

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 482 of 2020**

- Santosh Kumar Nivsarkar @ S.K. Nivsarkar S/o Late S.C. Nivsarkar, Aged About 52 Years Presently Working As Chief Executive Officer Of Zila Sahakari Kendriya Maryadit, Durg R/o Near Kalibadi Mandir, S. A. F. Line, Sindhiya Nagar, Durg, Tahsil And District - Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Cooperative Affairs, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Registrar, Cooperative Societies Chhattisgarh, Indrawati Bhavan, Atal Nagar, Nava Raipur, District - Raipur Chhattisgarh.
3. President Zila Sahakari Kendriya Bank Marydit, Durg Chhattisgarh, Office At G.E. Road, Durg, District Durg Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Ajay Thakre, Advocate
For Respondents/ State	:	Shri Amrito Das, Addl A.G.
For Respondent No. 3	:	Shri Manish Upadhyay, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****22/01/ 2020**

1. Heard.
2. This is second round of litigation, initially a direction was issued by the Registrar under Section 53-B of the C.G. Cooperative Societies Act, 1960 (for short Act of 1960) (Annexure P-2) on 17.12.2019 to take action against the petitioner on the ground of gross negligence and financial irregularities. The same was subject of challenge in WPS No. 10830 of 2019. This Court on 24.12.2019 has dismissed the petition and observation was made to consider the representation made by the petitioner in compliance of Section 53-B (1) of Act of 1960 (Annexure P-3). It is thereafter, the show cause notice under Section 53-B (2) of Act of 1960 was issued to the petitioner,

which is under challenge.

3. It is contended by the petitioner that after the initial notice was issued by the Society i.e. Respondent No. 3 to the petitioner, the enquiry was held and order of censure was passed, therefore, the Society having exercised the power under Section 53-B(1) of the Act of 1960, the Registrar is denuded to exercise any power under Section 53-B(2). It is stated that Section 53-B(1) gives the Society the power to pass any order as it deems fit and when such orders have been passed, second show cause cannot be issued. It is stated had there a case, if the Society had not taken any action under Section 53-B(1), the Registrar could have exercised the power under Section 53-B(2).
4. Learned counsel for the respondent/ Society, Respondent No. 3, supports the contention of the petitioner and would submit that the Society having taken the action, no further action can be taken by the Registrar individually.
5. Learned State counsel would vehemently opposes the argument and would submit Section 53-B do not given the discretion to pass any order, it is only confined to removal and further the order of disqualification is prescribed. Therefore, if any other order is passed, it would be a failure to take action under Section 53-B (1). Consequently the show cause issued under Section 53-B (2) is legal.
6. Heard the learned counsel for the parties at length.
7. For the sake of brevity Section 53-B(1) and (2) are reproduced here under:-

[53-B. Powers of the Registrar to remove an Officer of a society in certain circumstances - (1) if in the opinion of the Registrar, any officer of the co-operative society has been grossly negligent in the discharge of his duties imposed on him by or under this Act the rules made thereunder or byelaws or has, by a fraudulent act, caused financial loss to the society the Registrar may without prejudice to any other action that may or can be taken against him, call upon the society to remove within a specified period such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity to the officer concerned of being heard, pass such orders as it deems fit.

(2) On the failure of the society to take action under sub-section (1), the Registrar may after affording opportunity to the officer of being heard and for reasons to be recorded, and communicated to the officer and the society concerned, remove or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society for the period specified in the

order.

8. Reading of Sub Section (1) would show that if the Registrar is of the opinion that any officer who has been grossly negligent in discharge of his duties under this Act or Rules or by a fraudulent act has caused financial loss may call upon the Society to "remove the said Officer within a specified period" and "also pass an order to disqualify him from holding in office thereafter the Society will pass the order as it deems fit". Consequently the reading of Sub Section (1) would show that the Society has only two options when such direction are given. If any other action/ punishment like censure in this case is inflicted, there the Registrar may resort to action sub Section (2) of Section 53-B. The Registrar, therefore, may without prejudice to any other action may direct the Society to take the codified direction under Sub Section (1) as contemplated. Consequently the Society can only either remove the officer and in addition can pass a order of disqualification if it is not been done. The Registrar apart from the power under Section (1) if is satisfied no action as per sub section (1) is taken then he is empowered by Section (2) to take action after affording opportunity to the Officer and may pass the order of removal and disqualify etc.
9. In this case, the Registrar obviously seems to be not satisfied by the action taken by the respondent/ society under Section 53-B (1). The order against the petitioner is only of the censure neither it is of removal or attached with any disqualification. Consequently the Registrar would get a jurisdiction under Section 53-B (2) to issue a show cause and can go for enquiry Further the petition is against the issuance of show cause so as per the ratio laid down in Silemens Ltd. Vs. State of Maharashtra and Ors. reported in (2006) 12 SCC 33., unless it is shown the show cause is premeditated no petition to challenge the same would be maintainable. In view of these facts enumerated above I am not inclined to entertain this petition, accordingly this petition stands dismissed.

Sd/-

Goutam Bhaduri
Judge