

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 143 OF 2019

1. Rajendra Gangaram Patil
Age : 57 years, Occu:Service,
R/o.14, Ugandhar Colony, Gondur Road,
Deopur, Dhule.
2. Sunil Shivaji Patil,
Age : Major, Occu : Service,
R/o.28, Savarkar Nagar, Sakri,
Tq. Sakri, Dist. Dhule.
3. Atiram Ramchand Pawar,
Age : Major, Occu : Service,
R/o. Kokani Hill, Nandurbar,
Tq. and Dist. Nandurbar.
4. Smt. Sangita Rajaram Avhad,
Age : Major, Occu : Service,
R/o. Shubham Apartment, In front of
Sindhuratna English School,
Sakri Road, Dhule, Dist. Dhule.
5. Kishor Atmaram Rayate,
Age : Major, Occu : Service,
R/o. 22, Sainagar, Navapur,
Tq. Navapur, Dist. Nandurbar.
6. Anil Tukaram Torwane,
Age : Major, Occu : Service,
R/o. Raje Sambhaji Nagar, Near
Dnyanpeeth School, Satana Road,
Pimpalner, Tq. Sakri, Dist. Dhule.
7. Bahadursing Narayansing Padavi,

Age : Major, Occu : Service,
R/o. At Post Bhangrapani,
Tq. Akkalkuwa, Dist. Nandurbar.

8. Ravindra Rajdhar More,
Age : Major, Occu : Service,
R/o. Plot No. 15, Shriraj Apartment,
In front of Police Club, Vaibhav
Nagar, Dhule, Tq. and Dist. Dhule.
9. Bhaskar Nimba Amrutsagar,
Age : Major, Occu : Service,
R/o. Deochand Nagar, Sanghma Chowk,
Near Ramnagar, Sakri Road,
Dhule, Tq. and Dist. Dhule.
10. Sau. Pratibha Rajendra Sisode,
Age : Major, Occu : Service,
R/o Bhupesh Nagar, Behind Town
Hall Creation Garden, Shirpur,
Tq. Shirpur, Dist. Dhule.
11. Sau. Sindhubai Shantaram Ahirrao,
Age : Major, Occu : Service,
R/o. 8 Suyog Nagar, Vadi-Bhokar
Road, Deopur, Dhule, Dist. Dhule.
12. Kailas Poulad Patil,
Age : Major, Occu : Service,
R/o Tirupati Balaji Nagar,
Songir, Tq. and Dist. Dhule.
13. Hansraj Vitthal Patil,
Age : Major, Occu : Service,
R/o. 79, Suraj Kesari Nagar,
Nandurbar, Tq. and Dist. Nandurbar.
14. Girish Hilal Bagul,
Age : Major, Occu : Service,
R/o. B.K.Desale Nagar,

Varul Road, Shindkheda,
Tq. Shindkheda, Dist. Dhule.

15. Motilal Uttamrao Deore,
Age : Major, Occu : Service,
R/o. At Post Boris,
Tq. and Dist. Dhule.

..PETITIONERS

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Department of Cooperation,
Mantralaya, Mumbai.
2. The Hon'ble Minister,
Cooperation Textile and Marketing,
Mantralaya Mumbai.
3. The Divisional Joint Registrar,
Cooperative Societies,
Nashik Division Nashik.
4. Inquiry Officer (U/Sec. 88)
So also Assistant Registrar
Cooperative Societies,
Shirpur, Tq. Shirpur, Dist. Dhule.
5. Dhule and Nandurbar
District Primary Teachers
Cooperative Patpedhi Ltd.,
Office : Abhiyanta Nagar,
Vadi-Bhokar Road, Deopur,
Dhule, Dist. Dhule.

.. RESPONDENTS

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Mr. Vijay B. Patil, Advocate for the petitioners
Mr. P.N. Kutti, A.G.P. for respondent Nos.1 to 4
Mr. Shrikant S. Patil, Advocate for respondent No.5

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CORAM : MANGESH S. PATIL, J.
DATE : 20.08.2021

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioners are the members of the erstwhile Managing Committee of the respondent no.5 Credit Society during the period 2005 to 2010. After election of a new Managing Committee in October 2011, out of sheer vengeance and grudge a re-audit was undertaken in respect of the period during which the petitioners were holding the office. On the basis of such re-audit the respondent no.3 Divisional Joint Registrar passed the impugned order under Section 88 of the Maharashtra Cooperative Societies Act 1960 (hereinafter referred to as the Act) and the Appeal preferred by them before the Minister has also been dismissed. Hence this Writ Petition.

3] The learned advocate Mr.Patil for the petitioners would at the inception submit that with an intention to obviate any such re-audit to be undertaken just to take vengeance by a successor body, the Commissioner for Cooperation and Registrar of Cooperative Societies of Maharashtra has issued a Circular dated 8/4/1988 and has laid down certain guidelines to regulate the powers under Section 81(6) of the Act of ordering re-audit. It is in utter dereliction of these guidelines that in the present matter the Managing Committee in the office has engineered a direction for re-audit which forms the basis of the impugned order under Section 88 of the Act.

4] The learned advocate Mr.Patil would then submit that the impugned order passed by the respondent no.3 clearly undermines the purport and scope of that provision. It is expected that he would arrive at some objective satisfaction. While issuing the directions of conducting an enquiry there has to be a clear case of misfeasance or misapplication. Specific irregularities have to be noted to demonstrate application of mind. However, the impugned order does not comply with these basic requirements. Mere use of word 'satisfaction' is not sufficient. There has to be some substance which is conspicuously absent in the impugned order to justify such satisfaction. In support of his submission he would place reliance on the decision of this Court

in the case of Director of Handlooms, Powerlooms and Co-operative Textiles, Nagpur V/s G.S.Rambhad, Chairman and others; 2000(2)Mh.L.J.566.

5] The learned A.G.P. and the learned advocate for the respondent no.5 submit that all the precautions leading to the passing of the impugned order have been taken. Rampant irregularities were noticed in the re-audit. Each of them has been noticed and pointed out by the respondent no.3 in his impugned order which clearly demonstrates that he did apply his mind. Having reached an objective satisfaction there was no alternative for him but to direct the enquiry. They would submit that the petitioners are shying away from the enquiry. They would have an opportunity to meet the charges. Considering the gravity of the charges the impugned order cannot be struck down. No prejudice is likely to be caused to them. It is not that there is no basis for arriving at the objective conclusion. The audit report *prima facie* supports such a conclusion. There is no illegality in the order. The respondent no.2 learned Minister has taken into consideration all these circumstances and has rightly dismissed the petitioner's Appeal.

6] I have carefully considered the rival submissions and the provisions of the Act, as also the impugned orders and the decision of this Court in the case

of *Director of Handlooms* (supra).

7] So far as the purport and scope of the provisions of Section 88 of the Act, those have been succinctly laid down in the case of *Director of Handlooms* (supra) in paragraph nos.8 to 10.

8] However, the fact of the matter is that the matter in hand would be governed by the self-same observations. As can be noticed, in that matter, the Registrar except by using the word 'satisfaction' had not demonstrated in the order about having applied his mind while exercising the powers under Section 88 of the Act. As against this, in the matter in hand, the respondent no.2 has passed an elaborate and speaking order.

9] Pertinently, the impugned order reads about the respondent no.2 having gone through the provisions, the audit report and other documents and has taken care to reproduce and point out each and every instance of misfeasance or misapplication which are about 14 instances. Though one need not go into each of these, the serious objections are touching to the aspect of having received deposits from non members to the tune of 17 crores of rupees and not depositing of more than Rs.17 crores and not securing those with at least

20% in the secured instruments. The employees were paid salaries of which atleast 4 of them were absconding and 6 were suspended. Huge loans were outstanding against the employees. There was no provision made for non performing assets which has resulted in the accounts not reflecting the correct figure of losses. There is a difference in figures in respect of actual deposits and the deposits mentioned in the balance sheet. 90% of vouchers against which reimbursements were claimed did not disclose to whom the money was paid.

10] It is after going through and referring to these details that the respondent no.3 has passed the impugned order regarding satisfaction that all the aforementioned instances have resulted in causing loss to the Society. If this be so, in my considered view the impugned order cannot be equated with the order that was before this Court in the case of *Director, Handlooms* (supra).

11] Apart from the above state of affairs, when the aforementioned circumstances clearly indicate that the respondent no.3 has reached some objective satisfaction, it would not be appropriate for this Court to sit in appeal to ascertain if he really was entitled to reach such a conclusion. There

has to be some leeway for any authority conferred with such a power. The satisfaction reached by him being based on some material, this Court need not go into sufficiency or otherwise of that material while exercising writ jurisdiction.

12] There is no merit in the Writ Petition. It is dismissed. However, the observations made hereinabove are only for the purpose of deciding the Writ Petition and the Enquiry Officer need not feel influenced by those.

13] The Rule is discharged.

[MANGESH S. PATIL, J.]

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