

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 264 of 2021**

**(Arising out of order dated 31-08-2021 passed by the learned
Single Judge in WPC No. 3478 of 2021)**

1. Sushil Kumar Agrawal S/o Ramdas Agrawal Aged About 51 Years
Vice President (State) Chhattisgarh Chamber of Commerce and
Industries, R/o Ward No. 08, Chandni Chowk, Raigarh
Chhattisgarh.
2. Shakti Agrawal S/o Pramod Kumar Agrawal Aged About 32 Years
General Secretary, Chhattisgarh Chamber of Commerce and
Industries, R/o House No. 127/01, Ward No. 19, Ravishankar
Shukl Market, Infront of Townhall, Raigarh Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Department of
Commerce And Industries, Mahanadi Bhawan, Mantralaya, New
Raipur District Raipur Chhattisgarh.
2. Registrar Firms and Societies Chhattisgarh Indrawati Bhawan,
Block-1, Third Floor, Atal Nagar, Raipur District Raipur
Chhattisgarh.
3. Chhattisgarh Chamber of Commerce Through Its President Shri
Amar Parwani, Ch. Devilal Vyapar Udyog Bhawan, 2nd Floor,
Bombey Market, Raipur Chhattisgarh.
4. Amar Parwani President, President Ch. Devilal Vyapar Udyog
Bhawan, 2nd Floor, Bombay Market, Raipur Chhattisgarh.

---- Respondents

For Appellants	:	Shri Varun Sharma, Advocate.
For Respondents/State	:	Shri Chandresh Shrivastava, Dy. Advocate General.

Hon'ble Shri Prashant Kumar Mishra, Ag. Chief Justice
Hon'ble Shri Naresh Kumar Chandravanshi, J.

Judgment on Board

By

Hon'ble Shri Prashant Kumar Mishra, Ag.Chief Justice.

09/09/2021

1. Heard.
2. Short question arising in this writ appeal is whether an application under Section 32 of the Chhattisgarh Societies Registrations Adhiniyam, 1973 can be entertained by the Registrar even when the application does not constitute the majority of the members of the governing body of the society and such members are not less than 1/3 of the total number of the members of the society.
3. The writ petition before the Single Bench was preferred to direct the Registrar to make an enquiry into the alleged complaints contained in the application moved by the petitioners.
4. Learned Single Judge has dismissed the writ petition on the ground that petitioners neither constitute majority nor their number are not less than 1/3 of the total number of the members, therefore, the application itself was not maintainable, therefore, this Court cannot direct Registrar to consider the application made by the petitioners to comply with Section 32 to make an enquiry on its own motion.
5. Section 32 of the Adhiniyam is reproduced hereunder for ready reference.

“32. Enquiry and settlement of disputes. -

(1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on [the application together with an affidavit in support of its contents] of-

(a) a majority of the members of the governing body of the society; or

(b) not less than one-third of the total number of members of the society.

(3) The Registrar or the person authorised by him under sub-section (1) shall for the purpose of an enquiry under this section have the following powers, namely :-

(a) he shall at all times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, if they relate to the head office of the society at any place at the headquarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

(b) he may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof or in his own office and may examine such person on oath; and

(c) (i) he may notwithstanding any regulation or bye-laws specifying the period of notice for a general meeting of the society, require the officers of the society to call a general meeting of the society at such time at the head office of the society or at any other place at the headquarter of the society and to determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the regulations or bye-laws of the society and its proceedings shall be regulated by such bye-laws.

[(4) When an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society and may issue appropriate directions to the society, which shall be binding on all parties concerned.]”.

6. The provision contained under Section 32, as produced above, would manifest that the Registrar can make an enquiry on its own motion or on the application by the required majority or by the persons who are not less than 1/3 of the total number of

members of the society. Admittedly, petitioners are not covered within the sweep of sub section (2) of Section 32, however, when the power conferred on the Registrar is to make an enquiry on its own motion also, the said power can be exercised by the Registrar as is conferred on him under Section 32 (1) of the Adhiniyam. If materials are placed before the Registrar, inviting him to invoke his jurisdiction under sub Section (1), it cannot be said that since the petitioners do not constitute the required number, the application is not maintainable. When the power is conferred to make an enquiry on its own motion, the same would be sufficient enough to take cognizance in the matter and proceed further. If the provision is taken otherwise, an enquiry can never be made because the majority of the member of the society or such numbers which is not less than 1/3 of the member, would never want an enquiry into the affairs of the society and more so when it concerns financial irregularities.

7. In the matter of **Muslim Co-operative Bank Ltd. v. Assistant Registrar of Co-operative Societies** the Karnataka High Court while dealing with the powers of the Registrar under Section 25 of the Karnataka Societies Registration Act, 1960 with regard to powers to initiate enquiry suo motu or on requisition pointed out distinction & requirement as under:-

“6. As far as the exercise of suo motu powers is concerned, under what circumstances it should be exercised it left to the Registrar himself under the Societies Act as also under the Act. He could do so in whatever manner he gets information if he considers the information sufficient to institute an enquiry into the affairs of the Society or a Co-operative Society, as the case may be, the Registrar concerned has the power to institute an enquiry under Section 25 of the Societies Act in the case of a society and Section 64(1) of the Act in the case of a Co-operative Society, if the Registrar is satisfied that sufficient basis is made out in

such written representation. Such is the suo motu power conferred on the Registrar of Societies under Section 25(1) of the Societies Act and on the Registrar of Co-operative Societies under Section 64(1) of the Act. Therefore, the fact that the Registrar has referred to the complaint made by a member in the order instituting the enquiry is no ground to hold that the Registrar had not acted suo motu. Naturally for exercise of suo motu powers also, there must be some source of information for the Registrar to do so. Such information may come to the Registrar of the Societies or the Registrar of Co-operative Societies, during his inspection of a Society or a Co-operative society as the case may be or by any other means including a written complaint by a member. For these reasons with great respect, we are unable to agree with the view expressed by Puttaswamy, J., in the case of Mahila Seva Samaj that if a Registrar institutes an enquiry on the basis of a complaint submitted by members who do not constitute either fifty per cent of the governing body members or one third of the members of the society, the enquiry instituted is illegal, and that his power to institute enquiry suo motu must be exercised without reference to any complaint by any member or members who do not fulfill the requirement prescribed under Section 25."

8. Considering that the application is still pending before the Registrar, we dispose of the writ appeal directing the Registrar to proceed to invoke powers under Section 32 (1) and make an enquiry in accordance with law. Let the same be initiated within one month from the date of receipt of copy of this order and thereafter, it be conclude within next six months. Needless to say, the Registrar shall afford proper opportunities of hearing to all the effected parties.

9. Accordingly, the present writ appeal is disposed off.

SD/-

(Prashant Kumar Mishra)
Acting Chief Justice

SD/-

(N.K. Chandravanshi)
Judge

Amardeep