

MANUAL - XVII

MISCELLANEOUS

(1) Procedure for registration of co-operative societies:

- (a) A society is statutory form of organization. The registration of a society renders it a body corporate by the name under which it is registered with perpetual succession and a common seal. The society is entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits. The moment the society is registered, a body corporate automatically comes into being. Registration of co-operative society is compulsory.
- (b) Section 3 empowers the Government to appoint a person to be the Registrar of Co-operative Societies for Puducherry. The Government may also appoint one or more persons to assist such Registrar and confer on such person or persons all or any of the powers of the Registrar exercisable under this Act by general or special order. By Notification, the Government of Puducherry have conferred certain powers on the Joint Registrar, Deputy Registrar, Dairy Development Officer, and Co-operative Officer who work under the general guidance, superintendence and control of the Registrar.
- (c) Sections 4 to 10 (Except Section 5) and Rules 3,5 and 6 deal with the registration of societies. Every co-operative society has to be registered after complying with all the formalities, as required under the provisions of the Act.
- (d) The object of the society must be:
- (i) Promotion of economic interest of its members in accordance with co-operative principles: or
 - (ii) Facilitating the operation of society having such object.

- (e) The first category consists of primary co-operative societies and the second one is central / apex societies, which comprise of primary / secondary societies. The liability of the society may either be limited or unlimited.
- (f) Co-operative principles are not defined anywhere in the Act or Rules. Of course, it is these principles, which distinguish the co-operative institutions from other private organizations.
- (g) It shall be noted that the Registrar shall not register a society if, in his opinion, it is likely to be economically unsound or the registration of the society may have an adverse effect on the co-operative movement.
- (h) Application for registration: Every application for registration of a society shall be made in duplicate and in Form No.1. The Form No.1 contains details, inter alia, name of the proposed society, area of operation, total population of the area, address, persons elected by the applicants to the committee, applicants' names, age, profession, signatures.

The application should be signed:

- (a) In case of a primary society, by at least 25 independent persons residing or owning immovable property in the same town or village and who are qualified for membership;
- (b) If the society applies for registration of another society as one of the applicants, the former society should authorize a person to sign the application on its behalf. If all the applicants of the proposed society are not societies, twenty-five other members should sign the application. If such members are less than twenty-five, all of them should sign.

An independent person is explained as one who is not dependent upon another member for his means of livelihood.

The application shall be accompanied by a copy of a proposed bye-laws of the society. The Registrar may require any further information about the proposed society, which the applicants should furnish. Further the Registrar is empowered to decide whether a person is an independent person or is a resident of or owns immovable property in a town or village.

(i) Registration: In the matter of registration of societies, the powers of the Registrar are conferred on the Joint Registrar of Co-operative Societies, Deputy Registrar of Co-operative Societies, and Dairy Development Officer. Registrar has been armed with adequate powers in the matter of registration of societies. Registration of societies depends upon the objective satisfaction of the Registrar. Before registering the society, the Registrar must satisfy himself about the following conditions:-

- (1) The application must be in the prescribed form;
- (2) It should be accompanied by a copy of the proposed bye-laws;
- (3) The application is signed by at least twenty five independent members;
- (4) If the applicants are only societies, duly authorized persons on behalf of every society must sign;
- (5) The proposed society has the prospects of sound business and reasonable chances of working successfully;
- (6) The area of operation of the proposed society is clearly demarcated and does not overlap with the area of operation of another society of the same class or category
- (7) The bye laws of the proposed society are not contrary to the provision of the Act and the Rules or to the co-operative principles or to any other law applicable to the society;

- (8) The bye laws of the proposed society are in conformity with the model bye laws, if any, prescribed for such class or category of societies to which the proposed society belongs.
- (j) Bye Laws: The bye laws govern the organization of a co-operative society and set out the way in which it is to function. It is an integral part of the legal framework of a co-operative society. They should always be in conformity with the Act and Rules. A member joining the society is supposed to have accepted the bye laws of the society. Therefore, it is imperative to ensure that the bye laws of the proposed society shall deal with the matters specified under Rule 4.
- (k) On satisfying with the conditions aforesaid, the Registrar may register the society within a period of three months from the date of receipt of the application, as otherwise extension of time is to be sought from the Government, by making a report to the Government stating the reasons therefor and the Government may allow Registrar such time as may be considered necessary to dispose of such application.
- (l) When a society is registered, the Registrar shall issue a certificate of registration in Form No.2 together with a copy of the certified copy of the bye laws as approved and registered by him. A copy of the certificate of registration and a copy of the bye-laws shall be furnished to the financing bank, Central or apex society concerned.
- (m) Registration certificate: The Registrar, on registration of the society, issues a certificate of registration when the society and its bye-laws have been registered and such certificate shall be the conclusive evidence that the society is duly registered. The certificate provides the following:-
1. Name of the society.
 2. Nature of liability.

3. Date of registration.

The registration certificate is signed by the Registrar and bearing his official seal and containing the registration number of the society. The word 'limited' shall be the last word in the name of every society with limited liability.

(2) Procedure for raising dispute under the Puducherry Co-operative Societies Act, 1972:

An important feature of the co-operative law is that disputes relating to the constitution, management and business of a society, between specified parties, shall be referred to the Registrar of Co-operative Societies for adjudication and need not be taken to the civil courts. Settlement of disputes through the Registrar to the exclusion of civil court, is no doubt, an unusual provision. What has prompted the Legislature to make this provision is the welfare character of the co-operative movement itself. The provisions are intended for the speedy disposal of all kinds of disputes concerning constitution, management or business.

(a) DISPUTE:

Section 84 provides that any dispute touching the constitution of the committee or management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society shall be referred to the Registrar for decision.

One of the exceptions recognized in Section 84(1) is a dispute regarding disciplinary action by the society or its committee against a paid servant of the society.

It is also provided that dispute relating or in connection with any election to a committee shall not be referred till the date of the declaration of the result of such election.

(b) REFERENCE OF DISPUTE:

Rule 64 lays down that the reference to the Registrar of any dispute shall be in writing.

The period of limitation for referring a dispute shall be regulated by the provisions of the Indian Limitation Act. However, if there is a dispute between the society or its committee and any past committee, any past officer, past agent or past servant or the nominee, heirs or legal representatives of the deceased officer, deceased agent or deceased servant relating to any act or omission shall be referred within three years from the date on which the act or omission took place.

A dispute relating to or in connection with any election of officer shall be referred to Registrar within two months from the date of declaration of result of such election.

The Registrar has prescribed the following fees to be deposited in advance for deciding the dispute:

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| (i) Monetary dispute |Rs.100/- for each case. |
| (ii) Non-monetary dispute |Rs.500/- for each case |

In proceedings before the Registrar or the Arbitrator legal practitioners shall not be entitled to appear to represent parties. Section 84(6) empowers Registrar to pass *interlocutory orders* as he may deem fit in the interest of justice.

(3) Procedure for Appeal and Revision under the Puducherry Co-operative Societies Act, 1972:

(a) Under the various provisions of the Act, the Registrar is clothed with immense powers. For speedy and effective settlement of dispute, the powers of the civil court have also been conferred on him. Hence natural

justice warrants that the aggrieved should have avenue for appeal. Under these circumstance, it has become relevant for the creation of an appellate authority vested with powers of appeal, revision and review.

- (b) **Tribunal – Section 139:** Section 139 provides for constitution of as many Tribunals as may be necessary by the Government, consisting of a single member who shall be a judicial officer, not below the rank of subordinate Judge. The jurisdiction of the Tribunal may be determined by the Government from time to time.
- (c) **Appeals – Section 140:** An appeal in legal parlance is to mean the renewal of a cause from an inferior or subordinate to superior Tribunal or forum in order to test and scrutinize the correctness of the impugned decision. It amounts to a complaint to higher forum that the decision of the subordinate Tribunal is erroneous and therefore, liable to be rejected or set right.
- (d) Section 140 provides for two appellate forums. The first one is the Tribunal constituted under Section 139 and the second one is the Government and its officers.
- (e) **Appeals to Tribunal:** An appeal to the Tribunal in the following cases may be made by the aggrieved person:-
 - (a) An order of surcharge made under Section 82(1);
 - (b) An order made superseding the committee under Section 83;
 - (c) An order made under Section 84(2) by the Registrar on receipt of the reference;
 - (d) An order made under Section 84(3) by the Registrar, other than an order of transfer, reference withdrawal or retransfer of a dispute;
 - (e) Any decision by the Registrar under Section 84(4) in deciding certain questions;

- (f) An order of the Registrar under Section 126 in winding up of a society;
- (g) An order by the Registrar under Section 133 to recover certain sum by attachment and sale of property;
- (h) An order under Section 157 relating to attachment of property;
- (f) Any matter relating to or in connection with the constitution of a committee, including any election thereto, falls outside the purview of the Tribunal.
- (g) The proceedings of a Tribunal shall be summary and shall be governed by the provisions of the Code of Civil procedure, 1908, as far as practicable. The fees payable in respect of every appeal is Re.1
- (h) It will be seen from the above that the jurisdiction of the Tribunal extends to almost all important orders passed by the Registrar.
- (i) **Appeals to Government or The Registrar of Co-operative Societies:** An appeal lies on the following orders to the Government if those order are passed by the Registrar of Co-operative Societies; and to the Registrar if those orders are passed by any other person.
 - (a) A decision under Section 7 deciding certain questions by Registrar whether a person is an independent person or a resident of or owns immovable property in a town or village;
 - (b) Refusal to register a society under Section 9;
 - (c) Amendment of bye-laws under Section 11;
 - (d) Direction to amend the bye-laws under Section 12;
 - (e) Approval given for amalgamation, transfer or division of societies under Section 14;
 - (f) Disqualifying a member of the committee under Section 34;
 - (g) Disqualifying an office bearer under Section 35;
 - (h) Approval given by the Registrar to any lift irrigation society for taking loan from any financial institution under Section 120;

- (i) Approval given by the Registrar is sharing expenditure for providing supply of water under Section 121;
- (j) Approval of the Registrar for regulating the supply of water under Section 123;
- (k) Terminating the membership of any person of the lift irrigation society under Section 124.
- (j) In respect of amendment of bye-laws and amalgamation, transfer or division, the aggrieved person will be the society.
- (k) Any person who is refused admission to a society under Section 20 or an person who is aggrieved by an order of the liquidator under Section 128 may appeal to the Registrar
- (l) **Limitation:** Any appeal shall be preferred within two months from the date of decision, order, award, refusal, registration or approval complained of. However, the appellate authority may admit an appeal after the said period of two months, if the appellant has sufficient cause for not preferring the appeal within the said period.
- (m) **Disposal of an Appeal:** In disposal of an appeal, the appellate authority, after giving an opportunity to the parties to make their representations, may pass orders as he may deem fit. The decision or order shall be final.
- (n) The appellate authority may pass such interlocutory orders pending the decision on the appeal, as the authority may deem fit. The authority may also impose cost.
- (o) **Revision – Section 141:** Supervisory or revisional power is considered to be a power vesting in the higher or superior Tribunal, to satisfy about the soundness or correctness of the order of the inferior Tribunal.
- (p) Section 141 creates two forums for revision:
 - (1) The Registrar is empowered to revise the proceedings of any officer subordinate to him.

- (2) The Government is empowered to revise the orders of the Registrar in respect of any proceeding, not being a proceeding in respect of which an appeal to Tribunal is provided under Section 140 (1).
- (q) The statute eliminated all the orders of the Registrar which can be taken in appeal to the Tribunal from the revisional jurisdiction of the Government as otherwise the party will have two concurrent remedies: (i) by way of appeal to Tribunal; and (ii) by way of revision to the Government and thus resulting in some cases in conflicting orders.

(r) Steps to be followed:

- (a) The first step when exercising the power of revision under this Section is to call for the records of the proceedings, the correctness, legality, regularity or propriety of which the revisional authority want to satisfy itself. The power can be exercised either suo motu or on application from the party concerned.

Every application for revision shall be preferred within three months from the date on which the proceedings, decision or order was communicated to the applicant.

- (b) To examine the records and if the revisional authority is satisfied that the proceedings require a modification, annulment, reversal or remission for reconsideration, it has to give an opportunity of making representations to the party likely to be adversely affected.
- (c) The revisional authority has to take into consideration the representations so received and then pass suitable orders.
- (d) In the mean time, the revisional authority is also empowered to stay the operation of the order.
- (e) The revisional authority may also impose cost.

(s) Procedure regarding appeals (other than those to the Tribunal) & Application for revision – Rule 104:

- (i) An appeal or an application for revision shall either be presented in person or sent by registered post to the appellate or revising authority.
- (ii) The fee payable is as provided in the Rule.
- (iii) The appeal or application for revision shall be in the form of memorandum. The original or certified copy of the lower authority should be enclosed.
- (iv) Every appeal or application for revision shall-
 - (a) Specify the name and address of the appellant or applicant and the name and address of the respondent;
 - (b) State who made the order and give the date of order of the lower authority;
 - (c) Set forth the grounds of objection with a memorandum of evidence;
 - (d) State the relief sought for.
- (v) When an appeal under Section 140(2) is preferred after the expiry of two months, it shall be accompanied by a petition for condonation of delay.
- (vi) On receipt of the appeal or the application for revision, the appellate or revising authority shall ensure that:
 - (a) The appellant or applicant has locus standi;
 - (b) It is made in time;
 - (c) It conforms to all the provisions of the Act and Rules.
- (vii) The appellate or revision authority may call upon the appellant or applicant to remedy the defects, if any, and furnish such additional information as may be necessary within 15 days of the receipt of the notice. If the appellant or the applicant fails to remedy the defects or furnish the

additional information called for within the said period, the appeal or the revision petition may be dismissed.

- (viii) Before passing the order under Section 141, the revising authority may obtain from any subordinate officer such further information for the purpose of verifying the regularity or propriety of such decision. The revising authority may also call for and obtain from the parties such information as is necessary.
- (ix) In the proceedings before the appellate or revising authority, legal practitioners shall not be entitled to appear to represent parties, as a matter of right.
- (x) On the basis of the enquiry conducted and with reference to the records examined, the appellate or revising authority shall pass orders.
- (xi) The order shall be in writing and be communicated to the parties and to the subordinate officer.

(4) Review – under Section 142 of the Puducherry Co-operative Societies Act, 1972:

(1) The term review means a judicial re-examination of the case in certain specified and prescribed circumstances. Apart from an appeal or a revision, the parties are in certain circumstances entitled to file a review petition. While an appeal or a revision is filed before a high authority against an order of the lower authority, a petition for review is filed before the same authority, which has decided an appeal or revision. But the grounds of review are entirely different from the grounds on which an appeal or revision lies. The following circumstances should exist for filing review petition under this Section;

- (1) There should be an order passed in appeal or in revision;

- (2) There should be a discovery of new and important facts which, after the exercise of due diligence were not within the knowledge or could not be produced by the party when the order in revision or appeal was made;
- (3) There should be some mistake or error apparent on the face of the record;
- (4) There should be any sufficient reason.

(2) No application for review shall be preferred more than once in respect of the same order.

(3) Limitation: The period of limitation for filing a review petition is three months from the date of communication of the order. The decision or order passed on the application for review shall be final.

(4) **Procedure for review:**

- (1) The application shall be in the form of memorandum setting forth the grounds for revision. It shall be accompanied by a memorandum of evidence.
- (2) The application shall be accompanied by the original or certified copy of the order to which the application relates. The fee payable for every application is Rs.2.
- (3) No application for review shall be entertained unless it is accompanied by such additional number of copies to serve on the parties.
- (4) No final order shall be passed on such application unless notice has been given to all parties interested to make their representations.

(5) The review authority is empowered to pass interlocutory orders, pending the decision on the application for review.

(6) He may award costs.

(5) Bar of jurisdiction of Civil Courts – Section 144:

This Section seeks to oust the jurisdiction of a civil court as the Act itself provides for settlement of disputes. The main object is to avoid wasteful expenses in settling disputes and to provide a cheap, effective and quick remedy in arbitration, liquidation etc. Jurisdiction is the power to hear and determine a case.

According to Section 144, the civil court has no jurisdiction to sit on appeal on any order or award passed, decision or action taken or direction issued under the Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them.

(6) Tribunal, Registrar to have certain powers of Civil Court – Section 145:

The Tribunal, The Registrar, The arbitrator or any other person deciding a dispute and the liquidator of a society shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure 1908, in respect of the following matters, namely-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits; and
- (d) Issuing commissions for the examination of witnesses.

| Appeal to the Co-operative Tribunal (District Court, Puducherry) Under Section 140(1) r/w. Rule 104 | | |
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| Sl. No. | Section | Particulars |
| 1 | 82(1) | Surcharge |
| 2 | 83 | Supersession of committee |
| 3 | 84(2)(3)(4) | Disputes (a) Not applicable for any decision, order, or award u/s. 84(2)(3)(4) in respect of any matter relating to or in connection with the constitution of a committee including any election thereto. (b) Not applicable for any order of transfer, reference, withdrawal or retransfer of a dispute u/s. 84(2) (3). |
| 4 | 126 | Winding up |
| 5 | 133 | Execution – Power of the Registrar to recover certain sum by attachment and sale of property |
| 6 | 157 | Attachment of property |
| 7 | 84(2)(3) | Award of an arbitrator |

| Appeal to the Secretary to Government (Co-operation)/ Registrar of Co-operative Societies under Section 140(2) r/w. Rule 104 To Secretary to Government (Co-operation) | | |
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| If decision, refusal, registration, approval or order is that of the Registrar Registrar of Co-operative Societies | | |
| If decision, refusal, registration, approval or order is that of any other person | | |
| Sl. No. | Section | Particulars |
| 1 | 7 | Power of Registrar to decide certain question (regarding an individual residence, property) |
| 2 | 9 | Registration of societies |
| 3 | 11 | Byelaws - Amendment (Aggrieved person means registered society) |
| 4 | 12 | Byelaws - Direct amendment (Aggrieved person means registered society) |
| 5 | 14 | Amalgamation, transfer or division of societies (Aggrieved person means registered society) |
| 6 | 24 | Members - Expulsion |
| 7 | 34 | Disqualifications - Membership of committee |
| 8 | 35 | Disqualifications - Office-bearers |
| 9 | 120 | Lift Irrigation Society - Declaration by members |
| 10 | 121 | Lift Irrigation Society - Agreement regarding period of membership, sharing of expenditure, etc |
| 11 | 123 | Lift Irrigation Society - Regulation of supply of water |
| 12 | 124 | Lift Irrigation Society – Admission of transferees of land and heirs, etc., as members |

| Revision by the Secretary to Government (Co-operation) / Registrar of Co-operative Societies under Section 141 r/w. Rule 104 To Secretary to Government (Co-operation) If proceedings is issued by the Registrar Registrar of Co-operative Societies If proceedings is issued by any officer subordinate to him | | |
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| Sl. No. | Section | Particulars |
| 1 | 141 | In respect of any proceedings not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 140(1). |

| Review Secretary to Government (Co-operation) / Registrar of Co-operative Societies under Section 142 r/w. Rule 105 | | |
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| Sl. No. | Section | Particulars |
| 1 | 142 | The appellant of an appeal (Section 140) or the applicant of a revision petition (section 141) may apply for the review of any order passed under Section 140 or 141, as the case may be. |

(7) Procedure for Appeal under Section 19 the Right To Information Act, 2005:

(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer which is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the

concerned third party shall be made within thirty days from the date of the order.

- (3) A second appeal against the decision under sub-section (10 shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commissions:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (4) If the decision of the central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.