IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16934 of 1992
Date of Decision: 16.05.2016

Malkiat Singh ... Petitioner

Versus

The Kotla Co.operative Agricultural Services Society Ltd. Kotla and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.S. Diwana, Advocate, for the petitioner.

None for respondent No.1.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Vide order dated April 11, 2016 this case was set down for final disposal.

2. Even on second call, Mr. Lalit Pathak, learned counsel for respondent No.1 has not appeared nor has the previous order dated March 14, 2016 been complied with. The original record has not been produced for the perusal of the Court. The order reads as follows:-

> *"Respondent-society to produce the original record including the original proceedings book containing resolution dated 26.10.1979 as well as the original record of operation of bank account by Malkiat Singh for the period w.e.f. 6.11.1979 to 19.5.1980 as per audit report dated 30.6.1980. The original audit report in full text be also produced. It is expected that the Patiala Central Cooperative Bank, Nandpur Kalaur, Distt. Fatehgarh Sahib will cooperate with the society for production of record in terms of this order.*
>
> *List again on 11.4.2016."*

3. Respondent No.1 is proceeded against ex parte.

4. In the absence of production of record an adverse inference is drawn against the 1st respondent-Society and there is no reason why I should not accept the version of the petitioner in challenge to the impugned award and orders dated July 24, 1982, December 05, 1990 and September 08, 1992 placed at Annex P-1, P-2 and P-4.

5. Briefly stated, the facts are that the petitioner was a Salesman in the respondent-Cooperative Society during the period 1979-80. He left service of the 1st respondent in the last week of July, 1980 to take up an employment under the State of Punjab as a teacher in the Education Department. After the petitioner was no longer in service of the 1st respondent, his previous employer obtained an arbitration award on July 24, 1982 on the basis of an audit report pertaining to the period July 01, 1979 to June 30, 1980 using it against the petitioner. The arbitration award was ex parte petitioner. On coming to know of the existence of the award and feeling aggrieved and dissatisfied with it he filed a revision petition before the Deputy Secretary Cooperative Societies, Punjab (Appeals). The revision did not lie and the Court granted opportunity to the petitioner to file an appeal before the Assistant Registrar Cooperative Societies, Fatehgarh Sahib under section 68 of the Punjab Cooperative Societies Act, 1961 (for short "1961 Act"). In appeal, he challenged the legality and validity of the impugned ex parte award holding him liable to pay money to the ex-employer. The 3rd respondent rejected the appeal on December 05, 1990 and upheld the award passed by the 4th respondent.

6. Dissatisfied with the order in appeal, the petitioner moved a

revision before the Commissioner (Appeals), Jalandhar challenging the impugned award on four grounds. The first ground of challenge was that the petitioner did not deal with the Saving Fund Accounts of the Cooperative Society and he cannot be held liable for any deficiency or defect in the maintenance of the accounts. The second ground was that the impugned award was liable to be set aside since as it did not contain any meaningful reasons for the conclusions drawn and was, therefore, a cryptic and non-speaking order silent on the relevant facts and material aspects of the case which were not taken into due consideration. The third ground was that the case of the petitioner was covered under section 54 and not under section 55 of the Act as the impugned award was based on an audit report made after an annual audit was conducted pertaining to the period July 1979 to June 1980. Lastly, it was urged that the award is ex parte and the award has been passed at the back of the petitioner and is therefore violates the principles of natural justice.

7. The revision was rejected on September 08, 1992 by the authority without properly discussing the points in issue raised by the petitioner in his grounds of revision. It is against this order that the petitioner has approached this Court in writ jurisdiction under Article 226 of our Constitution challenging the legality and validity of the three impugned orders.

8. In his address to the Court in challenge to the award it is argued that the proceedings against the petitioner under section 55 of the Act from the inception and up to the passing of the order in revision are a nullity as the case of the petitioner is fully covered by section 54 of the Act. He

continued his thread of arguments to submit that the award is cryptic and was not a decision on merits. Besides, the details in the order (Annex P-2) run counter to the one given in the award (Annex P-1). He urges that the impugned award and the order passed in revision are liable to be quashed in the light of ratio of Preet Singh & Sada Ram v. The Central Co-operative Bank Ltd., Rohtak, reported in 1977 PLJ 400 (DB).

9. To summarize his challenge, three broad issues are presented for determination in this case. The petitioner was wrongly proceeded against ex parte by the arbitrator. His case fell in section 54 but not in section 55; he had no role to play in the subject matter of the dispute; the award is based on an audit report in the making of which he was not associated having left service of the 1st respondent to join as a teacher under the service of Punjab Government in the Department of Education. Since the foundation of the case lies in the ex parte award the Court's attention must rest first on the award which involved a dispute of a sum of ₹ 6,880/- earning interest thereon @ ₹ 2494/- making a total recoverable amount of ₹ 9374/-+250/- as expenses as claimed by the 1st party, i.e., the 1st respondent – The Kotla Cooperative Agricultural Services Society Limited Kotla. The amounts have been calculated up to November 06, 1979. The full text of the award reads as follows:-

> *"A dispute arose between the Kotla co-operative Agricultural Society Ltd. and Malkiat Singh Ex-Salesman about the above-noted sum of saving fund for the decision of which Asstt. Registrar Co-operative Societies Sirhind had appointed me the arbitrator under the Punjab Co-operative Societies Act.*
>
> *I fixed different dates for the hearing to both the parties on which a Charanjit Singh Secretary 1st Party*

(Society) came present whereas none appeared on behalf of the 2nd Party.

On going through the record of the Society, it is clear that Malkiat Singh Ex-Salesman has withdrawn the amounts from the Savings Fund Account of the Society on different dates out of which a total sum of Rs.6880/- has nowhere been spent by him on the works of the Society He has himself embezzled this amount. I being the arbitrator pass the decree against the 2nd party as under:-

Sr. No.	*Name and Father's Name*	*Principal*	*Interest*	*Expenses*	*Total*
1.	*Malkiat Singh Ex-Salesman*	*6880/-*	*2494/-*	*250/-*	*9624/-*

Date
6.11.79.

The interest shall be recovered from his at the rate mentioned in the award upto 6.11.1979 and 14% w.e.f. 7.11.79

Order is pronounced.

Sd/- x x
Dharampal, Arbitrator.
24.7.82"

10. The awards to say the least is non-speaking. The arbitrator has not even cared to assign reasons which led to petitioner (respondent in the arbitration proceedings) being proceeded against ex parte. The petitioner has been made out to be an embezzler, siphoning money belonging to the Society. He is accused of withdrawing money on different dates but not spending it on the works of the Society. A perusal of the order in appeal under section 68 passed by the Assistant Registrar Cooperative Societies, Sirhind reveals that there is no independent application of mind or meaningful discussion or reasons assigned to dismiss the appeal. The order is in three paragraphs the first two of which are only noticing the contentions of the parties but no finding have been returned on them. The total discussion on the merits of the appeal is as follows:-

> *"After hearing the arguments of both the parties and after going through the record of the Society, arbitration proceedings, I have come to the conclusion that the appellant was afforded full opportunity to prove his case but he failed to so. The order of the arbitrator is based on facts. The appeal of the appellant is, therefore, dismissed and the order is pronounced in the open court in the presence of both the parties."*

11. The petitioner is right when he contends that the order in appeal is bereft of reasoning. It is difficult to gauge what weighed in the mind of the appellate authority relevant to rejection of the appeal. Even the contentions of the Society are left standing vacant without any meaningful discussion or effort to understand the case of the petitioner. The order cannot stand strict judicial scrutiny of discharge quasi judicial duty of the appellate authority to consider all issues raised in the grounds of appeal and after dealing with them to return proper findings thereon for or against the petitioner of his involvement in the alleged embezzlement. The appellate order suffers from infirmities resulting from want of due application of mind. The same deserved to have been set aside by the Court of the Commissioner (Appeals) Jalandhar exercising the powers of the Secretary, Cooperative Societies Punjab in revisional jurisdiction. The matter should ordinarily have been remanded to the appellate authority to return firm findings of fact based on evidence which alas was procured at the back of the petitioner since he was proceeded ex parte before the arbitrator. Instead, the Commissioner (Appeals), Jalandhar valiantly proceeded to decide the revision on merits only to make a mess of it. In case, the Court finds that the revisional order is a good one and justice was done even then something could be said by ignoring the order in appeal from which the revision arose.

12. To examine the case from this point of view the learned counsel for the petitioner draws attention of the Court to the grounds of revision. The subject matter of the charge was 10 bags of khad (manure). The petitioner averred that the respondent did not acquaint itself of the relevant record of the Society wherein it was clearly noted by the auditor that 30 out of 40 bags of khad had been received from CMS Bassi Pathana as per the Gate Pass and the 10 bags of khad were outstanding against one Gurmukh Singh, a Salesman of CMS Bassi Pathana. He pointedly referred to page 5 of the stock register of the respondent pertaining to the material period October 01, 1978 to June 30, 1980 which brought a picture forth that he had really no role to play in the occurrences. There was no proof that 10 bags of khad were ever received by the petitioner from CMS Bassi Pathana after the audit was conducted and, therefore, he cannot be held accountable for 10 bags of khad which are still outstanding against CMS Bassi Pathana. This aspect was mentioned clearly in the grounds of appeal but was not considered by the appellate authority. The deficiency in khad, if any, was detected during annual audit carried out by a person authorized by the RCS, Punjab under section 48 of the Act as is evident from the audit report/note pertaining to the period July 01, 1978 to June 30, 1979 (Annex P-6). In these circumstances, it was argued that the matter had to be dealt with under section 54 and not under section 55 of the Act. Therefore, the entire proceedings are a nullity and the petitioner is not legally bound by the proceeding. In support of his case he cited the decision of this Court in Om Parkash Chopra v. The State of Haryana, 1989 (1) LJR 313.

13. The Commissioner (Appeals) in his order dated September 08,

1992 held that the audit report clearly shows that the petitioner had been operating the saving banks account of the Society with the Patiala Central Cooperative Bank, Nandpur Karaul and for this end he read the order of the court a quo where specific dates of bank operation were mentioned. It was concluded from these facts that the petitioner had drawn the amounts but had failed to account for them [₹ 6880/-]. The Commissioner thought that since the petitioner was given an opportunity to explain the adjustments of these amounts and he failed to do so, the appeal was required to be dismissed. For the first time throughout the proceedings passing through two stages did the appellate authority hold that the award could not be said to be ex parte because the notice issued by the arbitrator was received by the petitioner himself and despite notice he failed to appear before the arbitrator. He relied on the authority in <u>Angoori Lal Sharma v. The State of Haryana and others</u>, 1980 PLJ 86 holding that section 54 does not debar action under section 55 against the person managing the affairs of the Cooperative Society. Even in this order of the Commissioner (Appeals) there is no worthwhile discussion with reference to original record. It appears that he did not himself examine the original record but reached his facile and wrong conclusions on the face of the appellate order which suffer from errors apparent on the face of record. The Commissioner (Appeals) did not even think it fit to record in the order with absolute clarity and certainty to the mode and manner in which the petitioner was "duly served" of notice, before a Court can consider the effect of failure of appearance before the arbitrator and its effect. It could be worthwhile to peruse the audit report dated June 30, 1980 at Annex P-5 which is the source of adverse action against the petitioner. The same reads as follows:-

> *"3. Malkiat Singh, Salesman has with-drawn and deposited the following amounts from the Saving Account of the Society during the period covered under audit. The balance amount has neither been deposited in the bank not entered in the Rokar and thus embezzled. Malkiat Singh, salesman is responsible for it and the balance amount is Rs.6880/-.*

Date	*Amount Withdrawn*	*Detail*	*Date*	*Deposited Amount*	*Detail*
6.11.79	*1,000/-*		*31.3.80*	*3,000/-*	
13.11.79	*1,000/-*		*25.3.80*	*1,000/-*	
21.2.80	*3080/-*	*For Sugar*	*30.5.80*	*2,000/-*	
21.2.80	*2619.60*	*Pay*		*6,000/-*	
20.3.80	*3100.00*	*Sugar*			
11.4.80	*877.20*	*Pay*			
16.4.80	*2000.00*				
19.5.80	*2700.00*				
	16376.80				
	6000.00	*Amount Deposited*			
	10376.80				
	3496.80	*Amount of Pay*			
	6880/-	*Balance Amount."*			

14. Learned counsel for the petitioner draws the attention of the Court to the proceedings of the Committee in Book 51 at Annex P-6 which is the record of the meeting of the society held on October 26, 1979 which grants to one Hardev Singh, President or Kirpal Singh, Vice President along with Secretary to deal with the saving accounts of the Society (Sabha).

15. The crucial contention raised is that the Proceeding Book 51 is conclusive fact that on October 26, 1979 and thereafter the petitioner's pen was returned to him without ink and he could no longer deal with the savings account which operation was entrusted to Hardev Singh and Kiorpal Singh. If the petitioner had no dominion over the savings bank account after October 26, 1979 then the audit report deals with dates and events transpiring after the passing of the resolution, which dates are all between November 06, 1979 and May 19, 1980 (Annex P-5) and no one appears to

have set his eyes on such a fundamental fact that removes the base of the case and against the petitioner and flaws the proceedings. Even if non-appearance before the arbitrator is taken against him and that he was rightly proceeded ex parte even then the charge of embezzlement cannot hold, much less it should, without a fair and proper inquiry to reveal the truth, and truth must always triumph. Thus seen, the award of the arbitrator is a perfectly illegal award which contains no reasons to support a description of the petitioner as an embezzler and to expose him even to criminal proceedings. The basic flaw in the case is that the petitioner was not given a pre-decisional hearing at the time of making of the award. The remaining exercise is in post-decisional hearing which is not a substitute for a fair hearing, fair opportunity to lead evidence and a reasonable opportunity was not given to the petitioner to prove his innocence and dispel the cloud of doubt is the award is of no legal consequence.

16. If a case can be decided on facts then there is no necessity to go into case law or to examine the interconnection between sections 54 and 55 of the Act. I would thus return to the 1st paragraph of this order to emphasize that non-production of original record in terms of the interim order dated March 14, 2016 has to be read against the 1st respondent and, therefore, throughout the proceedings the Society had more to hide than to reveal and accordingly, I would accept the petition and set aside the impugned award and the consequential orders dated July 24, 1982, December 05, 1990 and September 08, 1992 placed at Annex P-1, P-2 and P-4. In passing, it may be noted that by interim order dated December 18, 1992 the arrest of the petitioner was stayed and the appeal was admitted on September 28, 1993

with interim stay to continue. That order is made absolute.

17. The petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

16.05.2016
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