

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6519 OF 2015

[Saibaba Majoor Sahakari Sanstha Maryadit, Chandrapur .vs. State of Maharashtra and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : PRASANNA B. VARALE, J.

DATED : FEBRUARY 10, 2016.

Heard Mr. Rajnish Vyas, the learned counsel for the petitioner and Mr. P.V. Bhoyar, the learned Assistant Government Pleader for the respondents.

A limited controversy involved in the present petition is that the petitioner challenges the order passed by the Assistant Registrar, Co-operative Society, Chandrapur i.e. respondent no.2, whereby the request for re-enquiry is turned down on the ground that there is no provision in the Act for initiating re-enquiry.

From the perusal of the material placed on record, it reveals that an Audit was conducted in the society namely Kranti Rajkaragir Rangkamgar Majoor Sahakari Sanstha Maryadit, Chandrapur. The petitioner-society approached the Assistant Registrar as certain deficiencies are found in the Audit and also the petitioner approached the Assistant Registrar for seeking an enquiry, the Assistant Registrar directed an enquiry under Section 83 of the Maharashtra Co-operatives Act, 1960. It seems that, in the enquiry, no fault was found with the President of the said society one Mr. Ranjan Singam. The petitioner-society then approached the Assistant Registrar, by an application dated

3.9.2015. It is submitted by the petitioner that the first enquiry was not properly conducted and in the Special Audit, the Auditor found that the President of the said society is responsible for the financial losses. It is submitted by the petitioner in the application dated 3.9.2015 that as the enquiry was not properly conducted and as in the Special Audit, the Auditor found the President of the Society responsible for the losses and directed recovery of the amount, re-enquiry be conducted in the affairs of the society under Section 83 of the Maharashtra Co-operatives Act, 1960. For sometime, there was no response to the application. As such the petitioner submitted a reminder to the Assistant Registrar on 30.9.2015. The Assistant Registrar, by communication dated 30.10.2015, informed the petitioner-society that as already an enquiry was conducted under Section 83 of the Maharashtra Co-operatives Act, 1960, in the affairs of the society and as there is no provision of re-enquiry, the application filed by the petitioner is rejected. Being aggrieved by the said order, the petitioner-society is before this court.

Mr. Vyas, the learned counsel for the petitioner, submitted that the order passed by the Assistant Registrar is clearly unsustainable in view of the judgment of this Court. Mr. Vyas, learned counsel, placed heavy reliance on the judgment of this court reported in 1995 LPJ 847 in the matter of Yeshwaot Sahakari Soot Girni Niyamit .vs. Director of Handlooms, Powerlooms and Co-op. Textiles and Additional Registrar, Co-op. Societies, Maharashtra State, Nagpur.

Per contra, Mr. Bhoyar, the learned Assistant Government Pleader for the respondents, supports the order impugned in the petition on the ground that there is no provision of re-enquiry and as enquiry was already conducted in the affairs of the society, the application was rightly rejected.

As the controversy revolves around the only issue, whether the Assistant Registrar vests a power of re-enquiry and as the learned counsel for the petitioner placed heavy reliance on the judgment of this Court, it would be useful to refer to the said judgment. Somewhat similar circumstances were before this Court in the matter of Yeshwaot Sahakari Soot Girni Niyamit .vs. Director of Handlooms, Powerlooms and Co-op. Textiles and Additional Registrar, Co-op. Societies, Maharashtra State, Nagpur. In the matter of Yeshwaot Sahakari Soot Girni Niyamit, the order of re-enquiry was challenged dealing with the issue. This Court observed thus :

Section 83 of the Maharashtra Co-operatives Societies Act, 1960, in our opinion, invests ample power in the Registrar, on his own motion or upon the application of 1/3rd members of the society, to hold an inquiry either by himself or by a person duly authorised by him in writing in that behalf, into the constitution, working and the financial condition of the society. The power is obviously to root-out the mal-practice and malfunctioning and also provisions of Sections 84 to 88 clearly show that it is also with a view to fastening financial responsibility on individuals, guilty of lapses Sub-Section (5) of Section 83 provides that it shall be competent for the Registrar to withdraw any inquiry from the officer whom it is entrusted and to hold inquiry himself or entrust it to any other person as he deems fit. On proper reading of these provisions, we have

no manner of doubt that it is always open to the Registrar to order re-inquiry, if for any valid grounds he is not satisfied either with the manner in which the inquiry is conducted by the Enquiry Officer or the report of the Enquiry Officer.

(Emphasis supplied)

Thus, on the backdrop of judgment of this Court, it is clear that the power vests with the Registrar for re-enquiry under Section 83 of the Maharashtra Co-operative Societies Act, 1960. It will not be out of place that the Registrar can exercise his power on his subjective satisfaction. The Assistant Registrar thus can arrive at a conclusion assessing material and on his subjective satisfaction may order re-enquiry. In view of these facts, the view taken by the Assistant Registrar in communication dated 13.10.2015 that there is no provision of re-enquiry is unsustainable. It would have been a different aspect if the Registrar would have rejected the application that at the instance of the petitioner, he cannot order re-enquiry, but such is not the case. The application is rejected only observing that there is no provision of re-enquiry. The order impugned in the present petition is thus unsustainable.

In the result, the petition is partly allowed. The order impugned is quashed and set aside. The Assistant Registrar is at liberty to pass the order afresh in view of the observations of this Court and more particularly in view of the judgment of this Court referred to above. The petition is disposed of in above terms.

JUDGE