

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1475 OF 2017

Brihanmumbai Police Karmachari Sahakari

Pat Sanstha Maryadit,

New B.D.D Chawl No.6, 1st Floor, Naigaon,

Dadar East, Mumbai 400 014

Through its Hon. Secretary

.. Petitioner

Versus

1. State of Maharashtra

Through the Secretary, Co-operation

Department, Mantralaya, Mumbai-400 032.

2. Divisional Joint Registrar,

Co-operative Societies, Mumbai Division,

Mumbai, Having Office at Malhotra House.

6th Floor, Opp G.P.O., Mumbai – 400 001.

3. The District Deputy Registrar,

Co-operative Societies, Mumbai,

Having Office at Malhotra House,

6th Floor, Opp G.P.O., Mumbai – 400 001.

4. The Authorized Officer cum Assistant Registrar,

Co-operative Societies, F/S Ward,

Having Office at Malhotra House. 6th Floor,

Opp G.P.O., Mumbai – 400 001.

5. The Enquiry Officer,

in the Office of Assistant Registrar, F/S Ward,

Having Office at Malhotra House. 6th Floor,

Opp G.P.O., Mumbai – 400 001.

6. Chandrakant Baburao More

New B.D.D. Chawl, 17/02 Mahatma Phule

Road, Naigaon, Dadar East,

Mumbai-400014.

.. Respondents

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- Mr. Narendra V. Bandiwadekar, Senior Advocate for Petitioner.
 - Ms. V.S. Nimbalkar, AGP for Respondent – State.
 - Mr. Bhushan Walimbe for Respondent No.6.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : DECEMBER 01, 2022.
PRONOUNCED ON : JUNE 14, 2023

JUDGMENT:

1. By the present Petition, Petitioner has prayed for the following relief:

“b) By a suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 14.01.2016 passed by the Hon’ble Minister, Co-operation Department-Respondent No.1 in Revision Application No.459 of 2015 and accordingly the said Revision Application filed by the Respondent No.6 may kindly be dismissed with costs.”

2. This Petition challenges the legality and validity of order dated 14.01.2016 passed by Respondent No.1 – State in Revision Application No. RVA/2013/459/15-S dated 14.01.2016 under Section 154 of The Maharashtra Co-operative Societies, Act 1960 (for short “**the said Act**”)

3. Petitioner is a Co-operative Society registered under the said Act. Employees of the Police Department of the Government of Maharashtra serving within Greater Mumbai are its members. It has more than 33,000 members.

4. Impugned Judgment in Revision proceedings exonerates the culpability and liability of Respondent No.6. He was a member of the Managing Committee of the Society holding the post of Joint Secretary from December, 2000 onwards. Admittedly, his tenure was for five years. Apart from Respondent No.6 another member of the Managing Committee also held the post of Joint Secretary. These are undisputed facts.

5. Petitioner - Society advances loan to its members who are employees of the Police Department. EMI against loan advanced by Society is deducted from the monthly salary of members and remitted to the Society. Procedure for loan application begins by submitting a certificate issued by the Head of Department certifying that Applicant is employee of the Police Department alongwith completed loan application form. According to Petitioner, this is a *sine qua non* for seeking loan from the Society.

6. During 2004-2005 it came to the knowledge to the Society that eight Applicants/persons who availed loan from the Society were not employees of the Police Department and they had procured the loan by playing a fraud on the Society. Criminal complaint was filed against these eight persons and offences under Sections 406, 408, 170, 419, 465, 467, 468, 471 read with 34 of Indian Penal Code, 1860 (for short 'IPC') were registered against them. The criminal case is still

pending.

7. In the meanwhile, Petitioner initiated inquiry under Section 83 of the said Act. Respondent No.5, appointed as an Enquiry Officer in his report, recommended action to be taken under Section 88 of the said Act. Respondent No.4 – Authorized Officer cum Assistant Registrar conducted the statutory inquiry and submitted Enquiry Report dated 11.05.2009 under Section 88 of the said Act.

8. Perusal of the Enquiry Report submitted by Enquiry Officer under Section 88 of the said Act reveals indictment of six persons / members of the Society having committed serious discrepancies in recommending and disbursement of funds of the Society without adhering to the laid down procedure. The names of the six employees are contained in a tabular column in the Report wherein the name of the Respondent No.6 appears in respect of disbursement of loan to four alleged members. Admittedly, Respondent No.6 was Joint Secretary of the Society at the then time. Enquiry Report states that in respect of disbursement of loan to four alleged members, Respondent No.6 has appended his signature as Joint Secretary along side the signature of R.R. Bhogale (President of the Society) and the Respondent No.6 is alleged to have erased the crossing on the loan disbursement cheque to make it appear as a bearer cheque. That the acts attributed to the Respondent No.6 have been done on two dates

namely 13.01.2005 (disbursement to two members) and 18.03.2005 (disbursement to the remaining two members). Perusal of Report indicates that at the time of inquiry R.R. Bhogale, President of the Society did not file his reply nor did he submit any documentary evidence. Perusal of the Report further levies a serious charge leading to conferring membership on persons who are not employees of the Police Department and disbursement of loan amount to such persons. Though there is no direct indictment of the Petitioner, Report holds that at least seven members of the Society including its office bearers were liable for disbursement of loan amount and the consequential financial loss caused to the Society since the loan amount was disbursed to the alleged members and their accounts have subsequently turned into NPAs'.

9. Report concludes by holding that Society incurred a financial loss of Rs.6,99,700/- due to such disbursement of loan amount to such alleged members and that Respondent No.6 and seven others have actively played a role in disbursement of loan amount to them resultantly causing a financial loss to the Society. Hence, recovery of amount of Rs.6,99,700/- is foisted upon four members (including the Petitioner) who have been directly held responsible as they are signatories on the cheques issued for disbursement. The four members are Shantaram Jadhav, Santosh Kuveskar, Deepak Ghosalkar

and Chandrakant More (Petitioner). Pertinently Enquiry Report completely exonerates R.R. Bhogale, President who is also a signatory on four cheques, D.V. Ghosalkar and S.S. Kuveskar who are signatories on two cheques, but indicts the aforementioned four members of the Managing Committee. The role of Kuveskar and Ghosalkar is discussed with respect to recommending four alleged persons and accepting them as members of the Society and for conducting due diligence of such members who would be admitted as members of the Society. By the impugned Enquiry Report financial loss caused to the Society is apportioned amongst the aforementioned four members and in that view of the matter Petitioner is made liable to pay the sum Rs.1,74,925./- being his apportioned share towards loss caused to the Society.

10. Being aggrieved, Respondent No.6 filed statutory Appeal under Section 152 of the said Act before the Divisional Joint Registrar to challenge the Enquiry Report under Section 88. By a reasoned order dated 29.09.2009 the Divisional Joint Registrar, Co-op. Societies, Mumbai dismissed Petitioner's Appeal and upheld the Enquiry Report.

11. Respondent No.6 then filed Revision Application before the State Minister of Co-operation to challenge the order passed by the Divisional Joint Registrar. After hearing the parties, by order dated

14.01.2016 Revision was allowed and Respondent No.6 was exonerated from the liability of payment of Rs.1,74,925/-. Being aggrieved, Petitioner is therefore before this Court.

12. Mr. Bandiwadekar, learned Senior Advocate appearing for the Petitioner – Society would submit that the impugned order passed in Revision proceedings does not consider the fact that an imminent fraud has been played on the Society by its office bearers including the Respondent No.6. He would submit that indictment of the Respondent No.6 is necessary and has been *prima facie* proved since he is not only responsible for signing the cheques to four alleged members for disbursement of loan, but has also committed the offence of tampering on the cheque instruments. He would submit that the endorsement made by Respondent No.6 to cancel the crossed cheques issued to the four alleged members and tampering with the cheque instruments by converting the crossed cheques into bearer cheques was an illegal act and beyond his authority.

12.1. He would submit that Respondent No.6 held the post of a member of the Managing Committee and no such authority was given to any of the members of the Committee to unilaterally convert crossed cheques issued for disbursement of loan amount into bearer cheques and directing the Society to pay the loan amount to them in cash. He would submit that the Enquiry Report under Section 88 of

the said Act returns a findings to this effect and the said finding is upheld by the Divisional Joint Registrar in the statutory Appeal filed by Respondent No.6.

12.2. He would submit that reference by the learned Minister in the impugned order to the letter dated 07.12.2007 addressed by the Society to Respondent No.3 stating that the Society had authorised the designated office bearers to cancel the crossed cheques and make them bearer cheques is not well founded. He would submit that though the letter states that such authority was given only to the Executive President, Secretary and Joint Secretary, at the relevant time when the act of cancellation of crossed cheques was done by Respondent No.6, he was not holding any post of Executive President, Secretary and Joint Secretary in the Society. He would submit that the act of Respondent No.6 had taken place some time in 2004 – 2005 when the loan amount was disbursed and the said letter was issued much subsequently on 07.12.2007. He would next submit that the second letter dated 13.01.2001 addressed by the Society to the Bank of Maharashtra, Bhoiwada Branch, Mumbai which has been relied upon by Respondent No.1 in the impugned order was a letter signed and addressed by the three office bearers of the Society namely Executive President, Secretary and Joint Secretary. He would submit that though the said letter states that the Society had authorised its

office bearers mentioned in that letter and empowered them to convert crossed cheques into bearer cheques, the authority was only restricted to the aforesaid three signatories namely the Executive President, Secretary and Joint Secretary only and not to any other office bearer. He would submit that Respondent No.6 though was one of the Joint Secretaries, he was not given any authority or empowered to convert crossed cheques into bearer cheques. He would submit that the finding returned in the impugned order that there was a existant procedure being followed by the Society to convert crossed cheques into bearer cheques cannot come to the assistance of Respondent No.6 in absolving his liability of overreaching his authority as office bearer of the Society. He would submit that only after holding a detailed enquiry under Section 88 of the said Act, Respondent No.4 – Enquiry Officer has found Respondent No.6 guilty of a serious misconduct which admittedly has caused a financial loss to the Society. He would submit that this Court needs to appreciate the fact that the loan disbursed to the alleged members of the Society was on the basis of forged and fabricated documents in as much the alleged employees never worked in the Police Department of the State of Maharashtra.

13. In that view of the matter, he has urged the Court to quash and set aside the impugned order dated 14.01.2016 and uphold the Enquiry Report / order dated 11.05.2009 passed by Enquiry Officer

and the appellate order dated 29.09.2009 passed by the Divisional Joint Registrar in statutory Appeal upholding the Enquiry Report / order.

14. ***PER CONTRA***, Mr. Walimbe, learned Advocate appearing for the contesting Respondent No.6 would submit that what needs to weigh with the Court is the fact whether was it only the Respondent No.6 who was responsible for disbursement of loan or whether but all members of the Managing Committee played a decisive role in the said procedure. He would submit that verification of the loan application was the responsibility of the Managing Committee of the Society and it is only after the loan was verified by the Loan Committee and a resolution to that effect was passed, the procedure for disbursement of loan would commence. He would submit that the eight alleged members submitted verified documentation i.e. loan application form and certificate issued by the Head of Department for seeking the loan. He would submit that in the first place the documentation submitted by the alleged members was itself fabricated in as much as the certificate issued by the Head of Department wherein they were serving were fabricated and forged documents. He would submit that the loan application form and the said certificate was duly considered by the Managing Committee in respect of the eight alleged members for loan sanction. He would submit that it is only after this sanction

was given that the role of disbursement of loan amount came into effect and Respondent No.6 as well as the other office bearer including the Executive President of the Society signed the cheques and loan files for disbursement of the loan. He would submit that all acts of the Managing Committee members including that of the answering Respondent was strictly in accordance with the resolution passed by the Managing Committee of the Society. He would submit that the said resolution authorised individual Managing Committee members including Respondent No.6 to sign the cheques for the loan amount sanctioned by the Managing Committee and therefore it cannot be held that the answering Respondent was solely responsible for the financial loss caused to the Society. He would submit that exoneration of the Executive President and the other members of the Society from any liability itself proves that discretion is writ large on the face of record while conducting the Enquiry under Section 88 of the said Act and in that view of the matter, the impugned order dated 14.01.2016 has been correctly passed and deserves to be upheld. He would therefore urge the Court to dismiss the present Writ Petition and uphold the order dated 14.01.2016 passed in Revision proceedings by the Revisional Authority.

15. I have heard Mr. Bandiwadkar, learned Senior Advocate for Petitioner; Ms. Nimbalkar, learned AGP for Respondent – State and

Mr. Walimbe, learned Advocate for Respondent No.6 and with their able assistance perused the pleadings in the present case. Submissions made by Advocates has received due consideration of this Court.

16. At the outset, it is seen that Respondent No.6 was appointed as a member of the Managing Committee in the year 2000 and his tenure was upto 2005. The alleged act of disbursement of loan and consequentially appending signature on the cheques for disbursement are alleged to have been done on 13.01.2005 and 18.03.2005. It is not the Petitioner's case that Respondent No.6 was not a member of the Managing Committee. Admittedly, Respondent No.6 was the Joint Secretary. Infact there were two Joint Secretaries. In so far as the alleged acts are concerned, it is extremely pertinent to note that all four cheques signed by Respondent No.6 were also countersigned by Mr. R.R. Bhogale, President of the Society. Record clearly reveals that Mr. R.R. Bhogale did not file his reply whatsoever in the enquiry proceedings nor did he submit any evidence whatsoever. Despite this the President of the Society has been completely exonerated from any liability. *Prima facie* if Respondent No.6 is to be indicted on the basis of his signature appearing on the loan disbursement cheque then equally the President ought to have been indicted for the same. The Enquiry Report however exonerates the President and only indicts the Respondent No.6. There is a finding in the Enquiry Report that seven

persons (including the Respondent No.6) were responsible for playing an active role in the alleged purported fraud. If that be the case then indictment of only four persons out of said seven members is not justified. Allegations of fraud are not only required to be pleaded but also proved with sufficient and reliable evidence. Fraud cannot be based upon conjectures and surmises.

17. Be that as it may, concentrating on the role of Respondent No.6, it needs to be stated that as member of the Managing Committee and being the Joint Secretary of the Society, he carried out his duties by appending signatures on the loan disbursement cheques. Preparation of the cheque and all activities prior thereto, *inter alia*, beginning with submission of the loan application form alongwith the recommendation letter from the head of the department where the Applicant is serving, verification of the documents submitted and carrying out due diligence of the same, placing the applications of such Applicants before the Managing Committee for sanction, scrutinising the individual files of the Applicants by the Loan Committee are all such acts for which undoubtedly the Respondent No.6 cannot be held responsible and liable.

18. In that view of the matter, the findings returned by the Enquiry Officer and upheld by the Appellate Authority are not well founded. One of the charge and finding is that by virtue of the act of

Respondent No.6, membership has been conferred on the persons/Applicants (who applied for loan) who are not employees of the Police Department and loan has been disbursed to such persons. In the given facts and circumstances of the present case, it cannot be fathomed that Respondent No.6 being the Joint Secretary of the Society and one of the office bearers of the Managing Committee can be solely held responsible and liable for disbursement of loan to a person who is not an employee of the Police Department. The most important aspect for consideration is the fact of due diligence in such a case. Appropriate enquiry and due diligence if carried out by those responsible to do so before recommending the application of such persons (Applicants) for loan sanction to the Managing Committee could have unearthed the genuineness of the Applicants. Therefore the role of Respondent No.6 needs to be understood in its proper perspective. It is on record that a resolution to that effect was passed by the Society assigning and authorising individual Managing Committee members to sign the cheques of the loan amount which were signed by the Managing Committee. In that view of the matter, the entire Managing Committee is liable and responsible and not the member who has appended his signature on the cheque for disbursement of loan. If the Enquiry Officer has exonerated the other Managing Committee members then in that case indictment of Respondent No.6 is high handed and arbitrary. All that is needed to

be seen in the present case is that the Managing Committee members had been authorised by the Managing Committee to sign the cheques for disbursement of loan. In that view of the matter, it cannot be held that only Respondent No.6 and three other members of the Committee are liable for causing financial loss to the Society and are liable for reimbursement of the said financial loss. It is reiterated that verification, due diligence and scrutiny of the application for seeking loan is the most important step which is verified by the Manager of the Society or those responsible who are entrusted with the said work and appointed by the Society for the same. This is a classic case where the Managing Committee has sanctioned the loan amount and an individual office bearer of the Managing Committee who has been entrusted with the responsibility and duty of signing the cheques is held responsible for disbursement of loan. This cannot be countenanced in the facts of the case. It cannot be stated that Respondent No.6 was not authorised for appending his signature. If that be the case, then signature of Mr. R.R. Bhogale who had counter signed all four cheques would also be responsible for indictment.

19. Next the charge of tampering is required to be considered. There is a positive finding returned in the impugned order which states that on the request of several members who were disbursed the loan amount the Managing Committee members had allowed the

cheques to be encashed as bearer cheques. It is also been stated that the Bank had followed this system of encashment of bearer cheques much before in point of time before indictment of Respondent No.6 in the present case. There is a categorical reference to two specific letters dated 13.01.2001 and 07.12.2007 in the order dated 14.01.2016 which have been dealt with extensively in the said order. These two letters have been addressed to the Bank, *inter alia*, intimating the Bank that the cheques given for encashment would bear the signatures of two office bearers and on the authorization of any one of the office bearer the cheque could be converted from a crossed cheque to a bearer cheque. It is not in doubt that the Respondent No.6 was not the Joint Secretary when the said acts took place in 2005 in respect of four cheques. The cheques were signed by both the President and Respondent No.6 on behalf of the Society. The contents of these two letters clearly go to the root of the matter. Respondent No.6 while passing the order dated 14.01.2016 has considered the effectiveness of the above two letters and dealt with the same at length in the findings.

20. I see no reason to disturb the findings of the Revisional Authority and offer an alternate view as the same according to me are not only cogent but clearly effective in the facts and circumstances of the present case and are based on sound reasoning. The order dated

14.01.2016 passed by the Revisional Authority is therefore upheld.
Consequently the Writ Petition fails.

21. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]