IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8166 OF 2023

PETITIONER :- Sanjay Vasantrao Dehanikar, Aged : 56, Occupation: Certified Auditor, Co-operative Society residing near gurumandir, Karanja Lad, Karanja Washim, Maharashtra: 444105.

..**VERSUS**..

RESPONDENT :- The Commissioner cum Registrar, Co-operative Societies having its office at 2nd floor New Central Building, near Sasson Hospital, Pune, 411001.

Mr. R.D. Dhande, Advocate for Petitioner.
Ms D.I. Charlewar, A.G.P. for the Respondent.

CORAM : ROHIT W. JOSHI, JJ.
DATE : 29/09/2025

ORAL JUDGMENT :

1. Heard.

2. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. The present petition takes exception to the order dated 09.11.2023, passed by the Commissioner of Co-operative and Registrar of Co-operative Societies, Government of Maharashtra, Pune, whereby the name of the petitioner was ordered to be deleted from the panel of auditors, purportedly in exercise of powers under Section 81 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCS Act of 1960") read with Rule 61(1)(g) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "MSC Rules of 1961").

4. A society by the name 'Vidarbha Bahujan Hitaya Karmachari Sahakari Patsanstha, Karanja', registered under the MCS Act of 1960, has not completed its audit within the statutory period. As a consequence of which, one R.K. Chauhan was appointed as an auditor for completing the audit for the said society. It appears that the said auditor also failed to conduct the audit within the time granted.

5. As a consequence of the above, vide order dated 07.08.2020, the present petitioner was appointed as an auditor to conduct the audit of the said society. The petitioner had issued a communication dated 15.09.2020 to the Manager and former President of the society, requesting to provide relevant records for the purpose of conducting the audit. It appears that, despite the said communication, the relevant records were not provided. Thereafter, the petitioner issued another letter dated 18.09.2020 to the District Deputy Registrar of Co-operative Societies, Karanja, Dist. Washim, stating that since the Manager of the society had not provided relevant records, the petitioner was not inclined to conduct the audit of the said society and requested that another auditor be appointed in his place.

6. The Assistant Registrar, Co-operative Societies, Karanja, had issued a communication dated 08.10.2020 to the District Deputy Registrar, stating that the records of the society be seized in exercise of powers under Section 81 of the MCS Act of 1960. It will be pertinent to mention that an offence was registered against the erstwhile President of the society vide First Information Report (hereinafter referred to as "FIR") No.79 of 2020, for the offences punishable under Sections 406, 409 and 420 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. The said

President had filed an application for anticipatory bail before this Court being Criminal Application (ABA) No.405 of 2020, in which an interim order of protection was passed on 08.01.2021. Perusal of the order indicates that while granting interim protection, this Court expressed that the relevant facts showing the complicity of the accused would emerge before the Court upon receipt of the audit report therefore, until the audit is completed, the applicant therein should not be arrested.

7. In this backdrop, on 23.6.2021, an FIR was lodged by erstwhile President against the present petitioner, alleging that the petitioner had demanded a bribe in order to furnish a favorable audit report. In view of the FIR, which was lodged against the petitioner, a show cause notice was issued to the petitioner. The petitioner has filed reply to the said notice. After considering the explanation of the petitioner, the Commissioner of Co-operative and Registrar of Co-operative Societies, Government of Maharashtra, Pune, passed the order dated 09.11.2023, directing that the name of the petitioner be deleted from the panel of auditors during the pendency of the criminal case filed against him.

8. Mr. Rahul Dhande, learned Advocate for the petitioner states that the petitioner has challenged the FIR registered against him by filing application before this Court being Criminal Application (APL) No.1321 of 2021 wherein vide order dated 22.02.2022, this Court has directed that although the investigation continue, the chargesheet should not be filed without leave of the Court. The learned Advocate makes a statement that the said order is still operating and the chargesheet is not filed in the matter as yet. He further states that the said criminal application is pending.

9. The learned Advocate draws attention to Section 81 of the Act of 1960 and Rule 69 1(g) of the MCS Rules of 1961 to contend that the registration of an FIR by itself can never be a ground for ordering the removal of name of the auditor from the panel.

10. *Per contra*, Ms. D.I. Charlewar, learned A.G.P. supports the impugned order. She contends that, having regard to the responsibilities and role of an auditor, it is undesirable for persons against whom serious offenses, such as those under the Prevention of Corruption Act, 1988, are registered to continue on the panel of auditors. The learned A.G.P. draws attention to the clause 9(c) of the Government Resolution dated 12.02.2013 and contends that the action taken vide impugned order is strictly in accordance with the said clause.

11. However, Clause 9(c) of the Government Resolution dated 12.02.2013, will be attracted only in cases where offence under the Prevention of Corruption Act, is registered against an auditor pursuant to a trap case. It is undisputed that, although the FIR is registered against the petitioner, the case is not a trap case where the petitioner was found accepting money from the informant or any other persons in connection with audit of the society in question.

12. As regards the proviso to Section 81 (5B) of the Act of 1960, the said provision states that if an auditor does not lodge FIR against the persons who are found guilty of any offence relating to the accounts of society and other offences after the conclusion of the audit then such auditor will be liable for disqualification and his name will also be liable to be removed from the panel of the auditors. The third proviso states that failure to file special audit report will be treated as negligence on the part of the auditor and in that contingency also the auditor shall be liable for action of disqualification. Perusal of the impugned order will demonstrate that the deletion of name is not taken for the reasons specified in the said provision.

13. Similarly, perusal of Rule 69(1)(g) of the MCS Rules of 1961, will also demonstrate that registration of an offence against an auditor is not a reason by itself to order deletion of name of the auditor from the panel of auditors.

14. The impugned order does not make out any case either Section 81 of the MCS Act of 1960 or Rule 69(1)(g) of the MCS Rules of 1961 or even the Government Resolution dated 12.02.2013 for deletion of name of the petitioner from the panel of the auditors.

15. Having regard to the reasons aforesaid, in the considered opinion of this Court, the impugned order dated 09.11.2023 is clearly unsustainable and cannot withstand the scrutiny of law. Accordingly, I pass the following order:

i) The writ petition is **allowed**.

ii) The impugned order dated 09.11.2023, passed by the Commissioner of Co-operative and Registrar of Co-operative Societies, Government of Maharashtra, Pune, is hereby quashed and set aside.

iii) The respondent authority is directed to include the name of the petitioner in the panel of auditors, if there is no other impediment.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate