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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.161 OF 2016

Rahul Ganpat Jaware
Age - 31 years, Occ - Certified Auditor
R/o Khirdi (K) Taluka - Raver,
District - Jalgaon

PETITIONER

VERSUS

1. State of Maharashtra
Through Commissioner for
Co-operation and Registrar
Co-operative Societies,
Maharashtra State, Pune
2. District Deputy Registrar,
Co-operative Societies, Jalgaon
3. Assistant Registrar,
Co-operative Societies, Jalgaon
4. Special Auditor, Class I
Co-operative Societies, Jalgaon

RESPONDENTS

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Mr. S. S. Bora, Advocate for the petitioner
Mr. G. O. Wattamwar, AGP for respondent-State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioner, aggrieved by order dated 3rd December, 2015 passed by Commissioner of Co-operation and Registrar, Co-

operative Societies invoking powers under section 81 and Rule 69 (G) of the Maharashtra Co-operative Societies Act, 1960 and Maharashtra Co-operative Societies Rules, 1961, respectively, removing the petitioner's name from the list of panel of auditors for a period of next five years.

3. Mr. Bora, learned advocate for the petitioner submits that aforesaid impugned order is untenable being in breach of noble principles of natural justice. No notice whatsoever has been given to the petitioner about any action being mooted for removal of his name from the panel of auditors for the reasons as have been referred to in the impugned order. Learned advocate further submits that an action is being taken against the present petitioner with reference to observations in a report submitted by special auditor wherein he purportedly indicts the petitioner for neglecting / faltering in performance of his duty. The action has been based solely on the report and without any opportunity to the petitioner to explain the correctness or otherwise of the observations appearing in the special report. He submits that in the absence of an opportunity and explanation from the petitioner, invoking powers with reference to section 81 of the Act and Rule 69 (G) of the Rules, is highly improper, without following the doctrine of *audi alterm partem*, high

handed and unsustainable. He supports his contention with an order of division bench dated 25th February, 2016 passed in writ petition No.1518 of 2016, which according to him has been passed in respect of a person who is similarly situated as the petitioner.

4. Mr. Wattamwar, learned AGP, however, contends that it cannot be said to be case of stark breach of principles of natural justice for, before taking action, notice had been given to the petitioner giving inkling to him that its fallout would be impugned order in the present petition. He, for said purpose, purported to refer to a communication dated 7th March, 2014 with reference to section 81 (1) (c) of the Act, calling upon explanation from the petitioner as to why the petitioner should not be held jointly responsible for misappropriation and as to why he should not be criminally prosecuted. According to learned AGP said communication had been refused to be accepted by the petitioner, which would tantamount to a good service. He, therefore, submits that it would not be a case as contended by learned advocate for the petitioner, of breach of principles of natural justice.

5. Learned AGP further goes on to justify the impugned order

referring to certain alleged acts and omissions on the part of the petitioner with reference to certain observations as are appearing in the special report.

6. The position as such, emerges that if at all an action can be said to have been mooted against present petitioner, that was with reference to fixing of liability on the petitioner and about criminal prosecution, no notice appears to have been given to the petitioner about him being de-listed from the panel of auditors. Having regard to contentions on behalf of the petitioner that de-listing has disastrous consequences as far as petitioner's profession is concerned, would be required to be taken into account. In the circumstances and having regard to that no notice has been given to the petitioner in respect of him being removed from the panel of auditors maintained by the respondents and further having regard to that in case of a similarly situated person division bench of this court has passed an order, relevant extract of which reads thus -

“3. On perusal of the order, it appears that, the same has been issued without extending an opportunity of hearing to the petitioner. The petitioner has also stated on oath that the Commissioner for Co-operation, before issuing the impugned order has not extended opportunity of hearing to the petitioner. Since the impugned order has been issued without observing the principles of natural justice, the same deserves to be quashed and set aside.

4. *It would be open for the Commissioner for Co-operation to pass appropriate orders after extending opportunity of hearing to the petitioner. The notice in respect of proposed action shall also have to be served on the petitioner well in advance.*

5. *In view of above, the petition is allowed. The order dated 3.12.2015, issued by the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune is quashed and set aside. The matter stands remitted back to the concerned authorities. As has been stated above, before passing any order, the concerned respondent shall extend an opportunity of hearing to the petitioner and the action shall be preceded by an appropriate notice indicating the action proposed to be taken against the petitioner.”*

it would expedient that the petitioner's case would also be governed by a similar order.

7. Writ petition as such, stands allowed by quashing and setting aside the impugned order dated 3rd December, 2015 at Exhibit-E to the petition. The matter stands remitted to the concerned authority. Before taking any decision, concerned respondent shall extend an opportunity of hearing to the petitioner. Action be preceded by appropriate notice indicating action proposed to be taken against the petitioner. Rule is made absolute in aforesaid terms with no order as to costs.

[SUNIL P. DESHMUKH, J.]