

No. 6764 (4) /VI(4)23/2001-Legal-Dated: 1/9/2006

To

All Assistant-Auditor General of
Cooperative Societies of Circles.

Sub: Audit suggestions for recovery
and surcharge action.

Sir,

It is observed that the Auditors are suggesting recovery of illegal payments from Officers or Office bearers without quoting the provision of the O.C.S.Act., Rule or Bye-laws of the Society which has been violated and for which they (Auditors) consider it as illegal. This is likely to cause problem for the surcharge authorities for quick disposal of proceedings and may also invite intervention of competent Tribunal/Court even before disposal of such proceeding. Since Section 67 of O.C.S.Act. provides that payments made contrary to the provisions of this Act., Rule and Bye-laws of the Society shall be recovered and replenished to the Society, the Auditor is bound to quote the provision of O.C.S.Act., Rule or the Bye-laws violated by the Officers or Office bearers concerned held liable by the Auditor. This will help the Officer or Office bearer to defend himself and the surcharge authority to take quick decision. Payments made in violation of provisions of other laws will not attract scope of Section 67 of O.C.S.Act.. So, Auditors may suggest for disciplinary action, in that case .

2. The Auditors must bear in mind that in all cases where they are suggesting recovery in terms of money or property belonging to the Society, they are recommending for depriving the Officers or Office bearers held so liable of their right to property to the extent of recovery suggested. Therefore, as per the principles of natural justice, they (Persons held liable) must be served with half-margin memo, or summons, service of summons must be sufficient, they must be heard in persons if they so request and their statements must be recorded. If their explanation or plea does not appear convincing the Auditor concerned may suggest for recovery giving adequate justification in support of the suggestion and categorically indicating in the report that half-margin memo/Summon was issued to the person held liable to explain his

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stand, and the responsibility was fixed as he did not respond or his explanation was not found satisfactory. Since service of summons to present Chief Executive or present Management on behalf of the liable persons is not sufficient Service, summons/half margin memos should be served on the liable persons and the service should be as per O.C.S. Rule 150 (3).

3. There are many instances in Audit Reports and Special Audit Reports where the Auditors have suggested recovery of irregular loans and advances from the Officer/Officers or Office bearers who have sanctioned or disbursed loans in violation of some Rules of Business or because these are advanced without proper documentation. Such advice for recoveries are legally untenable and totally erroneous, if it is proved that the loan has been received by the loanee and since in that case he is legally bound to refund it with interest. He can not be exonerated of the liability because of some documentation lapses or non-observance of rules of business or directions of management. For such omission or negligence or disobedience, management may be asked to discipline them. But if money will be surcharged from the errant officers and replenished to the Society, then the loanee will escape without refunding the loan with interest. Society can not initiate legal action against the loanee because it can not recover one loan twice. Therefore, if the Auditors find that certain loan accounts have become highly risky due to absence of certain vital documents, then they may suggest for disciplinary action against those who have financed and legal action under Section 68 of O.C.S. Act against the loanee and/or advise the Society to implead the errant officers or office bearers responsible for giving such loan which appeared to go bad from the appraisal records as additional O.P. along with the loanees and the sureties. But if the Auditors find that after exhausting all possible legal steps along with persuasion the loan remained totally or partly un-recovered, then he may suggest for recovery of this amount from the persons who made that bad finance. Auditors may also suggest recovery of fake loans, of course, subject to sufficient proof from the Officers or Office bearers liable. Even if a dispute filed for recovery of a loan is dismissed due to documentation lapses, then also the Auditors may suggest for recovery of the same from those who financed it.

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4. Another example is certain cases, where auditor feels that some Officer or Office bearer purchased land at a cost, much more than reasonable or prevailing rate and he intends to fix responsibility. In such case the loss accrued to the society in such land transaction has to be calculated taking into account the purchase cost, interest paid on borrowed funds used for purchase, till disposal and sale proceeds etc. before fixing the quantum of loss. There may be a situation where the land was purchased at a much higher rate, but due to appreciation of land-cost, there may not be a loss. Even in such case, loss at the time of purchase should be assessed very carefully, which should stand the test of law.

5. In all other cases of recovery coming within the scope of Section 67 of O.C.S. Act., like recovery of payments made in contravention of the provisions of O.C.S. Act., Rule and the Bye-laws of the Society or deficiency caused in the assets of the Society by breach of trust or negligence of duty or otherwise or mis-appropriated amounts or fraudulently retained money or other property of the Society, the Auditor should ask the Chief-Executive and Management to take both criminal and civil action to recover the same within particular dead-line to be fixed by the Auditor and advise next audit to comment on its compliance. If the Chief Executive and Management do not take any action on the Audit suggestion, then the next Auditor should make them liable for their lapses/omissions along with the Officers or Officers held liable for the recovery in the previous Audit Report. Surcharge action should always be the last resort but not the first. There is one exception of course, that when the present Chief Executive or the present management are found liable for the recovery, they are likely to avoid legal action against themselves. In some other cases, the society might not be having funds to deposit Court fee etc. In such cases suo motu surcharge action should be recommended along with a request to the R.C.S., Orissa to remove the Chief Executive and the management so that production of records would not be a problem.

6. Section 28(1)(a)(vi) of O.C.S. Act., provides that "the Committee shall exercise the power to enforce any debt or demand of the Society and institute defend or compromise legal

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proceedings for or against the society". Thus whenever a recovery is suggested either by Audit or by Inspection, a demand of the Society is created and the management should be given chance to do its duty. If the Audit authorities volunteer to do their duty and take over the responsibility to enforce recovery by exercise of their powers then very valuable audit mandays are lost when huge numbers of years of audit is pending for disposal. The audit staff engaged in monitoring and disposal of surcharge proceedings can rather be utilised to improve audit work and to earn more revenue for Government in the form of audit fee, and devote more time to ensure compliance of audit reports by societies concerned.

7. In the past, too much of alacrity and activism in suo motu surcharge action have been evinced with the objective of course to bring about financial discipline in the Cooperative Societies, and although that has yielded good results, it should be borne in mind that restoration of discipline in a society is primarily the responsibility of administrative authorities and not of audit. Over enthusiasm of some audit authorities has been mis-understood at times. Some of the surcharging authorities are behaving like Courts and are awarding punishments without such powers. It sends wrong signals to all quarters and every one is now writing to audit authorities to initiate surcharge proceedings when they are adequately empowered to deal with the problem. Therefore suo motu surcharge action should be sparingly resorted to. The Management of the Society should be left to decide whether to file dispute or file application for surcharge action and only when they appear to be avoiding such action deliberately, then audit should start initiating surcharge action.

8. Copy of most of the surcharge orders communicated to this Directorate are found to be non-speaking ones. In some cases it is being observed that preconceived decisions are passed not following the analysis given by the surcharge authority. In few cases it is seen that the Surcharging authority is passing order imposing fine on the surchargee which is not within his powers. Since orders should not only be just but should also appear just, it is impressed upon all surcharge authorities to pass orders quoting the law and Circular provisions supporting the orders and the final decision/order should be strongly justified in the body of the judgement preceeding the order/decision.

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9. Lastly, it has been brought to my notice that some surcharge authorities are exonerating the office bearers or Officers of the charge and are surcharging some other Officer or Office bearer whom they find liable during the course of hearing of surcharge proceeding. But this is not legally acceptable. If they found that the persons fixed by Audit are not liable they may exonerate them but can not make any other Officer or Office bearer liable without impleading him/them and giving him/them a chance to defend.

If any of the instructions contained in this Circular conflicts with any instruction issued earlier, then this Circular-guidelines would prevail. In case any other clarification is felt necessary, the surcharging authorities may feel free to such further clarifications.

The contents of this Circular guideline should be circulated to all SAAGCS/Auditors under the Directorate.

Auditor General,
Coop. Societies, Orissa.

Memo No. 6765 /Dt. 11/9/2006

Copy forwarded to Joint Secretary to Govt. of Orissa, Cooperation Department for information.

Auditor General of C.S.(O).

Memo No. 6766 /Dt. 11/9/2006

Copy to S.A.A.G.C.S., Central Audit/Audit-I/P.A. to A.G.C.S.(Orissa)/Steno to Deputy A.G.C.S.(O) for information.

Auditor General of C.S.(O).

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