IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2298 OF 2015

Sindhudurg District Primary Teachers Co-operative Credit Society Ltd. ..**Petitioner**

Vs.

State of Maharashtra through Government Pleader & Ors. ..**Respondents**

Mr. A. S. Khandeparkar i/b Khandeparkar & Associates for the Petitioner
Mr. S. D. Rayrikar AGP for the Respondent Nos.1, 2 and 4
Mr. S. S. Patwardhan i/b Mr. R. V. Rawool for the Respondent No.3
Mr. Pratap Patil for the Respondent No.5

CORAM : R. M. SAVANT, J.
DATE : 23rd July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 25-9-2015 passed by the Revisionary Authority i.e. Hon'ble Minister for Co-operation, Government of Maharashtra, by which order, the Revision Application filed by the Respondent No.3 came to be allowed and resultantly the order dated 20-11-2012 passed by the authorised officer under Section 88 of the Maharashtra Co-operative Societies Act (for short the said Act), as also the order passed by the Appellate Authority dated 27-9-2013, came to be set aside.

2 The Petitioner herein is a credit society comprising of the primary teachers in Sindhudurg District. The Respondent No.3 herein was the local

Director of the Dodamarg region of the Petitioner society. One Sunil Bhagwat was the Branch Manager of the Dodamarg Branch of the Petitioner society. In the special audit which was ordered by the District Deputy Registrar, Co-operative Societies, Sindhudurg, some malpractices were found in the disbursement of the loans and the said audit report disclosed a loss caused to the Dodamarg Branch of the Petitioner society. It is pursuant to the said special auditors report dated 14-4-2009, that a show cause notice came to be issued to the Directors of the Petitioner society calling upon them as to why an inquiry under Section 88 of the said Act should not be initiated against the said Directors. The said show cause notice came to be replied to by the Directors vide their reply dated 19-11-2010 (Exhibit B to the Petition). The Respondent No.3 independently filed his reply to the said show cause notice, which is dated 22-11-2010. It seems that another Director also filed his own reply to the said show cause notice. The authorised officer i.e. the inquiry officer considered the said replies and it was decided to proceed only against the Branch Manager Sunil Bhagwat and the Respondent No.3 under Section 88 of the said Act. The inquiry officer accordingly after taking into consideration the material on record which is reflected in the order passed by him which includes the auditors report, indicted the Branch Manager and the Respondent No.3 herein for the alleged loss caused to the Petitioner society, in so far as the Dodamarg Branch of the society is concerned. The inquiry officers report is dated 20-11-2012.

3 The Respondent No.3 aggrieved by the said report of the inquiry officer dated 20-11-2012 carried the matter by way of an Appeal filed under Section 152 of the said Act. It is required to be noted that in the said Appeal two contentions were highlighted namely that the special auditors report has not been proved as required under Rule 72(5) of the Maharashtra Co-operative Societies Rules and that the inquiry officer has taken into consideration the material which he has culled out from the proceedings pending in the Criminal Court and relied upon the same without putting the same to the Respondent No.3. The Appellate Authority by its order dated 27-9-2013 dismissed the Appeal. However, in so far as the said two contentions were concerned, the Appellate Authority observed that it is not only the special auditors report which has been been relied upon but also the material from the criminal complaint filed in the Court of the Learned JMFC. Hence the Appellate Authority did not deem the contentions raised on behalf of the Respondent No.3 which have been adverted to herein above, as being of any substance.

4 The Respondent No.3 thereafter carried the matter by way of a Revision before the State Government. The said Revision was heard by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, who by the impugned order dated 25-9-2014 has set aside the report as well as the order passed by the Appellate Authority and has remanded the matter back to the

inquiry officer for a denovo consideration of the matter as to whether it is required to proceed under Section 88 of the said Act against the Respondent No.3. The Order passed by the Revisionary Authority as can be seen is founded on the fact that the special auditors report has not been proved in accordance with law and that certain material which has been culled out from the proceedings pending before the court of Learned JMFC, has been used against the Respondent No.3, without giving an opportunity to the Respondent No.3 to deal with the same. The Appellate Authority thereafter has made certain observations as regards whether the Respondent No.3 could have been indicted, but ultimately as the operative part discloses has directed a denovo inquiry to be conducted.

5 The Learned Counsel appearing for the Petitioner was at pains to demonstrate that the remand as ordered by the Revisionary Authority was not warranted in view of the material which is already on record.

6 Per contra, the Learned Counsel appearing for the Respondent No.3 would support the impugned order and would contend that though the special auditors report could be acted upon, nevertheless the same would have to be proved in accordance with law in an inquiry under Section 88 of the said Act. The Learned Counsel would also contend that the inquiry officer could not have taken into consideration the material which he has culled out from the

proceedings which are pending before the Learned JMFC wherein the Respondent No.3 and the Branch Manager are being prosecuted.

7 In my view, the order passed by the Revisionary Authority remanding the matter back to the inquiry officer for a denovo consideration of the inquiry for the reasons which have been stated in the impugned order of the Revisionary Authority does not merit any interference in the Writ Jurisdiction of this Court. It would have to be borne in mind that an inquiry under Section 88 of the said Act has a serious consequence for a person who is charged thereunder. In the instant case, the inquiry has been found fault with on account of the circumstances which have been mentioned hereinabove namely that the special auditors report has not been proved in accordance with law and that certain material has been used against the Respondent No.3 of which opportunity has not been given to the Respondent No.3. However, one thing is required to be clarified that observations made by the Revisionary Authority as to whether the Respondent No.3 could have been indicted as he has nothing to do with the day to day functioning of the branch or that functioning of the branch is regulated by the head office, the said observations in my view are unwarranted especially having regard to the fact that the Revisionary Authority has finally ordered a denovo inquiry. Hence though this Court does not deem it appropriate to interfere with the impugned order passed by the Revisionary Authority, it is clarified that the said denovo inquiry

would be carried out by the authorised officer uninfluenced by any observations made in the impugned order passed by the Revisionary Authority as also the earlier orders passed by the authorised officer or the Appellate Authority.

8 Needless to state that the said inquiry should be conducted by giving a proper opportunity to both the parties. The Learned Counsel for the Respondent No.3 Mr. Patwardhan states that the inquiry after the remand has recommenced and the first date was on 25-6-2015. If that be so, the authorised officer / inquiry officer is directed to complete the same expeditiously. All the contentions of the parties are kept open for being urged before the inquiry officer.

9 With the aforesaid observations, the Writ Petition is disposed of.

[R.M.SAVANT, J]