

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 96 of 2018**

*{Arising out of order dated 19.01.2018 passed by learned Single Judge in Writ Petition  
(S) No.3875 of 2017}*

- Zila Sahkari Kendriya Bank Maryadit, Durg Through Its Chairman Preetpal Belchandan, S/o Late Bhudhar Lal, Aged About 56 Years, Office At G.E. Road Durg, Tahsil And District Durg (Chhattisgarh)

**---- Appellant****Versus**

1. State of Chhattisgarh Through Secretary, Department of Co-Operative Societies, Ministry At Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Registrar, Co-Operative Societies of Chhattisgarh, Block- B, 2nd And 3rd Floor, Departmental Office, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh)
3. Joint Registrar Co-Operative Societies, Durg Division, Maharaja Chowk, Borsi Road Durg, District Durg (Chhattisgarh)
4. Managing Direcor, Chhattisgarh State Co-Operative Bank Maryadit, Headquarter Raipur, District Raipur (C.G.)
5. Collector, Durg, District Durg (C.G.)
6. Shri S.K. Joshi Special Class Managing Director Chhattisgarh State Co-Operative Bank Maryadit, Headquarter At Raipur, District Raipur (C.G.)
7. N.K. Swarnkar In-Charge Chief Executive Officer Zila Sahkari Kendriya Bank Maryadit, Durg, GE Road, Durg, District Durg (C.G.)

**---- Respondents**


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|------------------------------------|---|--------------------------------------------------------------|
| For Appellant                      | : | Shri Rakesh Kumar Jha and Shri Jai Prakash Shukla, Advocates |
| For Respondent Nos.1,2,3 &5/State: | : | Shri Yashwant Singh Thakur, Additional Advocate General.     |
| For Respondent No.4                | : | Shri Prafull N. Bharat, Advocate.                            |
| For Respondent No.6                | : | Shri Goutam Khetrapal, Advocate.                             |

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**  
**Hon'ble Shri Justice Prashant Kumar Mishra**  
**Judgment on Board**

**Per Ajay Kumar Tripathi, Chief Justice**

**07.08.2018**

1. Zila Sahkari Kendriya Bank Maryadit, Durg is in appeal before us against the order dated 19.01.2018 passed by the learned Single Judge, dismissing the writ application and refusing to interfere with an appointment of Chief Executive Officer (for short 'the CEO') of the Bank by the Apex body of the Bank.
2. The relevant facts which have gone behind the present litigation are that the CEO of the Appellant-Bank, one Mr. Vinod Gupta was arrested by the Economic Offences Wing of the State of Chhattisgarh on 09.08.2017 for receiving a bribe of Rs. 27,000/-. He was arrested and produced before the concerned designated Court and remanded to custody. Naturally, due to the sudden crisis and vacuum created in the Bank, the Chairman of the Bank, as a stopgap arrangement to meet the immediate needs, appointed an Additional Manager, one Shri N.K. Swarnakar to be the incharge CEO till the Board of Directors decided to meet on 16.08.2017 to take a formal decision and appoint a CEO, who otherwise fulfills the requirement as laid down by the Reserve Bank of India.
3. Since the news of the arrest of the CEO of the Bank created certain stir and sensation, it seems that the Registrar of the Cooperative Society, on the very next date i.e. 10.08.2017 wrote a letter to the Chairman of the District Cooperative Bank i.e. the Appellant as to what kind of stopgap arrangement has been worked out by the Bank.
4. On 10.08.2018 itself, the Chairman wrote a letter to the Registrar, Cooperative Society, informing him of the working arrangement made by appointment of Shri

N.K. Swarnakar as well as the decision to hold a Board of Governors meeting on 16.08.2017 to appoint a full time CEO.

5. While the Registrar, Cooperative Society was still to pass any direction or direct the Bank to make regular arrangement of the CEO, it seems the Apex Cooperative Bank *i.e.* Chhattisgarh State Cooperative Bank Limited, Headquarters at Raipur, jumped into the dispute and the Managing Director of the Apex Bank directed Shri S.K. Joshi to join on the post of CEO from the present post he held at the Headquarters.
6. The Appellant-Bank naturally resisted such imposition by the Apex Bank since it was their stand that the Apex Bank has no authority to appoint the CEO as there was no vacancy and working arrangement had already been put in place and 16.08.2017 was the date fixed for holding of the Board of Governors meeting for regular appointment of CEO.
7. It seems that the matter thereafter travelled to the Registrar of Cooperative Society. On objections being raised by the Bank, the Registrar, Cooperative Society ratified the decision of the Apex Bank to appoint Shri S.K. Joshi as the CEO.
8. It is such a decision which has now formed the basis for the present round of dispute between the parties which not only includes the District Cooperative Bank - the Appellant, but also the Registrar of Cooperative Society, the Apex Bank who appointed a CEO, the appointee namely Shri S.K. Joshi and Shri N.K. Swarnakar who was appointed as the stopgap CEO. The Court is informed that Shri Swarnakar has now superannuated.
9. The writ application came to be filed by the Zila Sahkari Bank *i.e* the Appellant, challenging the decision of not only the Apex Bank but also the decision of the Registrar of Cooperative Society to accept or ratify the imposition of Shri S.K.

Joshi as the CEO. The arguments before the learned Single Judge was that after the amendment which had been brought about by the State Government itself to the Chhattisgarh Cooperative Societies Act, 1960, the power to appoint a CEO was vested in the Registrar of Cooperative Society alone. The Amended Act of 2016 incorporated certain provisions in sub-section (3) of Section 54 of the principal Act. Since the interpretation flows from the provisions of Section 54 and the amendments, they are reproduced hereinafter for ready reference:

“54. Appointment of Managers, Secretaries and other officers. - (1) No society shall appoint a Manager, Secretary, Accountant or other paid officer unless he holds such qualifications as may be prescribed.

(2) The Apex and Central Societies shall maintain such cadres of officers and other servants as the State Government may, by order, direct and the conditions of service of members of such cadre shall be such as the Registrar may, by order, determine.

(3) The State Government may, by notification, specify the class of societies which shall employ officers from such cadres maintained by the Apex or Central Societies under sub-section (2) as may be specified therein and it shall be obligatory on the part of such class of societies to accept and appoint such cadre officers on the cadre posts as and when deputed by the Apex or Central Societies.”

“In sub-section (3) of Section 54 of the Principal Act-

(i) for the punctuation full stop “.”, the punctuation “;” shall be substituted; and

(ii) below sub-section (3), the following shall be added, namely:-

(a) The eligibility criteria to hold the office of Chief Executive Officer of any Co-operative Bank shall be as such as may be prescribed by the Reserve Bank in this regard.

(b) If the concerning Co-operative Bank fails to appoint Chief Executive Officer under the eligibility criteria within a specified period, in such a condition the registrar may appoint such eligible officer of the Bank.”

10. The learned Single Judge, while interpreting the provision of Section 54 read with the amended provision incorporated in sub-section (3), held that the two provision have to be read conjointly and keeping in mind sub-section (2) of

Section 54 read with the notification which the State Government had made in exercise of power in sub-section (3) of Section 54, the Apex Bank had the necessary authority to appoint a CEO and to that extent, such exercise of power by the Apex Bank to appoint a CEO in the Appellant-Bank cannot be said to be erroneous.

11. The learned Single Judge further took note of the fact that since the Registrar of the Cooperative Society had further ratified the decision of the Apex Bank to appoint Shri S.K. Joshi as the CEO, therefore, the issue should rest at that and there is no infirmity in such decision which was required to be set aside or interfered with.
12. Counsel representing the Bank duly supported by learned counsel representing Shri Santosh Kumar Nivsarkar on one hand take a unified stand that the learned Single Judge has missed out the tree for the woods. While analyzing the provisions of Section 54 of the Chhattisgarh Cooperative Societies Act, 1960, the vital amendment brought about and incorporated in the said Section have not been appreciated in the right perspective, in the sense that as per the 2016 amendment incorporated in sub-section (3) of Section 54, there is requirement to appoint a CEO by a Cooperative Bank only if he fulfilled the eligibility and criteria as laid down by the Reserve Bank of India. There is a mandate of law which every Cooperative Bank has to follow. Clause (b) of sub-section (3)(ii) of Section 54 of the amended provision lays down that if a Cooperative Bank fails to appoint a CEO under the eligibility criteria within a specified period, then in such a condition the Registrar may appoint such eligible officer of the Bank.
13. The arguments, therefore, is that the amended provisions have significant bearing on the power which may have existed prior to the amendment. It is only if a Cooperative Bank fails to appoint a CEO under the eligible criteria within the

specified period that the Registrar will step in and will exercise power of appointment of a CEO and nobody else.

14. It is also argued that sub-section (1) of Section 54 talks about certain set of employees who can be or are required to be appointed on the basis of a cadre maintained by either Apex or a Central Society. They include persons like Manager, Secretary, Accountant or similarly other paid officers. Since CEO's have been dealt with separately under the amended provision, therefore by rules of interpretation, he does not come within an ambit of such a person who can be appointed from the cadre of officers maintained by an Apex body or a Central Society. The Legislatures have decided to vest such an important power of appointment of a CEO only in the Registrar Cooperative Society and none else.
15. We have been through the order of the learned Single Judge and the conclusion which the learned Single Judge has reached in paragraph 18 of the impugned order. We have no hesitation in recording that the learned Single Judge has made a serious error in interpreting the law specially the provisions of Section 54 in its entirety including the amendment which has been incorporated w.e.f 14.12.2016 to sub-section (3) of Section 54.
16. From the scheme of the Act and the provisions laid down under Section 54 of the Chhattisgarh Cooperative Societies Act, 1960, we hereby hold and declare that in matters of appointment of CEO, the Apex body or the Central Society have no power or role to play. That power can only be exercised with regard to Manager, Secretary, Accountant or such paid officers. It is further also held that power to appoint CEO can only be exercised by the Registrar of the Cooperative Society and that too, on failure of the District Cooperative Bank to make such appointment within a specified time, communicated to them by the Registrar.

17. If that be so and if we get back to the facts of the case, we do not find any communication of the Registrar of the Cooperative Society to the Bank to make such appointment. In fact, the Registrar has been duly informed by the Chairman of the Bank that they have made an ad-interim arrangement for a few days and the Board of Governors is meeting on 16.08.2017 to appoint a regular CEO and no further direction or response was sent by the Registrar to the Appellant-Bank in relation to such selection and appointment. But strangely enough, the Apex Bank rushes in to fill in a vacuum where there was none because the stopgap CEO was already appointed. That decision of the Apex Bank has been ratified by the Registrar of the Cooperative Society which is nothing, but complete abdication of his power, if not usurpation of the power by the Apex body.
18. The principle of ratification which has been talked about by the learned Single Judge as well as the decision or the principle on which reliance has been placed by the learned Single Judge does not apply to the facts of the present case because ratification can only happen provided the power has been exercised irregularly by an authority. Not in a case where power has been illegally exercised by an authority not vested in him in the very first place. Therefore, the principle of ratification which have been used as a justification for sustaining the appointment of Shri S.K.Joshi as a CEO by the Apex Bank or the body, was complete failure to exercise power on behalf of the Registrar of the Cooperative Society.
19. The stand of the Respondents in support of the decision of the learned Single Judge is in consonance with what the learned Single Judge has accepted in his order for refusing to interfere with the appointment of Shri S.K. Joshi and such arguments have to fail and are required to be rejected keeping in view the interpretation which we have given to the provision of Section 54 read with the significant amendment which was brought about by the State on 14.12.2016.

20. In the above interplay of facts and law, the impugned order passed by the learned Single Judge dated 19.01.2018 is required to be set aside. As a consequence thereof, the appointment of Shri S.K. Joshi as the CEO of the Zila Sahkari Kendriya Bank Maryadit, Durg issued by the Apex Bank dated 11.08.2017 and the decision of the Registrar, Cooperative Society ratifying the said decision dated 21.08.2017 are required to be quashed and are quashed.
21. The writ appeal is allowed in terms of the above.

Sd/-

**(Ajay Kumar Tripathi)**  
**Chief Justice**

Sd/-

**(Prashant Kumar Mishra)**  
**Judge**