

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19.07.2012

% **Judgment delivered on: 08.08.2012**

+ **W.P.(C) 10508/2009**

SHREE RISHABH VIHAR COOPERATIVE HOUSE BUILDING
SOCIETY LTD. Petitioner

Through: Mr. Ankur Arora, Advocate

Versus

SALIL RICHARIYA & ORS Respondents

Through: Mr. Anil Amrit, Adv. for R-1
Mr. K.C. Mittal, Mr. Sanjay Kumar
and Ms. Anjali Nehra, Adv. for R-2
Mr. Sanjeev Sachdeva, Sr. Adv.
with Mr. Pranav Mishra, Mr. B.K.
Pandey and Ms. Priyam Mehta, Adv.
for R-3
Mr. V.K. Tandon, Adv. for R-5

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner society assails the order dated 14.11.2008 passed by the learned Financial Commissioner in Case Nos.81/2006-CA and 260/2006-CA being revision proceedings under Section 80 of the

Delhi Cooperative Societies Act, 1972 (the Act), preferred by late Sh. Kushiram Jain, original respondent no.4 in the present proceedings to assail the enquiry reports dated 18.01.2006 (prepared under Section 55 of the Act) and the enquiry report dated 02.08.2006 (prepared under Section 59(1) of the Act).

2. By the impugned order, the said revision petitions have been allowed by the Financial Commissioner by holding that the enquiry report prepared under Section 55 of the Act was vitiated on account of breach of the principles of natural justice. Since the enquiry report under Section 55 of the Act has been set aside, which is a precursor to initiation of proceedings under Section 59(1) of the Act, the same too has been set aside.

3. We may, at the outset, notice a few background facts in which the present petition has come to be filed. The petitioner society, after allotment of plots to all its members, was left with three additional unallotted residential plots, as there were three vacancies of members in the society. While the original respondent no.4, Sh. Kushiram Jain was the Hony. Secretary of the petitioner society, undisputedly, an advertisement was issued in the English newspaper on 20.06.2001 inviting application to fill up the membership of the society. The interested persons were required to apply latest by 22.06.2001, i.e.

within two days of the issuance of the advertisement. The allegation of the petitioner society that the said advertisement was issued by respondent no.4 on his own appears to have been established. The said advertisement is revealing, not only of what it concealed, but of the modus operandi adopted for inviting the applications for membership and is, therefore, reproduced herein below:

"MISCELLANEOUS

Applications are invited by a Delhi bas Coop. Housing Society for its vacant membership latest by 22/3/2001. Box 9405-CA, Hindustan Times, New Delhi-110001."

4. From the aforesaid, it would be seen that there was no disclosure of the name of the petitioner society; no disclosure about the nature of the society i.e. whether it is a house building society (which entitles members to allotment of residential plots), or a group housing society (which entitles its members to allotment of built up flats); the number of vacancies; the location of the society; the names of the office bearers of the society, the size of the plot/flats available, and; its contact details.

5. The interested persons were expected to respond latest by 22.03.2001 i.e. within two days by posting their applications at a Box No. provided by the advertiser Hindustan Times. The respondent nos.1 to 3 are claimed to have responded to the said advertisement (apart

from a few others) and within a space of ten days from the date of issuance of the said advertisement, they were shown to have been enrolled as members on 28.06.2001, and entries in their respect were made in the membership register which, according to the petitioner, allegedly was on account of forgery and fudging of the records of the society by respondent no.4. As to how they were chosen over others (allegedly there were seven appellants) who allegedly applied, is not known. The procedure of conducting the draw of lots, as prescribed by Rule 24(2) of the Delhi Co-operative Societies Rules, 1973 was not adopted.

6. According to the petitioner, neither prior to issuance of the advertisement nor at the time of enrollment of these members, the matter was placed before the managing committee and respondent no.4 acted as the whole and sole in charge of the affairs of the petitioner society.

7. We may also note that, according to the petitioner, the newly enrolled members were required to pay for the plots allotted to them @ Rs.120 per sq. mtr. in the year 2001-02, which was the rate at which the original members had been allotted plots in the 1970s. According to the petitioner, the prevailing rate of plots during the year 2001-02,

as per the Land and Building Department, was Rs.2500/- per sq. mtr. and the market values of these plots were running into crores.

8. According to the petitioner even the paltry amounts were never received by the petitioner society. The petitioners state that the elections to the managing committee of the society were held on 17.03.2002, when Sh. Kushiram Jain respondent No.4 ceased to hold the position of the Hony. Secretary. Despite this being the position, respondent no.4 continued to hold himself out as the Hony. Secretary of the society and got the sub-lease deeds executed in respect of these allottees, i.e. respondent nos.1 to 3, of the three allotted plots in the office of the Sub Registrar on 05.04.2002. According to the petitioner, in spite of vacating the office of the Hony. Secretary, respondent no.4 continued to hold the records of the society which led to police complaints being made against him in May, August, October and November 2002. Only after an order being passed by the SDM, Gandhi Nagar directing the SHO, Anand Vihar to search all the official records of the petitioner society, the record was seized from respondent no.4 on 27.04.2003 and handed over to the petitioner vide seizure memo dated 27.04.2003. According to the petitioner, this record was also not complete.

9. The petitioner submits that on various complaints being made to the Registrar of Cooperative Societies (RCS), he ordered the conduct an enquiry under Section 55 of the Act. The enquiry officer Mr. T.O. Thomas, after examining the records of the society, made his report dated 18.01.2006 pointing out various irregularities in the affairs of the petitioner society.

10. During the said enquiry proceedings, the enquiry officer made a spot visit to the society. The records/documents made available by the society were verified in the society's office. Respondent no.4, Sh. Kushiram Jain, ex-secretary also submitted a statement and copies of letters sent by him to the RCS alongwith photocopies of correspondence exchanged between him, the office of the RCS and the society. The said correspondence was annexed with the enquiry report as Enclosure-3.

11. The enquiry officer made his report dated 18.01.2006 pointing out the various irregularities which appeared to have taken place in the process of enrollment of three members, to whom allotment of the three vacant plots was made, i.e. respondent nos.1 to 3.

12. Consequently, on the basis of the aforesaid enquiry report dated 18.01.2006, the Registrar constituted another enquiry- this time

under Section 59 of the Act, for which purpose Mr. N.J. Thomas, Under Secretary, Ministry of Home Affairs was appointed as the enquiry officer. Respondent no.4 was served with summons dated 14.03.2006 in this enquiry, a copy whereof has been placed on record at page 67. A copy of the enquiry report prepared by Sh. N.J.Thomas, enquiry officer has been placed on record. A perusal of the same shows that respondent no.4 actively participated in this enquiry and was ably assisted by advocates as well. Respondent no.4 in these proceedings was termed as the defendant. The procedure adopted in the said enquiry under Section 59 of the Act, as recorded in the enquiry report itself, inter alia, reads:

"3. Accordingly, a notice was issued to the Defendant as well as to the President/Secretary of the Rishabh Jain Cooprative House Building Society Ltd. (hereinafter called "the Society") on 14.03.06 directing them to present their cases before me on 25.03.06 at 9.30 A.M. The Defendant submitted an application dated 18.03.06 stating that he was not in receipt of the Inquiry Report submitted by Shri T.O. Thomas and, therefore, requested that a copy of the same may be made available to him to enable him to take appropriate action. He also submitted that he was not afforded any opportunity to present his case in the Inquiry conducted by Shri T.O. Thomas under Rule 55 of the DCS Act, 1972 and that the Inquiry Report of Shri T.O. Thomas was delivered in violation of the principles of natural justice. He, however, mentioned that on getting to know about the inquiry, he, on his own, submitted a representation to Shri T.O. Thomas explaining the facts relating to the complaint

4. In the hearing of the case on 25.03.2006, the Society was represented by Shri R.K. Jain, Shri D.K. Jain, Shri S.C. Jain and Shri Atul Jain. They submitted written replies dated 24.03.2006 and 25.03.06 explaining the case of the Society. On the request of the Defendant, the representatives of the Society were directed to provide him the copies of the Society's written statements dated 24.03.06 and 25.03.06 along with copies of all documents contained therein, to which the representatives of the Society agreed. The Defendant agreed to accept these documents from the representatives of the Society directly in order to save time in delivery of the same through mail.

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9. It appeared that the Defendant was avoiding submission of his written defence on the findings by Shri T.O.Thomas and created obstacles in the smooth and speedy conduct of the present enquiry in spite of all opportunities afforded to him. It further appeared that the purpose of sending various communications to me by the Defendant was to buy time to challenge the findings of Shri T.O.Thomas before the Financial Commissioner, NCT of Delhi, the appellate authority and that in spite of every effort made by the Society representatives to provide the Defendant the copies of the documents he was unwilling to receive them.....

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10. xx xx xx xx xx xx xx xx xx"

13. After discussing the case set up by the petitioner society as also the defence set up by respondent no.4, in detail, the enquiry

officer analysed the chronology of events and the evidence. The observations made in this enquiry report are revealing, and read as follows:

“(iv) All evidence adduced during the course of enquiry pointed out the fact that the Defendant came to single handedly manage the affairs of the Society during the period 1998-2002, as he did not brook any opposition and opinions from the other office bearers and members of the Managing Committee. The alleged autocratic and highhanded nature coupled with abusive and aggressive behavior on the part of the Defendant ensured to keep the other office bearers and members of the Managing Committee away from attending the meetings of the Committee in the initial period, leading to a single man show by the Defendant, while the MC remained a passive body. He even discharged the functions of the Treasurer and also took over the responsibility of control of funds, which are normally otherwise discharged by the Transfer through the office staff. In order to satisfy the legal requirements contained in the DSC Act, 1972 and the DCS Rules, 1973 and to prevent any adverse notice and interference by the Office of the Registrar of Cooperative Societies, the Defendant apparently fabricated records relating to meetings on the MC, etc. This is evident from the form, language and content of the minutes of the MC allegedly held on 11.05.2001, 28.06.2001 and 31.7.2001 and the variation in the signatures of the other members with their actual signatures.

.....

(v) The actions taken by the Defendant during the period 18.06.2001 to 16.03.2002 in the matter of enrollment of new members, allotment of plots, execution of perpetual sub lease deeds at the back of the Managing Committee clearly lead to the conclusion that the postponement of the election

was at the instance of the Defendant to enable him complete the legal enrollment of the three new members and to facilitate allotment of plots to them with the approval of the Office of the Registrar of the Cooperative Societies and the DDA. This was definitely a hush-hush affair perpetrated by the Defendant at the back of the Managing Committee/General Body of the Society. It transpires that the composition of the new Managing Committee elected on 17.02.02 did not go well with the Defendant, in spite of the fact that the elections were notified by him under his own signature. **It further transpires that the election of 26.02.02 were challenged by the Defendant as well as other before the Registrar of Cooperative Societies, besides the refusal of the Defendant to hand over charge of the record of the society to the new Managing Committee obviously for the reason that the Defendant found himself to be an ordinary member of the MC, devoid of any power, as a new Secretary was elected in the meeting of the new Managing Committee held on 02.04.02.** He still tried to usurp the powers of the duly appointed Secretary claiming that the Managing Committee elected on 17.03.02 was illegal.

(vi) Notwithstanding the formation of the new Managing Committee, the Defendant continued to function as Secretary of the Society and presented himself before the Registrar of Cooperative Societies as well as before the DDA in that capacity.

.....

(vii) In any case, the Defendant is seen to have committed fraud on the Society in the matter of allotment of three plots (i.e. plots 12, 46 and 99) forming part of the land allotted and developed by the Society in as much as (a) the decision to advertise in the newspapers inviting applications was done by the Defendant on his own without approval from the Managing Committee and after fabricating minutes of the Managing Committee meetings to give legal sanctity to his action. (b) the advertisement was made in a hush hush manner without giving the general public enough time to

respond and without giving the full particulars of the Society inviting the applications and the number of vacancies available (had the advertisement explained that the Society in question was a house building society having plots instead of flats, it would have been likely that more applications would have been received); (c) the applicants were enrolled as members of the Society on 28.06.01, i.e. within eight days of placing the advertisement and six days from the date of closure of applications, after fabricating minutes of the meeting of the Managing Committee which were never held; (d) the applicants were requested to pay cost of land @ Rs.120/- per sq. meter only which was the rate prevalent at the time of initial allotment of plots to its original members in the 1970, and was much below the DDA approved land rates in 2002. (e) in order to compensate for the cost escalation over time and to match the rise in land cost, the Society could have charged a higher land rate from the applicants to equalize the cost of land, giving financial gain to the Society. All these facts give evidence to the possibility that the whole exercise was a farce and there was a tacit arrangement between the Defendant and the applicants to defraud the Society of funds which would have accrued to the Society, had higher rates been demanded from them. The possibility of illegal gratifications having obtained by the Defendant in this exercise also cannot be ruled out considering the manner in which he manipulated the enrollment of the three applicants as new members and allotment of the plots to them in a hurry, before the new Managing Committee was elected". (Emphasis supplied)

14. The findings returned in this enquiry by the enquiry officer reads as follows:

"(i) That the Defendant allotted plots bearing no.12, 46 and 99 belonging to the Rishab Jain

House Building Society and located within the area of Rishab Vihar to S/Shri Sallil Richharya, Virender Jain and Sanjay Tiwari without authority and by usurping the power of the duly elected Managing Committee. He fabricated and forged records relating to the proceedings of the Managing Committee to satisfy the Office of Registrar of Cooperative Societies in clearing the names of these new members and recommending their names to the DDA for allotment of plots.

(ii) That the Defendant acted against the interests of the Society in as much as he demanded from the new allottees of the three plots in question land cost at a very discounted rate much below the land cost at the DDA approved rates prevailing in 2003, thereby defrauding the society of funds.

(iii) That the Defendant violated the provisions of the bye-laws 24 to 35 of the Society while managing the affairs of the Society during his tenure as the Secretary of the Society.

(iv) The Managing Committee elected in 1998 also was blameworthy in as much as its failure to discharge its duties and failure to rein in the Defendant created the situation congenial for him to usurp the powers and duties of the Managing Committee and act against the interests of the Society". (Emphasis supplied)

15. It is against the first enquiry report under Section 55 of the Act dated 18.01.2006, and the second enquiry report under Section 59(1) of the Act dated 02.08.2006 that the respondent no.4 preferred two revision petitions under Section 80 of the Act before the Financial Commissioner, which, as aforesaid, have been allowed.

16. The above extract from the enquiry report prepared by Mr. N.J. Thomas, Under Secretary, Ministry of Home Affairs dated 02.08.2006, makes it abundantly clear that respondent no.4 was served with the summons; he was absolutely clear about the purpose and scope of the said enquiry-as it was premised on the earlier enquiry report dated 18.01.2006 made by Mr. T.O.Thomas under Section 55 of the Act; respondent no.4 participated wholeheartedly in the enquiry proceedings before Mr. N.J. Thomas and was represented through able counsel. He also filed his detailed replies and was granted a hearing by the enquiry officer; the enquiry officer considered the defence of respondent no.4 and, only thereafter, he prepared the report under Section 59(1) dated 02.08.2006 setting out not only the procedure adopted by him, but also the facts and evidence marshalled by him and the conclusion drawn by him.

17. So far as the enquiry under Section 59(1) is concerned, there possibly could not have been any grievance raised with regard to respondent no.4 not being noticed; not being granted sufficient opportunity of representation, and; not being heard before the preparation of the enquiry report dated 02.08.2006. Even a perusal of the impugned order shows that the same proceeds on the premise that the respondent no.4 was not issued a notice during the conduct of the

enquiry proceedings under Section 55 of the Act by the enquiry officer Mr. T.O.Thomas. Since the enquiry report prepared by Mr. T.O. Thomas is stated to be the basis of the further enquiry conducted under Section 59(1) of the Act, the financial commissioner has set aside the subsequent enquiry under Section 59(1) of the Act on the ground that the first enquiry was not conducted in accordance with the principles of natural justice.

18. Section 55 of the Act reads as follows:

“55. Inquiry by Registrar

(1) The Registrar may of his own motion or on the application of the majority of the committee or of not less than one-third of the members, hold an inquiry or direct some person authorized by him or by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a cooperative society.

(2) The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely:-

(a) he shall at all times have, for purpose of examination free access to the books, accounts, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities cash or other properties to produce the same at any place specified by him;

(b) he may, notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the society, require the officers of the society to call a general meeting at such time and place at the headquarters of the society to consider such matter as may be directed by him; and where the officer of the society refuse or fail to call such a meeting he shall have power to call it himself;

(c) he may summon any person who is reasonably believed by him to have any knowledge of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.

(3) xxx xxx xxx xxx .

(4) The Registrar shall communicate a brief summary of the report of the inquiry to the society, the financing institution, if any, to which the society is affiliated and to the person or authority, if any, at whose instance the inquiry is made."

19. The enquiry conducted under Section 55 of the Act is for the purpose of enquiring into *"the constitution, working and financial condition or a cooperative society"*. A plain reading of Section 55(1) shows that the enquiry thereunder is not directed against any particular individual. The purpose of this enquiry is not to fasten the guilt or any liability on any particular individual for any wrong doings in the society. It is a general enquiry, inter alia, into the working and financial condition of a cooperative society. For conduct of the said enquiry, the enquiry officer i.e. the Registrar or the person authorized by him, is empowered to have access to and look into the books, accounts, cash and other properties belonging to or in the custody of the society. The enquiry officer may summon any person, to produce the same before him. He may also summon any person who is reasonably believed by him to have any knowledge of the affairs of the society, to appear before him and to examine such person on oath. It

is, therefore, clear that the enquiry under Section 55 of the Act is in the nature of a preliminary investigation or enquiry. It is inquisitorial in nature. It is not a quasi-judicial exercise aimed at determining the rights or liabilities of any particular or specific person. The purpose appears to be only to collect facts and materials which may, in future, become the foundation of an enquiry under Sections 59(1) and (2).

20. When an enquiry under Section 55 of the Act is held, it could result in a variety of situations. The enquiry officer may find everything in order in respect of the cooperative society in his report, in which case the Registrar may decide to accept the report and put the matter to rest. The Registrar may, in spite of a clear report, still decide to proceed in the matter under Section 59(1) for good reasons. It could be that after the report is made, the Registrar *prima facie* feels that one or more officers, or members of the cooperative society, or persons entrusted with the organization or management of the society have indulged in conduct referred to in Section 59(1) of the Act. It is in such cases that the Registrar would proceed further to order an enquiry under Section 59(1) of the Act. Of course, the enquiry under Section 59(1) of the Act could be initiated on account of the apparent discovery of defalcation, or misappropriation, or willful negligence

during the course of an audit, inspection or winding up of a cooperative society as well.

21. The Supreme Court in ***Competition Commission of India v. Steel Authority of India Ltd. & Anr.***, (2010) 10 SCC 744 dealt with a similar situation arising under the Competition Act. Section 26 of the Competition Act, insofar as it is relevant, reads as follows:

“26. Procedure for inquiry under section 19. - (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter”.

22. The issue raised before the Supreme Court was whether the parties, including the informant or the affected party are entitled to notice or hearing as a matter of right at the preliminary stage of formulating an opinion as to the existence of a *prima facie* case, and whether it was obligatory for the commission to record the reasons for formation of a *prima facie* opinion in terms of Section 26(1) of the Competition Act.

23. The Supreme Court while discussing the scope of Section 26 of the Competition Act held as follows:

“86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the

function to be performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. 'Natural justice' is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in view, the provisions of the law applicable. It is not a codified concept, but are well defined principles enunciated by the Courts. Every quasi-judicial order would require the concerned authority to act in conformity with these principles as well as ensure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness.

87. Now, let us examine what kind of function the Commission is called upon to discharge while forming an opinion under Section 26(1) of the Act. At the face of it, this is an inquisitorial and regulatory power. A Constitution Bench of this Court in the case of Krishna Swami v. Union of India: (1992) 4 SCC 605 explained the expression 'inquisitorial'. The Court held that the investigating power granted to the administrative agencies normally is inquisitorial in nature. The scope of such investigation has to be examined with reference to the statutory powers. In that case the Court found that the proceedings, before the High Power Judicial Committee constituted, were neither civil nor criminal but sui generis.

88. Referring to the investigation under criminal jurisprudence as well as scope of inquiry under service jurisprudence, the Court held as under: (Krishna Swami case (Supra), SCC P 646, Para 61)

61. The problem could be broached through a different perspective as well. In normal parlance, in a criminal case, investigation connotes discovery and collection of evidence before charge-sheet is filed and based thereon definite charges are framed. Inquiry by a Magistrate is stopped when the trial begins. The trial is a culminating process to convict or

acquit an accused. In Service Jurisprudence, departmental inquiry against a delinquent employee, bears similar insignia to impose penalty. **At the investigation stage the accused or the charged officer has no say in the matter nor is he entitled to any opportunity. The disciplinary authority or inquiry officer, if appointed, on finding that the evidence discloses prima facie ground to proceed against the delinquent officer, the inquiry would be conducted.** The criminal court frames charges after supplying the record of investigation relied on. Equally, the disciplinary authority/inquiry officer would frame definite charge or charges and would communicate the same together with a statement of the facts in support thereof sought to be relied on and would call upon the delinquent officer to submit his explanation or written statement of defence etc. At the trial/inquiry the person is entitled to reasonable opportunity to defend himself”.

89. The exceptions to the doctrine of audi alteram partem are not unknown either to civil or criminal jurisprudence in our country where under the Code of Civil Procedure ex-parte injunction orders can be passed by the court of competent jurisdiction while the courts exercising criminal jurisdiction can take cognizance of an offence in absence of the accused and issue summons for his appearance. Not only this, the Courts even record pre-charge evidence in complaint cases in absence of the accused under the provisions of the Code of Criminal Procedure. Similar approach is adopted under different systems in different countries.

90. Reference in this regard can be made to the case of Azienda Colori Nazionali (ACNA) S.P.A. v. Commission of the European Communities: (1972) ECR 0933, where the argument was raised that the Commission had infringed the administrative procedure laid down in Regulation No. 17/62 of the European Council Regulation. In that case the Commission of the European Communities sent the notice

of the objections to the applicant at the time of informing the applicant about the decision to initiate procedure to establish infringement of rules on competition. The European Court of Justice while holding that sending notification of the above mentioned decision simultaneously with the notice of objections cannot affect the rights of the defence, stated as under:

“10. Neither the provisions in force nor the general principles of law require notice of the Decision to initiate the procedure to establish an infringement to be given prior to notification of the objections adopted against the interested parties in the context of such proceedings.

11. It is the notice of objections alone and not the Decision to commence proceedings which is the measure stating the final attitude of the Commission concerning undertakings against which proceedings for infringement of the rules on competition have been commenced”.

91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (the Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal

and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice of hearing is not contemplated under the provisions of Section 26(1) of the Act". (emphasis supplied).

24. The conclusion drawn by the Supreme Court in answer to the aforesaid queries were as follows:

"(2) Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.

However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. The Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17(2) of the Regulations to invite not only the information provider but even 'such other person' which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be 'preliminary conference', for whose conduct of business the Commission is entitled to evolve its own procedure".

"(5) In consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie

view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties”.

25. Section 55 and 59 of the Act fall in Chapter VII, which deals with *“audit, enquiry, inspection and sur charge”*.

26. Before we proceed further, it would be useful to set out Section 59 of the Act. The same reads as follows:

“59. Surcharge.

(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person who is or with entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society had made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has misappropriated or retained any money or other property belonging to such society the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him, by an order in writing in his behalf, to inquire into the conduct of such person:

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1) the Registrar may, after giving the person concerned an opportunity of being heard, make an order, requiring him to repay or restore the money or property or any part thereof with interest at such rate, or to pay contribution

and cost or compensation to such extent, as the Registrar may consider just and equitable”.

27. Section 59(1) provides that even if, in the course of an audit, enquiry, inspection or winding up of a cooperative society, any person, who is entrusted with the organization or management of a cooperative society, or who is or has been at anytime, any officer or an employee of the society, is found to have defalcated or misappropriated the funds and assets of the society due to breach of trust, or willful negligence, or misappropriation, or fraudulent retention, the Registrar may enquire himself or direct any person authorized by him, to enquire into the conduct of such person either suo moto, or on the application of the managing committee of the society, the liquidator or any creditor of the society.

28. The opening words of Section 59(1), i.e. *“If in the course of an audit, enquiry, inspection or winding up of a cooperative society, it is found ”*, clearly suggest that the audit, enquiry or inspection- which is a precursor to the launch of an enquiry under Section 59(1) of the Act, was not directed against any particular person. Rather it was during such audit, enquiry, inspection or winding up process in respect of a cooperative society, that the involvement of a person in a

wrongdoing gets exposed. When Section 59 is read in juxtaposition with Section 55, it becomes clear that they together form a scheme.

29. The purpose of enactment of Section 59(1) of the Act is to empower the Registrar to order a more focused and specific inquiry into the role played by the person, whose conduct appears to be doubtful on the basis of, inter alia, the inquiry or inspection conducted in respect of a cooperative society. Furthermore, an inquiry report under Section 59(1) is also of a preliminary nature, and not final and binding. [See order dated 15.01.2010 of a Division Bench of this Court in **A. Bhattacharya V. Registrar of Co-operative Societies & Ors.**, W.P(C) No.5160/1999]. Section 59(2) provides that where an inquiry is ordered under Section 59(1) of the Act, the concerned person against whom the inquiry is launched, is given an opportunity of being heard before requiring that person to repay or restore the money or property, with interest, to the society or to compensate the society as the Registrar may consider just and equitable.

30. We are, therefore, of the view that at the stage of an enquiry under Section 55(1) of the Act, there is no need for the enquiry officer to issue notice to any specific individual or office bearer of the cooperative society, as it is a general and preliminary enquiry. It is only when the Registrar decides to proceed against a particular

individual, member or office bearer or person entrusted with the organization or management of the society under Section 59, that a notice would be required to be issued to that person. Pertinently, the conduct of the enquiry under Section 55(1) of the Act, and the preparation of the report thereunder by itself does not result in any civil or criminal consequence or fall out for any person. Even if the enquiry report prepared under Section 55(1) of the Act were to suggest wrongdoing by a particular person or officer of a society, the Registrar may or may not accept the report, and may or may not proceed further under Section 59 of the Act.

31. In the present case, admittedly, respondent no.4 voluntarily participated in the enquiry conducted under Section 55 of the Act by the enquiry officer. He submitted a statement, documents and correspondences before the enquiry officer. It appears from the enquiry report prepared under Section 55 of the Act that he made his submissions before the enquiry officer, whereafter the enquiry report was made. Therefore, even though, there was no requirement in law to grant any opportunity or hearing to any particular officer or person, while conducting an enquiry under Section 55 of the Act, the enquiry officer looked into the records of the society, including the documents produced by respondent no.4. In any event, therefore, there was

ample compliance with the principles of natural justice, even if it were to be assumed for the sake of argument, that the enquiry officer was obliged to follow the said principles while conducting the enquiry.

32. For the aforesaid reasons, the impugned order, insofar as it holds that the enquiry conducted under Section 55 of the Act was in breach of the principles of natural justice certainly cannot be sustained. We hold that the enquiry conducted under Section 55 of the Act was not hit by breach of principles of natural justice, as the said principles did not apply to such an enquiry. Consequently, the impugned order, insofar it set aside the enquiry reports prepared under Section 55 and Section 59 of the Act, is quashed.

33. We also find that the learned Financial Commissioner has proceeded to make observations on the facts/merits of the case, which was the subject matter of the enquiry under Section 59(1) of the Act. The learned Financial Commissioner has sought to pick holes in the case of the petitioners society by placing reliance on the managing committee resolutions relied upon by respondent no.4. The fact that the laconic advertisement, as aforesaid, was issued by respondent no.4 of his own accord, giving only two days to respond thereto, and that the three fresh members were inducted into the society within about ten days of the issuance of the advertisement has completely

been overlooked by the Financial Commissioner, as also the fact that not a farthing was deposited into the accounts of the society for allotment of the said plots. The conduct of respondent no.4 in continuing to act on behalf of the society despite his relinquishing the office of Hon. Secretary and in that capacity executing the registered deeds in favour of the three newly registered members has also been overlooked. The stand of the petitioner that the self serving resolutions were fabricated by respondent no.4, who was controlling and managing the record of the society has also not been adequately dealt with, even though it had come on record that the societies records were retained by respondent no.4 despite his vacating the office of the Hon. Secretary and that the records had to be retrieved through police aid.

34. In our view, the Financial Commissioner had no competence to make observations on the merits of the case, since he was dealing with a revision petition under Section 80 of the Act, primarily on the ground that the report under Section 55 of the Act was prepared in breach of the principles of natural justice.

35. The decision of a Division Bench of this Court in ***Manohar Lal Jain v. The Registrar Cooperative Societies & Ors.***, W.P.(C.) No.5003/1993 decided on 20.07.2009 relied upon by the respondents,

in our view, is of no avail. That was a case dealing with an enquiry under Section 59 of the Act and not one under Section 55 of the Act. As we have already observed above, there can be no quarrel with the proposition that in the conduct of an enquiry under Section 59 of the Act, the person/officer concerned is bound to be put to notice by the enquiry officer.

36. For the aforesaid reasons, we allow the present petition and quash the impugned order passed by the Financial Commissioner dated 14.11.2008 passed in Case No.81/2006 and Case No.260/2006.

37. Parties are left to bear their respective costs.

VIPIN SANGHI, J

SANJAY KISHAN KAUL, J

AUGUST 08, 2012

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