

DIRECTORATE OF COOPERATIVE AUDIT:ORISSA:BHUBANESWAR.

No.VI(4)27/03 2654 (16) /Legal/Dated:- 6.5.2004

To

The Asst. Auditor General of  
Cooperative Societies, All Audit  
Circles.

Sub:-

Regarding expeditious disposal of  
Surcharge proceedings U/s 67 of OCS Act  
and exercise of powers under code of  
Civil procedure 1908(amended up to 2002).

Sir,

Since it is often brought to the notice of undersigned and explanation submitted that the main reasons attributed to slow progress of Surcharge proceedings are

1. Difficulties/delay in service of notices (Show cause) by the Chief executives/Secretary of concerned institution/Societies.
2. Inadequate mandays available for hearing of the proceedings
3. Non-appearance of persons/Dependants required either to give evidence or to produce documents or other material objects producible as evidence.
4. Frequent and unnecessary adjournment of cases due to filing of time petitions/applications, the following remedies, available under provisions of OCS Act & Rules 1962 and code of Civil procedure 1908, may be adopted to overcome the situation for expeditious disposal of legal proceedings U/s 67 of OCS Act.

Circular issued by this Directorate bearing No.2772(16) dt.24.5.03 has rendered a modest approach for preparation of better strategy this year for incorporation in the Annual programme to ensure better progress and maximum and rational utilisation of mandays by deploying at least one SAAGCS in each circle throughout the year specifically for the purpose of initiation as well as disposal of the proceedings which would certainly yield results.

As regards problems /difficulties of service of showcause notices, the legal notices under section 67 of OCS Act to the surchargee noticees, who happens to be either officer/office bearer/ or employees of the concerned societies/

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institution, normally required to be served through the Chief Executive/ Secretary in view of the fact that notices can be expected to reach first in this manner as the addresses and locations of place of residence or business are readily available with the institution/ society and more so, the amounts sought to be collected through surcharge proceeding would be credited to the societies/institution itself. Only in case the Chief executive /Secretary is found involved or in any mischief or otherwise is suspected of him, the management/ financing agency/ local administrative authority may be sought for to render this service in the interest of public service and the society. If in normal cases, the Chief executive tries to defy such legal instruction, the Chief executive shall be held liable for not allowing the proceeding to be disposed off and therefore, recovery effected from him for the consequential loss suffered by the society treating it to be the wilful negligence or breach of trust. The serving officer shall in all cases mention specific datelines within which the notices are to be served.

and service return copy of acknowledgement of receipt of the notices is to be submitted to the serving officer. The Chief executive/ secretary may explain with sufficient reasons immediately to the serving Officer in case of extension of date lines becomes inevitable for allowing further time for service of such notices. It may also be mentioned in the notices that the same shall be served in the manner prescribed under Rule 150(3) of OCS Rules 1965 without any fail.

Thirdly, before hearing commences or at the time of hearing, it is often found that the delinquents/defendants/ witnesses/noticeses/Secretary/Chief executive/other persons, Who are required to appear in person or produce evidence/ documents/papers or material object producible, either avoid or cause delay without sufficient reasons with deliberate intention not to allow quick disposal of the proceeding.

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This tactics/attitude becomes ~~xxx~~ detrimental to the interest of the societies. In such cases, the presiding officer of the surcharge proceeding shall have all the powers of civil court under the code of Civil procedure 1908, as provided under section 120 of OCS Act, to summon and enforce attendance of any person and examine him ~~on~~ oath or requiring the discovery and production of any document, proof of fact by affidavit or issuing commission for examining witness. Detail procedure and manner of service of summon has already elaborately ~~it~~ been dealt under Rule 150 of OCS Rule 1965, which may be scrupulously followed, and issued under section 30 of Civil procedure code.

Where the person summoned U/s 30 of CPC ordered to appear in person or required either to give evidence or to produce documents or such other object produceable ~~as~~ as evidence, does not appear in person or produce such documents/objects etc or shows insufficient cause to the satisfaction of summoning authority for failing to comply the summon, the authority concerned may enforce the attendance, production of documents objects etc, for that purpose U/s 32 of Code of Civil procedure 1908 amended and notified upto 2002), which includes:-

- a) Issue a warrant (bailable) for his arrest.
- b) Attach and sell his property.
- c) Impose a fine upon him (not exceeding five thousand rupees)
- d) Order him to furnish security ~~rupees~~ for his appearance and in default commit him to civil prison.

All precautionary measures and care should, however, be taken while exercising these power and procedures and codes provided under section 32 and other provision of CPC in part XI of CPC (to exempt certain women, who according to customs and manners of the country, ought not to be compelled to appear and exempt VIPS and members of Legislative bodies i.e i) President ii) Vice President iii) Speaker of House of the People iv) Minister of Union v) Judges of Supreme Court vi) Governors of states and administrative of Union territories vii) Speakers of legislative Assemblies viii) The chairman of the State legislative councils ix) Minister of States x) the Judges of the High Court and the persons to whom 87-B applies) (Rulers of former Indian states).

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These powers shall be exercised only in extreme rare cases since the same would involve a lot of legal procedures requiring large infrastructural assistances and may invite far-reaching consequence at the slightest error or lapses.

However, before issuing warrant of arrest, "a notice to show cause why warrant of arrest should not issue" may be issued.

As regards frequent, unnecessary adjournment of cases or filing of time petitions by the parties concerned without showing sufficient or valid reasons, the presiding officer may exercise his discretionary authority to allow maximum three times (each 15 days duration at most) considering the genuine grounds, without any prejudice, for the sake of natural justice and thereafter, decide the case ex parte if the party does not appear consequentially for three times.

All the AAGCS are also ~~has~~ here by instructed to keep a close watch and send draft charges against the auditors showing unlawful recovery or recovery shown without giving sufficient opportunity to the person concerned or without evidence in support or such ~~has~~ recovery or recovery shown with prejudice or otherwise and draft charges against the presiding officers passing irrelevant orders or with prejudice or exempting cases without sufficient justification or reason, for taking appropriate action against them at this level.

This may be circulated among all SAAGCS and Auditors for their guidance and compliance reported.

*P. R. Dash*  
6/5/04  
Auditor General of C.S., Orissa.  
Memo No. 2655 / Dated: 5.2.04  
Copy submitted to Commissioner-Cum-Secretary to Govt. of Orissa, Cooperation Department for favour of kind information and necessary action.

*P. R. Dash*  
6/5/04  
Auditor General of C.S., Orissa.  
Copy to Audit-8/Audit-1/  
G.F. 5 S.C./All Auditor of Cenral Audit.  
Dash.29.4.2004.