

(2018) 07 CHH CK 0305

Chhattisgarh High Court

Case No: Writ Petition (C) No. 2071 Of 2011

Galib Memorial Education
Society

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: July 26, 2018

Acts Referred:

- Chhattisgarh Society Registrikaran Adhiniyam, 1973 - Section 32(1), 32(2)
- Karnataka Societies Registration Act, 1960 - Section 25
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Rajeev Shrivastava, Arun Sao, Navin Shukla

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioner Institution is a society under the provisions of the Chhattisgarh Society Registrikaran Adhiniyam, 1973 (hereinafter called as 'the Act of 1973'). Some complaints were made to the Assistant Registrar, Firms & Societies, regarding membership and financial condition of the said society leading to making of proposal by that authority to the Registrar, Firms & Societies for initiating enquiry under Section 32 (1) of the Act of 1973. The Registrar, Firms & Societies after satisfying himself on its own motion acting suo motu directed initiation of an enquiry with regard to the constitution, working and financial conditions of the society by order dated 11.7.2007, which was assailed by the petitioner by filing Writ Petition (C) No.5277 of

2007 (Galib Memorial Educational Society v. State of Chhattisgarh and others) before this Court on 24.7.2007 questioning legality, validity and

correctness of order dated 11.7.2007, the petitioner also filed an appeal before the State Government on 26.7.2007, but later on, the appeal was

withdrawn on the ground that writ petition has already been filed before this Court. In that writ petition, interim order was granted in favour of the

petitioner and ultimately, that writ petition was dismissed as having become infructuous on 21.10.2010. In the meanwhile, enquiry as directed by the

Registrar, Firms & Societies, was concluded and enquiry report was submitted on 6.3.2011 to the Registrar, Firms & Societies.

Thereafter, the Registrar, Firms & Societies sought explanation from the petitioner as well as from the complainant by the impugned show-cause

notice dated 28.3.2011 (Annexure P/1). The aforesaid show-cause notice seeking explanation is questioned by the petitioner herein in this writ petition

stating inter-alia that the said memo is in violation of Section 32(2) of the Act of 1973. Therefore, the impugned show-cause notice deserves to be

quashed.

2. Respondents No.1 to 4 filed consolidated return supporting the action of the State stating inter-alia that it is the case where the Registrar, Firms &

Societies, has acted suo motu on his own motion on a note proposed by the Assistant Registrar, Firms & Societies for initiating enquiry under Section

32(1) of the Act of 1973 and after satisfying himself on the material available on record, the enquiry has been proposed and directed by order dated

11.7.2007, which was challenged by the petitioner in writ petition (C) No.5277 of 2007 (Galib Memorial Educational Society v. State of Chhattisgarh

and others) and that writ petition was dismissed as having become infructuous on 21.10.2010. Therefore, the writ petition deserves to be dismissed.

3. Mr.Rajeev Shrivastava, learned counsel for the petitioner would submit that the impugned show-cause notice dated 28.3.2011 issued to the

petitioner on the basis of enquiry report conducted under Section 32(1) of the Act of 1973 is without jurisdiction and without authority of law as

enquiry was conducted on a complaint of respondent No.5 and therefore, unless requirements as contemplated under sub-section (2) of Section 32 of

the Act of 1973 are satisfied, no enquiry could have been directed to be conducted against the constitution, working and financial conditions of the society. Therefore, the impugned show-cause notice dated 28.3.2011 (Annexure P/1) deserves to be quashed.

4. On the other hand, Mr. Arun Sao, learned Deputy Advocate General for respondents No.1 to 4, would submit that the Registrar, Firms & Societies having satisfied himself on a note submitted by the Assistant Registrar, Firms & Societies on various complaints received took cognizance of the matter and acted suo motu and directed for initiation of enquiry by order dated 11.7.2007, which was challenged by way of writ petition and subsequently that writ petition was dismissed as having become infructuous and therefore, that order become final, as such, show-cause notice dated 28.3.2011 is only consequential order pursuant to the enquiry directed by the Registrar, Firms & Societies under Section 32(1) of the Act of 1973 on 11.7.2007, as such, the writ petition deserves to be dismissed.

5. Respondent No.5 has also filed return supporting the order passed by the Registrar, Firms & Societies.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

7. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 32 (1) & (2) of the Act of 1973 which reads as under:-

32. Enquiry and settlement of disputes.-(1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on the application together with an affidavit in support of its contents of-

(a) a majority of the members of the governing body of the society; or

(b) not less than one-third of the total number of members of the society.

(3) and (4) xxx xxx xxx.

8. A focused perusal of the aforesaid provision, it is quite vivid that the Registrar, Firms & Societies, is empowered to direct holding an enquiry into the

constitution, working and financial conditions of a society in two circumstances. Firstly, either on his own motion acting suo motu and this is totally independent provision enabling the Registrar to exercise suo motu power in reasonable cases after making of his mind on the material placed before him for consideration. Secondly, jurisdiction to hold an enquiry can be directed by the Registrar, if the application under Section 32(2) of the Act of 1973 is made by a majority of the members of the governing body of the society or not less than one-third of the total number of members of the society, but the application must be supported by an affidavit. Thus, the jurisdiction of the Registrar, Firms & Societies, under Section 32(1) of the Act of 1973 acting suo motu and acting on the application filed under Section 32 (2) both are distinct and independent to each other to direct for holding an enquiry.

9. In the matter of Muslim Co-operative Bank Ltd. v. Assistant Registrar of Co-operative Societies¹ the Karnataka High Court while dealing with the powers of the Registrar under Section 25 of the Karnataka Societies Registration Act, 1960 with regard to powers to initiate enquiry suo motu or on requisition pointed out distinction & requirement as under:-

6. As far as the exercise of suo motu powers is concerned, under what circumstances it should be exercised it left to the Registrar himself under the Societies Act as also under the Act. He could do so in whatever manner he gets information if he considers the information sufficient to institute an enquiry into the affairs of the Society or a Co-operative Society, as the case may be, the Registrar concerned has the power to institute an enquiry under Section 25 of the Societies Act in the case of a society and Section 64(1) of the Act in the case of a Co-operative Society, if the Registrar is satisfied that sufficient basis is made out in such written representation. Such is the suo motu power conferred on the Registrar of Societies under Section 25(1) of the Societies Act and on the Registrar of Co-operative Societies under Section 64(1) of the Act. Therefore the fact that the Registrar has referred to the complaint made by a member in the order instituting the enquiry is no ground to hold that the Registrar had not acted suo motu.

Naturally for exercise of suo motu powers also, there must be some source of information for the Registrar to do so.

Such information may come to the Registrar of the Societies or the Registrar of Co-operative Societies, during his inspection of a Society or a Co-operative society as the case may be or by any other means including a written complaint by a member. For these reasons with great respect, we are unable to agree with the view expressed by Puttaswamy, J., in the case of Mahila Seva Samaj that if a Registrar institutes an enquiry on the basis of a complaint submitted by members who do not constitute either fifty per cent of the governing body AIR 1991 Kar 243 members or one third of the members of the society, the enquiry instituted is illegal, and that his power to institute enquiry suo motu must be exercised without reference to any complaint by any member or members who do not fulfil the requirement prescribed under Section 25.

10. Reverting to the facts of the present case, it is quite vivid that the Assistant Registrar, Firms & Societies, received some complaints with regard to membership (working and financial conditions of the society) placed a note before the Registrar, Firms & Societies and the Registrar, Firms & Societies after satisfying himself proposed action and decided to exercise suo motu jurisdiction under Section 32(1) of the Act of 1973 by directing to hold an enquiry into the constitution, working and financial conditions of the society by order dated 11.7.2007 which states as under:-

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1973 (1998)

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32(1) ,

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Â 11. The above-stated order of the Registrar, Firms & Societies, was firstly challenged by the petitioner by filing Writ Petition (C) No.5277 of 2007

on 24.7.2007, thereafter an appeal was also preferred before the State Government on 26.7.2007, but appeal was withdrawn on the ground that writ

petition has already been filed before this Court. In that writ petition so filed, it was explicitly pleaded that order dated 11.7.2007 extracted hereinabove

is without jurisdiction and without authority of law and is in contravention of the provisions of Section 32 sub-section (2) sub-sections (a) & (b) of the

Act of 1973 and also in violation of principle of natural justice and quashment of order dated 11.7.2007 was sought for, but later on, that writ petition

was dismissed as having become infructuous by order dated 21.10.2010.

12. The question for consideration would be whether the Registrar, Firms & Societies, is unjustified in directing suo motu holding an enquiry under its

suo motu jurisdiction under Section 32(1) of the Act of 1973.

13. Submission of Mr.Shrivastava, learned counsel, is that since it is an application made by respondent No.5 for holding an enquiry against the

petitioner, therefore, it would fall under Section 32(2) of the Act of 1973 and unless condition precedents as contemplated in Section 32(2) of the Act

of 1973 are satisfied, no enquiry could have been directed by learned Registrar, Firms & Societies, under Section 32(1) of the Act of 1973.

14. As stated hereinabove, some complaints were made to the Assistant Registrar, Firms & Societies and the Assistant Registrar, Firms & Societies,

placed a note/proposal under Section 32(1) of the Act of 1973, which was considered by the Registrar, Firms & Societies and after satisfying himself

and based on the material available on record decided to hold an enquiry against the petitioner under Section 32(1) of the Act of 1973. Power and

jurisdiction to hold an enquiry suo motu which is an independent power apart from power conferred to hold an enquiry on an application filed under

Section 32(2) of the Act of 1973 at the instance of persons indicated therein was exercised by the Registrar and in this regard order dated 11.7.2007 is

quite clear and explicit and no exception can be taken to this as it is not the allegation that respondent No.5 is a member of the governing body of the

society and had made an application under Section 32(2) of the Act of 1973 for holding an enquiry against the petitioner society. Therefore, it is an out

& out exercise of power and jurisdiction by the Registrar, Firms & Societies on its own motion to direct an enquiry against the petitioner society into

the constitution, working and financial conditions of the society under Section 32(1) of the Act of 1973 and only upon conclusion of an enquiry and

submission of report, the Registrar, Firms and Societies has issued the impugned show-cause notice to the petitioner and the complainant to file their

objection, if any on the enquiry report so submitted by Enquiry Officer. Therefore, seeking of explanation by the Registrar on conclusion of enquiry

vide Annexure P/1 cannot be said to be without jurisdiction and without authority of law warranting interference by this Court under Article 226 of the

Constitution of India.

15. There is yet one more reason not to uphold the submission of the petitioner. The petitioner's substantive writ petition questioning the order dated

11.7.2007 directing holding an enquiry against the petitioner society got dismissed as having become infructuous and thereby the order dated 11.7.2007

has become final, which is an order by which the Registrar, Firms & Societies has exercised the jurisdiction under Section 32(1) of the Act of 1973

and therefore, once the order dated 11.7.2007 has been allowed to become final, the petitioner cannot contend that holding of an enquiry is without

jurisdiction and without authority of law. He is entitled to file objection on the enquiry report as has been sought for.

16. The decision rendered by the Madhya Pradesh High Court in P.R.Yadav v. Government of Madhya Pradesh and others, decided on 6.1.2000, is

clearly distinguishable to the facts of the present case. In that case, it was held by the Madhya Pradesh High Court that in case jurisdiction is invoked

under Section 32(2) of the Act then person invoking the jurisdiction has to satisfy the requirement incorporated in above-stated provision by

demonstrating requisite majority. It is not the case herein, however, in case in hand, Section 32(1) of the Act of 1973 has been invoked.

17. As a fallout and consequence of the above-stated discussion, the writ petition deserves to be and is hereby dismissed. However, this will not bar

the petitioner to file objection on enquiry report and he is at liberty to raise all such permissible grounds except the jurisdiction of the Registrar to hold

an enquiry. No cost(s).