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

## Writ Petition (WP) No. 4471 of 2023

Aanji (Mothi) Vishal Vividh Karyakari Sewa Sahakari Sanstha Maryadit, through its President Indrajit Batra

**Versus**

Government of Maharashtra through its Divisional Joint Registrar Cooperative Societies, Nagpur

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order | Court's or Judge's Order |
|---|---|

Shri S.K.Tambde, Advocate for the petitioner.
Shri B.M.Lonare, AGP for the respondent nos. 1 to 3.
Shri Pushkar Ghare, Advocate for the respondent nos. 5 and 7.

**CORAM : ANIL S. KILOR, J.**
**DATED : 13th FEBRUARY, 2024.**

Heard.

2. This writ petition takes exception to the order passed under Section 81(3)(c) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred as 'Act, 1960') dated 9th December, 2022 passed by the Assistant Registrar, Cooperative Society, Wardha directing the auditor to conduct the Test Audit Report for the year 2017-2022.

3. The test audit was directed in light of the complaint made by one Shri Gajanan Ramchandra Hiwre and nine other members of petitioner society and in view of the recommendation made by the District Deputy Registrar, Cooperative Society vide letter dated 25th February, 2022 in pursuance to the audit report of the financial year 2020-2021.

3. Before considering the matter on merit, it would be appropriate and necessary to refer to Section 81(3)(c) of the Act, 1960 which reads thus:

> **81. Audit**
> (3) (a)…
> (3) (b)...
> (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 authorized 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.

4. From perusal of the provision it is evident that in case 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 authorized person may carry out or cause to be carried out a test audit of accounts of such society.

5. The said provision further makes it clear that words used ‘brought to the notice of Registrar’ depict that some material should be there on record which suggest that audit report submitted by the auditor does not disclose true and correct picture of the accounts.

6. In the present case the complaint made by 10 members by making certain allegations, was supported by a single document substantiating their prayer for test audit. Despite without considering the pre-requisite of Section 81(3)(c) of the Act, 1960, the directions were issued by the Assistant Registrar to conduct the test audit for the year 2017-2022.

7. As far as the recommendation by the Government Auditor to conduct the test audit for the financial year 2020-21 is concerned it fulfills criteria of Section 81(3)(c) of the Act, 1960 and therefore to that extent I do not find any error committed by the Assistant Registrar in directing to conduct the test audit.

8. However, in any case test audit directed to be conducted for the period prior to 2020-2021 is without any material on record and without any satisfaction of the Registrar which is implied as regards the non-disclosure of the true and correct picture of accounts by the auditor in the audit report.

9. In the circumstances, the impugned order does not stand for scrutiny and accordingly it needs to be quashed and set aside to the extent for the period except 2020-2021. Accordingly, I pass the following order.

i. The writ Petition is partly allowed;

ii. The order dated 9th December, 2022 passed by the Assistant Registrar, Cooperative Society, Wardha is hereby quashed and set aside except for the period 2020-2021.

**[ANIL S. KILOR, J.]**