

(12) In view of the authoritative decision of the Supreme Court, supported as it is by the views taken by the Bombay and the Kerala High Courts, we feel that the view taken by the learned Single Judge in this case cannot be supported, while the view taken by another learned Single Judge of this Court in *Amar Singh Dosanj's case* (1) (*supra*) is the correct view.

(13) We, therefore, accept this appeal, set aside the order of the learned Single Judge issue a direction that the Registrar Co-operative Societies, has no jurisdiction to entertain any reference with regard to the dispute to the election of the Managing Committee of the Society till after the declaration of the result of the election. It was brought to our notice that the Deputy Registrar (respondent No. 3) who was seized of the matter has since given his decision adverse to the petitioner. In view of our above finding, such a decision would be *non est* as having been passed without any jurisdiction. The appellant will have his costs in this Court as well as before the learned Single Judge.

B. S. G.

MISCELLANEOUS CIVIL

Before Manmohan Singh Gujral and S. C. Mital, JJ.

SEWA SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ Petition No. 3749 of 1971

October 15, 1973.

Punjab Co-operative Societies Act (XXV of 1961)—Section 27—Punjab Co-operative Societies Rules (1963)—Rules 25(a) and 26(a)—Assistant Registrar—Whether has the jurisdiction to pass an order under Section 27 of the Act read with Rule 25(a) and 26(a) of the Rules.

Held, that a plain reading of Section 27 of the Punjab Co-operative Societies Act, 1961 shows that it is the Registrar who can pass order under Section 27(1)(b). The definition of the word 'Registrar' as given under Section 2(j) of the Act, lays down that a person appointed to be Assistant Registrar when exercising all or any of the powers of the Registrar, would also be a Registrar. The expression "when exercising all or any of the powers" occurring in

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clause (j) of Section 2 envisages that it has to be specifically mentioned as to in respect of which powers the assistance was to be rendered by the Assistant Registrar. In other words specific powers of the Registrar have to be conferred on the Assistant Registrar. Unless this is done, it is not open to the Assistant Registrar to exercise any of the powers of the Registrar. Hence the Assistant Registrar has no jurisdiction to pass an order under Section 27 of the Act read with Rules 25(a) and 26(a) of the Rules unless the powers of the Registrar contained in Section 27 of the Act are specifically conferred on the Assistant Registrar in this behalf.

Case referred by Hon'ble Mr. Justice A. D. Koshal,—vide his order dated 29th November, 1971, to a Division Bench, for decision an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice S. C. Mital finally decided the case on 15th October, 1973.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate, writ, order or direction be issued quashing the orders of respondent No. 2, dated 7th April 1971 (Annexure 'B'), order dated 30th July, 1971 (Annexure 'D') and order of respondent No. 1, dated 4th September, 1971 (Annexure 'C').

M. J. S. Sethi, Advocate, for the petitioner.

Narinder Singh, Advocate, for the respondents.

Dated the 29th November, 1971.

JUDGMENT

GUJRAL, J.—This judgment will dispose of Civil Writs Nos. 3749 of 1971, 4063 of 1971 and 4330 of 1971 as common questions of law arise for decision in all these petitions.

2. Civil Writ No. 3749 of 1971 was first placed before A. D. Koshal, J., who by order dated 29th November, 1971, referred the questions of law to a Division Bench as these questions were likely to arise in a large number of cases and involved the interpretation of numerous provisions of the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act) and the Rules made thereunder. It is in this manner that these three writ petitions came to be placed before us.

3. In the first of these writ petitions the petitioner was a member of the Verka Kisan Co-operative Marketing-cum-Processing

Society Ltd., Verka (hereinafter referred to as the Verka Society). The Verka Society was a member of the Punjab State Co-operative Society and Marketing Federation. Punjab (hereinafter called the Marketing Federation) and as a member of the Verka Society the petitioner was to act as its representative on the Marketing Federation. The petitioner was elected as a member of the Marketing Federation by the Verka Society. By circular letter No. E&T/ETA/G-1-49/57816-45, dated 17th November, 1970, the Joint Registrar (Headquarters), Co-operative Societies, Punjab, issued the following instructions:—

“Before taking action for cessation of a member he should be given an opportunity to explain his position. The action for cessation of a member of committee is to be preceded by a departmental enquiry. This cannot be the subject-matter for arbitration under section 56 of the Act.”

On 18th March, 1971 a notice was issued to the petitioner by respondent No. 2 (Assistant Registrar, Co-operative Societies) calling upon him to explain why he should not be “ceased from the Board of Directors” of the Marketing Federation under rule 26(f) of the Punjab Co-operative Societies Rules, 1963. According to this notice, the Verka Society was a defaulter to the Amritsar District Wholesale Co-operative Supply and Marketing Society Ltd. with regard to the sugar dues and fertiliser dues. It was further pointed out that the petitioner had drawn excess T.A. to the extent of Rs. 1,172.90 and this amount was also outstanding against him. Though the petitioner controverted all these allegations and denied his liability for the recovery of T.A. drawn by him but the Assistant Registrar by order Annexure B came to the conclusion that the petitioner had failed to prove that nothing was due from the Verka Society and that he had incurred disqualification under rule 25 and had, therefore, ceased to be a Director of the Marketing Federation. Against this order the petitioner filed an appeal which was treated as a revision petition and was dismissed for default of appearance.

4. Another notice was issued to the petitioner by the Assistant Registrar calling upon him to show cause why he should not be declared to have ceased to be a Director of the Marketing Federation as he was a defaulter to the Amritsar Central Co-operative Bank Ltd., Amritsar, in respect of an amount of Rs. 1,1721.21. The petitioner contested this allegation, but the Assistant Registrar having found

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that the petitioner had incurred disqualification under rules 25(a) and 26(f) of the Punjab Co-operative Societies Rules held that the petitioner had ceased to be a Director of the Marketing Federation with effect from 13th January, 1971. Thereafter the petitioner filed the present petition challenging the orders Annexures B, C and D. The orders of the Assistant Registrar were challenged on a number of grounds, but we are only concerned with the ground mentioned in paragraph 14(vi) which is as follows:—

“14. That the orders of the respondents contained in Annexures B, C and D are illegal, without jurisdiction, void, *mala fide*, based on no evidence, and against the principles of natural justice, *inter alia*, for the following reasons:—

* * * * *

(vi) That the Assistant Registrar has no jurisdiction to take action under Rules 25 and 26 of the Rules, inasmuch as no such powers have been delegated to him. The powers to take action under the said Rules are exercisable either by the Registrar himself or the Deputy Registrar of the Co-operative Society, who was delegated the powers of Registrar under the said Rules.

5. In Civil Writ No. 4063 of 1971, the petitioner, Harcharan Singh, was a member of the Manhari Jai Singh Bath Co-operative Dairy Society Ltd., (hereinafter called the Manhari Society) which in turn was a member of the Tarn Taran Central Co-operative Bank Ltd., Tarn Taran (hereinafter called the Tarn Taran Bank). In December, 1969, the petitioner was elected Director of the Tarn Taran Bank. On 14th July, 1971, the petitioner received a notice from respondent No. 2 (Assistant Registrar, Co-operative Societies, Amritsar) in which it was mentioned that the Manhari Society was a defaulter to the Tarn Taran Bank in respect of Rs. 155.85. The petitioner contested the notice and in his reply he pointed out that the entire amount had been paid on 21st November, 1969. Not accepting the plea raised by the petitioner the Assistant Registrar by order, dated 30th July, 1970, directed that the petitioner had ceased to be a Director of the Tarn Taran Bank. This order is Annexure C to the writ petition. To challenge this order the petitioner filed

the present writ petition in which one of the pleas taken was that the Assistant Registrar had no jurisdiction to pass an order declaring the petitioner to be a defaulter of the Tarn Taran Bank.

6. In Civil Writ No. 4330 of 1971 Surjit Singh petitioner was a Director of the Tarn Taran Kisan Co-operative Marketing Society Ltd., Tarn Taran (hereinafter called the Marketing Society). On 22nd July, 1971, the Assistant Registrar, Co-operative Societies, Tarn Taran, issued a show-cause notice calling upon the petitioner to explain why he should not be removed from the directorship of the Marketing Society. Though the petitioner contested this notice but respondent No. 2 by order Annexure C removed the petitioner from the directorship of the Marketing Society. The petitioner challenged this order through this writ petition and among other grounds took up the plea that respondent No. 2 had no jurisdiction to pass the order in question.

7. From the above it would emerge that in all these writ petitions it has been contended that the Assistant Registrar, Co-operative Societies, had no jurisdiction to pass an order under section 27 of the Act read with rules 25(a) and 26(a). The relevant provisions are as under:—

27. (1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties, imposed on it or him by this Act or the rules or bye-laws made thereunder, or commits any act which is prejudicial to the interests of the society or its members, or makes default in the implementation of production or development programmes undertaken by the co-operative Society, the Registrar may, after giving the committee or the member, as the case may be a reasonable opportunity to state its or his objections, if any, by order in writing—

* * * * *

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act and rules and bye-laws made thereunder."

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“25. *Disqualification for membership of committee.*—No person shall be eligible for election as a member of the committee if:—

- (a) he is in default to any co-operative society in respect of any sum due from him to the society or owes to any co-operative society an amount exceeding his maximum credit limit.”

“26. *Cessation of membership of committee.*—A member of the committee shall cease to hold his office as such if he:

- (a) continues to be in default in respect of any sum due from him to the co-operative society for such period as may be laid down in the bye-laws.”

8. A plain reading of section 27 would show that it is the Registrar, who can pass an order under section 27(1)(b). The expression “Registrar” has been defined in section 2(j) of the Act as follows:—

“2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (j) “Registrar” means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act, and includes any person appointed to assist the Registrar when exercising all or any of the powers of the Registrar.”

The above definition would show that a person appointed to be Assistant Registrar when exercising all or any of the powers of the Registrar would also be a Registrar. The expression “when exercising all or any of the powers” occurring in clause (j) of section 2 envisages that it has to be specifically mentioned as to in respect of which powers the assistance was to be rendered by the Assistant Registrar. In other words, specific powers of the Registrar have to be conferred on the Assistant Registrar and unless that is done it is not open to the Assistant Registrar to exercise any of the powers of the Registrar. In the present case, it is not disputed the powers of the Registrar contained in section 27 of the Act were not specifically conferred on the Assistant Registrar and this being the position the order was clearly without jurisdiction.

9. On behalf of the respondents it was contended that as soon as there was a default within the meaning of rule 26 of the Punjab

Co-operative Societies Rules, 1963, a member of the society would cease to hold his office and that no order was required in this respect. This argument is also without merit and was repelled in a recent judgment of this Court in *Lakha Singh v. The Registrar, Co-operative Societies, Punjab, Chandigarh and others* (1), in the following words:—

The question now to be seen is whether Rule 26 impliedly contemplated that some authority should give a prior finding about the facts on the basis of which it can be said that a member ceased to be a member or not. The matters relating to the election of the members of a committee of a co-operative society and the rights of the members to manage the affairs of the society are rights which may rightly be regarded as analogous to the rights of franchise. Any infringement of such rights by the executive, save in accordance with the provisions of the statute and the Rules on the subject, is to be looked upon with extreme disfavour. In interpreting such provisions, which have the drastic result of denying an elected member his right to manage the affairs of a primary society and in some cases of managing the affairs of the Central and Apex Societies, the Courts should lean in favour of elected members. If some officers of the Department were allowed to assume that a contingency had arisen under which a duly elected member of the society ceased to be a member, then no member would be able to exercise his functions in a reasonable certain manner. Besides, it would conduce to mutual bickerings and introduce utter chaos in the affairs of the society. Whenever a rule lays down that penal consequences shall flow against an elected member on the happening of certain event, then it must be assumed that the law contemplates the existence of an authority to determine whether that event has happened or not."

It was further observed as under:—

"Section 27 of the Act, no doubt contemplates the taking of disciplinary action by the Registrar against a Committee or its member, but a member would cease to be only if he

(1) A.I.R. 1973 Pb. and Hr. 13.

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becomes clothed with some of the infirmities mentioned in that rule. In substance, removal from membership and ceasing as a member have the same effect for an elected person. When the legislature in its wisdom has conferred the power of removal on the Registrar only, then it would be undesirable to hold that the said authority was not competent to take action under Rule 26. We are of the view that even when a declaration is sought to be given regarding a member under Rule 26, the matter must be decided by an authority invested with the powers of the Registrar."

Finding support from the above observations, I hold that the impugned orders in these writ petitions have been passed by the Assistant Registrar who was not competent to exercise the powers of the Registrar under section 27 of the Act. The impugned order in all these three writ petitions are, therefore, without jurisdiction and are quashed. There will, however, be no order as to costs.

MITAL, J.—I agree.

K. S. K. ...

INCOME TAX REFERENCE.

Before D. K. Mahajan and P. S. Pattar, JJ.

M/S. DASHMESH TRANSPORT COMPANY (P) LTD.,
LUDHIANA.—*Applicant.*

versus

THE COMMISSIONER OF INCOME TAX,—*Respondent.*

I.T.R. No. 35 of 1972.

October 23, 1973.

Income Tax Act (XLIII of 1961)—Section 40 (a) (ii)—Assessee Company taking over assets and liabilities of another Company—Tax liability of the transferor Company paid by the assessee—Such payment—Whether not allowable deduction by reason of section 40(a) (ii).

Held, that it is a fundamental rule of interpretation of statutes that a part of the statutory provision cannot be read in isolation.