(2010) 10 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 1206 of 1997

Maharashtra Certified Auditors Association (Regd.) and Shri. Dinesh A. Prabhu	APPELLANT
Vs	
The State of Maharashtra, The Commissioner for Cooperation and Registrar of Cooperative Societies, The Officer on Special Duty, Audit Board (ADF) and The Dairy Development Commissioner	RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:
Maharashtra Co-operative Societies Act, 1960 — Section 81, 81(1)

Citation : (2011) 1 BomCR 145

Hon'ble Judges : U.D. Salvi, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : R.P. Sabban, for the Appellant; C.R. Sonawane, AGP for Respondent Nos. 1 to 4, for the Respondent

Judgement

B.H. Marlapalle, J.—Both these petitions have a common challenge namely the validity of the circular dated 11th November 1996 issued by the Government of Maharashtra through the Department of Cooperation and Textiles in exercise of the powers conferred by Section 81(1)(a) of the Maharashtra Cooperative Societies Act, 1960 (`the Act'' for short). The first petition has been filed by the Association of Certified Auditors and Chartered Accountants, whereas the second petition has been filed by the Credit Cooperative Societies of the employees from two different companies viz. Kirloskan Oil Engines Private Limited and M/s. Sudarshan Chemicals Limited.

2. Section 81(1) of the Act reads as under:

81. Audit. (1) (a) The Registrar shall audit, or cause to be audited, at least once in each cooperative year, by a person authorised by him by general or special order in writing in this behalf the accounts of every society which has been given financial assistance including guarantee by the State Government or Government

undertakings, from time to time, and the accounts of the apex societies, State and District Level Federal Societies, District Central Cooperative Banks, Cooperative Sugar Factories Urban Cooperative Banks, Cooperative Spinning Mills, District and Taluka Cooperative Sale and Purchase Organizations, and any such Society or class of Societies which the State Government may, from time to time, by notification in the Official Gazette, specify.

Provided that, the audit of the District Central Cooperative Bank and the State Cooperative Bank shall be conducted by a Chartered Accountant approved by the National Bank;

(b) The societies other than the societies referred to in Clause (a) shall arrange to get their accounts audited, at least once in each cooperative year by an auditor from the panel of auditors maintained by the Registrar, or by a chartered accountant holding a certificate in cooperative audit issued by the institute of Chartered Accountants of India:

Provided that, the Registrar may, for reasons to be recorded in writing, audit or cause to be audited accounts of any such societies of any year and at any time.

Provided further that, the primary agricultural credit co operative society shall arrange to get their accounts audited at least once in each cooperative year by an auditor from the panel of auditors maintained by the Registrar; or by a Chartered Accountant holding a certificate in cooperative audit issued by the Institute of Chartered Accountants of India. The District Central Cooperative Bank and the State Cooperative Bank shall arrange to get their accounts audited at least once in each co operative year through a Chartered Accountant from the panel of auditors approved by the National Bank.

3. The State Government claims to have invoked its powers u/s 81(1)(a) of the Act and issued the impugned circular. Mr. Sabban, the Learned Counsel for the petitioners submitted that the circular has been issued to give a goby to the order of this Court passed in Writ Petition No. 4900 of 1995 on 1st February 1996. Section 81(1) has two parts and the first part in Clause (a) deals with the Cooperative Societies which receives financial assistance including guarantee from the State Government and the second part in terms of Clause (b) consists of those societies other than the societies covered in Clause (a). As per Mr. Sabban, if the impugned circular is allowed to hold the field, Clause (b) becomes redundant and the scheme of Section 81(1) of the Act could not be amended by issuing a circular. Legislative powers cannot be exercised by issuing administrative circulars, which proposition cannot be disputed.

4. The State Government has not filed any reply to oppose these petitions. In Writ Petition No. 4900 of 1995, this Court in paragraph3 observed as under:

3. As far as Cooperative societies, which received financial assistance, are concerned, audit is governed by section 81(1)(a) of the Maharashtra Cooperative societies Act, whereas the audit in respect of non aided societies are governed by

Section 81(1)(b) of the Act. Section 81(1)(a) authorizes the Registrar to audit or cause to be audited by a person authorized by him. As far as the societies which do not receive assistance are concerned, they are governed by Section 81(1)(b) which permits such societies to arrange to get their accounts audited by an Auditor of their choice as long as the auditor is one amongst the panel of auditors maintained by the Registrar, or by a Chartered Accountant holding a certificate in Cooperative audit issued by the Institute of Chartered Accountants of India. Proviso to Section 81 of the Act, however, authorises the Registrar for reasons to be recorded in writing, to audit or cause to be audited accounts of any such non aided societies. Orders, which are impugned in the petition, are purported to have been issued u/s 81(1)(b) but the same are not supported by reasons as required under the aforesaid proviso.

5. We have given our anxious considerations to the rival submissions made before us and the petitions could be disposed off by a simple clarification, so as to uphold the circular issued u/s 81((1)(a) of the Act. It is also pertinent to note that the operation of the said circular was not stayed by this Court during the pendency of these petitions.

As noted earlier and observed by this Court, the Societies covered by Clause (a) of Section 81(1) are the Societies which are receiving financial assistance including guarantee from the State Government, whereas the Societies covered by Clause (b) are the Societies which are not receiving financial assistance including guarantee from the State Government. The State Government can expand the classes of Societies covered by Clause (a) of Section 81(1) of the Act, provided such added class of the Societies are in receipt of financial assistance including guarantee by the State Government. The impugned circular cannot be made applicable to the class of Societies which are covered by Clause (b) of Section 81(1) of the Act i.e. the Societies which are not aided by the State Government.

6. Hence, we hold that the impugned circular is applicable only to the Societies mentioned therein and which fall under Clause (a) of Section 81(1) of the Act and the said circular is not applicable to the Societies which are covered by Clause (b) i.e. nonaided Cooperative Societies of any category.

7. Rule is made absolute in terms of above clarification, but without any order as to costs.