

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

WRIT PETITION NO. 5873 OF 2023

Kolhapur Zilla Sahakari Doodh
Utpadak Sangh Ltd. Kolhapur,
Having its office at B-1, M.I.D.C.
Gokul Shirgaon, Kolhapur 416234.
Through its Authorised signatory,
Shri Dayanand Laxman Patil.

... Petitioner.

V/s.

1. State of Maharashtra,
Through Hon'ble Minister For
Department of Animal Husbandry,
Dairies & Fisheries Having his office
at Mantralay, Madam Cama Road,
Mumbai 400032.
2. Joint Registrar
Cooperative Societies (Dairies)
having his Office at Administrative
Building, Khan Abdul Gafarkhan Road,
Worli Sea Face, Mumbai 400018.
3. Deputy Registrar
Cooperative Societies (Dairies)
having his Office at Administrative
Building, Khan Abdul Gafarkhan Road,
Worli Sea Face, Mumbai- 18.
4. Officer on Special Duty,
Board of Auditors, (Animal Husbandry,
Dairies & Fisheries Department)
Maharashtra State, having his Office
at Third Floor, Administrative Building,

SANJAY
KASHINATH
NANOSKAR

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SANJAY KASHINATH
NANOSKAR

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Khan Abdul Gafarkhan Road,
Worli Sea Face, Mumbai 18.

5. Special Auditor Class-1,
Ahmadnagar, having his Office
at Plot No. 10/B-2, MIDC,
Ahmadnagar Manmad Road,
Ahmadnagar.

6. Shoumika Amal Mahadik,
Age- 45 Years, Occ. Agriculture,
R/at Mahadik Pump,
Shiroli (Pulachi), Tal. Hatkanangale
Dist. Kolhapur.

... Respondents.

Mr.Anil V. Anturkar, Senior Advocate with Mr.S.S.Patwardhan
i/b. Ms.Mrinal A. Shelar for the Petitioner.

Mr.A.Y.Sakhare, Special Counsel with Mr.P.P.Kakade, GP,
Mr.A.I. Patel, Addl.GP and Ms.R.A.Salunkhe, AGP
for Respondent Nos.1 to 3.

Mr. G.S. Godbole, Senior Advocate, with Mr.Drupad Patil and
Mr.Dheeraj Patil for Respondent No.6.

**CORAM: NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE: 28 August 2023.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule is made returnable forthwith. Respondents
waive service. Writ petition is taken up for disposal.

2. The Petitioner is a Federal Society of the dairy societies in the district Kolhapur. The Petitioner has moved this writ petition under Article 226 of the Constitution of India to question the Test Audit initiated by the Respondent- State Government under the provisions of the Maharashtra Co-operative Societies Act, 1960. Respondent No.1 is the State. Respondent Nos.2 and 3 are the Joint Registrar and Deputy Registrar of the Co-operative Societies. Respondent No.4 is the Officer on Special Duty and Respondent No.5 is the Special Auditor Class-1. Respondent No.6- Shoumika Mahadik is the member of the Board of Directors of the Petitioner-Society.

3. The subject matter of this petition is a Test Audit order under the Maharashtra Co-operative Societies Act, 1960. The Act of 1960 is enacted to provide for the orderly development of the co-operative movement in the State of Maharashtra and to consolidate and amend the law relating to co-operative societies in the State. Chapter-VII deals with the management of the societies. Chapter-VIII, which is of relevance, provides for audit, inquiry, inspection and supervision of the cooperative societies. Section 75(2A) of the Act of 1960 mandates that every society shall appoint an auditor or auditing firm from a panel approved by the State Government on this behalf having such minimum qualifications and experience as laid down in section 81 of the Act. Section 81 deals with the audit of

the cooperative societies. It provides that the co-operative society shall cause its accounts to be audited at least once in each financial year and also cause it to be completed within four months from the close of financial year to which such accounts relate by the auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or an authority authorised by it in this behalf. The auditor must possess required qualifications and experience as may be prescribed to be eligible for auditing accounts of societies. The audit report is to be placed before the annual general body meeting. The manner of preparation, declaration and maintenance of the panel of auditors and auditing firms by the Registrar is prescribed. The committee of every society is obligated to ensure that the annual financial statements like the receipts and payments or income and expenditure, profit and loss and the balance sheet, along with such schedules and other statements, are audited within four months of the closure of the financial year. The auditor's report should contain all particulars of the defects or the irregularities observed in the audit. The audit report should highlight accounting irregularities and their implications on the financial statements in detail with the corresponding effects on the profit and loss. The Report must specify the functioning of the committee and sub-committees of the societies to be checked and, if any irregularities or violations are observed or reported, duly fixing the responsibilities for such irregularities or violations. If the Registrar, under the Act of 1960, has reason to believe that there exists an element of fraud,

misapplication of funds, manipulation of the accounts or that the accounts of the society are likely to be tampered with, thereby causing loss to the society, he shall be competent to depute Flying Squad to submit a report. If it is brought to the notice of the Registrar that the audit report submitted by the auditor does not disclose the true and correct picture of the accounts, the Registrar or the authorised person may carry out or cause to be carried out a Test Audit of the accounts of such society. The test audit shall include examining such items as may be prescribed and specified by the Registrar in such order. This, in short, is the statutory backdrop in which this petition arises.

4. Shoumika Mahadik- Respondent No.6 has been making grievances regarding the functioning of the Petitioner. Respondent No.6 addressed a letter to the Chairman of the Petitioner- Society calling for information regarding the changes in the price paid for the purchase of milk. On 17 July 2021, Respondent No.6 requested the Managing Director of the Petitioner- Society for copies of the minutes of the meeting of the Board of Directors. On 29 July 2021, Respondent No.6 made a grievance regarding the tender being initiated and finalized by the Petitioner- Society. On 24 September 2021, the Petitioner- Society, in its annual general meeting, appointed one M/s.Mahesh Gurav & Co. to audit the accounts of the Petitioner for the year 2021-22. The Auditor was appointed under section 75(2A) of the Act of 1960.

5. On 31 August 2021, 1 September 2021 and 21 January 2022, Respondent No.6 again sought information and raised certain grievances regarding the functioning of the managing board of the Petitioner- Society. Respondent No.6 also wrote to the Divisional Joint Registrar, Co-operative Societies, on 7 February 2022, making a grievance regarding taking certain vehicles on hire without calling for tender. Again, on 15 July 2022, Respondent No.6 wrote to the Managing Director of the Petitioner- Society, calling for information and making certain allegations regarding financial irregularities. Respondent No.6 continued to send letters to the Managing Director of the Petitioner-Society calling for the documents regarding the functioning of the Petitioner-Society.

6. The Auditor completed the audit and submitted the report to the Petitioner- Society on 10 August 2022. According to Respondent No.6, this report contains various irregularities. The annual general body meeting of the Petitioner- Society was held on 29 September 2022. According to Respondent No.6, the minutes of the annual general meeting and the report of the Auditor showed various irregularities that were being highlighted continuously through various representations.

7. Respondent No.6 made a grievance to the Hon'ble Minister, Animal Husbandry and Dairy Development, Government of Maharashtra by submitting a written representation on 2 November 2022. Respondent No.6 complained that various

irregularities and breaches were committed by the Petitioner of the Act of 1960 and the byelaws. Respondent No.6 made a grievance that documents deliberately have been withheld from Respondent No.6 to cover up the illegal actions. Respondent No.6 stated that if a Test Audit is carried out, various factors would come to light.

8. Upon this representation/ complaint, the Hon'ble Minister called upon the concerned officer to examine and look into the issue. Respondent No.3- Deputy Registrar, Co-operative Societies (Dairy) wrote to Respondent No.4- the Officer on Special Duty, Board of Auditors (Animal Husbandry, Dairies and Fisheries Department) on 10 January 2023. Respondent No.4, on 11 January 2023, as per section 81(3)(c) of the Act of 1960, directed that the Test Audit be carried out, and appointed Respondent No.5- Special Auditor, Class-1, Co-operative Societies (Dairy), Ahmednagar as Special Auditor to carry out the Test Audit.

9. On 25 March 2023, Respondent No.5 called upon the Petitioner to furnish details for a Test Audit within seven days. Challenging this order directing Test Audit, the Petitioner filed this petition on 18 April 2023. The Division Bench took up the petition on 3 May 2023, and the Petitioner had sought leave to join Shoumika Mahadik as party respondent and the leave was granted. Accordingly, Shoumika Mahadik was joined as Respondent No.6. On 4 May 2023, the Division Bench adjourned the petition to 8 June 2023. While adjourning the petition, the Division Bench

observed that it will not stop the audit, but if the report of the audit is adverse to the Petitioner, it will not be acted upon till the next date.

10. We have heard Mr.Anil Anturkar, Senior Advocate for the Petitioner, Mr.A.Y.Sakhare, Senior Advocate as Special Counsel for Respondent Nos.1 to 3 and Mr.G.S.Godbole, Senior Advocate for Respondent No.6.

11. The first contention raised by the Petitioner is that Respondent No.4- Officer on Special Duty, is not competent in law to order the Test Audit as per section 81(3)(c) read with section 3 of the Act of 1960. Section 81(3) (c) reads thus:

81. Audit.

(1)

(2)

(3)(a)

(b)

(c) *If it is brought to the notice of the Registrar that the audit report submitted by the auditor does not disclose the true and correct picture of the accounts, the Registrar or the authorised person may carry out or cause to be carried out a test audit of accounts of such society. The Test Audit shall include the examination of such items as may be prescribed and specified by the Registrar in such order.*

It is contended by the Petitioner that only the Registrar is empowered to order a Test Audit and not the Officer on Special Duty. It is argued that Section 3 of the Act of 1960 defines

Registrar, and the Officer on Special Duty cannot be considered as Registrar for the purposes of section 81(3)(c). It is contended that the authorised person mentioned in section 81(3)(c), if read with section 3 of the Act, would show that the authorised person can only assist the Registrar and cannot become a Registrar itself for the purposes of the concerned provision. The Respondents, on the other hand, have relied on the notification dated 29 July 1989 issued under section 3 of the Act of 1960.

12. We have considered the rival contentions. Section 81(3)(c) permits the Registrar, when it is brought to the notice of the Registrar that the audit report does not disclose a true and correct picture, to carry out or cause to carry out a Test Audit. Section 3 deals with the post of Registrar. Section 3 reads thus:

“3. Registrar and his subordinates.

The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar, with such designations, and in such local areas or throughout the State, as it may specify in that behalf, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government.”

Under this provision, the State Government may appoint a person to

be a Registrar of the Co-operative Societies and, by a general or special order, confer on any person or persons all or any of the powers of the Registrar under the Act. Under this provision, the State issued a notification on 29 July 1989 as follows:

NOTIFICATION

*Agriculture, Animal Husbandry, Dairy
Development and Fisheries Department,
Mantralaya Annexe, Bombay- 400 032,
Dated the 29 July, 1989*

Maharashtra Co-operative Societies Act 1960. No. MLK 2588/28083/CR-360/ADF-10. In exercise of the powers conferred by section 3 of the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) (hereinafter referred to as "the said Act") and in supersession of Government Notification, Agriculture and Co-operation Department, No. MLK 2584 41869/CR-291/ADF-9, dated the 4th September 1986, the Government of Maharashtra hereby-

(1) appoints the Officer on Special Duty, Audit Board, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department to be the ex-officio Additional Registrar of Co-operative Societies for the State of Maharashtra; and

(2) confers on him the powers of the Registrar under sections 81 and 82 of the said Act and rule 69 of the Maharashtra Co-operative Societies Rules 1961, to be exercised in respect of the Animal Husbandry, Dairy and Fisheries Co-operative Societies and the Federation in the State of Maharashtra.

*By order and in the name of the
Governor of Maharashtra*

Sd/-

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Secretary to Government

Therefore, under this notification, the power under section 81(3)(c) of the Act of 1960 and Rule 69 of the Maharashtra Co-operative Societies Rules, 1961 has been conferred on the Officer on Special Duty. The conferment of power on the Officer on Special Duty is complete by this notification, and he has all the powers of the Registrar under section 81(3)(c). The Officer on Special Duty, in the exercise of this power under section 81(3)(c) read with Rule 69 of the Rules of 1961, has caused the Test Audit to be conducted through Respondent No.5. Therefore, Respondent No.4- Officer on Special Duty had all the powers under section 81(3)(c) which he has legitimately exercised in appointing Respondent No.5 to carry out Test Audit. It is clear from the provision of section 81(3)(c) and section 3 of the Act of 1960, read with notification dated 29 July 1989, that this contention of the Petitioner is without merit.

13. The next ground of challenge of the Petitioner is that the exercise of power under section 81(3)(c) by Respondent No.4 is bad in law as it is not as per the parameters of the said provision. It is contended that under section 81(3)(c), it is the Registrar's satisfaction for existence of parameters which is material, and it is not discernible from the order passed by the Officer on Special Duty that he has applied his mind and on the contrary, he has directed a Test Audit on the express direction of the Hon'ble Minister, who has no role to perform under the scheme of section 81(3)(c). On this ground, the direction to conduct a Test Audit is questioned. The Petitioner has relied on the decision of the Supreme Court in the case

of *Chandrika Jha v. State of Bihar*¹ in the furtherance of this proposition. The Respondents have refuted this contention, submitting that the Hon'ble Minister has not directed a Test Audit to be conducted but asked to take steps as per law upon complaint made by Respondent No.6. They have also contended that the order to carry out the Test Audit is issued by Respondent No.4, which is as per law.

14. The Petitioner has annexed the complaint made by Respondent No.6 dated 13 February 2023, which contains an endorsement of the Hon'ble Minister. It is based on this endorsement, the Petitioner has sought to contend that the Hon'ble Minister has order the Test Audit, and not Respondent No.5. However, this complaint of Respondent No.6 refers to her earlier complaints and the fact that a Test Audit has been conducted as sought and also mentions that certain further aspects also need to be examined. It is on this complaint that an endorsement has been made by the Hon'ble Minister to take necessary steps. However, the Petitioner has not placed on record the earlier correspondence made by Respondent No.6, which is placed on record by Respondent Nos.1 to 4 and Respondent No.6. This would show that Respondent No.6 has been continuously making grievances regarding the functioning of the Petitioner- Society. On 2 November 2022, Respondent No.6 wrote to the Hon'ble Minister seeking to bring to his notice various alleged irregularities in the functioning of the

¹ (1984) 2 SCC 41

Petitioner- -Society and also that in the Annual General Meeting dated 25 September 2022, several points raised in the Audit Report have not been looked into and had made a request that a Test Audit be conducted. On this complaint, the Hon'ble Minister has not directed a Test Audit but directed to examine the factual position and, after that, to proceed. Thereupon, Respondent No.2- Joint Registrar, corresponded with Respondent No.4- Officer on Special Duty, who then proceeded to take necessary steps for the Test Audit. It is thereafter, on 13 February 2023, that Respondent No.6 has written to the Hon'ble Minister that apart from the Test Audit, there are various other irregularities which need to be looked into. Therefore, when Respondent No.6 approached the Hon'ble Minister with her complaint, the Hon'ble Minister had not issued an order to conduct a Test Audit but had stated that the Authority would proceed after examining the factual position. This prior correspondence and the endorsement of the Hon'ble Minister dated 2 November 2022 are not placed on record in the petition. In view of this factual position, the reliance of the Petitioner on the decision of the Hon'ble Supreme Court in the case of *Chandrika Jha* is misplaced. In the said decision, the Hon'ble Supreme Court had disapproved the direction issued by the Minister to the executive in contravention of the statutory provisions or usurping the functions of the statutory authorities. However, in the present case, there is no such direction given by the Hon'ble Minister, and the Test Audit has been directed by Respondent No.4- Officer on Special Duty, who

was duly authorised and competent in law to do so. There is, therefore, no merit in the second contention as well.

15. The third ground of challenge of the Petitioner is that there was no material before the Officer on Special Duty to order a Test Audit. This submission is founded on the assertion that in the order dated 11 January 2023 issued by Respondent No.4, there is no reference to the Audit Report. It was also contended that the Audit Report/ extracts of Audit Report were not before the Hon'ble Minister when Respondent No.6 made the complaint. The Respondents have submitted that this contention is factually incorrect. In the affidavit filed by Respondent No.6, a copy of the complaint dated 2 November 2022 is annexed. To this complaint, copies of relevant pages of the report of statutory audit for the period from 1 April 2021 to 31 March 2021 were annexed, and this is the complaint which was directed to be examined and proceeded with. Respondent No.4, accordingly, while ordering the Test Audit, has referred to the relevant pages of the report in the order dated 11 January 2023. Therefore, the assertion that there was no material whatsoever before the Authority before ordering the Test Audit is factually incorrect.

16. The Petitioner then contends that though there may have been some documents before the Authorities, nothing in the said documents would even remotely constitute material enough to order a Test Audit. It was sought to be contended that merely

annexing the Audit Report, which was said to be annexed to the complaint, did not constitute any material that would warrant a Test Audit. The Respondents contended that an elaborate inquiry is not contemplated before ordering the Test Audit and in any case the material provided sufficient ground for ordering the Test Audit.

17. To appreciate the scope of judicial scrutiny of the quality of the material, the statutory scheme must be seen. Section 81 of the Act of 1960 mandates the society to keep its account audited through a government-approved auditor. This is the requirement of the Statute. If it is brought to the notice of the Registrar/ Officer on Special Duty that the audit report does not disclose the true and correct picture, a Test Audit can be ordered. This statutory scheme emphasises transparency in maintaining the accounts of the cooperative societies. For this purpose, Chapter VIII postulates a substantive role to be played by the State Government in maintaining purity in the accounts of a co-operative society. The Petitioner is a Federal Society of Dairy Societies in district Kolhapur. Around 5270 societies are the members of the Petitioner. The Petitioner collects milk from its members and markets it under the brand "Gokul". The collection of milk is approximately 14 lakh litres per day. The annual turnover of the Petitioner is Rs.3500 crore. The large number of villagers in the area of operation of the Petitioner depend on their livelihood by supplying milk to local dairies who, in turn, supply it to the Petitioner. A substantial quality

of milk is sold in several parts of Maharashtra under the brand name "Gokul". Therefore, how the Petitioner- Society functions would affect a large number of persons, and it is essential that its accounts are carefully maintained.

18. The judicial review of an order under section 81(3)(c) on the ground of the quality of the material cannot be as in an appeal, if at all permissible. Even otherwise, the Respondents have pointed out several areas of concern in the Audit that justified the Test Audit. According to the Respondents, some of the irregularities were concerning Bulk Milk Coolers where the Petitioner has not maintained a record of actual diesel consumption by Generators installed therein. Hand-written bills of Diesel Purchase are maintained instead of actual computer prints. The Petitioner has purchased the wood without inviting tenders regarding Boiler Wood. The Petitioner- Society has not taken active steps to recover the dues from the purchasers of milk and milk products, from the member dairies to whom the "animal food" is supplied, and from the contractors to whom advance payments or excessive payments were made. Amounts are paid as donations, with the cheques drawn in the individual names without obtaining prior permission from the Cooperation Department. There are illegal expenses on advertisements for events such as birthdays, etc. Various transactions are called for without inviting tender, such as for Fodder Seeds and Can Repairing and no record regarding the production of cost of milk products is maintained. Works are ordered by ignoring the

lowest bid. There are irregularities in internal management, such as the signatures of the Managers are not taken on vouchers; various vouchers are not signed. Daily accounts not signed by Accounts and supporting documents are not annexed to some of the vouchers. We do not intend to draw any final conclusion but considering the scheme of Chapter-VIII of the Act of 1960, it is not possible for us to hold that this material was not sufficient for ordering the Test Audit. Therefore, there is no merit in this contention as well.

19. Lastly, the Petitioner contended that Respondent No.6 did not raise any objection and had participated in the proceedings of the Managing Board of the Petitioner- Society as a Director herself. Respondent No.6 has filed an affidavit setting out the correspondence that Respondent No.6 has entered into, which we have referred to earlier. This correspondence would show that Respondent No.6 has continuously made a grievance and demanded supply of documents regarding the proceedings of the Board of Directors and the Managing Committee of the Petitioner- Society. Therefore, there is no substance in the contention that Respondent No.6 is estopped from opposing the petition.

20. The challenge raised in this petition also needs to be noted in the context of the stage-wise procedure under the Act. After the Test Audit, the next stage is provided in section 82 of the Act. Section 82 provides for the Rectification of defects in accounts. It states that if the result of the audit held under Section 81 discloses

any defects in the working of a society, the society shall, within three months from the date of the audit report, explain to the Registrar the defects or the irregularities pointed out by the Auditor, and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. Thereafter, if the committee of society fails to submit the audit rectification report to the Registrar and to the annual general body meeting, all the committee members shall be deemed to have committed an offence under Section 146. Accordingly, they shall be liable for penalty as provided in Section 147. Thereafter, under section 88, the Registrar may frame charges and after giving a reasonable opportunity pass such orders regarding the misapplication, retention, misfeasance or breach of trust, as he may determine. As against such order passed against any director under section 88 of the Act of 1960, an appeal is provided under section 152 of the Act. Therefore, the Test Audit is not the end of the process and the statute provides elaborate process. Therefore, the Test Audit itself will not fructify into any immediate action, but there are various stages before even inquiry against the individual director is carried out. The Petitioner and its directors will have an opportunity. Pursuant to the liberty by this Court, Test Audit is complete and the report is ready. Further process under the Act of 1960 will follow. The attempt of the Petitioner is to scuttle the inquiry of its accounts at the initial stage itself.

21. Accordingly, the writ petition is dismissed. Rule is discharged. No order as to costs.

22. At this stage, the learned counsel for the Petitioner seeks continuation of the ad-interim relief. Learned counsel for the Respondents opposes. Considering the stage at which the proceeding is and the statutory scheme providing various subsequent steps, we do not think it necessary to continue the ad-interim relief. Request is refused.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)