

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 152 of 2020**

{Arising out of order dated 22.01.2020 in Writ Petition (S) No. 482 of 2020 by the learned Single Judge}

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 Bank Maryadit, Durg, R/o Near Kalibadi Mandir, SAF Line, Sindhiya Nagar, Durg, Tahsil and District Durg, Chhattisgarh.

---- Appellant

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 Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh.
3. President, Zila Sahkari Kendriya Bank Maryadit, Durg, Chhattisgarh, Office at GE Road, Durg, District Durg, Chhattisgarh.

---- Respondents

For Appellant/Petitioner	: Shri Ajay Thakre, Advocate.
For Respondent/State	: Shri Ghanshyam Patel, Government Advocate.
For Respondent No. 3	: Shri Manish Upadhyay, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P.R. Ramachandra Menon, Chief Justice

10.02.2020

1. The grievance raised is against the show cause notice and the charge sheet issued by the Registrar in terms of Section 53-B(2) of the Chhattisgarh Co-operative Societies Act, 1960 (for short 'the Act'), when no proper action was taken by the Society, pursuant to the earlier notice issued by the Registrar in terms of Section 53-B(1) of the Act. Interference declined by the learned Single Judge in the writ petition is put to challenge in this appeal.

2. Heard Shri Ajay Thakre, the learned counsel for the Appellant/Petitioner, Shri Ghanshyam Patel, the learned Government Advocate representing the State and Shri Manish Upadhyay, the learned counsel representing the 3rd Respondent.
3. The grievance is mainly with regard to the show cause notice dated 08.01.2020, a copy of which has been produced as Annexure A/2 ,issued by the Registrar under Section 53-B(2) of the Act alongwith the charge-sheet. The learned counsel for the Appellant points out that the Appellant was working as the Chief Executive Officer of the District Co-operative Bank, Durg and while so, a notice was issued to him under Section 53-B(1) instructing the Society to take appropriate action for removal of the said officer. It is the case of the Appellant that, pursuant to the notice issued by the Registrar, the matter was considered by the Society and accordingly he was inflicted with a punishment of 'censure'. After having the proceedings finalised as above, there was no need, necessity or occasion for the Registrar to pursue the matter further by invoking the power and proceedings under Section 53-B(2) of the Act. The notice issued by way of Annexure A/2 on 08.01.2020 by the Registrar with reference to Section 53-B(2) was sought to be challenged by filing the writ petition with the following prayers:

"(10.1) That, the Hon'ble Court be pleased to call the entire record pertaining to the case of petitioner from the respondent for kind perusal.

(10.2) That, the Hon'ble Court by issuing appropriate writ set aside the impugned notice dated 08.01.2020 alongwith charge sheet (Annexure P/1)

(10.3) Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted."

The scope of the said provision is stated as not properly considered by the learned Single Judge while declining interference, and hence the appeal.

4. The provision with regard to the removal intended under sub-section (1) to (3) of Section 53-B of the Act stands on a different footing and this is without prejudice to the rights and liberties of the authorities concerned to pursue such other appropriate action in accordance with law. So as to understand the scope of the provision, it will be better to have a look at the Section which is reproduced below for convenience and reference:

"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 bye-laws 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 the order 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.

(3) An officer removed under the sub-section (1) or sub-section (2) shall with effect from the date of communication of the order, cease to hold that office and if disqualified shall not be eligible to hold any office under that society for the period specified in the order.

(4) (i) If in the opinion of the Registrar any salaried officer of the co-operative society willfully and persistently violates the provisions of this Act or Rules made thereunder, bye-laws of the society or any order passed by him or has by fraudulent act caused financial loss to the society,-

(a) then he may, without prejudice to any other action that may be taken against such officer, call upon the society to take action against such officer; and

(b) whereupon the society shall, after affording reasonable opportunity of being heard to such officer, pass such order within such period as may be specified by the Registrar.

(ii) In the case of failure of the society to take action under clause (i) of sub-section (4), the Registrar may, after affording reasonable opportunity of being heard to such officer, impose such major penalty on such officer as he may deem fit.

Explanation - "major penalty" may be the order of demotion from the present post held, compulsory retirement or termination from the service."

5. The scheme of the statute clearly reveals that, if the Registrar is of the opinion that any officer has been grossly negligent in discharge of his duties imposed on him under the Act or the Rules or the Bye-laws or has indulged into any fraudulent act causing financial loss to the Society, the Registrar may without prejudice to any other action to be taken against him can call upon the Society to remove within a specified period such officer and if necessary, it may go upto the disqualification for holding 'any office' under that Society for a period of three years and it is for the Society to pass appropriate orders after hearing the officer, as it deems fit. There may be instances where the Society is reluctant to take appropriate action in terms of sub-section 1 of Section 53-B of the Act; upon which power is still vested upon the Registrar to give a notice to the officer concerned and after affording an opportunity of hearing, to remove him or disqualify for a period not exceeding three years, as mentioned above. Sub-section (3) of Section 53-B also refers to the 'removal' so caused to be effected in terms of sub-section (1) or sub-section (2).
6. Coming to sub-section (4), the course of action to be pursued is somewhat similar, but it is in respect of a different context. Here again, what matters is the 'opinion' of the Registrar and the provision clearly says that the action to be taken is without prejudice to any other action that may be taken against the officer. The failure of the Society to take action in terms of clause (i) of sub-section (4) of Section 53-B of the Act may lead to the action to be taken by the Registrar as mentioned therein who could impose major penalty on any such officer which, as per the 'explanation', may be by way of demotion from the post held, compulsory retirement or termination from the service.
7. Even a mere reading of the above provisions shows that the situation envisaged under sub-section (1) to (3) of Section 53-B of the Act is different from the

course and proceedings to be pursued under sub-section (4) of Section 53-B of the Act. We are only concerned with the action taken by the Registrar under sub-section (1) and (2) of Section 53-B of the Act. The provision clearly says that the course of action to be pursued by the Registrar for causing 'removal' of the officer concerned is not on the basis of any 'finding' on guilt to be recorded but on the basis of 'opinion' of the Registrar. This denotes the immediate organisational requirement and the inaction or lethargy, if at all any on the part of the Society, in giving effect to the instructions given by the Registrar in this regard. It is for this reason, that the power is initially given to the Society to pass orders for causing such 'removal', if such removal was necessary in the opinion of the Registrar; which is without prejudice to any other action to be taken against the officer and if the Society is reluctant to act accordingly, direct action is possible by the Registrar in terms of sub-section (2) of Section 53-B of the Act.

8. The sequence of events in the instant case clearly reflects that despite issuing necessary instructions in terms of Section 53-B(1) of the Act to the Society, no action for 'removal' of the officer concerned was taken and has virtually retained him in service in the particular post itself, but for awarding a punishment of 'censure' in respect of the misconduct. Imposing a punishment for the misconduct is different from the requirement to be satisfied in terms of Section 53-B(1) of the Act and it is for this reason, that the matter was again looked into by the Registrar, who issued a subsequent notice in terms of Section 53-B(2) alongwith the charge sheet which made the Petitioner/Appellant to rush to this Court by filing the writ petition. The position has been considered by the learned Single Judge and interference has been rightly declined. We do not require any second thought to hold that the matter finalised by the learned Single Judge is perfectly within the four walls of the law and is not assailable under any circumstances.

9. There is no merit in the appeal. It stands dismissed accordingly. It is made clear that, since order is still to be passed by the Registrar in terms of Section 53-B(2); it is open to be challenged on other grounds, if any, by way of appropriate proceedings in accordance with law, if the Appellant is aggrieved in any manner.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge