

**(2001) 07 P&H CK 0208**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5781 of 1999

Dhuman Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

**Date of Decision:** July 17, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2002) 2 RCR(Civil) 417

**Hon'ble Judges:** Jawahar Lal Gupta, J; Ashutosh Mohunta, J

**Bench:** Division Bench

**Advocate:** Gurnam Singh, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

Jawahar Lal Gupta, J.

The petitioner was working as the Secretary of the Khera Gajju Cooperative Agricultural Service Society Limited (hereafter to be referred as the "Society"). The Society raised a dispute for the recovery of an amount of Rs. 11,582.96 against the petitioner. This dispute was referred to the Assistant Registrar, Cooperative Societies for arbitration. The petitioner pleaded that he had given an amount of Rs. 16,000/- to Amar Singh, the former Vice President of the Society. He even produced a receipt to support the submission. On this basis, the petitioner claimed that he was not liable to pay the amount. After consideration of the matter, the Arbitrator found that the petitioner had withdrawn an amount of Rs. 6746.02 from the accounts of the Society. Thereafter he had withdrawn another amount of Rs. 4836.96. Thus, he was liable to pay the amount of Rs. 11,582.96. A copy of the award dated December 18, 1991 has been produced as Annexure P2. Aggrieved by the award, the petitioner filed an appeal. It was dismissed vide order dated November 13, 1995. Still not satisfied, the petitioner filed a revision petition before the Government. It was heard by the Joint Secretary Cooperation. Vide order dated November 10, 1998, the revision petition was dismissed. Copies of the orders

passed by the Appellate and Revisional Authorities have been produced as Annexures P3 and P4 respectively. The petitioner alleges that these orders are illegal. Thus, he prays that the award as well as the orders passed by the Appellate and Revisional Authorities (copies of which are at Annexures P2 to P4) be quashed.

2. A written statement has been filed on behalf of the respondents. The claim made by the petitioner has been controverted.

3. Mr. Guman Singh, learned counsel for the petitioner contends that the proceedings initiated for arbitration and recovery are vitiated as the Society could have proceeded under the provisions of Section 54 of the Punjab Co-operative Societies Act, 1961 (in short to be called the "Act") for recovery of the amount embezzled by the petitioner and it was not entitled to raise a dispute u/s 55 of the Act. Learned counsel has placed reliance on a Single Bench judgment of this Court in [The Rukanpura alias Khus Khera Co-op. Agricultural Service Society Vs. Pritam Singh and Others.](#)

4. Section 54 of the Act provides as under: -

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, liquidation, 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."

5. A perusal of the above provision shows that if it is found that any person "has made any payment contrary to the 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", then the Registrar can initiate proceedings for the recovery of the money and order payment. Still further, the Registrar can move either "of his own motion" or "on an application". There is nothing to show that the matter was even

pointedly brought to the notice of the Registrar.

6. In the present case, the petitioner had not only drawn money from the accounts of the Society but he had also made proper entries. In this situation, it could not be said that he had caused deficiency in the assets of the Society by committing breach of trust etc. Still further, it was the petitioner's own case that he had, in fact, advanced money to a senior person viz. Amar Singh the former Vice President of the Society. Thus, there was a dispute regarding the liability for payment of money. In this situation, the Society had sought a reference u/s 55 of the Act. A perusal of Section 55 indicates that it entitles the aggrieved party to raise a dispute if it touches the constitution, management or the business of the Society. Clause (1), which is relevant for the decision of this case, may be noticed. It provides as under:

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 member and persons, claiming through members, past members and deceased member; 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 proceedings in respect of such dispute."

7. On a perusal of the above provision, we find that whenever there is a dispute relating to the business of the society, the aggrieved member or the Society etc. are entitled to claim a reference to the Arbitrator. It was so done.

8. On an examination of the facts in the present case, it is clear that the Society had raised a dispute. It was considered by the competent authority. The matter was referred to the Arbitrator. The petitioner had not raised any objection before the Arbitrator regarding the maintainability of the proceedings. The matter was decided. A perusal of the orders passed by the Appellate Authority shows that no objection regarding maintainability of reference was raised. It was only at the stage of the hearing of the revision petition that the objection was raised. We are satisfied

that in the circumstances of the case, the objection was rightly rejected by the Authority.

9. Mr Gumam Singh places reliance on the Single Bench judgment in Pritam Singh's case (supra). The observations undoubtedly support the petitioner's claim. However, in the circumstances of the present case, we feel that it would be a travesty of justice if we interfere with the order especially when no prejudice is shown to have been caused to the petitioner. It has been found by the three authorities that the petitioner had drawn money. An entry had been made in the records. This money was not paid. Consequently, the Society had raised an objection. The petitioner's defence was that he had paid major part of the money to Amar Singh. This version has been disbelieved. The Arbitrator had summoned Amar Singh. He had denied having executed the receipt. Keeping in view the circumstances of the case, we do not find any equity in favour of the petitioner so as to warrant away intervention under Article 226 of the Constitution. No ground for interference is made out.

10. No other point has been raised.

11. In view of the above, we find no merit in the writ petition. It is consequently dismissed.

12. Since no one has appeared on behalf of the respondents, we make no order as to costs.

Sd/- Ashutosh Mohunta, J.