

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1524 of 2017**

Chhattisgarh Kshetriya Grih Nirman Sahakari Samiti Maryadit, a registered society duly Registered Under The Chhattisgarh Co-Operative Societies Act, 1960 Bearing Its Registration No. RPR 99/83-84, Having Office At Jeevan Vihar Colony, Telibandha Project, VIP Square, Indira Gandhi Road, Raipur, District Raipur (Chhattisgarh), Through Its President Manish Raj Singhania, S/o Shri Rajkamal Singhania, Aged About 42 Years, R/o 15/481, Civil Lines PS Civil Lines, Raipur, District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department of Co-Operative, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh).
2. The Registrar, Co-Operative Societies, Raipur (Chhattisgarh).
3. The Joint Registrar, Co-Operative Societies, Raipur, District Raipur (Chhattisgarh).
4. The Deputy Registrar, Co-Operative Societies, Raipur, District Raipur (Chhattisgarh).

---- Respondents

And

WPC No.1529 of 2017

Bharat Grih Nirman Sahakari Samiti Maryadit, a registered society Duly Registered Under The Chhattisgarh Co-Operative Societies Act, 1960 Bearing Its Registration No. RPR 62/80-81, Having Registered Office At 15/480, Manjusha Rajbhawan Marg, Civil Lines, Raipur, District Raipur (Chhattisgarh), Through Its President Lalit Kumar Singhania, S/o Late Jeevan Lal Singhania, Aged About 61 Years, R/o 15/480, Civil Lines, PS Civil Lines, Raipur, District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department of Co-Operative, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The Registrar, Co-Operative Societies, Raipur (Chhattisgarh).
3. The Joint Registrar, Co-Operative Societies, Raipur, District Raipur (Chhattisgarh).
4. The Deputy Registrar, Co-Operative Societies, Raipur, District Raipur (Chhattisgarh).

---- Respondents

For Petitioners	:	Mr.Ashish Surana, Advocate
For Respondents	:	Mr.Arun Sao, Dy.A.G.

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Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

23/10/2017

1. These writ petitions are directed against the order dated 11.4.2017 passed by the Chhattisgarh State Cooperative Tribunal, Bilaspur (Camp Court, Raipur) and order dated 31.3.2016 passed by the respondent No.4/Deputy Registrar, Co-operative Societies, Raipur.
2. Learned counsel for the petitioners would submit that order dated 29.1.2014 passed by the Deputy Registrar, Co-operative Societies, Raipur has been set aside by Division Bench of this Court vide order dated 10.2.2015 in WPC Nos.1182 of 2014 and 1183 of 2014 (Annexure P/8). He would further that the issue involved in the present writ petitions is identical to the issue decided by this Court in WPC No.1485/2017 (Priyadarshini Grih Nirman Sahkari Samiti Maryadit Vs. State of Chhattisgarh), decided on 4.10.2017.
3. On the other hand, learned Deputy Advocate General for the respondents/State, would support the impugned order.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
5. The submissions made by counsel for the parties necessitate me to notice the provisions contained in Section 12 of the Act which states as under: -

“12. Power to direct amendment of bye-laws.

—(1) Notwithstanding anything contained in this Act, or the rules or byelaws, on the request of more than fifty per cent of the members of the society or if the Registrar considers that an amendment of the byelaws of society is necessary or desirable in the interest of such society, he may, by an order in writing to be served on the society in the prescribed manner, require the society to make the amendment within sixty days.

(2) If the society fails to make the amendment within the time specified by the Registrar, the Registrar may after giving the society an opportunity of being heard and after soliciting the opinion of such Apex Federal Society, as may be notified by the State Government, register such amendment and issue a certified copy thereof to such society.

Provided that the provisions of this section shall not apply in the case of Urban Co-operative Banks.”

6. A focused glance of the aforesaid provisions, particularly Section 12 (1) of the Act, which is in two parts, would show that the amendment can be made by the Registrar either on the request of more than 50% of the members of the society or if the Registrar considers that such an amendment of the bye-laws of society is necessary or desirable in the interest of such society. Thus, the sine qua non condition precedent to exercise the power to make an amendment in the bye-laws of a society is the satisfaction of the Registrar that the amendment of the bye-laws of society is necessary or desirable in the interest of such society, then only such power can be exercised by the Registrar.

7. In the matter of **The Maharashtra Brahman Sahakari Bank Ltd., Indore and another v. State of Madhya**

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Pradesh and others¹, G.P. Singh, CJ, while speaking for a Division Bench of the Madhya Pradesh High Court, and while considering the provisions contained in Section 12 (1) of the Madhya Pradesh Co-operative Societies Act, 1960, observed as under:-

“3. A reading of Section 12 will show that the Registrar can direct the society to make an amendment of its bye-laws which the Registrar considers to be necessary or desirable in the interest of the society and that when the society fails to make the necessary amendment, the Registrar can register such amendment after hearing the society's objections and on such registration the amendment binds the society and its members. ...”

8. In the matter of **State of Maharashtra and others v. Karvanagar Sahakari Griha Rachana Sanstha Maryadit and others**², the Supreme Court has clearly held that in order to make amendment of the bye-laws of the society, the paramount consideration for exercising such power by the Registrar is the interest of the society and what is in the interest of the society is primarily for the society alone to decide, and it has been observed in para 6 as under: -

“6. From the above discussion, it is clear that though the power is conferred on the Registrar to direct amendment of the bye-laws of the society, yet the paramount consideration is the interest of the society. So also the power of the State Government to issue directions in public interest cannot be exercised so as to be prejudicial to the interest of the society. In our view, what is in the interest of the society is primarily for the society alone to decide and it is not for an outside agency to say. Where, however, the Government or

1 AIR 1980 MP 84

2 (2000) 9 SCC 295

the Registrar exercises statutory power of issuing directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the society. In the instant case, having regard to the nature of the Society and its objectives, referred to above, and having also regard to the fact that the Society in the case of 5th respondent has turned down his request for the grant of permission by overwhelming majority, we are unable to say that the amendment directed by Government is in the interest of the Society. The High Court is, therefore, right in quashing the impugned directions/circulars."

9. Thereafter, in the matter of **Zoroastrian Cooperative Housing Society Ltd. and another v. District Registrar, Cooperative Societies (Urban) and others**³, again the Supreme Court following the decision in **Karvanagar Sahakari Griha Rachana Sanstha Maryadit's** case (supra) has laid down the considerations involved in exercise of power to direct amendment of bye-laws of a society and held that paramount consideration is interest of the society, so long as there is nothing prohibiting pursuit of such interest in the Act or the Rules. Their Lordships of the Supreme Court observed in paragraph 22 of their report as under: -

"22.... It is not permissible for the State Government to compel the society to amend its bye-laws as it would defeat the object of formation of the society. In that case, the society was constituted with the object of providing peaceful accommodation to its members. Though there may be circumstances justifying the State taking steps to meet shortage of accommodation, it was not open to the State Government to issue a direction to the Registrar of Cooperative

³ (2005) 5 SCC 632

Societies to direct a cooperative society to make requisite amendments to their bye-laws and grant permission to its members to raise multi-storeyed constructions. In appeal from that decision in State of Maharashtra v. Karvanagar Sahakari Griha Rachana Sanstha Maryadit, (2000) 9 SCC 295, this Court while dismissing the appeal stated that it was clear that though a power was conferred on the Registrar to direct amendment of the bye-laws of a society, yet the paramount consideration is the interest of the society. So also, the power of the State Government to issue directions in public interest, could not be exercised so as to be prejudicial to the interest of the society. In the view of this Court, what was in the interest of the society was primarily for the society alone to decide and it was not for an outside agency to say. Where, however, the Government or the Registrar exercised statutory powers to issue directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the society. This makes it clear that the interest of the society is paramount and that interest would prevail so long as there is nothing in the Act or the Rules prohibiting the promotion of such interest. Going by Chheoki Employees' Coop. Society Ltd. case⁴ neither the member, Respondent 2, nor the aspirant to membership, Respondent 3 had the competence to challenge the validity of the bye-laws of the Society or to claim a right to membership in the Society.”

- 10.** In the aforesaid case, the Supreme Court has clearly held that “the validity of a bye-law, that too an approved bye-law, has to be tested in the light of the provisions of the Act and the Rules governing cooperative societies. In so testing, the search should be to see whether a particular bye-law violates the mandate of any of the provisions of the Act or runs counter to any of its provisions or to any of the rules”.

4 (1997) 3 SCC 681

- 11.** At this stage, it would be appropriate to understand the meaning of the word “consider” used in Section 12 (1) of the Act.
- 12.** According to Longman Dictionary of Contemporary English (New Edition), “consider” means,
1. To think about something carefully especially before making a choice or decision.
 2. To think of someone or something in a particular way or to have a particular opinion.
 3. To think about an important fact relating to something when making a judgment.
- 13.** The word 'consider' has also been defined by the Supreme Court in the matter of **R.P. Bhatt v. Union of India and others**⁵ with reference to Rule 27 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Their Lordships of the Supreme Court held that the word 'consider' in Rule 27(2) implies 'due application of mind' and it casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof. **R.P. Bhatt** (supra) has been followed subsequently by the Supreme Court in the matter of **Ram Chander v. Union of India and others**⁶ while considering the word 'consider' employed in the Railway Servants (Discipline and Appeal) Rules, 1968 with reference to

⁵ (1986) 2 SCC 651

⁶ (1986) 3 SCC 103

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Rule 22(2) by holding that the word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

14. Thus, the Registrar, Cooperative Societies after due application of mind has to consider as to whether the amendment in the bye-laws is necessary and he has to record his own reason for his decision that the amendment in the bye-laws is necessary.

15. The Madhya Pradesh High Court in the matter of **State of M.P. v. Laxman Prasad Bhargav**⁷, while dealing with Section 12 (1) and (2) of the Act, held as under: -

“Section 12 of the Act has conferred extraordinary power on the Registrar, Co-operative Societies to direct any amendment in the bye-laws of co-operative society under sub-section (1) and on the failure of the society to make amendment in its bye-laws within such time as prescribed, the Registrar may register the amendment himself and in latter case, the Registrar is bound to give an opportunity of being heard to the society and this provision of sub-section (2) of Section 12 clearly assures that amendment has not been unnecessarily imposed on the society, for, after all, it is an internal matter of the society as to what amendment it likes. The only rider is that bye-laws should not be contrary to the Act or the Rules.”

16. This would take me to the factual score of the present case in which the Registrar, Cooperative

⁷ 1998 RN 52

Societies, has directed for amendment of the bye-laws of the petitioner Societies. Going deep into the facts and circumstances of the case, it would appear that some question was raised in the State Assembly with regard to the petitioner Societies and other Societies pursuant to which the State Government has constituted an enquiry committee and the said enquiry committee submitted its recommendation and accepting the recommendation of the committee, which is placed on record at page 136 & 89 onwards of the writ petitions, the Registrar passed order under Section 12 (1) of the Act. It nowhere demonstrates that the Registrar has ever applied his mind or considered the issue for amending the bye-laws, as required under Section 12 (1) of the Act, to the facts and circumstances of the case to reach to a conclusion that the amendment is necessary and desirable in the interest of the society except incorporating the words of the statute under Section 12 (1) of the Act in the order dated 31.3.2016 which is not the compliance of Section 12 (1) of the Act. Reasons have to be recorded after satisfaction by the learned Deputy Registrar to reach to a conclusion that such an amendment is necessary and desirable in the interest of the society.

- 17.** Merely because some recommendation has been submitted by the enquiry committee at the dictation of the State Government that does not constitute application

of mind and that cannot be held to the interest of the society. The Legislature has reposed confidence upon the Registrar to apply his mind after due consideration that the amendment of bye-laws of the society is necessary. He has to record his own satisfaction by giving his reasons as to why he is considering it appropriate to direct amendment in the bye-laws of the society which is absolutely lacking in the present case. Merely because some recommendation has been submitted by the enquiry committee at the instance of the State Government and accepting the said recommendation, directing amendment of bye-laws of the society is wholly impermissible in law. The Registrar exercising the discretion must have reached to his own conclusion and must have recorded his own satisfaction in exercise of power under Section 12 (1) of the Act.

- 18.** The exercise of power under Section 12 (1) of the Act is not a mere formality, it has to be exercised with utmost care and caution as per Section 12 (1) of the Act. The legislative mandate has to be complied with in the manner prescribed by law which has not been done so in the present case. The power exercised by the Deputy Registrar under Section 12 (1) of the Act on the basis of recommendation of the enquiry committee constituted by the State Government, cannot be said to be the valid exercise of power under Section 12 (1) and it cannot be said to be in the interest of society, as the reasons are

absolutely lacking in the order passed by the Deputy Registrar under Section 12 (1) of the Act.

19. Consequently, the order dated 31.3.2016 passed by the Deputy Registrar, Co-operative Societies, Raipur and order dated 11.4.2017 passed by the Chhattisgarh State Co-operative Tribunal, Bilaspur are hereby quashed. However, it will not bar the respondents to proceed in accordance with law.

20. The writ petitions are allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-