

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3500 OF 2024

- 1. Dattatraya Mahadev Ugale,**
Age 70 years, Occu.: Agriculture,
R/o. A/P. Madilage Budruk,
Taluka Bhudargad, Dist.: Kolhapur
 - 2. Ashok Maruti Farakate,**
Age 54 years, Occu.: Agriculture,
R/o. A/P. Kasaba Walve, Taluka
Radhanagari, Dist.: Kolhapur
 - 3. Vijay Raghunath Balugade,**
Age 50 years, Occu.: Agriculture,
R/o. A/p. Turambe, Taluka
Radhanagari, Dist.: Kolhapur.
 - 4. Yashvant Kerba Nandekar,**
Age 44 years, Occu.: Agriculture,
R/o. At Tirawade, Post Kadgaon,
Taluka Bhudargad, Dist.: Kolhapur
 - 5. Vishwanath Hindurao Patil,**
Age 60 years, Occu.: Agriculture,
R/o. A/P. Arjunwada, Taluka:
Radhanagari, District Kolhapur
- ... Petitioners**

V/s.

- 1. The State of Maharashtra,**
through its Secretary, Co-operation
and Marketing Department,
Mantralaya, Mumbai 400 032
- 2. Hon'ble Minister,**
Co-operation and Marketing
Department, Maharashtra State,
Mantralaya, Mumbai 400 032

- 3. Commissioner of Sugar and Special Registrar**, Maharashtra State, Pune, having office at Sakhar Sankul, Shivajinagar, Pune.
- 4. Regional Joint Director (Sugar)**, Kolhapur Region, Kolhapur, having office at Plot No.M-4, Shri. Shahu Market Yard, Behind Post Office, Kolhapur.
- 5. Special Auditor-1**, Cooperative Societies, Class-I (Sugar), Kolhapur, having office at 1519, 'C' Ward, Laxmupuri, Jaydhaval Building, Kolhapur 416 002.
- 6. Dudhganga-Vedganga Saha-kari Sakhar Karkhana Ltd.**, Bidri (Mouni Nagar), Bidri, Taluka Kagal, District Kolhapur through its Secretary / Managing Director.

... Respondents

Mr. Prashant Bhavake for the petitioners.

Mr. S.D. Rayrikar, AGP for respondent Nos.1 to 4/State.

Mr. Surel S. Shah for respondent No.6.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 15, 2024

PRONOUNCED ON : MAY 10, 2024

ORAL JUDGMENT:

1. The challenge in this writ petition is to the order passed by respondent No.2 granting a stay to the order dated 31 October 2023 passed by the Regional Joint Director (Sugar)—respondent No.4 in the exercise of power under Section 81(3)(c) of the Maharashtra Cooperative Societies Act, 1960 ("the said Act") appointing respondent No.5 as Special Auditor for conducting a test audit of respondent No.6—society.

2. The petitioners are the complainants at whose instance respondent No.4 passed an order under Section 81(3)(c) of the said Act. The petitioners approached respondent No.2 for issuance of direction to respondent No.3 to direct respondent No.4 to conduct a test audit of respondent No.6 – Society. In furtherance of such directions, respondent No.4 passed an order dated 31 October 2023 appointing Respondent No.5 as Special Auditor to conduct a test audit of Respondent No.6. respondent No.6 challenged the order dated 31 October 2023 before Respondent No.1 by invoking power under Section 154 of the said Act. Respondent No.1, by the impugned order, granted a stay to the order dated 31 October 2023. Hence, the petitioners have filed a present writ petition.

3. Mr. Bhavake, learned advocate for the petitioners inviting my attention to the scheme of the said Act, and in particular Sections 81, 152 and 153, submitted that the order passed under Section 81(3)(c) of the said Act is merely an administrative order and

against such order revision under Section 154 of the said Act is not maintainable.

4. Per contra, Mr. Shah, learned Advocate for respondent No.6, relying on the judgment in **Chimanbhai Dadubhai Desai & Anr. v. Chaturbhai P. Patel & Ors.** reported in AIR 1971 Gujarat 156 submitted that the order directing inquiry under Section 81(3)(c) of the said Act involves serious consequences to the cooperative society and, therefore, such order affects rights or liabilities of the cooperative society. Hence, such an order needs to be termed a quasi-judicial order. He submitted that, therefore, the expression "order or decision" in Section 154 of the said Act may contemplate orders that affect the rights and liabilities of the cooperative society. He submitted that the Revisional Authority is also empowered to decide the 'regularity of proceedings' under the Act and Rules and to quash and set aside such proceedings.

5. The precise questions which arise for consideration of this Court, based on the submissions made across the bar, may be formulated thus: (i) Whether an order under Section 81(3)(c) of the said Act is a quasi-judicial or administrative order; (ii) if such order is an administrative order, whether recourse to Section 154 of the said Act is available to the aggrieved party; and (iii) Whether Revisional Authority exercising power under Section 154 after examining 'regularity of proceedings' can quash and set aside the 'proceedings' under the Act and Rules.

6. For proper appreciation of the questions involved, it is necessary to set out relevant provisions of the said Act:

“**81. Audit.** (1)

(2)

(3)(c) If it is brought to the notice of the Registrar that the audit report submitted by the auditor does not disclose the true and correct picture of the accounts, the Registrar or the authorised person may carry out or cause to be carried out a test audit of accounts of such society. The test audit shall include the examination of such items as may be prescribed and specified by the Registrar in such order.

82. Rectification of defects in accounts.

(1) If the result of the audit held under the last preceding section discloses any defects in the working of a society, the society shall within three months from the date of the audit report, explain to the Registrar the defects or the irregularities pointed out by the auditor or auditing firm, and take steps to rectify the defects and provide remedy to irregularities, and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. The Registrar may also make an order directing the society or its officers to take such action, as may be specified in the order to remedy such defects, within the time specified therein.

(2)

(3)

(4)

152. Appeals

(1) An appeal against an order or decision under

sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 78A, 79, 88 and 105 including against an order for paying compensation to society, and sections 154B-2, 154B-3, 154B-9 and 154B-27 shall lie,—

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar:

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- (2)
- (3)
- (3A)
- (4)
- (5)

154. Revisionary powers of State Government and Registrar

(1) The State Government or the Registrar, *suo motu* or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or

order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.”

7. Before delving deeper into the matter to ascertain the scope and extent of revisional jurisdiction as per section 154 of the Act, it is imperative to briefly examine the concepts of "appellate jurisdiction" and "revisional jurisdiction." In essence, revisional jurisdiction is a component of appellate jurisdiction, not the other way around. Both appellate and revisional jurisdictions are established by statutory provisions. None of the parties involved in the proceedings possess an inherent right to appeal or seek revision. Typically, appellate jurisdiction entails a review of both facts and law, subject to any limitations set forth in the relevant statute. Conversely, while revisional jurisdiction falls within the realm of appellate jurisdiction, it does not equate to a full-fledged appeal. When seeking the intervention of the Revisional Court in a revisional capacity, its authority is confined by the statutory boundaries.

8. On a bare reading of Section 154 of the said Act, the following ingredients emerge:

- (i) **Authority to call for and examine records:** The State Government or the Registrar has the power to call for and examine the records of inquiry or proceedings where a 'decision or order' is made by the subordinate officers;
- (ii) **Purpose of examination:** The purpose of examination of record is to determine the legality propriety of the 'decision or order', particularly in cases where no appeal lies against such decision or order;
- (iii) **Power to modify, annul, or reverse:** If it appears that a 'decision or order' should be modified, annulled or reversed, the State Government or the Registrar can take such action in respect of the 'decision or order'. However, this can be done after giving the person affected by the decision or order an opportunity to be heard;
- (iv) **Fair inquiry:** The provision ensures that before any decision to modify, annul, or reverse the 'decision or order' is made, the persons affected are given a fair opportunity to present their case.

9. In essence, the provision grants the State Government or the Registrar the authority to revise 'decision or order' made by subordinate officers, ensure their legality and properness, and make necessary modifications or reverse the same while also ensuring that the persons are afforded the opportunity to be heard.

10. For the purpose of addressing the questions involved, it is necessary to examine Section 154. Section 154 of the Maharashtra

Co-operative Societies Act, 1960 pertains to the revisionary powers of the State Government and the Registrar. This section empowers the State Government and the Registrar, either suo-motu or on application, to call for and examine the records of an inquiry or proceedings where any decision or order has been passed by any subordinate officer, and no appeal lies. In the context of the term 'decision or order' referred to in this section, it is essential to understand that these decisions or orders are quasi-judicial in nature. Quasi-judicial decisions or orders are those made by quasi-judicial bodies or officials that are similar to judicial decisions but are not made by a court. They involve the application of statutory rules and principles to specific cases, often requiring a fair hearing and adherence to legal procedures. In the case of Section 154 of the Maharashtra Co-operative Societies Act, the decisions or orders referred to are subject to review by the State Government and the Registrar, indicating a quasi-judicial function where these authorities have the power to re-examine and potentially modify decisions made by subordinate officers. They involve a review process by higher authorities to ensure fairness and adherence to legal principles, even though they are not made by a traditional court.

11. The expression 'decision or order' under Section 154 of the Maharashtra Cooperative Societies Act holds significance in the context of quasi-judicial orders passed under various provisions of the Act. This provision plays a crucial role in defining the scope and implications of decisions or orders made within the

framework of Maharashtra Cooperative Societies Act. In the Maharashtra Cooperative Societies Act, 'decision or order' under Section 154 refers to the outcomes of quasi-judicial proceedings conducted by State Government, Registrar and his subordinates empowered under Section 3 of the Act . These decisions or orders are binding and have legal implications on the parties involved. They are essential for resolving disputes, ensuring compliance with the provisions of the Act and Rules .The analysis of the expression 'decision or order' under Section 154 requires examination of the following key aspects:

Quasi-Judicial Nature: The 'decisions or orders' passed by subordinate officers contemplated are quasi-judicial in nature, implying that they involve a decision-making process similar to that of a court but within the framework of the said Act.

Legal Consequences: The 'decisions or orders' passed by subordinate officers which are contemplated by Section section 154 have legal consequences and must be adhered to by the parties involved. They are enforceable and binding.

Dispute Resolution: Section 154 plays a vital role in the dispute resolution mechanism in relation rights created under the provisions of the said Act. It provides a structured process for enforcement of rights conferred under the Act and issues that may arise among members or Societies.

Compliance and Enforcement: The 'decisions or orders' contemplated under this section ensure compliance with the Act, Rules and by-laws of cooperative societies. They help in

maintaining order, transparency, and accountability within the members or societies.

Judicial Review: In case of dissatisfaction with a decision or order passed by subordinate officers, provision for judicial review is available under Section 154 to ensure fairness and justice in the process of enforcement of rights conferred under the Act.

Overall, the expression 'decision or order' under Section 154 of the Maharashtra Cooperative Societies Act is pivotal in regulating enforcement of rights conferred under the Act, the functioning of cooperative societies, providing a legal framework for resolving disputes within the members or societies, and upholding the principles of justice and fairness within the cooperative sector.

12. For interpretation the expressions “decision or order” in Section 154 it is also necessary to consider the nature of various decisions and orders enumerated under Section 152 of the said Act, which confer powers on the Appellate Authority about "order or decision" passed under various provisions of the said Act. It is pertinent to note that all the provisions mentioned in sub-section (1) of Section 152 of the said Act require the Registrar or Liquidator to pass a quasi-judicial order. The significance of sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 88, and 105 enumerated in section 152 of the Maharashtra Cooperative Societies Act lies in their detailed provisions that govern various aspects of cooperative societies. These sections cover crucial areas such as registration, management, business

operations, dispute resolution, partnerships, collaborations, reconstruction, and financial matters within cooperative societies. Each section plays a specific role in ensuring the smooth functioning, governance, and legal framework of cooperative societies in Maharashtra. Sections 4 and 9 relate to the Registrar of Society, whereby the Registrar is required to decide whether the proposed society is economically unsound, its registration may adversely affect the development of cooperation movement, or such registration is contrary to policy directives of the State Government. Section, therefore, contemplates enquiry to be conducted by the Registrar. Section 11 of the Act confers power on the Registrar to decide certain questions, such as whether a person is an agriculturist or not or whether he resides in the area of cooperation or not, and the exercise of such power requires the opportunity of hearing to the affected party. Sections 11, 12, 13, 14, 17, 18, and 19 focus on different aspects of the management and operations of cooperative societies, including partnerships, reconstruction, and financial matters. Section 21 and 21A allow societies to enter into partnerships and collaborations with other entities for specific business purposes, subject to certain conditions and approvals. Furthermore, sections 29, 35, 77A, 78, 79, 88, and 105 address dispute resolution mechanisms, financial assistance, and other important functions within cooperative societies. These sections provide a comprehensive legal framework for the functioning of cooperative societies, ensuring transparency, accountability, and effective governance. The inclusion of these

sections in the Maharashtra Cooperative Societies Act is essential to regulate and guide the operations of cooperative societies, safeguarding the interests of members, promoting cooperative principles, and facilitating their contribution to the socio-economic development of the region.

13. Section 154 of the Act states that the State Government or the Registrar may call for and examine the record of any inquiry or proceedings of any matter other than those referred to in sub-section (9) of Section 149 of the said Act. Sub-section (9) of Section 149 conferred the power of the Cooperative Appellate Court to call for and examine the record of any proceedings in which appeal lies before it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. The expression "other than those referred to in sub-section (9) of Section 149" indicates the nature of orders to be challenged under Section 154 of the said Act. There cannot be any dispute about the orders passed by the Cooperative Court, which are either judicial or quasi-judicial. Therefore, the expression "where any decision or order after referred to order under sub-section (9) of Section 149" is an indicator that the decision or order referred to in Section 154 of the said Act has to be a quasi-judicial order.

14. Moreover, the later part of sub-section (1) of Section 154 of the said Act confers power on the Government or the Registrar to modify, annul or reverse the order after giving the opportunity to be heard. The administrative orders under the provisions of the said Act do not affect the substantive rights of a party conferred

under provisions of the Act need not be made subject matter of the revision as the Registrar, apart from passing quasi-judicial order under the Act, is conferred with various other powers which are administrative in nature.

15. A Coordinate Bench of this Court had an occasion to consider the interpretation of the expression "decision or order" in **Sunil Sitaram Mahajan v. Suryakant Pandurang Badave & Ors.** reported in 2016 (3) Mh.L.J. 373. The Bench was considering the exercise of power by the Registrar, setting aside a proposal for confirmation of sale on the ground that the District Deputy Registrar had no authority to review its order. The Single Judge of this Court held that notice for confirmation of sale can be said to be only sequitur to the auction sale and, therefore, is a logical consequence of the said auction proceedings and cannot be said to be a "decision or order" to enable respondent No.1 to invoke revisional jurisdiction. It is observed that the word "decision" appearing in Section 154 may take its colour from the word "order" appearing in the said provision.

16. Another Coordinate Bench of this Court, in **Rajesh B. Yemkanmardi v. Praful J. Padiya**, reported in (2021) 1 Mah.L.J. 301: 2020 SCC OnLine Bom 701, held that the order confirming sale is thus not an order in the real sense and cannot be treated as an order within the meaning of Section 154 of the Act.

17. In **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr. v. State of Maharashtra & Ors.** reported in

(2012) 2 Bom CR 163, it was held that the order of the District Deputy Registrar confirming the sale is not an order as contemplated by Section 154 of the Act.

18. For the reasons stated above and in agreement with the consistent view taken by the Coordinate Benches of this Court, I hold that the expression "order or decision" referred to in subsection (1) of Section 154 of the Act needs to be a quasi-judicial order or decision.

19. Mr. Shah then submitted that the Revisional Authority is also empowered to decide the regularity of proceedings under the Act and Rules and quash and set aside such proceedings. To begin with, the word 'proceeding' is very general and, in common parlance, would mean "going forward". When used in connection with any legal matter, it would generally mean a 'prescribed mode of action for carrying into effect a legal right'. Thus, to start a proceeding against someone would mean 'to start a legal action against him'. Thus, in its ordinary meaning, or general sense, 'proceeding' means the form and manner of conducting judicial business before a court or judicial officer or quasi judicial authority, the form in which actions are to be brought and defended. In *Black's Law Dictionary*, in a general sense, "proceeding" is described as the form and manner of conducting juridical business before a Court or judicial officer; regular and orderly progress in the form of law, including all possible steps in an action from its commencement to the execution of judgment, and, in a more particular sense, any application to a Court of

justice, however made, for aid in the enforcement of rights for relief, for redress of injuries, for damages, or any remedial object. It, therefore, follows that the word "proceedings" has different shades of meaning and can be given a narrow or wide import depending upon the nature and scope of the enactment to which it is used and in the particular context of the language of the enactment in which it appears. The word "proceeding" is defined in the Shorter Oxford Dictionary as "doing, a legal action or process, any act done by the authority of a Court of law." The meaning to be attributed to the word "proceeding" would depend upon the scope of the enactment wherein the expression is used and with reference to the particular context wherein it occurs.

20. The Supreme Court in **Ram Chandra Aggarwal v. The State of Uttar Pradesh**, AIR 1966 SC 1888, while considering the meaning of the expression "proceeding" occurring in Section 24(1)(b) of the Civil Procedure Code, 1908, observed as under

“.....The expression “proceeding” used in this Section not a term of art which has acquired a definite meaning. What its meaning is when it occurs is a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute.....”

21. The MCS Act prescribes various modes of action for carrying into effect a legal right of a member of society using provisions enumerated in section 152 of the Act. The provisions mentioned in section 152 recognise or create substantive rights favouring members of cooperative societies or societies themselves. The

remedy by way of Appeal under Section 152 is provided to the aggrieved person concerning proceedings affecting their rights conferred under the Act. Therefore, on consideration, the scheme of the Act and careful reading of sections 152 and 154(1) of the Act makes it clear that the expression 'proceedings' pending before subordinate officers first part of sub-section (1) of Section 154 of the Act need to be held as 'quasi-judicial proceedings'.

22. Moreover, there is an indication in Section 154(1) to suggest limitation to the exercise of these powers about 'proceedings' because the revisional authority has to satisfy itself as to the legality or propriety of any 'decision or order' passed or to the regularity of the 'proceedings'. Section 154 postulates the revisional authority under subclause (1) to modify, annul or reverse the subordinate officer's 'decision or order'. The power conferred on revisional authority by the second part of sub-section (1) of section 154 to modify, annul or reverse is restricted to 'decision or order' passed by subordinate officers mentioned therein. However, it does not empower quashing and setting aside 'proceedings' on the ground that there has been some irregularity in the proceedings. The provision empowers the revisional authority to ultimately modify, annul or reverse the 'decision or order' in the quasi judicial proceedings under the Act and rules. The purpose of inserting the expression 'regularity of such proceedings' appears to confer power on the revisional authority to examine the regularity of quasi judicial proceedings and if such proceedings are irregularly instituted or irregularly proceeded

with, in that case, modify, annul or reverse 'decision or order' ultimately passed in such proceedings. Moreover, sub-section (2) provides for challenge only against 'decisions and orders' passed by the Registrar, Additional Registrar, Joint Registrar, or other subordinate officers and not against 'proceedings'. Therefore, in my considered opinion, Revisional Authority, after examining the regularity of proceedings, can not quash and set aside the proceedings under the Act and Rules.

23. The next question is whether an order passed by the Registrar under Section 81(3)(c) of the Act is a quasi-judicial order. Determining when an administrative authority must act judicially is not straightforward, especially without explicit statutory directives. There exists no universally applicable criterion for such determination. The obligation to act judicially may arise under various circumstances, making it impractical and unwise to attempt an exhaustive definition. The classification of a proceeding or order as a quasi-judicial order decision or administrative hinges upon the nature of the function performed rather than the entity executing it. The delineation between judicial and quasi-judicial functions necessitates an examination of the incidents attached to their exercise. A quasi-judicial authority sometimes functions as an administrative body; therefore, such order can be categorised as administrative order in a broad sense. Occasionally, an administrative authority may be required to adopt a quasi-judicial role throughout the proceeding or at specific junctures. In the former scenario, it maintains its quasi-judicial status from start to

finish, while in the latter, it assumes this role only during those particular stages of the process.

24. The Supreme Court examined the concept of the quasi-judicial Act in the **Province of Bombay v. Khushaldas S. Advani**, reported in AIR 1950 SC 222. In his concurring opinion, Justice S.R. Das outlined two key points: Firstly, if a statute grants authority to a non-court entity to resolve disputes between conflicting parties and to determine their respective rights, the authority is obligated to act judicially, making its decision quasi-judicial. Secondly, even if there is no direct dispute between two parties, if the statute requires the authority to act judicially in a manner that could harm the subject, then its decision remains quasi-judicial.

25. Similarly, in **Indian National Congress (I) v. Institute of Social Welfare & Ors.** reported in (2005) 5 SCC 685, the Apex Court has held that the exercise of power under Section 29A of the Representation of People Act, 1951 by the Election Commission is a quasi-judicial power. The Apex Court, in paragraphs 24 and 25, held as under:

“**24.** The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerges from the aforestated decisions, are these:

Where (a) a statutory authority empowered under a statute to do any act, (b) which would prejudicially affect the subject, (c) although there is no *list* or two contending parties and the contest is between the authority and the subject and (d) the

statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a *list* or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority, is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a *lis* before a statutory authority, the authority would be a quasi-judicial authority if it is required to act judicially."

26. In **Shankarlal Aggarwala & Ors. v. Shankarlal Poddar** reported in AIR 1965 SC 507, the Apex Court in paragraph 13 has held as under:

"13. It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the Act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial

proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. (Sic) No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial.”

27. In National Securities Depository Ltd. v. Securities and Exchange Board of India reported in (2017) 5 SCC 517, the Apex Court was considering an objection raised that the appeal filed under Section 15-T of the Securities and Exchange Board of India Act, 1992 was only restricted to quasi-judicial order and not an administrative order or legislative order or direction passed by the SEBI under the 1992 Act. Answering the question in the negative, the Apex Court held that three requisites were necessary in order for the Act of an administrative body to be characterised as quasi-judicial: (i) there must be a legal authority; (ii) this authority must be to determine questions affecting the rights of subjects; and (iii) there must be a duty to act judicially. It is held that the absence of lis between the parties would not necessarily lead to the conclusion that the power conferred on the administrative body would not be quasi-judicial so long as the aforesaid three tests are followed, the power is quasi-judicial. An administrative order would be directed to the regulation or supervision of matters as distinguished from an order which decides the rights of the parties or confers or refuses to confer

rights. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, mainly if that authority were a Court, and if the discretion has to be exercised on an objective and distinguished from a purely subjective, consideration, it would be a judicial decision. It is observed that a judicial decision is made according to law, whereas an administrative decision is made according to administrative policy. A quasi-judicial function lying somewhere in between is an administrative function that the law requires to be exercised in some respects as if it were judicial. It was, therefore, held that the orders of SEBI referable to Sections 11(4), 11-B, 11-D, 12(3), and 15-I of the 1992 Act are obviously outside the appellate jurisdiction of the Tribunal.

28. At this stage, it is necessary to refer to the proceedings before initiating a reference under Section 10 of the Industrial Disputes Act, 1947, whereby the Appropriate Government must ensure sufficient evidence indicating the existence or likelihood of an industrial dispute. If such a reference is made, the Government should specify the nature of the dispute in the referral order. However, the referral order issued by the Appropriate Government under Section 10 of the 1947 Act is administrative and does not undergo the same scrutiny as a judicial or quasi-judicial order. The order issued by the Appropriate Government under Section 10 of the 1947 Act is based on the subjective satisfaction of the Appropriate Government as it does not involve a legal dispute (lis). However, the aggrieved party has the right to contest that the

subject matter referred by the Government does not qualify as an industrial dispute under the 1947 Act.

29. The broad indicators to decide as to whether an order is a quasi-judicial order or not which are not exhaustive and which can be based on one or more factors stated hereinunder: (i) distinction between quasi-judicial and administrative act lies in whether the decision-maker is legally bound or authorised to act judicially; (ii) quasi-judicial act involves giving parties an opportunity to present their case, conducting some form of inquiry, considering evidence, and weighing facts before reaching a decision affecting rights; (iii) various judicial pronouncements provide definitions and characteristics of quasi-judicial acts, emphasising the need for legal authority, consideration of facts, and a duty to act judicially; (iv) the presence of contesting parties and an external authority to decide disputes is relevant in identifying quasi-judicial decisions; (v) where the law requires decision-maker to weigh the matter impartially, considering arguments from both sides, for an act to be considered quasi-judicial; (vi) a decision is deemed quasi-judicial if it represents an objective assessment of facts and applicable law in a case, leading to the declaration of rights or imposition of obligations affecting civil rights, following a statutory hearing of the involved parties; (vii) if the decision relies wholly or partially on personal or subjective opinions or policy considerations, it does not qualify as quasi-judicial. Nevertheless, if the authority, in reaching its decision, must assess proposals and objections and evaluate material at any stage of the process; and (viii) for

deciding an order to be quasi-judicial, it is necessary to examine provisions of relevant legislation, nature or rights at stake, procedural frame-work prescribed by the statute, consequences of the decision on the parties involved, any objection standardise outline in law and other indicators provided by the legislature.

30. Having examined the exercise of power under Section 81(3)(c) of the Act in the context of indicators laid down above, in my opinion, Section 81(3)(c) does not require the Registrar to grant the opportunity of hearing to the affected party before passing such order nor does it require conducting inquiry considering evidence or weighing facts before reaching a decision affecting the rights. While exercising said power, the Registrar is not legally bound to act judicially. Though the Registrar needs to evaluate the materials before exercising such power, the satisfaction that the audit report submitted by the Auditor does not disclose a true and correct picture of accounts is based on the subjective satisfaction of the Registrar. The order under Section 81(3)(c) of the said Act needs to be termed an administrative order as it is directed to the supervision of the affairs of society as distinguished from an order that decides the rights of the parties or confers or refuses to confer rights. The discretion to be exercised by the Registrar is purely subjective.

31. The Division Bench judgment of this Court in **Kolhapur Zilla Sahakari Doodh Utpadak Sangh Ltd., through its authorised signatory v. The State of Maharashtra, through Hon'ble Minister for Department of Animal**

Husbandry & Ors., reported in 2023 SCC OnLine Bom 1782. The Division Bench was considering the validity of the order of test audit similar to the order impugned before the Revisional Authority. While considering the validity of such an order, the Division Bench observed that judicial review of an order under Section 81(3)(c) of the said Act on the grounds of quality of material cannot be as in an appeal, if at all permissible. It is observed that the test audit is not the end of the process, and the statute provides an elaborate process. The test audit itself will not fructify into any immediate action, but there are various stages before even an inquiry against an individual director is carried out.

32. Mr. Shah, learned Advocate for respondent No.6, invited my attention to the judgment in **Chimanbhai Dadubhai Desai** (supra) to urge that the test audit will involve serious consequences to the cooperative society and it is not possible to say that such an order does not affect rights and liabilities of the cooperative society. In the facts of the case, the Division Bench was concerned with the inquiry into the constitution and the working and financial condition of the society. Section 84 of the said Act confers power on the Auditor to re-audit the accounts of the society. Section 84 of the said Act is broadly similar to Section 81 of the Maharashtra Cooperative Societies Act, 1960, and Section 85 of the Gujarat Act is similar to Section 82 of the Maharashtra Act. Section 86 of the said Act contemplates independent inquiry by the Registrar into the constitution, working and financial condition of the society and, therefore, in the context of such

inquiry, the Division Bench held that such inquiry involves severe consequences to the cooperative society. It is not possible to say that such an order does not affect the rights or liabilities of the cooperative society. In the present case, the effect of the order impugned is the conduct of a test audit. Hence, the judgment is inapplicable.

33. For the reasons stated above, the order passed by the Registrar to exercise power under Section 81(3)(c) of the said Act needs to be termed an administrative order. Therefore, in my considered view, revision under Section 154 of the said Act against an order under Section 81(3)(c) is not maintainable. The revision challenging order under Section 81(3)(c) of the said Act is not maintainable. Hence, the following order:

- a) The impugned order dated 22 November 2023 passed by respondent No.1 in Revision Application No.632 of 2023 is quashed and set aside;
- b) However, it shall be open for respondent No.6 to challenge the order dated 31 October 2023 by adopting appropriate proceedings as are permissible in law.

34. The writ petition stands disposed of in the above terms. No costs.

35. The effect of the order is stayed for the period of four weeks from today.

(AMIT BORKAR, J.)