AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 28.02.2020

Order Passed on : 11/08/2020

W.P.(227) No. 849 of 2013

1. C.G.State Marketing Federation Ltd. Through Managing Director, 880, Civil Lines, Post G.P.O., Ps Civil Lines, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh

2. C.G. State Marketing Federation Soap And Cattlefeed Factory, Through General Manager, Dhamda Naka, Durg, Civil And Revenue Distt Durg, Chhattisgarh

---- Petitioners

Versus

1. T.J. Pandey S/o Retd. General Manager, R/o New Shanti Vihar Colony, Behind Ayurved College, Danganiya, Civil And Revenue Distt Raipur, Chhattisgarh

2. State Of C.G. Through Secretary, Cooperative Department, Mantralaya, Post And P.S. Rakhi, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh

3. K.L.Dhargave Deputy Registrar And Inquiry Officer, O/o Deputy Registrar Cooperative Societies, Durg, At Present Joint Registrar, O/o Registrar Cooperative Societies, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh

----Respondents

For Petitioners	–	Mr. Prafull N. Bharat, Advocate.
For Respondent No.1	–	Mr. Ashish Shrivastava, Advocate.
For State	–	Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

11/08/2020

1. This writ petition has been brought praying for exercise of supervisory jurisdiction under Article 227 Constitution of India to quash the impugned order dated 24.09.2013 passed by the Court of State Co-operative Department, in which the order dated 21.03.2012 of Additional Registrar Co-operative Societies, Raipur was set aside.

2. Respondent No.1, who was the General Manager of C.G. State Cooperative Marketing Federation, Durg and is now retired from the same, had during his tenure between 20.07.1998 to 30.11.2000 made available the materials from the society to private businessman on credit without seeking any bank guarantee or other security and as per the rules, the price of the material delivered was not recovered within a period of three months, because of which, the petitioners have suffered a loss of Rs.22,21,452.09/-. On the basis of complaints received, an inquiry was made by respondent No.3 in capacity of Inquiry Officer. In the inquiry report submitted, it was held that the society has suffered a loss as mentioned hereinabove during the tenure of the respondent No.1, who did not make any effort to realize dues from the concerned business institutions and he was responsible for the said loss.

3. On the basis of this inquiry report, the proceeding under Section 58(B) of C.G. Co-operative Societies Act 1960 (hereinafter referred to as “the Act, 1960”) was initiated in which respondent No.1 was given opportunity of hearing. On conclusion of the proceeding, the order dated 21.03.2012 was passed by Registrar Co-operative Societies. The respondent No.1 was held responsible for the allegations made against him and he was ordered to make good the loses of Rs.22,22,706.09/-. This order was challenged in the appeal before the State Co-operative Department. The appeal filed has been allowed by the impugned order, in which the order dated 21.03.2012 by Registrar Co-operative Societies was set aside.

4. It is submitted by the learned counsel for petitioner that the respondent No.2, the State Co-operative Department has erred in passing the impugned order. According to the rules of recovery, the respondent No.1 was responsible to the initiate proceedings for recovery against the private businessman within a period of three months. The loss has been suffered by the society on account of the conduct of respondent No.1 towards the society, in the manner in which he has conducted the business of the society. The Registrar has powers under Section 58(B) of the Act, 1960 to make recovery of the amount from the person who has caused loss to the society. It is further argued that the appeal filed before the C.G. State Co-operative Department was not maintainable as Section 80(A) of the Act, 1960 provides only for the revision. Apart from that, the State Government and the State Cooperative Department could not have re-appreciated the evidence for the purpose of agreeing or disagreeing with findings recorded by the Registrar, therefore, the impugned order is bad in law. Hence, it is prayed that it may be set aside.

5. Learned counsel for the respondent No.1 submits that respondent No.2 has exercised its appellate jurisdiction under the provisions of Section 77 of the Act, 1960, which clearly provides under Section 77(1)(iii) that any order passed by Registrar or Additional Registrar shall be appealable before the State Government. Therefore, the order passed by the Registrar was considered and set aside in the appeal, hence, no error has been committed by the respondent No.2 in passing the impugned order by which the respondent No.1 was exonerated. It is further submitted that the case registered against the petitioner under Anti-Corruption Bureau has also been filed. The audit report also does not mention about any responsibility of the petitioner in non-realization of the dues from the private business parties. The learned appellate

Court has held in the impugned order that the respondent No.1 was not responsible for the credit given to the private businessman and also that it was a usual practice of giving the materials from the society on credit to the private business parties. Therefore, the respondent No.1 had not committed any irregularity.

6. It is also submitted that the appeal filed by respondent No.1 was within limitation under Section 77(4) of the Act, 1960. That time had to be computed from the date on which, the order was passed or communicated to the party affected by that order.

7. Reliance has been placed by the learned counsel for respondent No.1 on the judgment of Supreme Court in ***Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*** reported in (***1995) 5 SCC 5***, it is submitted that the petition is without any merits which may be dismissed.

8. In reply, it is submitted by the learned counsel for the petitioner that Section 58(B) of the Act, 1960 empowers the Registrar to recover the loses caused to the society and the proceeding under this provision has no connection with the result of any police case. The departmental inquiry against the respondent No.1 was not complete. The appeal filed by the respondent No.1 before respondent No.2 was delayed and not in accordance with the time limit provided under Section 58(B)(2) of the Act, 1960. Further, there is no provision in the Act 1960 for condoning the delay in filing appeal. Therefore, the impugned order passed by the respondent No.2 is not sustainable.

9. Learned counsel for the State appearing for respondent No.2 and 3 opposes the submissions made by the learned counsel for the petitioner and submits that the respondent No.2 has directly exercised the quasi-judicial powers conferred to it under the provision of C.G. Co-operative Society Act 1960.

10. Heard the counsel for both the parties and perused the documents present on record.

11. The M.P. Co-operative Societies Act, 1960 was adopted and enacted for the State of C.G. after it was constituted and came in existence from 01st of November, 2000. Most of the provisions of the M.P. Act of 1960 have been kept intact. Further, the Chapter 10 in the M.P. Act of 1960 which provides for constitution of tribunal has been deleted in the C.G. Act of 1960. The Chapter 10 of C.G. Act of 1960 provides for appeal, revision and review. The Section 58(B) of M.P. and C.G. Act of 1960 of are the same. The provision that is relevant in this case is Section 58(B) of C.G. Act, 1960 which is reproduced is under:-

> ***"58B. Procedure for making good, losses caused to a society*** :-
>
> ***(1)***If in the course of an audit, inquiry, inspection or the winding up of a society or otherwise, it is found that any person, who is or was entrusted with organization or management of such society or any deceased, past or present chairman, secretary, member of Board of Directors, officer or employee of the society has made any payment contrary to the provisions of this Act or the rules made thereunder or bye-laws of a society or has caused any deficiency or loss by gross negligence or misconduct or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may on his own motion or on the application of the Board of Directors, liquidator or any creditor may make an order requiring such person or in the case of a deceased person, his legal representative who inherits his estate, to repay or restore the money or property or any part thereof, with interest at such rate or to pay contribution and costs or compensation to such extent as the Registrar may consider just and equitable :
>
> Provided that no order under this sub-section shall be made unless the person concerned is given a reasonable

opportunity of being heard in the matters.

Provided further that the liability of a legal representative of the deceased shall be to the extent of the property of the deceased, which has come to the hands of such legal representative.

(2) Any person aggrieved by the order made under sub-section (1), may within thirty days from the date of communication of the order to him, appeal to the Tribunal:

Provided that in computing the period of limitation, the time requisite for obtaining a copy of the order appealed against shall be excluded.

(3) Any order made under sub-section (1) or sub-section (2) shall be enforced in accordance with the provisions of Section 85.

(4) If the Registrar is satisfied on affidavit, enquiry or otherwise that any person with intent to delay or obstruct the enforcement of any order that may be made against him under this Section-

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, he may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary."

12. Although this provision empowers the Registrar to make order for making good the loses caused to the society under Section 58(B)(1) of the Act,1960, but the Section 58(B)(2) of the Act, 1960 provides that person aggrieved by any such order passed shall have right to file appeal before the Tribunal against the order, from the date of order within 30 days or within 30 days from the date of communication of the order to him. Section 58(B)(3) of M.P. Act, 1960. Therefore, it appears that at the time of drafting of this amended provision for C.G. Act, it was missed out that the Chapter 10 of M.P. Act providing for constitution of

Tribunals was deleted and replaced by Chapter 10 for appeals, revision and review in C.G. Act. In these circumstances, Section 58(B)(2) in C.G. Act, 1960 appears to be a redundant provision as there is no tribunal in C.G. State.

13. Clause (iii) of Section 77 (1) of Act, 1960 very clearly provides that appeal from an order of Additional Registrar or Registrar should be preferred to the State Government. Therefore, the statement made on behalf of the petitioner that the order passed by the Registrar was revisable is of no consequence.

14. Reference has been made to Section 80A of M.P. Act, 1960 which provides that the Registrar shall have the revisional jurisdiction over the orders passed by the Subordinate Officers or Committee of a society. Section 80(A) of C.G. Act, 1960 is not the same, which provides for extension of period of limitation by appellate authority in certain cases. Therefore, there is no such provision on the basis of which, it can be said that the order passed by the Registrar was revisable in this particular case. The objection raised by the petitioner side that the order of Registrar was not appealable holds no force and is not sustainable.

15. In the case of ***Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil*** reported in ***2010 (8) SCC 329***, it was held that the High Courts cannot exercise the power of Superintendence under article 227 of Constitution to interfere with the orders of Tribunals or Courts nor can it in exercise of this act as a Court of appeal over the orders of Court or Tribunal subordinate to it. The purpose of exercise of jurisdiction of superintendence is only to keep Tribunals and Courts subordinate to it within the bounds of their authority, therefore, this Court cannot act as an appellate Court under Article 227 and to make appreciation and then interfere with the findings by the respondent No.2 in the impugned order.

16. As regards, the point of limitation raised by the petitioner's side, it is found that the petitioner side has not raised any objection regarding the appeal being barred by limitation before the appellate authority. The limitation for filing any appeal is again provided under Section 77(4) of C.G. Act. Section 77 of C.G. Act, 1960 is as follows:-

<u>“77.Appeal :-</u>

> ***(4)*** Every appeal shall be presented in the prescribed manner to the appellate authority concerned, within thirty days of the date on which the order appealed against was communicated to the party affected by the order Provided that in computing the period of limitation under this subsection the time requisite for obtaining a copy of the order appealed against shall be excluded.”

17. Further, the petitioner was required to establish it on the basis of the facts and other documentary proof that the appeal was delayed by filing it beyond 30 days from the date, the order was communicated to the aggrieved party. Sub-Section (4) of Section 77 of the Act, 1960 specifically provides that the order has to be communicated to the party aggrieved, only then the computation of the limitation shall start, regarding which there is no specific statement or other facts present in the case, about the communication of order to respondent No. 1. Therefore, on the basis of these consequences, I do not find any reason to interfere with the impugned order.

18. Accordingly, the petition is dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika