IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10133 of 2017 (O&M)
Date of Decision:01.02.2023

The Punjab State Cooperative Supply and Marketing Federation Limited

...Petitioner

Versus

Special Secretary Cooperation and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Naresh Gopal Sharma, Advocate, for
Mr. Mehar Deep Singh, Advocate,
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. B.S. Jaswal, Advocate,
for respondents No. 5 and 6.

JAISHREE THAKUR, J.

1. The petitioner by way of instant writ petition seeks issuance of a writ in the nature of Certiorari quashing the order dated 10.4.2013 (Annexure P-2) and order dated 1.3.2016 (Annexure P-6) passed by respondent No. 3 and 1 respectively.

2. Brief facts giving rise to the instant writ petition are that the petitioner Markfed filed an arbitration petition under Section 55 (1) of the Punjab Cooperative Societies Act, 1961 (for short **"the Act of 1961")** against respondents No. 4 to 6 for recovery of ₹55,78,571/-. In fact, during the paddy crop year 1994-1995, the petitioner Markfed entered into an agreement with M/s S.K. Enterprises, for custom milling of the paddy.

However, a dispute arose between the petitioner Markfed and M/s S.K. Enterprises, on account of which the petitioner Markfed filed a claim petition for recovery of loss under the provisions of the Arbitration and Conciliation Act, 1996 (for short **"the Act"**). In the said claim, respondent No. 6 prepared a wrong statement of account for recovery of loss from M/s S.K. Enterprises, which was duly signed and approved by respondent No. 5. In fact, the actual loss to be recovered from M/s S.K. Enterprises was ₹55,92,717/- but respondents 5 and 6 approved wrong statement of account for ₹1,56,075/- and accordingly the Arbitrator passed an award dated 11.3.2004 for ₹1,56,791/-, thus causing a loss of ₹57,35,362/- to the petitioner. This loss was caused on account of connivance of respondents No. 5 and 6 with M/s S.K. Enterprises. Respondent No. 4 being the District Manager, Markfed at Gurdaspur was required to file an objection petition against the aforesaid award passed by the Arbitrator under Section 34 of the Act, but he did not do so within the time specified in the Act despite repeated instructions from Head Office and he rather filed execution of the awarded amount thus caused huge loss to the petitioner. The petition filed under Section 55 (1) of the Punjab Cooperative Act, 1961 was dismissed by respondent No. 3 vide order dated 10.4.2013 (P-2).

Aggrieved against the order dated 10.4.2013, the petitioner preferred an appeal under Section 68 of the Act 1961 before respondent No.2, which was allowed, vide order dated 20.3.2014 (P-4) holding that the appeal was filed within a period of 60 days and thus the same was not time barred. It was also held that respondents No. 4 to 6, in connivance with each other prepared a wrong statement of claim and thus caused a huge financial loss of ₹55,78,571/- to the petitioner and therefore, they are liable for pay the same jointly.

Aggrieved against the order dated 20.3.2014, respondents No. 4 to 6 filed a revision before respondent No.1 on the ground that against award dated 10.4.2013, Markfed filed the appeal on 8.7.2013, which was barred by time. It is a settled law that no appeal under Section 68 of the Act, 1961 can be entertained if the same is filed beyond the prescribed period of 60 days. Respondent No.1, vide order dated 1.3.2016 (P-6) allowed the revision holding that the appeal filed by the Markfed was not filed within the period of limitation. Hence the instant writ petition.

3. Learned counsel for the petitioner would argue that respondent No.1 wrongly allowed the revision petition filed by respondents No. 4 to 6, while holding that the appeal filed by Markfed was not within the prescribed period of limitation. It is submitted that respondent No.3 passed order on 10.4.2013, certified copy of the same was applied on 16.4.2013 and it was prepared on 14.5.2013 and thereafter the appeal was filed on 8.7.2013 and thus the appeal so filed was within the period of 60 days i.e. prescribed period of limitation. Apart from that, it is submitted that the petitioner produced witnesses to prove that respondents No. 4 to 6 connived with each other and thus caused huge loss of ₹55,78,571/- to the petitioner and, therefore, the impugned orders deserve to be quashed.

4. Per contra, learned counsel appearing on behalf of the respondents would argue that the appeal filed by petitioner was hopelessly time barred. It is submitted that respondent No.3 passed the order on 10.4.2013, certified copy of the same was applied on 16.4.2013 and thus the

appeal should have been filed on or before 11.6.2013, whereas the appeal was filed on 8.7.2013 before respondent No.2. It is also submitted that as per the settled law, when the specific period of limitation has been provided under the Statue, the quashi judicial authorities have got no power to condone the delay in filling the appeal even under Section 5 of the Limitation Act and thus no interference is called for in the well reasoned order passed by respondent No.1.

5. I have heard learned counsel for the parties and have gone through the record.

6. The entire controversy in this case revolves around Section 68 of the Act of 1961, which reads as under:-

> "*Section 68. Appeal (1)...*
> *(2) An appeal against any decision or order under Sub-Section (1) shall be made within 60 days from the date of decision or order."*

Respondent No.1, while allowing the appeal elaborated as under:-

> "*I have perused the revision petition and the written statement of respondent Markfed. Before going to discuss the merits of the case it is necessary to adjudicate the issue as to whether the appeal was filed within limitation or not. The Additional Registrar has held that the appeal was filed within limitation whereas the petitioner counsel says that the appeal was time barred. To clarify this issue, the record of the Additional Registrar was summoned and perused. Markfed had attached a certified copy of the award dated 10.4.2013 with the appeal, a perusal of which shows that Shri Varinder Kumar, Clerk of Sh. H.L. Sharma, Advocate, who was counsel for Markfed before the Arbitrator applied for the certified copy of the award dated 10.4.2013 on 16.4.2013. The copy was prepared on 17.4.2013,*

which was certified by Superintendent o/o Joint Registrar, Cooperative Societies, Jalandhar on 14.05.2013. However, on the stamp affixed the date has been made to 14.05.2013 by overwriting it. Petitioner has also attached a photo copy of the certified copy of the award as Annexure P-2 with the revision petition. A perusal of the same shows that this copy was applied by Shri Puneet Kumar, Clerk of Sh KL Dua, Advocate, counsel for the respondent before the Arbitrator, had applied for certified copy of the award on 16.04.2013. The copy was prepared certified on 17.04.2013 and it was certified by the same Superintendent o/o Joint Registrar, Jalandhar. Both copies were applied on the same day. But date of certification is different and that is too by making some cuttings on the date mentioned on the stamp. It appears that this has been done intentionally with the view to help the applicant so that the copies were prepared on the same day then why the date of certification by the same officer is different. In my view it is due to the fact that when the person came to collect the certified copy on 14.05.2013 the copy was certified and the date was changed on the stamp. The practice is not correct. If this practice is allowed to continue then there would be no meaning of fixing the period of limitation. Once the order is pronounced on 10.4.2013, application for obtaining the certified copy was applied on 16.4.2013 by both parties and once party obtained the certified copy on 17.4.2013 then whey the Markfed counsel had delayed in obtaining copy on 14.05.2013. This question remains unanswered. The Additional Registrar has also not tried to clarify this before holding the appeal within limitation. In view of the above the revision petition is accepted and the order of the Additional Registrar holding the appeal is within limitation is set aside."

The findings recorded by respondent No.1 appears to be correct and based on record and calls for no interference.

7. Once it was held that the appeal was time barred, the another question that arose for consideration is, whether the Registrar, Cooperative Societies, Punjab could condone the delay in filing the appeal under Section 68 of the Punjab Cooperative Societies Act, 1961.

8. The Supreme Court in **Commissioner of Customs & Central Excise Vs. Hongo India (P) Ltd. And another 2009 (5) SCC 791** held that once the Statue itself does not expressly provide for condoning any delay, the delay in filing the appeal cannot be condoned. Furthermore, the Supreme Court in ***Popat Bahiru Govardhane Etc. Vs. Special Land Acquisition Officer and Another 2013 (10) SCC 765*** *has authoritatively answered that* where an application under Section 28 (A) of the Land Acquisition Act, 1894 (since repealed) was required to be moved within a period of three months from the date of award passed by the Reference Court. Section 28-A of the Land Acquisition Act, as it existed at the relevant time, did not empower the Land Acquisition Collector to condone the delay in submission of application for redetermination of the compensation amount. The Apex Court after referring to the earlier case-law, has held as follows:-

> *13. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed*

lex" which means "the law is hard but is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decision factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

9. For the reasons afore-stated, the writ petition is dismissed, being bereft of merit.

01.02.2023 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No