

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 64 of 2015

1. Kishori Prasad Sahu S/o Kanta Prasad Sahu, Aged About 38 Years, President Service Co-Operative Society, Registration No. 494, Vill-Sasha, Tah & PS-Pamgarh, Distt Janjgir-Champa, Chhattisgarh
2. Chandram Patel S/o Umend Ram Patel, Aged About 55 Years, Vice President Service Co-Operative Society, Registration No. 494, Vill-Sasha, Tah & PS Pamgarh, Distt-Janjgir Champa, Chhattisgarh
3. Laxmikant Tiwari, S/o Tirath Raj, Aged About 60 Years, Director Member, Service Co-operative Society, Registration No.494, Vill-Sasha, Tah & PS-Pamgarh, Distt-Janjgir Champa, Chhattisgarh
4. Jawahar Singh Maravi, S/o Antu Maravi, Aged About 60 Years, Director Member, Service Co-operative Society, Registration No. 494, Vill-Sasha, Tah & PS-Pamgarh, Distt-Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

1. Joint Registrar, S/o Co-Operative Society, Bilaspur, Distt-Bilaspur, Chhattisgarh
2. Deputy Registrar Cooperative Society, Janjgir, Distt-Janjgir Champa, Chhattisgarh
3. G.P. Upadhyay Cooperative Inspector, Janjgir, Distt-Janjgir Champa, Chhattisgarh

---- Respondents

For the Petitioners : Shir H.V. Sharma, Advocate.

For the State/Respondents : Shri Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

16/03/2017

1. This petition under article 227 of Constitution of India has been brought for issuance of writ of certiorari quashing the order passed by the Chhattisgarh Co-operative Tribunal, Bilaspur.

2. Petitioners are office bearer of Sewa Sahkari Samiti, Village-Sasaha, Registration No.494, Tahsil-Pamgarh, Distt- Janjgir-Champa, Chhattisgarh. A notice under Section 53(2) of Chhattisgarh Co-operative Societies Act, 1960 dated 16.1.2014 **Annexure P/4** was issued against the petitioner Committee alleging that Committee failed to take action against the concerned employees for realization of the loss occurred, due to loss to 2275.39 quintal of paddy in purchase on support price in the year 2012-13, it was stated that Committee has neglected in performance of duties, which is the reason for the loss occasioned and explanation was called.
3. Committee submitted explanation and reply **Annexure P/5** along with various documents in support of the explanation given. Sub-registrar Co-operative Society, Janjgir-Champa passed an order dated 7.3.2014 dismissing the explanation given by the Committee, and order was passed under Section 53(1) of the Act about the supersession of the Committee for a period of 6 months.
4. This order was challenged before the Joint Registrar Co-operative Society, Bilaspur, Division-Bilaspur. Order dated 14.7.2014, was passed by dismissing the appeal of the Committee and maintaining the order dated 7.3.2014 passed Sub-registrar Co-operative Society, Janjgir-Champa. Further, appeal was preferred before the Chhattisgarh Co-operative Tribunal, Bilaspur. This appeal was decided on 4.12.2014 by the tribunal, in which, the appeal of the petitioner Committee was dismissed and the orders under challenge were upheld.
5. The grounds in this petition are these, that the learned Co-operative Tribunal below failed to consider the burden of proof

regarding the show cause notice. Petitioners were not afforded the opportunity to defend before the Co-operative Society, which is against the principal of natural Justice. On these grounds, relief is prayed for.

6. Learned counsel for the petitioner submits that Section 53(2) of the Co-operative Societies Act, 1960 has not been complied with. After issuance of show cause notice and submission of reply by the petitioner, no enquiry was conducted, which is a requirement under Section 53(2) of the Act. Further, it is submitted that the supersession was ordered for a period of 6 months, but the functioning of the Committee has not been revived after the passing of the period of supersession, which is without any order of extension by the Registrar Co-operative Society, hence, order may be passed in favour of the petitioner.
7. Learned counsel for the respondents has opposed the grounds in petition and the arguments submitted in this behalf. It is submitted that the proceeding was drawn in accordance of the provision of Section 52 of the Act and the order of super-session has been passed in accordance with Section 53(1) of the Act, which needs no interference.
8. The only documents submitted on record are the documents filed by the petitioner. On perusing the documents filed, it appears that the show cause notice **Annexure P/4** was responded by reply **Annexure P/5** along with documents in support of the explanation given. The order of supersession first passed by Sub-registrar Co-operative Society, Janjgir-Champa **Annexure P/3** mentions the explanation submitted. On perusal of this order, it stands clarified that no statement of witnesses were recorded and no enquiry was

conducted before passing of this order. This order was further confirmed by the appellate authority Joint Registrar Co-operative Society, Bilaspur and thereafter, by Chhattisgarh State Co-operative Societies Tribunal, Bilaspur in their respective orders.

9. Section 53(2) of Chhattisgarh Co-operative Societies Act, 1960 clearly demonstrate that before passing the order of sub-Section (1) of Section 53 list of allegations has to be given to the opposite party along with documents and list of witnesses in support of charge levelled against opposite party/Committee. If the contention in this petition is to be believed, it is apparent that apart from hearing the show cause notice **Annexure P/4**, no charge-sheet was given to the petitioner Committee, as required under Section 53(2) of the Act. Reasonable opportunities of issuing against the proposed order and representation was as well not given to the petitioner Committee before passing such order and no enquiry was conducted to determine on the basis of evidence in enquiry, that petitioner Committee was negligent in performance of duties, which resulted in loss to the co-operative societies.

Reliance has been place on the judgment of **M.P. High Court in Ward No.4 Primary Consumer Co-operative Stores Ltd. Satna and another Vs. State of M.P. and others**, reported in **1986 MPLJ 203**, in which it was held that enquiry is essential before passing an order of supersession and the report of preliminary inquiry must be made available to person against whom enquiry is contemplated. This is a case in which respondent have not been able to put forth any explanation, as to whether an enquiry was conducted before the passing an order of supersession by the Sub-registrar Co-operative Societies, Janjgir-Champa. Under these circumstances, this appears to

be a case where the provision of Section 53(2) of the Act has not been complied with, hence, there is a clear violation of principal of natural justice in passing the order impugned.

Further reliance has been placed on **M.P. High Court in Adim Jati Sewa Sahkari Samiti Maryadit and another Vs. State of M.P. and others**, reported in **2000(3) M.P.L.J. 255**, in which it was held that on expiry of period of supersession such period of supersession could not be retrospectively extended. Section 53(3) of the Act specifically provides that period of supersession can be extended by order of Registrar Co-operative Societies.

10. On the basis of reasons aforementioned, this petition deserves to be allowed. The impugned order of super-session against the petitioner is hereby set aside, respondents are directed by a writ of mandamus to restore the petitioners to the same position before the date of show cause notice and further directed to conduct an inquiry, if required to do so, in accordance with the provisions Section 53(2) of the Act.

Sd/-

(Rajendra Chandra Singh Samant)

Judge