

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1443 of 2017

(Arising out of order dated 7-3-2017 in Appeal Case No.NIL/2016 of the learned Chhattisgarh State Cooperative Tribunal, Bilaspur)

Samta Sahakari Grih Nirman Samiti, Raipur, a Registered Society bearing registration No.U.P.Pa./R.P.R./35/1971-72, First Floor, 127, Samta Shopping Arcade, Samta Colony, Chirhuldih, Raipur, Police Station Saraswati Nagar, District Raipur (C.G.), through the President Ramvishal Upadhyay

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Co-operative Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Registrar, Co-operative Societies, Raipur (C.G.)
3. Joint Registrar, Co-operative Societies, Raipur (C.G.)
4. The Deputy Registrar, Co-operative Societies, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Prateek Sharma, Advocate.
For Respondents/State: Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/10/2017

1. This writ petition is directed against the order dated 23-4-2013 (Annexure P-4) passed by the Deputy Registrar, Co-operative Societies, Raipur; the order dated 13-7-2016 (Annexure P-2) passed by the Registrar, Co-operative Societies, Chhattisgarh; and the order dated 7-3-2017 (Annexure P-1) passed by the Chhattisgarh State Co-operative Tribunal, Camp Court Raipur, challenging the same as unsustainable and bad in law.

2. Learned counsel for the petitioner submits that in W.P.(C) No.1485/2017, the order dated 23-4-2013 passed by the Deputy Registrar, Co-operative Societies, Raipur, has been set aside and the consequential orders have also been set aside.
3. Learned State counsel would oppose the submissions.
4. I have heard learned counsel 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 sociality 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 Pradesh and others**¹, 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: -

1 AIR 1980 MP 84

2 (2000) 9 SCC 295

“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 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,

3 (2005) 5 SCC 632

it was not open to the State Government to issue a direction to the Registrar of Cooperative 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. case*⁴ 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”.

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

4 (1997) 3 SCC 681

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 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

⁵ (1986) 2 SCC 651

⁶ (1986) 3 SCC 103

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 extra-ordinary 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 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 28 onwards of the writ petition, 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 23-4-2013 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 23-4-2013 passed by the Deputy Registrar is hereby quashed. Resultantly, the orders passed by the Registrar and the Chhattisgarh State Cooperative Tribunal are also hereby quashed. However, it will not bar the respondents to proceed in accordance with law.

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

Sd/-
(Sanjay K. Agrawal)
Judge