

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

Writ Petition No. 1095/2022

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 case, after Enquiry conducted under Section 83 of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act of 1960"), on the basis of Enquiry report of respondent no. 4 – Assistant Registrar of the Co-operative Societies, Teosa and on the directions of respondent no. 2 - Registrar of Co-operative Societies by order dated 26.10.2020, and on receiving the report of enquiry conducted under Section 83 of the Act of 1960, the enquiry under Section 88 of the Act, 1960 was directed by the Commissioner/Registrar of the Co-operative Societies. The same was quashed and set aside by the respondent no. 1 - the Hon'ble Minister, vide impugned order dated 11.01.2022. The same is under challenge in the present writ

petition.

3. From the record, it is evident that the four Directors of respondent no. 5 – Bank made a complaint to the District Deputy Registrar alleging irregularity in the Management of respondent no. 5 - Bank. Thereupon, a preliminary inquiry was conducted by respondent no. 3 - District Deputy Registrar and submitted his report to the respondent no. 2 – Registrar of Co-operative Societies, who on findings that further enquiry under Section 88 of the Act of 1960 is necessary, directed to hold enquiry under Section 83 of the Act of 1960. Accordingly, it was held and in the same certain irregularities were recorded. Hence, the Commissioner, Co-operative Societies directed the enquiry under Section 88 of the Act of 1960 to fix the liabilities against Directors of the Bank vide order dated 16.11.2021.

4. Respondent no. 5 – Bank feeling aggrieved by the same preferred an Appeal before the Hon'ble Minister which came to be allowed on the ground that to initiate enquiry under Section 83, the application shall be moved by 1/5th Members of the Society and since the application was not moved by 1/5th Member of the Society, the proceedings under Section 83 of the Act of 1960 vitiates. The Hon'ble Minister also comments upon the merit of the matter.

5. The learned Counsel for the petitioner has pointed out that the Hon'ble Minister decided the matter hurriedly and it was period of COVID-19 pandemic and despite the said fact and even though, Caveat was there and Advocate for the petitioner was present and shown to be heard but, no opportunity of being heard was given to the petitioner.

6. In reply, the learned Counsel for respondent no. 5 – Bank submits that though Caveat was there but, since the petitioner was not party to the appeal, there is no question to hear the petitioner or to supply the copy of the proceedings to the petitioner.

7. In the above backdrop, I have perused the record. If the argument of respondent no. 5 – Bank is accepted that the petitioner was not party to the appeal and, therefore, even though the Caveat was there, there is no need to hear the petitioner, the order of the Hon'ble Minister needs to be quashed and set aside as the Hon'ble Minister has observed that the application on which the enquiry under Section 83 of the Act of 1960 was conducted was not moved by 1/5th Members of the Society. If the Hon'ble Minister is of the considered view that the enquiry under Section 83 of the Act of 1960 was conducted on the basis of a complaint made by the petitioner and the other three Directors, all the three Directors were necessary party to the appeal and in absence of their presence, the appeal ought not to have

proceeded with by the Hon'ble Minister.

8. On the other hand, if it is held that enquiry under Section 83 of the Act of 1960 was not conducted on the basis of the application moved by the petitioner and other three Directors but, it was conducted *suo moto*, in that eventuality also, the order of the Hon'ble Minister needs to go, for the reason that the Hon'ble Minister has held that the order directing enquiry under Section 83 of the Act of 1960 is based on the complaint made by the four Directors and not based on the complaint made by 1/5th Members of the Society.

9. Thus, in both the eventuality, the only way out in this case, is to remand the matter 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
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Date: 2023.04.29
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