

8 September 2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6204 OF 2016

Pratap Ramchandra Chougule

....Petitioner

V/s.

Authorized Enquiry Officer and

....Respondent

Dy. Registrar of Co-op.Soc.

Mr. Surel Shah, for the Petitioner.

Mr. P.P. Pujari, AGP for Respondent Nos.1 to 3.

CORAM : SANDEEP V. MARNE, J.

DATED : 8 SEPTEMBER 2023.

P.C. :

1. By this petition, Petitioner challenges order dated 6 February 2015 passed by the Hon'ble Minister, Co-operation rejecting Petitioner's Appeal filed challenging the order dated 3 October 2013 passed by the Authorised Enquiry Officer and Deputy Registrar of Co-operative Societies, Kolhapur.

2. Briefly stated, facts of the case are that Petitioner, at the relevant time, was working as Branch Manager of Kagal, Branch-1 of Kolhapur District Central Co-operative Bank Ltd. It appears that on an

allegation of financial irregularities in certain branches of the Bank, enquiry under the provisions of Section 88 of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**) was initiated. Petitioner was one of the noticees and a charge was framed against him. After holding enquiry, Respondent No.1 passed order dated 3 October 2013 holding 28 employees and officers of the Bank responsible for misappropriation and apportioned various amounts against the name of each of the employees. Petitioner was held responsible for amount of Rs.1,77,154/-.

3. Out of the 28 employees held responsible, 9 of them filed Appeal under Section 154 of the Act of 1960 before the Minister, Co-operation. However, by order dated 6 February 2015, the Minister, Co-operation has proceeded to dismiss Appeal No. 256/2014 filed by such nine employees. Petitioner has filed the present petition challenging the order passed by Respondent No.1 on 3 October 2013, as well as the order of the Minister, Co-operation dated 6 February 2015.

4. Mr. Shah, the learned counsel appearing for Petitioner would contend that perusal of the order passed by Respondent No.1 would show that Petitioner's exact role in the entire transaction is not discussed in any manner. He would submit that perusal of the order would show that some misappropriation may have happened in Kagal, Branch No.2, but Petitioner was not posted in Branch No.2 but was functioning as a Branch Manager in Branch No.1. That *qua* Branch No.1, there is no specific finding in the order of Respondent No.1 except some irregularity

about keeping excess cash in the Branch. Again, with regard to that allegation, he would submit that there is no specific role assigned to Petitioner.

5. Mr. Shah would further submit that under Section 88 of the Act of 1960, an employee of the Bank cannot be held responsible. In support of this contention, he would place reliance on the judgment of this Court in *Shriram Dhonduji Raut Vs. Bahu Uddesiyab Sahakari Sanstha Virsi and Ors.* (2004) Bom.C.R. 383. Mr. Shah would also place reliance on the judgment of this Court in *Mahesh Govind Karguitakar V/ s. Liquidator, Bhandari Co-op. Bank Ltd. Ors.* (2023) 1 LLJ 384.

6. *Per-contra*, Mr. Pujari, the learned AGP would oppose the petition and support the orders passed by the Ministry (Revenue) and by Respondent No.1. He would submit that the Respondent No.1 has applied his mind to every defence raised by Petitioner and has thereafter held him responsible for the misappropriated amount. That the order of Respondent No.1 does not suffer from the vice of perversity. That the Minister, Co-operation has thereafter considered all the points raised by the Petitioner while rejecting the Appeal. In that view of the matter, he would contend that, this Court would be loathe in exercising writ jurisdiction to interfere in the impugned orders.

7. Having heard the submissions canvassed by the learned counsels for the parties, it is seen that the Respondent No.1 has initiated

action under Section 88 of the Act of 1960 on account of financial irregularities committed in various branches of the Bank. Mr. Shah has contended that under Section 88 of the Act of 1960, the employee of a society cannot be held responsible unless such an employee is associated with organization or management of the Society. He has contended that Petitioner was not associated with the organization or management of the Society. Mr. Shah has placed reliance on the judgment of ***Shriram Dhonduji Raut*** (supra) in which this Court held in paras-6, 7 and 8 as under :

6. On a plain construction, this section empowers the Registrar to make an inquiry on the basis of an Auditor's report in respect of any misfeasance or breach of trust in relation to the funds of the society. This section also empowers the Registrar to make an order requiring to pay, repay or restore the money or property or any part thereof with interest at such rate as the Registrar may determine. But who does section 88 apply to? A plain reading of the section makes it clear that the Registrar is empowered to take this action in regard to "any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society". Therefore, whether section 88 was available in the present case depends on the answer to the question whether the petitioner was a person who has taken part in the organisation or management of the society or was an officer of the society. Now there seems to be no dispute about the fact that the petitioner was appointed on a salary of Rs.90/- per month and was placed incharge of the cloth section of the shop of the society at Shendurwafa. In the dispute, the society has described the petitioner as Manager. However, a perusal of the appointment order shows that the petitioner was appointed as a *Pramukh* i.e. head or a person incharge of the cloth section. Therefore, the petitioner cannot be said to be a person who has taken part in the organisation or management of the society in the sense used in section 88 of the Act. This phrase contemplates a person who has taken part in organising the society itself i.e. in forming it or its management. There is an appreciable difference between a person having taken part in the organisation and management of the society and someone having taken part in the organisation and management of a shop belonging to or run by the society. Clearly the petitioner belongs to the latter category.

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On the principle that the greater includes the lesser, a person who has taken part in the management of the society may be considered to be a person who has taken part in the management of a shop, but the reverse is not true.

7. The next thing that requires consideration is whether the petitioner can be said to be an officer of the society. The word "officer" has been defined by the Act itself. Sub-section (20) of section 2 of the Act defines "officer" as follows:-

"(20) "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society."

8. On application of the section, it is clear that the petitioner is not a person elected. He is a person who is appointed. But that still does not make him an officer as defined because the election or the appointment must be in order to "give directions in regard to the business of such society." There is nothing on record to show that the petitioner was empowered to give directions in regard to the business of the society. If anything, it appears that he was subject to the directions of the society having been appointed to be incharge of one of its shops at Shendurwafa.

8. In my view, the judgment in *Shriram Raut* (supra) cannot be cited in support of an absolute proposition that no employee of the Society can ever be held responsible under Section 88 of the Act of 1960. The judgment in *Shriram Raut* is rendered in the facts that case where the employee therein was posted as a Head in clothing section at one of the shops of the society. Considering the role of employee therein, this Court arrived at a conclusion that he was not a person who took part in organisation or management of the Society nor he was its officer. Petitioner was admittedly holding the position of 'Branch Manager'.

Definition of the term 'Officer' undoubtedly includes a Manager. As a Branch Manager, Petitioner was undeniably empowered to give directions with regard to business of the Society. It is therefore difficult to hold that Petitioner did not take any part in managing the business of the Society. In that view of the matter, the contention raised by Mr. Shah that in his capacity as an employee, Petitioner would be outside the purview of provisions of Section 88 of the Act of 1960 deserves to be repelled.

9. Coming to the next submission advanced by Mr. Shah about non-discussion of Petitioner's role, perusal of the order passed by Respondent No. 1 would indicate that though Respondent No.1 has passed detailed Order running into over 400 pages, there is absolutely no finding as to how Petitioner is responsible for any misappropriation and why the amount is apportioned against him. Though Respondent No. 1 has devoted pages after pages to record contents of replies and submissions advanced during the course of hearing, the sketchy findings recorded by him does not even refer to Petitioner's name. In my view, under the provisions of Section 88 of the Act of 1960, it was incumbent upon Respondent No.1 to record specific findings in respect of each of the employees as to how they were responsible for alleged misappropriation. Unless such a conclusion is reached, it was impermissible for Respondent No.1 to direct recovery of any amount under Section 88 of the Act of 1960. In my view therefore, the order of Respondent No.1 suffers from the vice of non-application of mind and perversity and for absence of any findings *qua* the Petitioner, the same

would be unsustainable.

10. The order passed by the Minister does not make the case of the Respondents any better. The Hon'ble Minister has merely recorded the events that have occurred leading to institution of enquiry and passing of order by Respondent No.1. Though nine employees had preferred Appeal before the Hon'ble Minister, no attempt is made by the Hon'ble Minister to find out the exact role assigned to each of those employees by Respondent No.1 in the enquiry. The Appeals are rejected by recording general and vague findings. While deciding the Appeal, the Minister has not discussed the role of the Petitioner and why he could be found guilty of misappropriation of the amount assigned to him. Therefore, the order passed by the Minister also suffers from the vice of perversity.

11. Resultantly, I find the order passed by Respondent No.1 on 3 October 2013, as well as the order of the Minister, Co-operation dated 6 February 2015 to be indefensible. Both orders are accordingly set aside *qua* the Petitioner only. Any consequential action for recovery initiated against Petitioner also stands set aside. The Writ Petition is accordingly **allowed and disposed of.**

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SANDEEP V. MARNE, J.