

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1286 OF 2022

Janhit Nagari Sahakari Pat Sanstha Maryadit,
Pune.

.... Petitioner

Versus

State of Maharashtra & Ors.

.... Respondents

...

Mr. S. S. Panchpor, i/b. Radhika Panchpor for Petitioner.

Mr. A. P. Vanarase, AGP for Respondent.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 07 DECEMBER 2023.
PRONOUNCED ON : 15 DECEMBER 2023.

JUDGMENT:

1. **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, Petition is taken up for hearing.

2. The Petition raises an issue as to whether an inquiry into working or financial affairs of a Society can be ordered by the Registrar on the basis of an application made by a non-member. The issue arises in the light of challenge set up by Petitioner - Society to the decision of the Deputy Registrar dated 02 July 2019 appointing Special Auditor to

conduct inquiry into the allegations levelled in the complaint filed by individuals who are not the members of the society. Petitioner-Society unsuccessfully challenged the decision of the Deputy Registrar dated 02 July 2019 before the Divisional Joint Registrar, who has rejected Petitioner's Revision Application by Order dated 26 November 2019, which is also the subject matter of the challenge in the present petition.

3. Petitioner is a Cooperative Credit Society registered under the provisions of the Maharashtra Cooperative Societies Act 1960 (**MCS Act**). Petitioner claims to have been graded 'A' in various financial years and has 4986 members. One Shri. Sudhir Ramchandra Alhat, who is not a member of the Petitioner-Society addressed letter dated 06 June 2019 to various authorities including the District Deputy Registrar, Pune City levelling various allegations against the Directors of the Petitioner-Society and demanding inquiry into its administrative and financial affair. The complaint was also signed by 04 ex-employees viz. Shri. Choudhari Sandesh Popatrao, Bhosale Sachin Limbraj, Sachin Shravan Londhe and Barin Malhari Carillul. It is Petitioner's case that the said 04 ex-employees were forced to resign from services of the Society after being caught of committing illegal theft of Society's data and intellectual property.

4. By the communication dated 02 July 2019, the Deputy Registrar appointed Shri. Rajkumar Kharat as Special Auditor to conduct inquiry into the complaint submitted by Shri. Sudhir Alhat and others. Aggrieved by the decision of the Deputy Registrar dated 02 July 2019,

Petitioner-Society preferred Revision No.301 of 2019 before the Divisional Joint Registrar, Cooperative Societies, Pune. By Order dated 26 November 2019, the Divisional Joint Registrar has proceeded to reject Revision Application No. 301 of 2019. Petitioner-Society is aggrieved by the decision of Deputy Registrar dated 02 July 2019 and the Order of the Divisional Joint Registrar dated 26 November 2019 and has filed present petition.

5. Mr. Panchpor the learned counsel appearing for Petitioner would submit that impugned Orders passed by the Deputy Registrar and Divisional Joint Registrar suffers from jurisdictional error. He would submit that the statutory framework under the MCS Act does not permit institution of inquiry into the affairs of the society by entertaining application of a non-member. That neither Shri. Alhat nor the 4 ex-employees are / were members of Petitioner-Society and therefore did not have locus to file complaint or seek and inquiry into the affairs of the Society. He would submit that there are essentially three provisions under the MCS Act under which the Registrar can institute inquiry into the affairs of the Society. The first provision is in the form of clause (b) of sub-section 3 of section 81, under which the Registrar can depute a flying squad for examination of books, records of accounts and other papers of the Society if he has reason to believe that there exists an element of fraud, misappropriation of funds, manipulation of accounts or possibility tampering of accounts of the Society. According to Mr. Panchpor the second provision is in sub-section 1 of section 83, under which the

Registrar can either *suo moto* or an application of 1/5th members of the Society or on the basis of special report under 3rd Proviso to Section 81 (5B) can hold inquiry. The third provision, according to Mr. Panchpor, is traceable to section 84 of the MCS Act, under which Registrar can inspect the books of the Society on an application by a creditor after recording a satisfaction that the Society has failed to meet the demand of the creditor.

6. Mr. Panchpor would further submit that in none of the three provisions, a non-member is entitled to seek institution of inquiry into the affairs of the Society. He would submit that in the present case the Registrar has not initiated any inquiry *suo moto* nor 1/5th members of the Society have requested for institution of inquiry. He would therefore submit that the institution of inquiry by the Deputy Registrar on compliant filed by Shri. Sudhir Ramchandra Alhat, with signatures of 4 ex-employees, in violation of the statutory framework of the MCS Act. In support of his contention Mr. Panchpor would rely upon Judgments of this Court in **Vitthal Co-operative Housing Society, Mumbai Vs. Divisional Joint Registrar CSMD & Ors**, 2015 (2) Mh.L.J. 452 and **Ashok Saha and others Vs. State of Maharashtra and others**, (2011) 4 Mh.L.J. 432.

7. *Per Contra* Mr. Vanarase, the learned AGP would oppose the petition and support the Orders passed by the Deputy Registrar and Divisional Joint Registrar. He would submit that full opportunity of hearing would be granted to Petitioner-Society in the inquiry instituted

by the Registrar and principles of natural justice would be followed. That therefore there is no reason for the Petitioner to shy away from the inquiry. That the petition is premature as the inquiry is yet to be concluded. Mr. Vanarase would further submit that since complaint is made by ex-employees, who are conversant with the working of the Society, the Registrar has thought it appropriate to institute inquiry into the allegations levelled by such employees. That the decision of the Deputy Registrar under section 83 is administrative in nature there by creating no cause in favour of the Petitioner. He would pray for dismissal of the petition.

8. Rival contentions of the parties now fall for my consideration.

9. Petitioner has challenged the decision of the Deputy Registrar dated 02 July 2019 who has appointed Special Auditor to conduct inquiry into the affairs of the Society on the ground that said decision is taken on the basis of complaint dated 06 June 2019 filled by non-members. It is Petitioner's case that the person who is not member of the Society can never seek institution of inquiry under the provisions of MCS Act. For the purpose of present petition, provisions of section 83 of the MCS Act would be relevant which reads thus:-

83. Inquiry by Registrar :

((1) The Registrar may suo motu, or, on the application of the one-fifth members of the society or on the basis of Special Report under the third proviso to sub-section (5B) of section 81, himself

or by a person duly authorised by him in writing, in this behalf, shall hold an inquiry into the constitution, working and financial conditions of the society.

[(2) Before holding any such inquiry on an application, the registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine, towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following, the procedure laid down in that section, direct from whom and to what extent the cost of the inquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.)

(3) (a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence punish the defaulter with a penalty not exceeding [five thousand rupees). Any sum imposed as penalty under this section shall on the application by the Registrar or the person authorised by him to a Magistrate having jurisdiction be recoverable by the Magistrate as if it were a fine imposed by

himself. 2[(c) The Registrar or the officer authorised by him shall complete the inquiry and submit his report as far as possible within a period of six months and in any case not later than nine months.]

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.

10. Thus, under section 83 of the MCS Act, inquiry can be held into the constitution working or financial conditions of a Society under three eventualities viz. (i) *suo moto* by Registrar, (ii) on application of 1/5th members of the Society and (iii) on the basis of special report under 3rd proviso of section 81 (5B). It must be noted here that the word ‘may’ is used for holding of *suo moto* inquiry by Registrar whereas the word ‘shall’ is used for holding inquiry at the instance of application by 1/5th members of the Society or on the basis of special report. Thus, statutory scheme is such that if 1/5th members of the Society make an application, holding of inquiry is mandatory. On the contrary, use of the word ‘may’ for exercise of power of the Registrar to hold *suo moto* inquiry indicates that upon receipt of an information, the Registrar may or may not order inquiry. For the purpose of holding inquiry *suo moto*, the Registrar can always receive information from various sources. One such source could be in the form of a complaint made by persons who is not a member. Thus, there cannot be an absolute proposition that a non-member can never file a complaint with the Registrar or that the Registrar cannot look

into such complaint for *suo moto* ordering an inquiry. The only difference between Registrar's *suo moto* power to hold inquiry and inquiry on application of 1/5th members is that the Registrar may or may not exercise *suo moto* upon receipt of complaint from a non-member, but he is bound to hold inquiry on receipt of requisition from 1/5th members of the Society. Thus if a non-member makes an application to the Registrar, the Registrar is not bound to hold an inquiry unlike the situation where 1/5th of the members file an application for holding inquiry. I am unable to agree with the submission of Mr. Panchpor that under no circumstances, the Registrar can entertain an application by non-member or ex-employee for ordering an inquiry under section 83 of the MCS Act. In a given circumstance, a complaint by non-member can become a source of information for the Registrar for exercise of *suo moto* power. Thus everything would depend of facts of each case, the nature of information divulged in a complaint, familiarity of complainant with affairs of society and application of mind by the Registrar to such information.

11. Reliance is placed by Mr. Panchpor on the Judgment of Single Bench of this Court in ***Vithalnagar Co-operative Housing Society*** (supra). In that case, the application was filed by a non-member demanding institution of inquiry under section 83. This court held in paragraph No. 3, 4 and 6 as under :-

3. The decision on merits with regard to the members right, based upon an application ACC, by the third person, needs to be

decided first in the present facts and circumstances of the case. Considering the scope and purpose of section 83, it is necessary that one third and/or one fifth members of the society to file a complaint/application for an inquiry against the society. The authority, in the absence of any such application, may, suo motu, pass orders for such inquiry, but in a situation like this where an application was filed by respondent No. 2, who admittedly was not a member on the date of the application i.e. 10-1-2010 his application was considered by the impugned order. The issue with regard to his membership is still pending in other proceedings.

4. We are concerned with the date when the application was filed where admittedly respondent No. 2 was not even a member of the society against whom, the respondents ordered to initiate Inquiry under section 83 which follows section 88 of the Act. If case is made out with supporting material, an invocation of suo motu power by the authority is difficult to interfere with, but when the application was filed by the third person, as done in the present case, who admittedly was not a member of the society at the relevant time, in my view, need to be tested in the background of litigation between respondent No. 2 and the society. A person who was not a member at the relevant time and even prior to that just cannot lodge a complaint and/or pray to initiate inquiry against the society members and/or society as he had no personal knowledge of the events and circumstances to initiate such Inquiry which certainly affects the rights of the managing committee members of the relevant time and definitely the name and fame of the society.

6. The order, therefore, passed by the Divisional Joint Registrar, in the above background, to initiate suo motu Inquiry by observing that the material placed on record even by a member of public can be taken note of to initiate such inquiry against such private society, in my view, is unacceptable. The power of suo motu cannot be read and referred to mean the basic provisions which required that the one fifty/one third members to file such application to Initiate such Inquiry just cannot be overlooked but need to be dissected for all the purposes. If the Registrar and/or concerned authority wants to initiate Inquiry suo motu against the society based upon the material with them, there cannot be

issue on this power. But If there is a case of complaint by a member then it should be as per the mandate of the section so referred above ie one fifth/one third members should lodge the complaint. And if it is based upon the third person's complaint, the situation is different. This, in my view, just cannot be overlooked. Therefore, in a given case, if such an application is filed by a person claiming to be the member to initiate Inquiry under section 83 against the society, the Registrar and/or authority need to test the same differently. This cannot be treated like a public Interest litigation.

12. Mr. Panchpor would also rely upon Judgment of this Court in *Ashok Saha* (supra) in which it is held in paragraph No. 7 as under :-

7. In my view, not only the Registrar but there are officers who are responsible and have various obligations under the Act who are bound to look into the affairs of the society from time to time. Therefore, the Registrar can take note of Information so received and may of his own proceed to hold the enquiry. In the present case, it is based upon the complaint. Therefore it is necessary that such application or complaint should be supported by one-third of the members of the society. The aspect that some members or one member is against the particular action of the society/managing committee, that itself should not be the reason to invoke the provisions of section 83 of the M.C.S. Act. But if an application is filed by the requisite members of the society, the Registrar is under obligation to take action as contemplated.

13. Thus both in *Vithalnagar Co-operative Housing Society* and *Ashok Saha* this Court has taken a view that though Registrar can take note of information disclosed in complaint by a non-member, such complaint stands on a completely different pedestal and cannot be compared with requisition by 1/5th members.

14. Having considered the statutory framework and law laid down by this Court, it is necessary to examine whether the decision of the Deputy Registrar in directing holding of inquiry is warranted. The Order passed by Deputy Registrar on 02 July 2019 reads thus :-

प्रति,

श्री राजकुमार खरात

विशेष लेखापरिक्षक, वर्ग-२ (ग्राहक) सहकारी संस्था, पुणे.

विषय- जनहित नागरी पतसंस्थेविरुद्ध तक्रार अर्जाची चौकशी करणेबाबत

संदर्भ- मा. जिल्हा उपनिबंधक, सहकारी संस्था, पुणे शहर, यांचेकडील जा.क्र. जिउनिपुश/ नापत/ जनहितपत/त.अ./१०४२९/२०१९, दिनांक २३/०५/२०१९ रोजीचे अर्जासोबतचा श्री. सुधीर आल्हाट व इतर यांचा दिनांक १०/०६/२०१९ रोजीचे २ तक्रार अर्ज.

उपरोक्त विषयाकडे आपले लक्ष वेधणेत येते, जनहित नागरी सहकारी पतसंस्था मर्यादित, कॅम्प, पुणे या संस्थेतील संचालक मंडळ, पतसंस्थेचे २/- अधिकारी व कर्मचारी यांनी फसवणुक केल्यामुळे त्यांच्यावर गुन्हे दाखल करणेबाबत व सर्व कर्ज प्रकरणांची चौकशी करून संस्थेकडून घेत असलेल्या बेकायदा लाभाची चौकशी करून त्यांचे संचालक पद रद्द करून त्यांच्यावर फौजदारी कारवाई करणेबाबत मागणी केलेली आहे.

त्यास अनुसरून सदर तक्रार अर्जाची चौकशी करणेकामी आपली नियुक्ती करणेत येत आहे. सोबत संदर्भित २ तक्रार अर्ज जोडून पाठविलेले आहेत. तरी सदर तक्रार अर्जाची मुद्देनिहाय सखोल चौकशी करून आपले स्वयंस्पष्ट अभिप्रायासह चौकशी अहवाल दोन प्रतीत या कार्यालयास ८ दिवसांत सादर करावा.

15. The decision dated 02 July 2019 does not indicate application of independent mind by the Deputy Registrar. He has merely referred to the filing of complaint by Shri. Sudhir Alhat and others on 06 June 2019 and has decided to appoint Special Auditor for holding

inquiry. Therefore, even if complaint dated 06 June 2019 is treated as source of information received by the Deputy Registrar for taking *suo moto* decision, there is nothing on record to indicate application of mind by the Deputy Registrar to the allegations levelled in the complaint. The Deputy Registrar has proceeded to direct holding of an inquiry in a mechanical manner. He has placed the compliant on par with a requisition by 1/5th of members for mandatorily directing inquiry. In my view therefore, decision of the Deputy Registrar dated 02 July 2019 is totally erroneous.

16. It must also be borne in mind that 4 ex-employees who apparently tendered resignations on account of initiation of disciplinary proceedings on allegation of theft of intellectual property of Petitioner-Society, put their signatures on the complaint by using name of ex-president of a political party. There is nothing on record to indicate that Shri. Sudhir Alhat was in any manner conversant with the affairs of the Society. Therefore, he was not in a position to disclose any information to the Registrar for exercise of *suo moto* power of appointing of Special Auditor under section 83 of the MCS Act. So far as ex-employees are concerned, they have put their signatures on the foot of the complaint which is essentially addressed by Mr. Sudhir Alhat. The Society has alleged that those 4 have acted in vengeful manner by deliberating involving a political personality to put pressure on the Registrar. It is also alleged that the complaint was motivated against the Board of Directors of the Society on account of disciplinary action taken against them. Be

that as it may. If the Registrar was to apply his independent mind to the complaint of such ex-employees, it would have been a different matter altogether. However, the Dy. Registrar has ordered enquiry by merely making a reference to the complaint.

17. The decision of Deputy Registrar dated 02 July 2019 and the Order of the Divisional Joint Registrar dated 26 November 2019 are thus unsustainable and are liable to be set aside.

18. Petition accordingly succeeds. The decision of Deputy Registrar dated 02 July 2019 appointing inquiry officer and the Order of the Divisional Joint Registrar dated 26 November 2019 are set aside. Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

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