

(1977) 07 SHI CK 0004

High Court of Himachal Pradesh

Case No: Civil Writ Petition No. 56 of 1977

The Bilaspur District
Co-operative Marketing and
Consumers Federation Ltd.

APPELLANT

Vs

The State of Himachal Pradesh
etc.

RESPONDENT

Date of Decision: July 6, 1977

Citation: (1977) 6 ILR HP 395

Hon'ble Judges: R.S. Pathak, C.J; T.U. Mehta, J

Bench: Division Bench

Advocate: Kedar Ishwar, for the Appellant; A.G., for the Respondent

Judgement

R.S. Pathak, C.J.

By this writ petition the Petitioner, The Bilaspur District Co-operative Marketing and Consumers Federation Ltd., prays for relief against the order of the Registrar, Co-operative Societies, dated March 7, 1977, and the order of the State Government dated May 17, 1977.

2. Shri V.D. Kalia the third Respondent was the Secretary-cum-Manager of the Petitioner-Federation. The Petitioner took disciplinary proceedings against him and framed charges in a number of matters. An order of suspension was made on August 7, 1969. Subsequently on completion of the disciplinary proceeding, the Petitioner found him guilty and his services were terminated on November 6, 1969. Shri Kalia appealed, and the appeal was allowed by the Deputy Registrar, Co-operative Societies (Development), Himachal Pradesh, by an order dated February 16, 1970. The order of termination was set aside and the Board of Directors of the Petitioner were required to institute a proper enquiry and afford an adequate opportunity to Shri Kalia to set up his defence. Subsequently, the Petitioner applied in revision, and the revision petition was allowed by the Registrar, Co-operative Societies, Himachal Pradesh, by an order dated September 21, 1971,

whereby the appellate order of the Deputy Registrar was set aside. Shri V.D. Kalia claimed payment of subsistence allowance for the period November 6, 1969, when the appellate order was made in his favour, and September 21, 1971, when it was set aside in revision. It appears that he moved the Chief Minister of the State Government, and thereafter an order was made by the Registrar, Go-operative Societies, on March 7, 1977, advising the Board of Directors to make payment of the subsistence allowance to Shri Kalia. It seems that the matter was considered by the Board of Directors, and a difference of opinion arose between the elected Directors of the Board and those nominated by the State Government u/s 35(1)(a) of the Himachal Pradesh Co-operative Societies Act, 1968. u/s 35(3) of the Act, the matter was referred to the State Government. The State Government gave decision in favour of Shri V.D. Kalia, by an order dated May 17, 1977. The order purports to have been made u/s 35(3) of the Act.

3. Learned Counsel for the Petitioner has vehemently contended that the order of the Registrar made on March 7, 1977, is an illegal order and therefore effect cannot be given to it by the Government u/s 35(3) of the Act. It is urged that Section 35(3) does not contemplate within its scope orders which are illegal.

Section 35(3) of the Act provides:

35(3) Where in a co-operative society in which shares have been subscribed or liability by way of guarantee for borrowing has been undertaken by the Government, exceeding fifty per centum of the working capital of the society, a difference of opinion in respect of any matter arises between any member of the committee nominated under Sub-section (1)(a) and other members thereof, the matter shall be referred by the committee to the Government whose decision thereon shall be final and will operate as if the same were a decision taken by the committee.

According to the terms of this provision, in a co-operative society where the Government has contributed more than 50% of the working capital of the society, it is entitled to resolve a difference of opinion between a nominated member of the committee and the remaining members, and the decision so rendered by it is, by operation of law, to take effect as if it were a decision taken by the committee. The *raison d'être* of this provision appears to be that the Government has contributed a majority of the working capital of the society, and therefore must be presumed to speak for the society. It is a principal of law and settled in practice that ordinarily the majority represents the voice of a collective body. It is immaterial that the order of the Registrar dated March 7, 1977, to which effect was given by the Government u/s 35(3), may be an illegal order. The mere legality of that order is of no consequence in considering the validity of the action of Government u/s 35(3). The decision of the Government u/s 35(3) operates as a decision of the Committee, and so long as the decision is not void and a nullity, it is a decision binding on the society. We are of opinion that the Petitioner is not entitled to maintain this writ petition.

4. The Writ Petition is rejected.