

HIGH COURT OF CHHATTISGARH, BILASPURWrit Appeal No.330 of 2021*{Arising out of order dated 6-10-2021 passed by the learned Single Judge
in W.P.(C)No.4083/2021}*

Preetpal Belchandan, S/o Late Budhar Lal, aged about 58 years,
R/o Village Tirga, Tahsil & District Durg

(Petitioner)
---- Appellant

Versus

1. State of Chhattisgarh, through Secretary, Department of Co-operative Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur
 2. Registrar, Cooperative Societies Chhattisgarh, Indiravati Bhawan, Naya Raipur, District Raipur.
 3. Joint Registrar, Cooperative Societies, Durg, Division Durg, Office at Bunkar Sangh Bhawan, Station Road, Santra Badi, District Durg.
 4. Vinod Kumar Bunkar, the then Deputy Registrar, Cooperative Societies, Durg, District Durg (C.G.)
 5. Vishwadeep Mahobe (Assistant Registrar), present incharge Deputy Registrar, Co-operative Societies, Durg, District Durg (C.G.)
 6. A.K. Singh, Senior Cooperative Inspector, Office at Deputy Registrar, Cooperative Societies, Durg, District Durg (C.G.)
- Respondents

For Appellant: Mr. Manish Upadhyay, Advocate.

For Respondents No.1 to 3 / State: -

Mr. Sunil Otmani, Additional Advocate General
and Mr. Gagan Tiwari, Deputy Govt. Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.

Order On Board
(21/10/2021)

Sanjay K. Agrawal, J

1. Heard on admission and I.A.No.1 for interim relief.
2. Mr. Manish Upadhyay, learned counsel appearing for the appellant,

at the outset, would submit that though the appellant has challenged the initiation of proceeding under Sections 58-B & 19-C of the Chhattisgarh Co-operative Societies Act, 1960 by way of writ petition which has been dismissed, but since final order has been passed in the proceeding under Section 19-C of the Act of 1960 on 18-10-2021, therefore, the writ appeal is only confined to challenging the dismissal of writ petition qua the proceeding under Section 58-B of the Act. He would further submit that proceeding under Section 58-B of the Act of 1960 has been initiated and straightway the proceeding for making good the losses caused to the society has been initiated against the appellant without complying with the proviso to Section 58-B(1) of the Act, as he was the Chairman of Jila Sahakari Kendriya Bank Maryadit, Durg, whereas he will have to be given reasonable opportunity before institution of enquiry and once enquiry is instituted, thereafter, the procedure envisaged under Section 58-B(1) is required to be followed. As such, the order of the learned Single Judge is liable to be set aside.

3. Mr. Sunil Otwani, learned Additional Advocate General ably assisted by Mr. Gagan Tiwari, learned Deputy Government Advocate, would submit that notice Annexure P-7 has been issued only on 22-9-2021 to institute enquiry as provided under the proviso to Section 58-B(1) of the Act of 1960 and after complying with the said proviso, decision will be taken as to whether to institute proceeding under Section 58-B(1) or not and thereafter, the proceeding under Section 58-B(1) would be initiated and appropriate orders will be passed thereupon.

4. We have considered the rival submissions made by learned counsel for the parties and gone through the record with utmost circumspection.

5. Section 58-B(1) of the Act of 1960 provides as follows: -

“58-B. Procedure for making good losses caused to a society—(1) Notwithstanding anything contained in this Act or the rules or the bye-laws of a society where the State Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans, debentures or advances or has given grants in any other form and if in the course of an audit, inquiry, inspection or the winding up of a society or otherwise, it is found that any person who is or was entrusted with organisation or management of such society or any deceased, past or present Chairman, Secretary, Member of the Board, Officer or employee of the society has made any payment contrary to the provisions of this Act or the rules made thereunder or bye-laws of a society or has caused any deficiency or loss by gross negligence or misconduct or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may on his own motion or on the application of the Board, liquidator or any creditor, enquire himself or direct some person authorised by him, by an order in writing in this behalf, to enquire into the conduct of such person within two years of the date of the report of audit, enquiry or inspection, or winding up, as the case may be :

Provided that no such enquiry shall be instituted against a person unless the person concerned is given a reasonable opportunity of being heard.”

6. A careful perusal of the aforesaid provision would show that a proviso has been appended to Section 58-B(1) of the Act of 1960 and in order to follow the holding of enquiry under Section 58-B(1), firstly, the proviso appended to sub-section (1) of Section 58-B has to be complied with and the person proceeded against has to be given an opportunity of hearing to demonstrate that no such enquiry

is required to be instituted and if ultimately upon affording opportunity of hearing, decision is taken by the competent authority to hold enquiry, then only the proceeding for making good the losses caused to the society under Section 58-B(1) of the Act of 1960 would be initiated and unless enquiry is instituted after giving opportunity of hearing to the person concerned, proceedings under Section 58-B(1) of the Act of 1960 cannot be initiated.

7. Thus, before institution of enquiry under Section 58-B(1) of the Act of 1960, opportunity of hearing is required to be given to the person concerned and once decision is taken to hold enquiry, then Section 58-B of the Act of 1960 can be invoked into.
8. Reverting to the facts of the present case in the light of the aforesaid provision, it is quite vivid that it is the stand of the State / respondents No.1 to 3 that Annexure P-7 has been issued in compliance of the proviso appended to sub-section (1) of Section 58-B of the Act of 1960 in which after hearing the appellant, decision would be taken in compliance of the said proviso to Section 58-B(1) of the Act of 1960 to initiate enquiry under Section 58-B(1) of the Act of 1960 and depending upon that decision, further proceeding under Section 58-B(1) of the Act of 1960 would be taken. In that view of the matter, the order passed by the learned Single Judge is clarified / modified to the extent that pursuant to Annexure P-7 dated 22-9-2021, the appellant is at liberty to file reply and documents, if not filed already, that no such enquiry can be instituted and by which the competent authority is to take decision whether to institute enquiry under Section 58-B(1) of the Act of 1960 against the appellant or not and depending upon

that decision, the competent authority would proceed in accordance with law. Even otherwise, the appellant is at liberty to question the order passed under the proviso to Section 58-B(1) of the Act of 1960, in accordance with law, if occasion so arises.

9. The writ appeal is accordingly stands finally disposed of with the above-stated modification / clarification. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge