

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2483 of 2016**

Sushil Kumar Tigga S/o Late Jerom Tigga, Aged About 48 Years
Deputy Registrar, Cooperative Society, Bemetara, District
Bemetara, (C.G.)

---- **Petitioner****Versus**

1. Ganesh Ram Patel S/o Late Gyanbandhu Patel, Aged About 59 Years Chairman, Gramin Seva Sahkari Samiti Maryadit, Udela, Regd .No. 1212, R/o Dongripali, Post Chanat, Tahsil Basna, District Mahasamund, (Chhattisgarh) Pincode- 493555
2. Hariram Sidar, S/o Shri Ghoso Sidar, Aged About 76 Years Upadhyaksh, Gramin Sahkari Samiti Maryadit, Udela, R/o Bijrabhatha, Post Nawgtarhi, Tahsil Basna, District Mahasamund, (Chhattisgarh)
3. Smt. Khirmoti Nayak, W/o Shri Shashidhar Nayak, Aged About 56 Years Upadhyaksh, Gramin Seva Sahkari Samiti Maryadit, Udela, R/o Lohadipur, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
4. Upendra Kumar Tripathi, S/o Late Chhalo Prasad, Aged About 54 Years Director, Gramin Seva Sahkari Samiti, Maryadit, Udela, District Mahasamund, (Chhattisgarh) R/o Lohdipur, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
5. Girdhari Lal Nayak, S/o Shashidhar Nayak, Aged About 36 Years Director, Gramin Seva Sahkari Samiti Maryadit, Udela, R/o Lohdipuyr, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
6. Ganesh Prasad Patel, S/o Shri Laxman Prasad Patel, Aged About 77 Years Director Gramin Seva Sahkari Samiti, Maryadit, Udela, R/o Chandrakhuli, Post Nawgarhi, Tahsil Basna, District Mahasamund, (Chhattisgarh)
7. Lakheshwar Siwar, S/o Shri Prithvi Singh Sidar, Aged About 48 Years Director, Gramin Seva Sahkari Samiti Maryadit, Udela, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
8. Ramlal Ratre, S/o Shri Shivprasad Ratre, Aged About 58 Years Director, Gramijn Seva Sahkari Samiti, Maryadit, Udela, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
9. Smt. Khelkunwar Sidar, Wd/o Late Gopal Sidar, Director, Gramin Seva Sahkari Samiti, Maryadit, Udela, R/o Lohdipur, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)

10. Registrar, Sahkari Sanstha, Chhattisgarh, Raipur, Indrawati Bhawan, Block- B, 3rd Floor, Naya Raipur, District Raipur, (Chhattisgarh)
11. V. L. Patel, Rural Agriculture Extension Officer And Incharge Officer, Gramin Seva Sahkari Samiti Maryadit, Udela, Office Of Sub Registrar, Sahkari Sanstha, Mahasamund, District Mahasamund, (Chhattisgarh)
12. Parshuram Patel, S/o Shri Kushal Patel, Director, Gramin Seva Sahkari Samiti, Maryadit, Udela, R/o Lohdipur, Post Bhawarpur, Tahsil Basna, District Mahasamund, (Chhattisgarh)
13. Kunjbihari Patel, S/o Shri Goutam Patel, Director Gramin Seva Sahkari Samiti, Maryadit, Udela, R/o Chandrakhuli, Post Nawgarhi, Tahsil Basna, District Mahasamund, (Chhattisgarh)
14. Chhattisgarh State Cooperative Tribunal Bilaspur, Through President, Mungeli Road, Bilaspur (Chhattisgarh).

---- Respondents

For Petitioner : Shri H.B. Agrawal, Senior Advocate with Smt. Prabha Sharma, Advocate.

For Respondents 2 & 9 : Shri Sunil Sahu, Advocate.

For Respondent/State : Shri Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/09/2017

(1) The petitioner was a Deputy Registrar, Cooperative Societies, Mahasamund at that time and the Case No. 10/2014-15 (Gramin Seva Sahkari Samiti, Maryadit – Udela Vs. Dhanurjay Nayak & others) and Case No. 11/2014-15 (Gramin Seva Sahkari Samiti, Maryadit – Udela Vs. Dileep Diwan & others) were pending before him under Section 64 of the Chhattisgarh Cooperative Societies Act, 1960 (henceforth “Act, 1960”). Both the cases were dismissed for want of prosecution on 31.10.2014 by the petitioner while acting as Deputy Registrar, Cooperative Societies Act, 1960.

(2) The appeal Case No. 13 / 2015 (Ganeshram Patel & others Vs. Registrar, Cooperative Societies, Chhattisgrh, Raipur & othes), which is against the supersession of Board of Directors, Gramin Seva Sahkari Samiti Maryadit, Udela came up before the C.G. Cooperative Societies Tribunal, Bilaspur (for short 'the Tribunal) in the appeal and the Tribunal by its order dated dated 09.03.2016 has recorded a finding that the petitioner, acting as Deputy Registrar, Cooperative Socieites, has dismissed in default the two applications filed under Sction 64 of the Act, 1960 and thereby caused loss to the Government to the extent of ₹ 39, 63,771.10/-, which has been directed to be deposited, against which instant writ petition has been filed questioning the same.

(3) Learned counsel for the petitioner would submit that the petitioner acted as Presiding Officer under Section 64 of the Act, 1960 while deciding the above two applications and, therefore, the act done by him is only discharge of judicial duty and he cannot be saddled with the liability of paying the amount of Rs. 39, 63,771.10/-. He further submits that the Tribunal has passed the order for recovery wihout giving due opportunity of hearing to the petitioner and, therefore, impugned order is liable to be set aside.

(4) On the other hand, Shri Sao, learned counsel for the State would support the impugned order.

(5) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(6) In the matter of **Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Co-operative Bank Ltd.**, their Lordships of the Supreme Court has held that in an appeal against the order of Asstt. Registrar, there

were allegations of mala fide in the grounds of appeal. It has further been held that Asstt. Registrar, Cooperative Societies was a “Court” within the meaning of Contempt of Courts Act.

(7) In the matter of **K.G. Ansari, Advocate Vs. S.P. Agrawal, Advocate and another**¹, the Division Bench of the Madhya Pradesh High Court has held that Deputy Registrar of Co-operative Societies under the M.P. Co-operative Societies Act in exercise of his powers under Section 64 of the Act, 1960, is a “Court”, and he is subordinate to the High Court.

(8) Sections 2 & 3 of the Judges (Protection) Act, 1985 provides as under:-

“ 2. **Definition.**- In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person -

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Cl. (a).

3. **Additional protection to Judges.**- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec. (2), no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his

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official or judicial duty or function.

(9) Since the Deputy Registrar of the Cooperative Society under the Act of 1960 is a court subordinate to the High Court and he has dismissed the application as Presiding Officer under Section 64 of the Act of 1960 for want of prosecution, he is entitled for protection under the Judges (Protection) Act, 1985. Merely because, the petitioner, in the capacity of Presiding Officer, has dismissed the above two applications, it does not mean that the petitioner-Presiding Officer will be responsible to pay amount of recovery sought in those applications. The petitioner has performed his duty in accordance with law and it cannot be said that he has committed an illegality in rejecting the applications and, therefore, the finding recorded by the Tribunal is contrary to law. There is additional reasons for setting aside the impugned order as neither the petitioner was heard nor any notice was issued to him before passing the impugned order of recovery of Rs. 39,63,771.10/-, which is impermissible in law.

(10) For the forgoing reasons, the appeal is allowed. Part of the order dated 09.03.2016 by which the liability has been saddled upon the petitioner to pay an amount of Rs. 39, 63,771.10/- is set aside. Order is modified to the above extent. Rest of the conditions mentioned in the order shall remain intact.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-