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

Writ Petition No.3549/2020

The Gajanan Nagari Sahkari Pat Sanstha Limited, Akola
Reg. No.347, through its Chief Executive Officer,
Nandkishor Narayan Aware, aged about 51 years,
Occ. Service, Office situated at Moti Market, Dabki road,
Old City, Akola, Tq. and Dist. Akola. .... Petitioner.

Versus

1. The Divisional Joint Registrar, Co-operative Society, Amravati.

2. The District Deputy Registrar, Co-operative Society, Akola. .... Respondents

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Mr. S.A. Mohta, Advocate for petitioner.
Mr. H.D. Futane, AGP for respondents.

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**CORAM : R.M. Joshi, J.**
**DATE : 10-06-2025.**

## ORAL JUDGMENT

By consent of both the sides, heard finally at the stage of admission.

ii. The facts as appeared from the record indicate that the petitioner is a cooperative society duly registered under the provisions of the Maharashtra Cooperative Societies Act, 1961 (for short 'Societies Act'). The claim of the petitioner society is that as per the provisions of Section 81 of the Act, statutory audit is conducted from the year 2015 till 2019, through an Auditor duly appointed in the panel formed by the District Deputy

Registrar. Audit reports for these years were submitted to the Authorities under the Act. According to the petitioner, show cause notice came to be issued to the petitioner on 17-06-2019, seeking explanation with regard to the audit conducted for the year 2017-18. The annexure to the said show cause notice indicated the points on which explanation is sought from the petitioner-cooperative society. It is case of the petitioner that the impugned order came to be passed by the District Deputy Registrar, Cooperative Societies, Akola on 23-12-2019, whereby re-audit is directed for the years 2015-16, 2016-17, 2017-18 and 2018-19. This petition takes exception to this order essentially on the ground that the order has been passed without issuing any show cause notice to the petitioner or affording an opportunity of hearing to the petitioner.

iii. Learned Counsel for the petitioner has drawn attention of the Court to the show cause notice dated 17-06-2019 which according to him does not refer to the competency of the auditor to audit the accounts of the petitioner society. It is his submission that in absence of any show cause notice being issued to the petitioner society, it was not open for the District Deputy Registrar to pass impugned order directing re-audit. It is his contention that had such show cause notice been issued to the petitioner, the petitioner would have been in a position to justify/explain the competency/validity of the appointment of the auditor which has been done from the panel of Auditor maintained under the Act.

iv. Learned AGP has supported the impugned order on the ground that no show cause notice is contemplated under the provisions of Section 81(6) of the Societies Act for re-audit of the society. It is his submission that show cause notice was already issued to the petitioner on 17-06-2019 and since during the course of hearing of the said show cause notice, it was revealed about the audit being conducted by the auditor not competent to conduct the audit of the petitioner society, order impugned came to be passed. According to him, since the expenses of re-audit are to be borne by the Department, no prejudice will cause to the petitioner if re-audit of the accounts is done, pursuant to impugned order.

v. In order to appreciate the rival contentions it would be necessary to take note of relevant provision of Societies Act.

Chapter VIII deals with Audit of Co-operative Societies. Section 81 determines all aspects regarding audit of Co-operative Societies. It provides for mechanism for appointment of auditors approved by State Government. It further provides for the manner to which audit must be conducted and the steps to be taken in respect of various matters reflected from audit of accounts including lodging of First Information Report about offence committed by any person relating to accounts.

Sub-Section (6) of Section 81 empowers Registrar to cause re-audit of the accounts of any society on requisition of Reserve Bank of India or on application by Society or otherwise. The re-audit can be directed only if it is necessary or expedient. Without disputing power of Registrar to direct re-audit, it is necessary to state that the order of re-audit can be passed only if it is necessary or expedient and that such order cannot be passed in routine manner. Thus, in case of direction of re-audit there must exist circumstances which necessitates re-audit of accounts. In the instant case, Audits of petitioner society are conducted for years 2015-16, 2016-17, 2017-18 and 2018-19. The show cause notice indicates that explanation was sought in respect of audit of year 2017-18, that too, on other grounds and not on competency of Auditor. Thus, if it was opinion of Registrar that the Auditor who had conducted audit for these years was not competent/qualified to conduct audit of petitioner society, it was necessary to call upon petitioner to explain the same. Merely because expenses of re-audit are borne by Department, it would not make order impugned justified.

vi. It is incomprehensible that *suo motu* order is passed without giving an opportunity of hearing to the society to show that re-audit is necessary for particular reason. In the instant case, a show cause notice was issued on 17-06-2019, wherein discrepancies allegedly found in the audit report of the year 2017-18 were highlighted and society was asked to explain the same. The society has duly replied to the said show cause notice on 18-07-2019. A perusal of show-cause notice and reply clearly indicates that the issue of competency of the auditor the society was never called upon to meet with such contention. It is for the first time while passing the impugned order dated 23-12-2019, the Deputy District Registrar holds that the audit conducted for the petitioner society for the years from 2015 to 2019 is not done by the competent auditor. Having done so, the petitioner society has been denied an opportunity of hearing and to justify the appointment/competency of the auditor. On this sole ground the order impugned cannot sustain and deserves to be set aside. In view of the above, the petition succeeds. The impugned order is set aside.

vii. It is however clarified that setting aside of impugned order will not preclude the concerned authorities under the Act to take appropriate action in accordance with the law.

(**R.M. Joshi, J.**)