



GOVERNMENT OF KERALA

Abstract

Home Department - Provisional attachment issued against Bharat Lajhna Multi - State Housing Co - operative Society under section 7(3) of Banning of Unregulated Deposit Schemes Act- rescinded - orders issued.

HOME (SC) DEPARTMENT

G.O.(Rt)No.2435/2023/HOME Dated,Thiruvananthapuram, 26-08-2023

Read 1 Proceedings No. SC3/5/2023/Home dated 23.05.2023.

2 Proceedings No. SC3/5/2023/Home dated 14.07.2023.

ORDER

The 55th Meeting of the State Level Co-ordination Committee on the Regulation of Non-Banking Financial Companies and Deposit Acceptance Activities of Unincorporated Bodies held on May 6th 2022, based on a market intelligence input received by the Reserve Bank of India regarding unauthorized deposit collection by M/s Bharat Lajhna Multi State Housing Co-operative Society Limited (hereinafter referred to as "The Society") instructed the Competent Authority under BUDS Act, 2019 (hereinafter referred to as "The Competent Authority") to enquire into the matter. Consequently, as per directions of the Competent Authority, vide Letter No SC3/5/2023/Home dated 06.01.2023, the State Police Chief enquired into the matter and a report was furnished vide Letter No 191/TDR/C-Branch/ID/23 by DySP District Crime Branch, Idukki. The Report of the Dy. SP District Crime Branch, Idukki indicated the following facts:

Four cases have been registered against Bharat Lajhna Multi State Housing Co-operative Society Limited u/s. 3 r/w 21(2)(3), 5 r/w 23, 25(1) of BUDS Act 2019, at Thodupuzha, Kanjar ,Nedumkandam and Adimaly Branches. The accused with the intention to get wrongful gain to the society and wrongful loss to the investors, accepted investment by violating the rule that deposits can be accepted only from the members who have voting rights.

The Investment has no guarantee of the government or any regulatory authority. The institution has cheated the investor by accepting the investment from the general public in various schemes from the time the institution has started.

Based on the directions from the Government, the State Police Chief entrusted the enquiry to State Crime Branch. As per direction of ADGP Crime Branch, the Superintendent of Police Crime Branch Idukki unit conducted preliminary enquiry through Detective Inspector – I CB Idukki unit and submitted report to SP Crime Branch , in which the enquiry officer stated that the firm by Bharat Lajhna Multi State Housing Co-operative Society is Chennai headquarterd in Chennai Reg .No. MSCS/CR/235/2006, with Bharat Lajhna Multi State Housing Co-operative Society Limited , Building Number 305/306, 2nd Floor , Ten Square Mall, 100 Feet road, (Near CMBT) , Koyembedu, Chennai 600 107.

The society operates around 100 branches in the states of Tamil Nadu, Kerala, and UT Pondicherry and the branches accept deposits from the public under various schemes. He also stated in the report that, the State Co-operative Registration Department has no authority for auditing, inspection or other controls on the Multi State Co-operative Societies and has no responsibility regarding the investment therein.

A report has been submitted showing that the BUDS authority should consider investigating in detail the illegal acceptance of deposits in violation of Central Registrar of Co -operative Societies instructions and there is a possibility that public who invest in Bharat Lajhna Multi State Housing Co-operative Society Limited may be cheated as the government does not have any guarantee for the investments.

SP CB Idukki submitted the report to the State Police Chief through ADGP Crime Branch for further action. After examining the report submitted by the ADGP Crime Branch, State Police Chief has given direction to register cases against the branches of Bharath Lajhna Multistate Housing Co-operative Society at Thodupuzha, Adimaly, Kanjar and Nedumkandam Police Stations.

In compliance to the direction of State Police Chief, the following cases have been registered:

1. Thodupuzha PS Crime 382/2023 U/s 406,420,34 PC and sec. 5 of KPDEF Act 2013, (Act 7 of 2015), Sec. 3 r/w 21(2)(3), 5 r/w 23,25(1) of BUDS Act 2019 dated 13.03.2023.

2. Adimali PS Crime 305/23 U/s 406,420,34 PC and sec. 5 of KPDEF Act 2013, (Act 7 of 2015), Sec. 3 r/w 21(2)(3), 5 r/w 23,25(1) of BUDS Act 2019 dated 17.03.2023.

3. Kanjar PS Crime 183/23 U/s 406,420,34 IPC and sec.5 of KPDEF Act 2013, (Act 7 of 2015), Sec. 3 r/w 21(2)(3), 5 r/w 23,25(1) of BUDS Act 2019 dated 17.03.2023.

4. Nedunkandam PS Crime 233/23 U/S 406,420,34 IPC and sec.5 of KPDEF Act 2013, (Act 7 of 2015), Sec. 3 r/w 21(2)(3), 5 r/w 23,25(1) of BUDS Act 2019 dated 15.03.2023, the case has been registered.

Since the case required detailed investigation, the investigation of the case has been transferred to the District Crime Branch, Idukki as per order number D2-15655/20203/ID Dated 20-03-2023 of District Police Chief and the investigation started from 22.03.2023. I, Dy. SP District C – Branch Idukki is the present Investigation Officer of the cases.

Taking into consideration the reports received from the State Police Chief (SPC) vide letter No D3-3480/2023/PHQ dated 18.04.2023 and Letter No G4-12783/2023/ID(1) dated 05.04.2023 from the District Police Chief (DPC), Idukki, and prima facie going by the report and contents of the First Information Report (FIR), orders for provisional attachment of all movable and immovable properties and all other deposits held by the Deposit Taker (the Society) and the money or any other Property acquired either in the name of the Deposit Taker or in the name of any other person on behalf of the Deposit Taker, was ordered under Section 7(3) of the BUDS Act 2019 vide Proceedings No SC3/5/2023/HOME Dated 23-05-2023 read as first paper above.

Aggrieved by this order of the Competent Authority, the Society filed WP(C) No. 17039 of 2023 in the High Court of Kerala with a prayer to quash the Proceedings of the Competent Authority. The Hon. High Court of Kerala in its Judgment dated 08th June 2023 in WP(C) No.17039 of 2023 disposed the Writ Petition directing the Respondent i.e. The Competent Authority to consider Exhibit P8 of the Petitioner which is a True Copy of the letter issued by the Society to the Respondent dated 15.5.2023, after affording an opportunity of hearing to the Petitioner within a period of three weeks from the date of receipt of a Certified Copy of the Judgment.

Consequent to the Judgment of the Hon. High Court, notices for hearing on 22.06.23 were issued by the Competent Authority to the State Police Chief (SPC), Dy. SP District Crime Branch, Idukki, Registrar of Cooperative Societies, Kerala and the Petitioner i.e. the Society.

The various Respondents to the Notice were heard on 22.06.2023 and the following facts/contentions were put forth orally as well as with supporting documents.

1. Dy. SP District C – Branch Idukki

As per direction of ADGP Crime Branch, the Superintendent of Police Crime Branch Idukki unit conducted preliminary enquiry through Detective Inspector – I CB Idukki unit and submitted a report to SP Crime Branch , in which the enquiry officer stated that the firm by Bharat Lajhna Multi State Housing Co-operative Society is Chennai headquarterd in Chennai Reg .No. MSCS/CR/235/2006, with Bharat Lajhna Multi State Housing Co-operative Society Limited , Building number 305/306, 2nd Floor , Ten Square Mall, 100 Feet road,(Near CMBT) , Koyembedu, Chennai 600 107.

The Society operates around 100 branches in the states of Tamil Nadu, Kerala, and UT Pondicherry and the branches accept deposits from the public under various schemes. He also stated in the report that, the State Co-operative Registration Department has no authority for auditing, inspection or other controls on the multi state co-operative societies and has no responsibility regarding the investment therein.

A report has been submitted showing that the BUDS authority should consider investigating in detail the illegal acceptance of deposits in violation of CRCS instructions and there is a possibility that public who invest in Bharat Lajhna Multi State Housing Co-operative Society Limited may be cheated as the government does not have any guarantee for the investments.

SP CB Idukki submitted the report to the State Police Chief through ADGP Crime Branch for further action. After examination the report submitted by the ADGP Crime Branch, State Police Chief has given a direction to register cases against the branches of Bharath Lajhna Multistate Housing Co-operative Society at Thodupuzha, Adimaly, Kanjar, Nedumkandam Police Stations.

Suo moto crime cases were registered by police against Bharat Lajhna Housing Co - operative Society for unauthorized deposit collection. It is reported that 4 cases have been registered against the branches of Bharat Lajhna Housing Co - Operative Society Limited located at Thodupuzha, Kanjar, Nedumkandam and Adimali for committing offences u/s 3 r/w 21(2) (3), 5 r/w 23, 25 (1) of BUDS Act, 2019. The accused with the intention to get wrongful gain to the firm and wrongful loss to the investors, accepted deposits from public violating the rule that deposits can be accepted only from the members who have voting rights.

The crime cases registered against the firm are as follows:

1. Thodupuzha Police Station Crime No. 382/2023 u/s 406, 420, 34 IPC and section 5 of KPID Act, 2013, section 3 r/w 21 (2) (3), 5 r/w 23, 25 (1) of BUDS Act against Bharat Lajhna Housing Co – Operative Society branch at Thodupuzha, Idukki.
2. Adimali Police Station Crime No. 305/2023 u/s 406, 420, 34 IPC and section 5 of KPID Act, 2013, section 3 r/w 21 (2) (3), 5 r/w 23, 25 (1) of BUDS Act against Bharat Lajhna Housing Co - Operative Society branch at Adimali, Mannamkandam, Idukki.

3. Kanjar Police Station Crime No. 183/2023 u/s 406, 420, 34 IPC and section 5 of KPID Act, 2013, section 3 r/w 21 (2) (3), 5 r/w 23, 25 (1) of BUDS Act against Bharat Lajhna Housing Co - Operative Society branch at Moolamattom, Idukki.

4. Nedunkandam Police Station Crime No. 233/2023 u/s 406, 420, 34 IPC and section 5 of KPID Act, 2013, section 3 r/w 21 (2) (3), 5 r/w 23, 25 (1) of BUDS Act against Bharat Lajhna Housing Co – Operative Society branch at Nedumkandam, Idukki.

The Dy. SP District Crime Branch Idukki further submitted that there were no complainants per se in any of the cases and the FIRs were filed Suo moto by the Police. He also mentioned that since the investigations were in a preliminary stage, there was no corroborative evidence to substantiate the charges levelled in the FIR. Copies of the FIR filed were submitted for Record.

2. Additional Registrar of Co-operative Societies (Representing the Registrar of Co-operative Societies, Kerala)

It was submitted that inspections were conducted in certain branches of the Society and it was noticed that ledgers and other documents regarding the members were not found in the branches for verification. It was also added that the Society being under the regulatory control of Central Registrar of Cooperative Societies, the State Registrar of Cooperative Societies, Kerala has no authority to take any action against the Society. He further submitted that the Inspection Report from the Registrar of Cooperative Societies, Kerala states that the Society accepted deposits from nominal Member as well as general public and also mentioned the fact that they could not find any registers or documents to corroborate from whom the deposits were collected.

3 M/s. Bharat Lajhna Multi State Housing Co-operative Society Limited (Representing by its Admin Director)

It was stated that The Petitioner Society has its Headquarters in Chennai, Tamil Nadu and has been Registered to carry on its operations in the States of Tamil Nadu, Kerala and Pondicherry vide Certificate of Registration

with No MSCS/CR/235/2006 dated 24th February 2006 issued by Office of Central Registrar of Cooperative Societies, Ministry of Agriculture, (Department of Agriculture & Cooperation), Government of India. The byelaws filed by the Society have also been registered.

It was submitted that as per byelaw No 6 of the society could raise funds by taking subscriptions, deposits and contributions apart from other sources mentioned. Byelaw No 7 & 8 stipulate that the Authorized Capital of the Society is Rs 100 Crores and the maximum borrowing limit of the society shall be ten times of the subscribed share capital plus accumulative reserves minus accumulative losses (if any). Byelaws No 9 to No 23 stipulates the kinds of Membership, Rights and their duties. Byelaw No 13(i) specifically mentions that every member of the society shall have one vote in the affairs of the society.

The Resolution dated 26.07.2019 of the Board of Directors of the Society was submitted wherein the Society has decided to convert all existing nominal membership to regular membership with voting rights as per law and the byelaws of the Society; and no new nominal membership shall be accepted. The conversion of nominal membership to regular membership shall be applicable only in case of members who have been issued a nominal membership.

It was also further resolved that all the memberships accepted henceforth shall only be regular membership and no other membership shall be issued and all the members shall have voting rights.

The Admin Director of the Society stated that post the above-mentioned Board Resolutions they are not accepting deposits from non-members and they accept deposits only from voting members. He further submitted copy of Judgment dated 23.08.2021 in WPC No.1701 of 2021 (WPC Nos. 1701, 9825 & 5354 of 2021 and WMP Nos 1909, 5948, 10459, 1906, 8451, 5949, 5950, 1902 of 2021) passed by the Honourable High Court of Madras. The gist of Judgment is as follows:

A petition was 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 Society 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.

ORDER

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 activity 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.

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.

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 regulations, 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 2019 Act was relied upon and the same is extracted hereunder: -

*THE FIRST SCHEDULE
REGULATED DEPOSIT SCHEME*

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

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 2nd respondent, within a period of four weeks from the date of receipt of copy of this order.

e. The 2nd 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.

Considering the submissions of the Petitioner, Dy. SP District C – Branch Idukki, and Additional Registrar of Cooperative Societies (Representing the Registrar of Cooperative Societies, Kerala) and the fact that the Honourable High Court of Kerala in its Judgment passed in WPC No 17039/2023 dated 8th June 2023 had directed the Competent Authority to hear the Petitioner within a period of three weeks of receipt of the Certified copy of Judgment, a detailed analysis had to be done on the various submissions both oral and written produced, the Provisional Attachment order No SC3/5/2023/Home Dated 23.05.2023 of the Competent Authority were kept in abeyance vide Orders issued on 14.7.2023 by the Competent Authority.

FINDINGS

A perusal of all 4 FIRs produced by Dy. SP District Crime Branch Idukki shows that Sec 3r/w 21(2)(3), 5 r/w 23, 25(1) of BUDS Act 2019 have been invoked on basis of complaints from the general public. No documents were produced during the hearing which confirmed any complaint from the public, All FIRs were filed Suo moto by the Police under the assumption that there were violations of the BUDS Act 2019. On being asked whether there was any enquiry or analysis of documents of the Society, the answer was negative. The only reply given was investigations are in a preliminary stage and hence they are not in a position to corroborate how the violation of the provisions of BUDS Act 2019 actually took place. It was further asked whether they considered at any point of time the fact that the multi

state cooperative societies are regulated by the Central Registrar of Cooperative Societies and any violation should be reported to them in the first instance. The reply was negative and excuse given was that Investigation was in the preliminary stage.

The Additional Registrar of Cooperative Societies (Representing the Registrar of Cooperative Societies, Kerala) mentioned very clearly that all the inspections conducted on the petitioner society by the Registrar of Cooperative Societies, Kerala were done without examination of all the records of the Society and were based only on available records in the Branch offices where the inspections were conducted. They were therefore not in a position to conclusively prove that the Society had violated the conditions laid down in the Registration granted by the Central Registrar of Cooperative societies. Further since they did not have the authority to take action against a Multi-state Cooperative society, they referred the matter to the Central Registrar of Cooperative Societies.

The Petitioner Society has produced its Bye laws and subsequent Board Resolutions which show that post 2019, they have been collecting deposits only from regular voting Members. The Hon. High Court of Madras in WPC No.1701 of 2021 (WPC Nos. 1701, 9825 & 5354 of 2021 and WMP Nos 1909, 5948, 10459, 1906, 8451, 5949, 5950, 1902 of 2021) have examined in detail whether the deposits being collected by the society are in violation of the BUDS Act 2019 or otherwise. It is pertinent to note that the subject matter in these WPCs is similar to what has been stated in the FIRs filed by the Police. The Hon. High Court of Madras in its order in these WPCs has clearly permitted the Society to collect/receive deposits only from its voting members in accordance with Sec 67 of the Multistate Cooperative Societies Act 2002. Further it has given a direction to the Central Registrar of Cooperative societies to conduct an enquiry as contemplated under Chapter VIII of the Multistate Cooperative Societies Act 2002 and it may also inspect the books/records maintained by the society and if any irregularities identified/detected, shall proceed 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.

ORDER

The Provisional Attachment Order No SC3/5/2023/Home dated 23.05.2023

passed by the Competent Authority under BUDS Act 2019 had relied solely on the facts presented in the 4 FIRs submitted along with the Report No 191/TDR/C-Branch/ID/23 of the Dy. SP District Crime Branch Idukki. Neither was the Society given a chance to present its case nor were any documents of the Society examined before passing the order. The Hon. High Court of Kerala in its Judgment in WPC No 17039 of 2023 dated 08.06.2023 had directed the Competent Authority to hear the Petitioner Society and take appropriate decision on the same.

The Banning of Unregulated Deposit Schemes Act 2019 came into force on the 21st day of February 2019 with an aim to curb Unregulated Deposits.

Section 2(4) defines Deposits as under:

“deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(a) amounts received as loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5 of th

(b) amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies;

(c) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(d) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange

Management Act, 1999 (42 of 1999) and the rules and regulations made thereunder;

(e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;

(f) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;

(g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);

(h) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of the People Act, 1951 (43 of 1951);

(j) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

(i) payment, advance or part payment for the supply or hire of goods or

provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

(ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;

(iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or

(iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii): Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund: Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

Explanation.-For the purposes of this clause,

(i) in respect of a company, the expression "deposit" shall have the same meaning as assigned to it under the Companies Act, 2013 (18 of 2013);

(ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934 (2 of 1934), the expression "deposit" shall have the same meaning as assigned to it in clause (bb) of section 45-I of the said Act;

(iii) the expressions "partner" and "firm" shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932 (9 of 1932);

(iv) the expression "partner" in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009);

(v) the expression "relative" shall have the same meaning as assigned to it in the Companies Act, 2013 (18 of 2013);

Further, Section 2(17) of the Act defines an Unregulated Deposit scheme as

“Unregulated Deposit Scheme” means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule.

Section 3, 4, 5 and 6 of the Act have provision regarding Banning of Unregulated Deposits

3. Banning of Unregulated Deposit Schemes. — On and from the date of commencement of this

Act,—

(a) the Unregulated Deposit Schemes shall be banned; and

(b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement

soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

4. Fraudulent default in Regulated Deposit Schemes. —No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

5. Wrongful inducement in relation to Unregulated Deposit Schemes.—No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme

6. Certain scheme to be Unregulated Deposit Scheme.—A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (43 of 1978) shall be deemed to be an Unregulated Deposit Scheme under this Act

In the first Schedule appended to the BUDS Act 2019, Serial No 8 in point 1 defines the Regulator and Regulated Deposit scheme in case of Multi-State Cooperative Societies

THE FIRST SCHEDULE

See section 2 (15)

(1) The Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the following Table, namely

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

An analysis of the documents and submissions of the Petitioner Society, Dy. SP District Crime Branch Idukki, Additional Registrar of Cooperative Societies (Representing the Registrar of Cooperative Societies, Kerala) and records present on file would indicate that the deposits collected by the Society fall within the definition of Regulated Deposit Scheme as covered in the First Schedule of the BUDS Act 2019.

At this point in time no documents or any other evidence has been presented either by the Police Authorities or the Registrar of Cooperative Societies, Kerala to conclusively prove that the society is collecting Unregulated Deposits which come under the purview of the BUDS Act 2019. Since the activities of the Society qualify as a Regulated Deposit scheme, the Regulator is Central Registrar of Cooperative Societies. During the course of Investigations in case the Police / Registrar of Cooperative Societies, Kerala find that the Society has violated any provisions of the Multi-state Cooperative Societies Act 2002, they may refer the matter to the appropriate Regulator for due legal action. Consequently, the Provisional

Attachment Order No SC3/5/2023/Home dated 23.05.2023 issued by the undersigned stands withdrawn.

As per the directions of the Honourable High Court of Kerala in Judgment delivered in WPC No 17039 of 2023, Exhibit P8 of the Petitioner Society stands disposed and the same is reported to the Hon. High Court of Kerala.

(By order of the Governor)
SANJAY M KAUL
COMPETENT AUTHORITY

To:

Advocate General, Kerala (with C/L)

All District Collectors

The State Police Chief

The Additional Director General of Police (Crimes)

All District Police Chiefs

The Inspector General of Registration Department

The Transport Commissioner

The Lead Bank Managers

Registrar of Co-operative Societies

General Managers of KSFE/District Managers of KFC etc (through the District Collectors)

The Accountant General(Audit/A&E)Kerala, Thiruvananthapuram The Finance/ Law/Revenue/Taxes Departments

I & PR (Web & New Media) Department.

Stock File/Office Copy

Forwarded /By order

Signed by

Prameela K Nair

Date: 26-08-2023 12:19:09
Section Officer