

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12512 of 2020 (O&M)
Date of Decision:14.01.2021

GURNAM SINGH

.....Petitioner

Versus

ADDITIONAL REGISTRAR (D) COOPERATIVE SOCIETIES AND
OTHERS

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Amandeep Singh, Advocate
for respondents no.4 and 5.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This writ petition has been filed for quashing order dated 30.04.2008, Annexure P-4, passed by Managing Director, MARKFED as well as order dated 30.05.2017, Annexure P-6, passed by the learned Additional Registrar (D), Cooperative Societies, Punjab, with a prayer to uphold order dated 07.07.2014, Annexure P-5, passed by the Joint Registrar Cooperative Societies, Ferozepur.

Brief facts necessary for adjudication of the case are that petitioner, who was working as field officer with respondent-MARKFED, was served with charge sheet dated 06.12.2000 for causing loss of Rs.8,07,595/- for paddy crop of 1996-97 at the MARKFED Branch Office, Jaitu due to shortage and consumption of excess Bardana in connivance with one Madan Lal, Mechanic, since retired. Regular departmental enquiry was

conducted. The Inquiry Officer, concluded that charge of shortage to the tune of Rs.7,91,635/- was proved but did not find sufficient evidence qua charge of consumption of excess Bardana. Dissent note along with finding of the enquiry officer, were served upon the officer. Petitioner filed representation before the Punishing Authority i.e., Managing Director. Punishing Authority, after considering the facts, circumstances and material on record, vide order dated 29.09.2005 found the petitioner to be responsible for causing loss of Rs.6,40,742/- and awarded punishment of stoppage of two annual grade increments with cumulative effect along with recovery of financial loss of his share. The department, thereafter, filed reference under Section 55 /56 of the Punjab Cooperative Societies Act, 1961 for recovery of the amount of Rs.6,40,742/- as principal and interest at the rate of 19.5% per annum. Deputy Registrar, Cooperative Societies, Faridkot, vide order dated 30.04.2008, directed recovery of Rs.6,40,742/- along with interest at the rate of 19.5 % per annum while observing that the present petitioner had appeared in person and was provided with the copy of the petition and was asked to file reply. However, he did not file reply and thereafter, stopped attending the proceedings, as well.

Appeal filed by the petitioner against order dated 30.04.2008, was accepted by the Joint Registrar, Cooperative Societies, Ferozepur, vide order dated 07.07.2014, Annexure P-5.

Revision petition filed by the MARKFED was however allowed vide order dated 30.5.2017, by learned Additional Registrar (D), Cooperative Societies, Punjab. Order dated 30.04.2008 by the Deputy Registrar was upheld with the modification that amount of interest is decreased from 19 % to 9% per annum.

Petitioner has filed the present writ petition on 18.08.2020

challenging order dated 30.05.2017, passed by the Additional Registrar (D), Cooperative Societies, Punjab. Though, there is no limitation for filing a writ petition however it was noticed that there is no explanation whatsoever in the writ petition as to why the petitioner waited for over three years to approach this Court. Liberty was afforded to the petitioner to place on record reasons for delay in filing of the writ petition. Despite opportunities, no such reasons are forthcoming.

Learned counsel for the petitioner submits that the petitioner is in Canada and is therefore unable to supply reasons for delay in filing of the present writ petition. On a pointed query to learned counsel for the petitioner as to fate of the appeal, if any, filed against order dated 29.09.2005, Annexure P-3, there is again no specific information forthcoming.

At this stage, Mr. Amandeep Singh, Advocate, learned counsel for respondents no.4 and 5, to whom an advance copy of the writ petition has been supplied, on instructions from Law Officer, Markfed, also named Amandeep Singh, submits that order dated 29.09.2005, has attained finality and in-fact no appeal has been filed against the said order.

Learned counsel for the petitioner, at this stage, submits that CWP No. 7894 of 2020 has been filed by the petitioner involving similar issue, wherein the petitioner has been held responsible for shortage in wheat stock and prays that present petition be adjourned for 29.01.2021 i.e. the date on which said writ petition is listed.

I have gone through the interim orders passed in CWP No. 7894 of 2020 and it is obvious from a perusal of interim order dated 18.06.2020 that the matter can have no possible bearing on the present writ petition. Petitioner in the said matter has agreed to deposit the amount mentioned in the order of punishment and has challenged the escalated amount. In the

present case, punishment order dated 29.09.2005 quantifies the loss caused by the petitioner to be Rs.6,40,742/- i.e., the amount sought to be recovered from the petitioner. Order dated 18.06.2020 passed in CWP No. 7894 of 2020 is reproduced as hereunder:-

“The petitioner Gurnam Singh, stated to be aged 70 years has filed the present writ petition inter alia with a prayer to quash the orders dated 30.04.2008 (P8) and 30.05.2017 (P10).

Learned counsel based upon the pleadings submits in contrast to the earlier liability allegedly of Rs.1 lakh vide the above order, it has been wrongly escalated to Rs.18 lakhs plus.

Record of the case shows that this Court passed the following order on 09.06.2020:-

“Inter alia contends that petitioner is ready to pay the amount of wheat stock as reflected in the punishment order dated 25.07.2005 (P-6).

Notice of motion for 18.06.2020.

Notice regarding stay as well.

Mr. Amandeep Singh, Advocate accepts notice on behalf of respondent Nos.4 and 5.

Let the amount be calculated by respondent No.4 so that the same can be deposited by the petitioner.”

Learned counsel for respondents No.4&5 submits that due to COVID-19, the calculations could not be made as the concerned dealing officials were not available. He, however, seeks more time to file reply as well as calculation.

List on 17.07.2020.

Till then the respondents are directed to maintain status quo and not to effect any recovery from the petitioner.”

The petitioner admittedly filed the present writ petition after over three years of passing of the impugned order dated 30.05.2017. Order dated 29.09.2005, is informed to have attained finality. There is not a whisper of an explanation leave alone a reasonable explanation as to what prevented the

petitioner from seeking his remedies against order dated 30.05.2017. The Hon'ble Supreme Court in **State of Jammu and Kashmir Vs. R.K. Zalpuri and others (2015) 15 SCC 602** while observing that power of Court in exercise of power under Article 226 of the Constitution of India is plenary and wide but at the same time, a writ Court is required to remain alive to the nature of the claim and unexplained delay on the part of the writ petitioner. Reference was made to its earlier decisions which reads as under:-

“23. Recently in **Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, 2014 (4) S.C.T 193: (2014) 4 SCC 108**, it has been ruled thus:

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

The Hon'ble Supreme Court in above said case held that a stale claim can't be allowed to rise like a phoenix by a writ Court and that a litigant can't adopt an attitude that " he can sleep to avoid death and eventually proclaim 'deo gratias' – 'thanks to God'".

Despite opportunity being afforded to the petitioner since August 2020, no explanation leave alone a plausible explanation is forthcoming. Argument that grave injustice shall be caused to the petitioner is noticed only to be rejected. The petitioner has accepted order dated 29.09.2005 and has chosen to file present writ petition after an unexplained delay of over three years at his leisure, challenging orders dated 30.04.2008 and 30.05.2017. Writ petition is clearly hit by delay and laches.

Keeping in view the facts and circumstances as above, I do not find any ground whatsoever to interfere in the present writ petition.

No other argument has been addressed.

Writ petition is accordingly dismissed.

14.01.2021
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.