

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 165 of 2018**

1. State Of Chhattisgarh Through The Secretary, Department Of Cooperative Societies, Mantralaya Mahanadi Bhawan New Raipur District Raipur Chhattisgarh.
2. The Registrar, Cooperative Societies, Chhattisgarh Indravati Bhawan, New Raipur District Raipur Chhattisgarh.
3. The Deputy Registrar, Cooperative Societies, Vivekanand Nagar, Raipur District Raipur Chhattisgarh.

---- Appellants**Versus**

1. Rajiv Grih Nirman Sahkari Samiti Maryadit, Through Its President Subhash Chandra Malhotra, S/o Late Jagmohan Malhotra Aged About 72 Years, R/o C- 30, Sector - 2, Bajaj Colony, Raipur District Raipur Chhattisgarh.
2. The Chhattisgarh State Cooperative Tribunal, Bilaspur Camp Court Raipur Chhattisgarh

---- Respondents**WA No. 169 of 2018**

1. State Of Chhattisgarh Through The Secretary, Department Of Cooperative Societies, Mantralaya Mahanadi Bhawan, New Raipur District Raipur Chhattisgarh.
2. The Registrar, Cooperative Societies, Chhattisgarh, Indravati Bhawan, New Raipur District Raipur Chhattisgarh.
3. The Deputy Registrar, Cooperative Societies, Vivekanand Nagar, Raipur District Raipur Chhattisgarh.

---- Appellants**Versus**

1. Priyadarshini Grih Nirman Sahkari Samiti Maryadit Through Its Chairman Rajesh Shrivastava, S/o Late Shri B.C. Shrivastava, Aged About 68 Years, R/o Priyadarshini Nagar, Raipur P.W. New Rajendra Nagar, Raipur, District Raipur Chhattisgarh.
2. The Chhattisgarh State Cooperative Tribunal, Bilaspur Camp Court, Raipur Chhattisgarh.

---- Respondents**WA No. 170 of 2018**

1. State Of Chhattisgarh Through The Secretary, Ministry Of Cooperative, Mantralaya Mahanadi Bhawan New Raipur Police Station Mandir Hasod Raipur District Raipur Chhattisgarh
2. The Registrar, Cooperative Societies, Chhattisgarh Raipur Chhattisgarh Indravati Bhawan New Raipur Police Station Mandir Hasod Raipur District Raipur Chhattisgarh.
3. The Deputy Registrar, Cooperative Societies, Vivekanand Nagar Raipur Police Station Civil Lines District Raipur Chhattisgarh.

---- Appellants**Versus**

Kuber Grih Nirman Sahkari Samiti Maryadit, Rohinipuram, Raipur Through Its Director, Sewak Ram Pandey, S/o Late Shri G R Pandey, Aged About 67 Years, R/o C- 295, Rohinipuram Raipur Police Station Deen Dayal Upadhyay Nagar Raipur District Raipur Chhattisgarh.

---- Respondent

For Appellants/State : Shri Prafull N. Bharat, Additional Advocate General.
For Respondents : Shri Kishore Bhaduri and Shri Anmol Sharma, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

21/08/2018

Per Ajay Kumar Tripathi, Chief Justice

1. Heard counsel for the parties.
2. All the three appeals arise out of a common order dated 04.03.2017 where the writ applications of the Respondent/Cooperative Societies were allowed and the amendment to the bye-laws which was ordered to be incorporated by the Registrar Cooperative Society under purported exercise of power under Section 12(1) of the Chhattisgarh Cooperative Societies Act, 1960 was struck down.
3. After having heard learned Additional Advocate General for the State and the counsel for the Respondents in the entirety of the facts, the learned Single Judge cannot be said to be in error in taking a view which has been crystallized in paragraphs 20 and 21 of the decision, which reads as under:-

“20. 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.

21. 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.”

4. From reading of the above, it is evident that the learned Single Judge does not question the power of the Registrar to exercise authority under Section 12 of the Act, but the manner in which such power has been exercised. The non-application of mind was found by the learned Single Judge and that is the reason why after setting aside the order/orders, the Hon'ble Court also opined that quashing of the orders will not bar the Respondent to proceed in accordance with law. Meaning thereby that the Registrar Cooperative Society can still undo or do what is required to be done within the framework of the Section.

5. Even though it has not been argued or urged at the bar on behalf of the Respondents but the Court cannot overlook the obvious fact, emerging from the decision of the Deputy Registrar, Cooperative Societies which is Annexure P/3 that this is a cyclostyled readymade order, which has been issued by incorporating the name of different Cooperative Societies, which by itself shows the mechanical manner, in which, the power has been exercised by the said authority.

6. The Courts have time and again deprecated such method and methodology of decision making, especially by authorities who are *quasi judicial* authorities. Evidence showing application of mind by them is equally important as the final decision, especially when such decisions become subject matter of judicial review.
7. All the appeals therefore are dismissed. The Registrar Cooperative Societies however is free to proceed in accordance with law.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE