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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5758 OF 2021

Solapur District Co-operative
Group Secretaries Association
through its President
Pandurang Dnyanoba Vyavhare
Age : 57 years, Occu.: Service,
Residing at Post Karkamb,
Taluka : Pandharpur, District : Solapur … Petitioner

V/s.

1. State of Maharashtra
Through Ministry of Co-operation and
Textiles, Mantralaya, Mumbai

2. The Commissioner of Co-operation and
Registrar, Co-operative Societies
Maharashtra, 2nd floor, New Central
Building, Opposite B.J. Medical College
Camp, Pune

3. The District Central Co-operative Bank
Solapur through its Administrator,
Having Office at Goldfinch, Peth, Solapur

4. The Solapur Zillah Dekharekh Sahakari
Sanstha, Solapur, through Liquidator
Having Office at 46, Navi Peth,
Yogeshwari Complex, Solapur

5. The District Deputy Registrar,
Co-operative Societies, Solapur,
Having office at Collector's Office
Compound, Solapur ... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. Sarang Aradhye, Mr. Shantanu Gurav, Ms. Shruti Kothavade and Mr. Saarth Chordia for the Petitioner

Dr. Birendra B. Saraf, Advocate General with Mr. P.P. Kakade, G.P. and Mr. M.M. Pabale, AGP for the State - Respondent Nos. 1,2 & 5

Mr. Anil Sakhare, Senior Advocate i/b. Mr. Umesh Mankapure for Respondent No.3

CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.

DATE : 18 DECEMBER 2023

Judgment ***(Per Nitin Jamdar, J.)*** :-

Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner – Solapur District Co-operative Group Secretaries Association filed this Writ Petition on 21 March 2021 for a direction to the Respondents to implement the directives issued by the State Government on 6 December 2010 and the subsequent decisions. Thereafter, the clause in the order dated 6 December

2010, which the Petitioner sought to be enforced stood modified/substituted by the order dated 15 March 2022. By an amendment in this petition, the Petitioner has challenged the order dated 15 March 2022. The primary challenge in the Petition now, after amendment, is to the order dated 15 March 2022.

3. The Petitioner – Society was established in the year 1990 and has around 510 members in the Solapur District. Respondent No.1 is the State of Maharashtra through the Ministry of Co-operation and Textile. Respondent No.2 is the Commissioner of Co-operation and Registrar, Co-operative Societies. Respondent No.3 is the District Central Co-operative Bank. Respondent No.4 is the Solapur Zilha Dekharekh Sahakari Sanstha, Solapur and Respondent No.5 is the District Deputy Registrar, Co-operative Societies, Solapur.

4. The members of the Petitioner – Society are Group Secretaries. In 1940, the Mehta-Bhansali Committee proposed the concept of Group Secretaries for processing applications for loans and disbursing loans to the members of the Co-operative Societies who are farmers and to liaison between the Government Department to implement various Government schemes and to look after the secretarial work of the ground level Co-operative Societies. The work of Group Secretaries began sometime in the year 1945. On 18 June 1971, the State Government issued a Government Resolution

for the caderisation of Group Secretaries. Thereafter, on 28 March 1972, certain monetary benefits to the District Supervision Co-operative Societies were provided for. The Commissioner for Co-operation and Registrar of Co-operative Societies issued a Circular on 14 August 1974 indicating the role of the Group Secretaries with Primary Agricultural Credit Societies.

5. The structure of Co-operative Agricultural Credit Societies in the State of Maharashtra is three-tiered. The Primary Agricultural Credit Societies function on the village level, District Central Co-operative Banks work at the District level, and at the State level it is the State Co-operative Bank. The District Central Co-operative Bank disburses loans to the Primary Agricultural Credit Societies charging 4% interest on the crop loans and in turn, the Primary Agricultural Credit Societies charge 6% interest to the farmers. It is this 2% margin that is the profit and income of the Primary Agricultural Credit Societies.

6. The Government of India took an initiative to strengthen the co-operative credit structure. For that purpose, the Government of India constituted a committee known as the Vaidyanathan Committee. The Vaidyanathan Committee submitted its report on the revival of Rural Co-operative Credit Institutions. On 13 November 2006, the Government of India, the State of Maharashtra and the National Bank for Agriculture and Rural

Development (NABARD) signed a tripartite Memorandum of Understanding. The State of Maharashtra by amendment to the Maharashtra Co-operative Societies Act, 1960 (the Act of 1960) inserted Section 69A in respect of the constitution of the Co-operative State Cadre of Secretaries of certain societies and establishment of employment fund for the cadre. Section 69B was added to the Act of 1960, by the Maharashtra Act 11 of 2008. Section 69B provides for the constitution of the District Level Committees and the State Level Committees for solving the problems related to the service and salaries of existing group secretaries.

7. On 6 December 2010, the State of Maharashtra issued directions laying down a methodology concerning the group secretaries. This order referred to the report of the Vaidyanathan Committee. The introduction and the appointment of the State and District Level Committees to resolve various issues faced by the Group Secretaries and to streamline these modalities, certain directions were issued. There were directions regarding absorption and payment of salary. There were further directions on 23 November 2012 and 8 February 2019.

8. The State of Maharashtra repealed Section 69A by the Maharashtra Act 16 of 203 on 13 August 2023. This was pursuant to the report of the Vaidyanathan Committee and the tripartite

Memorandum of Understanding between the Government of India, the State of Maharashtra and the NABARD.

9. This Petition was filed by the Petitioner on 21 March 2021 with a grievance that despite various directions of this Court to implement the order dated 6 December 2010, the same was not being done correctly and despite subsequent communications dated 23 November 2012 and 8 February 2019 regarding the release of salary of Group Secretaries there was no progress. Even the representation made by the Petitioner – --Society to the State Government on 16 August 2020 yielded no result. Making this grievance this Writ Petition was filed, praying for a direction to the Respondents, more particularly, the Respondent No.3 the District Central Co-operative Bank to forthwith act upon on the Government Directives dated 6 December 2020 and the subsequent communications dated 23 November 2012 and 08 February 2019 for release of salary of the Group Secretaries.

10. The Petition first came up on board on 21 September 2021 and it was adjourned from time to time for completing the pleadings. An interim order came to be passed on 20 December 2021 specifying Without Prejudice a temporary arrangement with the direction to place the matter for hearing.

11. On 15 March 2022, the State issued another directive and modified clause 4 of the directives dated 6 December 2010, which provided for modalities of payment. The order dated 15 March 2022 was issued under Section 79(1) whereby Clause 4 of the order dated 6 December 2010 was deleted and substituted by Clauses 4A and 4B in the order dated 15 March 2022. Clause 4A and 4B in the order of 15 March 2022, (as per the translation provided by the State) lays down as under.

> *"4A. Financial assistance is provided by the District Central Co-operative Bank to various Multipurpose Co-operative Credit Societies for providing short, medium and long term credit to farmers for agriculture in a three-tier credit structure. Various Multipurpose Co-operative Credit Societies provide loans to farmers at the village level through financial assistance received from banks. District Central Co-operative Banks provide financing to various Multipurpose Co-operative Credit Societies at 4% interest rate for short term loans. Loans are disbursed to farmers at 6% interest rate by various Multipurpose Co-operative Credit Societies. The District Central Co-operative Banks provides financing to variations Multipurpose Co-operative Credit Societies at an interest rate of 10.50% for medium term and long term loans. The loans are disbursed to farmers at an interest rate of 12.50% by various Multipurpose Co-operative Credit Societies at 2% of the said short, medium and long term loan allocation remains to Vividha Karyakari Seva Co-operative Societies. From the said 2% margin, the Multipurpose Co-operative Credit Societies should manage their expenses. In other words as amount towards salary of Group Secretaries has*

to be paid from the 2% margin amount of the Multipurpose Co-operative Credit Societies.

Group secretaries are the employees of Multipurpose Co-operative Credit Societies. Hence, amount towards salary of Group Secretary has to be paid by the concerned society. It is mandatory for the District Central Co-operative Bank to pay the salary amount to the group secretary from the 2% margin amount and such amount has to be credited on the account of concerned society.

4B. Primary Various Multipurpose Co-operative Credit Societies should deposit the amount of the contribution to be paid towards the salary of the group secretaries appointed by them from 2% margin amount/income received from them in the account of concerned account of District Supervision Committee maintained in the District Central Co-operative Bank by 10th day of every month.

Those Societies who will not deposit the amount towards salary of group secretaries from 2% margin amount in the account of concerned District Supervision Committee in spite of recovery, the District Level Committee shall ascertain and verify that 23% margin amount is available on the account of concerned society and then will recommend the District Central Co-operative Bank to deposit the recovered amount in the account of concerned society of District Supervision Committee.

As per the recommendations of the District Level Committee, the District Central Co-operative Bank will deposit 2% margin amount towards the salaries of the group Secretaries and will debit the said amount in the account of the concerned society. It is mandatory for the

Bank to follow the recommendations of the District Level Committee."

The Petitioner sought leave to challenge the order dated 15 March 2022 by amending the Petition which leave was granted and amendment was carried out. Reply affidavit is filed.

12. Reply affidavit is filed including additional affidavits in respect of the amended Petition on behalf of Respondent No.3 - the District Central Co-operative Bank, State of Maharashtra and Respondent No.4. They have opposed the prayers.

13. We have heard Mr. Y.S. Jahagidar, Senior Advocate for the Petitioner, Mr. Anil Sakhare, Senior Advocate for the Respondent No.3 and Dr. Birendra Saraf, Advocate General for the Respondent Nos. 1, 2 and 5.

14. The Petitioner, in short, contends that the directives dated 16 December 2010 were preceded by reports of various committees and deliberations and it was an informed decision of the State Government based on material. By various orders of this Court that is in Writ Petition No. 9525 of 2010 dated 14 December 2010, Writ Petition No. 11124 of 2010 dated 24 February 2011 and Writ Petition No. 4457 of 2011 dated 7 July 2014 the State Government has been directed to enforce the directives dated 6 December 2020 and these orders have not been challenged. This well-considered

and informed decision of the State, enforced by this Court is sought to be nullified by issuing the order dated 15 March 2022 which is a mere corrigendum. There is no rationale or basis for this change. It is well established that a corrigendum can only be issued to correct clerical errors. Therefore order issued under Section 79A(1) which is based on the report of the Registrar cannot be substantively changed by a corrigendum. The principle that a corrigendum cannot change substantive orders is recognized in the decision of the Hon'ble Supreme Court in *Vipinchandra Vadilal Bavishi (Dead) by Legal Representatives and Anr. v/s. State of Gujarat and Ors.*[1] and the decision of the High Court of Uttarakhand in *Dr. Vinod Kumar Chauhan v/s. State of Uttarakhand and Ors.*[2] Therefore, the corrigendum dated 15 March 2022 being issued without any power and any rationale is bad in law especially when the order dated 16 December 2010 has been directed to be enforced by this Court. It is issued during the pendency of the present Petition to nullify the earlier orders of the Court. These are the grounds of challenge of the Petitioner before us.

15. On behalf of the State and the District Co-operative Bank, it is contended that whatever the phraseology used in the order dated 15 March 2022, the order is traceable to a statutory power under Section 79A(2) of the Act of 1960, and the description in the document is not determinative of the power exercised. It is

1 (2016) 4 SCC 531
2 (2023) SCC OnLine Utt 1223

contended that a misconception which led to certain confusion regarding modality of payment was corrected by the order dated 15 March 2022 and the Petitioner has not suffered any prejudice nor it is the case of the Petitioner that any of its rights are violated. The rationale for the change is placed on record in the reply affidavits.

16. We have considered the rival submissions. Though the Petitioner has sought to trace the history in respect of the group secretaries since the year 1940 in an attempt to project that litigation has a complex history, the issue urged before us, which is a legal one, lies in a narrow compass.

17. The original prayer made in this Petition is that the directions issued by the State Government dated 6 December 2010 be enforced. It now stands substituted with the challenge to the order dated 15 March 2022. That being the scope of this Petition, we have examined the grounds of challenge to the order dated 15 March 2022 in the Petition. The grounds of challenge to the order dated 15 March 2022 are limited. These are that the directions issued by the State Government on 6 December 2010 are statutory and they could not be diluted or modified by issuing a corrigendum. Secondly, the corrigendum can be issued only for mathematical purposes. It is sought to be argued that this challenge is contrary to the directions of this Court and carried out during the pendency of the present Petition. These are the basic challenges.

18. During oral arguments, Petitioner has repeated this central theme with variations. If the order dated 15 March 2022 is issued under the statutory power and it is permissible for the State Government to do so, there is no challenge on merits in the pleadings to the fresh exercise of power by the State Government.

19. First to consider the Petitioner's argument that the order dated 15 March 2022 is contrary to the orders of this Court. The Petitioner has relied upon the orders passed in Writ Petition No. 9525 of 2010, Writ Petition No. 4457 of 2011 and Writ Petition No. 11124 of 2010. In Writ Petition No. 9525 of 2010, the Kolhapur District Cooperative Group Secretaries Association and others sought implementation of the directions dated 6 December 2010. In this Petition, a simpliciter direction was issued by order dated 14 December 2010 to comply with the directions dated 6 December 2010. Similarly, in Writ Petition No. 4457 of 2011, the Ahmednagar Zilla Dekhrekh Sah. Sanstha (Cader), Karmachari Union, sought direction for complying with the directions dated 6 December 2010. In Writ Petition No. 11124 of 2010 also, the petitioners- Aurangabad District Co-operative Societies Group Secretaries Association sought similar direction to implement the directions dated 6 December 2010.

20. All the orders passed in the above Writ Petitions on 14 December 2010, 24 February 2011 and 7 July 2014 respectively directed implementation of the directions dated 6 December 2010. At that time, directions dated 6 December 2010 were in force and since those who were bound by them were not implementing them, the writ was issued by this Court. Thus, the Court issued directions to enforce the directions of 6 December 2010 as it was applicable then. None of these orders lay down any foundational principle that the methodology to be adopted for payment to the Group Secretaries as stated in the Government directions dated 6 December 2010 can never be changed, modified or clarified. Therefore, based on these orders which only direct the implementation of existing Government orders, it cannot be argued that the State Government is precluded from modifying the order dated 6 December 2010. Similar is the contention that the order dated 15 March 2022 was passed while this Writ Petition is pending. There was no restraint order for the State to exercise the statutory power or any direction that the State cannot or should not change or clarify the methodology.

21. That brings us to the Petitioner's main argument that the order dated 6 December 2010 could not have been superseded or modified by issuing a corrigendum. The Petitioner argues that the order dated 6 December 2010 was issued by the State Government by exercising power under Section 79A(1) of the Act of 1960 (as it stands now) and this order cannot be substituted by corrigendum.

22. The basis for the Petitioner's contention is the phrase 'clarification/corrigendum' used in the order dated 15 March 2022. However, it is settled law that if the authority has a statutory power to issue a particular direction in law and while exercising the power, the source of power is not referred to or wrongly referred to, on that ground alone the exercise of power cannot be set aside. This principle has been followed in several decisions. The learned Advocate General has placed reliance on the decision of the Hon'ble Supreme Court in the case of *N.Mani Versus Sangeetha Theatre and Others.*[3] which has taken this view. Therefore, merely because the word corrigendum has been used in the order dated 15 March 2022, it would not be determinative of the nature of power used.

23. According to the Petitioner, the directions dated 6 December 2010 were issued under Section 79A (1) of the Act of 1960. In that context, Section 79A(1) needs to be noticed. It reads thus:

> *"79A. [Government's power] to give directions in the public interest, etc.-*
>
> *(1) <u>[If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied] that in the public interest or for the purposes of securing proper implementation of co-operative production and</u> other development programmes approved or undertaken by Government, or to secure the proper*

3 (2004) 12 SCC 278

management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, [the State Government may issue] directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions.

(2) [The State Government may] modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as [it may deem fit].

(3) Where the Registrar is satisfied that any person was responsible for complying with any directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed without any good reason or justification, to comply with the directions, the Registrar may by order--

> *(a) if the person is a member of the committee of the society, [declare him to be disqualified to be or to continue to be a member of the committee of any society,] for a period of six years from the date of the order;*
>
> *(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order declare them disqualified as provided in clause (a) above:*

> *Provided that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society is affiliated.*
>
> *[Provided further that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the Registrar shall be at liberty to proceed further to take action accordingly.]*
>
> *Any order made by the Registrar under this section shall be final]".*
>
> (emphasis supplied)

Therefore, under Section 79A (1), the State Government, on receipt of a report from the Registrar or otherwise, is satisfied in the public interest or other purposes mentioned therein can issue directions from time to time. Sub-section (2) of Section 79A empowers the State Government to modify or cancel any directions issued under sub-section (1). Therefore, the power of modification of the directions or to cancel the directions issued under Section 79A (1) is specifically provided under Section 79A (2). Even otherwise under Section 21 of the General Clauses Act, 1897 where, by any Act or Regulations a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power to add to, amend, vary or rescind any notifications orders, rules or bye-laws so issued

24. By the order dated 15 March 2022, the State Government has modified/clarified the part of the directions dated 6 December 2010 in respect of clause 4 thereof. Such power is vested in the State Government under Section 79A (2) of the Act of 1960. The contention of the Petitioner that the exercise of power under Section 79A(1) has to be preceded by a report of the Registrar, is incorrect by the plain language of Section 79A(1) where the words "report of the Registrar" are followed by the words "or otherwise". The stand of the state is that the order dated 15 March 2022 is merely clarificatory while Petitioner contends that it modifies the order dated 6 December 2010. Both contingencies are covered under Section 79A (2) of the Act of 1960.

25. Since the order dated 15 March 2022 is traceable to the exercise of the statutory power of modification, the reliance of the Petitioner on the decision of the Hon'ble Supreme Court in the case of *Vipinchandra Vadilal Bavishi (Dead) by Legal Representatives and Anr.* and the decision of the High Court of Uttarakhand in the case of *Dr. Vinod Kumar Chauhan* are misplaced. The Petitioner's only challenge to the order dated 15 March 2022 is that it modified clause 4 of the directions dated 6 December 2010 without lack of power on behalf of the State to modify by corrigendum. This argument based on the order dated 15 March 2022 being merely a corrigendum which can only be issued for correction of arithmetical and clerical errors is without any basis and is rejected.

26. However, during oral argument, the Petitioner has sought to contend that there is no rationale for carrying out the change as done by the order dated 15 March 2022 in clause 4 of the directions dated 6 December 2010 and it would be contrary to the backdrop in which the order dated 6 December 2010 is passed.

27. The State and District Central Co-operative Bank submitted that despite there being no separate pleading in the Petition the oral argument of the Petition is met by providing reasons for the proposed change in their replies. The District Central Co-operative Bank (Respondent No.3) has outlined the roles and responsibilities of Group Secretaries and how they operate. District Central Co-operative Bank argues that these Secretaries are a significant cause for the accumulation of the Non-Performing Assets. They grant loans to their members, but due to undisclosed reasons, fail to recover them. This non-recovery leads to the Non-Performing Assets (NPA) exceeding acceptable limits. District Central Bank contends that every Primary Agricultural Credit Society must deposit their salaries into the District Central Bank, and if the society fails to do so without a recommendation from the district-level committee, the District Central Bank cannot pay the salary. It is asserted that Group Secretaries are not employees of the District Central Bank, and it is the responsibility of the Primary Society to pay their salaries. If a society and its Secretary fail to recover the loan, the District

Central Bank cannot be held accountable for the salaries of Group Secretaries. It is contended that the District Central Bank must operate by instructions from the Reserve Bank of India and the State, as it is the custodian of public funds and is accountable to the public. Without directives from the district-level committee, the District Central Bank cannot pay the salaries of the Group Secretaries.

28. The Commissioner for Co-Operation in the State has supported the stand of the District Central Bank in the affidavit. The affidavit asserts that there is no employer-employee relationship between Group secretaries and the District Central Bank. Consequently, the responsibility for paying the petitioners' salaries does not rest with the Bank. According to, Primary Societies are required to deposit an amount equivalent to 1.25 times the annual salary of secretaries with the supervision society. However, there was an ambiguity in interpreting this directive in the order dated 6 December 2010. It was necessary to provide clarification for the Primary Societies to ensure a clear understanding of the payment of salaries to Group Secretaries. The directive issued on 6 December 2010 was being misinterpreted that the District Central Bank was responsible for paying the secretaries' salaries. In reality, the Primary Societies are primarily accountable for these payments. They recover loans from members and repay the District Central Bank at a 4% per annum rate, with 2% covering managerial expenses, including

Secretaries' salaries. The Primary Societies bear the primary responsibility for paying group secretaries' salaries. The District Central Bank is not obligated to use its funds for these payments, as its funds come from deposits. The employer – primary societies, are obligated to pay the salaries. The other clauses in the order dated 6 December 2010 order are still in effect, along with those from March 15, 2022, issued by the same authority. Therefore, there is no illegality or infirmity in these directives.

29. According to the State, therefore, the salaries of the Group Secretaries always related to the Primary Agricultural Credit Society, depending on the balance of their account and it was the never responsibility of the District Central Cooperative Bank to step in to address the shortfalls and take on liability for the payment. This misconception was sought to be redressed by the order dated 15 March 2022 by exercising power under Section 79A(2) of the Act of 1960. This reason given as an answer to the oral arguments of the petitioner cannot be said to be arbitrary.

30. As far as emoluments which are to be paid to the Group Secretaries are concerned, they are not altered. Even otherwise, the State of Maharashtra has taken a policy decision. It has added 69B in the Act of 1960 to constitute District Level and State Level Committees for solving the issues relating to services and salaries of existing Group Secretaries. The learned Advocate General also

confirms that if there is any grievance that despite funds being available, the salaries are not paid to the Group Secretaries, then recourse to the District Level and State Level Committees formed under Section 69B of the Act of 1960 is available to them.

31. Therefore, there is no merit in the main challenge that the order dated 15 March 2022 being corrigendum cannot modify or clarify the statutory order issued on 6 December 2010 and that it is contrary to the orders issued by this Court. There is no challenge on the merits of the order dated 15 March 2022 in the pleadings and the arguments made during oral arguments are countered by the Respondents to demonstrate that the order dated 15 March 2022 is a *bona fide* exercise of power.

32. In conclusion, we do not find any merit in the Petition.

33. The Writ Petition is dismissed. Rule discharged. No order as to costs.

MANJUSHA DESHPANDE, J. ***NITIN JAMDAR, J.***

JYOTI PRAKASH PAWAR

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