

ADDL. REGISTRAR, CO-OP. SOCIETIES, BIHAR AND ORS.

SEPTEMBER 17, 1991

[M. M. PUNCHHI AND K. RAMASWAMY, JJ.]

B

Bihar and Orissa Cooperative Societies Act, 1935—Sections 48 (6), 56 - Legislative intention—Revisionary powers of Registrar—Construction, nature and ambit of.

C

Bihar and Orissa Cooperative Societies Act, 1935—Sections 40, 48 — Initiation of proceeding u/s. 40 prior to proceeding u/s. 48—Whether amounts to double jeopardy.

D

Bihar and Orissa Cooperative Societies Act, 1935 —Sections 2(1), 2(a), 6,26,56—"Registrar"—Construction—Whether assistants of Registrar eligible to exercise powers of Registrar.

The appellant, an Ex-Treasurer of a Co-operative Society was said to have defalcated a sum of Rs. 95,790.54 and for recovery thereof, proceedings were initiated under section 48 of the Bihar and Orissa Co-operative Societies Act, 1935 with interest accrued thereon of Rs. 25,555 as on December 30, 1976.

E

The Registrar referred the matter to the Asstt. Registrar who on enquiry and having given the opportunity to the appellant passed an award, against which appeal was filed.

F

The Deputy Registrar allowed the appeal on the ground that the appellant was surcharged.

On revision, the first respondent set aside the appellate order and confirmed the award with a further direction to pay interest till date of recovery.

G

The appellant filed a writ petition which was dismissed in limine by the High Court against which this appeal by special leave.

The appellant contended that the Registrar had no revisional

H

- A** jurisdiction under Section 56 since the award of the Asstt. Registrar was by the Registrar under the Act acting as Registrar's delegate; that surcharge proceedings against the appellant were initiated under Section 40 in which the appellant was found payable of partial amount, as against which, the society filed an appeal before the Government, which was
- B** pending and the award amounted to double jeopardy for the same liability and therefore, it was illegal.

Dismissing the appeal, this Court,

- C** HELD: 1. A bare reading of the relevant provisions in Section 48 clearly manifests the legislative intention that the Registrar on reference, himself may decide the dispute or transfer it for disposal to a person exercising powers of the Registrar in this behalf. If the Registrar himself decides the dispute under Section 48(3) the question of either appeal or revision to him does not arise except a review. This dichotomy is to be
- D** maintained when a revisional power is to be exercised by the Registrar. The power of revision is conferred expressly only, either on application or *suo moto*, against any order passed by "a person exercising the powers of the Registrar". Obviously it refers to the person appointed to assist him under s. 6(2) (a) of the Act. [148G-H, 149 A]

- E** 2. The Registrar under s. 6(1) of the Act has his pre-eminent supervisory authority over the function and orders of the Registrars appointed under s. 6(2)(a) to assist him in the discharge of the duties or functions under the Act except over his delegate under sub-section (4) of s. 6. His supervisory or revisional power is to correct all palpable material
- F** errors in the orders passed or the action taken by the subordinate officers feeding injustice. Merely because the Asstt. Registrar on reference exercised the powers under sub-section (3) of s. 48. The Registrar is not denuded of his supervisory or revisional powers under s. 56 of the Act. Therefore, the Addl. Registrar as delegate of the Registrar is clearly within
- G** his power to exercise his revisional power over the appellate order under S. 48(6) of the Act. It is accordingly legal and valid. [149 E-G]

- H** 3. The language in s. 56 was couched very widely without being hedged with any limitation like the revisional powers under s. 115 C.P.C. or the similar language used in sister Acts in some other States. The reason appears to be obvious. The order of the Dy. Registrar by language

of sub-section (6) of s. 48, undoubtedly shall be final. When the legislature gives "finality" to an order, it is normally not open to revision. But still it must be construed in the light of the scheme of the Act, its operation and resultant effect. The language in s. 56 is not hedged with any limitation of the finality in sub-section (6) of Section 48. The revisional power under section 56 is independent of the appellate powers under section 48(6). The latter is amenable to revision by the Registrar. [150 D-F]

4. The proceedings under s. 40 are not in substitution of s. 48, but are independent of and in addition to the normal civil remedy under s. 48. The culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings under section 40. But that is not so under section 48. Therefore, mere initiation or an order passed under s. 40 does not divest the jurisdiction or power of the Registrar under s. 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award under s. 48(3) or revision under s. 56 does not amount to double jeopardy. [151 C-D]

5. Section 2(i) of the Act defines "Registrar", which means a person appointed to perform the duties of Registrar or Co-operative Societies under this Act. The State Government may appoint a person to be the Registrar of the Co-operative Societies besides Additional Registrar and also appoint persons to assist such Registrar. Under sub-section 2(a) the persons appointed to assist the Registrar are entitled to exercise all or any of the powers of the Registrar under the Act except under s. 26. Sub-section (4) of Section 6 gives power to the Registrar to delegate, transfer or assign to the Addl. Registrar all the powers including the powers under s. 26 and 56 and thereupon the Addl. Registrar as a delegatee of the Registrar is empowered to exercise powers so transferred or assigned or delegated to him. Section 6 thereby makes a clear distinction between the exercise of the powers of the Registrar, by the Addl. Registrar as a delegatee of the Registrar and of the Asstt. Registrars or Dy. Registrars appointed to assist the Registrar empowered as such in the discharge of their functions under the Act. Such assistants are entitled by statutory operation to exercise the powers under the Act conferred by the State Govt. except to the extent expressly excluded by the statute. [147 B, 148 A-B]

A AIR 1976 Patna 179, over-ruled.

Chintapalli Agency Taluk Arrack Sales Co-op. Society Ltd. v. Secretary (Food & Agricultural), Govt. of Andhra Pradesh, [1978] 1 SCR 563, followed.

B *Roop Chand v. State of Punjab, [1963] Suppl. 1 SCR 539, distinguished.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2168 of 1980.

C From the Judgment and Order dated 2.8.1979 of the Patna High Court in C.W.J.C. No.1819 of 1979.

R.K. Khanna and R.P. Singh for the Appellant.

L.C. Goyal for the Respondents.

D The Judgment of the Court was delivered by

E K. RAMASWAMY, J. The appellant, the Ex-Treasurer of the Gopalganj Co-op. Development & Cane Marketing Union, Gopalganj, was said to have defalcated a sum of Rs. 95,790.54 and for recovery thereof, proceedings were initiated under s. 48 of the Bihar and Orissa Co-operative Societies Act, VI of 1935, for short 'the Act' with interest accrued thereon of Rs. 25,555 as on December 30, 1976. The Registrar referred the matter to the Asstt. Registrar, Gopalganj, who on enquiry and having given the opportunity to the appellant passed an award in Case No. 400 of 1975 on December 30, 1976 for the aforesaid sums. On appeal, the Deputy Registrar set aside the award on the ground that the appellant was surcharged in Surcharge Case No. 18 of 1976. On further revision, the first respondent set aside the appellate order and confirmed the award with a further direction to pay interest till date of recovery. The appellant filed C.W.J.C. No. 1819 of 1979 which was dismissed *in limine* by the Patna High Court on August 2, 1979. Thus this appeal by Special Leave.

G The learned counsel for the appellant raised two- fold contentions. His first contention is that the Registrar has no revisional jurisdiction under s. 56 since the award of the Asstt. Registrar is by the Registrar under the Act and the Asstt. Registrar acted as his delegate. In support thereof he placed strong reliance on *Din Dayal Singh v. The Bihar State Cooperative Marketing Union Ltd*, AIR 1976 Patna 179. It is further contended that

H surcharge proceedings against the appellant were initiated under s. 40 in

which the appellant was found payable of partial amount as against which the society filed an appeal before the Government which is pending. The award amounts to double jeopardy for the same liability. Therefore, it is illegal. We find no substance in either contention.

Section 2 (i) of the Act defines 'Registrar', which means a person appointed to perform the duties of Registrar of Co-operative Societies under this Act. Section 6 in Chapter II provides thus:

"6. The Registrar— (1) The State Government may appoint a person to be registrar of Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar.

(2) The State Government may, by general or special order published in the Official Gazette, confer —

(a) on any person appointed under sub-section (1), to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers under Section 26; and

(b) on any Co-operative Federation or financing bank all or any of the powers of the Registrar under Section 20, sub-section (3) of Section 28 and Section 33.

(3) Where the State Government is of opinion that the Registrar needs the assistance of Additional Registrar for speedy disposal of business, it may by order published in the Official Gazette, appoint such number of Additional Registrar as it may deem fit.

(4) Notwithstanding anything to the contrary contained in any other provision of the Act, the Registrar may delegate, transfer or assign to the Additional Registrar such of his powers and functions and duties as he may consider necessary including the power under sections 26 and 56 and the Additional Registrar shall, thereupon have powers of Registrar in matters so delegated, transferred or assigned to him."

From a reading of sub-sections (1) to (3) of s. 6, it is clear that the State Government may appoint a person to be the Registrar of the Co-operative Societies besides Additional Registrar and also appoint persons to assist such Registrar. Under sub-section 2 (a) the persons appointed to

- A assist the Registrar are entitled to exercise all or any of the powers of the Registrar under the Act except under s. 26. Sub-section (4) gives power to the Registrar to delegate, transfer or assign to the Addl. Registrar all the powers including the power under ss. 26 and 56 and thereupon the Addl. Registrar as a delegate of the Registrar is empowered to exercise powers so transferred or assigned or delegated to him. Section 6 thereby makes a
- B clear distinction between the exercise of the powers of the Registrar, by the Addl. Registrars as a delegatee of the Registrar and of the Asstt. Registrars or Dy. Registrars appointed to assist the Registrar empowered as such in the discharge of their functions under the Act. Such assistants are entitled by statutory operation to exercise the powers under the Act conferred by the State Govt. except to the extent expressly excluded by the statute.

C

Section 48 provides procedure to adjudicate any dispute touching the business of a registered Society other than a dispute regarding disciplinary action taken by the Society or its Managing Committee against a paid servant of the society, arising amongst its members covered by clauses (a) to (e) and (c) covering any officer, agent or servant of the society (past or present). Such disputes shall be referred to the Registrar. Under sub-section (2) thereof the Registrar may on receipt of such reference (a) decides the dispute by himself or (b) transfer for disposal to "any person exercising the powers of the Registrar in this behalf"... Under sub-section (3) the Registrar (Assistant or Deputy) on reference shall dispose of the same in the manner provided in the Act and the rules. A right of appeal under s.48

D (6) is provided against the award made under sub-section (3). Sub-section (9) provides the subject to the orders of the Registrar on appeal or review a decision given in a dispute transferred or referred under clauses (b) and (c) shall be final. Section 56 provides power of revision thus:

E

F

Power of revision by Registrar – The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator under s. 44".

G

A bare reading of these relevant provisions clearly manifests the legislative intention that the Registrar on reference, himself may decide the dispute or transfer it for disposal to a person exercising powers of the Registrar in this behalf. If the Registrar himself decides the dispute under s. 48(3) the question of either appeal or revision to him does not arise except a review. This dichotomy is to be maintained when a revisional power is to be exercised by the Registrar. The power of the revision is conferred expressly only, either on application or *suo moto*, against any

H

order passed by "a person exercising the powers of the Registrar". Obviously it refers to the person appointed to assist him under s. 6(2)(a) of the Act.

In *Chintapalli Agency Taluk Arrack Sales Co-op. Society Ltd. v. Society (Food & Agriculture), Govt. of Andhra Pradesh*, [1978] 1 S C R 563 a similar question had arisen. The Dy. Registrar of Co-operative Societies gave notice to the appellant and amended under s. 16 (5) of the A.P. Co-operative Societies Act, the Bye-laws of the Society so as to restrict the area of operation within the specified area. On a revision filed against the order under s. 77, the Registrar gave certain directions which was assailed being without jurisdiction. When it came before the High Court, the High Court allowed the writ petition. On appeal this court held that the power of the Registrar is in accordance with the pre-eminent position accorded by the Act to the Registrar under whose supervision any other person appointed under s.3 (1) may function and act. "It is, therefore, not correct that the Registrar could not exercise powers under s. 77 in examining the correctness, legality or propriety of the proceedings initiated by the Dy. Registrar under s. 16(5) of the Act". It was further held that the power under s.16 is that of the Registrar, but the Dy. Registrar is empowered by the Government to exercise the powers, but under the general superintendence of the Registrar. Accordingly it was held that the revision was maintainable. The same ratio applies to the facts on hand. The Registrar under s. 6 (1) of the Act has his pre-eminent supervisory authority over the functions and orders of the Registrars appointed under s. 6(2) (a) to assist him in the discharge of the duties or functions under the Act except over his delegate under sub-section (4) of s. 6. His supervisory or revisional power is to correct all palpable material errors in the orders passed or the action taken by the subordinate officers feeding injustice. The language couched in s. 56 advisedly was wide of the mark to reach injustice whenever found in the orders or actions of his subordinate officers. Merely because the Asstt. Registrar on reference exercised the power under sub-s. (3) of s.48, the Registrar is not denuded of his supervisory or revisional powers under s. 56 of the Act. Therefore, the Addl. Registrar as delegate of the Registrar is clearly within his power to exercise his revisional power over the appellate order under s. 48 (6) of the Act. It is accordingly legal and valid. The ratio in *Roop Chand v. State of Punjab*, [1963] Suppl. 1 SCR 539 is clearly distinguishable. Therein the State Govt. have expressly delegated their power to the Asstt. Director. Thereby the Subordinate Officer exercised the powers of the State Govt. as their delegate. The Govt. was thereafter devoid of powers to exercise the revisional powers over the subordinate officers. This court in *Chintapalli Agency's case* (supra) distinguished *Roop*

- A *Chand's* ratio. *Din Dayal Singh's* case (supra) no doubt supports the contention of the appellant. Relying upon the language in sub-section (9) of s. 48 "save as expressly provided in this section", the Division Bench construed that the appellate order of the Deputy Registrar passed under s. 48 (6) was otherwise provided and so was not amenable to revision under s. 56. The learned Judges construed that since the appellate order shall be final. The effect of language under sub-sec. (9) of s. 48 was to exclude the revisional jurisdiction of the Registrar under s. 36. In addition, the Division Bench also construed that the Registrar himself referred the dispute to the Asstt. Registrar and any person exercising the power of the Registrar in this behalf is to be in the parameters of his delegate and that, therefore, the Registrar himself cannot revise his own order under s. 56.
- C We find it difficult to approve the ratio of the High Court. At the cost of repetition we point out that s. 6, sub-section (1) and sub-section 2 (a) make a distinction between "the Registrar" and "a person exercising the powers of the Registrar". Sub-section (4) further amplifies the exercise of the power of the Registrar by the Additional Registrar as his delegate.
- D That apart, it is clear that the Registrar is the final supervisory authority over the subordinate officers exercising the powers or performing the duties under the Act. The language in s. 56 was couched very widely without being hedged with any limitation like the revisional powers under s. 115 C.P.C. or the similar language used in sister Acts in some other States like A.P. The reason appears to be obvious. The order of the Dy. Registrar by language of sub-section (6) of s. 48, undoubtedly shall be final.
- E We are aware that when the legislature gives "finality" to an order, it is normally not open to revision. But still it must be construed in the light of the scheme of the Act, its operation and resultant effect. The language in s. 56 is not hedged with any limitation of the finality in sub-section (6) of s. 48. Thus we hold that the revisional power under s. 56 is independent of the appellate power under section 48(6). The letter is amenable to revision by the Registrar. The ratio of the Division Bench in *Din Dayal's* case (supra) is, therefore, not good law.
- F

The second contention that the award of the Asstt. Registrar amounts to double jeopardy offending his right under Art. 20 is misconceived and without substance. Undoubtedly s. 40 gives power to the Registrar to initiate surcharge proceedings, on receipt of audit report under s. 33 or an enquiry under s. 35 or on inspection under Ss. 34, 36 or 37 or of the winding up proceedings, if it appears to the Registrar that any person who has taken part in the organisation or the management of the society or any past or present officers of the society made any illegal payment under clause (a); or by reason of his culpable negligence or mis-

- G
- H

conduct causes loss or deficiency to the funds of the society under clause (b); or failed to bring into account any sums which ought to have been brought into the account under clause (d); or misappropriated or fraudulently retained any property of the society or of the financing bank etc. The proceedings under s. 48 are in the nature of a civil suit, otherwise cognisable by a civil court under s. 9 of the C.P.C. The statute has taken out the jurisdiction of the civil court and expressly conferred on the Registrar or a person exercising the powers of the Registrar to decide the dispute touching the business or management of the society between its members, past members etc. or their office bearers, agent or officers or servants of the society etc. The proceedings under s. 40 are not in substitution of s. 48, but are independent of and in addition to the normal civil remedy under s. 48. The culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings under s. 40. But that is not so under s. 48. Therefore, mere initiation or an order passed under s. 40 does not divest the jurisdiction or power of the Registrar under s. 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award under s. 48(3) or revision under s. 56 does not amount to double jeopardy. We are informed that an appeal before the Government is pending against surcharge order under s. 40. We express no opinion thereon. We hold that exercise of the power to pass an award under s. 48 does not amount to double jeopardy. The appellate order of the Dy. Registrar is obviously and palpably illegal and rightly corrected. The appeal is accordingly dismissed, but since none appeared for the respondents we order no costs.

V.P.R

Appeal dismissed.