

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2958 of 2019

Reserved on 24/06/2020

Delivered on 11/02/2021

1. Sachin Singh Baghel S/o Late Sajjan Singh Baghel Aged About 62 Years R/o 65, Srishti Colony, Rajnandgaon, Chhattisgarh
2. Smt. Savitri Dwivedi W/o Shri Rajkumar Dwivedi Aged About 46 Years R/o Bramhan Para Dongargarh, District Rajnandgaon, Chhattisgarh
3. Shri Radhe Lal Sahu S/o Late Sarju Ram Sahu Aged About 56 Years R/o Village Manikchauri, Post Office Dharampur, Tahsil And District Kabirdham, Chhattisgarh
4. Shri Shashikant Dwivedi S/o Late Rajpratap Dwivedi Aged About 62 Years R/o Ward No. 05, Indira Nagar Dongargarh, District Rajnandgaon, Chhattisgarh
5. Smt. Laxmi Bai Chandrakar W/o Shri Alakhram Chandrakar Aged About 57 Years R/o Village Mohad, Post Office Mohara Ward No. 49, District Rajnandgaon, Chhattisgarh
6. Shri Mithilesh Kumar Dubey S/o Late Radhelal Dubey Aged About 55 Years R/o Village And Post Gaindatola, Block Churiya, District Rajnandgaon, Chhattisgarh
7. Shri Arun Sahu S/o Late Kirat Lal Sahu Aged About 47 Years R/o Village Kotrasarar, Post Office Jangalpur, District Rajnandgaon, Chhattisgarh
8. Shri Minesh Kumar Sahu S/o Late Nilkanth Sahu Aged About 49 Years R/o Karmtara, Post Bijetara, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh
9. Shri Sharwan Kumar Janghel S/o Late Bhagwati Prasad Janghel Aged About 38 Years R/o Village Jangalpur, Post Bundeli, Tahsil And Block Chuikhadan, District Rajnandgaon, Chhattisgarh
10. Shri Ramkrishna Chandrawanshi S/o Late Kunjbihari Chandrawanshi Aged About 58 Years R/o Village Mongra, Post Bhadsena, Ambagarh Chouki, District Rajnandgaon, Chhattisgarh
11. Shri Harsingh Purane S/o Shri Dameram Purane Aged About 52 Years R/o Village And Post Sivani, Tahsil Manpur, District Rajnandgaon, Chhattisgarh
12. Shri Guhraram Banjare S/o Shri Sekhwa Banjare Aged About 60 Years R/o Village Aamgaon, Post Sahaspur Lohara, District Kawardha, Chhattisgarh

13. Shri Surje Ram Dewangan S/o Late Lakhan Lal Dewangan Aged About 59 Years R/o Village And Post Medha, Police Station And Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Co Operative Department, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh
2. Registrar, Co Operative Society Chhattisgarh, Block 3, 2nd And 3rd Floor, Indrawati Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh
3. Reserve Bank Of India, Reserve Bank Of India, 16th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai
4. Jila Sahkari Kendriya Bank Maryadit, Rajnandgaon, Through Its Chief Executive Officer, District Rajnandgaon, Chhattisgarh
5. Collector, District Rajnandgaon, Chhattisgarh
6. National Bank For Agriculture And Rural Development, Plot C 24, G Block, Bandra Kurla Complex, B K C Road, Bandra East, Mumbai, Maharashtra
7. Deputy Registrar, Co Operative Society, Rajnandgaon, District Rajnandgaon, Chhattisgarh

---Respondents

AND

WPC No. 636 of 2020

1. Sachin Singh Baghel S/o Late Shri Sajjan Singh Baghel Aged About 62 Years R/o 65 Shrishti Colony, District Rajnandgaon Chhattisgarh
2. Smt. Savitri Dwivedi W/o Shri Rajkumar Dwivedi Aged About 46 Years R/o Brahman Para, Dongargarh, District Rajnandgaon Chhattisgarh
3. Shri Radhe Lal Sahu S/o Late Shri Sarju Ram Sahu Aged About 56 Years R/o Village Manikchauri, Post Office Dharampur, Tehsil And District Kabirdham Chhattisgarh
4. Shri Shashikant Dwivedi S/o Late Rajpratap Dwivedi Aged About 62 Years R/o Ward No. 05, Indira Nagar Dongargarh, District Rajnandgaon Chhattisgarh.
5. Smt. Laxmibai Chandrakar W/o Alakhram Chandrakar Aged About 57 Years R/o Village Mohad , Post Office Mohara, Ward No. 49, District Rajnandgaon Chhattisgarh

6. Shri Mithilesh Kumar Dubey S/o Shri Late Radhelal Dubey Aged About 55 Years R/o Village And Post Gendatola , Block Chhuriya, District Rajnandgaon Chhattisgarh
7. Shri Arun Sahu S/o Late Kirat Lal Sahu Aged About 47 Years R/o Village Kotrasarar , Post Office Jangalpur , District Rajnandgaon Chhattisgarh.
8. Shri Minesh Kumar Sahu S/o Late Nilkanth Sahu Aged About 49 Years R/o Village Karamtara, Post Bijetara, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh
9. Shri Shrawan Kumar Janghel S/o Late Bhagwati Prasad Janghel Aged About 38 Years R/o Village Jangalpur , Post Bundeli, Tahsil And Block Chhuikhadan, District Rajnandgaon Chhattisgarh
10. Shri Ramkrishna Chandrawanshi S/o Late Kunjbihari Chandrawanshi Aged About 58 Years R/o Village Mongra Post Bhadsena, Ambagarh Chauki, District Rajnandgaon Chhattisgarh
11. Shri Harsingh Purane S/o Shri Dameram Purane Aged About 52 Years R/o Village And Post Sivani, Tahsil Manpur , District Rajnandgaon Chhattisgarh.
12. Shri Guhraram Banjare S/o Shri Sekhwa Banjare Aged About 60 Years R/o Village Aamgaon, Post Sahaspur Lohara, District Kawardha Chhattisgarh.
13. Shri Surje Ram Dewangan S/o Late Lakhan Lal Dewangan Aged About 59 Years R/o Village And Post Medha , Police Station And Tahsil , Dongargarh, District Rajnandgaon Chhattisgarh

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through The Secretary Co- Operative Department Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur , District Raipur Chhattisgarh
2. Registrar Cooperative Societies, Chhattisgarh , Block 3, 2nd And 3rd Floor Indrawati Bhawan, Atal Nagar Naya Raipur , District Raipur Chhattisgarh.
3. Reserve Bank Of India Reserve Bank Of India, 16th Floor, Central Office Building , Shahid Bhagat Singh Marg, Mumbai - 400001.
4. Jila Sahakari Kendriya Bank Maryadit Rajnandgaon Through Its Chief Executive Officer, District Rajnandgaon Chhattisgarh.
5. Collector District Rajnandgaon Chhattisgarh.
6. National Bank For Agriculture And Rural Development Plot C-24, G Block, Bandra Kurla Complex , Bkc Road, Bandra East, Mumbai Maharashtra , 400051.

7. Deputy Registrar Cooperative Society, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---Respondents

For Petitioners	:	Mr. Prafull N. Bharat, Advocate
For State	:	Mr. Amrito Das, Additional A.G.

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. Since the issue involved in both the writ petitions were common i.e. the order of suspension of the petitioners, both the writ petitions have been taken up for hearing together and are being disposed of by a common order.
2. As regards WPC No. 2958/2019 is concerned, since the six months period during which the suspension order dated 03.08.2019 would remain valid has expired and the respondents have subsequently passed a fresh order on 03.02.2020, the writ petition WPC No. 2958/2019 as such has rendered infructuous. Accordingly, the said writ petition WPC No. 2958/2019 is dismissed as having become infructuous.
3. Now this Court would like to proceed to decide WPC No. 636/2020. Challenge in the present Writ Petition is to the Order dated 3.2.2020 whereby the State Government has for the second time suspended the Board of Directors of the Jila Sahakari Kendriya Bank Maryadit, Rajnandgaon and the Respondents have also appointed a Management Committee to look after the functioning of the said Bank.

4. Facts of the case in nutshell are that, Petitioner No.1 is the President/Chairman of the Jila Sahakari Kendriya Bank Maryadit, Rajnandgaon and the other Petitioners all of them are the members of the Board of Directors. All the Petitioners were elected members of the Board of Directors elected in an election that was held in the month of May, 2016 and the Petitioners thereafter took charge of their respective assignments with effect from 6.6.2016. The tenure of Petitioners from the election that was held in 2016 was for a period of 5 years. From June, 2016 onwards, the Petitioners have been discharging their duties without any complaint from any corner so far as their functioning is concerned.
5. Respondents however issued a show cause notice to the Petitioners on 10.7.2019 under Sub-section 2 of Section 53 of the Chhattisgarh Cooperative Societies Act, 1960 (hereinafter referred to as, "the Act of 1960"). The show cause notice was issued alleging that the Board of Directors were unable to discharge their duties and were performing in a manner detrimental to the interest of the members of the Bank thereby calling an explanation as to why they should not be removed or superseded. To the said Show Cause Notice, the Petitioners submitted their detailed reply in respect of each of the allegations. Subsequently, the Respondents issued an Order dated 3.8.2019 suspending the Board of Directors and appointed a Management Committee under the District Collector, Rajnandgaon.
6. The said Order dated 3.8.2019 was subjected to challenge by way of WPC No.2958/2019. When the said Writ Petition came up for

hearing on admission, this Court vide an Interim Order dated 29.8.2019 ordered that no order of supersession shall be carried out by the Respondents till the pendency of the Writ Petition or the period of suspension, whichever is earlier. Since the Government can place the Board of Directors of a Bank under suspension only for a maximum period of 6 months, as a natural consequence, since the Board was not superseded in between, after a period of 6 months the Board would have automatically got reinstated. It is here that the Respondents have issued a fresh order of suspension dated 3.2.2020 for a further period of 6 months, which is under challenge in the present Writ Petition. As has been mentioned earlier since a fresh order dated 03.02.2020 has been issued the said writ petition has since become infructuous. The order dated 03.02.2020 has been challenged by way of a fresh petition i.e. WPC No. 636/2020.

7. Challenge to the impugned Order dated 3.2.2020 is on the ground that the action on the part of the Respondents is wholly arbitrary, malafide and is also without any justified and cogent reasons.
8. According to learned Counsel for Petitioners, since there was an interim order passed in WPC No. 2598/2019 to the extent of restraining the Respondents from supersession of the Board, the authorities could not have again placed the body under suspension vide Order dated 3.2.2020. Since there was no order of suspension passed in between, the Petitioners ought to have restored back as the Directors of the said Cooperative Bank and the impugned second order of suspension is thus wholly illegal and without any

basis. Further contention of learned Counsel for Petitioners also is that the said authorities have totally ignored the reply that the Petitioners have submitted to the first Show Cause Notice whereby there was a categorical explanation given to each of the charges/allegations. It was also the contention of learned Counsel for Petitioners that the plain reading of allegation would establish that major portion of the allegations or the charges levelled against the Petitioners were of a period prior to the Petitioners' took charge as the Directors from the present election that was held in 2016, and therefore, the present Board of Directors cannot be held liable for the alleged misconduct or irregularities, if any, committed by the erstwhile body. It was further contended that the request of the Petitioners' supersession made by the State authorities to Reserve Bank of India (in short, "RBI") as per the requirement of Section 53 of the Act of 1960 also did not found favour with the State authorities as the RBI had clearly turned down the request of supersession sought by the State authorities. Further, from the plain reading of the two orders of suspension, dated 3.8.2019 and dated 3.2.2020, would clearly reveal that the action on the part of Respondents was predetermined malafide action without any cogent and strong charges or grounds nor has it been taken on the basis of any substantial evidence. Next contention was that most of the charges were of a period prior to the Petitioners' took charge from the present election that was held in 2016 and as regards other charges those were so trivial that they did not call in for invoking the provisions of Section 53 of the Act of 1960. Learned Counsel for

Petitioner has in support of their contentions relied upon the decision made in the case of “**State of Madhya Pradesh & Others v. Sanjay Nagayach & Others**” reported in **2013 (7) SCC 25**.

9. Opposing the Writ Petition, learned State Counsel at the outset questioned the maintainability of the Writ Petition itself on the ground of there being efficacious, statutory remedy available under Section 78 of the Act of 1960. Learned State Counsel in between placed the reliance upon the order of the Division Bench passed in WPC No. 2353/2019 to substantiate their contentions of the Writ Petition being not maintainable on the ground of availability of an alternative remedy.
10. According to learned State Counsel, there is no requirement of a consensus or concurrence of the RBI for superseding the Society under Section 53 of the Act of 1960. Learned State Counsel submits that if the challenge is only to the suspension order, under the circumstances the Petitioners cannot question the veracity of the allegations with the charges levelled. Learned State Counsel further submitted that the action on the part of the Respondents is well within the powers conferred upon the authorities and that the challenge is not questioning the lack of competence or the authority. According to learned State Counsel, the impugned order is only an order issued exercising the powers under Section 53 (10) of the Act of 1960 wherein the *Proviso* to Section 10 of Section 53 clearly empowers the State authorities to take such a decision.

11. Having heard the contentions put forth on either side and on perusal of records, undoubtedly, the Petitioners were placed under suspension on two occasions; firstly on 3.8.2019 when they were suspended for the first time and, secondly, vide order dated 3.2.2020 that is the impugned order in Writ Petition WPC No. 636/2020 by which the Petitioners were again put under suspension.
12. Another admitted factual matrix as it stands is the fact that the earlier order of suspension was subjected to challenge by way of WPC No. 2958/2019. This Court while hearing the said Writ Petition on 29.8.2019, as an interim measure restrained the Respondents from issuing order of supersession till the next date of hearing. By efflux of time, six months period got over. Since no order of supersession was taken within the first six months, the suspension proceeding automatically lost its efficacy. Realising this, the State authorities for the second time issued the impugned order of suspension dated 03.02.2020 on the same set of facts and on the same set of allegations.
13. What needs to be appreciated at this juncture is that though the Show Cause Notice was issued at the first instance on 10.7.2019 before placing the Petitioners under suspension but there does not seem to be any further development that have transpired thereafter. No decision as such has been taken on the reply that the Petitioners have submitted to the Show Cause Notice either on the affirmative or on the negative to the explanation so provided. Another fact which needs consideration at this juncture is that without making any

further development on the Show Cause Notice dated 10.7.2019 and the subsequent reply provided by the Petitioners, they have again placed the Petitioners under suspension.

14. It would be relevant at this juncture to refer to Section 53 of the Act of 1960, which is reproduced herein below:-

“53. Supersession of committee.

53 (1) If, in the opinion of the Registrar, the committee of any society,-

(a) is negligent in the performance of the duties imposed on it by or under this Act or bye-laws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties; or

(b) commits acts which are prejudicial to the interests of the society or its members; or

(c) violates the provisions of this Act or the rules made thereunder or byelaws of the society or any order passed by the Registrar;

the Registrar may, by order in writing, remove the committee and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance;

Provided that in case of a Co-operative Bank, the order of supersession shall not be passed without previous consultation with Reserve Bank;

Provided further that if no communication containing the views of the Reserve Bank of India, on action proposed is received within forty-five days of the receipt by that Bank of the request soliciting consultation, it shall be presumed that the Reserve Bank of India agrees with the proposed action and the Registrar shall be free to pass such order as may be deemed fit;

Provided also that in case of a Co-operative bank, if so required by the Reserve Bank in the public interest or for preventing the affairs of the Co-operative Bank being conducted in a manner, detrimental to the interest of the depositors or for securing the proper management of a Co-operative Bank, the Registrar shall pass an order for the supersession of its committee or managing body by whatever name called and for appointment of an Administrator therefore for such period or periods not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank and on such appointment, the provisions of subsection (4), (5), (6) and (8) shall apply as if orders were passed under sub-section (1);

Provided also that if a non-official is appointed in the committee of a primary society, he shall be from amongst the members of that society, entitled for such representation and in case of Central or Apex society, if a person is appointed in the committee of such society, he shall be a member of one of its affiliated societies entitled for such representation.

(2) No order under sub-section (1) shall be passed unless a list of allegations, documents and witnesses in support of charges leveled against it has been provided and the committee has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

(3) The period specified in the order under sub-section (1) may, at the discretion of the Registrar, be extended, from time to time;

Provided that No such order shall remain in force for more than three years in the aggregate.

(4) The person or persons so appointed, shall subject to the control of the Registrar and to such instructions as he may, from time to time, give, have power to exercise all or any of the powers and to discharge all or any of the functions of the committee or of any officer of the society, and to take all such actions, as may be required in the interest of the society.

(5) The Registrar may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

(6) The person or persons so appointed shall, before the expiry of the period of his or their appointment, arrange the constitution of a new committee in accordance with the bye-laws of the society.

(7) Before taking action under sub-section (1) in respect of a financing Bank or in respect of a society indebted to a financing bank, the Registrar shall consult, in the former case, the Chhattisgarh State Co-operative Bank Limited and, in the latter case, the financing bank concerned, regarding such action. If the Chhattisgarh State Co-operative Bank limited or the financing bank, as the case may be, fails to communicate its views within forty five days of the receipt by such bank of the request soliciting consultation, it shall be presumed that the Chhattisgarh State Co-operative Bank Limited, or the financing bank concerned, as the case maybe, agreed with the proposed action.

(8) Notwithstanding anything contained in Section 48,49 and 50, if there is a difference of opinion between the general body of society and the person or persons appointed under sub-section (1) in respect of any matter, it shall be referred to the Registrar for decision and his decision thereon shall be final;

Provided that if the Registrar fails to take any decision within three months of the general body meeting, the decision of the general body of the society shall prevail.

(9) Nothing in this section shall be deemed to affect the power of the Registrar to direct the winding up of the society.

(10) During the period between the issuance of notice and the passing of an order removing the committee, the committee may be required by the Registrar to function under the supervision, and with the approval of such authority as the Registrar may specify in this behalf and no order made or resolution passed or any other act performed by the committee, shall be effectual unless it is approved by such specified authority;

Provided where the Registrar, while proceeding to take action under sub-section (2), is of the opinion that the supersession of the committee during the period of proceeding is necessary in the interest of the society he may suspend the committee, which shall thereupon cease to function and make such arrangement as he thinks fit, of the affairs of the society till the proceedings are completed and order issued under sub-section (1);

Provided further that the period of suspension shall not exceed six months and on the expiry of said period the suspension of the Committee shall stand revoked.

Provided also that, if the committee so suspended, is not superseded after undergoing the proceeding mentioned above, it shall be re-instated and the period during which it has remained suspended shall not count towards its term.

Provided also that no order of suspension shall be made unless the committee of the society has been given a reasonable opportunity of being heard.

(11) Notwithstanding anything contained in this Act, the Registrar shall, in case of Central Co-operative Banks, Urban Co-operative Banks and District Cooperative Agriculture and Rural Development Banks, if the recovery continuously in three financial years is less than 65 per cent of the demand or if the overdues exceed 40 per cent, pass an order for removal of the committee or the Managing Committee by whatever name it is called of the Bank and for appointment of an administrator therefor for such period or periods not exceeding five years in the aggregate, as may be specified by the Registrar and on such appointment, the provisions of sub-section (4),(5) and (6) shall apply thereto as if an order was passed under sub-section (1);

Provided that no such order shall be made unless the committee has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it is considered.

12) When a committee of a society has been superseded under sub-section (1) any member of the committee, notwithstanding anything contained in this Act, rules made thereunder or byelaws of the society, shall not be eligible for contesting the election as a member of the committee nor he shall be eligible for co-option or nomination in that society for a period of seven years;

Provided that nothing in this sub-section shall apply to a member of the committee of a society who was not a party to such decision of the committee which led to the supersession of it.

(13) Notwithstanding anything contained in this Act, or rules made thereunder or byelaws of society, if the committee of society ceases to function due to order of any Court or otherwise, the Registrar may appoint a person or committee of persons temporarily till the Court order is vacated or the new elections are held and the committee takes charge.”

15. Plain reading of the aforesaid provisions would clearly reflect that the Registrar could have placed the body under suspension only invoking the *Proviso* to Sub-section 10 of Section 53. The second *Proviso* to Sub-section 10 clearly envisages that the period of suspension shall not exceed six months. It is all the more necessary to take note of the fact that the fourth *Proviso* to Section 10 provides that no order of suspension shall be made unless the Board of Directors of the Society, that is the Petitioners herein, have been given a reasonable opportunity of being heard.
16. What also needs to be appreciated at this juncture is that the order of suspension under challenge in the present Writ Petition is that which was issued on 3.2.2020. Now, as per the *Proviso* to Sub-section 10 of Section 53, the Registrar has the power to place a Society under suspension. However, at the same time, the provisions also further in the second *Proviso* to Sub-section 10, clearly stipulates that the suspension can be only for a period of six months and not beyond that. Likewise, what has also to be appreciated is the third *Proviso* to Sub-section 10 which further in very categorical terms has laid down that in the event if the Board so suspended is not superseded within the six months' time, the

consequences would be, that the Board has to be reinstated and the period of suspension shall not be counted towards its terms.

17. Now, in the instant case, the second order of suspension was issued on 03.02.2020 and moreover there was no interim order in favour of the Petitioners against the suspension and as such there was no any impediment for the Respondents to proceed with the proceedings under Section 53 of the Act of 1960 so far as superseding is concerned. Though the six months' period has lapsed from the date of suspension, it has been learnt that the Board has not been superseded till now.
18. What has to also to be appreciated is that after the first suspension order dated 10.07.2019 being passed, the High Court vide interim order dated 29.08.2019 had restrained the government from passing an order of supersession. This interim order operated for more than 6 months and the writ petition WPC No. 2598/2019 also being pending the respondent-State without leave of the Court or getting the interim order dated 29.08.2019 vacated passed the second suspension order dated 03.02.2020. This action of the respondent was firstly to circumvent the interim order passed by this High Court in WPC No. 2958/2019 and secondly they wanted to take action of supersession against the petitioners. What also needs highlighted at this juncture is that though there was an interim application on behalf of the petitioners against the second suspension, but this High Court did not grant any interim relief to the petitioner. This in other word

means that the respondents were free to proceed with the proceedings of supersession.

19. Given the aforesaid factual matrix of the case and the legal provisions as it stands, this Court is of the opinion and also reached to the conclusion that now that the subsequent period of six months also have lapsed and the respondents authorities have not proceeded further with the super-session proceedings, this Court is of the opinion that pursuant to the second proviso to sub-section 10 of section 53, the order of suspension would automatically stand revoked and further in terms of the third proviso to sub-section 10 of section 53 the Board would automatically stand reinstated and the period of suspension in terms of the aforementioned statutory provisions would not be counted towards the tenure/term of the Board. The respondents are accordingly directed to ensure due compliance of the second and third proviso of sub-section 10 of section 53, so far as the Board is concerned forthwith without any further delay.

20. The writ petitions accordingly would stand disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved