

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2191 OF 2014

Laxman Dharma Patil and others	Petitioners
versus	
Union of India and others	Respondents

Mr.Venkatesh Dhond, Senior Advocate, with Mr.Vaibhav Singh,
Mr.Varun Satiya i/by M/s.Crawford Bayley & Co. for Petitioners.

Dr.Milind Sathe, Senior Advocate, with Mr.Rohan Cama,
Mr.Rahul Jain i/by RES Legal for Applicants in NMW(L) No.199
of 2015.

Ms.Anjali Helekar with Mr.A.R.Varma and Mr.D.PSingh for
Respondent nos.1 and 2.

Mr.Harish R. Pawar for Respondent nos.11 and 12.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 26 November 2015

PC :

1. By this petition under Article 226 of the Constitution of India, the Petitioners seek writ of mandamus or any other appropriate writ, order or direction directing the Respondent no.2 to conduct investigation in the affairs of Respondent no.3 society in accordance with the powers conferred by Multi State

Co-operative Societies Act, 2002. The prayer clauses (b) and (c) of this petition read as under :

"(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order and thereby directing the Respondent no.2 to ascertain the amount outstanding to members of Respondent no.3 Society and to disburse payments to such members;

(c) That this Hon'ble Court be pleased to declare after calling for records of Respondent no.3 Society and going into the legality thereof no annual general meeting of Respondent no.3 Society took place on 4th June 2010."

2. Along with this petition, there is a Notice of Motion filed by Applicant Anant Eknath Mhatre in which he seeks the following reliefs :

"(a) that pending the hearing and final disposal of the present writ petition, this Hon'ble Court be pleased to direct the Respondent no.4 to 15 to file an affidavit disclosing their personal assets and to pass an order of injunction restraining respondent nos.4 to 15, their servants, agents and all other persons claiming through or under the respondents from in any manner dealing with, alienating, disposing, transferring and/or create third party rights of such assets as are disclosed;

(b) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to direct the Respondent no.16 to deposit in this Hon'ble Court Rs.99,76,586/- being amounts payable to respondent nos.4 to 15, as more specifically detailed in Schedule-A hereto."

3. We have heard Mr.Dhond, learned Senior Advocate appearing on behalf of the Petitioners in the writ petition and Dr.Sathe, learned Senior Advocate for the Applicants in the

Notice of Motion. The Petitioners project the alleged irregularities and illegalities and by Respondent no.3. It is claimed that Respondent no.3 is a co-operative credit society registered under the Multi State Co-operative Societies Act, 2002 ('the Act'). A reference is made to the said Act, the Rules and bye-laws of the society. It has been alleged that the functioning of the Respondent no.3 society is not in accordance with the Act, Rules and bye-laws. Apart from Directors of Respondent no.3 society having failed to convene any annual general meeting or a meeting of the board after 2008, the Petitioners who are members of the said society, are aggrieved by the fact that a voluntary contribution from their salaries and emoluments is paid over to the society. The society, therefore, must function in accordance with the Act, Rules and bye-laws. Its working and functioning must be investigated and enquired so that the members can obtain details of the receipt of monies, how they have been accounted and whether they are paid over to the Petitioners or other members in the time stipulated for the same. It is submitted that neither there is any meeting held in accordance with law nor are there any proper elections. On the earlier occasion, the Petitioners approached this Court requesting this Court's intervention so as to hold elections. That writ petition was disposed of on the assurance that the elections will be held. Thereafter the Petitioners obtained certain information under Right to Information Act, 2005. They also rely upon these proceedings to urge that the audited accounts of

Respondent no.3 including balance sheet and profit & loss account for last seven years have not been furnished to the members. That is why correspondence was entered into and not only with the society but also with the employer M/s.Pfizer Limited and members of the society. The audit reports and other documents which are vital in order to ascertain the functioning and working of the society, were also not provided. The Petitioners found that these large scale irregularities and illegalities amount to offences punishable under penal laws and sought Police intervention. The Petitioners, some of whom are retired, being fed up with the lack of response from the society and its office bearers, have approached this Court and desire that this Court should issue a direction to the statutory functionary namely the Registrar under the Multi State Co-operative Societies Act, 2002 (Respondent no.2) to exercise his powers under Section 78 of the Act.

4. On such a petition, we find an affidavit-in-reply has been filed by the Director (Co-operation). Respondent no.3 society, although served, is not represented. The Director (Co-operation) states that the role of Central Registrar has been well defined under the Act. Power is vested in Central Government to direct special audit in certain cases under Section 77 of the Act. Similarly, the Central Registrar can order an inquiry and/or investigation of a multi state co-operative society under Sections 78 and 79 of the Act. However, special audit or inquiry or

inspection can be conducted only if the conditions set out in Sections 78 and 79 are fulfilled and complied with. The Petitioners' letters of 2010 have been duly received and that is admitted, but it is submitted that the Petitioners have indulged in multiple litigation. They have not sought at any stage an inquiry and in terms of the statutory provisions. Therefore, there is no merit in the writ petition and it be dismissed.

5. The Petitioners in order to meet this statement in the affidavit-in-reply on behalf of Respondent nos.1 and 2,, filed an additional affidavit. They have placed on record the fact that several members including the present Petitioners addressed letters to the Chartered Accountant/Auditors and requested for information. They were provided with draft audit report. The copy of the draft audit report reveals that it does not meet the requirement in law. There cannot be a draft audit report and circulated in this manner by the auditors for they have to complete their task. The Petitioners also relied upon further letters and on correspondence not referred in the petition, to urge that the office bearers of the Respondent no.3 society committed offences inasmuch as they have not accounted for but misappropriated the funds and monies. The company M/s.Pfizer Limited has been closed. 132 employees have taken voluntary retirement. 80 employees have not taken voluntary retirement. There are letters addressed and that is why the monies deposited by the members in the Respondent no.3

society have been misappropriated by the board of directors and office bearers. The dues payable to Respondent nos.4 to 15 from the company is in the tune of Rs.99,76,586/-.

6. It is on this material that we have heard the learned counsel and on the earlier occasion we enquired from Ms.Helekar appearing for Respondent nos.1 and 2 as to why steps set out under Section 78 of the Act cannot be initiated.

7. Ms.Helekar would submit that Section 78 itself requires certain conditions to be fulfilled. She would submit that the discretion vested with the Central Registrar to hold an inquiry is exercisable on the request of federal society to which the multi state co-operative society is affiliated or a creditor or not less than 1/5th of the total number of members of the society. She would submit that in the present case, the Petitioners, who claim to be members and supported by only some others, do not constitute 1/5th strength of the total number of members of the society. The total number of members is 240, according to Mr.Dhond. True it is that this number is not before the Court. Equally 1/3rd members of the Board is a condition, which is not complied with.

8. However, both learned Senior Counsel place reliance on the term "Creditor" appearing in sub-Section 1 of Section 78 of the Act to urge that even at the instance of a Creditor, the Central Registrar may hold the inquiry.

9. They would submit that since the deductions have been voluntarily made from the salaries and emoluments of the members, it is incumbent upon the society that it should allow to withdraw that money with attendant benefits, and thus the Petitioners are creditors of Respondent no.3.

10. Having heard both sides on this point and equally noting the objection by Mr.Pawar appearing for Respondent Nos.11 and 12 who are the office bearers, we are of the view that in the facts peculiar to this case, the Central Registrar can be directed to hold an inquiry under Section 78 of the Act of 2002. Sub-section 1 of Section 78 refers to a request and from several quarters. It could be from a federal co-operative society to which the multi state co-operative society is affiliated or a creditor or not less than 1/3 members of the Board or not less than 1/5th number of total members. In the present case, the members of the society are claiming the dues from the society. They are accusing the society of misappropriating the amounts and not being paid over to them. It is claimed that this is a legitimate dues and a deduction from the salary and emoluments of the workers of M/s.Pfizer Limited. Respondent no.3 is a co-operative credit society of the workers and employees. Therefore, the Petitioners satisfy the requirement of the term "Creditor". We are in agreement with the submissions of learned Senior Advocates on this point.

11. In the facts peculiar to this case and without treating this order as a precedent, we can safely direct the Central Registrar to take cognizance of the contentions raised in this petition and in Notice of Motion and hold an inquiry in terms of sub-Section 1 of Section 78 of the Act of 2002. He may hold the inquiry by himself or any person authorized by him by order in writing. The inquiry shall be made into the functioning and working so also the financial condition of Respondent no.3 society. The Central Registrar or the person authorized by him shall be free to exercise all powers in terms of sub-Section 2 and sub-Sections 3 and 4 of Section 78 of the Act of 2002. We hope and expect that the Central Registrar will act in terms of these directions and complete the inquiry expeditiously.

12. While we direct holding of such inquiry, we clarify that we have not gone into the rival submissions. We are mindful of the objection of the contesting Respondents namely that present litigation is really not by members of the society but somebody else is putting up them to gain control of the affairs of the society. Therefore, we clarify that all contentions including on the initiation and maintainability of the inquiry, the jurisdiction of Central Registrar and merits of the charges, are kept open. They can be raised at appropriate stage before appropriate forum.

13. It is made clear that the inquiry shall be completed by the Central Registrar within six months from the date of receipt of a copy of this order.

14. The writ petition is disposed of. In view thereof, Notice of Motion (L) No.199 of 2015 does not survive and stands disposed of as such.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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