IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.1701, 9825 and 5354 of 2021
and WMP Nos. 1909, 5948, 10459, 1906, 8451, 5949, 5950, 1902 of 2021

WP No.1701 of 2021

The Bharath Lajhna Multi state Housing Co-operative society Ltd
Rep by its President K.Monoharan No.305 and 306
2nd floor Ten Square Mall NEar Dr.JJ CMBT
100 feet Road (Koyambedu Road),
Chennai 600 107
Tamil Nadu ...Petitioner

Vs

1 The Secretary to Government of India,
Department of Agriculture co-operation and Farmers welfare,
Ministry of Agriculture and Farmers welfare,
Krishi bhavan, Government of India, New Delhi.

2 The Central Registrar of Co-Operative societies cum
Joint Secretary,
(Office of the Central Registrar of co-operative societies)
Department of Agriculture, Co-operation and
Farmers welfare, Krishi Bhavan, Government of India, New Delhi

.....Respondents

WP No.9825 of 2021

The Bharath Lajhna Multi state Housing Co-operative society Ltd
Rep by its President K.Monoharan No.305 and 306
2nd floor Ten Square Mall NEar Dr.JJ CMBT
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Farmers welfare, Krishi Bhavan, Government of India, New Delhi

WP No.5354 of 2021

1. Anitha C.S
2. Beena Vishunath
3. Ajay
4. Manojan
5. Srijit N

...Petitioners

Vs

1 Union of India
Rep by the Secretary to Government of India,
Department of Agriculture, Co-operation & Farmers Welfare
Ministry of Agriculture & Farmers Welfare,
Krishhi Bhavan, New Delhi

2 The Central Registrar of Co-Operative societies cum
Joint Secretary,
(Office of the Central Registrar of co-operative societies)
Department of Agriculture, Co-operation and
Farmers welfare, Krishi Bhavan, Government of India, New Delhi

3. The Bharath Lajhna Multi state Housing Co-operative society Ltd
Rep by its President K.Monoharan No.305 and 306
2nd floor Ten Square Mall NEar Dr.JJ CMBT
100 feet Road (Koyambedu Road),
Chennai 600 107
Tamil Nadu ...Respondents

Prayer in WP No.1701 of 2021 .: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the 2nd respondent vide F.No.R 11017/28/2017 – L&M dated 07.12.2020 sent by e-mail at late evening on 15th December 2020 and quash the same and consequently, forbear the 2nd respondent from taking any action detrimental to the interest of the petitioner on the erroneous misconception that receiving deposits from its own members is violation of the provisions of "Banning of Unregulated Deposit Schemes Act, 2019".

Prayer in WP No.9825 of 2021 .: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the impugned proceedings viz F.No.R.11017/28/2017-L&M dated 15.02.2021 of the 2nd respondent viz., The Central Registrar of Co-operative Societies, Department of Agriculture, Co-operation and Farmers welfare, Krishi Bhavan, Government of India, New Delhi and quash the same and consequently forbear the 2nd respondent from taking any action whatsoever in detrimental to the interest of the petitioner viz the said Bharath Lajhna Multi State Co-operative Soceity Ltd., (BLMSHC Society) on the misconception that receiving deposits from its own members is violation of the provisions of the Banning of Unregulated Deposit Schemes Act (Prayer Amended vide order dated 09.07.2021 made in WMP No.14156 /2021 in WP No.9825 of 2021 by DKKJ)-

Prayer in WP No.5354 of 2021 .: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the 2nd respondent vide F No R 11017 / 28 / 2017 L and M dated 07.12.2020 and quash the same.

For Petitioner : Mr.T.Murugamanickam
in WP No.1701 of 2021 for Mr.K.R.Vijayakumar
and WP No.9825 of 2021

For Petitioner : Mr.G.Rajagopalan
in WP No.5354 of 2021 for Mr.S.Panner selvam

For Respondents :
in WP No.1701 of 2021 M/s.P.J.Anitha
Central Government Standing
Counsel for R1 and R2

For Respondents :
in WP No.9825 of 2021 M/s.G.Ilangovan
Central Government Standing
Counsel for R1 and R2

For Respondents :
in WP No.5354of 2021 Mr.K.Ramanamoorthy
Central Government Standing
Counsel for R1 and R2

O R D E R

The subject matter involved are common in all these writ petitions and hence they are taken up together, heard and disposed of through this common order.

2. The Writ petition Nos.1701 of 2021 and 9825 of 2021 have been filed by the Multi State Housing Co-operative Society (herein after called as the Society), challenging the proceedings of the 2nd respondent dated 07.12.2020 and 15.02.2021 respectively. WP No.5354 of 2021 has been filed by the members of the society, challenging the proceedings of the 2nd respondent dated 07.12.2020.

3. The society was registered as Multi State Co-operative Society under Section 7 of the Multi State Co-operative Societies Act, 2002 (herein after called as the Act) and the rules thereunder. This society is functioning in two states namely Kerala and Tamil

Nadu and one Union Territory at Puducherry. It is claimed by the petitioner that the primary object of the society is to help and facilitate all its members to get affordable houses and it focusses mainly on development of housing activities. The society is also governed by the bye-laws.

4. The further case of the petitioner is that there are nearly 10,400 members and it has assets worth nearly 150 crores. It is further claimed by the petitioner that deposits are received only from its members and no deposits whatsoever has been received from any non member or from the general public. The petitioner society also claims that the deposits have been promptly repaid to the members as and when the period matured.

5. A complaint seems to have been given by one M.Karunakaran belonging to Kerala, to the Reserve Bank of India to the effect that the society is accepting fixed deposits by affording 11% interest and therefore, this person wanted to know whether

the society has the approval of RBI and if not, had requested the RBI to take immediate action.

6. It seems that this complaint was followed up by the RBI and forwarded to the 2nd respondent. The Registrar of Co-operative Societies, Kerala, was asked to conduct an inspection and to submit a detailed report before the 2nd respondent. Accordingly, a report came to be filed before the 2nd respondent and in the said report, certain irregularities were pointed out in the functioning of two of the branches of the society, wherein it is alleged that they have collected deposits from the general public.

7. The petitioner society was directed to attend an inquiry through video conferencing before the 2nd respondent on 07.12.2020. The order passed on that day is extracted hereunder :-

> ***This authority has received complaints that the society which is registered as a housing co-operative society, is taking deposits from its members at a***

fixed rate of interest of 12% and giving a commission of 5% to agents for collecting such deposits. Apart from the individual complaints, the Registrar of Co-operative Societies, Government of Kerala had conducted an inspection of the branches of the society and report has been submitted to this authority about the society's activity of taking deposits from Public. On receipt of complaints and report of Registrar of Co-operative Societies, Kerala, a show cause notice was issued to the society.

2. The Director of the society present through video conferencing (VC) today has admitted that an amount of Rs.55 crores has been collected as deposits. It was also stated that there are 261 branches with 10400 members. It was further clarified by him that the total receipts rent of property etc. On being asked about the bye-laws *under which such an acitivity is permitted, no clear answer was provided. The Director of society has sought time for putting up a proper reply to the queries raised by this authority.*

3. The Society is a housing co-operative society. It has no business to accept deposits. The activity of taking deposits from the public is illegal under the provisions of 'Banning of Unregulated Deposit Schemes Act, 2019'. Therefore, the society is prohibited for taking any further deposits from anybody including its members. By the next date of hearing, the management of the society is directed to provide a complete account of deposits taken from its members, complete inventory of its movable and immovable assets and the time it will take to repay all the depositors.

8. The above order has been put to challenge in WP

No.1701 of 2021. When this writ petition was pending, the 2nd respondent passed yet another order on 15.02.2021 and the same is extracted hereunder :-

The Chairman of the society states that the society has assets worth more than Rs.1.50 crores and the total deposits that they have taken from their members is approximately Rs.55 crores. The number of members from whom deposits are collected are around 10,000. The society runs 61 branches and they have given written details about deposits and the members along with valuation of the investments.

2. The office of this authority has not received the documents submitted by the society. Society is directed again to submit all the required documents within a week so that they can be put on record. The Chairman of society further assures that they will not take any further deposits from any member of *the society and shall return all the deposits within one year of passing this order.*

3. Considering that the society is ready to comply with the order of this authority, further regulatory action is kept on hold. The society shall submit a complete account of returned money taken as deposits from its members on 1st of each month along with the list of the members to whom the deposits have been repaid and the list of members along with amounts due to the rest of the members. In case the deposits are not returned at a suitable pace, then this authority will be constrained to take regulatory action against the society.

4. The chairman of the society has already assured that no activity of taking deposits or anything related to credit will be undertaken by the society. The society shall strictly comply and no deposits in whatever form will be taken in future.

5. In case, society provides housing to its members which is its primary objective, then in pursuance of that activity, the members of the society can collaborate and pay in lie of the housing and other connected amenities provided by the society strictly as per the objectives for which the society has been set up. Director (Cooperation) is required to take monthly reports from the management of the society as directed in this order and in case of non-compliance, he will submit a report to this authority after issuing a show cause notice to the society for a hearing, if required.

9. The above order has been put to challenge in WP No.9825 of 2021.

10. The respondents have filed a counter affidavit to the effect that action was initiated based on the inspection report

received from the Registrar wherein it was found that the society is involved in irregularities whereby in two of the branches, deposit was received from general public. In view of the same, an inquiry was conducted by the 2nd respondent with a view to give an opportunity to the society and ascertain if the society had contravened the provisions of Banning of Unregulated Deposit Schemes Act, 2019 (herein after called as 2019 Act) by collecting deposits from the public. The interim order came to be passed only to ensure that the interest of the innocent persons are safeguarded and the society returns back the deposit collected from the general public as well as its members. This inquiry was necessitated to take a decision to proceed further under Chapter VIII of the Act.

11. Heard the respective learned Senior counsel appearing for the petitioners and respective learned Standing counsel appearing on behalf of respondents.

12. The learned Senior Counsel appearing on behalf of the

petitioners submitted that the society had never received any deposits from general public and the deposits were received only from its members. It was further submitted that such receipt of deposits was neither opposed to the Act nor the Provisions of the Banning of Unregulated Deposit Schemes Act, 2019 or under the bye-laws of the society.

13. The learned Senior counsel specifically relied upon Clause V (22) of the bye-laws and the same is extracted hereunder :-

> **OBJECTIVES AND FUNCTIONS**
>
> ***22. Accept the deposits from the members of the society and utilise the same for giving loans to its members or invest and make payment the deposited amount which are accepted by the society as and when demanded or completion of maturity period.***

The attention of this Court was also drawn to Clause 6 (A) (IV) which provided for the funds of the society raised by accepting deposits. That apart, Clause 46 of the bye-laws was also relied upon and the same is extracted hereunder :-

46. Deposits

Deposits may be received from members at any time within the limits determined under the Act and Rules on such rates of interest and subject to such rules and regualtions, as may be approved by the Board of Directors.

14. The learned Senior counsel appearing on behalf of the petitioners also brought to the notice of this Court Section 67 of the Act and the same is extracted hereunder :-

67. Restrictions on borrowing.—

(1) A multi-State co-operative society may receive

deposits, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws: Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves: Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

[Explanation - For the removal of doubts, it is hereby clarified that a multi-state Co-operative society shall not be entitled to receive deposits from persons other than voting members]

15. The learned Senior counsel appearing on behalf of the petitioners by relying upon the provisions and bye laws extracted supra submitted that the society was entitled to accept deposits

from its members and by virtue of the amendment to Section 67 of the Act in the year 2019, the deposits can be received from the voting members. According to the society, the deposits were never received from any one from the general public and it was always received only from the members and after the 2019 amendment, only from the voting members. Therefore, it was submitted that the 2nd respondent ought not to have prohibited the society from taking any further deposits even from its own members and such a prohibition is beyond the powers and jurisdiction of the 2nd respondent. It was also submitted that no undertaking was given as claimed at Paragraph 2 of the order dated 15.02.2021 and it has been categorically denied at Paragraph 9 in the affidavit filed in support of the writ petition in WP No.9825 of 2021.

16. The learned senior counsel appearing on behalf of the petitioners submitted that the society clearly falls under the definition of a deposit taker under Section 2(6) (VIII) of the 2019 Act. It was further submitted that the deposit collected by the

society will fall under the Regulated Deposit Scheme under Section 2(14) of the 2019 Act. To substantiate this submission, Entry 8 of the First Schedule of the 2019Act was relied upon and the same is extracted hereunder :-

THE FIRST SCHEDULE

REGULATED DEPOSIT SCHEME

Sl.No.	*Regulator*	*Regulated deposit Scheme*
8.	*The Central Registrat Multi-State Co-operative Societies*	*Any scheme or an arrangement for acceptance of deposits from voting members by a multi-state Co-operative Soceity registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002)*

17. The learned Senior Counsel by relying upon the above Entry, submitted that since the society was accepting deposits from its members and from 2019 onwards from its voting members , the

deposit will clearly fall under the Regulated Deposit Scheme and therefore, there is no violation committed by the petitioner society.

18. Per contra, the respective learned Central Government Standing Counsel appearing on behalf of the respondents 1 and 2 submitted that the society was directed to give all the particulars regarding the deposits received along with all the relevant materials and even without submitting the same, the society has chosen to rush to this Court challenging the interim orders passed by the 2nd respondent. It was submitted that there are some adverse reports available against the society and the 2nd respondent wants to conduct an inquiry and inspection and proceed further under Chapter VIII of the Act.

19. In the considered view of this Court, the 2nd respondent has the power and jurisdiction to conduct such an inquiry and

proceed further to take action if the society is involved in any irregularities or is in violation of any law in force. However, the 2nd respondent ought not to have gone to the extent of prohibiting the society even from receiving deposits from its own members. There is no prohibition for the society to receive deposits from the voting members and such deposits will fall under the Regulated Deposit Scheme. Of course, the amount to be received as deposits and utilising the same, shall be within the limits determined under the Act and Rules. Therefore, while passing interim orders, the 2nd respondent could have allowed the petitioner society to collect deposits from its voting members and prohibited collection of deposits from any other category of members or from the general public and in the meantime, the 2nd respondent could have directed for the production of particulars of the deposits along with materials in order to take a decision in accordance with law. To this limited extent, this Court is inclined to modify the directions issued by the 2nd respondent and at the same time, ensure that the inquiry is proceeded further in order to find out the truth.

20. In view of the above discussion, all the writ petitions are disposed of with the following directions :-

a. The society is permitted to collect / receive deposits only from its voting members in accordance with Section 67 of the Act.

b. The society is prohibited from receiving any other deposit from any other category of members or from the general public.

c. The society shall repay back the deposits which have already matured to all those members who have made those deposits.

d. The society is directed to furnish all the particulars of the deposits collected till now along with supporting materials to the 2^{nd} respondent, within a period of four weeks from the date of receipt of copy of this order.

e. The 2^{nd} respondent on receipt of the particulars regarding the depositors and the materials pertaining to the same shall conduct an inquiry as contemplated under Chapter VIII of the Act and may also inspect the books / records maintained by the society and if any irregularities are identified / detected, shall proceed further strictly in accordance with law. It goes without saying that the society shall be given an opportunity if any adverse action is contemplated against the society. and

f. The exercise shall be completed by the 2nd respondent within a period of three months from the date of receipt of the particulars and materials pertaining to the deposits from the society. No costs. Consequently, all connected miscellaneous petitions are closed.

23.08.2021

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Index : Yes
Internet :Yes

To

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