Before Amol Rattan Singh, J.

HARYANA STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED — *Petitioner*

versus

MEHTAB SINGH AND OTHERS — *Respondents*

CWP No. 18449 of 2017

October 6, 2017

Haryana Cooperative Societies Act, 1984 — Ss. 114 & 115 — Revisional jurisdiction — Can be exercised by the Government with regard to any proceedings, even under the rules framed under the Act — Such authority and proceedings would include the Registrar exercising powers under the revisional jurisdiction granted by rules pertaining to service conditions of employees— Jurisdiction of the Government to exercise revisional jurisdiction conferred by section 115, remains unfettered as regards any orders passed by a subordinate authority—Suo motu power, exercisable by Government in all such cases were no appeal lies to it under section 114.

Held, that a revision petition under Section 115 of the principal Act (that Act being the one under Section 37 of which the Rules of 1988 have been framed), enables Government to call for and examine the record of any proceedings in which no appeal lies to the Government, to enable it to satisfy itself with regard to the legality or propriety of any decision or order passed by an authority under the Act. Further, revisional jurisdiction can be exercised by the Government with regard to any proceedings even under the rules framed under the Act. Thus, in my opinion, such authority and such proceedings would also include the Registrar exercising powers under the revisional jurisdiction granted to him by rules pertaining to the service conditions of employees, with such rules having been framed under Section 37 of the principal Act as already noticed.

(Para 27)

Further held, that a perusal of Section 114 of the Act of 1984 shows that no appeal lies to the Government against an order of the Registrar passed under Rule 21 of the Rules of 1988 and therefore, in the opinion of this Court, as regards jurisdiction of the Government to exercise its revisional power conferred by Section 115 of the principal

Act, it remains unfettered as regards any orders passed by a subordinate authority.

(Para 30)

Haryana Cooperative Societies Act, 1984 — Ss. 102, 114 & 115 — Revision — Suo motu or on an application of a party to a reference — Revisional jurisdiction can be invoked only by a party to a reference under Section 102 — However, Government itself may suo moto exercise its revisional jurisdiction on other matters to — Petition by a party that was not maintainable, having been entertained by Government cannot be held to be barred — Once it was entertained, the Government could be said to have exercised its "suo moto power" to entertain it — Impugned order not without jurisdiction.

Held, that the matter may have been different if there had been a comma, after the phrase "*suo motu*" in Section 115, before the phrase "or on an application of a party to a reference under Section 102,....". However, since that is not the case, though revisional jurisdiction can be invoked only by a party to a reference under Section 102 of the Act (pertaining to disputes for arbitration), however, Government itself may *suo motu* exercise its revisional jurisdiction on other matters too. Thus, *suo motu* power is exercisable by Government in all such cases where no appeal lies to it under Section 114 of the Act. Undoubtedly, the revision petition filed before respondent no.2 was not in exercise of the said authority's *suo motu* power, but upon respondent no.1 having filed the said petition. Seen from that perspective, of course it could be held that the petition itself was not maintainable. However, it having been entertained by respondent no.2, in my opinion it cannot be held to be barred because once it was entertained, the Government (respondent no.2) could also be said to have exercised its "*suo motu* power" to entertain it.

(Para 31)

Haryana State Supply and Marketing Cooperative Service (Common Cadre Rules), 1988 — Rl. 21 — Revisional jurisdiction — To be exercised by the Registrar in the case of employees of the common cadre to which the rules apply, against decision of the Board on an appeal under Rule 20 — Jurisdiction conferred, limited to cases coming within the ambit of the common cadre rules.

Held, that thus revisional jurisdiction exercised under Rule 21 of the Rules of 1988, is to be exercised by the Registrar in the case of employees of the common cadre to which the rules apply, against the

decision of the Board on an appeal filed under Rule 20. The jurisdiction conferred, is therefore, obviously limited to cases coming within the ambit of the aforesaid common cadre rules.

(Para 26)

Haryana Cooperative Societies Act, 1984 — Ss. 114 and 115 — Haryana State Supply and Marketing Cooperative Service (Common Cadre Rules), 1988 — Rl. 21 — Recovery imposed — Revision — Enquiry by District Manager — Whether or not the moisture is higher than the prescribed limit and benefit of lesser gain should be given was required to be gone into by the Revisional authority, which it has not done — Impugned order quashed — Matter remitted to the Government, to go into the question of whether the authorities below have correctly appreciated the question of storage gain having been factored in correctly or not as per norms.

Held, that no doubt, weighment of stocks would also otherwise be basically necessary to determine whether there has been any gain or loss as regards sheer weight itself, for any reason including moisture content added, since the time that the stock was stored in the godown. Yet, that would not obviate the need for the revisional authority to have gone into the aspect of storage gain due to moisture, as per norms, because that is what respondent no.1 was charged with in the first place. Hence, whether the authorities below the revisional authority, have correctly appreciated that aspect while ordering recovery from respondent no.1, is something which the revisional authority was required to go into, which it has not done.

(Para 41)

Further held, that consequently, this petition is allowed and the impugned order, Annexure P-6, is hereby quashed. The matter is remitted to respondent no.2 to go into the question of whether the authorities below have correctly appreciated the question of storage gain having been factored in correctly or not as per norms, while imposing the aforesaid recovery on respondent no.1. The revisional authority will go into that aspect, including the duty assigned to officers/officials at different levels, to determine the moisture content and the consequent storage gain/loss, and responsibility to be fixed in case of a discrepancy. After assessing as to whether respondent no. 1 and others (who were responsible for applying the norms), did their duty or not, a speaking order would be passed by the revisional

authority, arriving at a conclusion eventually as to whether respondent no.1 was guilty in giving less storage gain as per the norms fixed.

(Para 43)

Padamkant Dwivedi, Advocate
for the petitioner.

Raman B. Garg, Advocate
for respondent no. 1.

R. K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

(1) The Haryana State Cooperative Supply and Marketing Federation Limited (hereinafter referred to as HAFED or the Company) is the petitioner herein seeking a writ of certiorari, quashing the impugned order dated 12.07.2016, Annexure P-6, passed by the 2nd respondent herein, i.e. the Additional Chief Secretary to the Government of Haryana, Department of Cooperation, allowing the revision petition filed by respondent no.1 herein, Mehtab Singh, a former Field Inspector (Stores), under Section 115 of the Haryana Cooperative Societies Act, 1984.

(2) The revision petition filed by respondent no.1 had sought setting aside of the order Annexure P-5, passed by the 3rd respondent herein, i.e. the Registrar, Cooperative Societies, Haryana, also on a revision petition (but filed under Rule 21 of the Haryana State Supply and Marketing Cooperative Service (Common Cadre Rules), 1988), vide which order respondent no.3 had upheld the order passed against the 1st respondent by the Deputy General Manager (Administration), HAFED, Panchkula, on behalf of the Board of Administrators of the company. The said order is dated 20.04.2011, a copy of which has been annexed as Annexure P-4 with the petition. Vide the said order, a recovery of `226545.05 paise, imposed by the Managing Director of the petitioner company on respondent no.1, was upheld, such recovery having been ordered to be made from respondent no.1 vide the order dated 28.01.2005, Annexure P-3.

(3) The background of the litigation is that respondent no.1 was served with a charge sheet on 06.11.2000 (Annexure P-1), alleging therein that he "gave less gain" of 863.03 quintals of wheat, "in the dispatch of 118344 bags of wheat of rabi-994-95", to the Food Corporation of India, in the months of July 1994 and from January

1995 to March 1995, thereby leading to a loss of `405274.30 paise, to the petitioner, HAFED.

(4) The first respondent having submitted his reply on 20.04.2001, it not having been found to be satisfactory, a departmental enquiry was ordered into the charges levelled, and the enquiry officer, vide his report dated 22.07.2003 (Annexure P-2), held that the charges stood proved against respondent no.1.

(5) The competent authority, i.e. the Managing Director (not impleaded as a party in the present petition), agreeing with the conclusion of the enquiry officer, issued a show cause notice to respondent no.1 for recovery of `303955.07 paise, i.e. 75% of the total loss of `405274.30 paise.

(6) In reply to the aforesaid show cause notice dated 16.12.2003, respondent no.1 submitted his reply dated 17.05.2004, after which he was also heard in person by the punishing authority (Managing Director) on 18.10.2004, with the said authority eventually imposing a punishment of recovery of `226545.50 paise, taking that to be 75% of the share falling to respondent no.1, of the total loss, vide the aforesaid order, Annexure P-3.

(7) Against that order respondent no.1 filed an appeal to the Board of Administrators under Rule 20 of the aforesaid Rules of 1988, which, upon considering the appeal and after giving a personal hearing to the 1st respondent, dismissed the same vide the order Annexure P-4, dated 20.04.2011, as already noticed.

(8) The impugned order, Annexure P-6, passed by the revisional authority (respondent no.2), is seen to have been passed with none appearing for the petitioner (HAFED), before the 2nd respondent. The reason for such non-appearance has been given in the petition to be that counsel for the company was busy in another case, with a request for adjournment having been turned down by the said revisional authority.

(9) Subsequently an application for recalling of the impugned order was also dismissed by respondent no.2, vide an order dated 26.07.2016 (Annexure P-7). That order cites a judgment in UP State Road Transport Corporation, Kanpur Region *versus* Babu Singh & Ors., holding that in the absence of a statutory provision, a review application is not permissible, even if it is "under the garb" of a modification / correction etc. of an order.

(10) Consequently, the present petition has come to be filed by HAFED.

(11) Upon notice having been issued by this Court on 21.08.2017, with notice re: stay also having been issued on that date, CM no.13102- CWP of 2017 was thereafter filed by the petitioner, which is an application seeking stay of operation of the impugned order, on the ground that the 1st respondent has filed a complaint before the Haryana Human Rights Commission, with notice issued by the said Commission to the petitioner company to appear before it on 18.08.2007, and the matter thereafter adjourned only to enable the petitioner to challenge the order impugned herein by way of the present petition, with the learned Commission further directing, on 22.08.2017, that the petitioner release half the amount ordered to be recovered from the 1st respondent, within a period of 15 days.

(12) Thus, fearing that the said amount would have to be released to respondent no.1, the said application was filed, seeking a stay on the impugned order itself, so that the learned Commission would not insist upon respondent no.1 being paid the amount on the basis of the impugned order, Annexure P-6.

(13) Notice having been issued by this Court in the said application on 14.09.2017, operation of the impugned order had been stayed till the next date of hearing, with learned counsel for the petitioner company also having argued that the impugned order is void ab initio, the power of revision having already been exercised by the Registrar (respondent no.3) vide his order Annexure P-5 and therefore, no second revision petition being maintainable.

(14) Upon respondent no.1 having put in his appearance through Mr. Raman B. Garg, Advocate, the issue of maintainability of the petition under Section 115 of the Act of 1984 was first gone into by this Court, with an order passed on 29.09.2017 that a revision petition filed under Section 115 of that Act, enabled Government to exercise revisional powers either *suo motu* or an application of an aggrieved party and therefore, even if the Registrar (respondent no.3) had already exercised his revisional powers under Rule 21 of the aforesaid Rules on 1988, the power exercised under Section 115 of the principal Act (The Haryana Cooperative Societies Act 1984) was an independent jurisdiction, over and above any revisional jurisdiction granted to a lower authority under the rules framed under that Act.

(15) Consequently, the matter thereafter had been adjourned to enable counsel for the parties to argue on the merits of what is contained in the impugned order.

(16) Today, when the matter came up for hearing, the main case itself was taken on Board with the consent of parties, though earlier it was only the stay application (CM no.13102-CWP of 2017) which was being argued.

(17) Mr.Dwivedi, learned counsel appearing for the petitioner company pointed to the fact that, as a matter of fact, the learned revisional authority (respondent no.1), has completely lost sight of the fact that norms for causing a loss in the wheat stock due to less weighment are completely different to loss caused due to not factoring in storage gain due to moisture content in the wheat stored in the godown, as per the instructions dated 9.06.1992, a copy of which was produced in Court by learned counsel.

(18) He submitted that whereas storage gain due to moisture entering the wheat stocks during its storage period, is dealt with in the first part of the instructions, whereas loss due to pilferage is contained in the last part of the instructions.

(19) He then pointed to the concluding part of the impugned order, which reads as follows:-

> "After hearing the submission made by the petitioner and examining the case file, it is clear that the request of petitioner was duly received in office of DM HAFED Faridabad. As per instructions dated 10.06.1992, the DM was duty bound to maintain utmost vigilance and carry out physical checks and to ensure that at the time of procurement, the necessary test weighment of stocks are carried out at his own level to ensure that stocks are not pilferaged but no action on the part of respondent authorities was taken. Therefore, no penalty can be imposed upon the petitioner."

(20) Mr. Dwivedi submitted that the revisional authority completely lost sight of fact that test weighment of the stock is more in the context of pilferage, whereas whether or not enough storage gain has been factored in as per norms, should have been looked into in terms of the aforesaid instructions and other such instructions, which issue has not been even dealt with at all in the impugned order,

possibly due to the reason that counsel for the petitioner (HAFED) was not present when the impugned order was passed on 12.07.2016.

(21) He therefore submitted that the impugned order deserves to be set aside on that ground alone, the issue not having been dealt with in detail, as should have been by the revisional authority.

(22) On the other hand, Mr. Raman Garg, learned counsel appearing for respondent no.1, submitted that simply because the revisional authority referred to the duty of the District Manager to carry out necessary stock weighment, with respondent no.1 not involved in such test weighment, that did not mean that respondent no.2 had not appreciated the controversy. He submitted that the entire history of the case having been given in the impugned order, very obviously revisional authority was aware of the order it was passing, with it being held that it was actually the responsibility of the District Manager to ensure that the stocks were properly weighed and as such, respondent no.1 could not be held responsible for any pilferage or even non-factoring in of moisture content therein during storage.

(23) Learned counsel naturally prayed for dismissal of the writ petition.

(24) Having heard learned counsel for the parties, before going into the contentions of both learned counsel on the merits of the impugned order, it is first necessary to go into the preliminary issue raised by Mr. Dwivedi, earlier, on non-maintainability of a revision petition before the Government (respondent no.1), under Section 115 of the Act of 1984, once revisional jurisdiction had been exercised by the Registrar (respondent no.3) under Rule 21 of the Haryana State Supply and Marketing Cooperative Service (Common Cadre Rules) 1988.

(25) Both the provisions are being reproduced herein under:-

Section 115 of the Haryana Co-operative Societies Act, 1984.

"**115. Revision**- The Government may sou motu or on an application of [an aggrieved party] call for and examine the record of any proceedings [under this Act and the rules framed thereunder] in which no appeal lies to the Government under section 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appeal

> to the Government that any such decision or order should be modified, annulled or revised, the Government may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit."
>
> **Rule 21 of the Haryana State Supply and Marketing Co-operative Service (Common Cadre) Rules, 1988**
>
> "21. Revision.- In the case of employees of the Common Cadre a revision petition against the decision of the Board shall lie with the Registrar within 60 days of such decision."

(26) Thus revisional jurisdiction exercised under Rule 21 of the Rules of 1988, is to be exercised by the Registrar in the case of employees of the common cadre to which the rules apply, against the decision of the Board on an appeal filed under Rule 20. The jurisdiction conferred, is therefore, obviously limited to cases coming within the ambit of the aforesaid common cadre rules.

(27) On the other hand, a revision petition under Section 115 of the principal Act (that Act being the one under Section 37 of which the Rules of 1988 have been framed), enables Government to call for and examine the record of any proceedings in which no appeal lies to the Government, to enable it to satisfy itself with regard to the legality or propriety of any decision or order passed by an authority under the Act.

(28) Further, revisional jurisdiction can be exercised by the Government with regard to any proceedings even under the rules framed under the Act.

(29) Thus, in my opinion, such authority and such proceedings would also include the Registrar exercising powers under the revisional jurisdiction granted to him by rules pertaining to the service conditions of employees, with such rules having been framed under Section 37 of the principal Act as already noticed.

(30) A perusal of Section 114 of the Act of 1984 shows that no appeal lies to the Government against an order of the Registrar passed under Rule 21 of the Rules of 1988 and therefore, in the opinion of this Court, as regards jurisdiction of the Government to exercise its revisional power conferred by Section 115 of the principal Act, it remains unfettered as regards any orders passed by a subordinate authority.

(31) The matter may have been different if there had been a comma, after the phrase "*suo motu"* in Section 115, before the phrase "or on an application of a party to a reference under Section 102,.....". However, since that is not the case, though revisional jurisdiction can be invoked only by a party to a reference under Section 102 of the Act (pertaining to disputes for arbitration), however, Government itself may *suo motu* exercise its revisional jurisdiction on other matters too.

(32) Thus, *suo motu* power is exercisable by Government in all such cases where no appeal lies to it under Section 114 of the Act.

(33) Undoubtedly, the revision petition filed before respondent no.2 was not in exercise of the said authoritys' *suo motu* power, but upon respondent no.1 having filed the said petition. Seen from that perspective, of course it could be held that the petition itself was not maintainable. However, it having been entertained by respondent no.2, in my opinion it cannot be held to be barred because once it was entertained, the Government (respondent no.2) could also be said to have exercised its "*suo motu* power" to entertain it.

(34) Hence in the opinion of this Court, the impugned order, Annexure P-6, is not without jurisdiction at least.

(35) Coming then to the issue of whether the impugned order suffers from lack of application of mind on the merits of the case, in view of what has been pointed out by Mr. Dwivedi, learned counsel for the petitioner, to the effect that norms with regard to whether moisture content was correctly factored in or not, by respondent no.1, to calculate shortage of wheat.

(36) In my opinion that contention is correct.

(37) The revisional authority has referred to the instructions dated 10.06.1992 in the penultimate paragraph of the impugned order, which is the only part of the order in which the authority has actually dealt with the controversy, the background of which has been given in the previous paragraphs of the order.

(38) The said instructions are being reproduced herein below, in toto:-

> "THE HARYANA STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED: CHANDIGARH
>
> ---
>
> No.Hafed/Proc/PA-II/1550 Dated:10.06.1992

All the Dms,
Hafed in the State.

SUBJECT: NORMS FOR STORAGE GAIN IN WHEAT STOCKS.

The matter regarding fixation of norms for storage gain has been under consideration of the Management for quite long time. This was discussed in the DMs meeting held on 11.1.92 at Kaithal and 2.2.92 at H.O. and in the Business Promotion Committee meeting held on 10.2.92. After discussions, following norms for storage gain are fixed:-

Months	Storage Gain
April-June	No loss in the wheat
July	800 gms. Per qtl.
August	900 gms. Per qtl.
September	1000gms. Per qtl.
October to December	1200gms. Per qtl.
January to March	1400gms. Per qtl.
April onwards	1200gms. Per qtl.

Some Field Officers pointed out that in the beginning of season; stocks of high moisture arrive in the mandis, some of which are also purchased by the procuring agencies. Most of such stocks, they pointed out, are harvested by combines. After detailed discussions it was felt that such stocks arrive only for a few days in the beginning and purchase of such stock is done in augment the procurements. It was felt that such stock may not give required gain.

In such stocks where moisture is higher than the prescribed limit, benefit of lesser gain would be given to the concerned FI but while doing so any enquiry should be conducted by the DM concerned, so that no un-due benefit is passed on to any one.

Further, it will be the duty of DM and Coordinating officer concerned deputed from H.O., to record a note about purchase of such stocks.

Wherever storage gain is less than the limit prescribed DM should send a report within 24 hours to Manager (Proc.), Chief Audit Officer and Manager (WH). Further, DM should conduct preliminary enquiry after taking into account the

storage gain of other stacks at the same centre and also the storage gain being recorded at other, centers fixing responsibility. He should send his report in 10 days without fail.

DM should maintain utmost vigilance and carry out physical checks at their own level to ensure that stocks are not pilferaged. They should also ensure that at the time of procurement, necessary test weighment of stocks are carried out so that pilferage does not place before the arrival of the stocks at the storage centre as per procurement procedure, it was made clear that it would be the duty of FI/SK receiving the stocks to verify the weight and he will be fully responsible for any shortages and responsible without conducting any enquiry.

Those DMs/FIs/SKs who record higher gain than the norm would be rewarded on quantity basis for which instructions would follow soon.

Sd/- For Managing Director,
Hafed"

(39) Thus, norms for storage gain in weight in the wheat stock due to moisture, during the period of storage, have been given for different months in the first part of the aforesaid instructions, after which it has been stated that even in stocks harvested by combine harvesters, whether or not the moisture is higher than the prescribed limit and benefit of lesser gain should be given, should be decided on an enquiry to be conducted by the District Manager concerned, so that no undue benefit is passed on to anyone.

(40) That aspect has not even been referred to in the impugned order, whereas "necessary test weighment of stocks" is what is referred to, which is actually seen to be in the context of trying to ensure that there has been no pilferage.

(41) No doubt, weighment of stocks would also otherwise be basically necessary to determine whether there has been any gain or loss as regards sheer weight itself, for any reason including moisture content added, since the time that the stock was stored in the godown. Yet, that would not obviate the need for the revisional authority to have gone into the aspect of storage gain due to moisture, as per norms, because that is what respondent no.1 was charged with in the first place.

(42) Hence, whether the authorities below the revisional authority, have correctly appreciated that aspect while ordering recovery from respondent no.1, is something which the revisional authority was required to go into, which it has not done.

(43) Consequently, this petition is allowed and the impugned order, Annexure P-6, is hereby quashed. The matter is remitted to respondent no.2 to go into the question of whether the authorities below have correctly appreciated the question of storage gain having been factored in correctly or not as per norms, while imposing the aforesaid recovery on respondent no.1.

(44) The revisional authority will go into that aspect, including the duty assigned to officers/officials at different levels, to determine the moisture content and the consequent storage gain/loss, and responsibility to be fixed in case of a discrepancy.

(45) After assessing as to whether respondent no. 1 and others (who were responsible for applying the norms), did their duty or not, a speaking order would be passed by the revisional authority, arriving at a conclusion eventually as to whether respondent no. 1 was guilty in giving less storage gain as per the norms fixed.

(46) Judgments on the issue of when storage gain is to be calculated or not calculated at all, shall also be considered by the revisional authority, as cited before it.

V. Suri