

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

WRIT PETITION NO.5456/2018

Mr.Mohan S/o Ramrao Khanderao

Vs.

Divisional Joint Registrar, Co-operative Societies, Amravati and 10 others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mrs. K.T.Deshpande, Advocate with Advocate R.R.Vyas. for petitioner.
Shri A.M.Balpande, Assistant Government Pleader for respondent nos. 1 and 2.
Shri S.S.Ghate, Advocate for respondent nos. 4 to 11.

CORAM : A.S.CHANDURKAR, J.

DATED : August 08, 2019

The challenge raised in the present writ petition is to the order passed by the Revisional Authority on 15.05.2018 thereby setting aside the enquiry report dated 27.06.2017 and directing the District Deputy Registrar to conduct a fresh enquiry into the matter.

On the complaint made by the petitioner who was one of the directors of the respondent no.3-Society, which is duly registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the said Act'), the Assistant Registrar held an enquiry. On considering the report that was submitted by the Society, it was concluded in the said Enquiry that the Directors and the Manager were responsible for the irregularities in the purchase of 'Tur'. Acting on that basis further action under the provisions of Section 73-I and 77-A of the said Act was initiated against the respondent nos. 4 to 11. In the meanwhile, the said respondents filed a revision application before the Divisional Joint Registrar. The petitioner was not impleaded in those proceedings and by the impugned order, the enquiry report has been set aside on the ground that due opportunity was not given to some of the Directions who were held

responsible in the said enquiry. Being aggrieved by that order, the petitioner has challenged the same in this writ petition.

Mrs. K.T.Deshpande, learned counsel for the petitioner submitted that the petitioner was not impleaded in the revision proceedings. It was the petitioner who was the original complainant and at whose instance the said enquiry was held. It was therefore necessary that the petitioner ought to have been heard before the said enquiry report was set aside. It was further submitted that though the enquiry report was submitted on 27.06.2017, the revision application filed under Section 154 of the said Act was beyond the period of limitation. There was no application for condonation of delay and without considering this aspect the revisional power has been exercised. On this count, the impugned order was liable to be set aside.

Shri S.S.Ghate, learned counsel for the respondent nos. 4 to 11 and Shri A.M.Balpande, learned Assistant Government Pleader for the respondent nos. 1 and 2 submitted that the Revisional Authority after considering the records of the enquiry proceedings found that due opportunity was not given to the some of the Directors while submitting the enquiry report. The conclusions were based on the documents provided by the Society. The Revisional Authority therefore found it fit to remand the proceedings. On such remand, it was open even for the petitioner to participate in the enquiry to demonstrate the alleged illegalities. On behalf of the revision applicants, it was submitted that on getting knowledge of the enquiry report on 17.11.2017, the revision application was filed on 21.11.2017. Same was therefore within limitation.

I have heard the learned counsel for the parties at length and I have perused the documents on record. It is not in dispute that on the complaint made by the petitioner, an enquiry was held. The Assistant Registrar was forwarded copy of the enquiry report that was prepared by the three member enquiry Committee. In that enquiry, reports submitted by the

Society were taken into consideration while recording its conclusion. On the basis of the said enquiry further action under Section 73- I and 73-A of the same Act came to be taken. Those proceedings were separately challenged by the respondent nos. 4 to 11. It is seen that the enquiry reports and other documents as per letter of the Society dated 15.11.2017 are shown to have supplied to the respondent nos. 4 to 11 on 17.11.2017, after which the revision application came to be filed. It is true that the enquiry report is dated 27.06.2017 and the revision application has not been filed immediately after the period of 60 days from that report. It is however seen that on receiving the copy of the enquiry report on 17.11.2017 which acknowledgment was produced for perusal, the revision application has been filed within a period of four days thereafter. Therefore, I do not find any illegality on the part of the Revisional Authority in entertaining the revision application.

It is a fact that the petitioner was not heard when the order on the revision application was passed. However by virtue of the order of remand a fresh enquiry has been directed to be held. This is after noticing various shortcomings in the earlier enquiry and in absence of the opportunity to some of the Directors. On instructions, it is submitted that till date the fresh enquiry has not yet commenced. In the light of the fact that the petitioner has also been now noticed to participate in the fresh enquiry, it is found that such fresh enquiry deserves held in the light of the short comings noticed by the Revisional Authority.

In that view of the matter as the petitioner has an opportunity to again demonstrate before the Enquiry Officer various illegalities as alleged, I am not inclined to interfere in writ jurisdiction. Keeping other challenges open for being raised before the Enquiry Officer, the writ petition stands dismissed. No costs.

JUDGE