



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

WRIT PETITION NO.362/2019

Subhash Sitaramji Raghatatae,
aged major, Occ. Business,
R/o Viveknagar, Chandrapur,
Tah. & Dist. Chandrapur.

... Petitioner

- Versus -

1. Divisional Joint Registrar,
Cooperative Societies, Nagpur
Division, Nagpur, Dhanwate Chambers
(Annex) Sitabuldi, Nagpur 440 012.
2. Ramdas Tukaram Chaudhari,
aged 66 Yrs., Occ. Agriculturist,
R/o Balaji Ward, in front Bajaj
Polytechnic College, Chandrapur,
Tah. & Dist. Chandrapur.
3. Assistant Registrar, Cooperative Societies,
Tah. & Dist. Chandrapur.
4. Pandharkawda Seva Sahakari Sanstha
Maryadit, Pandharkawda, through its
President Tah. & District Chandrapur. ... Respondents

Mr. O.A. Ghare, Counsel h/f Mr. A.M. Ghare, Counsel for the
Petitioner.

Mr. J.Y. Ghurde, Assistant Government Pleader for Respondent
Nos.1 and 3.

Mr. R.J. Kankale, Counsel for Respondent No.2.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 29.2.2024.

DATE OF PRONOUNCING THE JUDGMENT: 7.3.2024.

JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By way of present petition the petitioner has challenged the order dated 19.12.2018 passed by respondent No.1 in Appeal No.29/2018 and has prayed to maintain the order dated 25.5.2018 passed by respondent No.3.

3. The facts, in brief, are as under:-

The petitioner who is an Agriculturist is having membership of two Agricultural Credit Cooperative Societies i.e. Seva Sahakari Sanstha Maryadit, Chandrapur and Pandharkawda Seva Sahakari Sanstha Maryadit Pandharkawda. The petitioner has availed agricultural loan from both the societies for the year 2017-2018. The petitioner has repaid the agricultural loan of

Seva Sahakari Sanstha Maryadit Chandrapur and after repaying the said loan he got his membership cancelled from the said society. Respondent No.3 by taking cognizance of the complaint of respondent No.2 had issued directions under Section 79 of the Maharashtra Cooperative Societies Act, 1960 vide order dated 12.4.2018 to take action under Rule 45(1) and (2) of Maharashtra Cooperative Societies Rules, 1961 for cancellation of membership of the petitioner from both the societies.

Respondent No.4 by taking action passed the order dated 25.5.2018 and confirmed the membership of the petitioner so far as respondent No.4 society is concerned. As the Managing Committee of Seva Sahakari Sanstha Pandharkawda vide Resolution No.5 has continued the membership of the petitioner, being aggrieved by the said order respondent No.2 had preferred an appeal with respondent No.1 challenging the order on the ground that the petitioner borrowed loan from both the societies and respondent No.1 was pleased to allow the appeal after hearing all the parties. The said order dated 19.12.2018 is challenged before this Court.

4. The learned Counsel for the petitioner has stated that the complainant respondent No.2 has no *locus* to lodge the complaint for cancellation of membership of the petitioner as he is not member of either of the societies. When respondent No.2 lodged the complaint at that time he was not member of two societies. Membership of Chanda Seva Sahakari Sanstha Maryadit was cancelled before the complaint. The membership of the petitioner from Chanda Seva Sahakari Sanstha was cancelled in October 2017 and the complaint is lodged by respondent No.2 in November 2017.

5. Respondent No.3 has passed the order under Section 79 for initiation of proceedings under Rule 45 of the Maharashtra Cooperative Societies Rules, 1961. The original power under Section 79 of Maharashtra Cooperative Societies Act lies with the Registrar cum Commissioner of Cooperation State of Maharashtra, Pune, however, said powers seems to have been delegated to respondent No.3 i.e. Assistant Registrar. The order

which is passed by respondent No.3 under Section 79 is an order which is passed by the Authority empowered with power of Registrar. In view of the above fact, appeal under Section 152(1) (a) should have been filed before the State Government and must not have been filed before respondent No.1, however, respondent No.1 without jurisdiction has entertained the appeal and has passed the illegal order which is liable to be quashed.

6. The respondent No.1 committed an error of law in not appreciating the fact that the petitioner has already repaid the loan of Chanda Seva Sahakari Sanstha Maryadit and even if it is presumed for the sake of arguments that in the agricultural year 2017-2018 the petitioner had availed loan from both agricultural societies in question it does not *ipso facto* make the act of petitioner illegal. Rule 45 of the Maharashtra Cooperative Societies Rules, 1961 is reproduced as under:-

“45. Restrictions on borrowing from more than one credit society:- (1) Every person who is a member of more than one resource society (other than a Land Development Bank or a Central Bank or a marketing society) dispensing credit shall, if

he has not already made, make a declaration in Form that he will borrow only from one such society to be mentioned in the declaration and shall send a copy of such declaration duly attested to all societies of which he is or has become a member.

(2) Any person who continues to be a member of more than one such society without complying with the provision of this rule shall be liable to be removed from the membership of any or all such societies upon receiving a written requisition from the Registrar to that effect:

Provided that the society from which a person has borrowed may permit him to borrow from any other society of which he is a member to such extent and subject to such conditions as may be laid down by it.

(3) The Registrar may, for reasons to be recorded in writing, exempt any person or persons from the operation of this rule or prohibit any person or persons from borrowing from more than one society, notwithstanding that permission of the society under proviso to sub-rule (2) has been obtained by him.”

7. On perusal of the above rule it is clear that there is no prohibition to a member of a cooperative society of not obtaining loan from more than one society, however, this issue was absolutely not considered as since 2017 the petitioner was not member of Chanda Seva Sahakari Sanstha Maryadit but only

member of respondent No.4 society. Thus there was absolutely no error on the part of respondent No.4 in dropping proceedings initiated under Rule 45 of the Maharashtra Cooperative Societies Rules, 1961.

8. The learned A.G.P. has opposed the petition stating that the respondent was delegated power as per notification dated 7.8.1993 by the State Government to deal with the appeals under Section 152 of the Maharashtra Cooperative Societies Act and, therefore, the respondent has jurisdiction to pass the order.

9. The issue involved before respondent was in respect of Rule 45 of Maharashtra Cooperative Societies Rules, 1961. The petitioner had procured loan from both the agricultural credit cooperative societies. As per sub-rule (1) of Rule 45 the petitioner had failed to give declaration in form "K" that he has borrowed loan from one society only and further failed to send the copy of such declaration duly attested to all the societies of

which he is or has become member. Since there is gross violation of Rule 45 the petitioner is liable to be removed from the membership of any or all such societies under sub-rule (2) of Rule 45. Hence prayed to dismiss the petition.

10. Respondent No.2 who is complainant has opposed the petition by filing his affidavit on record.

11. Heard both the parties. Perused the record.

12. The first contention of the petitioner is that the complainant has no *locus* to lodge the complaint. The petitioner has relied on the observations made in paragraph Nos.4 to 8 of the judgment passed by this Court in case of Vithal Nagar Cooperative Housing Society, Mumbai V/s Divisional Joint Registrar, CSMD and others reported in 2015(2) Mh.L.J. 452

which read as under:-

“4. We are concerned with the date when the application was filed where admittedly respondent No.2 was not even a member of the

society against whom, the respondents ordered to initiate inquiry under section 83 which follows section 88 of the Act. If case is made out with supporting material, an invocation of suo motu power by the authority is difficult to interfere with, but when the application was filed by the third person, as done in the present case, who admittedly was not a member of the society at the relevant time, in my view, need to be tested in the background of litigation between respondent No.2 and the society. A person who was not a member at the relevant time and even prior to that just cannot lodge a complaint and/or pray to initiate inquiry against the society members and/or society as he had no personal knowledge of the events and circumstances to initiate such inquiry which certainly affects the rights of the managing committee members of the relevant time and definitely the name and fame of the society.

5. *In the present case where respondent No.2 is involved and on similar complaints, by order dated 27.10.2010 in Criminal Application No.4667/2010 - Meena Shroff v. The State of Maharashtra, in a criminal proceeding, there is an observation in paragraph 7 as under:*

"7 The respondent No.2 is not yet admitted as a member of the managing committee. Prima facie, it does appear that complaints are being filed with a mala fide intention of harassing them since they did not admit him as a member."

This observation that the complaint so filed with a mala fide intention as he was not admitted as a member just cannot be overlooked

so also the Criminal Application which is pending in this Court.

6. The order, therefore, passed by the Divisional Joint Registrar, in the above background, to initiate suo motu inquiry by observing that the material placed on record even by a member of public can be taken note of to initiate such inquiry against such private society, in my view, is unacceptable. The power of suo motu cannot be read and referred to mean the basic provisions which required that the one fifth/one third members to file such application to initiate such inquiry just cannot be overlooked but need to be dissected for all the purposes. If the Registrar and/or concerned authority wants to initiate inquiry suo motu against the society based upon the material with them, there cannot be issue on this power. But if there is a case of complaint by a member then it should be as per the mandate of the section so referred above i.e. one fifth/one third members should lodge the complaint. And if it is based upon the third person's complaint, the situation is different. This, in my view, just cannot be overlooked. Therefore, in a given case, if such an application is filed by a person claiming to be the member, to initiate inquiry under Section 83 against the society, the Registrar and/or authority need to test the same differently. This cannot be treated like a public interest litigation.

7. In the present case, however, the Divisional Joint Registrar in spite of pendency of criminal application between the parties and the observation of mala fide, so referred above, directed the Deputy Registrar, Cooperative Societies, K West Ward, Mumbai to take the

decision treating it suo motu inquiry, though this Court by order dated 27.04.2010 in Writ Petition No.817/2010, directed the Divisional Joint Registrar to consider the said application dated 10.01.2010 afresh, the Deputy Registrar, inspite of this, as recorded above, directed the other authorities to deal with the application, contrary to the order passed by this Court. There was no such direction earlier issued by this Court in the order dated 27.4.2010. On the contrary the directions were issued to consider the application including the issue of maintainability and locus.

8. Therefore, in view of above, I am inclined to observe that the application filed by respondent No.2 dated 10.01.2010 is not maintainable and has no locus and so also the orders issued by Respondent No.1 to initiate the proceedings under section 83 of the Act of 1960 by treating it to be as suo motu.”

13. In case in hand the respondent No.2 who was not a member at the time of lodging complaint, moreover, at the relevant time petitioner has cancelled the membership from Chanda society by repaying the loan and was member of only one society i.e respondent No.4. The society has continued his membership the proceedings under Section 45(2) were dropped

by respondent No.4. The appeal was filed by the complainant who has no *locus*.

14. There is no provision under Section 79 to disqualify the member. The order is passed under Section 79 and the petitioner is disqualified. Learned Counsel for the petitioner has relied on the judgment of this Court in Mohanlal Bhagwan Pandey V/s. Apurva Co-op. Hsg. Soc. Ltd and Ors. reported in **2009 (5) Mh.L.J. 330** wherein it is observed in paras 7 and 8 as under:-

“7. A perusal of the order passed by the Appellate Court, no doubt, indicates that it has been passed against the order issued by the Deputy Registrar under Section 79(1) of the said Act on 23rd March, 1990. Section 79(1) of the Maharashtra Co-operative Societies Act reads as follows:-

79(1) Registrar’s power to enforce performance of obligations:- (1) The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such

records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

8. In my opinion, the aforesaid provision do not give any scope to the Deputy Registrar to pass orders under Section 79(1) of the said Act for implementing orders other than those mentioned in the aforesaid Section. The Deputy Registrar therefore cannot issue any orders under this Section for implementation of an order directing enrolment of a member. Therefore, in my opinion, the order passed by the Appellate Court cannot be faulted in these circumstances.”

15. Disqualification of member does not come under Section 79(1) of the Act. It clearly indicates total non-application of mind by respondent No.1.

16. In view of the aforesaid observations the order dated 19.12.2018 passed by respondent No.1 is set aside and the order dated 25.5.2018 passed by respondent 3 is maintained. The petition is allowed. Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)