

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(C) No. 1595 of 2019**

Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit Prem Nagar, District-Surajpur, Chhattisgarh. Through The President Jagdish Gupta, S/o. Late Umashankar Gupta, Aged 60 Yrs, R/o. Tarkeshwarpur, Post Umeshwarpur, District- Surajpur, Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh, Through The Secretary, Co-Operative Department, Mantralaya Atal Nagar, Raipur, Chhattisgarh.
2. The Registrar, Co-Operative Societies, Indravati Bhawan, Atal Nagar, Raipur, Chhattisgarh.
3. The Deputy Registrar, Co-Operative Societies Surajpur, District- Surajpur, Chhattisgarh.
4. The Asst. Registrar, Co-Operative Societies Surajpur, District- Surajpur, Chhattisgarh.
5. Shri Sainth Kerketta, Co-Operative Inspector Appointed As Liquidator Of Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit Prem Nagar, District-Surajpur, Chhattisgarh.

**---- Respondents**

---

|                |   |                              |
|----------------|---|------------------------------|
| For Petitioner | : | Mr. Prafull Bharat, Advocate |
|----------------|---|------------------------------|

|                       |   |                               |
|-----------------------|---|-------------------------------|
| For State Respondents | : | Mr. Rahul Jha, Govt. Advocate |
|-----------------------|---|-------------------------------|

---

**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**08.05.2019**

Heard

1. The present petition is against the order dated 26.04.2019 whereby the petitioner society has been directed to be liquidated for the reason that certain defalcation was pointed out.
2. Learned counsel for the petitioner would submit that initially the petitioner was served with a show cause notice dated 23.03.2019 by the Assistant Registrar though it was said to be on behalf of the Deputy Registrar. The said notice was replied on 30.03.2019 by Annexure P-4. It is contended that

as per Section 69 of the C.G. Co-operative Societies Act, 1960 (*for short "the Act of 1960"*) liquidation for winding up can be only on the ground when the enquiry has been held under Section 59, which is not the case herein or an inspection has been made under Section 60 or on receipt of the application made by not less than  $\frac{3}{4}$  of the members of the society that the society ought to be wound up. It is submitted no such exigencies exists to invoke such jurisdiction. He submits that the Assistant Registrar did not have a jurisdiction as he was not a Registrar. It is stated after reply was filed the contention was raised. The second show cause notice was issued by the State on 12.04.2019 by Annexure P-6 to correct earlier defect. It is stated that for the second show cause notice on 15.04.2019, the petitioner sought for time to file reply, as he was otherwise busy in the election. However, without giving an opportunity of hearing, the order dated 26.04.2019 has been passed. Learned counsel placed his reliance in case of *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Others* reported in (1998) 8 SCC 1 and would submit that no opportunity of hearing was granted and when the notice was without jurisdiction even the alternative remedy is available, the High Court can interfere to issue writ.

3. Per contra, learned State counsel submits that the alternative remedy of filing of appeal under Section 78 of the Act of 1960 was available to the petitioner and the finding was arrived at after enquiry; consequently, no relief can be granted.
4. Perusal of the document prima facie shows that initially notice of winding up dated 23.03.2019 was issued by the Assistant Registrar. Perusal of Section 69 of the Act of 1960 shows that it is the Registrar who can contemplate the liquidation under Section 69 and further sub-section 2 of Section 3 of the Act of 1960, the State Government by the notification specified any other officer to perform such power.
5. During the course of submission, a Notification No.F 15-19/15-02/2012/03

dated 04.05.2012 is placed on record for perusal, which shows that the Deputy Registrar have been delegated such power. Consequently, it goes to show the first show cause notice issued by the Assistant Registrar was without jurisdiction. Therefore, another show cause notice was again issued on 12.04.2019 to the petitioner, which is Annexure P-6. The record shows the petitioner sought for time on 15.04.2019 to file reply on the ground that due to the election some time may be granted, however, despite that no time was granted and eventually the impugned order dated 26.04.2019 was passed.

6. Without going into merits of this case, prima facie, it appears that the reasonable opportunity was not granted to the petitioner as the documents shows that no hearing was given to petitioner after the time was sought to file reply. The time to file reply though was sought which was denied by the impugned order. In the facts of this case, in the opinion of this Court, one another opportunity of hearing should have been given to the petitioner as otherwise it would amount to arbitrary act and would suffer with unreasonableness. In the result, taking into facts of the case, the order impugned dated 26.04.2019 prima facie appears to have been passed without giving reasonable opportunity of hearing to the petitioner to place his defence.
7. In the result, the order dated 26.04.2019 is set aside. Consequently, the petition is allowed. The respondents shall be at liberty to give an opportunity of hearing to the petitioner and thereafter shall be free to pass any order. It is also expected that the petitioner shall not seek any unnecessary adjournment to prolong the proceeding, if any, contemplated pursuant to the second show cause notice dated 12.04.2019. It is made clear that this Court has not made any observation on the merits of this case.

**Sd/-**  
**Goutam Bhaduri**  
Judge