the opinion of a Committee of Officers, as to whether the system presently in vogue is fool proof, efficient, as well as free from the vice and danger of misuse and exploitation. We would also like to have the opinion from the said Committee as to whether a better and more meaningful system replacing the prevalent system can be introduced. The Committee to be appointed by us shall go into the entire gamut of all the issues associated with the allotment of business as well as engagement of trucks by respondent No. 4-Society so that mal-practices, favouritism, misuse as well as corrupt means are avoided. The Committee shall bear in mind the fact that its opinion and recommendations shall be very helpful to this Court and useful in bringing about the positive transformation. Additionally, the opinion and the recommendations of the Committee can be later on applied to other Societies at other places.

With the agreement of the learned counsel for the parties, this Court hereby appoints the Committee comprising of the following:-

1. Mr. Sirikant Baldi, IAS.
2. Mr. Devesh Kumar, IAS.
3. The Registrar, Co-operative Societies, Himachal Pradesh, Ex-officio.

Based on the aforesaid observations and directions, the Committee shall complete its task and submit its report to this Court in three weeks from today. The Registrar, Cooperative Societies shall coordinate the meetings as well as functioning of the Committee. The Committee, undoubtedly shall hear the views of all parties concerned before formulating its opinion and recommendations.

List after three weeks."

23. In obedience to these directions, the committee so constituted placed on record its report along with affidavit dated 11.12.2007. The recommendations of

the said committee are enumerated herein below:

"4.0 Recommendations Of The Committee

4.1 After hearing all the persons present in the meeting, Committee deliberated about the legality and relevance of the existing gatta system. The Committee observed that the number of trucks in the Society is more than the number of members and, therefore, every truck is assigned a number which is called "gatta" in local parlance. On the basis of this number and truck number, the work of carriage of cement is given to a truck. Every day, a new list trucks is prepared by rotation so that every truck owner could get business in fair and equitable manner. Therefore, gatta system is nothing but a procedure devised by the Society to provide work to every truck listed in the truck register which at present has 2032 trucks. This system is necessary for day to day operation of the society.

4.2. The Committee also discussed about the legality of present gatta system at present in vogue. The gatta system is not provided in the H.P. Cooperative Societies Act, Rules and the bye-laws of the society. However, Committee feels that it cannot be termed as illegal, as it does not appear to be in contravention of any provisions of law. The only issue is that at present this is not provided in the bye laws. The Committee also notices that same system is also prevalent in Ambuja Cement factory at Darlaghat where similar types of Societies are functioning. Therefore, the committee recommends that this system may be provided in the bye-laws of the Society by making necessary amendments.

4.3 The existing members/truck owners should be allowed to sale his truck and gatta to any person who is eligible to become member of the Society. The suggestion of the learned counsel for petitioner that the truck/gatta should be transferred only to the existing members cannot be accepted. Such proposal will be restrictive and monopolistic and stop enrolment of new members in the society.

4.4 Some of the members present in the meeting pointed out that even if a member has sold his truck as well as gatta, he continues to be a member of the Society because necessary provision does not exist in the Rules and the bye laws to remove him from the membership of the Society. The Committee feels that where a member has sold his truck as well as his gatta, then there is no point of his continuing as member of the Society. Actually this is creating complications in the functioning of the Society. Therefore, the committee recommends that all members who are not possessing any vehicle should be removed from the membership of the society after providing them an opportunity of being heard. The Society should make necessary amendments in its bye laws to ensure that membership is automatically stands surrendered, in case an existing member has transferred his truck/gatta, and he does not own any other truck listed with the society.

4.5 The Committee recommends that in future whenever a member intimates to

the Society that he has sold his truck along with gatta then affidavit should be taken from such member that his gatta may be transferred to the eligible person. Further if he does not own any other vehicle, then he should also mandatorily give in writing to surrender his membership.

4.6 In case, a truck owner loses his vehicle due to accident or vehicle is not condemned, then the Society should grant him six month's time to replace/purchase new vehicle failing which gatta could be forfeited.

4.7 During the discussions, some of the truck owners intimated that their trucks were figuring in 2032 list of trucks but the Society has not given them any work. This point was discussed in detail. The Secretary of the society intimated that these members had tippers whereas the society requires normal trucks. The Committee deliberated this issue in detail and felt that the Society cannot forfeit valuable right of carrying cement vested in a truck owner without providing opportunity of being heard to such truck owners/members and also without involving the office of the Assistant Registrar Cooperative Societies. Therefore, the Committee advised the Society that all such owners should be give four months time to ply their vehicle whose truck number is figuring in the list of 2032 trucks. All the correspondence with such truck owners should also be endorsed to the Assistant Registrar Cooperative Societies Bilaspur for his information. Moreover, the compliance of re-plying of these vehicles should be intimated to the Assistant Registrar Cooperative Societies Bilaspur within four months.

4.8 The Committee also deliberated that in future additional trucks may be required in the society (in case volume of work increases). The addition of new members/new trucks should be through a transparent procedure. The Committee recommends that whenever Society decides to add new trucks, fresh applications should be invited from all eligible persons residing within the area of operation of the society by giving wide publicity. The existing members having only one truck would also be eligible to apply for second vehicle. In case number of application received is more than the number of new trucks required, then the same should be decided by draw of lots under the Chairmanship of Assistant Registrar Cooperative Societies or S.D.M. Bilaspur, in the presence of Applicants."

24. As per the writ record, neither there are any objections filed to the recommendations of the said committee by the petitioner nor the report of the committee has been challenged separately.

25. It is amply clear from a perusal of the averments made in the initial petition filed by the petitioner under Section 72 of the 1968 Act that it was not disclosed by him therein that he had sold/transferred his truck bearing registration No. HP-24-3927 along with Gatta in favour of Shri Paramjeet Singh. This petition is dated 01.06.2006, whereas the Gatta already stood sold by the petitioner in favour of Shri Paramjeet Singh before the said date, which is evident from his application for attestation of affidavit which is dated 29.05.2006 and which is on

record. Thus, at the time when the petitioner filed petition under Section 72 of the 1968 Act, there was concealment of major facts by him from the authority concerned. When the factum of his having sold Gatta and truck in favour of Shri Paramjeet Singh was mentioned in the reply filed to the petition filed by the respondent-society, then the petitioner came up with a new story in his rejoinder to the effect that before he sold his Gatta in favour of Shri Paramjeet Singh Thakur, he had already purchased another Gatta alongwith truck from one Smt. Vidya Devi. Incidentally, none of these facts were disclosed by him in the initial petition filed by him for the reasons best known to him. The factum of the petitioner having purchased a Gatta from Smt. Vidya Devi along with her truck was also falsified by the respondent-society, who produced on record an affidavit of Smt. Vidya Devi to the effect that the truck in issue already stood sold along with Gatta in favour of Shri Baldev Kumar much before when the same was purportedly sold by Smt. Vidya Devi to the petitioner. It was on these basis that Additional Registrar (Administration), Cooperative Societies dismissed the petition filed by the petitioner under Section 72 of the 1968 Act by holding that it stood proved that the petitioner had transferred Gatta/membership in respect of his truck bearing registration No. HP-24-3927 owned by him in favour of Shri Paramjeet Singh, whereas there was no material on record to the effect that the petitioner had purchased Gatta/membership as was alleged by him and, thus, the allotment of work was rightly denied to him by the respondent-society. The revisional authority concluded and rightly so that it was apparent from the record that there was no dispute that Gatta of vehicle No. HP-24-3927 owned by the petitioner stood sold by him to Shri Paramjeet Singh Thakur on 29.05.2006, whereas on the strength of affidavit of Smt. Vidya Devi and Baldev Kumar dated 02.07.2005 vehicle No. HP-11-2513 along with Gatta was sold by Smt. Vidya Devi to Shri Baldev Kumar and on the basis of this information, the work was assigned by the respondent-society to Shri Baldev Kumar.

26. In my considered view, there is no infirmity with the conclusions which have been arrived at by the authorities below in dismissing the petition filed by the petitioner under Section 72 of the 1968 Act as well as subsequent revision petition filed by him. This Court has no hesitation in holding that the petitioner did not approach the authority under Section 72 of the 1968 Act with clean hands. He concealed material facts from the authority concerned and it was only the respondent-society which revealed the true and correct facts in the reply, which was filed by it to the petition under Section 72 of the 1968 Act. The respondent-society in its reply had categorically stated that the father of the petitioner was Office Incharge and taking advantage of this fact, the records were misplaced to the advantage of the petitioner. This serious contention of the respondent-society could not be dispelled by petitioner in the rejoinder or subsequent pleadings filed by the petitioner. He was not able to prove that he had purchased Gatta from Smt. Vidya Devi, as alleged by him before he sold his Gatta to Shri Paramjeet Singh. Learned counsel for the petitioner could not satisfy this Court as to why these necessary material facts were concealed by the

petitioner in the original petition filed by him under Section 72 of the 1968 Act. There was no challenge to the Gatta system in the original petition so filed by him. It was only in the revision petition that challenge was laid to the said Gatta system, which in my considered view was not permissible because the petitioner himself being a beneficiary of the Gatta system had no locus to assail the same. Even otherwise, this controversy has now been put to rest by the committee which was constituted by this Court and whose recommendations are now part of the record. The recommendations of the committee have not been assailed in any manner whatsoever by the present petitioner. The said committee in its report has rightly held that Gatta system is nothing but a procedure devised by the society to provide work to every truck listed in the societies register and this system is necessary for day to day operation of the society. It is further mentioned in the report of the committee that though Gatta system is not provided in the H.P. Cooperative Societies Act, Rules and the bye laws of the society, however, the same cannot be termed as illegal as the same does not appear to be in contravention of any provisions of law.

27. Incidentally, Smt. Vidya Devi has also filed an affidavit to the effect that her affidavit dated 25.05.2006 which was being relied upon by the petitioner had been got executed from her fraudulently by the petitioner. This very important aspect of the matter could not be rebutted by the petitioner.

28. Therefore, in view of the above, there is neither any infirmity nor any illegality in the orders passed by the authorities dated 13.09.2006 and 10.07.2007 vide which the petition under Section 72 of the 1968 Act and the revision petition under Section 94 of the present petition have been rejected.

29. Now coming to the order passed by the revisional authority dated 11.06.2007 vide which it has allowed the application of Sh. Baldev Kumar to be impleaded as party respondent in the revision petition, in my considered view, there is no infirmity in the same. It cannot be said that Shri Baldev Kumar was a stranger to the issue being adjudicated by way of revision petition, especially in view of the fact that the alleged Gatta and truck which had been purchased by the petitioner from Smt. Vidya Devi in fact stood sold/transferred by Smt. Vidya Devi to said Shri Baldev Kumar much before its purported purchase from Smt. Vidya Devi by the petitioner. Even otherwise, learned counsel for the petitioner could not point out as to what prejudice was caused to the petitioner by the said application having been allowed by the revisional authority.

30. In view of the above discussion, I do not find any merit in the present writ petition and the same is accordingly dismissed and so are all the miscellaneous applications. Interim order, if any, stands vacated.