

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4600 OF 2018

Subhash S. Phule & Ors.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. R. V. Govilkar i/by Suhas S. Inamdar for the Petitioners.

Smt. V. S. Nimbalkar, AGP for Respondent Nos.1 to 4.

Mr. V. S. Talkute, for Respondent No.5

Mrs. Shraddha Kocharekar, Under Secretary, Co-operation Department,
present

CORAM : NITIN W. SAMBRE, J.

DATED : 3rd AUGUST, 2022

P.C.:

1. Heard.

2. The challenge in the petition is to the order dated 17/01/2018 passed in the Revision Application no. 453 of 2013 by State Government (Minister for State, Co-operation, Marketing & Textiles, Mantralaya, Mumbai). Vide said order, the State Government claims to have heard the revision on 28/10/2013 and 27/09/2017. Revision was preferred by the respondent-society, which is allowed by impugned order. Petitioners suffered an order under Section 88 of the Maharashtra Cooperative Societies Act on 19/12/2009 against which an appeal was preferred before the Divisional Joint Registrar, Cooperative Societies, Pune. Said appeal was allowed on

20/02/2013. The respondent-society feeling aggrieved, preferred revision before the State Government, which was entertained under section 154 of the Maharashtra Cooperative Societies Act. Order of the Divisional Joint Registrar, Cooperative Societies, Pune is set aside in said revision vide impugned order.

3. As a sequel of above, the respondents to the said Revision Application preferred this petition.

4. The foremost contentions are, apart from the fact that the order impugned lacks reasons and considerations, it is claimed that the petitioners were not heard before the impugned order was passed, as notices of hearing was not served on the petitioners.

5. As a consequences, this Court has directed AGP to produce the original records of hearing. Based on the record, with the assistance of Under Secretary, it was tried to demonstrate that the notices in regard to hearing of the aforesaid revision were issued to be served through the Assistant Registrar, Co-operative Society, Akulj on the parties.

6. Without ascertaining whether such notices were served on the parties concerned, the Minister has proceeded to hear the revision and passed the order.

7. As such, it can be inferred that the order impugned is without there

being service of notice of hearing to the aggrieved parties i.e. the petitioners. The petitioners were unable to canvass the arguments to substantiate their case in the revision. Order impugned passed by the State Government has adverse consequences over the legal rights of the petitioners. That being so, it was mandatory for the State Government to ensure service of notice of hearing before concluding the hearing in the matter. That being so the impugned order is not sustainable and is quashed and set aside.

8. The petition stands allowed in the aforesaid terms.

9. The parties hereto agree that they shall be appearing before the State Government on 26/09/2022. As such the fresh notice to the parties are dispensed with.

10. We expect the State Government to take decision on the pending revision in any case within a period of three months from 26/09/2022.

11. This Court has noticed that the statutory appellate or revisional powers under the local and other acts are vested in the State Government. At times either Secretaries or Hon'ble Ministers are exercising such powers.

12. At the time of hearing of such proceedings, on short notice, the matters are fixed for hearing and notices are issued to be served through the local offices of the concerned Administrative Department, as can be noticed from the facts of this case.

13. Of course, the intention of such authority appears to give notices to the parties concerned to appear and argue their case. However, what is noticed in number of matters is, though such notices are ordered to be issued and to be served through local offices of the concerned departments, without ensuring the service of such notices, such revisions or appeals proceedings are taken up and decided.

14. As a sequel of above, the parties are required to take recourse to the statutory remedies before this Court questioning the orders passed by the State Government. In such eventualities, this Court for denial of opportunity of hearing in number of matters has set aside the orders with further directions to hear the parties.

As the consequences of the matter being decided by the State Government without there being an opportunity of hearing/absence of service of notice, not only of the State Government but also of this Hon'ble Court's precious judicial time is wasted.

15. In this background, it will be appropriate to issue following directions.

Before the matter is placed for effective hearing before the Presiding Officer, it shall be the duty of the concerned Under Secretary to take entries in the file on status of service of notice to the parties to such proceedings. If the notices are not served, (acknowledgments are not received), the Under

Secretary shall bring the said fact to the notice of the Presiding Officer. In the matter of entertaining revisions or appeals, it should be ensured that the notices are not only issued but effectively served on all the parties in the said proceedings.

16. Copy of this order be placed before the Hon'ble the Chief Secretary, Government of Maharashtra, so as to facilitate him to issue appropriate circular/orders to the respective departments.

ANANT
KRISHNA
NAIK

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by ANANT
KRISHNA NAIK
Date: 2022.09.08
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(NITIN W. SAMBRE, J.)