



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 515 OF 2011

- 1] Prakash Hiranman Sontakke.
- 2] Ravindra Manikrao Meshram.
- 3] Ramesh Vithobaji Gajbhiye.
- 4] Devanand Mahadeorao Gaikwad.
- 5] Smt. Sushila Shankarrao Mankar.
Deleted as per Court's order dated 5/8/2024.

All are members of Defence Project Sevakanchi
Sahakari Pat Sanstha Maryadit, Nagpur,
and R/o Defence Project Campus, Ambazari, Nagpur.

...PETITIONERS

Versus

- 1] Divisional Joint Registrar,
Co-operative Societies, Nagpur.
- 2] Assistant Registrar, Co-operative Societies,
Taluka Nagpur, having its office at
Plot No. 8, Sahakar Sadan,
Hindustan Colony, Amravati Road, Nagpur.
- 3] Shri Zanaklall s/o Dhanuji Shende,
Authorized Officer under Section 88 of
Maharashtra Co-operative Societies Act,
1960 and R/o Plot No. 198,
Chandan Nagar, Ramabai Garden,
Medical Chowk, Nagpur.
- 4] Defence Project Sevakanchi Sahakari Pat
Sanstha Maryadit, Ambazari, Nagpur,
having its office at Defence Project area,
Near Post Office, Ambazari,

Amravati Road, Nagpur, through its
Manager.

- 5] Shri Kamlakar Baburao Ingle,
R/o Qr. No. 7/71/5, Type – II,
Ordinance Factory Estate,
Amravati Road, Nagpur.

...RESPONDENTS

Shri Abhijit Deshmukh, Counsel for the petitioners.
Ms D.I. Charlewar, A.G.P for respondent nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.
DATE : SEPTEMBER 12, 2024

ORAL JUDGMENT :

The petitioners, the then directors of the Defence Project Sevakanchi Sahakari Pat Sanstha Maryadit, Nagpur, have challenged order dated 23/12/2010 passed by the Divisional Joint Registrar, Co-operative Societies, Nagpur, in Appeal No. 51/2010, thereby dismissing the appeal filed against the report dated 29/6/2010 prepared under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (for short “Act of 1960”). The authorized officer has held the petitioners and few others liable for payment of amount, which are termed as financial irregularities committed by them during the period from 1992-93 to 1997.

2] The report was challenged in Appeal before the Divisional Joint Registrar, Co-operative Societies, Nagpur, in terms of Section 152 of the Act of 1960, which has been dismissed.

3] The learned Counsel for the petitioners has invited my attention to the impugned report dated 29/6/2010, wherein the authorized officer has found that the enquiry officer, while conducting enquiry under Section 83 of the Act of 1960, has travelled beyond the scope of enquiry to fix the liability of the office bearers. The authorized officer was of the view that under Section 83 of the Act of 1960, the enquiry officer is supposed to conduct enquiry as regards the manner in which the financial irregularities were committed and can further ascertain the amount of irregularities/misappropriation. The authorized officer has then noted that the enquiry officer has, however, fixed the liability of the office bearers as well. The authorized officer has, however, held that the aforesaid mistake committed by the enquiry officer will not vitiate the report because the enquiry under Section 88 is processed on

the basis of report filed under Section 83 and thus the said report will be considered for assessment of damages against the promoters, office bearers, etc. of the Society. The assessment is to be done in terms of Section 88 of the Act of 1960.

4] The learned Counsel for the petitioners submitted that once the authorized officer has held that the enquiry officer has travelled beyond jurisdiction, he could not have acted upon the report prepared under Section 83 of the Act of 1960.

5] I do not find any substance in the aforesaid argument. The learned A.G.P. has rightly submitted that the authorized officer has ignored that part of the report, which according to him was beyond jurisdiction of enquiry under Section 83 of the Act of 1960. The authorized officer has rightly noted that the enquiry report, under Section 83 of the Act of 1960, is the basis of assessment of damages against the delinquent promoters, etc. in terms of Section 88 of the Act of 1960. The authorized officer has conducted the enquiry under

Section 88 and fixed the liability of the office bearers, including the petitioners.

6] The second ground of challenge is that the documents – Exhibits 1 to 56 were not supplied.

7] The order impugned, however, clearly indicate that all the documents, exhibited in the enquiry, were made available to the Counsel for the appellant for cross-examination and the cross-examination was completed by the enquiry officer. The learned Counsel for the petitioners failed to show, from the cross-examination or otherwise, that the petitioners were, in any way, prevented from cross-examining the witnesses for want of documents under question. This shows that all the documents were furnished to the petitioners. Further, this Court, vide order dated 4/2/2011, has considered this argument and opined that non-supply of these documents would not vitiate the entire enquiry, as these documents relate to only one charge.

8] In any case, since there is a categorical finding in

the impugned order that all the documents were furnished to the Counsel appearing for the appellant and in absence of anything to the contrary, merely because a ground is taken by the petitioners in the appeal memo or in the Writ Petition, will not, by itself, substantiate the said ground. There is, thus, no merit in the contention that the documents were not furnished to the petitioners.

9] The third ground of challenge is that there were two reports under Section 83 of the Act of 1960 and that itself will vitiate the enquiry report.

10] This ground, however, was not taken before the appellate authority nor is there finding given on this ground. That being so, this ground cannot be raised for the first time before this Court.

11] Put all together, there appears no reason why should this Court interfere with the impugned order in writ jurisdiction.

12] The Writ Petition is accordingly dismissed. Rule is discharged.

JUDGE

Sumit