



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

WRIT PETITION NO. 213/2019

Chandrashekhar Ganpatrao Wasule .Vs. The Minister for Cooperation
Handloom and Textile Division, Mantralaya, Mumbai and Ors.

AND

WRIT PETITION NO. 5010/2019

Shri Prakash Ramaji Ware .Vs. The Minister for Cooperation Handloom and
Textile Division, Mantralaya, Mumbai and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. M. Pande, Advocate for petitioner.
Mr. A. J. Gohokar, A.G.P. for respondent Nos. 1 and 2.
Mr. P. S. Tidke, Advocate for respondent No.4.

CORAM : ANIL L. PANSARE, J.

DATE : 29.07.2024

On 08.07.2021, following order was passed in Writ
Petition No.5010/2019.

*“The learned AGP seeks time on the ground that
file has been misplaced.*

2. *One of the contentions is that, the powers under
Section 88 of the Maharashtra Co-operative Societies
Act, 1960 (for short, 'the Act of 1960') are to be
exercised by the Registrar. In the present case, the
powers has been exercised by the Divisional Registrar.
The documents, by which the Registrar has delegated
powers to the Divisional Registrar in terms of Section 3
of the Act of 1960 are not placed on record for the
reason that these documents were not served upon the
Petitioner.*

3. *As regards the order passed by the Registrar
under Section 88, the Petitioner has not placed on
record the said order. What has been placed on record
is part of the Inquiry Report envisaged under Section
88, which in the present case has been conducted by*

the Officer nominated by the Divisional Registrar. The Report is concluded with order of recovery.

4. Thus, the person who has been authorized to conduct inquiry, has passed final order which prima facie appears to be not permissible, if one has to follow the mandate of Section 88. It will be either Registrar or the Officer to whom Registrar's powers have been delegated should pass order under Section 88. Thus, there appears fundamental defect in the order passed under Section 88, which order was then challenged before the Respondent No.1 - The Minister for Co-operation under Section 154 of the Act of 1960.

5. The learned AGP seeks time to take instructions on this point and to place on record the necessary documents. Be filed within two weeks from today.

6. The learned Counsel for Petitioner further submits that the matter is covered by the Judgment dated 14/9/2010 passed by the Co-ordinate Bench of this Court in Writ Petition No. 5361/2009 (Shri Gajanan Govind Kawade & Ors. V/s Shri D. D. Hukre & Ors.). The copy of order has been served upon the other side.

7. The learned AGP shall take instructions on this point as well.

8. Stand over to 29th July, 2023, strictly as a last chance."

2. Counsel for the respondent No.4 submits that vide notification dated 24.11.2021, the power of Registrar under the Maharashtra Co-operative Societies Act, 1960 (for short the, 'Act of 1960) and the Rules framed thereunder, have been delegated to the Divisional Joint Registrar of Cooperative Societies in the Division.

3. Thus, it appears that the Registrar's powers have been delegated to the Divisional Joint Registrar.

4. The learned A.G.P. has invited my attention to Section 88 of the Act of 1960, to point out that the Registrar or the person authorised by him, may conduct inquiry and also pass an order under Section 88.

5. However, the order of Registrar/Divisional Joint Registrar appointing the Deputy Registrar, is not placed on record or was not made part of the inquiry report.

6. Be that as it may, having heard on merit, it appears that there is no dispute on the point that the person submitting audit report has been not examined before the authorised person in terms of Section 72(5) of the Act of 1960. Counsel for the petitioner has invited my attention to the judgment passed by Coordinate Bench of this Court in **Gajanan s/o Govind Kaawde and Ors. Vs. D. D. Hukre and Ors., Writ Petition No.5361/2009, decided on 14.09.2010.** This Court, while highlighting the importance of the evidence in the proceeding before the inquiry officer, has held thus:

“6. Perusal of Sub Rule 5 above shows that the authorised person shall record the evidence led by the Society or the concerned persons and also take documents on record proved by them. Section 3 of the Indian Evidence Act, 1972 defines 'proved'. It is, thus, clear that the evidence has to be led by the Society concerned or the persons concerned and for doing that the witness or witnesses will have to be examined before the authorised person that too in the presence of the delinquents. As regards the documents, the same can be taken on record, if these documents are

proved. If these stages are completed, namely, evidence is recorded and documents are proved the authorised person can fix a date for hearing of arguments of both parties. In the instant case, it is undisputed that respondent No.2 - Society did not examine a single witness before the authorised person nor proved a single document, but merely filed some documents including the audit report under Section 83 of the Act that was prepared by Shri Ramakant Muley, who was also not examined before the authorised person. The obvious reason for examining the witnesses before the authorised person to prove the facts as well as documents in the presence of the delinquents is with a view to comply with the principles of natural justice. Needless to say that the delinquents as well as the authorised person are entitled to mark the demeanour of the witnesses during their examination. The evidence of these witnesses is required to be tested by the test of cross-examination by the delinquents. That is why it is essential to actually examine the witnesses before the authorised person. It may be true that the proceedings under Section 88 of the Act cannot be compared with the proceedings in the Court of law but then the proceedings before the authorised person are in the nature of quasi judicial proceedings and in no case the rule of audi alteram partem or the principles of natural justice can be compromised. The authorised person acts like a Tribunal since it has a power to saddle the monetary liability on the delinquents.”

7. As could be seen, the society is under obligation to, inter alia, examine the person/officer, who has filed the report in terms of Section 83 of the Act of 1960. The inquiry, therefore, suffers from non compliance of mandatory provisions.

8. In view thereof, the inquiry stands vitiated. Consequentially, the orders passed on the basis of the inquiry report viz. order dated 04.02.2015 passed by the Deputy Registrar and order dated 03.05.2018 passed by the Hon'ble Minister upholding the order passed by the Deputy Registrar will not sustain. Both the orders are accordingly quashed and set aside.

9. The inquiry is relegated back to the inquiry officer i.e. the Deputy Registrar who shall proceed with inquiry from the stage the defect is noticed, which is pointed out in the instant order. Accordingly, the inquiry is restored on the file of inquiry officer who shall proceed to conduct inquiry in accordance with law. The petition is disposed of in the above terms.

10. At this stage, I am informed that the Deputy Registrar, who has conducted the inquiry, has been transferred. If that is so, the Registrar or Divisional Joint Registrar, as the case may be, is at liberty to authorise any other person to conduct and continue with the inquiry.

11. The writ petition is disposed of. No order as to costs.

(Anil L. Pansare, J.)