

(2014) 08 P&H CK 0304

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 464 of 2014(O&M)

S.K. Sud

APPELLANT

Vs

The Financial Commissioner

RESPONDENT

Date of Decision: Aug. 6, 2014

Acts Referred:

- Punjab Co-operative Societies Act, 1961 - Section 54, 54(1), 68

Hon'ble Judges: Satish Kumar Mittal, J; Arun Palli, J

Bench: Division Bench

Advocate: Dharam Vir Sharma, Senior Advocate and Shivani Sharma, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Arun Palli, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order dated 25.11.2013, vide which Civil Writ Petition filed by the appellant was dismissed.

2. Orders dated 14.05.2007 (Annexure P-8) and 30.06.2005 (Annexure P-7), that were in question before the learned Single Judge, reveal that the appellant was charge sheeted on as many as 12 counts for various acts of omission and commission and out of which 5 were proved against him culminating into an order of recovery of sum of Rs. 10,67,470/-, on account of the losses he had caused to SPINFED (respondent No. 4). Summary of the proved charges vis-à-vis financial implications reads as thus:

3. What indeed led to this, would be expedient to notice.

4. Appellant served as Chief Executive in SPINFED's affiliated mills, namely, Mansa Cooperative Spinning Mills Ltd. and Abohar Cooperative Spinning Mills Ltd. between 1980 to 1992. While in service appellant was charge sheeted for committing various acts of omission and commission on 20.10.1993. Instead of filing reply to the

chargesheet, appellant submitted his resignation that was accepted by the then Managing Director of SPINFED, and chargesheet was dropped. Inspector Audit, Cooperative Societies of CSM, Abohar brought out in his report, for the financial year 1991-1992, serious lapses/irregularities committed by the appellant, during his tenure as Chief Executive of Abohar Mill. Pursuant to the preliminary inquiry, conducted by the Additional Registrar(G), Cooperative Societies, Punjab, it was found that there did exist *prima facie* proof against the appellant for having caused losses to the CSM Abohar and Mansa Mills. He was found to have acted contrary to the rules and byelaws of the respective Societies while managing their affairs. As the audit report coupled with the findings recorded in the preliminary inquiry, unraveled the willful negligence of the appellant *vis-à-vis* the interest of the Mills, the RCS, Punjab ordered an inquiry u/s 54(1) of the Punjab Cooperative Societies Act, 1961 (for short, "the Act"). Additional Registrar(G), Cooperative Societies, Punjab and vide report dated 14.02.2005, found the appellant guilty of five charges. Copy of the inquiry report was duly delivered to the appellant and he was also afforded personal hearing, in terms of Sub Section 2 of Section 54 of the Act, by the Registrar, Cooperative Societies, Punjab on 27.04.2005. On a consideration of the matter and the material on record, the competent authority under Sub Section 2 of Section 54 of the Act ordered recovery against the appellant in consonance with the provisions contained in the Act. Appeal preferred against the said order, u/s 68 of the Act, was dismissed vide order dated 14.05.2007 by respondent No. 1. These were the orders that were assailed by the appellant vide the civil writ petition before this court.

5. We discern from the records that the appellant had questioned the aforesaid orders on multiple grounds; firstly, the proceedings initiated by the authorities were barred by limitation as envisaged u/s 54 of the Act itself, which provided initiation of proceedings within the period of six years from the date of act of commission. Secondly, the action of the authorities was in apparent breach of the principles of natural justice. Further, with respect to the liability ascertained against the appellant, the respondent had initiated proceedings before the Arbitrator regarding Mansa Cooperative Spinning Mills Ltd., culminating into an award that was made rule of the Court and subsequently proceedings for recovery of the amount were also initiated against the Abohar Cooperative Spinning Mills Ltd., and even against the erring firm i.e. M/s. Power Engineers Ltd., for which also a decree had been passed. Thus, it was sought to be urged that once the respective decrees were obtained against the erring Mills, the respondents could execute the such decree and the appellant could not be held responsible for the same amount. Further, the audit report which was the basis for initiation of the proceedings was *qua* Abohar Cooperative Spinning Mills Ltd. and not *qua* Mansa Cooperative Spinning Mills Ltd. for which proceedings had been initiated against him.

6. Learned Single Judge, on a consideration of the matter in issue and the material on record found that the interpretation being drawn by the appellant of the provisions of Section 54 to contend that the amount had been advanced to the

defaulter from 1983-1985, and thus the period of six years had to commence from the said date as it was that date which would be the date of act of omission and commission, was of no consequence. On a detailed reference to the said provision, which is reproduced in the order being assailed, it was observed that the provisions of Section 54 clearly envisaged initiation of proceedings if something was found amiss during the course of an audit, inquiry, inspection or the winding up of a Cooperative Society which proceedings was not bondaged to the actual date of default. It was observed that in the matter in hand, the audit was conducted in the year 1992 and the surcharge proceedings u/s 54 of the Act were initiated in the year 1994. Thus, by no stretch of imagination it could be said that the proceedings initiated against the appellant were beyond the stipulated period of six years. Further, the plea that the audit report was qua Abohar Cooperative Spinning Mills Ltd. and not qua Mansa Cooperative Spinning Mills Ltd., was also found to be untenable. In reference to the order dated 26.05.1994 (Annexure P-3), it was observed that clearly both these Mills had been mentioned in the same breath in the content of the order. It was observed that once the said document referred to both the Mills and the losses caused to respondent No. 4, the said plea would be of no avail to the appellant. Likewise, the grievance of the appellant that the action of the respondents suffered from breach of principles of natural justice was also devoid of basis, as it could be discerned from the inquiry report that an attempt was made by the inquiry officer to associate the appellant with the inquiry. In fact, appellant even responded by seeking access to the material sought to be relied upon against him. However, he did not choose to appear before the inquiry officer and, therefore, could hardly make any such grievance. Particularly, when post inquiry, the report was delivered to the appellant which was the basis for determining his liability and thereafter, even the Registrar, Cooperative Societies afforded him an opportunity to explain his stand which the appellant did by submitting a written response. This was even followed up by a personal hearing.

7. Thus, learned Single Judge was of the view that there was sufficient adherence to the principles of natural justice without any manifestation of prejudice to the cause of the appellant. His plea that appropriate proceedings were secured through process of law against the defaulting firm/company and, therefore, appellant could not be saddled with a responsibility to pay the amount, was also rejected being devoid of merit. It was observed that the intent of the respondent was to secure the losses that have accumulated on account of the fault of the appellant and the amount in question being public money needed to be protected.

8. We have heard the learned senior counsel for the appellant and perused the records.

9. Learned senior counsel for the appellant simply seeks to reiterate the pleas that were considered and rejected by the learned Single Judge. He urged that the very initiation of the proceedings u/s 54 of the Act were barred by limitation as

contemplated u/s 54 of the Act itself.

10. To our mind, the argument being advanced lacks conviction and cannot be countenanced. Provisions of Section 54 of the Act are clear and concise and incapable of any misconstruction. What the provision clearly postulates is, if in the course of an audit, inquiry, inspection or the winding up of a cooperative society, it is found that any person is or was entrusted with the organization or management of the said society or who is or has at any time being an officer or an employee of the society, had made payment contrary to the act, rules, byelaws or caused deficiency in the assets of the society by breach of trust or willful negligence or had misappropriated or fraudulently retain any money or other property of the said society, the Registrar on his own motion or on an application, could inquire himself or direct any person authorized by him to inquire into the conduct of such person. However, proviso to the said provision envisage that no such inquiry shall be held after the expiry of six years from the date of commission referred to in sub section. Ex facie, the process as set out in the provisions of Section 54 of the Act would come in operation if in the course of an audit, inquiry etc. any irregularity or illegality comes to fore and thus, the six years" period as envisaged in the proviso to the provisions of Section 54, has no correlation with the actual date of default as is sought to be contended but when the irregularity or illegality is detected during the course of an audit. As observed by the learned Single Judge, audit was conducted in the year 1992 and the surcharge proceedings were initiated in the year 1994, thus, it could not be said that the proceedings were initiated beyond the stipulated period of six years. As observed by the learned Single Judge, the inquiry officer did attempt to associate the appellant with the inquiry. However, he chose not to appear before the inquiry officer. Copy of the inquiry report was delivered by the liquidator to the appellant in terms of Sub Section 2 of Section 54 of the Act. He was also afforded a personal hearing by respondent No. 2 on 27.04.2005. So much so, he even sent his written submissions to respondent No. 2 vide letter dated 06.05.2005 and the same were duly considered by respondent No. 2 point to point and dealt with, as is evident from the order itself i.e. dated 30.06.2005 (Annexure P-7). Contention of the learned senior counsel that the audit report, on the basis whereof the proceedings were initiated u/s 54, was qua Abohar Cooperative Spinning Mills Ltd. and not Mansa Cooperative Spinning Mills Ltd. and thus the action is vitiated, is equally misconceived and untenable. Learned Single Judge had considered and rejected the said plea with a reference to the order dated 26.05.1994 (Annexure P-3) which clearly referred to both these Mills. It is further discernible from the said order that a preliminary inquiry was conducted by the then Additional Registrar(G), Cooperative Societies, Punjab, Chandigarh and a prima facie proof was found against the appellant that he had caused losses to the Mills i.e. Mansa and Abohar Cooperative Societies Spinning Mills Ltd. Audit report and the inquiry indicated that all these acts were willful and the interest of the Mills was neglected.

11. In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the order being assailed in the present appeal. The same being devoid of merit is, accordingly, dismissed.