

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-35483 of 2019 (O&M)

Date of decision: 20.02.2023

Sandeep Ghai and another

..Petitioners

Versus

The Additional Registrar(I), Cooperative Societies,
Punjab and others

..Respondents

CWP-15415 of 2020(O&M)

Sumit Kohli

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate
for the petitioners

Mr. Vikas Arora, AAG, Punjab

Mr. S.S.Bhinder, Advocate
for respondent no.5 and 6 (in CWP-15415-2020)

Mr. Ashwani Prashar, Advocate,
for respondent no.7 and 8 (in CWP-15415-2020)

ANIL KSHETARPAL, J(Oral)

1. Two connected writ petitions have come up for preliminary hearing. The contesting respondents are already represented. The Civil Writ Petition No.35483 of 2019 is treated as the lead case.

The petitioners pray for the following substantial reliefs:-

- a) *Issue a writ in the nature of certiorari quashing the impugned Resolution dated 13.6.2012 (Annexure P-5)*

passed by the respondent no.4 bank and the consequential orders emanating there from i.e. -orders dated 29.04.2015 and 06.10.2015 (Annexure P-14 to P.17) passed by the respondent no.3 & 2 respectively and also the orders dated 14.07.2016 and 15.01.2018 Annexures P.20 to P.23 passed by the respondent no.1.

- b) Quash all the consequential proceedings arisen therefrom being malafide, illegal and void ab-initio and ultra-vires the provisions of Section 55 of the Punjab Cooperative Societies Act, 1961 and rules framed therein and a result of erroneous exercise carried out by the respondent nos.1 to 3.*
- c) issue a writ in the nature of mandamus directing the respondent no.4 to initiate proceedings under Section 54 of the Punjab Cooperative Societies Act, 1961 against the respondents number 5 to 12 and 13 to recover the entire deficiency in the assets of the respondent number 4 by their willful negligence or fraudulent misappropriation as a result of conspiracy and wrongly reflected in the names of the petitioners.”*

2. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

3. The learned counsel representing the petitioners contends that the private respondents played a fraud while releasing the loan amount in favour of the petitioners. He submits that the private respondents have been convicted pursuant to lodging of an FIR and subsequent trial in this regard.

He further submits that once a fraud had been played, then, the arbitration proceedings under Section 55 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the 1961 Act') are not maintainable. He further contends that in view of the proceedings initiated under Section 54 of the 1961 Act against the private respondents in the present case, the proceedings under Section 55 of the 1961 Act were not maintainable against the petitioners.

4. On the other hand, the learned counsels representing the respondents object to the maintainability of the writ petition and impleadment of the various respondents.

5. On a careful reading of the petition as well as the documents attached, it is evident that a huge amount of public money is alleged to have been siphoned off by the officials of the Hoshiarpur Primary Cooperative Agricultural Development Bank Limited. The modus operandi to siphon off the amount was to extend the loan under the non-farming sector loan category by furnishing insufficient collateral security. Various fake loans were sanctioned and consequentially, default was committed in payment of the loan amount. The bank ultimately referred the matter to the Arbitrator in view of the provisions of Section 55 of the 1961 Act. The Arbitrator has passed the award which has been upheld in the appeal as well as in the revision petition.

6. Before proceeding with the matter, it would be appropriate to extract Section 54 and 55 of the 1961 Act, which read as under:-

SECTION -54-Surcharge.

(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time

been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may of his own motion or on the application of the committee, liquidator or any creditor, enquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person:

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him 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.

SECTION - 55- Disputes which may be referred to arbitration :-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

- (a) among members, past members and persons claiming through members, past members and deceased members; or*
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
- (c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or*
- (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of*

such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely -

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;*
- (b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; and*
- (c) any dispute arising in connection with the election of any officer of the society.*

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.”

7. The learned counsel representing the petitioners relies upon the judgment passed by the Supreme Court in **A. Ayyasamy vs. A. Paramasivan and others** (SLP(C) Nos.16250-16251 of 2015, decided on 04.10.2016) and a Division Bench judgment in **Malkiat Singh vs. State of Punjab and others, 1987 PLJ 561.**

8. The petitioners, before this Court, are alleged to be the borrowers of the loan amount, however, they have committed default in making the payments. It is the case of the petitioners that they did not receive the amount of loan though a finding of fact has been arrived at by the Arbitrator to the effect that the amount was deposited in their respective bank accounts.

9. It is not disputed by the learned counsel representing the

petitioners that the proceedings under Section 54 of the 1961 Act were not initiated against the petitioners but against the private respondents. It is also not in dispute that the private respondents stand convicted and sentenced in the said matter after completion of the trial. Hence, the first objection of the learned counsel representing the petitioners that once the proceedings under Section 54 of the 1961 Act have been initiated, resort to remedy under Section 55 of the 1961 Act cannot be made, has no substance because the proceedings under Section 54 of the 1961 Act were not initiated against the petitioners but against the private respondents.

10. As regard the judgment passed in the case of A. Ayyasamy(supra), it may be noted that the aforesaid judgment is in the context of Arbitration and Conciliation Act, 1996. In this case, the reference to the dispute is under Section 55 of the 1961 Act. Hence, the judgment passed in A. Ayyasamy(supra) shall not be applicable to the facts of the present case.

11. Moreover, it is evident that Section 55 of the 1961 Act starts with a non obstante provision which enables/empowers the Arbitrator to decide the dispute which has been referred to him.

12. The scope of judicial review under Article 226/227 of the Constitution of India is limited particularly when the concerned authorities have passed the orders following the procedure laid down in law.

13. At this stage, the learned counsel representing the petitioners contends that the amount though deposited in the accounts of the petitioners but was withdrawn by the official respondents as the amount should have, straightway been paid to the 3rd party.

14. This Court has considered the submission of the learned counsel

representing the petitioners, however, expresses its inability to accede to the same particularly when there is a finding of fact of deposit of the loan amount in the respective bank accounts of the petitioners recorded by the Arbitrator.

15. Keeping in view the aforesaid facts and discussion, both the writ petitions are dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

February 20, 2023
nt

(ANIL KSHETARPAL)
JUDGE

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