

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 1094/2022

ARVIND S/O DATTATRAYA GAWANDE
VS

HONBLE MINISTER FOR COOPERATION MAHARASHTRA STATE, MUMBAI AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.B. Patil, Advocate for the petitioner
Mr. D.P. Thakare, AGP for respondent nos. 1 to 4
Mr. G.R. Sadar, Advocate for respondent no. 5

CORAM : A. S. KILOR, J.

DATED : 24/04/2023

Heard.

2. In this writ petition the order dated 11.01.2022 passed by respondent no. 1 - the Hon'ble Minister setting aside the order passed by the Commissioner, Co-operative Societies dated 16.11.2021, directing to conduct Test Audit under Section 81(3)(c) of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act of 1960"), is under challenge.

3. After going through the record, it is evident that the Authorized Enquiry Officer of respondent no. 5 - Bank made certain comments as regards fixed aggregated contract units and observed that to find out the investment made by the Bank under the Mutual Fund through one Miss. Archana Barabde, whether has received any profit or it

caused loss to the Bank, is a technical aspect which has to be determined through the audit. The said report was considered by the Commissioner and Test Report was directed to be conducted under Section 81(3)(c) of the Act of 1960 vide order dated 16.11.2021.

4. However, the Hon'ble Minister recorded the findings in favour of the Bank by holding that from the said investment made by Ms. Archana Barabde, the Bank has received returns more than the interest rate of the Nationalized Bank and accordingly, quashed and set aside the order of conducting Test Audit.

5. The learned Counsel for the petitioner submits that the enquiry was conducted on the application made by the petitioner and three other Directors and despite the same, they were not made party to the revision application before the Hon'ble Minister and even though, the Caveat was there and it was a period of Covid-19 pandemic, the Hon'ble Minister hurriedly decided the revision application. It is pointed out that on 30.11.2021 the revision application was filed and on 11.01.2022 the order was passed.

6. The learned Counsel for respondent no. 5 – Bank strongly opposed the present writ petition and submits that after recording the findings that the Bank has received benefits from the said investment, the Hon'ble Minister has rightly set aside the order of Test Audit.

7. From the record, it is evident that while conducting enquiry, the Enquiry Officer has categorically observed that whether the Bank has received any benefit or has caused losses because of investment made by Ms. Archana Barabde, is a technical issue and which can be determined only by audit. The Hon'ble Minister while arriving at a conclusion that the Bank has received more benefit than the interest rate of the Nationalized Bank, he has not made any discussion for reaching such conclusion.

8. As far as the submission of the learned Counsel for the petitioner that the petitioner was not heard, the Hon'ble Minister ought to have seen that the enquiry was conducted after the complaint lodged by the petitioner and three other Directors of respondent no. 5 – Bank. The Hon'ble Minister, therefore, ought to have joined the petitioner as party before hearing the revision application on merit.

9. It is an admitted fact that the petitioner had filed a Caveat, however, before he could file an application for making him as party, the matter was decided.

10. It is apparent from the record that within a period of one month revision was decided and it was a Covid-19 Pandemic period.

11. Thus, for considering the matter on merit and as well as on the point of principles of natural justice, I am of the

opinion that it needs to be remanded back to the Hon'ble Minister to decide the same afresh. Accordingly, I pass the following order:

- (a) The writ petition is partly allowed.
- (b) Impugned order dated 11.01.2022 passed by the Hon'ble Minister is hereby quashed and set aside.
- (c) The matter is remanded back to the Hon'ble Minister to decide the same afresh, after hearing both the parties.
- (d) The petitioner is at liberty to move an application for joining him as a party to the appeal.
- (e) If such application is filed by the petitioner, the Hon'ble Minister shall decide the same in accordance with law.

JUDGE

SANDIP
MAHADEV
GATE

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
Date: 2023.04.29
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