

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4083 of 2021**

Preetpal Belchandan S/o Late Budhar Lal Aged About 58 Years R/o Village Tirga, Tahsil and District Durg Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Department, of Cooperative Affairs, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Registrar Cooperative Societies, Chhattisgarh, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh.
3. Joint Registrar Cooperative Societies Durg, Division, Durg Office At Bunkar Sangh Bhawan Station Road, Santra Badi, District Durg Chhattisgarh.
4. Vinod Kumar Bunkar the then Deputy Registrar Cooperative Societies, Durg, District Durg Chhattisgarh.
5. Vishwadeep Mahobe (Assistant Registrar) Present Incharge Deputy Registrar, Cooperative Societies Mahasamund, District Mahasamund Chhattisgarh.
6. A.K. Singh Senior Cooperative Inspector Office at Deputy Registrar, Cooperative Societies, Durg, District Durg Chhattisgarh. ---

Respondents**WPC No. 4122 of 2021**

1. Smt. Baneej Bai Kosma W/o Bhaduram Kosma Aged About 46 Years R/o Village Matri, Tahsil Daundilohara, District Balod Chhattisgarh
2. Neelchand Divya S/o Umed Das Divya Aged About 50 Years R/o Village Bhopsara, Post Ghursena Tahsil Navagarh, District Bemetara Chhattisgarh
3. Ramakant Dwivedi S/o Late Abhayram Aged About 56 Years R/o Shivpara, Durg District Durg Chhattisgarh
4. Vyas Narayan Dewangan S/o Late Kaliram Dewangan Aged About 58 Years R/o Village And Post Patan, Tahsil Patan, Durg District Durg Chhattisgarh
5. Rewaram Rawte S/o Sanatram Rawte Aged About 46 Years R/o Village Bharritola, Tahsil Daundi, District Balod Chhattisgarh
6. Jaiprakash Chandrakar S/o Late Guharam Chandrakar Aged About 52 Years R/o Village Borway, Tahsil Patan, District Durg Chhattisgarh
7. Smt. Shanti Bai Verma W/o Tijaruram Verma Aged About 72 Years R/o Ward No. 02, Patelpara, Bansa, Kusmi, Tahsil Berla, District Bemetara Chhattisgarh

8. Smt. Jaishree Deshmukh W/o Cheman Kumar Aged About 45 Years R/o Ward No. 10 Suregaon, District Balod Chhattisgarh
 9. Gorelal Chandrakar S/o Late Thelauram Aged About 58 Years R/o Village Gopalpur, Thankhamariya, District Bemetara Chhattisgarh
 10. Chumman Lal Sahu S/o Gairduram Sahu Aged About 55 Years R/o Village Bhothali, Tahsil Gurur, District Balod Chhattisgarh
 11. Pramod Gandhi S/o Late Laxmi Narayanji Gandhi Aged About 44 Years R/o Sadar Road, Bemetara, District Bemetara Chhattisgarh
 12. Khemlal Sahu S/o Sunder Lal Aged About 61 Years R/o Bhatgaon Kalangpur, District Balod Chhattisgarh
 13. Shiv Kumar Chandrakar S/o Shri Pusauram Chandrakar Aged About 61 Years R/o Prem Sagar Chowk, Baigapara, Durg District Durg Chhattisgarh
- Petitioners**

Versus

1. State of Chhattisgarh through The Secretary, Department of Cooperative Affairs, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Registrar Cooperative Societies, Chhattisgarh Indravati Bhawan, Naya Raipur District Raipur Chhattisgarh
3. Joint Registrar Cooperative Societies Durg, Division Durg Office at Bunkar Sangh Bhawan, Station Road, Santra Badi, District Durg Chhattisgarh
4. Vinod Kumar Bunkar, the then Deputy Registrar, Cooperative Societies Durg, District Durg Chhattisgarh
5. Vishwadeep Mahobe (Assistant Registrar) Present In-charge Deputy Registrar, Cooperative Societies Mahasamund, District Mahasamund Chhattisgarh
6. A. K. Singh Senior Cooperative Inspector Office at Deputy Registrar, Cooperative Societies Durg, District Durg Chhattisgarh

--- Respondents

For the Petitioners : Mr. B.P. Sharma, Advocate with Manish Upadhyay, Advocate.

For the State-Respondents: Mr. Alok Bakshi, Addl. Advocate General with Mr. Anish Tiwari, Govt. Advocate and Mr. Gagan Tiwary, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.10.2021

Heard.

1. Since the facts of the case and issue involved in WPC No. 4083/2021 and WPC No. 4122 /2021 are almost similar, they are decided together.
2. Both the petitions have been filed to quash the proceeding initiated pursuant to the summons/notice issued on 22.09.2021 (Annexure P-1) under Section 58-B of ***The Cooperative Societies Act 1960 (for short “The Act of 1960”)***. In WPC No.4083/2021, prayer was also made to quash the show cause notice dated 22.09.2021 (Annexure P-8) in addition to the proceedings under summons dated 22.09.2021 (Annexure P-7).
3. Learned counsel for the petitioners would submit that the petitioner Preetpal Belchandan in earlier round of litigation filed a petition before this Court with prayer to hold the election on the ground that the tenure period of 5 years of earlier elected body has already passed on 11.06.2020 and no election of the Primary Societies is being held, which otherwise would be necessary for election of the secondary Society. This Court in W.A.No.404/2020 (Annexure P-11) has directed the Secretary, State Cooperative Election Commission, Raipur (respondent no.2 therein) to complete the process of election within a further period of 3 months from the date of receipt of the order dated 09.12.2020. He would submit that subsequently MCC No.34/2021 was filed by the State Cooperative Election Commission wherein further 3 months time was granted to finalize the election. On the same ground of challenge, SLP No.1425/2021 preferred before the Supreme Court was also dismissed as the time was already granted by this Court to conduct the election. He would submit that after the contempt proceedings were drawn on 04.04.2021 (Annexure P-14) the election process has been commenced which would start from 03.12.2021 and eventually would

end on 06.12.2021.

4. It is further contended by the petitioners that in the meanwhile in order to stop the petitioners to contest the election, an FIR was lodged by Annexure P-4 on different grounds that the petitioners have committed irregularities in between 08.04.2014 to 12.05.2020, which was subject of challenge before this Court in W. P (Cr). No.210/2021 wherein interim orders were passed on 12.05.2021 and it was observed that no coercive steps shall be taken against the petitioner Preetpal Belchandan. However, again summons have been issued on 22.09.2021 (*Annexure P-7*) with certain allegations and another notice under section 19-B has been issued on 22.09.2021. It is submitted that both the notices are tainted with malice as the finding adverse to the petitioners is already arrived at the behest of the Collector, therefore, mere formalities would be done while conducting the enquiry and every effort is made to stop the petitioners to contest the election. Therefore, both the notices Annexure P-7 & Annexure P-8 being malice in fact and law are required to be quashed.
5. Per contra, learned State Counsel submit that the notice (*Annexure P-7*) is issued under section 58-B for recovery which is a procedure for making good the losses caused to the Society by the act of the member, for which, the hearing is required to be made and further the notice u/s 19-C (2) is issued on the other allegation, for which, the petitioner has every right to reply. Learned State Counsel further submits that serious allegations have been attributed to the petitioners and therefore the enquiry which is contemplated cannot be stopped.
6. Perused the documents filed along-with the petitions. Two notices are under challenge in WPC No.4083/2021. One is u/s 58-B and another notice is u/s 19(c) sub-section (2) of the Cooperative Societies Act. Section 58-B is a procedure for making good the

losses caused to a Society which contemplates that notwithstanding anything contained in the Act or Rules or bye-laws of the Society, where the State Government has contributed to its share capital or has given financial assistance and during the enquiry if it is found that any person who was entrusted with organisation or management of the Society has caused loss then the recovery could be made. However, before such recovery, no enquiry shall be instituted unless the person is given a reasonable opportunity of hearing. Section 58-B (2-A) contemplates that after the enquiry is concluded, if it is held that the person who is held liable for causing loss to the Society would not be eligible to contest the election in any manner for a period of 6 years from the date of communication of the order. Likewise, section 19-C(2) is on the subject issue that notwithstanding anything contained in the Act or Rules or bye-laws of the Society where the Registrar is of the opinion that it is desirable to expel a member from the society for indulging in any of the activities specified in sub-section (1), he may call upon such member and Society to explain within a period to be specified by him, why such member should not be expelled from the Society.

7. Along with show cause notice dated 22.09.2021 (Annexure P-7) the allegations are also attached which include the allegation of financial loss. Like wise in the notice u/s 19(1)(2) (Annexure P-8) certain financial anomalies are attributed. Therefore, the petitioners at this stage would be well within their right to reply and explain their defence before the authority. Simply because of the fact that the petitioner(s) presume that prejudice would be caused to him for the reason that at his behest, the elections were ordered and he may be elected and he is being stopped to contest the election, that presumption cannot be a reason to stop any enquiry which is statutory under Act of 1960. At this stage, if the enquiry itself is

stopped, it would amount to strangle the entire process of a fact finding and the presumption or prejudice cannot be allowed to hold the sway in favour of the petitioner(s).

8. Under the circumstances, I do not find any merit to admit the petitions. Therefore the petitions filed against the show cause notice are dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**

Rao