

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 205 of 2015**

1. Umend Singh Marko Aged about 47 years, S/o Late Chotelal Marko R/O Village Tendumuda Tahsil Marwahi, District Bilaspur, (Chhattisgarh) As The President Of Aadim Jati Seva Sahkari Samiti Marwahi, District Bilaspur (Chhattisgarh)
2. Chandrika Prasad Tiwari, Aged about 68 years, S/O Late Devidin Tiwari, R/o Village & Tahsil Marwahi, District Bilaspur, (Chhattisgarh) As Vice President Of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
3. Dr. Shivpratap Rai Aged about 50 years, S/o Late Khemchand Rai R/O Village Chichgohana Tahsil Marwahi, District Bilaspur (Chhattisgarh) As Member Of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
4. Mohanlal Rai, aged about 64 years S/o Late Gorelal Rai R/O Village Marwahi Tahsil Marwahi, District Bilaspur (Chhattisgarh) As Member of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
5. Suraj Singh Pottam, aged about 45 years S/o Late Mansingh Pottam R/o Village Tendumuda Tahsil Marwahi District Bilaspur (Chhattisgarh), As Member of Aadim Jati Seva Sahkari Samiti Marwahi, District Bilaspur (Chhattisgarh)
6. Vijay Singh Baghel, Aged about 53 years S/o Late Raghunath Singh Baghel, R/O Village Lohari Tahsil Marwahi District Bilaspur, (Chhattisgarh) As Member of Aadim Jati Seva Sahkari Samiti, Marwahi District Bilaspur (Chhattisgarh)
7. Narayan Prasad Gupta, Aged about 56 years S/o Jaidev Prasad Gupta R/o Village Chanadongari, Tahsil Marwahi, District Bilaspur (Chhattisgarh) As Member of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
8. Jagat Singh Paw, Aged about 60 years, S/o Late Hansu Paw R/o Village Chanadongari, Tahsil Marwahi, District Bilaspur (Chhattisgarh) As Member of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
9. Prakash Chand Dubey, Aged about 42 years S/o Late Narayan Prasad Dubey R/o Village and Tahsil Marwahi, District Bilaspur, (Chhattisgarh) As Member of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
10. Smt. Madhuri Sharma, Aged about 50 years, S/o Shri Lalman Sharma R/o Village Chichgohana Tahsil Marwahi, District Bilaspur, (Chhattisgarh) As Vice President Of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur (Chhattisgarh)
11. Smt. Kunti Devi Aged about 35 years, S/O Shri Daulatlal Rai R/O Village Chanadongari, Tahsil Marwahi, District Bilaspur (Chhattisgarh) As Member Of Aadim Jati Seva Sahkari Samiti Marwahi District Bilaspur (Chhattisgarh)

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Versus

1. State of Chhattisgarh through the Secretary of Department of Cooperative Societies Mantralaya, Naya Raipur (Chhattisgarh)
2. State of Chhattisgarh through the Secretary of the Department Food Civil Supply Corporation and Consumer Protection Mantralaya, Naya Raipur
3. Collector Bilaspur (Chhattisgarh)
4. Sub Divisional Officer, Revenue, Pendraroad, District Bilaspur (Chhattisgarh)
5. Chief Executive Officer, Jila Sahkari Bank, Maryadit Bilaspur (Chhattisgarh)
6. Branch Manager Sahkari Bank Maryadit, Marwahi, District Bilaspur (Chhattisgarh)
7. Shri D.R. Thakur Aged About 52 Years R/O Bilaspur Posted As Deputy Registrar Cooperative Societies Bilaspur Chhattisgarh 1st Floor Old Composite Building Bilaspur (Chhattisgarh)
8. V.K. Ratray Manager of Aadim Jati Seva Sahkari Samiti Marwahi, District Bilaspur (Chhattisgarh)
9. Officer In Charge Of The Police Station Marwahi, District Bilaspur (Chhattisgarh)
10. District Marketing Officer, Bilaspur (Chhattisgarh) The Department Food Civil Supply Corporation And Consumer Protection.
11. C.C. Bajpai Senior Cooperative Inspector Officer In Charge Of Aadim Jati Seva Sahkari Samiti Marwahi, District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioners	: Shri Anand Mohan Tiwari, Advocate.
For Respondents 1,2,3,4 & 9	: Shri R.K. Gupta, Deputy Advocate General.
For Other Respondents	: Shri Ramakant Pandey and Shri Keshav Dewangan, Advocates.

Hon'ble The Acting Chief Justice,
Hon'ble Shri Justice P. Sam Koshy.

Judgement On Board**Per Navin Sinha, Acting Chief Justice****26/03/2015**

1. The present appeal arises from order dated 18.2.2015 in Writ Petition (C) No.2584 of 2014 dismissing the writ petition on the ground of availability of

alternative remedy for appeal under Section 77 of the Chhattisgarh Cooperative Societies Act, 1960 (hereinafter called 'the Act').

2. The Appellants are members of the Board of Directors of Aadim Jati Seva Sahkari Samiti, Marwahi, District Bilaspur. The Deputy Registrar, Cooperative Societies, after giving them a show-cause notice, on 29.11.2014 ordered supersession of the Board of Directors under section 53(1) of the Act and appointed one Shri C.P. Bajpai, Senior Cooperative Inspector as the Incharge Officer to look after the affairs of the society for six months. The show-cause notice issued to the Appellants stated that there had been financial mismanagement under more than one head for total amount of Rs.30,94,748.19 in the previous two years. The Board of Directors had not been able to regulate the working of its employees and no steps had been taken for recovery of the defalcated amount. The Society filed its reply that steps had been taken for lodging a first information report but the Officer Incharge of the Police Station, Marwahi, did not register it.

3. Learned Counsel for the Appellants submitted that alongwith the reply to the show-cause notice, they had furnished a copy of the report given to Marwahi Police Station on 10.1.2014 containing an the endorsement of the Officer Incharge asking for report of the District Marketing Officer and the audit report before the FIR could be registered. Pursuant to the same, the Society on 15.11.2014 wrote to the Deputy Registrar asking for the aforesaid documents stating that the Officer Incharge was not registering the first information report in absence of the same and it may be made available so that the first information report be registered. This aspect finds no consideration in the impugned order. The order is cryptic and non-reasoned simply stating that the cause shown was not satisfactory. The impugned order is therefore arbitrary on the face of it reflecting complete non-application of mind to relevant issues and

disclosing no reasons. In the circumstances the availability of an alternative remedy of appeal cannot be considered as sufficient and proper remedy. Unless the Appellants are first made aware of the reasons which passed the mind of the authority in rejecting the cause shown, the Appellants will not be able to file a proper appeal and the appeal preferred shall be illusory.

4. Learned Counsel for the State submitted that the charge for financial embezzlement in the Society has not been denied. The Appellants have themselves named the two employees who are answerable for the same. The Managing Committee cannot absolve responsibility for the misconduct of the employees of the Society. Opportunity to show cause has been given. The reply has been considered. The defence in the cause shown has been adequately considered and orders passed. The order of the Learned Single Judge merits no interference as the Appellants have adequate remedy in appeal.

5. We have considered the submissions on behalf of the parties. Availability of an alternative statutory remedy can bar a writ petition. But it is not an absolute proposition and more of a self-imposed restriction. There are various exceptions to this rule, the most important of them being the violation of principles of natural justice.

6. Natural justice cannot be read as confined to the giving of a show cause notice and fulfilling the formality of stating that the cause shown has been considered but not found satisfactory. If a power is given to a statutory authority it has to be exercised in accordance with law and within the limits of the statutory jurisdiction. Section 53(2) of the Act provides for opportunity to show cause and "consideration" of the cause shown.

7. The connotation of the word "considered" cannot be lost sight of. It means application of mind to the cause shown vis-a-vis the allegations to arrive at a reasoned conclusion why the cause shown was not acceptable. Reasons in an order are proof of consideration. Consideration signifies an act done after careful thought which can only be reflected through reasons.

8. Reasons have been held to be but a facet of the principles of natural justice. They are the ultimate control over arbitrariness in exercise of statutory powers. If cause is shown and the statutory authority finds it difficult to deal with the explanation given, it shall be very convenient for him to act arbitrarily and state in one line only that it was not satisfactory. Reasons have been held to be the heart and soul of an order giving an insight into the mind of the decision maker displaying that he has considered all the aspects of the matter and took into consideration all relevant materials before arriving at a decision. If an order is appellable, reasons are all the more necessary. Unless the aggrieved is first told why the cause shown by him was not acceptable, he shall be severely handicapped in filing the appeal. The appellate remedy will then be rendered illusory as the grounds urged by him will be vacillating from one to another unsure of what were the reasons why the cause shown was rejected.

9. The importance of a reasoned order by a quasi judicial authority was considered in (2010) 3 SCC 732 (Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samiti) observing as follows:

"40. It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusions. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-

delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. *"The giving of reasons for a decision is an essential attribute to judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind."*

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum.

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

10. The Appellants took a specific defence of having reported the matter to the police and produced documentary evidence with regard to the documents asked for by the Officer-in-Charge. Pursuant thereto, the Appellants wrote to the Deputy Registrar asking for documents. At this stage we are not on the correctness, acceptability or unacceptability of the cause shown. The issue for our consideration in exercise of judicial review over the decision making process, is confined to the consideration of the cause shown by the Appellants before passing the impugned order. We fail to find any discussion or consideration of the same. No useful purpose shall therefore be served by relegating the Appellants to the appellate remedy at this stage. The result shall be a foregone conclusion as the appellate authority will also not be able to ascertain the reasons why the cause shown was not acceptable.

11. We are therefore satisfied not to dismiss the present appeal on the ground of an alternative remedy under Section 77 of the Act. The order dated

29.11.2014 by the Deputy Registrar is set aside and the matter is remanded to him for passing a fresh reasoned and speaking order within a maximum period of six weeks from the date of receipt and/or presentation of a copy of this order, provided the Appellants cooperate. If the Appellants do not cooperate, it shall be open for the Deputy Registrar to proceed ex-parte also but only after recording the reasons of the efforts made by him to persuade the Appellants to participate notwithstanding which they refused to do so.

12. This order being passed in presence of the Counsel for the Appellants shall be placed by the Appellants before the Deputy Registrar within 10 days from today. If they do not place the order within 10 days, it shall lose its efficacy. Any fresh order passed by the Deputy Registrar in accordance with law, if aggrieved, shall be amenable to challenge before the appellate authority only.

13. The appeal is allowed.

Sd/-
(Navin Sinha)
ACTING CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE