IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7504 OF 2020

Babasaheb Shrimantrao Deshmukh
VERSUS
The Divisional Joint Registrar and others

Mr. V. D. Salunke, Advocate for Petitioner
Mr. D. J. Choudhari, Advocate for Respondent No. 2
Mr. S. K. Shirse, AGP for Respondent Nos. 1 and 3/State

CORAM : R. M. JOSHI, J.
DATE : 05 August, 2025

PER COURT :-

1. This Petition takes exception to the order dated 19.12.2019 passed by Divisional Joint Registrar Co-operative Societies, Latur and order dated 14.10.2020 passed by the Hon’ble Minister for Co-operation and Textile Department, Mantralaya, Mumbai rejecting the appeal filed before the Minister.

2. The facts which led to the filing of this petition can be narrated in brief as under :

Petitioner worked as a Manager from 2011 onwards. He was holding additional charge of the Chief Executive Officer (for short “CEO”) of DCC Bank, Beed in the year 2016. Said election was for a period of 5 years.

On 28.06.2017, GR was issued by the State Government promulgating Chatrapati Shivaji Maharaj Shetkari Sanman Yojana-2017 (herein called as “Scheme” for the sake of brevity) extending monetary benefits to the agriculturist. Corrigendum was also issued on 05.07.2020 and 20.07.2017. The respondent-bank was called upon to implement the said scheme. In connection with this GR, Writ Petitions were filed before this Court being Writ Petition No. 11383/2015 and Writ Petition No. 35961/2016 wherein some directions were came to be issued in respect of the recovery of dues and payment of money to the depositors. It is claimed by the petitioner that the bank had followed the said directions issued by this Court. It is further claimed by the petitioner that the bank has received the amount under the scheme, and since no individual was member of the bank, loan is given and repaid only through VKSS Societies. It is thus claimed that amount received under Scheme is forwarded to the said societies to pay the same to the agriculturist. It is also claimed that there is no grievance made by any agriculturist in this regard.

3. It is further case of the Petitioner that Respondent No. 1 – Divisional Joint Registrar of the Co-operative Society issued show-cause notice dated 15.11.2018, 31.12.2018 and 18.01.2019 under Section 79 (1) of the Maharashtra Co-operative Societies Act, 1960 (for short “the Act”) and the petitioner was called upon to explain as to why the action under Section 79(3)

of the Act should not be taken against him. Petitioner claims to have replied the said show cause notice with supporting documentary evidence. It is alleged by the petitioners that owing to the political rivalry/equations, the Divisional Joint Registrar without considering the reply passed by order dated 19.12.2019 and removed petitioner from the post of Chief Executive Officer (for Short “CEO”). It was further directed that the Management to dismiss the CEO of the Bank and appeal came to be filed against the said order before the Hon’ble Minister. The appeal before the Minister was heard and Minister dismissed the said appeal by order dated 14.10.2020. Hence, this petition.

4. Learned counsel for petitioner submits that perusal of the show-cause notices indicate that the notices are issued under Section 79(1) of the Act. It is his contention that Section 79(2) provides for the procedure to be adopted before passing order under Section 79(3) of the Act. By referring to the said provisions, it is submitted that Section 79(3) contemplates passing of order of imposing penalties does not empower the Authority to remove any person from the post or to qualify him. It is his submission by referring to the said show-cause notice that petitioner was not called upon to show-cause as to why he should not be removed from the post of CEO of the Respondent-Bank. Thus, it is his contention that the said notice was never under Section 79(A) of the Act but was always under Section 79(1). It is his further submission that

Section 78 read with Section 64(2) of the Act requires consultation with the federal society before removal of any employee or the CEO including Chairman. By relying upon the judgment of Hon'ble Supreme Court in case of ***Union of India Vs Sankalghand Himatlal Sheth 1977 AIR(SC) 2328,*** it is argued that whenever a consultation is contemplated that would not be a formality but the consultation should be meaningful. It is his submission that even accepting the fact that the copies of show-cause notice were marked to the Federal society, it cannot be said that there was consultation as contemplated by Section 79(A) of the Act. To support his submissions he placed reliance on following judgments :-

i) Suresh Dnyandeo Khumkar & others Vs. State of Maharashtra & others 1987 (3) Bom. C.R. 211

ii) Ravindra V. Gaikwadand others Vs. State of Maharashtra and others 2002 (5) Mh.L.J. 464

iii) S. P. Gupta Vs. President of India and others AIR 1982 SC 149

5. Learned counsel for Respondents-Bank supported the impugned order. It is his contention that merely because wrong provision is recorded in the show-cause notice, it does not become so. According to him the action has been initiated under Section 79(A) of the Act and in view of the amendment and with introduction of Second proviso to Section 79(A), there is deemed

permission of Federal society if the proposal is not responded within a period of 45 days. It is his submission by referring to the notices issued to the petitioner that the copies of the said notice were duly marked to the Federal society and in absence of any response from the society, there is deemed sanction of the Federal society to the action of removal of the petitioner.

6. Learned AGP has placed reliance on the judgment of Hon'ble Supreme Court in case of ***N. Mani Vs. Sangeetha Theatre and others (2004) 12 SCC 278*** to contend that if an Authority has power in the law merely because while exercising the said power, a source of power is not specifically referred or a reservations made to a wrong provisions of law that by itself does not vitiate the exercises of the power.

7. There cannot be any dispute made with regard to the proposition sought to be canvassed by the learned counsel for respondents that the wrong quotation of the provision of law by itself would not make such show-cause notice under different provision of law. However such intention of authority must be disclosed from bare reading of contents of the show-cause notice. Perusal of show-cause notice clearly shows that the show-cause notice is not only issued under Section 79(1) but it also contemplates that the action would be initiated under Section 79(3) of the Act. Even, otherwise the said show-

cause notice does not contemplate the removal of the petitioner from the post held by him. This Court, therefore, finds no reason to accept the contention of learned counsel for the respondents that it was mere a mistake on the part of Authority to issue notice by mentioning Section 79(1) instead of Section 79(A). Having regard to the nature of show-cause notice, it cannot be held that the notice intended was under Section 79(A) but wrongly/inadvertently mentioned under Section 79(1) of the Act. Needless to say that in the exercise of powers under Section 79(1) to 79(3), Registrar cannot take action of removal of the CEO or an employee.

8. Assuming that the notice was issued under Section 79(A) of the Act, it needs to be seen as to whether there is compliance of the said provisions in order to sustain impugned orders. At this stage, it would be relevant to take note of the provisions of Section 79(A) which reads thus :-

> ***79A. [Government's power] to give directions in the public interest, etc.***
>
> *(1) If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied] that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the*

depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under subsection (1),and in modifying or cancelling such directions may impose such conditions as it may deem fit.

(3) Where the Registrar is satisfied that any person was responsible for complying with any directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed without any good reason or justification, to comply with the directions, the Registrar may by order--

(a) if the person is a member of the committee of the society, declare him to be disqualified to be or to continue to be a member of the committee of any society, for a period of six years from the date of the order;

(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, declare them disqualified as provided in clause (a) above :

***Provided** that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society is affiliated.*

***Provided further** that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the*

Registrar shall be at liberty to proceed further to take action accordingly.

Any order made by the Registrar under this section shall be final.

9. Section 79A(3) of the Act mandates recording of satisfaction by Registrar of any person being responsible for complying directions, under Section 79A (1) and (2) has failed in its compliance without good/justified reasons. Here in this case, the petitioner has tendered explanation to the show-cause notice. The Registrar therefore, ought to have recorded its satisfaction that petitioner has not complied with directions without justification. It is thereafter the second stage would come in play. The Registrar thereafter shall form an opinion of disqualification of a member/CEO and removal of employee. It is at this stage also such person to be disqualified gets opportunity of being heard. Similarly, it mandates consultation with Federal society before actual removal.

10. Thus, this provision clearly requires Registrar to hear the concerned member/CEO/employee on the point of his removal from the post/employment. It would therefore, be obligation on the part of Registrar to issue notice to such person indicating his intention to take such action. Since, the consequence of such order is drastic in nature, the rule must be complied

with strictly.

11. In the instant case, at no point of time, petitioner was heard on the point of removal from the post of CEO or as Chairman of the society. Thus, there is non compliance of the provision, which is mandatory in nature. Even otherwise, unless notice is issued under Section 79(3) of the Act disclosing intention to take action under Section 79(3)(A) or (B) of the Act, it would not be open for Registrar to claim subsequently that notice was issued under Section 79(A) of the Act, by issuing notice under Section 79(1) of the Act, as both powers are to be exercised in two different situations.

12. Suffice it to say that since no show-cause notice has been issued to petitioner for this removal and as no opportunity of hearing was rendered to him, the order of removal cannot sustain.

13. Now coming to the issue of the consulation with the Federal society and its implication is concerned, record indicates that the show-cause notice forwarded to the Federal society does not indicate action of removal of petitioner being contemplated therein. Even if it is accepted that in view of Second proviso on expiry of 45 days of communication by Registrar of its opinion to remove CEO/employee, if Federal society fails to communicate its opinion, then it shall be presumed that Federal Society has no objection to take

action under this Section, but question is that whether such presumption would apply in this case. There is no need to emphasize that the consultation with Federal society is not an empty formality. The provision clearly shows that Registrar is required to communicate his opinion of removal of the CEO/employee under Section 79(A)(3)(a) or (b) of the Act and it is only when such opinion is communicated, question of application of deeming provision would arise.

14. It would be fruitful to take note of the Constitution Bench of the Hon’ble Supreme Court in case of Union of India Vs. Sakalghand Himatlal Sheth (cited supra) wherein the Hon’ble Supreme Court has held as to the amendment of consultation. Paragraph No. 29 of the said judgment is reproduced herein below :-

> *“the word ‘consult’ implies a conference of two or; more persons or, an impact, of two or more minds in respect of a topic in order to enable them to evolve a correct or at-least a satisfactory solution” and added “In order that the two minds may be able to confer and produce a mutual impact, It is essential that each must have for its consideration full and identical facts which can at once constitute both the source and foundation of the final decision”. Krishna Iyer, J. speaking on behalf of himself and Fazal Ali, J. also pointed out that “all the materials in the possession of one who consults must be unreservedly placed before the consultee and further a reasonable opportunity for getting information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him,” and “the consultant in turn must take the matter*

> *seriously since the subject is of grave importance." The learned Judge proceeded to add: "Therefore, it follows that the President must communicate to the Chief Justice all the material he has and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the adminstration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system."*

15. It is thus clear from the above observations that the word "consult" implies a conference of two or more persons and an impact of two or more minds in respect of topic in order to enable them to evolve correct solution. Thus, what was required for such consultation is that one party communicates all material he has during the course he proposes an action and intern. The consultee is also expected to collect necessary information and to deleberate upon the opinion expressed by the consultor. In the instant case, the facts on record indicates that no such requirement of real consultancy has been undertaken.

16. Division Bench of this Court in case of Suresh Khumkar (cited supra) while dealing with the provisions of the Act has held that when the Registrar had sent only a copy of show-cause notice and no other relevant material to the Federation so that it could form its opinion and sent it to the

Registrar within reasonable time. There would be no effective consultation and hence, the order passed was set aside.

17. In the present case too, except for sending the copy of show-cause notice that too not under the provisions of Section 79(A) but under the provisions of Section 79(1) of the Act, no other material is forwarded to Federal society. As contemplated to proviso of Sub-section 3 of Section 79(A), opinion of the Registrar was not also communicated to the Federation in order to respond to the same with application of mind. Thus, the second proviso to Sub-section 3 thereof would not apply to the present case. Consequently, the act of sending of the copy of the show-cause notice to the Federal society cannot be termed as a compliance as contemplated by proviso to Section 79(A)(3).

18. The entire record more than sufficiently demonstrates that the action taken against the petitioner even if is accepted to have been taken under Section 79(A), for want of mandatory compliance of Section 79(3), the order impugned passed by Divisional Joint Registrar is not tenable. The Hon'ble Registrar has failed to take into consideration the relevant provisions and erred in dismissing the appeal.

19. Now question arises as to what relief the petitioner is entitled. It is

admitted fact that the petitioner was terminated on 31.12.2019 and was to superannuate in September, 2021. Learned counsel for petitioner, on instructions, make statement that petitioner does not claim any backwages however he is entitled for the retiral benefits. Since, the order of termination itself is not maintainable, the same is set aside. It is held that the petitioner would be entitled to receive retiral benefits as if he was not terminated from service but without any backwages.

20. Petition therefore, stands allowed in above terms.

21. Pending Civil Application, if any, stands disposed of.

(R. M. JOSHI, J.)

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