



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.143 of 2014.

Reserved on : 11.07.2014.

Date of decision: 16.07.2014.

M/s Mariental India Pvt. Ltd.

.....Petitioner/Claimant.

Versus

**Himachal Pradesh State Co-operative
Marketing and Consumer's Federation Ltd.
& others**

**.....Respondents/Non-
claimants.**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

***Whether approved for reporting?*¹Yes**

For the Petitioner : Mr.Ashok Sood, Advocate.

**For the Respondents : Mr.G.C.Gupta, Senior Advocate
with Ms.Meera Devi, Advocate, for
respondent No.1.**

**Mr.Virender Kumar Verma and
Ms.Meenakshi Sharma, Additional
Advocate Generals with Ms.Parul
Negi, Deputy Advocate General,
for respondents No.2 and 3.**

Tarlok Singh Chauhan, Judge.

The moot question in this petition is whether it is maintainable under Article 227 of the Constitution of India.

2. The petitioner herein has claimed the following substantial reliefs:-

"(i) That the impugned Orders/Award dated 3.8.10 and the order dated 30.10.2013 passed by Special Secretary (Cooperation) to the Government of Himachal Pradesh (Learned Appellate Authority) in case No.23/010 titled M/s Mariental India Pvt. Ltd. Versus Himachal

***Whether the reporters of the local papers may be allowed to see the Judgment?*Yes**



Pradesh State Cooperative Marketing Consumer's Federation Ltd. (HIMFED) along with order dated 3.8.2010 passed by learned Arbitrator/Joint Registrar(Credit), Cooperative Societies H.P., Shimla be set aside, quashed and any other appropriate order direction and writ may kindly be issued in favour of petitioner against the respondents;

(ii) The Claim Petition/Reference titled M/s Mariental India Pvt. Ltd. Versus Himachal Pradesh State Cooperative Marketing Consumer's Federation Ltd. (HIMFED) preferred before the learned Arbitrator be allowed with costs."

3. The parties are not at variance that the dispute arising between the parties was required to be referred and adjudicated by the named Arbitrator i.e. Registrar, Cooperative Societies, Himachal Pradesh, who passed award on 03.08.2010 against which award the petitioner preferred an appeal before the State Government which too has been dismissed vide order dated 30.10.2013. Both these decisions are questioned by way of this petition under Article 227 of the Constitution of India.

4. What appears from the record is that the proceedings were conducted before the Registrar, Cooperative Societies in accordance with the terms of the agreement wherein the Registrar, Cooperative Societies, was the named Arbitrator. The dispute had been referred to the Registrar in terms of Clause-12 of the agreement dated 25.05.2007 which reads as follows:-

"12. In case of any dispute or difference of opinion arises out of this contract/Agreement the same shall be referred to the Registrar, Cooperative Societies, Shimla, H.P. for adjudication and the decision of Registrar, Cooperative Societies, Shimla shall be binding upon both the parties. The consultant has agreed to become the C Class member of Himfed. This agreement is signed on this day of 25/5/07 in the presence of witnesses."



5. It is further not disputed that on account of petitioner having become the member of the Cooperative Societies i.e. HIMFED, the dispute was adjudicated upon by the Registrar in terms of Sections 72/73 of the H.P. Cooperative Societies Act, 1968 (hereinafter referred to as the 'Act') and an appeal against his decision was preferred by invoking the provisions of Section 93 of the Act *ibid*.

6. Now the only question which requires to be determined is as to whether the Registrar can be termed to be the Court or Tribunal subordinate to the High Court so as to be amenable to the jurisdiction of this Court under Article 227 of the Constitution of India. The word 'tribunal' is wider than 'Court'; all Courts are tribunals, but all tribunals are not Courts. There are many things in common between a tribunal and a Court. A body which determines controversies or the rights of parties is called a 'tribunal', when it possesses some but not all the trappings of a Court. The essential requisite before a body can be characterized as a 'tribunal' is that it should be a quasi-judicial body exercising some judicial function. When a tribunal is required to decide after hearing the parties and objectively, according to evidence, it may be called a quasi-judicial tribunal and it then becomes subject to the writ of certiorari issued by the superior Courts and it would also come under the purview of Article 227 of the Constitution of India.

7. Undoubtedly, the Registrar in this case has acted as a quasi-judicial authority and given his award in accordance with the provisions of the H.P. Cooperative Societies Act and Rules and even the appeal (the maintainability of which was not questioned) has been preferred under the provisions of the Act. Therefore, the only question



remaining to be answered is as to whether the Registrar can be considered to be a Court or a Tribunal.

8. Though numbers of authorities have been cited by the learned counsel for the petitioner, but, to my mind, it is the judgment in ***Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd. and another AIR 1967 SC 1494*** which alone has bearing in the present case. In the said case, the appellant therein had filed an appeal before the Joint Registrar of Cooperative Societies against the order of the Assistant Registrar. One of the questions involved there was as to whether the Registrar acting under the Bihar and Orissa, Cooperative Societies Act, 1935 was a Court. The High Court found the appellant guilty of Contempt of Court. Dismissing the appeal, the Hon'ble Supreme Court held as under:-

“11. It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted under S.57 of the Act in case of disputes which fell under S. 48. A Registrar exercising powers under S.48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S.48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.”

9. Now in view of the ratio of the judgment of the Hon'ble Apex Court in ***Thakur Jugal Kishore Sinha's*** case (supra) when read



with various provisions of the H.P. Cooperative Societies Act, more particularly, Sections 71 and 94 coupled with the provisions of the Rules 141, 143 and 145, it would be clear that the Registrar has not merely the trappings of a Court, but in many respects, has been conferred with the same powers as given to the ordinary Civil Courts of the land by the Code of Civil Procedure.

10. Reference in this regard can conveniently be made to Sections 71 and 94 of the H.P. Cooperative Societies Act, 1968, which provides as under:-

“71. Powers of civil court:- (1) *In exercising the functions conferred on him by or under this Act, the Registrar, the arbitrator or any other person deciding a dispute under section 73 and the liquidator of a co-operative society or person entitled to audit, inspect or hold any inquiry shall have all the powers of civil court while trying a suit, under the Code of Civil Procedure, (5 of 1908), 1908 in respect of the following matters:-*

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
- (b) *requiring the discovery and production of any document;*
- (c) *proof of facts by affidavit; and*
- (d) *issuing commission for examination of witness.*

(2) *In the case of affidavit, any officer appointed by the Registrar, the arbitrator, or any other person deciding a dispute and the liquidator as the case may be, may administer oath to the deponent.”*

“94. Review and Revision:- (1) *The state Government except in a case in which an appeal is preferred under section 93 may call for and examine the record of any inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.*

(2) *The Registrar may at any time,--*

- (a) *review any order passed by himself; or*



(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit;

Provided that, before any order is made under sub-section (1) and (2), the State Government or the Registrar as the case may be shall afford to any person likely to be affected adversely by such orders an opportunity of being heard.

[Provided further that every application under sub-section (1) and (2), to the State Government or the Registrar, as the case may be shall be made within ninety days from the date of the communication of the order sought to be reviewed or revised.]”

11. Reference may also be made to Rules 141, 143 and 145 of the H.P. Cooperative Societies Rules, 1971, which reads thus:-

“141. Mode of service of summons-(1) *Every summons issued under the Act or these rules shall be in writing and shall be authenticated by seal, if any, of the officer by whom it is issued and shall be signed by such officer or by any person authorized by him in writing in that behalf. The summons shall require the person summoned to appear before the said officer at a stated time and place, and shall specify whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes; and any particular document, the production of which is required, shall be described in the summons with reasonable accuracy.*

(2) Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced, instead of attending personally to produce the same.

(3) The service of summons under the Act or these rules on any person, may be effected in any of the following ways:-

(a) by giving or tendering it in person; or



- (b) if such person is not found, by leaving it at least at his known place of abode or business or by giving or tendering it to some adult member of his family; or*
- (c) if the address of such person is known to the Registrar or other authorized person, by sending it to him by registered post with acknowledgement due; or*
- (d) if none of the means aforesaid is available by affixing it in some conspicuous part of his last known place of abode or business.*

4. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent, or other person, on his (defendant's) behalf, he shall require the signature of the person to whom the copy is so delivered or tendered as an acknowledgement of service endorsed on the original summons.

5. The serving officer shall in all cases in which the summons have been served under sub-rule(4), endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of summons.

(6) Where the person to be summoned is a public officer, or is the servant of a company or a firm or a local authority or an institution or any other person, the officer issuing the summons may, if it appears that the summons may be conveniently so served, send it by registered post acknowledgement due for service on the party to be summoned to the head of the office in which he is employed together with a copy of the summons to be retained by person concerned.

(7) The summons under sub-rule (3)(a) of this rule may be served through the Tehsildar or an employee of the Co-operative Department, or the Chairman or the Secretary of the society of which the person summoned is a member."

"143. Certain proceedings under the Act and the rules to be judicial proceedings- Proceedings of inspection under section 66 and inquiry under sections 67 and 69, proceedings under sections 73,74, 93, 94 , 95 and execution proceedings under section 87 shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code, 1860."



“145. Code of Civil Procedure to operate in certain matter-
Where the Act, or these rules, have not laid down any procedure for any matter arising during the course of proceeding under section 74, 87, 93, 94 and 95 the procedure laid down under the Code of Civil Procedure, 1908 for such matter shall be applied in the same manner as if the person conducting the proceeding is a civil court.”

12. Thus what would be seen from the aforesaid provisions is that the Registrar while exercising the powers under Section 73 of the Act discharges duties which would otherwise fall to the ordinary Civil and Revenue Courts of the land. The Registrar, thus, has not merely trappings of a Court, but in many respects, has been given the same powers as are given to the Civil Courts of the land by the Code of Civil Procedure including the power to summon and examine the witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own orders etc.. Therefore, the case is squarely covered by the ratio as laid down in ***Thakur Jugal Kishore Sinha’s*** case (supra) and accordingly for the purpose of invoking the provisions of Article 227, the Registrar while deciding a case under the provisions of H.P. Cooperative Societies Act, acts as Court and thus his orders are amenable to the jurisdiction of this Court under Article 227 of the Constitution of India.

13. Accordingly, the present petition under Article 227 of the Constitution of India against the order of the Registrar as affirmed by the State in exercise of the powers conferred upon it under the H.P. Cooperative Societies Act and Rules is held to be maintainable.

14. Now let respondents file their reply to the petition within a period of three weeks. List on **07.08.2014**.

July 16, 2014.
(krt)

(Tarlok Singh Chauhan),
Judge.