

HIGH COURT OF CHHATTISGARH, BILASPURWrit Appeal No.332 of 2021

*{Arising out of order dated 6-10-2021 passed by the learned Single Judge in
W.P.(C)No.4122/2021}*

1. Smt. Baneej Bai Kosma, W/o Bhaduram Kosma, aged about 46 years, R/o Village Matri, Tahsil Daundilohara, District Balod (C.G.)
2. Neelchand Divya, S/o Umed Das Divya, aged about 50 years, R/o Village Bhopsara, Post Ghursena, Tahsil Navagarh, District Bemetara (C.G.)
3. Ramakant Dwivedi, S/o late Abhayram, aged about 56 years, R/o Shivpara, Durg, District Durg (C.G.)
4. Vyas Narayan Dewangan, S/o Late Kaliram Dewangan, aged about 58 years, R/o Village & Post Patan, Tahsil Patan, District Durg (C.G.)
5. Rewaram Rawte, S/o Sanatram Rawte, aged about 46 years, R/o Village Bharritola, Tahsil Daundi, District Balod (C.G.)
6. Jaiprakash Chandrakar, S/o Late Guharam Chandrakar, aged about 52 years, R/o Village Borway, Tahsil Patan, District Durg (C.G.)
7. Smt. Shanti Bai Verma, W/o Tijaruram Verma, aged about 72 years, R/o Ward No.2 Patelpara, Bansa, Kusmi, Tahsil Berla, District Bemetara (C.G.)
8. Smt. Jaishree Deshmukh, W/o Cheman Kumar, aged about 45 years, R/o Ward No.10 Suregaon, District Balod (C.G.)
9. Gorelal Chandrakar, S/o Late Thelauram, aged about 58 years, R/o Village Gopalpur, Thankhamariya, District Bemetara (C.G.)
10. Chumman Lal Sahu, S/o Gairduram Sahu, aged about 55 years, R/o Village Bhothali, Tahsil Gurur, District Balod (C.G.)
11. Pramod Gandhi, S/o Late Laxmi Narayanji Gandhi, aged about 44 years, R/o Sadar Road, Bemetara, District Bemetara (C.G.)
12. Khemlal Sahu, S/o Sunder Lal, aged about 61 years, R/o Bhatgaon Kalangpur, District Balod (C.G.)
13. Shiv Kumar Chandrakar, S/o Shri Pusauram Chandrakar, aged about 61 years, R/o Prem Sagar Chowk, Baigapara, Durg, District Durg (C.G.)

{Appellants No.1 & 2 are the then Vice President and appellants No.3 to 13 are the then Directors of the Zila Sahakari Kendriya Bank Maryadit, Durg (C.G.) for the period 12-6-2015 to 11-6-2020}

(Petitioners)

---- Appellants

Versus

1. State of Chhattisgarh, through Secretary, Department of Cooperative 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, Mahasamund, District Mahasamund (C.G.)
6. A.K. Singh, Senior Cooperative Inspector, Office at Deputy Registrar, Cooperative Societies, Durg, District Durg (C.G.)

---- Respondents

For Appellants: Mr. Manish Upadhyay, Advocate.

For Respondents No.1 to 3 / State: -

Mr. Sunil Otvani, 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 appellants, at the outset, would submit that though the appellants have challenged the initiation of proceeding under Section 58-B of the Chhattisgarh Co-operative Societies Act, 1960 by way of writ petition which has been dismissed, but this 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 appellants without complying with the proviso to Section 58-B(1) of the Act, as the appellants herein were Vice Presidents and Directors of Jila Sahakari Kendriya Bank Maryadit, Durg, whereas they 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, procedure 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 appellants, 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 appellants are 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 appellants or not and depending upon that decision, the competent authority would proceed in accordance with law. Even otherwise, the appellants are 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