

Humara India Credit Cooperative ... vs Union Of India on 19 January, 2021

Author: Jyoti Singh

Bench: Chief Justice, Jyoti Singh

\$~2

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 817/2021 & CM APPLs.2093-94/2021
HUMARA INDIA CREDIT COOPERATIVE SOCIETY

Through: Mr. S.B. Upadhyay, Sr.
Mr. Simranjeet Singh, Ms. Neha G
Dube, Mr. Aadhar Nautiyal & Mr.
Adv.
versus

UNION OF INDIA

..... R

Through: Mr. Chetan Sharma, ASG wit
Mr. Asheesh Jain, CGSC and Mr. Amri
Adv. for R-1 & 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 19.01.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPL.2094/2021 (exemption) Allowed, subject to just exceptions.

W.P.(C) 817/2021 & CM APPL.2093/2021 (stay)

1. Rule DB.

2. Learned Senior Counsel appearing for the petitioner during the course of his arguments has taken this Court to various orders passed by the Central Registrar of Co-operative Societies under the Multi State Cooperative Societies Act, 2002(hereinafter referred as "the MSCS Act, 2002"). Attention is specifically drawn to a Circular dated 3rd July, 2017, issued by Department of Agriculture, Cooperation and Farmers' Welfare under the Ministry of Agriculture and Farmers' Welfare (Annexure P-4 to the writ petition) and has placed reliance on paras 2 and 3 thereof which read as under:

"2. Whereas, these multi-state cooperative societies are functioning as autonomous cooperative organizations accountable to their members as per the provisions of the MSCS Act, 2002 and rules made thereunder, the business matters such as accepting of deposits, giving loan to members and repayment of deposits fall under the powers

and functions of the Board of Directors of the multi-state cooperative societies and office of the Central Registrar has no role to play on these matters.

3. As such, to make it clear to the members/investors/public, all multi-state cooperative societies (except multi-state cooperative banks) are hereby directed to display the following in the entrance of the society, branches, in the forms relating to various deposits and also to post in their websites, if any maintained:

"Multi-state cooperative societies are functioning as autonomous cooperative organizations accountable to their members and not under the administrative control of the Central Registrar, Ministry of Agriculture and Farmers' Welfare. Therefore, the depositors/members are advised to take decision for investing deposits based on the performance of the society at their own risk. Central Registrar, Ministry of Agriculture and Farmers' Welfare does not provide any guarantee for these deposits."

(emphasis supplied)

3. Learned Senior Counsel appearing for the petitioner contended that the orders dated 17.08.2020, 24.09.2020 (Annexure P-1 colly) and the notice dated 26.11.2019 (Annexure P-5) are contrary to the provisions of the MSCS Act, 2002 as also contrary to Circular dated 3rd July, 2017. It is also contended that the basic premise on which the order is passed is completely misplaced in as much as even if it is accepted for the sake of arguments that some complaints have been received, it is only from a miniscule percentage of the members i.e. less than 0.05%, while the Society has thousands of members enrolled with it. It is submitted that in response to the directions of the Central Registrar, during the proceedings on 21.01.2020, petitioner submitted valuation reports of some of its projects, however, on account of the Covid-19 Pandemic, it could not submit the quarterly statements regarding payments to the depositors and had sought time. The needful was done subsequently and on 17.08.2020, a letter was submitted narrating the position of compliances and seeking some time for further compliance.

4. Learned Senior Counsel submits that even otherwise, the complaints ought not to have been entertained by the respondents directly, as the petitioner has introduced an Online complaint grievances settlement process and therefore the complaints can be sent on this portal and will be redressed. Learned Senior Counsel for the petitioner strenuously argues that all these points have been highlighted by the petitioner in the reply given by the petitioner to the Central Registrar including the objection that he has no power, jurisdiction and authority to deal with the issues / complaints of the depositors / members as Multi State Cooperative Societies function as autonomous cooperative organizations accountable to their members and are not under the administrative control of the Central Registrar, Ministry of Agriculture and Farmers' Welfare. It is thus prayed that considering the provisions of Multi State Cooperative Societies Act, 2002 and the letter and spirit of the Circular dated 03.07.2017, the orders dated 17.08.2020, 24.09.2020 (Annexure P-1 colly) and notice dated 26.11.2019 (Annexure P-5) be quashed. Learned Senior Counsel further prays that during the pendency of the present writ petitions operation of the said impugned orders be stayed.

5. Learned Senior Counsel appearing for the petitioner submits that in the impugned order, a direction has been given to Director (Corporation) to send a reminder to the SFIO to expedite the investigation, which direction is beyond the power, jurisdiction and authority of respondent No.2. It is further submitted that looking to the provisions of the MSCS Act, 2002, especially, Section 121 thereof, the provisions of the Companies Act are not applicable to Multi State Cooperative Societies. A direction to SFIO can only be passed under Section 212 of the Companies Act, 2013. Attention is drawn to Sections 210 to 212 of the Companies Act, 2013, which provide for investigation by SFIO as well as to the definition of "Body Corporate" as provided under Section 2(11) of the Companies Act, 2013 which specifically excludes "Society".

6. Having heard the learned Senior Counsel for the petitioner and looking to the Circular dated 03.07.2017 and the provisions of the Multi State Cooperative Societies Act, 2002 along with those of the Companies Act as well as the facts of the case, we are of the view that the petitioner has established a prima facie case in its favour and the balance of convenience is also in favour of the petitioner. If the impugned order is not stayed, petitioner will be unable to carry out its business, which would automatically result in loss and consequent winding up of the petitioner society. Thus there will be irreparable loss to the petitioner.

7. In view of the above, further proceedings before the Central Registrar

- Respondent No.2, as well as the operation, implementation and execution of the impugned orders referred to above which are dated 17.08.2020, 24.09.2020 (Annexure P-1 colly) and notice dated 26.11.2019 (Annexure P-

5) are stayed till the next date of hearing. Meanwhile the petitioner is permitted to carry on its business activities in accordance with law and as per the bye-laws of the petitioner Co-operative Society. Order dated 24.09.2020 is having a reference of investigation by SFIO. As we have stayed this order, again we are not passing specific order of stay against investigation by SFIO, at the behest of Central Registrar of Co-operative society under the MSCS Act, 2002.

8. Learned counsel appearing for the respondents seeks time to file counter affidavit. Time as prayed for is granted.

9. Let the counter affidavit be filed before the next date of hearing.

10. List this matter alongwith W.P.(C) 669/2021 and W.P.(C) 670/2021 on 19.02.2021.

CHIEF JUSTICE JYOTI SINGH, J JANUARY 19, 2021 kks