

Anand

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

**WRIT PETITION (L) NO.1671 OF 2015**

Gulabrao Sakharam Shelke

.Petitioner

v/s.

1.The Commissioner For Co-op. &  
Registrar For Co-op. Societies,  
Maharashtra State

.Respondents

2.Shri. Anil Kadoba Chauhan

3.Shri Shivajirao Pahinkar

4.The State of Maharashtra

5.The Maharashtra State Co-op.  
Bank Ltd.

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Mr.Uday G. Shelke i/b. Mr.K.B.Borhade, for the Petitioner  
Mr.Vineet B. Naik, Senior Counsel with Mr.A.B.Vagyani, GP &  
Mr. Vishal Thadani, AGP, for the Respondent Nos.1 to 4.  
Mr.A.Y.Sakhare, Senior Counsel with Ms.Nikita Trivedi for  
Respondent No.5.

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**CORAM : A.A.SAYED, J.**

**DATE : 16.07.2015**

**ORAL JUDGMENT:**

. By the above petition filed under Article 226 of the  
Constitution, the Petitioner has impugned the order dated  
07.01.2013, the Inquiry Report dated 09.01.2014 and the order  
dated 22.05.2014. By the impugned order dated 07.01.2013, the  
Respondent No.1 – Commissioner for Co-operation & Registrar for  
Co-operative Societies (hereinafter referred to as 'Registrar') had

appointed the Respondent No.2 – Shri Anil Chauhan, Additional Registrar, Co-operative Societies, to conduct an inquiry under Section 83 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “MCS Act”) in respect of the financial affairs of Respondent No.5 Bank. Respondent No.2 accordingly after conducting the inquiry, submitted the impugned Inquiry Report dated 09.01.2014 to the Respondent No.1 Registrar. Pursuant thereto, Respondent No.1 Registrar by the impugned order dated 22.05.2014 appointed Respondent No.3 – Shri Shivajirao Pahinkar, Additional Registrar, Co-operative Societies as the Authorized Officer under Section 88 of the MCS Act for the purpose of fixing the responsibility for the monetary losses caused to the Respondent No.5 Bank.

2. The Petitioner was the Director of the Respondent No.5 Bank, namely Maharashtra State Co-operative Bank Ltd., an Apex Co-operative Bank for the State of Maharashtra, from the year 1992 to 2010. It is the case of the Petitioner in the Petition that on or about 29.10.2014, the Petitioner received notice dated 16.10.2014 from Respondent No.3 to submit an explanation under Section 88 of the MCS Act & Rule 72(1) of the Maharashtra Co-operative Societies Rules (hereinafter referred to as 'MCS' Rules). The Petitioner, by his letter dated 30.10.2014 requested Respondent No.3 to supply copies of the various documents, a copy whereof

was also sent to the Respondent No.5 Bank. Further communications were exchanged between the Petitioner, Respondent No.3 and Respondent No.5 Bank. The Petitioner thereafter received a fresh notice dated 30 April 2015 from the Respondent No.3 to submit explanation under Section 88 of the MCS Act and Rule 72(2) of the MCS Rules. The Petitioner sought copies of documents and pointed out that unless and until the documents are made available, he would not be in a position to give his explanation and requested the Respondent No.3 to extend the date for submitting his explanation. According to the Petitioner, the Respondent No.5 Bank has forwarded to him copies of the impugned order dated 7<sup>th</sup> January 2013, the impugned Inquiry Report dated 9 January, 2014 and the impugned order dated 22 May 2014 and 'some other papers' and it was for the first time on 27 May 2015 that the Petitioner received copies of the impugned orders dated 7 January, 2013 and 22 May, 2014.

3. I have heard learned Counsel for the Petitioner, learned Senior Counsel for the Respondent Nos.1 to 4 and learned Senior Counsel for the Respondent No.5 Bank.

4. Though several assertions/pleas have been made/raised in the Petition, the only contention urged before the Court by the learned Counsel on behalf of the Petitioner is as regards violation of

principles of natural justice. It is firstly submitted by the learned Counsel that under sub Rule (4) of Section 71 of MCS Act the Respondent No.2 Inquiry Officer was required to obtain an explanation from the Petitioner (being a former Director of Respondent No.5 Bank) prior to submission of the Inquiry Report. However, no such explanation was called for from the Petitioner. Hence, there was violation of principles of natural justice. The second submission urged on behalf of the Petitioner is that under Rule 71(5) of MCS Rules, the Petitioner was required to be granted an opportunity of hearing prior to passing of the impugned order dated 22 May 2014 by the Respondent No.1 Registrar (appointing the Respondent No.3 as an Authorized Officer for the purpose of fixing the responsibility of the monetary losses caused to the Respondent No.5 Bank under Section 88 of the MCS Act). It is contended that inasmuch as no opportunity of hearing has been given to the Petitioner, principles of natural justice have been violated and the impugned order dated 22 May 2014 is required to be set aside. Learned Counsel for the Petitioner further submitted that though the remedy of Revision before the State Government is provided under Section 154 of the MCS Act, inasmuch there is a violation of principles of natural justice, the Writ Petition would be maintainable. Learned Counsel in support of his submission has relied upon the following judgments:

- i) *Nanasaheb Namdeo Nirmal vs. The State of Maharashtra & Anr.*, 2002(2) ALL MR 876;
- ii) *Shri. Hari J.S. Bhangui (deceased thru LRs.) vs. Shri. Custodio Godinho & Ors.*, 2002(2) ALL MR 882;
- iii) *Sandeep Inderchand Gandhi & Ors. vs. State of Maharashtra & Ors.*, 2015(3) Mh.L.J. 925;
- iv) *Cheranellur Co-operative Society Ltd. vs. Deputy Registrar*, AIR 1977 Kerala 76;
- v) *Ramashankar Prasad Singh & Ors. vs. The State of Bihar & Ors.*, AIR 1973 Patna 269 (V 60 C 92);
- vi) *Deorao Vithoba Kale vs. Divisional Joint Registrar Co-operative Societies, Nagpur and others*, 1982 Mh.L.J. 543;
- vii) *Kumbhargaoon Vividh Karyakari Sahakari Seva Society Ltd. vs. The Assistant Registrar, Co-op. Societies, Patan & Ors.* 1993(1) Bom.C.R. 586;
- viii) *Yusuf Khan Mahboob Khan Pathan vs. Riazuddin Allauddin and others*, 2001(2) Mh.L.J. 408;
- ix) *Gurmej Singh vs. State of Punjab & Anr.*, AIR 2009 SC 2699;
- x) *Arun Dattatraya Narake vs. Authorized Officer, Kolhapur District Central Co-op. Bank Ltd. & Ors.*, Writ Petition No.1963 of 2015, dated 4 March 2015;
- xi) *Shri Vilasrao Bhauso Shinde & Ors. vs. Sangli District Central Co-operative Bank Karmaveer Bhaurao Chowk, Sangli & Ors.* Writ Petition No.3679 of 2015, dated 18 April 2015.

5. Learned Senior Counsel on behalf of the Respondent Nos. 1 to 4, on the other hand has invited my attention to the relevant provisions of the Act and Rules and submitted that there is no mandatory requirement under Section 83 r/w Rule 71(4) to seek an explanation from the Petitioner by the Respondent No.2 Inquiry Officer prior to the submission of the Inquiry Report. He further submitted that Rule 71(5) also does not contemplate any hearing to be given to the Petitioner prior to passing of the impugned order dated 22 May 2014 as sought to be contended on behalf of the Petitioner. The learned Senior Counsel submitted that in terms of sub-Rule (5) of Rule 71, the manner in which 'costs' of the inquiry are to be 'apportioned' amongst the parties mentioned in sub-section (1) of Section 85, is required to be specified in the Inquiry Report and it is only in the event, the Registrar passes an order in respect of 'apportionment of costs', that an opportunity of hearing is required to be provided to the persons concerned. He pointed out that in the present case there is no such issue of apportionment of costs involved. The learned Senior Counsel has taken me through the Affidavit-in-Reply filed on behalf of the Respondent Nos.1 to 4 and submitted that even NABARD had conducted a statutory inspection which revealed several defects in the functioning of the Respondent No.5 Bank and the Board of Directors were superseded and a Board of Administrators was appointed to

manage the Respondent No.5 Bank in or about May 2011. Learned Senior Counsel submitted that the Petitioner has been issued a Show Cause Notice by the Respondent No.3 in terms of Rule 72(2) and he has been granted an opportunity to submit his explanation. He submitted that by the impugned order dated 22 May 2014, no liability is fixed on the Petitioner and the Petitioner shall get a complete opportunity of hearing under Section 88 of the MCS Act r/w Rule 72 of the MCS Rules before fixing any liability. It is contended that the Writ Petition would not be maintainable in view of the efficacious remedy available to the Petitioner in the form of Revision under Section 154 of the MCS Act and that in any event the Petitioner can raise the contentions in the present Petition in Appeal, if the Petitioner is aggrieved by the final order passed under Section 88 of the MCS Act. Learned Senior Counsel has placed reliance on the order passed by a learned Single Judge of this Court in ***Dongaon Vividh Karyakari Seva Sahkari Society vs. The State of Maharashtra & Ors.*** (Writ Petition No.2358 of 2015, dated 24 March 2015).

6. Learned Senior Counsel for the Respondent No.5 Bank submitted that the Respondent No.5 has already furnished copies of relevant documents to the Petitioner. He states that the record of the Respondent No.5 Bank are quite voluminous, however, the

Respondent No.5 Bank is willing to furnish copies of further specific documents which may be intimated by the Petitioner to the Respondent No.5 Bank.

7. I have given my due consideration to rival contentions. Chapter VIII of the MCS Act consisting Sections 81 to 90 and Chapter VII of the MCS Rules consisting Rules 69 to 74 deal with the topic 'Audit, Inquiry, Inspection and Supervision'. To appreciate the controversy, it would be necessary to refer to some of the aforesaid provisions of the Act and Rules as they stood at the relevant time. Sections 83, 84, 85, 88, 152 & 154 and Rules 71 and 72 are relevant for our purposes and are extracted hereunder:

***“Section 83. Inquiry by Registrar***

*(1) The Registrar may of his own motion, and shall on the application of one-third of the members of a society, himself or by a person duly authorized by him in writing in this behalf, hold an inquiry into the constitution, working and financial conditions of a society.*

*(2) Before holding any such inquiry on an application, the registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine, towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following, the procedure laid down in that section, direct from whom and to what extent the cost of the enquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may*

be borne by the State Government.

(3) (a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the enquiry is in possession of information, books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorized by him under sub-section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which put to him by the Registrar or the person authorized by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorized by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence punish the defaulter with a penalty not exceeding five hundred rupees. Any sum imposed as penalty under this section shall on the application by the Registrar or the person authorized by him to a Magistrate having jurisdiction be recoverable by the Magistrate as if it were a fine imposed by himself.

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.

#### **Section 84. INSPECTION OF BOOKS OF INDEBTED SOCIETY.**

(1) On the application of a creditor of a society who—

(a) satisfies the Registrar that the debt is a sum then due, and that he has, demanded payment thereof and has not received satisfaction within reasonable time, and

(b) deposits with the Registrar such sum as the Registrar may require as security for the costs of any inspection of the books of the society, the Registrar may, if he thinks it necessary, inspect or direct some person authorised by him by order in writing in this behalf to inspect, the books of the society.

(2) The Registrar shall communicate the result of any such inspection to the applicant, and to the society whose books have been inspected.

(3) It shall be competent for the Registrar to withdraw any order of inspection from the officer to whom it is entrusted, and to inspect himself or entrust it to any other person as he deems fit.

(4) The powers of inspection conferred on the Registrar by this section may be exercised by him of his own motion in respect of any society, which is indebted to Government or for which share capital (wholly or partly) is provided by Government or where any financial interest of Government is otherwise involved.

#### **Section 85. Costs of Inquiry and inspection**

(1) Where an inquiry is held under section 83 or an inspection is made, under the last preceding section, the Registrar may apportion the costs, or such part of the costs, as he may think just between the society, the members or creditors demanding the inquiry or inspection, the officers or former officers and the members or past members or the estates of the deceased members of the society:

*Provided that,-*

(a) no order of apportionment of the costs shall be made under this section unless the society or person or the legal representative of the deceased person liable to pay the costs thereunder, has or have been heard, or has or have had a reasonable opportunity of being heard;

*(b) the Registrar shall state in writing the grounds on which the costs are apportioned.*

(2) No expenditure from the funds of a society shall be incurred, for the purpose of defraying any costs in support of any appeal preferred by any person other than the society against an order made under the foregoing sub-section.

#### **Section 88. Power of Registrar to assess damages against delinquent promoters, etc.-**

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection

under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorized to make inquiry under section 83 or the person authorized to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspection or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorized by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorized under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

### **Section 152. Appeals.**

(1) An appeal against an order or decision under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21 A, 29, 35, 77 A, 78, 79, 88, and 105 including an order for paying compensation to a society shall lie,--

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

*(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.*

*(3) An appeal under sub -section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.*

*(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.*

**Section 154. Revisionary powers of State Government and Registrar.-**

*(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub -section ( 9) of section 149, where any decision or order has been passed by any sub ordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.*

*(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.*

*(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues.*

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

**Rule 71. Procedure and principles for the conduct of inquiry and inspections.**

(1) An order authorizing inquiry under section 83 or inspection under section 84 shall, among other things, contain the following :-

(a) the name of the person authorized to conduct the inquiry or inspection;

(b) the name of the society whose affairs are to be inquired into or whose books are to be inspected ;

(c) the specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry or inspection is to be completed and report submitted to the Registrar ;

(d) cost of inquiry ;

(e) any other matter relating to the inquiry or inspection.

(2) A copy of every order authorizing inquiry under section 83 or inspection under section 84 shall be supplied to the federal society or societies to which the society in respect of which the order is issued is affiliated.

(3) If the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (1), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection and the Registrar, if he is satisfied, grant such extension of time for the completion of the inquiry or

inspection as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust it to such other person as he deems fit.

(4) On receipt of the order referred to in sub-rule (1) the person authorized to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts and other documents in possession of the society or any of its officers, members, agents or servants and obtain such information or explanation from any such officers, members, agents or servants of the society in regard to the transactions and working of the society as he deems necessary for the conduct of such inquiry or inspection.

(5) The person authorized to conduct the inquiry or inspection shall submit his report to the Registrar, on all the points mentioned in the order referred to in sub-rule (1). The report shall contain his findings and the reasons therefor supported by such documentary or other evidence as recorded by him during the course of his inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned, amongst the parties specified in sub-section (1) of section 85. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the person or persons concerned.

(6) The costs of the inquiry or inspection apportioned by the Registrar under sub-section (1) of section 85 shall be recovered as provided in section 86. The Registrar may direct that such costs or any part thereof shall be paid in the first instance from the funds of the society or in case of inspection, from the amount deposited by the -creditor under clause (b) of sub-section (1) of section 84 and then recovered and repaid to the society or the creditor, as the case may be.

**Rule 72. Procedure for assessing damages against delinquent promoters, etc, under Section 88**

(1) On receipt of a report referred to in section 86 or otherwise the Registrar or any other person authorized by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the

organisation or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society.

(2) On the completion of the further inquiries under sub-rule (1) where necessary, the Registrar or the person authorized by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statements in his or their defence within fifteen days of the date of issue of the notice.

(3) On receipt of the statements referred to in sub-rule (2), the Registrar or the person authorized by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.

(4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorized by him may permit production of other documentary or oral evidence, if considered necessary, subsequently.

(5) The Registrar or the person authorized by him, shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.

(6) On the day fixed for hearing under sub-rule (5), the Registrar or the person authorized by him, shall hear the arguments and may pass his final orders on the same day or on any date fixed by him within sixty days from the date on which the hearing was completed. On the date so fixed, the Registrar or as the case may be, the person authorized by him shall, make his final order, either, ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.

*(7) The Registrar or the person authorized by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any pan of such cost as he thinks just.*

*(8) The Registrar or the person authorized by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes his final order.”*  
(emphasis supplied)

8. It is thus seen that under Section 83(3)(a) of the MCS Act, the Inquiry Officer is empowered to seek information from all officers, members and past members of the Society or any other person, ‘who in his opinion’ are in possession of such information and to produce all books and papers relating to the Society which are in their custody or power and the aforesaid persons are required to give all assistance in connection with the inquiry. Under Rule 71(4), the Inquiry Officer is empowered to obtain such information or explanation from any officer, members, agents or servants of the Society in regard to the transaction and working of the society ‘as he deems necessary’ for the conduct of such inquiry. A plain reading of aforesaid Section 83(3)(a) read with Rule 71(4) discloses that it is the ‘discretion’ of the Inquiry Officer whether or not to call for such information or documents. If the Inquiry Officer is of the opinion that no useful purpose would be served in calling for the information or that no assistance is necessary from any past member or any other person in connection with the inquiry, or that the documents in the

custody of the Society are sufficient for the purposes of the inquiry, he may exercise his discretion accordingly. This exercise of discretion by the Inquiry Officer is left to his subjective satisfaction and would depend on the facts and circumstances of each case. There was thus no obligation on the Respondent No.2 Inquiry Officer to call for any explanation from the Petitioner who is a former Director of Respondent No.5-Bank. In any case, it is not even the case of the Petitioner that he is in the custody of any documents or has any information by which the Respondent No.2 Inquiry Officer would 'not' have recommended initiation of further action under section 88 of the MCS Act. In ***Shri Vilasrao Bauso Shinde (supra)***, it has been held in para 14 of the judgment that the inquiry under Section 83 is in the nature of fact finding inquiry and the Inquiry Report is recommendatory in nature, pursuant to which the Registrar has to initiate action under Section 88 if he is of the opinion that such an action is warranted. Merely because the Inquiry Officer in a given case (as set out in Additional Affidavit of the Petitioner by giving illustrations) has sought information by issuing notice under Section 83(3)(a), can in no manner help the case of the Petitioner. As stated earlier it would depend entirely on the facts and circumstances and the subjective satisfaction of the Inquiry Officer in each case.

9 But quite apart from the above, it is pertinent to note that under section 88, the Registrar is empowered to appoint an Authorized Officer for the purposes of fixing liability merely on the basis of Audit Report or inspection or otherwise also (and not only when an inquiry is held under section 83). In these circumstances, I do not see how the Petitioner in the present case, where a statutory inspection was also conducted by NABARD, can insist that the Respondent No.2 Inquiry Officer ought to have called for an explanation from him prior to submission of the Inquiry Report. In the light of the above, there is no merit in the contention of the Petitioner that there has been violation of principles of natural justice since it was mandatorily required by the Respondent No. 2 Inquiry Officer to call for an explanation from the Petitioner under Section 83 MCS Act read with Rule 71(4) of the MCS Rules prior to the submission of the Inquiry Report.

10. Insofar as the contention of the Petitioner that there has been violation of principles of natural justice also because prior to passing of the impugned order dated 22 May 2014 (appointing the Respondent No. 3 as Authorized Officer for fixing responsibilities of the monetary losses under Section 88) the Respondent No.1 Registrar was statutorily required under Rule 71(5) of the MCS Rules to grant an opportunity to be heard, I find that there is no such requirement of hearing contemplated under Rule 71(5). The

hearing contemplated under Rule 71(5) is in connection with the manner in which 'costs are to be apportioned' amongst the parties mentioned in section 85(1) if the costs are specified and recommended in the Inquiry Report of the Inquiry Officer. Section 85(1) also deals only with the issue of 'costs of inquiry and inspection' and the proviso (a) to section 85(1) lays down that no order of apportionment of the costs shall be made under this section, unless the society or persons or the legal representative of the deceased person liable to pay costs thereunder, has or have been heard, or has or have had a reasonable opportunity of being heard. In the present case, there is no such plea respecting 'costs' or 'apportionment' thereof even remotely raised by the Petitioner nor argued before the Court. There is thus no substance in the contention of the Petitioner that there has been violation of principles of natural justice on the aforementioned ground.

11. In ***Yusuf Khan Mahboob Khan Pathan (supra)*** relied upon on behalf of the Petitioner, the Inquiry Officer instead of confining the inquiry to the issue of financial irregularities in the Society, passed an order declaring some other persons as being duly elected members of the Committee. It is these circumstances that the Division Bench of this Court entertained the Writ Petition and held that the order was passed without authority of law. That case is clearly distinguishable on facts and cannot be said to be a

precedent in the instant case. The other judgments cited on behalf of the Petitioner essentially deal with general principles governing rule of natural justice and maintainability of writ petitions and on facts which are entirely different. The said judgments would, therefore, not apply to the case in hand.

12. The Petitioner has not availed of remedy of Revision/Appeal under section 152/154 of the MCS Act to challenge the impugned orders/Inquiry Report. Much water has flown under the bridge. The inquiry under Section 83 of the MCS Act is already complete and the Inquiry Report has been submitted by Respondent No. 2 Inquiry Officer to the Respondent No.1 Registrar and the matter has reached the stage of section 88 now, as the Respondent No.3 has been appointed as the Authorized Officer by the Respondent No.1 Registrar to fix the liability so as to recover the monetary losses caused to Respondent No.5 Bank. The Petitioner has been issued a show cause notice under Rule 72(2) by the Respondent No. 3 Authorized Officer, after conducting a preliminary inquiry and the Petitioner would have ample opportunity to defend himself. It would be apposite here to refer to the Affidavit-in-Reply filed on behalf of the Respondents Nos. 1 to 4, wherein it has been *inter alia* averred as follows:

“The accounts of the Respondent No.5 Bank for each financial year from 2007-08 to 2010-11 were

audited by the statutory auditors/Chartered Accountants and at the same time the National Bank/NABARD had conducted statutory inspection of the Respondent No.5 Bank for the period 2009-10 to 2010-11. The statutory audit as well as the statutory inspection revealed several defects/adverse features in the functioning of the Respondent No.5 Bank. The financial position of the Respondent No.5 Bank is found to be deteriorating. The then management of the Bank conducted the affairs of the Bank in a manner detrimental to the interest of the depositors. The deterioration in the financial position of the Respondent No.5 Bank was mainly on account of lack of professional approach of the management. The Board of Directors of the Respondent No.5 Bank had taken several decisions which were not in the interest of the Respondent No.5 Bank. The Board of Directors sanctioned loans to various societies in violation of Credit Monitoring Arrangement guidelines issued by the NABARD. The Respondent No.5 Bank waived/allowed interest rebate in violation of the provisions in bye-laws, Act and Rules. The non-performing assets (NPA) of the Respondent No.5 Bank increased double fold of the tolerable level. The Respondent No.5 Bank did not comply with the minimum capital requirement as envisaged in the provisions of Sections 42(6)(a)(i) of the Reserve Bank of India Act, 1934 and Section 11(1) of the Banking Regulation Act, 1949 (AACS) as its net worth or real/exchangeable value of paid up capital and reserves was estimated at minus Rs.144.22 crores and the capital adequacy ratio was estimated at minus 1.5% as on 31 March 2010. After considering the irregularities

committed by the then Board of Directors of the Respondent No.5 Bank, the Reserve Bank of India was compelled to take coercive action against them. Accordingly, on the advice/requisition by the Reserve Bank on 4 May 2011, the Respondent No.1 Registrar superseded the Board of Directors of the Bank and appointed Board of Administrators to take care of management of the Bank on 7 May 2011.”

At this stage it would not be proper for this Court to pass any order that would have the effect of scuttling the proceedings under section 88 of the MCS Act. In my view, considering the facts and circumstances of the case and the quantum of financial losses stated to have been suffered by the Respondent No. 5 Bank, it is high time that the proceedings under section 88 are taken to its logical conclusion. It would be open for the Petitioner to challenge the impugned orders/Inquiry Report in Appeal, in the event any adverse orders are passed against him in the proceedings under section 88, if so permissible in law and if so advised.

13. For the aforesaid reasons, I am not inclined to entertain the Petition in exercise of extraordinary writ jurisdiction of this Court under Article 226 of the Constitution. The Petition is accordingly dismissed. No order as to costs.

14. The statement of the learned Senior Counsel for the Respondent No. 5 Bank is recorded that the Respondent No. 5 Bank shall furnish copies of specific documents as may be called upon by the Petitioner, which have not already been furnished to him. The Court is informed that the matter before the Respondent No. 3 is kept tomorrow. The Petitioner shall appear before the Respondent No. 3 and it would be open for him to seek further time to put in his explanation to the Show Cause Notice, which shall be considered sympathetically.

**(A.A.SAYED, J.)**