

The Bapauli Cooperative Agricultural Service Society v. The State  
of Haryana etc. (M. R. Sharma, J.)

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but this hope did not materialise. We are, therefore, issuing these directions so that the appellant, who put in best part of his life in serving the Government, may not be further put to unnecessary inconvenience and harassment.

(17) The learned Single Judge did not decide the question whether the appellant is entitled to the payment of interest as claimed by him with the observations that the appellant may file separate proceedings for the same. Keeping in view the fact that the appellant who retired from service in the year 1967, is an old man and has already undergone prolonged and protracted litigation, and keeping in view the observations of the Full Bench in *Mohindra Singh's case* (supra), we, therefore, think it proper to decide the question of interest in these proceedings, especially when the plea has been taken in the pleadings and the State Government was given an opportunity to reply to the said plea and all the facts being clear on the records. In order to avoid further litigation, we have adopted this course.

(18) We have also directed the State Government to fix the fee of the appellant regarding the Departmental Enquiries against Mr. P. S. Multani and Mr. R. I. N. Ahuja, in accordance with the guidelines as provided under para 25.3 of the Punjab Law Department Manual. We further direct that the said fee be assessed and paid by the State Government to the appellant within three months positively.

(19) No other point has been pressed by the learned counsel for the respondents.

(20) For the reasons recorded above, the appeal is accepted to the extent indicated in the earlier part of the judgment. However, there will be no order as to costs.

*Harbans Lal, J.*—I agree and have nothing to add.

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N. K. S.

MISCELLANEOUS CIVIL

*Before B. S. Dhillon and M. R. Sharma, JJ.*

THE BAPPAULI COOPERATIVE AGRICULTURAL SERVICE  
SOCIETY,—*Petitioner.*

versus

THE STATE OF HARYANA and others,—*Respondents.*

Civil Writ No. 427 of 1976

April 19, 1976.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 23,  
84-A and 85 (2) (xxxviii)—Haryana State Central Co-operative Bank*

*Staff Service (Common Cadre) Rules 1975—Rules framed under section 84-A—Whether infringe upon the rights of a primary society conferred by section 23—Legislature—Whether has provided guidelines for the framing of such Rules.*

*Held* that the final authority in a Co-operative Society vests in the general body of its members or its managing body elected in accordance with its bye-laws as laid down in section 23 of the Punjab Co-operative Societies Act 1961, but this authority is not absolute and free from restraints. Even the general body of the members cannot take any step which may be derogatory to the promotion of the economic interests of the members of a society in accordance with co-operative principles ; nor can the general body take any decision which may be contrary to the Act or the Rules framed thereunder. Section 23 of the Act has to be interpreted in such a manner so that its operation does not set at naught some of the other provisions of the Act. An apex society has to advance money to the central and primary societies. It is, therefore, essential that this money should be put to an effective use for the benefit of the borrowing and the lending societies. The law has, therefore, leaned in favour of the interests of the lending society by providing that such societies should frame rules governing the classes of public servants who are entrusted with the duty of handling the money advanced by them and this is precisely what section 84-A of the Act has authorised the Registrar to do. The service rules framed by an apex society lay conditions of service of the Secretaries of the Primary Societies which do not necessarily impinge upon the authority of the general body of a society conferred upon it under section 23 of the Act. Such a general body or a small body would continue to give day-to-day instructions to the Secretaries who shall be bound to follow them. The rules would come into play only when a dispute touching upon the relationship of a master and servant vis-a-vis the general body of the Primary Society and its Secretaries is being considered. Where a Secretary does not follow or obey the lawful directions issued by the general body of the primary society, penal action against him would have to be taken under the Common Cadre Rules, but it does not mean that the Secretary is not subordinate to the general body of the members. There is no conflict between the areas of operation of sections 23 and 84-A of the Act. Both have been enacted for different purposes and can be given full effect without impairing in any manner the applicability of the other. Thus the Rules framed under section 84-A do not infringe upon the rights of a primary society conferred by section 23 of the Act. (Paras 18 and 20).

*Held*, that section 84-A(2) of the Act lays down that the apex society shall, with the prior approval of the Registrar, make rules for the regulation of recruitment and the conditions of service of such employees. The words 'recruitment' and 'conditions of service' have

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come to acquire meanings which are well known and furnish sufficient guidelines to the apex society to make rules. Where the Legislature retains in its own hands the essential legislative functions and delegates the task of implementing the purposes and objects of the statute by enunciating a legislative policy with sufficient clearness, the rules made by the rule making authority cannot be said to suffer from the vice of excessive delegation. The apex society which supplies funds to its member society is expected to know that officials of a particular standard and security of service would be best suited to handle the funds advanced by it. The rules have to be framed by it regarding regulation of recruitment and conditions of service only. By enacting section 84-A (2) of the Act, the Legislature has given a clear expression to its policy and has not delegated its essential legislative functions in favour of an outside agency. (Paras 21 and 22).

*Case referred by Hon'ble Mr. Justice B. S. Dhillon, on 7th November, 1975 to a Division Bench for decision of an important question of Law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice B. S. Dhillon, and Hon'ble Mr. Justice M. R. Sharma finally decided the case on 19th April, 1976.*

*Amended petition under Articles 226 and 227 of the Constitution of India praying that the records of the case be called for and after perusal :—*

- (i) *The impugned resolution be quashed by means of an appropriate writ, order or direction ;*
- (ii) *the common Cadre Rules 75 framed by respondent No. 3 be struck down as ultra vires of the Act, the Rules and the bye-laws of the Primary Societies ;*
- (iii) *the operation of the impugned resolution and the common cadre rules be stayed till the final disposal of this writ petition,*
- (iv) *Any other appropriate relief be allowed to the petitioner ; and*
- (v) *Costs of the petition be awarded to the petitioner ;*

*Prem Singh, Advocate with N. S. Ahlwat, Advocate, for the petitioner.*

*R. K. Chhokar, Advocate, Intervener.*

*C. B. Kaushik, Advocate, for A.G. (Hy.) for Nos. 1 to 4.*

*M. R. Sharma, J.—*

(1) The petitioner is a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act). In exercise of powers under section 84-A of the Act, the Registrar Co-operative Societies, Haryana, Chandigarh, directed the apex Society respondent No. 3 to frame Common Cadre Rules applicable to some of the categories of servants of its member societies, including the petitioner-Society. Respondent No. 3 consequently framed the Primary Co-operative Agricultural Credit/Service Societies, Secretaries Common Cadre Rules, 1973, which were later on replaced by the Haryana State Central Co-operative Bank Staff Service (Common Cadre) Rules, 1975 (hereinafter called the Rules). It is alleged that these Rules infringed upon the statutory rights of the Primary Co-operative Societies conferred on them under section 23(1) of the Act, which lays down that final authority in a co-operative society shall vest in the general body of the members and where the bye-laws of such a society provide the constitution of a smaller body, such authority shall vest in the smaller body consisting of the delegate members of the society.

(2) The other ground of challenge is that the Legislature has not provided sufficient guidelines in section 84-A of the Act to the apex societies to frame the requisite rules. The petitioner-Society has urged that it is highly satisfied with the service rendered by the Secretary appointed by it about five years back whom it wants to retain even now and because of the Common Cadre Rules it may be forced to dispense with his services.

(3) This petition and certain other such petitions came up for hearing before my learned brother Dhillon, J., on November 7, 1975. It was argued before him that the provisions of section 84-A run counter to the provisions of section 23 and section 85(2) (xxxviii) of the Act. My learned brother was of the view that the question involved was of considerable importance affecting a large number of employees of the various societies, and for this reason he recommended that the case be decided by a larger Bench. This is how, this reference has come up before us for decision.

(4) At the very outset I would like to notice the provisions of the Act. Section 2 of the Act provides the definition of certain expressions used in the Act. According to sub-section (aa) an 'apex

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society' means 'a co-operative society whose membership includes central societies.' According to sub-section (bb) a 'central society' means 'a co-operative society whose membership includes primary societies. 'According to sub-section (bbb) a 'primary society' means a co-operative society whose membership consists exclusively of individuals.'

(5) According to sub-section (b) of section 2 'committee' means 'the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted.'

(6) Each and every Society is not entitled to be registered as a co-operative society under the Act. Section 4 lays down that subject to the other conditions of the Act, a society which has its object the promotion of the economic interests of its members in accordance with the co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under the Act with or without limited liability. The emphasis is on the promotion of the economic interests of the members of a society in accordance with co-operative principles.

(7) Section 7 lays down the manner in which an application for registration of a society is to be made to the Registrar. Section 8(1) is of some importance which may be reproduced as under :—

“8. Registration (1) If the Registrar is satisfied—

(a) that the application complies with the provisions of this Act and the rules,

(b) that the objects of the proposed society are in accordance with section 4,

(c) that the proposed bye-laws are not contrary to the provisions of this Act and the rules, and

(d) that the proposed society has reasonable chances of success,

the Registrar may register the society and its bye-laws.”

(8) Not only the object of the society should be the promotion of the economic interests of its members in accordance with co-operative principles but its bye-laws should also not be contrary to the provisions of the Act and the Rules.

(9) Section 10-A empowers the Registrar to direct the amendment of the bye-laws of a society if he is satisfied that such an amendment is necessary or desirable in the interests of such a society.

Section 23 is again of some importance and reads as under :—

“23. *Final authority is a co-operative society* :—

(1) The final authority in a co-operative society shall vest in the general body of members :

Provided that where the bye-laws of a co-operative society provide for the constitution of smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws the smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

(2) Notwithstanding anything contained in sub-section (2) of section 19, each delegate shall have one vote in the affairs of the society.”

(10) The question which is likely to crop up in this case is whether the managing body possess unlimited authority to carry on its business regardless of the other provisions of the Act or not.

(11) There have been some instances in which the managing body could not elect its successor before the expiry of its term. In such an eventuality, section 26-A of the Act empowers the Registrar to constitute a new committee in certain cases.

(12) Section 27 empowers the Registrar to supersede a committee if in his opinion such a committee persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the rules framed thereunder or the bye-laws, or the Society commits any act which is prejudicial to its interest or its members.

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(13) Section 30 provides that the registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and also enjoy power to hold property, the power to enter into contracts and the power to institute and defend legal proceedings.

(14) The next section which is of relevance for the purpose of this case is section 84-A of the Act which is under challenge. It reads as under :—

“84-A. *Constitution of common cadre* :—

- (1) The Registrar may require an apex society to constitute a common cadre of all or specific class of employees in the service of that society or in the service of the central societies which are members of the apex society, or in the service of the primary societies which are members of the apex society or the aforesaid central societies.

When a common cadre is constituted under sub-section (2), the apex society shall, with the prior approval of the Registrar, make rules for the regulation of recruitment and the condition of service of such employees.”

(15) Section 85 of the Act empowers the State Government to carry out the purposes of the Act. Sub-section (2) of this section lays down that rules also be framed for—

“85. (2) (xxxviii) :

Qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies.”

(16) A cumulative consideration of the aforementioned provisions of the Act make it abundantly clear that the societies formed only with the object of promoting economic interests of its members on co-operative principles can be registered by the Registrar under the Act. The bye-laws of these societies are not supposed to be contrary to the provisions of the Act and the rules framed thereunder. Apart from the right of the society to suo

*motu* apply to the Registrar for the amendment of bye-laws, the Registrar himself is empowered to direct a society to amend its bye-laws if he is satisfied that such an amendment is necessary or desirable in the interests of such a society. Since the bye-laws of a society have of necessity to be in conformity with the provisions of the Act and the Rules as laid down in section 8(1) (c) of the Act, it is reasonable to infer that wherever it appears to the Registrar that the bye-laws of a particular society come in conflict with the provisions of the Act and the rules framed thereunder, he would not only be empowered to order an amendment of the bye-laws but shall also be under a duty to do so under section 10-A of the Act. The Registrar acts as a mentor and a guide for the co-operative societies. He is under a statutory obligation to see that these societies continue to function. For this purpose, he has been empowered to supervise the election of the managing committees and to nominate or to supersede the committee if the term of the elected committee expires or the committee is found to be amiss in the performance of its statutory duties, as the case may be. In short, the ultimate power of control and supervision vests in the Registrar. He is expected to see that the co-operative societies which are corporate bodies under the Act continue to function in accordance with the provisions of the Act and the Rules.

(17) The final authority in a co-operative society does of course vest in the general body of its members or its managing body elected in accordance with its bye-laws as laid down in section 23 of the Act, but this authority is not absolute and free from restraints. Even the general body of the members cannot take any step which may be derogatory to the promotion of the economic interests of the members of a society in accordance with co-operative principles, nor can the general body take any decision which may be contrary to the Act or the Rules framed thereunder. When considered in this light, section 23 of the Act has to be interpreted in such a manner so that its operation does not set at naught some of the other provisions of the Act. It is settled law that two provisions of a statute have to be read in such a manner that one of them does not necessarily repeal the other. The question of repeal of one provision of a statute by another arises only when two of them are wholly incompatible with one another or if they are read together they would lead to wholly absurd consequences. If on a fair and proper interpretation these two provisions can be reconciled with each other, the Courts of law are under a duty to adopt such an interpretation and to give full effect to the two provisions of the

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Act instead of holding that one of them is repealed by the other. See in this connection, *The Ambala Ex-Servicemen Transport Co-operative Society Ltd. Ambala City and another v. The State of Punjab and others*, (1). In modern times the theory of laissez faire allowing absolute right to the master to terminate the services of his employees has lost all significance. Under the industrial law, elaborate provisions have been made to avoid security of tenures to the industrial workers. Thus, even a private master cannot be allowed to put an end to the employment of industrial workers so long as they do not commit an act of misconduct. Even when misconduct is alleged, an enquiry has to be held in accordance with the provisions of standing orders which by and large correspond to the principles of natural justice. Precisely for these reasons, it is said that now-a-days elements of contractual liability are slowly vanishing as necessary attributes of a public service which is becoming more and more a matter of status.

(18) Even under the common law, it is not necessary that the master himself should exercise all the powers of control over the servant. According to Halsbury's Laws of England, Third Edition, Volume 25, page 447—

“A person may be the servant of another although a third party has the power of appointing or dismissing him or of requiring his dismissal, or has powers of direction and control in regard to his work, or pays him his wages. A person may be a servant although remunerated otherwise than by wages or although only employed at will; and the relation is not destroyed because the master works with the servant. A person may be a servant to different masters; and a contract for exclusive personal service does not necessarily establish the relation of master and servant.”

(19) An apex society shall advance money to the central and primary societies. It is, therefore, essential that this money should be put to an effective use for the benefit of the borrowing and the lending societies. The law can, therefore, lean in favour of the interests of the borrowing society by providing that such societies should frame rules governing the classes of public servants who

(1) A.I.R. 1959 Punjab 1(Full Bench).

are entrusted with the duty of handling the money advanced by them. That is precisely what section 84-A of the Act authorised the Registrar to do. The service rules framed by the apex society lay conditions of service of the Secretaries of the Primary Societies which do not necessarily impinge upon the authority of the general body of a society conferred upon it under section 23 of the Act. Such a general body or a small body would continue to give day-to-day instructions to the Secretaries who shall be bound to follow them. The rules would come into play only when a dispute touching upon the relationship of a master and servant vis-a-vis the general-body of the Primary Societies and its Secretaries is being considered. Where a Secretary does not follow or obey the lawful directions issued by the general body of the primary society, penal action against him would have to be taken under the Common Cadre Rules, but it does not mean that the Secretary is not subordinate to the general body of the members. Speaking for myself, I can see no conflict between the areas of operation of sections 23 and 84-A of the Act. Both have been enacted for different purposes and can be given full effect without impairing in any manner the applicability of the other. The first contention raised on behalf of the petitioner-Society must, therefore, be repelled.

(20) The second ground of attack does not stand even a moment's scrutiny in view of the authoritative pronouncements of their Lordships of the Supreme Court in a large number of cases. Section 84-A(2) of the Act lays down that the apex society shall, with the prior approval of the Registrar, make rules for the regulation of recruitment and the conditions of service of such employees (emphasis supplied). The words 'recruitment' and 'conditions of service' have come to acquire meanings which are well known. These words furnish sufficient guidelines to the apex society to make rules. Where the Legislature retains in its own hands the essential legislative functions and delegates the task of implementing the purposes and objects of the statute by enunciating a legislative policy with sufficient clearness, the rules made by the rule-making authority cannot be said to suffer from the vice of excessive delegation. In *The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi, and another*, (2) it was observed as under :—

“What guidance should be given and to what extent and whether guidance has been given in a particular case at

(2) A.I.R. 1968 S.C. 1232;

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all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

(21) The apex society which supplies funds to its member-society is expected to know that officials of a particular standard and security of service would be best suited to handle the funds advanced by it. The rules have to be framed by it regarding regulation of recruitment and conditions of service only. By enacting section 84-A(2) of the Act, the Legislature has given a clear expression to its policy and has not delegated its essential legislative functions in favour of an outside agency. The second contention raised on behalf of the petitioner also deserves to be repelled and I order accordingly.

(22) For the reasons mentioned above, I would hold that the rules framed under section 84-A of the Act do not infringe upon the rights of a managing body of a primary co-operative society appearing in section 23(1) of the Act and by enacting section 84-A of the Act the Legislature has not abdicated its essential legislative functions. I would accordingly order that this petition be dismissed with no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

H.S.B.

REVISIONAL CIVIL

Before B. S. Dhillon and M. R. Sharma, JJ.

T. N. MAHAJAN,—Appellant.

versus

M/S JANTA STEEL AND METAL CO-OP. INDUSTRIAL SOCIETY LTD., 5948, BILLIMAGAN, DELHI and another,—Respondents.

Civil Revision No. 864 of 1972.

May 3, 1976.

Code of Civil Procedure (V of 1908)—Section 115—Punjab High Court Rules and Orders Volume V—Chapter 1-A, Rule 7—Revision