



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8337 OF 2019

Asaram S/o Thaksing Chavan,
Age : 60 Years, Occu. : Labour,
R/o Durganagar Tanda,
Tq. Ambad, Dist. Jalna. .. Petitioner

Versus

1. Durgadevi Majoor Sahakari Sanstha
Maryadit, Durganagar Tanda,
Tq. Ambad, Dist. Jalna.
Through Gulab Nanu Rathod,
Age : 55 Years, Occu. : Labour,
R/o Ramnagar, Ambad,
Tq. Ambad, Dist. Jalna.
2. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad.
3. The Assistant Registrar,
Co-operative Society, Ambad,
Tq. Ambad, Dist. Jalna. .. Respondents

Shri Avinash A. Khande, Advocate for the Petitioner.
Shri K. J. Suryawanshi, Advocate for the Respondent No. 1.
Mrs. Vaishali N. Jadhav-Patil, A.G.P. for the Respondent Nos. 2
and 3.

CORAM : SHAILESH P. BRAHME, J.

DATE : 17TH APRIL 2024.

JUDGMENT :-

. Rule. Rule is made returnable forthwith. With the consent

of parties heard finally at the admission stage.

2. The petitioner has invoked jurisdiction under Article 227 of the Constitution of India with following substantial prayer :

12-C) By issuing Writ of Certiorari or any other appropriate Writ, order or direction in the like nature, the order passed by the respondent No. 2 in revision No. 40/2019 dated 29.05.2019 may kindly be quashed and set aside.

3. The respondent No. 1 is a Co-operative Society registered under provisions of the Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity and convenience hereafter referred as to the 'Act of 1960'). The petitioner had submitted an application cum complaint to District Deputy Registrar and the respondent No. 3 on or about 26.09.2018 U/Sec. 11 of the Act of 1960. His grievance was that few members were illegally enrolled who were not possessing eligibility considering the place of residence, occupation and few of them were elected members of the local bodies. It was prayed that 25 persons residents of Durganagar Tanda be enrolled and bank accounts of the society be closed.

4. The complaint was referred to the respondent No. 3/Assistant Registrar for conducting enquiry and submitting report. Report was submitted and substance was found in the contentions of the petitioner. Thereafter, respondent No. 3

conducted hearing on various dates and passed order on 29.12.2018, thereby expelling membership of 12 persons enumerated therein.

5. The respondent No. 1 preferred revision before the respondent No. 2/Divisional Joint Registrar along with application for condonation of delay of 82 days. Delay was condoned on 24.05.2019. Revision No. 40 of 2019 was heard on merits and it was allowed vide order dated 29.05.2019. The petitioner is assailing this order.

6. Learned counsel for the petitioner submits that he was original complainant and on his complaint order was passed by the respondent No. 3 on 29.12.2018. Without impleading him, revision was preferred by the respondent No. 1 and it was allowed surreptitiously. There is gross violation of principles of natural justice. The manner in which impugned judgment and order was passed reflects arbitrariness and high handedness. He would further submit that revision was not maintainable at the instance of the respondent No. 1. He further submits that the affected persons did not challenge order of expulsion.

7. Learned counsel for the respondent No. 1 opposes submissions and prayer of the petitioner by filing affidavit in reply. He submits that petitioner had no locus to file application on 26.09.2018. The petitioner had resigned and his resignation was accepted on 29.06.2008. Since then, he was not concerned with the business of the respondent No. 1. It is further

submitted that the procedure contemplated by Sec. 11 of the Act of 1960 has not been followed by the respondent No. 3 for expelling 12 persons. According to him revisional authority has rightly exercised jurisdiction. Learned counsel for the respondent No. 1 would refer to the findings recorded by the revisional authority to buttress that without extending opportunity of hearing coercive action was taken against the concerned members.

8. Learned Assistant Government Pleader supports the impugned order and would rely upon affidavit in reply. She adopts the submissions of the learned counsel for the respondent No. 1.

9. Having considered submissions of the parties, I propose to examine sustainability of the impugned order in the wake of principles of natural justice. Undisputedly, the petitioner had made complaint on 26.09.2018 challenging membership with additional prayers. An enquiry was conducted and report to that extent was submitted on 28.09.2018. On the basis of the report, respondent No. 3/Assistant Registrar passed orders on 29.12.2018 expelling membership of 12 persons. The respondent No. 2/Divisional Joint Registrar, a revisional authority reversed order vide judgment dated 29.05.2019.

10. There was delay in preferring revision and a separate application was filed for condonation of delay by the respondent No. 1. Interestingly, petitioner was neither party to application

for condonation of delay, nor to revision. Petitioner was necessary party being original complainant. For non joinder of necessary parties, the proceedings before the revisional authority were not maintainable.

11. Impugned judgment does not reflect that petitioner was noticed or heard before rendering any decision on merits. Revisional authority refers two complainants and their complaints filed on 12.06.2018 and 19.06.2018. The petitioner was one of them having filed complaint on 19.06.2018. No endeavour was made by the revisional authority in directing the respondent No. 1 to implead the petitioner and/or extend opportunity of hearing to the petitioner. I am of the considered view that there is violation of principles of natural justice.

12. Revisional authority condoned delay on 24.05.2019, without hearing petitioner. Record shows that respondent No. 3 filed reply on 28.05.2019 before the revisional authority. On very same day hearing was conducted by the revisional authority. On the next day decision was rendered on merits allowing the revision. Surprisingly, within five days matter was heard and finally decided. The manner in which the revisional authority exercised jurisdiction is highly objectionable and would amount to arbitrariness and high handedness.

13. Submission of the respondent that petitioner had tendered resignation and it was accepted way back on 29.06.2008 would not be relevant. Whether the petitioner was having *locus standi*

or not would be decided by the revisional authority. As this Court is not adjudicating the matter on merits, it is not necessary to comment upon this aspect of the matter. It is left open to the revisional authority to deal with it on its own merits.

14. It is useful to refer to the judgment passed by this Court in the matter of Savitri Chandrakesh Pal Vs. State of Maharashtra and others reported in *2009(4) Mh. L. J. 406*, wherein the modalities to be followed by quasi judicial authorities are laid down. In that view of the matter, I have no hesitation to hold that due procedure has not been followed by the respondent No. 2.

15. Learned counsel for the respondent No. 1 submits that matter be remanded to the trial authority by quashing and setting aside orders passed on 29.12.2018 as well as 29.05.2019. The petitioner has specifically made prayer for quashment of order passed by the revisional authority. There is no prayer to test validity of order dated 29.12.2018. It would not be permissible for the respondent No. 1 in this petition to contend that matter be remanded to the respondent No. 3/Assistant Registrar for decision afresh. The request is rejected.

14. I, therefore, pass following order.

O R D E R

A. The writ petition is allowed in terms of prayer clause 12-(C).

- B. Matter is remitted back to the respondent No. 2/Divisional Joint Registrar for deciding it afresh on it's own merits by extending an opportunity of hearing to the petitioner.
- C. Parties shall appear before the respondent No. 2 on 17.06.2024.
- D. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

bsb/April 24