

*Before Rajan Gupta, J.*

**KASHMIRI LAL,—Petitioner**

*versus*

**THE COMMISSIONER (APPEALS)  
JALANDHAR AND OTHERS,—Respondents**

**CWP No. 10531 of 1989**

2nd February, 2010

*Constitution of India, 1950—Art. 226—Punjab Cooperative Societies Act, 1961—S. 56—Petitioner stood surety for good conduct of a salesman appointed by Society—Dispute referred to Arbitrator—Arbitrator holding petitioner liable to pay amount due to Society—Appellate authority holding petitioner as well as salesman equally liable for amount—Revisional authority holding petitioner liable for entire principal amount and interest—Arbitrator an ex-officio member of managing committee of Society—Acting as a quasi judicial authority at relevant time—Appellate authority not giving any cogent reason for brushing aside objections raised by petitioner that Arbitrator could not act as a judge in his own cause—Revisional order also silent on this issue—Award passed by appellate authority as well as revisional authority deserve to be quashed—Matter sent back to Registrar directing to act in accordance with provisions of 1961 Act.*

*Held*, that the Assistant Registrar, Cooperative Societies, who decided the dispute and gave the award was at the relevant time member of the managing committee of the Abohar Society. The arbitration was initiated at the instance of Abohar Society and award was given ultimately in its favour. It is well settled that justice must not only be done but must appear to be done. Since the Assistant Registrar was an *ex-officio* member of the managing committee of the Abohar Society when dispute was referred to him, he should have refrained from deciding the same. He was acting as a *quasi* judicial authority at the relevant time and should have kept this fact in mind.

(Para 7)

*Further held*, that the order passed by the Arbitrator deserves to be set aside on the ground that the Arbitrator at the relevant time was an *ex-officio* member of the managing committee of the Abohar Society. For the same reason, award passed by the appellate authority as well as revisional authority deserve to be quashed. It is evident from perusal thereof that the appellate authority did not give any cogent reason for brushing aside the objections raised by the petitioner that the Arbitrator could not act as a judge in his own cause. The revisional authority was supposed to advert to the ground taken by the petitioner in his petition. However, the revisional order is silent on this issue. Even at the time of admission of this petition, this Court had noted the contention of the petitioner that the Assitant Registrar was an *ex-officio* member of the managing committee of the aforesaid society and thus stayed recovery of the amount till further orders. For these reasons, the orders Annexures P-1, P-2 and P-3 are hereby quashed.

(Para 8)

Ashwani Prasher, Advocate, *for the petitioner.*

O. P. Dabla, DAG, Punjab, *for respondents No. 1, 7 & 8.*

**RAJAN GUPTA, J. (ORAL)**

(1) Challenge in this writ petition is to orders, Annexures P-1, P-2 & P-3, passed by the Arbitrator, appellate and revisional authorities respectively fixing liability on the petitioner to pay the amount due to the Society having been held liable for the same as he stood surety for the good conduct of Shri Dharam Chand Salesman.

(2) Brief factual background of the case is that Diwankhera Cooperative Agriculture Service Society Ltd. Diwankhera (hereinafter referred to as "Diwankhera Society"), appointed Dharm Chand (respondent No. 4 herein) as a salesman by a resolution, dated 19th August, 1966. He was authorised to obtain fertilizer from Abohar Cooperative Marketing Society Ltd., Abohar (hereinafter referred to as "Abohar Society"). A sub-depot of Abohar Society was established at Diwankhera. The petitioner Kashmiri Lal stood surety for Dharam Chand salesman appointed by the Society to the tune of Rs. 40,000. It was found later that stock of fertilizer,

value of which would come to Rs. 48,783.49 P, remained unaccounted. Abohar Society raised a dispute in this regard with Diwankhera Society. It impleaded Kashmiri Lal (petitioner herein) Diwankhera Society Dharam Chand and two other persons as respondents in the said dispute. The matter was thereafter referred to the Arbitrator for deciding the dispute. The Arbitrator passed the award on 21st April, 1977 in the first instance. However, the award was set-aside by the Deputy Registrar, Cooperative Societies (respondent No. 7 herein) *vide* his order dated 29th August, 1980 and the matter was remanded back to the Arbitrator for decision afresh. The arbitration came up before Assistant Registrar, Cooperative Societies, Fazilka (respondent No. 8 herein), who heard the parties all over again on 6th August, 1985. He delivered an award, Annexure P-I holding the petitioner liable to pay the amount in question. The petitioner preferred an appeal before the appellate authority i.e. Deputy Registrar, Cooperative Societies. He raised a contention *inter alia* that the Arbitrator, who had decided the case, was an *ex-officio* member of the Abohar Society in whose favour decision had been given. After considering the matter, the appellate authority came to the conclusion that the petitioner as well as respondent No. 4 (Dharam Chand) were equally liable for the amount due to the Abohar Society. No interest was, however, awarded. Both Kashmiri Lal (petitioner) and Dharam Chand (respondent No. 4) challenged the appellate order before the revisional authority i.e. Commissioner (Appeals), Jalandhar (respondent No. 1). A separate revision was preferred by Abohar Society making out a case only for interest on the amount due. The revisional authority, *vide* its order dated 6th April, 1989, held the petitioner liable for the entire principal amount and awarded compound interest @ 6% per annum.

(3) Learned counsel for the petitioner has argued that the entire proceedings are vitiated in view of the fact that Assistant Registrar, who acted as the Arbitrator and took the decision, was an *ex-officio* member of the Abohar Society and thus, interested in the case. According to him, for the same reason the appellate and revisional orders cannot be allowed to stand. He submits that this plea was raised before the appellate authority but was brushed aside by it. According to him, thereafter, this ground was

taken in the grounds of revision before the revisional authority but the same was not adverted to in the impugned order, Annexure P-3. He thus, submits that the impugned orders deserve be set-aside. Reliance has been placed on judgments reported as **Baldev Singh versus The State of Punjab and others (1)** and **Dharampal versus The State of Haryana and others (2)** in support of the contention that an Arbitrator, who is an *ex-officio* member of the Board, was not competent to decide the dispute as he would act as a Judge in his own cause. He, thus, submits that matter needs to be reconsidered by an independent and impartial Arbitrator afresh and thus, the case be remitted back for this purpose.

(4) No body has put in appearance on behalf of respondents No.2 to 6. In the reply filed on behalf of respondent No. 4, however, it has been admitted that the Assistant Registrar, Cooperative Societies, Fazilka, who decided the arbitration, was an *ex-officio* member of the Managing Committee of the Abohar Society at the relevant time.

(5) Mr. Dabla, learned D.A.G. Punjab, who has appeared for respondents No. 1, 7 & 8, does not dispute the proposition of the law laid down in **Baldev Singh's** and **Dharampal's case** (*supra*). He has no objection if the matter is remanded back for a decision afresh by an impartial Arbitrator.

(6) I have heard learned counsel for the parties and given careful thought to the facts of the case.

(7) Admittedly, the Assistant Registrar, Coperative Societies who decided the dispute and gave the award, Annexure P-I, was at the relevant time member of the managing committee of the Abohar Society. The arbitration was initiated at the instance of Abohar Society and award was given ultimately in its favour. It is well settled that justice must not only be done but must appear to be done. Since the Assistant Registrar was an *ex-officio* member of the managing committee of the Abohar Society when dispute was referred to him, in my considered view, he should have

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(1) 1975 PLJ 507

(2) 1983 PLJ 304

refrained from deciding the same. He was acting as an *quasi* judicial authority at the relevant time and should have kept this fact in mind. In **Dharmpal's case** (*supra*) this court observed as under :—

“Now the award Annexure P. 4 and the appellate order Annexure P. 5 are again impugned on the same very ground that the arbitrator should not have acted as such on account of his apparent interest in the affairs of respondent No. 4 being *ex-officio* Director of the Society. The sole contention on behalf of the respondents is that the Assistant Registrar, Yamunanagar, had no financial interest in the matter and he was only one of the Directors of the Cooperative Society, respondent No. 4. I do not see any merit in the contention raised on behalf of the respondents. By now it is well laid down that in these matters where the arbitrator or any other authority is supposed to act as a judicial or quasi-judicial authority, justice has not only to be done but it must appear to have been done. This Assistant Registrar admittedly being one of the Directors of respondent No, 4, is interested in the affairs of the Society and this fact cannot possibly be ignored. To my mind, he should not have acted as a judge in his own cause. The principle had even been accepted by the Government as early as the year 1965 when instructions to the effect that in cases where the Assistant Registrar happens to be one of the Directors of the Cooperative Society should not act as an arbitrator in a dispute between that Society and any other individual, had been issued. In spite of these instructions, the Assistant Registrar, for the reasons best known to him, chose to act as the arbitrator and passed the impugned order.”

(8) I am in respectful agreement with the observations aforesaid in Dharampal's case (*supra*) and feel that order passed by the Arbitrator, Annexure P-1 deserves to be set-aside on the ground that the Arbitrator at the relevant time was an *ex-officio* member of the managing committee of the Abohar Society. For the same reason, award passed by the appellate authority as well as revisional authority deserve to be quashed. It is evident from persual thereof that the appellate authority did not give any cogent reason for brushing aside the objections raised by the petitioner that the

Arbitrator could not act as a judge in his own cause. The revisional authority was supposed to advert to the ground taken by the petitioner in his petition. However, the revisional order is silent on this issue. Even at the time of admission of this petition, this court had noted the contention of the petitioner that the Assistant Registrar was an *ex-officio* member of the managing committee of the aforesaid society and thus stayed recovery of the amount till further orders. For these reasons, the orders Annexures P-I, P-2 and P-3 are hereby quashed. The case is sent back to Registrar, Cooperative Societies, Punjab to act in accordance with provisions of Punjab Cooperative Societies Act, particularly Section 56 thereof. The parties are directed to remain present before the Registrar on 12th March, 2010.

(9) Allowed in aforesaid terms.

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**R.N.R.**

*Before Surya Kant, J.*

**SUKHDEV SINGH AND OTHERS,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**CWP No. 14238 of 1991**

10th March, 2010

*Constitution of India, 1950—Art. 226—Punjab Privately Managed Recognized Aided Schools Recruitment Benefits Scheme, 1992—Cls. 3 & 5—Punjab Civil Services Rules (Vol. II)—Rules 3.16, 3.17, 3.17A, 3.30 & 3.31—Petitioners rendering services in Government Aided Privately Managed Schools against posts duly sanctioned under Grant-in-Aid scheme—Whether service rendered by a Teacher/Master in a Government Aided Privately Managed School is countable towards pensionary benefits—Held, yes—Respondents directed to count services rendered by petitioners in Government Aided Privately Managed Schools against posts duly sanctioned Grant-in-Aid scheme towards their ‘qualifying service’ for pension subject to certain conditions.*