IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2946 OF 2025

Kulswami Co-Operative Credit Society Ltd.
Address: F-3, First Floor, Central Facility Building APMC Fruit Market, Sector- 19, Vashi, New Mumbai, through its Chief Executive Officer, Shri Chandrakant Dhondu Chavan …Petitioner

Versus

1. State of Maharashtra
through Principal Secretary, Co-operation, Marketing and Textile Department, Mantralaya, Mumbai.

2. The Commissioner of Co-operation & Deputy Registrar (Credit Society), Co-operative Society, Maharashtra State, Pune.

3. Shri Pratap Patil (Inquiry Officer) Deputy Registrar, Co-operative Society, Vashi- 2.

4. Shri Bhagwan Tukaram Botre, (Special Auditor Class – 2), Co-operative Society, Thane.

5. Mr. Narayan N. Shinde
Age: 67 years, Occ: Business Shree Dattakurpa Niwas, Plot No. 134, Flat No. 1:1, Sector 12, Vashi, Mumbai

6. Mr. Bhivraj B. Shinde
Age : Adult, Occ: Fruit Merchant,

APMC Fruit Market Shop No. F/159, Sector 19, Vashi, Navi Mumbai – 400705.

7. Mr. Balakrishna V. Shinde,
Age: Adult, Occ: Fruit Merchant, APMC Fruit Market, Shop No. F/167, Sector 19, Vashi, Navi Mumbai- 400705.

8. Shri. Satish B. Doke
Age: 66 years, Occ: Business, Om Dwarkanath CHS, A- 403, Plot No. 11, Sector 19a, Nerul (e) Navi Mumbai – 400704.

9. Mr. Ashok K. Chavan Age: 65 years, Occ: Retired, Mauli CHS, Plot No. 29C, B-107, Sector – 4, Opp. Jimmy Tower, near NMSA Vashi, Navi Mumbai – 400703. …Respondents

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Mr. Uday B. Nighot a/w Sulajja Patil, for the Petitioner.
Mr. N. C. Walimbe, Addl.G.P a/w Ms Ashwini A. Purav, for Respondents Nos. 1 and 2.
Mr. Mohan Kumhbar (through V.C.) i/b Mr. Somnath Thengal for, for the Respondents Nos. 5 to 9.

CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.

RESERVED ON: 11th SEPTEMBER 2025.
PRONOUNCED ON: 25th SEPTEMBER 2025.

Judgment : (Per Manjusha Deshpande, J.) :-

1. The Petitioner- "*Shri Kulswami Co-operative Credit Society Ltd.*" is assailing the order dated 25th May 2022 passed by

Respondent No. 2, under Section 81(3)(c) of the Maharashtra Co-operative Societies Act, 1960 (for short "MCS Act") and the Rules made thereunder, appointing Respondent No. 4 as a 'Test Auditor', on the basis of the letter dated 11th April 2022, addressed by the "Bachav Committee" constituted by Respondent Nos. 5 to 9. The Petitioner is therefore invoking the powers of this Court vested in it, under Article 227 of the Constitution of India.

2. The brief facts leading to the passing of the impugned order are that, the Petitioner is a Co-operative Society registered on 7th March 1984, under the provisions of MCS Act. A new Managing Committee is formed in the year 2015, by replacing the Committee lead by Respondent No.5. Seven persons who are the ex-office bearers and ex-employees, addressed a communication to Respondent No. 2, and in furtherance thereto, an enquiry to inspect working of the Society under Section 89(A)(1) of the MCS Act was directed by order dated 8th September 2020. Upon receiving the enquiry report dated 27th May 2021, the Petitioner-Society removed the defects and also submitted a compliance report dated 1st October 2021. Respondent No.2 directed to hold enquiry into constitution working and financial condition of the Society under Section 83 of the MCS Act, vide order dated 18th January 2022. Simultaneously, a Show Cause Notice under Section 73(c)(a) of the MCS Act, was also issued to the members of the Petitioner-Society on 30th December 2021. The Petitioner-Society therefore filed a Revision Application challenging the order dated 18th January 2022 and Show Cause Notice dated 30th December 2021, before the Hon'ble Minister of Respondent No. 1. Initially, the Hon'ble Minister granted stay and eventually the Revision

Application No. 42 of 2022 was allowed vide order dated 3rd March 2023.

3. The Respondent Nos. 5 to 9, who have constituted "*Shri Kulswami Co-operative Credit Society Ltd. Bachao committee*", addressed a communication to Respondent No.2, alleging maladministration by the members of the existing committee, claiming that as a result of mismanagement by the committee, the future of the Petitioner-Society is in danger. They requested that 'Test Audit', for the period 1st April 2015 to 31st March 2021, on 17 points set out by them is required to be conducted. Respondent no.2, vide order dated 19th May 2022 in exercise of powers under Section 79 (2) of the MCS Act, directed the Petitioner-Society to remove the defects found in the report.

4. After issuance of the order dated 19th May 2022 issued under Section 79(2) of the MCS Act, immediately within a period of six days, i.e. on 25th May 2022, Respondent No.2 passed an order under Section 81(3)(c) of the MCS Act, directing the 'Test Audit' of the Petitioner for a period from 1st April 2015 to 31st March 2021, in response to the complaint by the "Bachav Committee" dated 11th April 2022. Being aggrieved by the orders dated 19th May 2022 and 25th May 2022, the Petitioner-Society filed Revision Application under Section 154 of the MCS Act, bearing No. 292 of 2022, before the Hon'ble Minister of Respondent No.1. The Hon'ble Minister granted stay to the said order passed by the Respondent No.2 vide order dated 22nd June 2022. Eventually Revision application filed by the Petitioner-Society was allowed vide order dated 3rd March 2023.

5. The order dated 3rd March 2023 passed by the Hon'ble Minister was subjected to challenge by Respondent Nos. 5 to 9 in Writ Petition No.6847 of 2023, before this Court. After hearing the parties, this Court has set aside the order passed by the Hon'ble Minister on the ground that, the Revision was not maintainable, directed the parties to take recourse to appropriate proceedings. This Court was of the view that the order passed under Section 81(3)(c) cannot be termed as an 'order' for entertaining Revision under Section 154 of the MCS Act, as such, the Revision was not maintainable. Even the order passed under Section 79(2) being Appealable, a writ petition was not maintainable. In view of the order passed by this Court on 10th February 2025, the Petitioner-Society has approached this Court challenging the order dated 25th May 2022 passed by Respondent No.2 under Section 81(3)(c)of the MCS Act, directing to conduct Test Audit of the Petitioner-Society.

6. Mr. Nighot, learned counsel appearing for the Petitioner submits, that the impugned order has been passed by Respondent No. 2, without affording any opportunity of being heard to the Petitioner-Society and without adhering to the principles of natural justice. Respondent No. 2 has passed the impugned order totally oblivious of the fact that the points in the inspection report, under Section 89(A) of the MCS Act in the order dated 19th May 2022, giving directions under Section 79(2) of the MCS Act and in the order dated 25th May 2022 directing to conduct 'Test Audit' under Section 81(3)(c) of the MCS Act are virtually the same.

7. Respondent No. 2, after passing an order dated 19th May 2022 giving directions under Section 79(2) of the MCS Act, has immediately passed an order within six days under Section 81(3)(c) of the MCS Act for conducting Test Audit of the Petitioner-Society. The order under Section 79(2) of the MCS Act was passed directing the Petitioner Society to remove the defects/deficiencies in the rectification report, and immediately, without granting sufficient time to the Petitioner to comply with directions under Section 79(2) of the MCS Act, the order has been passed under Section 81(3)(c) of the MCS Act, on the complaint made by Respondent Nos. 5 to 9, on the same grounds on which an order under Section 79(2) of the MCS Act has been passed. It is submitted that, on such background, the order passed by Respondent No. 2 becomes unsustainable.

8. It is further submitted that, in fact, even an order under Section 79(2) of the MCS Act, giving directions to remove the defects and file rectification report was uncalled for, in view of the rectification report submitted by the Petitioner-Society on 1st October 2021. More so, in view of the fact that when the rectification report dated 13th October 2021 has been filed by the Petitioner, the Inspecting Officer has made a nominal remark of "accept" or "reject" independently. Therefore, in view of the filing of rectification report, without verifying the truthfulness in the allegations made, and by attaching undue importance to the letter dated 11th April 2022, of the 'Bachav Committee' an order under Section 81(3)(c) of the MCS Act, has been passed, which is unwarranted.

9. The impugned communication dated 25th May 2022, which was subjected to Revision has been revived, as a result of setting aside of the order in Revision by this Court vide order dated 10th February 2023. During the intervening period, Respondent Nos. 5 to 9 have continued to make complaints against the Petitioner-Society. In response to one such complaint filed by Respondent Nos. 5 to 9 dated 19th October 2023, the Deputy Registrar has refused to conduct the Test Audit of the Petitioner-Society for the period 2021- 2022 and 2022-2023 which is informed vide communication dated 19th July 2024.

10. The long and short of the submission of the Petitioner is that; (i) the principles of natural justice have not been followed before passing the impugned order. The principles of natural justice ought to have been followed by Respondent No. 2 by granting an opportunity of hearing to the Petitioner and (ii) the order passed by Respondent No. 2 is not supported by any reason whatsoever, recording subjective satisfaction; hence, on both the grounds, the impugned order deserves to be quashed and set aside.

11. Mr. N. C. Walimbe, learned Addl.G.P. has resisted the prayers in the Writ Petition. While opposing the Petition reliance is placed on the affidavit filed on behalf of Respondent No. 2 through District Special Auditor, Class – I, Co-operative Societies, Thane. It is submitted that the order dated 25th May 2022 is passed by Respondent No. 2 on the basis of the complaint filed by the 'Bachav Committee' of Respondent Nos. 5 to 9 dated 11th April 2022. The complaint filed by the 'Bachav Committee' highlighted the irregularities in the financial management and audit reports of the Petitioner-Society. On receiving the complaint, the audit reports of the Petitioner-Society for the relevant period were scrutinized by the District Special Auditor, Class – I, Co-operative Societies, Thane. On examination of the records, the District Special Auditor submitted his report on 24th April 2022, recommending conducting of 'Test Audit' of the Petitioner, to ascertain the veracity and correctness of the financial accounts of the Petitioner-Society. Based on the recommendation of the District Special Auditor, Respondent No. 2 issued the order dated 25th May 2022, in exercise of his powers under Section 81(3)(c) of the MCS Act.

12. The learned Addl.G.P. has drawn our attention to paragraph 5 of the affidavit, which reads thus:

> *"5. I further state that, upon representations made by the Petitioner Society and the Bachav Committee, Respondent No.2 sought clarifications and explanations from the Society vide letters dated 05.01.2024 and 08.05.2024 for the period 2021-22 and 2022-23 i.e. different period. After due deliberation and consideration of the submissions made, the Registrar of Co-operative Societies accepted the explanations offered by the Petitioner Society for the subsequent audit periods and informed the Bachav Committee, vide letter dated 19.07.2024, that a test audit for the financial years 2021-22 and 2022-23 was not required."*

13. The learned Addl.G.P. therefore conceded to the position that Respondent No. 2 had sought clarification and explanation from the Petitioner-Society for the period 2021-2022 and 2022-2023, which is for a different period and does not pertain to the financial year 2015 to 2021 which is under challenge. However, according to him, the issue of Test Audit for the period from 2015 to 2021 is well within the statutory ambit of Section 81(3)(c) of the MCS Act. It empowers Respondent No. 2 to direct Test Audit, if the accounts of a particular Co-operative Society brought to his notice, does not disclose, a true and correct picture of its accounts.

14. It is also submitted that the Additional Registrar of the Co-operative Societies has been delegated with powers to issue such orders by the Government, vide communication dated 24th November 2021. He further submits that, though it was found that for the subsequent period the Test Audit was not necessary, however, so far as the period mentioned in the impugned order is concerned, it was found that it was necessary to conduct the 'Test Audit', hence the communication dated 25th May 2022 directing to conduct the 'Test Audit' for the period 2015 to 2021, is passed by Respondent No. 2 which does not deserve any interference.

15. We have heard the respective counsel and, we have perused the contents of the Writ Petition with the assistance of the parties. The impugned communication is issued by Respondent No. 2 in exercise of its powers under Section 81(3)(c) of the MCS Act, 1960 and the MCS Rules, 1961. Respondent Nos. 5 to 9, who are the ex-members and ex-employees of the Petitioner-Society have filed complaint raising 1 to 17 points, alleging malfunctioning and mismanagement in the affairs of the Petitioner-Society, with a prayer to conduct Test Audit of the Petitioner-Society. The allegations are primarily with respect to the mismanagement and irregularities in the accounts of the Petitioner-Society. It is alleged that due to the unaccounted expenses, huge loss is caused to the Petitioner-Society. The impugned communication also refers to the inspection report of the statutory audit of the Petitioner-Society for the period 2020-2021, prepared by the District Special Auditor, Class- I, Co-operative Society, Thane. In his inspection report he has recommended that there are certain objections and deficiencies in the audit report of the Petitioner-Society, due to which, it is necessary to conduct 'Test Audit' of the Petitioner. The objections are primarily regarding the financial irregularities found in the management of accounts of the Petitioner, which are highlighted in his report. On the basis of the report of the District Special Auditor, Class-I, and the complaint made by the 'Bachav Committee' of Respondent Nos. 5 to 9, the impugned communication directing 'Test Audit' of the Petitioner-Society on the issues/points mentioned in Annexure- A is directed to be conducted by the Special Auditor, Class-II, Co-operative Society (Consumer), within one month from the date of order.

16. Upon perusal of the impugned communication, the first thing that strikes us is that, the Test Audit of the Petitioner-Society is directed merely on the basis of the complaint made by Respondent Nos. 5 to 9, without there being any verification about the correctness or substance in the allegations made by the Respondent Nos. 5 to 9- 'Bachav Committee'. Respondent No. 2 could have passed such order only after verification about the truthfulness in the allegations of the Respondents. Without there being any inspection or verification into the veracity of the allegations made by Respondent Nos. 5 to 9, the impugned communication has been issued by Respondent No. 2. Even the inspection report submitted by the Special Auditor, Class-I, dated 25^{th} April 2022, refers to the inspection of the statutory Audit only for the year 2020-2021 conducted by him. He has not made any inspection of the statutory audit pertaining to the year 2015 to 2019. Therefore *prima facie* the order does not reflect that there was any material produced before Respondent No. 2 to record his satisfaction, that there is necessity of conducting Test Audit of the Petitioner- Society for the period 2015 to 2019. In absence of any material, as well as recording of satisfaction regarding necessity to conduct Test Audit for the said period, Respondent No. 2, has observed that he finds it necessary to conduct the Test Audit of the Petitioner-Society for a period 1st April 2015 to 31st March 2021.

17. According to us, the impugned order is not only unreasoned but also passed without recording subjective satisfaction in an arbitrary and capricious manner. The impugned order reflects non-application of mind and casual approach of Respondent No. 2.

18. Section 81(3)(c) of the MCS Act, 1960 reads thus:

> *"**81(3)(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 authorised 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."*

19. On perusal of Section 81(3)(c) it is evident that, when it is brought to the notice of the Registrar of the Co-operative Societies that the audit report submitted by the Auditor does not disclose the true and correct picture of the accounts, the Registrar is empowered to conduct a Test Audit of accounts of such Society. What Section 81(3)(c) contemplates is the recording of reasons for the necessity to conduct the 'Test Audit', before exercise of powers under Section 81(3)(c) of the MCS Act.

20. On perusal of the impugned order it appears that, only on a demand made by Respondent Nos. 5 to 9 on the issues/points raised by them in respect of functioning of the Petitioner-Society, the order has been passed. Respondent Nos. 5 to 9 have not in any manner whatsoever demonstrated that the audit report of the Petitioner- Society does not reflect the true and correct picture of its accounts.

21. Though the District Special Auditor, Class-I has submitted inspection report, it pertains only to the year 2020-2021, without considering it that Respondent No. 2 has passed an order directing Test Audit for the period from 2015 to 2021. Without there being any evidence in support of allegations that, the statutory audit report does not disclose the true and correct picture of the accounts, solely on the basis of complaint by Respondent Nos. 5 to 9, the order has been passed by Respondent No. 2 in a mechanical manner.

22. During the course of hearing the learned Addl.G.P. has placed on record a communication dated 3rd September 2025 addressed to him by the Additional Registrar, Co-operative Societies, State of Maharashtra, Pune. The communication is addressed to him in response to his communication, after the hearing in this Court on 12th August 2025, calling upon him to explain whether the necessary conditions for issuing the order under Section 81(3)(c) of the MCS Act had been complied with before passing the impugned order. In response to the queries raised by this Court, the Additional Registrar has informed the Addl.G.P., that in view of the order dated 10th February 2025 passed by this Court, the order passed under Section 81(3)(c) of the MCS Act has been confirmed, therefore, on the assumption that such order passed under Section 81(3)(c) of the MCS Act has been confirmed, the only change made in the earlier order was appointing one Shri Ganesh Shreepadrao Kshirsagar for conducting the Test Audit instead of Shri Bhagwan Botre.

23. The Second query as to whether the inspection of the audit report of the period 2015 to 2020 has been conducted, it is categorically informed that while passing the order dated 25th May 2022, the inspection of the 'statutory audit' only for the year 2020-2021 has been conducted, however, from the record it appears that, the inspection of the statutory audit for the period 2015 to 2020 has not been conducted.

24. The aforementioned communication confirms the fact that without there being any inspection of the audit report for the period from 2015 to 2020, a Test Audit of the same has been directed, which is not in consonance with Section 81(3)(c) of the MCS Act. Section 81 of the MCS Act provides for a complete mechanism with regard to Audit. So far as the 'Test Audit' is concerned, only upon identifying defects in the statutory audit directions can be issued for conducting Test Audit. Though powers are given to the Registrar under Section 81(3)(c) of the MCS Act, however such powers are to be exercised in a judicious manner only on satisfaction of the conditions as contemplated under the said sub-section, i.e. true and correct facts are not disclosed in the statutory audit of the Society. When there is no inspection of the statutory Audits of the said period, the question of recording of satisfaction does not arise.

25. In the present case, merely relying on the complaint of 'Bachav Committee' of Respondent Nos. 5 to 9 and the inspection report of the statutory audit for the period 2020-2021 recording objections and deficiencies, the District Special Auditor Class- I has recommended Test Audit of the Petitioner-Society. The impugned order is passed without there being any material on record for subjective satisfaction and without recording any reasons, becomes unsustainable and requires interference by this Court.

26. This being a Writ Petition filed under Article 227 of the Constitution of India, though we are aware about the limited scope for interference, however, upon perusal of the impugned order we have not hesitation to hold that, the order impugned is *ex-facie* arbitrary and untenable, having passed without recording any reasons in exercise of power under Section 81(3)(c) of the MCS Act. As a result, the order dated 25th May 2022 passed by Respondent No. 2 under Section 81(3)(c) of the MCS Act, directing to conduct the Test Audit of the Petitioner-Society, is hereby quashed and set aside.

27. The Writ Petition stands disposed of in the above terms.

(MANJUSHA DESHPANDE, J.) **(SUMAN SHYAM, J.)**

Rushikesh