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

**WRIT PETITION NO. 14560 OF 2019**

Sunil s/o. Dagadu Kothawade,
Age 52 yars, Occ. Certified auditor,
R/o. 108, Swami Padmanabh Nagar,
Sakri Road, Dhule,
District Dhule. .. Petitioner

versus

1. The State of Maharashtra
through the Secretary for
Cooperation Department,
Mantralaya, Mumbai.

2. The Commissioner for Cooperation and
the Registrar, Cooperative Societies,
Maharashtra State, Pune.

3. The District Deputy Registrar,
Cooperative Societies, Dhule,
District Dhule. .. Respondents.

Mr. A.D. Sonkawade, Advocate h/f. Mr. A.V. Hon, Advocate for petitioner.
Mr. A.S. Shinde, AGP for respondents.

**CORAM : S.G. CHAPALGAONKAR, J.**

**RESERVED ON : 12th JUNE, 2024.
PRONOUNCED ON : 19th JUNE, 2024.**

**ORDER :-**

1. The order passed by the Honourable Minister for Cooperation dated 16.9.2019 in Revision Application No. 493 of 2019, thereby confirming the order dated 12.7.2019 passed by the

Commissioner for Cooperation, Maharashtra imposing penalty of removing the petitioner’s name from the panel of auditors for the period of 5 years is subject matter of challenge in this writ petition filed under Article 227 of the Constitution of India.

2. Mr. A.D. Sonkawde, alongwith Mr. A.V. Hon learned advocate appearing for the petitioner vehemently submits that the petitioner is empanelled as auditor in the State list prepared by the Department of Cooperation. During the year 2014-15, the petitioner was appointed as Auditor and alleging certain irregularities in performance of his duty, the petitioner is subjected to penalty of removal of his name from the list of Auditors for a period of 5 years.

3. Mr. Sonkawade, learned counsel for the petitioner submits that the petitioner was alleged non-compliance of his obligation to lodge FIR in respect of illegalities/irregularities as observed by him during the course of audit of the society conducted by him. He would further point out that in case of such failure of Auditor, the Registrar of cooperative Societies is obliged to file FIR. In the present case, even the Registrar has not lodged any FIR. He would further point out that later on, re-audit of the society was directed. However, outcome of such audit is not produced before this Court in spite of several opportunities. The petitioner has been victimized. Therefore, he urges to quash and set aside the impugned order and issue direction for restoration of the petitioner’s name in the list of auditors.

4. Mr. Shinde, learned AGP seriously opposes the prayer. He would submit that Section 81 of the Maharashtra Cooperative Societies Act, particularly, proviso under sub-clause 5(3) read with Rule 69(G)(II)

of the Rules, provides for penalty a regards the misconduct on the part of the auditor. He would submit that the petitioner was under statutory obligation to unveil the irregularities or illegalities in the conduct of business of the society and also to lodge the FIR. Although the petitioner came across such illegalities in the conduct of business of the society i.e. Tonde Vividh Karyakari Seva Sahakari Society Ltd. for the financial year 2014-15, he failed to perform his duties in accordance with the Rules. He was under obligation to file criminal case against the Directors and officers of the society found responsible for misappropriation and irregularities in maintenance of accounts.

5. Having considered the submissions advanced, it can be observed that the impugned order removing name of the petitioner from the list of auditors maintained by the State has been passed on 12.7.2019. The penalty of removal of name of petitioner for a period of 5 years has been imposed. The period covered under the penalty is at the verge of expiry within a period of less than one month as on today. In this background, the learned advocate for the petitioner submits that as the petitioner has already suffered punishment, he continued with the present proceeding since punishment inflicted upon him is stigmatic.

6. It can be observed that the petitioner had noted discrepancies and deficiencies in his Audit Report. However, he failed to register FIR against the Directors and officers of the society who are responsible for misappropriation. Pertinently, failure of the petitioner could have been rectified by the respondent authorities and such FIR cold have been lodged either by the Authorized Officer or any other Auditor from the panel. It appears that no such FIR is lodged even by making

alternative arrangement as contemplated under the Rules. Further it can be observed that re-audit of the society was directed through Special Auditor Shri A.B. Chavan in pursuance of order dated 5.12.2017 passed by the District Deputy Registrar, Cooperative Societies, Dhule. Report of such audit is also not placed before this Court as directed under order dated 31.7.2020.

7. In the aforesaid background, looking to the fact that the petitioner has almost suffered the penalty, it would be appropriate to direct that removal of the petitioner's name from the list of auditors, shall be restricted till today. Consequently, writ petition is partly allowed. The effect and operation of the impugned order shall be restricted till today. The proposal for inclusion of the name of petitioner in the list of auditors be considered on its merit.

8. Writ petition is accordingly disposed of.

**[S.G. CHAPALGAONKAR]**
**JUDGE**

grt/-