



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

Writ Petition No. 8365 of 2023

Shri Sunil S/o Chatrapal Kedar,
Aged 61 years, Occupation : Social work,
R/o Patansaongi, Tq. Saoner,
District Nagpur.

... Petitioner

- Versus -

(1) State of Maharashtra,
through its Divisional Joint Registrar
Co-operative Societies, Nagpur,
Tahsil & District Nagpur.

(2) The Nagpur District Central Co-operative
Bank Ltd. Nagpur, through its
Administrator, Near Gandhi Sagar Lake,
Mahal, Nagpur,
Tahsil & District Nagpur.

... Respondents

Mr. A. M. Ghare, Advocate for the petitioner
Mr. Anand Deshpande, GP for the State/respondent no. 1
Mr. M. B. Agasti, Advocate for respondent no. 2

CORAM : ANIL L. PANSARE, J.

Date : 29-02-2024

JUDGMENT

Rule. Rule made returnable forthwith.

2. The challenge is to the orders dated 29-30/09/2023,
13-10-2023 and 1-12-2023 passed by the authorized officer in the

enquiry under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act of 1960') conducted by the respondent no. 2 – bank.

3. The petitioner is Ex-Chairman of the respondent no. 2 – bank and is facing charge of mismanagement. The minutes of meeting/ order dated 29-30/09/2023 indicate that in order to give fair opportunity to explain the facts and circumstances relating to transaction under dispute, the authorized officer has summoned the petitioner to give evidence along with all necessary documents in his possession to assist the authorized officer to arrive at a just decision. This order has been passed by noting the fact that the petitioner has made a statement that he does not want to give oral evidence. Pursis to that effect under the signature of petitioner has been filed.

4. Thereafter vide order dated 13-10-2023, the petitioner was directed to file his affidavit explaining the facts and circumstances relating to transaction as disclosed in charge-sheet dated 27-3-2003.

5. On 1-12-2013, the petitioner filed application for adjournment which came to be granted by imposing costs of Rupees Five Lakhs.

6. The moot question is whether the authorized officer can compel the petitioner to lead oral evidence. The answer is certainly in the negative for the following reasons.

7. The argument of learned Government Pleader that to give fair opportunity, the petitioner has been called upon to lead evidence is to my mind beyond the scope of expression “granting fair opportunity”. To grant fair opportunity of hearing, which includes opportunity to lead evidence, will not within its ambit include compelling a person to give evidence, particularly when he has opted to not enter a witness box.

8. The authorized officer under Section 89 of the Act of 1960 is empowered to compel the production of document or material object but cannot compel a person to give evidence. The authorized officer under the said provision has power to summon and examine a person. Summoning a person for examination is one thing and compelling him is another. The person summoned may, for some reason, not be willing to give the evidence. In such circumstances, the authorized officer will be at liberty to draw adverse inference against him, as permissible under the law.

9. The coordinate Bench of this Court in the case of ***Pirgonda Hongonda Vs. Vishwanath Ganesh and ors. [AIR 1956 Bom 251]*** has

held that normally, a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness box it would be open to the Court to draw an inference against him. The Court further held that if the party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by the issue of a witness summons.

10. The party to the proceedings under Section 88 of the Act of 1960, in my view, cannot be compelled to give evidence under the garb of granting him fair opportunity to explain the facts and circumstances. The opportunity on the point of leading evidence having been already availed by the petitioner by stating that he does not want to give any oral evidence.

11. Learned Government Pleader contends that not only the petitioner was summoned to give oral evidence but has been called upon to produce necessary documents in his possession. If that be so, the authorized officer will have to specify the documents to be produced in terms of Section 89 of the Act of 1960 which he is at liberty to do even now. What has been ordered is to produce all necessary documents in his (petitioner's) possession. Such is not the purport of Section 89 of the Act of 1960. It provides that authorized officer can compel production of documents. To compel production, the officer will

have to identify the document and secondly, there must be reason that those documents are in his possession. Such is not the case here.

12. Learned Government Pleader has relied upon the judgment of coordinate Bench of this Court in the case of ***Arun Dattatraya Narake Vs. Authorized Officer, Kolhapur District Central Co-op. Bank Ltd. and ors. [2015(4) Mh.L.J. 740]*** to submit that this Court has directed State of Maharashtra to issue appropriate guidelines for conducting proceedings under Section 88 of the Act of 1960. He has invited my attention to the Circular dated 19-9-2018. It is stated in the Circular that the Registrar or authorized officer shall, after getting the closing pursis of evidence from the society, give fair opportunity to all the delinquents, persons or officers one by one serially to lead their oral evidence by way of affidavits and documentary evidence in support of their oral evidence and give a fair opportunity to the society to cross-examine the said delinquents one by one. Thus, what has been contemplated is to give fair opportunity to all the delinquents to lead oral evidence. This opportunity has been granted to the petitioner. He has declined to enter the witness box. I will reiterate here that to grant fair opportunity and to compel the delinquent to lead evidence are two different things.

13. Learned counsel Mr. Ghare is right in contending that under the garb of granting fair opportunity, the authorized officer could not have compelled the petitioner to give evidence.

14. The orders dated 29th and 30th September, 2023 compelling the petitioner to lead evidence are, therefore, unsustainable. So far as the order dated 1-12-2023 is concerned, Mr. Ghare, learned counsel for the petitioner has made a request to reduce the costs by assuring that the petitioner shall, without genuine cause, not seek adjournment. Considering the assurance given, it will be appropriate to reduce the costs to Rs. 50,000/-. Resultantly, following order is passed.

ORDER

- (i) The orders dated 29th and 30th September, 2023 passed by the Authorized Officer are quashed and set aside.
- (ii) The costs of Rs. 5,00,000/- imposed vide order dated 1-12-2023 is reduced to Rs. 50,000/-.
- (iii) Rule is made absolute in above terms.

(Anil L. Pansare, J.)