

2023:PHHC:129477

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-21310-2023 (O&M)
Date of Decision:- 6.10.2023

Harkait Singh and others

... Petitioners

Versus

Additional Registrar (Credit), Cooperative Societies,
Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. D.V.Sharma, Senior Advocate with
Mr. Manbir Singh and Mr. Arshdeep, Advocates
for the petitioners.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. H.S.Bedi, Advocate for respondent No. 3.

Mr. Ashwani Prashar, Advocate for respondent No. 4.

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GURVINDER SINGH GILL, J.

1. The petitioners assail show-cause notice dated 21.8.2023 (Annexure P-8) issued by Joint Registrar, Cooperative Societies, Patiala, vide which the petitioners have been asked to explain as to why action be not taken against them for having misutilized their position and powers as Directors and having caused financial loss to Ropar District Cooperative Milk Producers Union Ltd., Verka Mohali Dairy. The petitioners also assail order dated 6.9.2023 (Annexure P-20) vide which an appeal filed by the petitioners challenging said show-cause notice dated 21.8.2023 (Annexure P-8) has been dismissed by the Additional Registrar (Credit), Cooperative Societies, Punjab.

2. The learned counsel assails impugned order mainly on a legal issue, as has been recorded in order dated 22.9.2023 at the time of issuance of notice of motion. The relevant extract from said order is reproduced herein-under:-

“The petitioners assail order dated 6.9.2023 (Annexure P-20) passed by Additional Registrar (Credit), Cooperative Societies, Punjab, Chandigarh vide which an appeal filed by the petitioners challenging their suspension as ordered by Joint Registrar, Cooperative Societies, Patiala Division, Patiala vide order dated 21.8.2023 (Annexure P-8), has been dismissed.

Learned Senior counsel representing the petitioners has raised arguments pertaining to competency of Additional Registrar (Credit), Cooperative Societies, who has disposed of their appeal vide impugned order on the ground that although the petitioners in accordance with provisions of Section 68(1)(e) read with Section 68(2)(c) of Punjab Cooperative Societies Act, 1961 had filed an appeal to the Registrar, Cooperative Societies, but for reasons best known to the Registrar, Cooperative Societies, the said appeal seems to have been entrusted to Additional Registrar, Cooperative Societies, whereas an Additional Registrar, Cooperative Societies is not competent to hear appeal against an order passed by a Joint Registrar, Cooperative Societies.”

3. The learned senior counsel for the petitioners, in order to support his aforesaid contention, has drawn the attention of this Court to Section 68 of the Punjab Cooperative Societies Act, 1961 (in short hereinafter referred to as ‘the Act’) providing for appeals and revisions. It is Section 68(2) of the Act which would be relevant. Section 68(2) of the Act is reproduced herein-under:-

“68. Appeals.

- (2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,
- (a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;
 - (b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

- (c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;
 - (d) if the decision or order was made by the Registrar, to the Government; and
 - (e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorised by the Registrar in this behalf.”
4. The learned counsel for the petitioners vehemently argued that while clause (b) of Section 68(2) of the Act specifically provides that the Registrar may authorize any Additional Registrar or Joint Registrar to hear an appeal against an order passed by Deputy Registrar, Clause (e) of Section 68(2) of the Act also vests Registrar with similar powers but no such power is vested with the Registrar, as per clause (c) of Section 68(2) of the Act with respect to appeals against order passed by Joint Registrar or Additional Registrar. It has been submitted that the legislature has consciously provided for the aforesaid scheme wherein the Registrar has not been authorized to entrust an appeal against an order passed by the Joint Registrar to anybody else. It has, thus, been submitted that entrustment of an appeal to Additional Registrar, filed by petitioners against order passed by Joint Registrar to the Registrar, is against the scheme of the Act and that as such, the entire proceedings being *void ab-initio* deserve to be set aside.
5. The learned counsel for the petitioners further submitted that any such delegation of powers cannot be made unless specifically provided for in the legislation and that too under orders of the Governor. The learned counsel, in order to buttress his aforesaid submissions, has referred to a judgment of a Bench comprising of five Judges of Hon’ble Supreme Court rendered in AIR 1963 Supreme Court 395, Bachhittar Singh versus State of Punjab and

another wherein the requirements with respect to validity of an order passed by State Government have been discussed as under :-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.”

6. On the other hand, the learned State counsel has opposed the petition while submitting that in the instant case, the State Government, in exercise of powers vested by Section 3 of the Act had empowered Additional Registrars to exercise the powers of the Registrar exercisable under the Act and the rules framed thereunder, vide notification dated 21.3.1978 (Annexure R-2/1).
7. This Court has considered the submissions as noted above.
8. While it is correct that as per the scheme of the Act, Section 68 provides that an appeal against an order passed by Joint Registrar is to be heard by the Registrar. However, Section 3 of the Act vests the State Government with powers to appoint any person to assist the Registrar in discharge of his functions under the Act and to appoint any number of Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars. Section 3 of the Act is reproduced herein-under :-

“3. Registrar and other officers and their powers :-

- (1) The Government may appoint a person to be the Registrar of Co-operative Societies for the State.
- (2) To assist the Registrar in his functions under this Act the Government may appoint such number of Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars and other persons with such designations as it may think fit.
- (3) The Government may, by general or special order, confer on any person appointed under sub-section (2), all or any of the powers of the Registrar under this Act.
- (4) Every person appointed under sub-section (2) shall exercise his powers subject to the general superintendence and control of the Registrar.
- (5) Notwithstanding anything contained in this Act, where any power of the Registrar is exercised by any person by virtue of the order issued by the Government under sub-section (3), the order passed or decision made by such person shall, for the purpose of appeal, be deemed to be the order or decision of that person and not of the Registrar.”

9. A perusal of Sub-Section (3) of Section 3 of the Act shows that the Act vests the State Government with power to confer upon any person, as appointed under Sub-Section (2), all or any of the powers of the Registrars under the Act.

10. Pursuant to order dated 22.9.2023 passed by this Court, the learned State counsel has filed a short affidavit of Kuldeep Kumar, Joint Registrar, Cooperative Societies, Patiala which is accompanied by a notification dated 21.3.1978, issued by the Government of Punjab, the relevant extract of which is reproduced herein-under :-

"Punjab Government
Cooperation Department

NOTIFICATION

No.1669-C-V-78/6450

the 21 March, 1978

In supersession of Punjab Govt. Cooperation Department Notification No.S.O.71/P.A.25/61/5.3/69 dated 19th November 1969 and in exercise of the powers conferred by Sub-section (3) of Section 3 of the Punjab Cooperative Societies Act, 1961 (Punjab Act 25 of 1961) and all other powers enabling him in this behalf, **the Governor of Punjab is pleased to confer** on the following officers of the Cooperative Department such powers of the Registrar as are mentioned against each:-

1. <u>All Additional Registrars, Cooperative Societies, Punjab</u>	<u>All the powers of the Registrar exercisable under the aforesaid Act and the Rules framed thereunder.</u>
2. All Joint Registrars, Cooperative Societies, Punjab.	All the powers of the Registrar exercisable under the aforesaid Act and the Rules framed thereunder.
3. All Deputy Registrars, Cooperative Societies, Punjab.	All the powers of the Registrar exercisable under the aforesaid Act and the Rules framed thereunder except the powers exercisable under Section 26 (1D) and Section 27 in respect of Cooperative Consumer Stores and Central Cooperative Banks.
4. xxx xxx xxx	xxx xxx xxx

11. A perusal of the aforesaid notification shows that the said notification has been issued by the Governor of Punjab in exercise of powers conferred by Section 3(3) of the Act. Vide said notification, the Additional Registrars, apart from other officers, have been conferred with all such powers of the Registrar which a Registrar would exercise under the Act. The said delegation would clearly imply that the powers of the Registrar even with respect to Section 68 of the Act stand delegated. It would be more particularly evident from the

fact that the only exception with respect to such delegation that has been made is qua exercise of powers under Section 26(1D) and Section 27 by Deputy Registrars. No exception of any kind has been drawn with respect to delegation of powers to Additional Registrars. As such, the contention of the petitioners that powers with respect to appeals against orders passed by Joint Registrar cannot be delegated by the Registrar to Additional Registrar does not hold any ground and cannot be accepted.

12. As far as the judgment cited by learned counsel for the petitioners i.e. Bachhittar Singh's case (supra) is concerned, Hon'ble Apex Court, while dealing with a case where Revenue Minister had passed an order modifying punishment, without conveying the same to the person concerned, held that such an order could not be said to be an order passed by State Government. It has been held therein that an order issued by the State Government has to be expressed in the name of the Governor and has to be conveyed. However, the position in the present case with regard to notification dated 21.3.1978 (Annexure R-2/1) is entirely different. The notification dated 21.3.1978 (Annexure R-2/1) clearly shows that the same has been issued in the name of Governor of Punjab and a copy of the same has also been forwarded to the Registrar, Cooperative Societies. In any case, the said notification dated 21.3.1978 has not been challenged till date. Consequently, the judgment in Bachhittar Singh's case (supra) would not advance the case of the petitioners in any manner.

13. The Rules of Business of the Government of Punjab, 1992 provide that any order or instrument of the Government of Punjab is to be signed either by a Secretary or by an Additional Secretary, a Joint Secretary, a Deputy Secretary

or an Under Secretary, as may be specially empowered by Governor in that behalf. Para 9 of said notification dated 25.2.1992 reads as under :

9.(1) Every order or instrument of the Government of the State of Punjab shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary or an Under Secretary or such other officer as may be specially empowered by the Governor in that behalf and the signature so made shall be deemed to be the proper authentication of such order or instrument.”

14. The notification dated 21.3.1978 (Annexure R-2/1), which has been issued in the name of Governor, is signed by none else but an officer of the highest rank i.e. Secretary to Government of Punjab, Cooperation Department. Nothing has been shown to this Court that the Secretary to Government of Punjab, Cooperation Department was not empowered by the Governor with respect to issuance of notification. Even otherwise, this Court finds that the present stage is rather pre-mature for this Court to interfere in the matter inasmuch as it is a show-cause notice which has been issued to the petitioners. Hon’ble Supreme Court in State of Uttar Pradesh v. Brahm Datt Sharma & Anr. reported in (1987) 2 SCC 179, held that when a show cause notice is issued to a government servant under statutory provisions calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown, it is open to the government to consider the matter in the light of the facts and submissions placed by the

government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.

15. To a similar effect is a subsequent judgement of Hon'ble Supreme Court in Union of India and another v. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28, wherein it held as under:-

“13. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

14. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet”

16. Nothing has been shown to this Court from which it could be inferred that the Joint Registrar was not competent to issue a show cause notice dated 21.8.2023 (Annexure P-8) or that the same suffers from any kind of *malafide*.
17. Finding no merit in the petition, the same is hereby dismissed.
18. Needless to mention, it shall be open to the petitioners to put forth their case before the authority where the proceedings arising out of the said show cause

notice are pending. It is also clarified that this order is not to be construed as any expression as regards alleged misconduct of the petitioners.

6.10.2023

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes
Whether Reportable	Yes