

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 698 of 2020

Reserved on : 26/02/2020

Delivered on : 03/03/2020

Koyla Karmachari Grih Nirman Evum Kalyan Sahakari Samiti Maryadit, Registered Under The Relevant Provisions Of The Chhattisgarh Cooperative Society Act, 1960 Having Its Registered Office At Lagra, Near R. T. O. Office, Bilaspur, District Bilaspur, Its Registration No. 258/Bilaspur, Dated 01.07.2006, Through Its Elected President Namely Shri Anuranjan Prasad Singh S/o Late Hanuman Singh, Aged About 53 Years, R/o Ashok Nagar, Near DLS College, Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Cooperative Societies, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh
2. Registrar, Cooperative Societies, Raipur, District Raipur, Chhattisgarh
3. Deputy Registrar, Cooperative Societies, In Front Of Collectorate, Old Composite Building, Bilaspur, District Bilaspur, Chhattisgarh
4. Joint Registrar, Cooperative Societies, In Front Of Collectorate, Old Composite Building, Bilaspur, District - Bilaspur, Chhattisgarh
5. Shikshit Swarojgar Udyog Sahakari Samiti Maryadit, Bilaspur, Through Its President Namely Jyoti Bhushan Gond, A Registered Society Registered Under The Cooperative Societies Act Having Its Registered Office At Garima Press Road, Tilak Nagar, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate.
For State	:	Mr. Amrito Dad, Addl. AG

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. The challenge in the present writ petition is to the order Annexure P-1 dated 04.01.2020. Vide the said impugned order the Joint Registrar Co-operative Societies, Bilaspur has placed the petitioner society under suspension and has initiated proceedings for supersession under Section 53.
2. Brief facts of the case relevant for adjudication of the present writ petition is that the petitioner is a Registered housing Society registered under the provisions of Chhattisgarh Co-operative Societies Act, 1960. The society was registered in the year 2006. The society was established with a goal and intention for providing plots for construction of residential houses at a reasonable rates to the employees of the Coal India Limited and one of its subsidiaries i.e. South Eastern Coal Fields Limited.
3. According to the petitioner there is no Government Share holding in the said society nor have the petitioner society received any sort of loan or financial assistance from the Government in the establishment and running of the society. Likewise, it is also the contention of the petitioner that the Government has also not given any guarantee on behalf of society.
4. According to the petitioner there is some dispute between the petitioner and respondent No.5 and respondent No.5 in turn has raised a dispute under Section 64 of the Co-operative Societies Act before the Deputy Registrar Co-operative Societies Bilaspur. The said dispute is still pending consideration before the Court of Deputy Registrar of

the Co-operative Societies. Respondent No.5 at the same time also filed a complaint to the Joint Registrar on similar allegations that he has raised in the dispute before the Deputy Registrar and Joint Registrar in turn called upon the petitioner to submit their reply and by recording the reply of the respondents to be unsatisfactory the Joint Registrar has passed the impugned order placing the petitioner society under suspension and meanwhile has appointed the Deputy Registrar Co-operative Societies Bilaspur as the Authorized Officer for running the society until further orders.

5. The primary ground of challenge made by the petitioner is that of, competency and jurisdiction of the Joint Registrar in placing the petitioner society under Suspension. According to the petitioner society the provisions of Section 53 would not be applicable upon those societies which does not have any Government share holding or loan or financial assistance and where there is also no guarantee given by the Government to the said society. According to the petitioner it is an independent society with no financial assistance whatsoever with the State Government in managing of the society either by financial assistance or by any other means. That it has its own bylaws and the Board of Directors of the said society are also elected by their own members without any interference from the State Authorities and therefore under the Second proviso to Section 53(1) one of the co-operative Societies Act, the Respondents could not have initiated supersession proceedings against the petitioners society. The contention of the petitioners all along was that there is no financial assistance received by the society whatsoever and therefore it has to

be accepted to be an independent private co-operative society and therefore the proceedings of supersession could not have been initiated by the respondents. Further contention of the petitioner also was that since the Co-operative Societies Act does not define financial assistance, therefore for assistance sake the financial assistance is defined under the Chhattisgarh Co-operatives Society (Nuksaan Ki Pratipoorti) Act of 2007 (in short 'the Act of 2007') which too would clearly reflect that the petitioner society cannot be brought among any of those co-operative society which can be termed to be a society which receives financial assistance under the Act of 2007.

6. It was further contention of the counsel for the petitioner that under no circumstances could the Joint Registrar have initiated proceedings against the petitioner society only on the complaint of the respondent No.5 with whom there is Civil dispute pending before the Court of Deputy Registrar, Co-operative Societies and before finalization of the said dispute by the Deputy Registrar no complaint whatsoever of the respondent No.5 should had been taken cognizance of by the Joint Registrar. In view of the same counsel for the petitioner prayed for quashment of Annexure P-1 the order of suspension and proceedings drawn for supersession.
7. Counsel for the petitioner relied upon the judgment of in the case of **State of Madhya Pradesh and Others Vs. Sanjay Nagayach and Others, (2013) 7 SCC 25** and **T. S. Manjunath Vs. State of Karnataka, AIR 2014 (4) KAR 653**.
8. Per contra, counsel appearing for the respondents submit that society at the time of its inception itself had taken financial assistance from the

State Government in the form of concessions and therefore the objection raised by the petitioner on the maintainability of the proceedings under Section 53 is not sustainable. Further objection that the respondent had raised is that of the petition not being maintainable on the ground of there being a statutory alternative remedy. According to the counsel for the respondent, the petitioner ought to have resorted to the remedy available under Section 78 of the Co-operative Society Act and should have raised the dispute challenging the impugned order before the Tribunal constituted in this regard.

9. According to the respondents the concessions which the petitioner establishment received was at the inception of the society itself when they had purchased land for meeting the objects and goal for which society was constituted. That the petitioner society received concession in the form of waiver of stamp duty and Court fees while executing the sale deed. The concession of waiver in the stamp duty and Court Fees at the time of purchase of land by the petitioner society was for achieving their object and goal. This obtaining of the waiver of stamp duty and Court fees is one which has to be brought within the ambit of financial assistance received by the society.
10. Thus, if the petitioners have availed the facility of waiver of stamp duty and court fees in the form of concession it cannot be said that petitioners have not received any financial assistance. According to the counsel for the respondents financial assistance can be in any form need not only in the nature of donation of loan given by the Government to the society. It also includes any sort of concession that too financial that the society has availed. The counsel for the

respondent further argued that the Act of 2007 cannot be taken into account for determining the issue of financial assistance. According to the respondent counsel the Act of 2007 is by itself an independent Act that has got nothing to do with the operation of the Co-operative Societies Act and provisions of Act of 2007 cannot be used for determining whether the petitioner society is receiving financial assistance or not.

11. Counsel for the respondent relied upon the judgment of the Supreme Court in the case of D.A.V. College Trust and Management Society & Ors. Vs. Director of Public Instructions and Ors., (2019) 9 SCC 185.

12. Having heard the contentions put forth on either side and on perusal of the record what is necessary to be appreciated at this juncture is the admitted factual position as it stands. Undisputedly, the petitioner is a Cooperative Housing Society. The basic aim and object of the Society is to provide land for construction of residential house at cheaper rate to its members. The further undisputed factual matrix of the case is that the Society for the purpose of development of the Housing Society had purchased large area of lands and these lands at the time of registration of sale deed were exempted from payment of stamp duty and court fees. The waiver of stamp duty and court fees was in accordance with the notification of the State Govt. whereby as a policy decision, it was held that the Cooperative Housing Society would be exempted from stamp duty for housing projects executed by the said Society (the Cooperative Housing Society). Based upon this waiver of payment of stamp duty and court fees enabled the petitioner Society to purchase large area of land to start the Cooperative

Housing Society and the Housing Project over the said land. Since the petitioner Society had got the land with waiver of stamp duty and court fees, the Society in turn passed the benefits to the members by providing plots at cheaper rate.

13. Counsel for the petitioner has argued that merely obtaining a waiver of stamp duty and court fees at the time of inception of the Cooperative Housing Society and which enable them to purchase some land by itself cannot be termed as financial assistance. It was the contention of the petitioner that the financial assistance would mean some occasional, periodical or regular financial assistance being provided to the Society for its management and operation.

14. What has to be ascertained is whether even the benefit or concession of waiver of stamp duty and court fees at the time of purchase of the property of the Cooperative Housing Society can be brought within the ambit of financial assistance being provided by the State or not. It would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **D.A.V. College Trust and Management Society and Ors. Vs. Director of Public Instructions and Ors.**, 2019 (9) SCC 185 wherein paragraph 26 it has been held as under:

“26. In our view, 'substantial' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast Rule can be laid down in this regard. Substantial financing can be both direct or indirect. Give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on this largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself

mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.”

15. Taking into consideration the aforesaid view of the Supreme Court if we take into account the facts of the present case where undoubtedly the petitioner Society was provided land with waiver of court fees and stamp duty required for registration of the property purchased by the said Cooperative Housing Society, it can be easily presumed that the State Govt. had provided some financial assistance to the petitioner Society for its establishment. The term financial assistance would be inclusive of any indirect financial assistance provided to the petitioner Society which in the instant case was in the form of a concession or benefit of waiver of stamp duty/court fees for the purpose of registration of the land purchased by the petitioner Society. Under the normal circumstances, a financial assistance means any type of monetary help or aid that a person, organization or government receives. The financial assistance may be in the form of guarantees, loans, cost sharing arrangement, subsidies or welfare payments, tax allowances, Govt. bailouts of struggling companies.

16. Likewise, the granting of concession in the form of waiver of court fees and stamp duties for registration of the land purchased by the petitioner Society also has to be treated as an actual extension of money which indirectly is a financial assistance provided. Thus, this Court is compelled to reach to the conclusion that the petitioner Society is one which has in fact received financial assistance from the Govt. and therefore the objection that the petitioner Society has raised

of the provisions of Section 53 of the Cooperative Society Act not being applicable upon the petitioner Society is not sustainable and the said objection stands rejected.

17. So far as the issue whether the action on the part of the respondents vide issuance of Annexure P-1 is proper, legal and justified is concerned, this Court is of the opinion that the said question is one which need to be raised and challenged by the petitioner Society availing the statutory alternative remedy available i.e. by invoking the provisions of Section 78 of the Cooperative Societies Act. In this regard, if we take into consideration the two judgments referred to by the petitioner Society, it would clearly reflect that those cases were entertained by the High Court under Article 226 of the Constitution of India only on the challenge being made on the competence and jurisdiction of the authorities initiating proceedings under Section 53 of the Cooperative Societies Act. In the instant case, this Court in the preceding paragraphs has clearly held that since the petitioner Society have received financial assistance, the objection of the respondents having lack of jurisdiction and competence stood rejected thereby the next issue whether the impugned order was proper, legal & justified or not is one which has to be challenged before the Tribunal under Section 78 of the Cooperative Societies Act.

18. Once when this Court reaches to the conclusion that the authorities concerned were competent enough and had all the jurisdiction to initiate proceedings under Section 53 of the Cooperative Societies Act, the action under Section 53 would now have to be put to

test or challenged before the Tribunal under Section 78 of the Cooperative Societies Act.

- 19.** Recently the Single Bench of this Court in WPC No. 2353/2019 had dismissed a writ petition on the ground of there being a statutory alternative remedy available vide judgment dated 20.08.2019. The said judgment was challenged by way of a writ appeal i.e. WA No. 460/2019. The Hon'ble Division Bench of this Court vide its judgment dated 14.10.2019 dismissed the appeal affirming the order passed by the Hon'ble Single Bench.
- 20.** In view of the aforesaid factual matrix of the case and the legal position as it stands so far as the objection of the competence and jurisdiction of the respondents in initiating proceedings under Section 53 of the Cooperative Societies Act is concerned, the same stands rejected.
- 21.** So far as the challenge on the merits part is concerned, this Court is not inclined to entertain the writ petition on account of there being a statutory alternative remedy available to the petitioner.
- 22.** Reserving the right of the petitioner Society to challenge the action under Section 53 of the Cooperative Societies Act before the Tribunal, the present writ petition stands rejected on both counts.

**Sd/-
(P. Sam Koshy)
Judge**