

OD 7

ORDER SHEET
WPO/1950/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NEELACHAL ABASAN CO-OPERATIVE SOCIETY LTD. & ANOTHER
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 25th April, 2022.

Appearance:
Mr. Debasish Banerjee, Adv.
Mr. Subrata Saha, Adv.
Mr. Abhik Biswas, Adv.
Mr. Supreem Naskar, Adv.
For the petitioners.

Mr. Tapan Kumar Mukherjee, Adv.
Ms. Tuli Sinha, Adv.
For the state respondent nos.1, 2 & 3.

The Court: Affidavit of service filed in Court today be kept on record.

The short ground of challenge to the order dated March 16, 2022 of the Joint Registrar of Co-operative Societies, KMAH Cell of the Co-operation Directorate, Government of West Bengal annexed at page 66 (Annexure-P7) of the writ petition, is that the modalities of Section 100(2) of the West Bengal Co-operative Societies Act, 2006 were not complied with by the Joint Registrar, although two specific complaints made by two alleged members of the society were referred to them.

It is submitted by learned counsel for the State that such inquiry by the Registrar can be initiated even *suo motu* under Section 100(1) of the 2006 Act and, for such an exercise, there is no restriction as stipulated in sub-Section (2) of Section 100.

However, a plain reading of the order itself indicates that the enquiry in question was directed on the basis of the complaints lodged by Sri R. Das (Rana Das) and Sri R.C.Giri, two alleged members of the co-operative society.

In fact, in its reply, the petitioner co-operative society had categorically mentioned its objections in such regard, including that one of the complainants, namely Sri R. Das (Rana Das), is a defaulter of MMC for over two decades and, inter alia, that the other complainant Sri Giri is the prime accused in a criminal case which is pending at present, on the allegation of collecting huge amounts of money by preparing fake money receipts and perpetrating other offences.

It is also evident from the said reply dated March 31, 2022, given by the Co-operative Society that the society made it very clear that it is absolutely open to any enquiry at any point of time as it is functioning in a transparent manner.

In the present case, upon consideration of the submissions of both sides, it is clear from the impugned order of enquiry itself that the

same was specifically initiated at the behest of two alleged members of the petitioner-society and not *suo motu* under Section 100 (1) of the 2006 Act.

Although the Registrar has power of directing such enquiry or holding the same by himself without any compliance of prior formalities, since the present order of enquiry was directed on the specific complaint of two members, without compliance of any of the yardsticks as stipulated in sub-Section (2) of Section 100 of the 2006 Act, the said order was passed palpably without jurisdiction.

It is well-settled that if a statute empowers an authority to do something then the said act has to be done in accordance with the procedure prescribed in the said statute itself or not. In view of violation of the said principle in the present case, the writ petition succeeds on merits.

WPO/1950/2022 is allowed, thereby setting aside the impugned order dated March 16, 2022, whereby the Joint Registrar of Co-operative Societies, KMAH Cell, Cooperation Directorate, Government of West Bengal, directed an inquiry to be held into the affairs of the petitioner-society.

However, it is made clear that nothing in this order shall prevent the respondents authorities from initiating any subsequent inquiry in future

in respect of the petitioner-society, in accordance with law and by adhering to all requisite legal formalities. If the respondents find sufficient ground to do so and if such an inquiry is initiated in accordance with law, the same shall be subject to the law governing the field and not be precluded by the present order or any of the observations made herein.

Since no affidavits were invited, it is deemed that the allegations made in the writ petition have been denied by the respondents.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)