

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2353 of 2019

Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit Prem Nagar
District Surajpur, 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
3. The Deputy Registrar Co-Operative Societies Surajpur, District-
Surajpur, Chhattisgarh
4. The Asst. Registrar Co-Operative Societies Surajpur, District-
Surajpur, Chhattisgarh.
5. Shri Sainath Kerketta Co-Operative Inspector Appointed as
liquidator of Atem Sahakari Vipnan Evam Prakriya Samiti Maryadit
Prem Nagar District- Surajpur, Chhattisgarh

--- Respondents

For petitioner – Shri Prafull N. Bharat, Advocate.
For State -Shri Amrito Das, Deputy A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order

20/08/2019

Heard.

1. In the instant petition order dated 18/06/2019 (Annexure P-1) is under challenge which is passed by the Deputy Registrar, Co-operative Societies, Surajpur whereby liquidation order has been passed against the petitioner/society.
2. Learned counsel for the petitioner would submit that the order have been passed in exercise of power under Section 69 (1) of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960') which contemplates three prerequisite conditions. (A) if the Registrar, after an inquiry held under Section 59 of the Act or (B) after an inspection has been made under Section 60 or on receipt of an

application made by not less than three fourths of the members of a society, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up. It is stated that in order to ascertain whether any inquiry was conducted under Section 59 or 60 as per charging Section of 69 (1), the information was sought for by petitioner by Annexure P-16 on 9/05/2019 and by Annexure P-17 dated 20/05/2019. It is stated in response to same it was informed that no enquiry either under Section 59 or 60 of the Act of 1960 has been conducted. It is further submitted that the impugned order has been passed on the ground that the petitioner has constructed the godown on government land, the account of the society have not been audited, no account book are maintained, further the society have not sold any fertilizer as was required and the petitioner have not conducted any business of fair price shop which was necessary. It is stated that those grounds for liquidation are completely illegal inasmuch as per the norms existing of the government dated 11th June, 2017, direction was given that godown be made on the government land. Likewise with respect of fair price shop the notification of the government dated 21/03/2006 speaks that the fair price shop shall not be given to the societies who are registered after 31st May, 2004 and admittedly the petitioner/society was registered on 18/02/2007.

3. With respect to not conducting any audit reference was made to Annexure P-23 and counsel would submit that the auditor was appointed by society as per norms and if he has not conducted or turned up to conduct the audit then the petitioner cannot be held responsible. Learned counsel would submit that as per direction of the State Annexure P-12 dated 24/05/2012, complete ban was imposed for sale of the fertilizer by the Co-operative Society. Therefore under any circumstances on which the liquidation has been proposed do not exist. He further submits that the liquidation was triggered on the basis of a political motive which would be

evident from Annexure P-18 and as internal correspondence in between the State would show that this Co-operative Society was targeted which is evident from letter dated 5/03/2019 Annexure P-20.

4. Per contra, learned State counsel submits that Section 69 is in two part. Admittedly no enquiry was held under sub section 1 of Section 69 of the Act of 1960 whereas the enquiry can be made suo moto and such right is within the power of the Registrar under sub section 2 of Section 69 of the Act of 1960. It is stated the action in the instant case was u/s 69(2) of the Act which would be evident from the impugned order. It is further stated that order would show that opportunity of hearing was given to the petitioner, therefore the other aspect the petitioner as has projected are factual aspect and disputed question of fact which cannot be gone into as a fact finding by this writ court. It is further submitted that alternative remedy to challenge the impugned order is available to the petitioner and no reason exist on the record as to why the petitioner cannot avail the alternative remedy.

5. Heard the learned counsel for the parties and perused the documents.

6. Liquidation is governed under Chapter 8 of the Chhattisgarh Co-operative Societies Act, 1960. Section 69 governs the liquidation which reads as under:-

“69. Winding up of Societies-(1) If the Registrar, after an inquiry has been held under Section 59, or an inspection has been made under Section 60 or on receipt of an application made by not less than three fourths of the members of a society, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up.

(2) The Registrar may of his own motion make an order directing the winding up of a society-

(a) where the society has not commenced working within a reasonable time of its registration or has ceased to work; or

(b) where in the opinion of the Registrar the Society has been working mainly for promoting the interest of any individual or group of individuals and not of the members generally; or

(c) where the society has ceased to comply with any conditions as to registration or management under this Act, rules or bye-laws; or

(d) Where the primary credit society continues to be in default by not recovering its full overdue demand from members for continuous three co-operative years and even after supersession, it fails to recover full overdue demand.

(3) No order under sub-section (1) or sub-section (2) shall be passed unless the society concerned has been given a reasonable opportunity of showing cause against the proposed order and representation, if any made by it is considered.”

7. Reading of Section 69 of the Act of 1960 would show that it is in two part. There are three segments exist in sub section 1 of section 69, first is contemplated when an inquiry has been held under section 59, second when an inspection has been made under section 60 and third on a receipt of an application made by not less than three fourths of the members of the society. It is the stand of the State that no action have been taken either under section 59 or section 60 which has been categorically replied by them. Sub section 2 of Section 69 of the Act of 1960 gives a suo moto power to the Registrar to make an order directing the winding up of the society. Therefore Section 69 is in two parts and sub section 2 of Section 69 gives the independent power to the Registrar to contemplate enquiry on its own motion. The order of the Deputy Registrar Annexure P-1 would show that the enquiry under sub section 2 of Section 69 was commenced and was conducted against the petitioner. Therefore

the fact that no enquiry was held under Section 59 or 60 of the Act would be of no consequences to the petitioner as section 69(2) has an independent operation irrespective of the sub section 1.

8. Thereafter order would show that personal hearing was given to the members of the society. Few of it's members appeared on 4/06/2019 and 10/06/2019. On earlier round of litigation since opportunity was not given to the petitioner/society as such in WPC No.1595/2019 on 8/05/2019 the order of liquidation was set aside with an opportunity of hearing to the petitioner and subsequent to this action show cause notice was issued and enquiry was held.

9. Section 78 of the Act of 1960 speaks of appeal which reads as under:-

“78.Appeals before the Registrar and Tribunal-(1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Act or the rules made thereunder:-

(a) If such order is passed by any officer subordinate to Registrar other than Additional Registrar or Joint Registrar, whether or not the officer passing the order is invested with the powers of the Registrar, to the Registrar;

(b) If such order is passed by the Registrar, Additional Registrar or Joint Registrar, to the Tribunal.

(2) A second Appeal shall lie against any order passed in the first appeal by the registrar, to the Tribunal on any of the following grounds only, namely:-

(i) that the order is contrary to law; or

(ii) that the order has failed to determine some material issue of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Act which may have produced error

or defect in the decision of the case upon merits.

(3) Every appeal shall be presented in the prescribed manner to the appellate authority concerned within sixty days from the date on which the order appealed against was communicated to the party affected by the order:

Provided that in computing the period of limitation under this subsection the time required for obtaining a copy of the order appealed against shall be excluded.”

10. In the instant case the orders have been passed by the Deputy Registrar and the opportunity of hearing has been given. Therefore jurisdictional issue do not come to fore for judicial scrutiny. There is no reason as to why the petitioner may not avail alternative remedy of filing statutory appeal as contemplated under Section 78. Record would show that orders have been passed and direction were given by the State in general to the Registrar of Co-operative Society to make an enquiry in respect of all the Co-operative Society within the State who have not followed the Act and Rules of Co-operative Societies Act. Therefore no bias can be attributed to State. Pursuant thereto different notice were issued under such notice enquiry came to fore. The State has contemplated that there was no audit as is required under Section 58 of the Act of 1960. The necessity of audit is corroborated by the Rule 50 of Chhattisgarh Co-operative Societies Rules, 1962 and if the audit have not been taken place and accounts have not been maintained then contemplated enquiry suo moto by the Registrar cannot be side lined only on the ground of bias. Considering the authority of the Registrar, no substitution is possible and no one else under the Act is empowered to act. Therefore when there is no substitution possible and no one else is empowered to act, then the natural consequence would be necessity has to be given a way or otherwise there would be no means of deciding and

machinery of justice or administration will break down. When the statute empowers a particular officer to act, there is no way to escaping the responsibility even if he is in other capacity notices were served. Transfer such statutory mandate and responsibility indeed would be recognized as ultra vires.

11. For the reasons as stated, I am not inclined to allow this petition. Petition has no merit and accordingly, the petition is dismissed.

12. It is further observed that the petitioner shall be at liberty to file statutory appeal and if the statutory appeal is preferred, as per law appellate authority shall decide the same on its merits without being influenced by dismissal and discussion made in this order.

Sd/-

(Goutam Bhaduri)

JUDGE