

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.8621 of 2000

Date of Decision.21.02.2017

Ram Niwas Goel, Executive Officer (U/S) Jind Central Cooperative Bank
Ltd. JindPetitioner

Vs

State of Haryana and othersRespondents

Present: Mr. R.K. Gupta, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Kamal Sharma, Advocate
for respondent No.4.

Mr. R.N. Lohan, Advocate
for respondent No.5.

Mr. B.S. Bairagi, Advocate
for respondent No.7.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

The petitioner-Ram Niwas working as Executive Officer in the Jind Central Cooperative bank, Jind was appointed as Administrator of the Dalamwala Cooperative Credit and Service Society Ltd., District Jind and Braham Parkash-respondent No.6, was acting as Secretary. On the basis of some allegation of embezzlement, reference was sought under Section 102 of the Haryana Cooperative Societies Act whereby the respondent-Society instituted the arbitration proceedings against the following persons:-

“1. Sh. Braham Parkash s/o Bhagwat Swarup, Ex. Secretary, Dalamwala Cooperative Credit and Service Society Ltd., Dalamwala, District Jind.

2. Satbir son of Deep Chand village Bohatwala.

3. Ram Niwas s/o Harnarain, Villagae Dalamwala.

4. *Smt. Rajpati w/o Sultan Village Bohatwala.*
5. *Smt. Krishna w/o Rajbir village Dalamwala.*
6. *The Jind Central Cooperative Bank Ltd. through its General Manager.”*

The aforementioned proceedings resulted into decision dated 06.02.1997 wherein the Arbitrator on the basis of some document and material held that the ex Secretary and the petitioner were liable to bear part of the alleged embezzled amount but held the liability of the bank also and ordered for taking action against the branch manager with liberty to recover the amount in case it desires so.

Mr. Gupta, learned counsel appearing on behalf of the petitioner submits that the aforementioned order was challenged on the premise that the finding should not have been arrived at in the absence of the petitioner, in essence, the petitioner has been punished without following the principles of *audi alteram partem*, which is not the scope of any of settled canons of law and justice. The appeal and the revision also met with the same fate and hence, preferred the writ petition. However, this Court while admitting the writ petition had granted the interim protection with liberty to the bank to seek recovery with permission of the Court.

Mr. Kamal Sharma, learned counsel appearing on behalf of respondent No.4 has taken preliminary objection qua maintainability of the writ petition on the premise that in pursuance of the order dated 06.02.1997 (Annexure P-1), the bank had issued a recovery notice dated 01.04.2002 calling upon the Establishment Officer-I, Head Office, Jind to recover the amount against the petitioner and Braham Parkash. Once the order aforementioned has not been challenged, writ petition is liable to be dismissed.

Per contra, Mr. Lohan, learned counsel appearing on behalf of the cooperative society submits that it had grievance against the Bank and liberty was granted to recover the amount from the bank. The latter part i.e. consequential effect of the Award granting liberty to the Bank to recover has nothing to do with the society.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt the order dated 01.04.2002 attached along with misc. application bearing No.10748 of 2002 has not been challenged and when there is a particular prayer to issue any other appropriate writ, order or direction, this Court can take cognizance of the same i.e. in the interest of justice, equity and fair play.

On going the aforementioned order, which reads as under, it appears that the Managing Director of the Jind Central Cooperative Bank Ltd. had issued a recovery certificate without compliance of the principles of natural justice viz; without calling the petitioner or Braham Prakash to show cause or an opportunity to reply:-

“Ref. No.ESR/33

dated 1.4.2002

*Establishment Officer-I,
Head Office, Jind.*

Sub: Regarding recovery in award case from Ram Niwas, the then Executive Officer.

As the arbitration case the Dalamwala PCCS Vs. Bhraham Parkash, Ex. Secretary for the recovery of Rs.35,800/- was pending before the Inspector, Cooperative Societies, Jind and the Arbitrator vide its award dated 7.2.1997 fixed the liability of Shri Ram Niwas, the then EO CCB Branch, Urban Estate, Jind to the extent of Rs.11,933/-, the description of which is as under:-

<i>Rs.14000/-</i>	<i>1/3rd part from 24.6.92 PAL</i>	<i>@ 17%</i>	<i>Total</i>
	<i>2600</i>	<i>4300</i>	<i>6900</i>

	4666	7750	12416
Rs.14000/- 1/3 rd part dated	4666	7737	12403
30.6.92			
Total	11932	19787	31719

In this way the total amount of Rs.31,790/- is outstanding towards above said employee by 31st March, 2002 and the said employee filed an appeal against that award which was dismissed. After appeal he filed revision petition before the Joint Secretary, Cooperation Department, Haryana which was also dismissed and now the case is pending before this Hon'ble Court which has not been decided so far nor the Hon'ble High Court have issued any stay order for the recovery of said amount. In this regard, it is ordered that an amount of Rs.31,719/- be recovered from the amount of arrears of the said employee.

-sd-
Ram Singh
Managing Director”

The order extracted above, in my view, is not sustainable in the eyes of law and does not conform to the principles of natural justice, de hors of the fact that the petitioner has not been successful in getting the observations expunged in the Award. Resultantly, the order dated 01.04.2002 is set aside. The writ petition stands allowed to the above extent. However, this order of mine shall not prevent the bank from taking action in accordance with law, if permissible and in case any action is taken, the petitioner shall take all the possible defences available under law.

(AMIT RAWAL)
JUDGE

February 21, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No