

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3550 of 2013**

M.L. Dewangan, Aged-57 years, S/o Shri J.L.Dewangan, presently working as Chief Executive Officer, At Jila Sahakari Krishi Avam Gramin Vikas Bank, Jagdalpur, District Bastar, R/o MIG-42, Housing Board Colony, Kabir Nagar, Raipur, P.S.-Amanaka, Raipur, District Raipur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through its Secretary, Co-operative Department, Mantralaya, Mahanadi Bhawan, Naya Raipur
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q. Vivekanand Nagar, Raipur (CG)
3. The Managing Director, Chhattisgarh State Co-operative Bank Limited, Raipur, H.Q.-Pandari, Raipur (CG)

---- Respondents

For Petitioner : Mr. Rajesh Kesharwani, Advocate

For Respondent No.1&2 : Mr.Varun Sharma, P.L.

For Respondent No.3 : None present though served

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****04/01/2016**

1. Invoking writ jurisdiction under Article 226 of the Constitution of India, the present writ petition has been filed by the petitioner seeking writ of mandamus or suitable direction to respondent No.2/Registrar, Co-operative Societies for appropriate

amendment in the service rules in the light of the order passed by this Court in Writ Petition (S) No.2133 of 2011.

2. In Writ Petition (S) No.2133 of 2011 (Zila Sahakari Kendriya Bank Employee Sangh & another vs. State of Chhattisgarh & others), this Court struck down Rule 7 of the Chhattisgarh Ke Jila Sahkari Kendriya Bank Karamchari Sewa (Niyojan, Nibandhan Tatha Unki Karya Esthithi) Niyam, 1982 as unconstitutional and illegal, pursuant to which and direction given in WP (S) No.1727 of 2012, respondent No.3/Bank has issued the memo to the Registrar, Cooperative Societies on 25.2.2013 and has proposed certain amendment in the Staff Service Rules.
3. Since no decision has been taken by respondent No.2, who is rule making authority under the Chhattisgarh Cooperative Societies Act, 1960 (hereinafter referred to as “the Act of 1960”), the instant writ petition has been filed claiming writ of mandamus to the Registrar, Co-operative Societies to amend the rules appropriately.
4. Mr.Rajesh Kesharwani, learned counsel appearing for the petitioner, would submit that inaction on the part of the respondent No.2 in not approving amendment in service rules suggested by respondent No.3 is clearly arbitrary and smacks

non-application of mind. Therefore, a writ of mandamus or direction be issued to the Registrar/Rule Making Authority to consider and amend the rules as proposed by respondent No.3.

5. Mr.Varun Sharma, learned Panel Lawyer appearing for respondents No.1 and 2/State would submit that power and jurisdiction to be exercised by the Registrar, Cooperative Societies with regard to rule making under Section 55(1) of the Act of 1960 is legislative in character and as such, no writ or direction can be issued directing respondent No.2 to amend the rules as proposed by respondent No.3.
6. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.
7. At this stage, it would be appropriate to notice Section 55(1) of the Act of 1960 which provides as under:-

“55. Registrar’s power to determine conditions of employment in societies.-(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.”

- 8 In order to consider the question raised herein, it would be appropriate to trace out the nature of rule making power of the Registrar, Cooperative Societies as provided under Section 55(1) of the Act of 1960. The said power could be either legislative or administrative.
9. Way back in the year 1987, Their Lordships of the Supreme Court in the matter of Union of India and another v. Cynamide India Limited and another¹ pointed out distinction between legislative, administrative and quasi judicial power as under:-

“7.....A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”. “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.” It has also been said: “Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class” while, “an adjudication, on the other hand, applies to specific individuals or situations”. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities

1 (1987) 2 SCC 720

while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.....”

10. Delineating the nature of power exercised by the Registrar under Section 55 of the Act of 1960 and to issue orders in the matter of **Hemant Kumar Ganga Prasad Gupta v. President, District Co-operative Central Bank Ltd. And others**², the Division Bench of the Madhya Pradesh High Court speaking through Hon’ble the Chief Justice G. P. Singh held as under:-

“9.....The power to make rules and issue orders under Section 55 conferred on the Registrar is in the nature of nature of a legislative power which is delegated to him by the Act.....”

11. Similarly, in the matter of **Bikal Bihari Soni and others v. State of M. P. and others**³, the Madhya Pradesh High Court has held that rule making function of the Registrar is legislative in nature. The report states as under:-

“Section 55(1) of the M.P. Co-operative Societies Act is in two parts. First part permits the Registrar to frame Rules from time to time governing the terms and conditions of employment in a society or

2 1983 M.P.L.J. 461

3 1986 M.P.L.J. 347

class of societies. The second part requires the society or class of societies to which the rules are applicable, to comply with the Order that may be issued by the Registrar in this behalf. The first part is really the rule making authority conferred upon the Registrar whereas the second part is the Order making authority of the Registrar. Rule making function is legislative in nature. As far as the order making power is concerned such power is generally used to describe the exercise of executive power or to take judicial or *quasi-judicial* decisions. These two powers are separate and for distinct purposes.”

12. The principle of law that emerges from the aforesaid judgments is that the rule making function of the Registrar, Cooperative Societies under Section 55 (1) of the Act of 1960 is legislative in character duly delegated to him by the said Act.
13. Now, the question is whether a writ of mandamus can be issued to a person exercising legislative function to amend the rule in a particular manner.
14. On the aforesaid question, the following decisions of the Supreme Court may be noticed usefully and fruitfully herein:-

14.1 In the matter of **Supreme Court Employees' Welfare Assn. v. Union of India**⁴, Their Lordships of the Supreme Court observed as under:-

“The court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme Parliament

4 (1989) 4 SCC 187

exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation.”

14.2 In the matter of **Union of India v. Assn. for Democratic Reforms**⁵, Their Lordships observed as under:-

“19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.”

14.3 Recently, in the matter of **V.K.Naswa v. Home Secretary, Union of India and others**⁶, Their Lordships of the Supreme Court have taken a note of all earlier decisions and held that the Court has no competence to issue directions to the legislature to enact the law in a particular manner and observed as under:-

“15. The issue involved herein was considered by this Court in *University of Kerala v. Council of Principals of Colleges*⁷. The Court elaborately explained the scope of separation of powers of different organs of the State under our

5 (2002) 5 SCC 294

6 (2012) 2 SCC 542

7 (2010) 1 SCC 353

Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed : (SCC p. 361, para13)

“13.....’. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the Rules.’

16. In *State of U.P. v. Jeet S. Bisht*⁸, this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.

17. In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*⁹, this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. (See also *Vishaka v. State of Rajasthan*¹⁰; *Common Cause v. Union of India*¹¹ and *Destruction of Public and Private Properties v. State of A.P.*¹²)

18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the

8 (2007) 6 SCC 586

9 (2011) 8 SCC 568

10 (1997) 6 SCC 241

11 (2008) 5 SCC 511

12 (2009) 5 SCC 212

law in a particular manner.”

14.4 The law laid-down by the Supreme Court in the matter of V.K.Nawsa (supra) has been followed recently by the Supreme Court in the matter of **Manoj Narula v. Union of India**¹³ with approval.

15. In the light of aforesaid authoritative statement of law rendered by the Supreme Court in the aforesaid judgments, this Court is of the considered opinion that power of the Registrar, Cooperative Societies to frame/amend the rule under Section 55(1) of the Act of 1960 is legislative in character and no writ of mandamus can be issued to the Registrar, Cooperative Societies to amend the rules suggested by respondent No.3.
16. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby dismissed, but without imposition of cost.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3550 Of 2013

PETITIONER : M.L.Dewangan

Versus

RESPONDENTS : State of Chhattisgarh and others

Head Note

(English)

No writ of mandamus can be issued to the Registrar, Cooperative Societies to amend the rules.

(हिन्दी)

नियमों में संशोधन हेतु रजिस्ट्रार, सहकारी समिति को परमादेश रिट जारी नहीं किया जा सकता है।

(Bablu Bhanarkar)
Private Secretary to Hon'ble Shri
Justice Sanjay K. Agrawal