(2021) 10 BOM CK 0149

In the Bombay High Court

Case No : Writ Petition No.6697 Of 2021

Mumbai District Central Co-op. Bank Ltd — APPELLANT

Vs

Commissioner And Registrar, Co-Op And Others — RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Co-Operative Societies Act, 1960 — Section 81, 81(3)(c), 81(5B), 82, 83, 83(1), 83(2), 83(3), 83(4), 83(5), 87,87(1), 87(2), 87(4), 89A, 146, 147, 148

Citation : (2021) 10 BOM CK 0149

Hon'ble Judges : G. S. Kulkarni, J

Bench : Single Bench

Advocate : Vineet Naik, N.N. Bhadrashete, Priyanka Bhadrashete, S. U. Kamdar, P. P. Kakade, S.H. Kankal

Final Decision : Dismissed

Judgement

G. S. Kulkarni, J

1. This is a petition filed under Article 226 of the Constitution of India wherein the petitioner has assailed an order dated 1 September 2021 issued by respondent no.2/Divisional Joint Registrar, Co-operative Societies, Mumbai Division, calling upon the petitioner to submit a rectification report within fifteen days from the said communication in regard to a Test Audit Report dated 10 August 2021 submitted by the auditor appointed as per the provisions of Section 81(3)(c) of the Maharashtra Co-operative Societies Act,1960 (for short 'the Act'). The petitioner is also aggrieved by a subsequent order dated 22 September 2021 also passed by the Divisional Joint Registrar ordering an inquiry exercising powers under Section 83 of the Act by appointing an inquiry officer, for an inquiry to be conducted on ten points as set out in Appendix A to the said order. The petitioner has also prayed for directions to the Divisional Joint Registrar to grant a reasonable period of three months under Section 82 of the Act to submit its explanation in respect of observations, defects, irregularities referred to in the

test audit report for the period 2015-2020 and for an opportunity to make submission with reference to such observations, defects, irregularities, and to submit a rectification report with reference to that regard.

2. The factual antecedents are required to be noted:

The petitioner is a co-operative society which was registered under the Act on 6 August 1974. It is engaged in the business of banking. The petitioner has contended that in the past the affairs, accounts and transactions of the petitioner have been audited by the statutory auditors appointed under Section 81 of the Act and the defects, if any, pointed out in such audits have been explained by filing rectification reports. It addition, NABARD had also regularly carried out inspection of the affairs of the petitioner. It is contended by the petitioner that the Divisional Joint Registrar had ordered an inspection of the petitioner under Section 89A of the Act and had appointed an Inspecting Officer, however, a copy of such inspection report was not made available to the petitioner.

3. The petitioner has contended that by an order dated 16 February 2021, the Divisional Joint Registrar invoking powers under Section 81(3)(c) of the Act appointed Mr.Nilesh B.Naik as a Special Auditor to carry out a Test Audit of the accounts of the petitioner. The Special Auditor carried out a Test Audit of the accounts of the petitioner for the period 2015-2016 to 2019-2020. A Test Audit report dated 10 August 2021 was also served on the petitioner.

4. After furnishing of a copy of the Test Audit Report to the petitioner, the Divisional Joint Registrar by the impugned order dated 1 September 2021 issued to the petitioner, called upon the petitioner to submit a rectification report within a period of fifteen days, on the deficiencies as pointed out in the Test Audit Report. This letter of the Divisional Joint Registrar was received by the petitioner on 3 September 2021, however, it appears that almost for about seventeen days the petitioner did not respond to the said letter, as for the first time the petitioner on 20 September 2021, addressed a letter to the Divisional Joint Registrar, requesting for time to be granted to the petitioner upto 31 December 2021 to submit a rectification report.

5. The Divisional Joint Registrar thereafter passed an order dated 22 September 2021 initiating an enquiry against the petitioner under Section 83 of the Act on the basis of the Test Audit Report and a Special report of the Auditor dated 20 August 2021 by appointing Mr.Pratap Patil, Deputy Registrar, Co-operative Societies, as an enquiry Officer. This order directs that the affairs of the petitioner and the loss which has been caused to the petitioner be inquired into by the enquiry officer and the report be submitted within three months from the date of such order. The order also records that serious issues have been noted in the Test Audit Report dated 10 August 2021 and considering such Test Audit Report and Report of the Special Auditor, it was thought appropriate that an inquiry be initiated in the financial affairs of the petitioner on ten issues which are set out in 'Appendix A' as annexed to the said order. On the aforesaid

backdrop, the petitioner is before the Court in the present proceedings assailing the communications dated 1 September 2021 and the order dated 22 September 2021, both issued by the Divisional Joint Registrar. This writ petition was filed on 24 September 2021.

6. On behalf of the respondents, a reply affidavit has been filed by Mr.Prashant Bhaurao Satpute, Deputy Registrar C.S., 'A' Ward, Mumbai, interalia raising a preliminary objection to the maintainability of the writ petition on the ground that the petitioner has an alternate remedy to file a revision application. It is contended that the impugned order has already been implemented as an enquiry has already commenced. It is contended that the enquiry is required to be completed within a specified time and by the present Writ Petition the petitioner is trying to deliberately prolong the enquiry. It is stated that the enquiry is a fact finding enquiry and recommendatory in nature and no harm or prejudice would be caused to the petitioner if the enquiry is continued under the said Act. It is next contended that the Registrar is always within his power to direct an inquiry to be conducted under Section 83 of the Act and more particularly, in the present case when there is a strong basis namely of Special Report submitted by the Special Auditor. It is contended that although the statutory audit has already been carried out by the petitioner from time to time, however, as per Section 89A of the Act a power has been conferred to inspect the working of the petitioner bank. Accordingly, the inspection was carried out and a report dated 3 December 2020 and a revised report dated 14 January 2021 were submitted to the Commissioner for Co-operation. It is stated that after examining such report, it was noted that there were serious irregularities in the functioning of the petitioner. It is contended that the condition of the bank was also examined for the financial year 2018-2019 by the NABARD and after perusal of the NABARD's report, issues of concern had come forward which are set out in seriatim (in vernacular) in paragraph 5 of the affidavit. It is contended that in view of such serious irregularities, it was found just and proper that an enquiry be initiated under Section 83 of the Act and an enquiry officer was accordingly appointed on the basis of the Special Report submitted by the Special Officer. It is further stated that as per the order dated 16 February 2021 the Test Audit was also conducted which is not disputed by the petitioner. The Special Auditor has prepared his report dated 10 August 2021 which was submitted to the Divisional Joint Registrar as also a special report dated 20 August 2021 was submitted making remarks that a detail inquiry is required to be conducted. A copy of the Special Report dated 20 August 2021 is annexed to the reply affidavit. It is stated that the impugned orders have been issued as per the provisions of the Act. It is next contended that the Test Audit Report is distinct from the statutory audit and hence, the benefit of Section 82 of the Act is not available to the petitioner after the Special Report is submitted by the Special Auditor. It is contended that there is no provision in the Act to provide for hearing by the Special Auditor at the time of submitting the Special Report, hence, the challenge in the petition is pre- mature and cannot be considered at the stage of the

enquiry under Section 83 of the Act. The respondents have denied the petitioner's allegation of violation of the principles of natural justice. It is contended that at the time of passing an order of appointment of an enquiry officer, there is no provision which would require an opportunity of hearing to be granted to the petitioner. It is further stated that the power exercised by the Divisional Joint Registrar to order an enquiry under Section 83 has been exercised in his administrative capacity, therefore, no hearing is required to be granted to the petitioner at the stage of ordering an enquiry. The respondents, thus, pray that the petition be dismissed.

7. Mr.Vineet Naik, learned Senior Counsel appearing for the petitioner has made extensive submissions which are primarily on the scheme of Chapter VIII and more particularly, the provisions of Section 81 which provides for an audit, Section 82 which provides for rectification of defects in the accounts and Section 83 which pertains to an inquiry by the Registrar. He has also drawn my attention to the provisions of Section 87 which provides that the Registrar would to bring the defects disclosed in inquiry or inspection to the notice of the society. The effect and consequences of these provisions in its applicability to the facts of the present case, would be adverted little later when the submission of Mr.Naik in that regard are being examined.

8. Mr.Naik has submitted that for the period prior to 2015-2020 a regular audit of the accounts of the petitioner had taken place and there was no cause of any concern for the petitioner. Mr.Naik submits that a Test Audit Report was ordered by the Divisional Joint Registrar vide order dated 16 February 2021 which was on the basis of the inspection undertaken under Section 89-A of the Act as also the report of the NABARD on ten irregularities as noted in the order dated 16 February 2021 passed by the Divisional Joint Registrar, appointing the Special Auditor. It is his submission that the Special Audit Report dated 10 August 2021 necessarily would be subject to the provisions of Section 82 which provides for an opportunity to the society to rectify the defects in the accounts. It is submitted that, in fact, by the impugned order dated 1 September 2021 such opportunity of rectification was made available to the petitioner, however, the objection of the petitioner is that the time of 15 days as prescribed in the said order to submit the rectification report was contrary to Section 82, which provides for a period of three months for rectification of such defects. It is therefore, his submission that the impugned communication dated 1 September 2021 prescribing the period of fifteen days for the rectification of the defects is in the teeth of the provisions of Section 82 of the Act, and hence, deserves to be set aside by ordering appropriate compliance of Section 82 of the Act in the present facts.

9. The next submission of Mr.Naik is on the impugned order passed by the Divisional Joint Registrar ordering an enquiry under Section 83 of the Act. Firstly, the submission is that in ordering such an inquiry, the Divisional Joint Registrar has referred to a Special Report dated 20 August 2021 of the Special Auditor

which has come to the knowledge of the petitioner for the first time being referred to in the reference paragraph of the said order dated 22 September 2021. It is submitted that such an action to initiate an enquiry is rendered illegal on two counts, firstly; that it was premature to order such inquiry, inasmuch as no opportunity was granted to the petitioner of any rectification of the defects in the accounts as Section 82 would provide. It is his submission that in any event the provisions of Section 83 under which the Registrar may order an inquiry on the basis of a Special Report under the third proviso to sub-section (5-B) of Section 81, cannot be invoked unless there is compliance of Section 82, namely of an opportunity of rectification of the defects as prescribed by the said provision. Hence, the submission is that for invoking Section 83, a prior compliance of Section 82 would be a sine qua non in the legislative scheme the provision stands under Chapter VIII of the Act.

10. Mr.Naik has also referred to the provisions of Section 87 which, according to him, also casts an obligation on the Registrar to bring defects disclosed in inquiry or inspection to the notice of the society and to call upon the society to rectify the defects. It is hence his submission that the invocation of an inquiry by the Divisional Joint Registrar under Section 83 of the Act, apart from not being justified, is an arbitrary and an illegal action.

11. In regard to the respondents' contention as raised in the reply that there is an alternate remedy as available to the petitioner to file a revision application, it is submitted that the remedy is certainly not an efficacious alternate remedy. In support of his such submission, Mr.Naik has referred to paragraph 21 of the petition which refers to a newspaper report dated 24 September 2021 which records that the Hon'ble Minister for Co-operation who is the revisional authority has justified the order passed by the Divisional Joint Registrar ordering an inquiry. Hence, the remedy of revision according to Mr.Naik, is certainly not an adequate remedy.

12. Mr.Naik has thus submitted that the impugned order dated 22 September 2021 passed against the petitioner under Section 83 is in violation of the principles of natural justice which are inherently recognized under the provisions of Section 82 and hence, the reliefs as prayed for in the petition ought to be granted.

13. On the other hand, Mr.Kamdar, learned Senior Counsel appearing for the petitioner in supporting the impugned order has made extensive submissions arguing on the legal effect as created by the provisions of Section 81(3)(c) read with sub-section (5-B), and Section 83 of the Act, to submit that these provisions are imperative when the co-operative bank like the petitioner is concerned. It is his submission that Section 83 is an independent provision. His submission is that for applicability and operation of Section 83 there is no relevance of Section 82. Mr.Kamdar would submit that in any event no prejudice whatsoever would be caused to the petitioner, if an inquiry is ordered under Section 83 as under the provisions of Section 87 an opportunity would be available to the petitioners, if

any, defects are pointed out in such enquiry. It is his submission that there was sufficient material not only reflected in the order dated 16 February 2021 passed by the Divisional Joint Registrar under Section 81(3)(c) of the Act but also from the report of the NABARD as referred therein and the Test Audit Report prepared by the Special Auditor. It is submitted that the argument of the petitioner to read Section 82 in the context of the applicability of Section 83 is completely misconceived and if such an interpretation is accepted, Section 83 would be rendered ineffective, when it is necessary for an enquiry to be undertaken by the Registrar in the circumstances as provided by Section 83. It is his submission that Sections 81, 82 and 83 in the legislative scheme as they stand, are required to be read in such a way that the provisions are rendered effective in the circumstances the legislature intends that the object of these provisions to be fulfilled. It is his submission that the petitioner would have a complete opportunity of participating in the enquiry and it is not that the petitioner becomes remediless, once an enquiry is completed. Mr.Kamdar would thus submit that the writ petition is misconceived and ought to be dismissed.

Reasons and Conclusion

14. At the outset dealing with the objection of Mr.Kamdar on maintainability of this petition on the ground that there is an alternate remedy available to the petitioner, I am not inclined to accept his contention in the facts and circumstances of the present case and more particularly, in view of the averments as made in paragraph 21 of the petition to which I have adverted above. Mr.Kamdar's objection is accordingly rejected.

15. Having heard the learned Senior Advocates for the parties and having perused the record and the impugned orders the following questions would arise for consideration of this Court:-

(I) Whether the impugned order notice dated 1 September 2021 granting 15 days time to the petitioner to submit rectification of defects, is violative of the provisions of Section 82 of the Act ?

(II) As to whether for an enquiry to be ordered under Section 83 of the Act interalia on the basis of the Special Report submitted by the Special Auditor under the third proviso to sub-section (5-B) of Section 81, an opportunity of rectification of defects as provided under Section 82, would be condition precedent ?

16. To answer these issues, it would be necessary to note the relevant provisions as discussed above. The relevant provisions being Section 81(3) (c) [Clause substituted by amendment Act 16 of 2013 dt.13-8-2013, (w.e.f. 14-2-2013)] read with sub-section (5-B) [as inserted by the Amendment Act 10 of 1988, S.43(e)] alongwith the proviso and Section 82 of the Act to begin with. Section 81 and 82 read thus:

"81. Audit.-

(1) (a) The Registrar shall audit, or cause to be audited, at least once in each co-operative 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 Co-operative Banks, Co-operative Sugar factories, Urban Co-operative Banks, Co-operative Spinning Mills, District and Taluka Co-operative 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.

(b) The societies other than the societies referred to in clause (a) shall arrange to get their accounts audited, at least once in each co-operative year by an auditor from the panel of auditors maintained by the Registrar, or by a chartered accountant holding a certificate in co-operative 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.

(2) The audit under sub-section (1) shall include examination or verification of the following items, namely (i) over dues of debts, if any;

(ii) cash balance and securities and a valuation of the assets and liabilities of the society

(iii) whether loan and advances and debts made by the society on the basis of security have been properly secured and the terms on which such loans and advances are made or debts are incurred are not pre-judicial to the interest of the society and its members;

(iv) whether transactions of the society which are presented merely by book entries are not prejudicial to the interest of the society;

(v) whether loans and advances made by the society have been shown as deposits;

(vi) whether personal expenses have been charged to revenue account;

(vii) whether the society has incurred any expenditure in furtherance of its objects;

(viii) whether the society has properly utilised the financial assistance granted by government or Government undertakings or financial institutions, for the purpose for which such assistance was granted;

(ix) whether the society is properly carrying out its objects and obligations towards members (2A) Where, in the opinion of the State Government, it is necessary In the public interest to do so in relation to any society or class of societies for ensuring management thereof in accordance with sound business principles or prudent commercial practices, the State Government may, by order, direct that such society or class of societies shall prepare and maintain its accounts in the form determined by the State Government, from time to time and that cost audit or performance audit or both, of such society or class of societies, as may be specified in the order, shall be conducted. (2B) where any order is issued under sub-section (2A), the Registrar shall cause such audit of such society or class of societies to be conducted by a cost accountant who is a member of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959.

(3) (a) The Registrar or the person authorised shall, for the purpose of audit, at all times have access to all the books, accounts, documents papers, securities cash and other properties belonging to, or in the custody of, the society, and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof.

(b) The Registrar shall be competent to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be deemed to be an audit report for the purpose of taking further action, if necessary.

(c) The Registrar or the person authorised by him in this behalf may carry out or cause to be carried out the test audit of the accounts of any society. The test audit shall include the examination of such items as may be prescribed.

(4) Every person who is, or has at any time been, an officer or employee of the society, and every member and past member of the society, shall furnish such information in regard to the transactions and working of the society as the Registrar, or the person authorised by him, may require

(5) The auditor appointed under sub-section (1) shall have the right to receive all notices and ever communication relating to the annual general meeting of the society and to attend such meeting and to be heard thereat, in respect of any part of the business with which he is concerned as auditor.

(5A) If, during the course of audit of any society, the auditor is satisfied that some books of accounts or other documents contain any incriminatory evidence against past or present officer or employee of the society the auditor shall immediately report the matter to the Registrar and, with previous permission of the Registrar, may impound the books or documents and give a receipt thereof to the society.

(5B) The auditor shall submit an audit memorandum duly signed by him to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the financial transactions of the society.

Provided that, where the auditor has come to a conclusion in his audit report that any person is guilty of any offene relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report The Auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The auditor who fails to file First Information Report, shall be liable for disqualification and his name shall be liable to be removed from the panel of auditors and he shall also be liable to any other action as the Registrar may think fit;

Provided further that, when it is brought to the notice of the Registrar that, the Auditor has ailed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorised by him in that behalf.

Provided also that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar alongwith his audit report. Failure to file such Special Report, would amount to negligence in the duties of the auditor and he shall be liable for disqualification for appointment as an auditor or any other action, as the Registrar may think fit.

(6) If it appears to the Registrar, on an application by a society or otherwise, that it is necessary or expedient to re-audit any accounts of the society, the Registrar may by order provide for such re-audit and the provisions of this Act, applicable to audit of accounts of the society shall apply to such re-audit.

82. Rectification of defects in accounts.-

If the result of the audit held under the last preceding section discloses any defects in the working of a society the society shall within three months from the date of audit report, explain to the Registrar the defects, or the irregularities pointed out by the auditor, and take steps to rectify the defects and remedy irregularities and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. The Registrar may also make an order directing the society or its officers to take such action, as may be specified in the order to remedy the defects within the time specified therein.

If, the committee of a society fails to submit the audit rectification report to the Registrar and to the annual general body meeting, all the members of the committee shall be deemed to have committed an offence under section 146 and accordingly shall be liable for penalty as provided in section 147. Where the society concerned is a member of a federal society, such order of imposition of penalty shall be made after consulting the State federal society concerned:

Provided that, the Registrar or the person authorised by him shall scrutinise the audit rectification report accordingly and inform the society about such report within six months from the date of receipt thereof:

Provided further that, it shall be the responsibility of the auditor concerned to offer his remarks on the rectification report of the society, itemwise, till entire rectification is made by the soceity and submit his report to the Registrar:

Provided also 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 the proposed action and the Registrar shall be at liberty to proceed further to take action accordingly. "

(NOTE: For convenience the highlighted portion is referred as 'Part I' and the underlined portion as "Part II" of Section 82.)

17. The statutory scheme as contained in Chapter VIII of the Act provides for, 'Audit, Inquiry, Inspection and Supervision', within which the above provisions find their place, appears to be quite clear. Section 81 as noted above interalia provides for an 'Audit' to be caused of the accounts of the society at least once in each financial year by an auditor or an auditing firm, from the panel prepared by the Registrar and approved by the State Government from amongst whom such auditor would be appointed by the General body of the Society. It also provides for the consequences of failing to undertake an audit and filing of returns in which case the Registrar would cause the accounts to be audited. Section 81 provides for a complete mechanism in regard to the audit. However, what is relevant for the purposes of the present proceedings is the provisions of sub-section (3)(c) of Section 81 which stipulates that 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 the accounts of such society. It provides that the test audit shall include the examination of such items as may be prescribed and specified by the Registrar in such order. Clause (c) of sub-section (3) was incorporated by an amendment brought about by the Maharashtra Act 16 of 2013 with effect from 14 February 2013.

18. In the present case, the Divisional Joint Registrar invoking the powers conferred under sub-section (3)(c) of Section 81 of the Act passed an order dated 16 February 2021 appointing a Special Auditor Mr.Nilesh B.Naik to undertake a test audit and make a report. The said order also set out the ten issues which according to the Divisional Joint Registrar necessitated the 'Test Audit'. It is not in dispute that such an order of the Divisional Joint Registrar passed under sub-section (3)(c) of Section 81 of the Act was acted upon, culminating into a Test Audit Report dated 10 August 2021 prepared by the

Special Auditor of which a copy was furnished to the petitioner. Further, the petitioner was also called upon by the impugned order/notice dated 1 September 2021 to rectify the defects within 15 days of receipt of the said notice. The petitioner however by its letter dated 20 September 2021 addressed to the Divisional Joint Registrar, had sought a longer time upto 31 December 2021 to submit a rectification.

19. In any event, on a plain reading of Section 82, two facets of the provisions are evident. The provision can be split into two parts, first part creating an obligation on the society to rectify the defects pointed out in an audit and the second part speaking about the powers of the Registrar to order compliance. In regard to the first part of Section 82, it provides that if the result of the audit held under Section 81 discloses any defects in the working of the society, the society shall within three months from the date of the audit report, explain to the Registrar, the defects or the irregularities pointed out by the auditor and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. Thus, the first part of Section 82 is purely an obligation cast on the society to achieve compliances by rectifying the defects for which a period of three months is prescribed. Thus, the law itself makes available to the society a period of three months to rectify the defects, and report the same to the Registrar. In the present case the audit report dated 10 August 2021 was certainly made available to the petitioner. There is no dispute in this regard. However, it appears that the petitioner has so far not filed any rectification report, as the first part of Section 82 would mandate.

20. Be that as it may, the second part of Section 82 confers a power on the Registrar to make an order directing the society or its officer to take action as may be specified in such order, to remedy the defects within the time as may be specified in such order, and in the event the Committee of the society fails to submit an audit rectification report to the Registrar and at the Annual General body meeting, the provision ordains that all members of the Committee in that event shall be deemed to have committed an offence under Section 146 of the Act and render themselves liable for punishment as provided under Section 147. Thus in regard to the second part of Section 82 of the Act, for the Registrar to make an order to take action to remedy the defects, no specific period has been prescribed. Thus, the petitioner's contention that the period of three months ought to have been provided by the Registrar in the impugned notice dated 1 September 2021, cannot be accepted, as it would not be a requirement of Section 82, in so far as the Registrar exercising powers under Section 82 was concerned.

21. In any event, it cannot be overlooked that the Test Audit Report itself was dated 10 August 2021, considering such date of the Test Audit Report a straight period of three months namely upto 10 November 2021 is available to the petitioner by virtue of the first part of Section 82 to make rectification of the

defects. Hence, by the very operation of law, the period of three months is available to the petitioner, and so far as such period is concerned, no specific order was required to be passed by the Registrar. Thus, the petitioner's contention that the three months period was not made available to the petitioner as per the provisions of Section 82 of the Act is wholly unfounded when tested on the anvil of the clear reading of the first part of Section 82. In fact such argument of the petitioner goes contrary to the first part of Section 82.

22. In so far as the Second part of Section 82 is concerned, the powers conferred on the Registrar under the second part of Section 82 to make an order directing the Society to take action as may be specified in such order to remedy the defects, within the time the Registrar may specify, stands completely independent of the availability of three months as prescribed by the first part of Section 82. For these reasons, no fault can be found in law in the Divisional Joint Registrar issuing the impugned notice dated 1 September 2021 calling upon the petitioner to make such compliance within fifteen days, considering the circumstances and with due regard to the fact that petitioner is a bank and is accountable also to the public at large. Needless to observe that it is the petitioner's own case that by its letter dated 20 September 2021 the petitioner had asked for extension upto 20 December 2021 to make rectification of the defects as pointed out in the Test Audit Report. In the facts and circumstances of the case, it is for the Divisional Joint Registrar to consider such request and if so, permissible in law, to accept the request of the petitioner as made by it in its letter dated 20 September 2021.

23. Thus the impugned order/notice dated 1 September 2021 granting fifteen days time to the petitioner to submit rectification of defects, cannot be said to be violative of the provisions of Section 82 of the Act.

24. Now adverting to the second question as to whether for an inquiry to be ordered under Section 83 of the Act, an opportunity of rectification of defects as provided under Section 82 would be a condition precedent, the following discussion would aid the conclusion.

25. The petitioner's challenge to the order dated 22 September 2021 passed by the Divisional Joint Registrar ordering an enquiry under Section 83 of the Act on the ten issues which are set out in the appendix to the said order is concerned, it clearly appears that such an enquiry has been ordered on the basis of a Special Test Audit Report dated 10 August 2021 submitted by the Special Auditor, as also on the basis of a Special Report dated 20 August 2021 as submitted by the Special Auditor. It would be appropriate to extract the official translation of the said order, which reads thus:-

[Translation from the photo copy of the Order, typewritten in Marathi]

Exhibit - G

Divisional Joint Registrar,

Co-operative Societies, Mumbai Division, Mumbai.

Malhotra House, 6th Floor, Opp. GPO, Fort,

Mumbai- 400 001.

Telephone No. 022 22691094

email-ID - djr-mum@rediffmail.com

Outward No. D.J.R./Mumbai/

U.Bank/Sec.83/M.D.C.C.B./3733/2021

Date - 22/09/2021

Read :-

1) Section 83 of the Maharashtra Co-op. Societies Act, 1960.

2) This Office Order bearing outward No. D.J.R./ Mumbai/ ADMN./ Mumbai Bank/ Section 81(3), 81(3)C/Order/642/2021 dated 16/02/2021.

3) Test Audit Report dated 10/08/2021 in respect of the Mumbai District Central Co-operative Bank Ltd. submitted by the Special Auditor, Class - 1, Co-operative Societies (Consumer), North Mumbai.

4) Administrative Special Report bearing No. SA. Class-1/C.N.M/T.A./Mumbai Bank/165/year 2021 dated 20/08/2021 in respect of the Test Audit, submitted by Special Auditor, Class-1, Co-operative Societies (Consumer) North Mumbai.

WHEREAS, Mumbai District Central Co-operative Bank Ltd. Mumbai, Mumbai Bank Bhavan, Dr. D.N. Road, Fort, Mumbai- 400001 is a Co-operative Society registered under the Maharashtra Co-op. Societies Act and the same comes within the purview of this office, AND,

WHEREAS, pursuant to the order dated 16/02/2021, of this Office, the Special Auditor, Class - 1, Co-operative Societies (Consumer), North Mumbai, under the Report referred to hereinabove at Sr. No. 2 (? 3), has submitted the Test Audit Report in respect of the Mumbai District Central Co-operative Bank Ltd., Mumbai to this office and has mentioned many serious issues therein, AND,

WHEREAS, on the date 20/08/2021, the Special Auditor, Class-1, Co-operative Societies (Consumer), North Mumbai, has submitted Administrative Special Report in respect of administrative irregularities on the points mentioned in the aforesaid order, at the time of aforesaid Test-Audit.

WHEREAS, on perusing the said Test Audit Report as well as Administrative Special Report, I am of the view that it is necessary to carry out thorough enquiry in respect of the affairs and financial condition of the Bank.

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APPENDIX - A

This office order bearing outward No. D.J.R./ Mumbai / U.Bank / Sec. 83/ M.D.C.C.B./3733/2021 dated 22/09/2021.

Points in the Enquiry

1) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021 regarding the expenditure incurred by the Bank during last five years on the things viz. Up-dating the computer program, system maintenance expenditure, hardware purchases.

2) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the expenditure incurred during the period from the year 2015-2016 to 2019-2020 on the repairs and renovation of the immovable property / property on rental basis.

3) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the account of loan given by the Bank under Corporate Loan Policy and which is not recovered / outstanding.

4) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the account of loan given by the Bank to the Co-operative Housing Societies under Self-Sufficient Development Policy.

5) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the account of loan given by the Bank by violating the area of operation mentioned in the By-Laws as well as by violating the area of operation mentioned in the Licence issued by the Reserve Bank of India and which is not recovered / outstanding (Sugar factories and other societies).

6) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the gold mortgage loan account in the unproductive category as well as in respect of the irregularities during last 5 years.

7) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the matter of loans disbursed during the period from the year 2015-2016 to 2019-2020 to the Labourers' Co-operative Societies and which are outstanding as on the date 31/03/2020.

8) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the account of loan given to the Co-operative housing societies on the basis of bogus documents.

9) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the account of loan given to the members-co-operative societies, without fully recovering the amount of shares in the proportion mentioned in the By-laws of the Bank.

10) To carry out thorough enquiry in respect of the point mentioned in the Test Audit Report dated 10/08/2021, regarding the provision made / to be made by the Bank in respect of unproductive property as on the date 31/03/2020.

(Bajirao Shinde)

Divisional Joint Registrar,

Co-operative Societies,

Mumbai Division, Mumbai.

Place - Mumbai

Date - 22/09/2021

Therefore, I issue following order to carry out the enquiry of the affairs of the Mumbai District Central Co-operative Bank Ltd., Mumbai.

ORDER

I, Bajirao Shinde, Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, in exercise of the powers delegated to me under section 83 of the Maharashtra Co-operative Societies Act, 1960, by this Order, appoint Shri. Pratap Patil, District Deputy Registrar, Co-operative Societies, Mumbai - (2), Eastern Suburbs, as an Enquiry Officer to carry out enquiry in respect of the affairs of the Bank viz. Mumbai District Central Co-operative Bank Ltd., Mumbai, Mumbai Bank Bhavan, Dr. D. N. Road, Fort, Mumbai - 400 001, mentioned in the Test Audit Report and Administrative Special Report of the same and in respect of the points regarding the financial condition of the said Bank as mentioned in Appendix - A.

The Enquiry officer, after carrying out thorough enquiry in respect of the aforesaid affairs and the financial loss incurred by the Bank in the said transactions, should submit his self-explanatory report within three months.

(Bajirao Shinde)

Divisional Joint Registrar,

Co-operative Societies,

Mumbai Division, Mumbai.

Place - Mumbai

Date - 22/09/2021

Copy to : -

1) Shri. Pratap Patil, District Deputy Registrar, Co-operative Societies, Mumbai (2), Eastern Suburbs and Enquiry Officer, Mumbai District Central Co-operative Bank Ltd. Mumbai.

2) Chairman / Executive Director, Mumbai District Central Co-operative Bank Ltd., Mumbai, Mumbai Bank Bhavan, Dr. D. N. Road, Fort, Mumbai - 400001. Copy respectfully submitted for information to :-

The Co-operation Commissioner and Registrar, Co-operative Societies, Maharashtra State, Pune. Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai.

26. From a reading of the impugned order dated 22 September 2021 as extracted above, it clearly appears that the Divisional Joint Registrar has proceeded on the basis of irregularities as pointed out in the report dated 20 August 2021 of the Special Auditor namely the ten irregularities as pointed out in the Appendix to the said order which forms the very subject matter of the enquiry as ordered by the Divisional Joint Registrar, under Section 83. The question is whether a prior opportunity of rectification of the infirmities and defects as provided for under Section 82 of the Act, is a pre-condition for the Registrar to initiate an enquiry under Section 83 of the Act. To examine this contention, it would be necessary to note the provisions of Section 83 which reads thus:-

"83. Inquiry by Registrar

(1) The Registrar may of his own motion, and shall on the application of one third of the members of a society, himself or by a person duly authorized by him in writing, in this behalf, hold an inquiry into the constitution, working and financial conditions of a society.

(2) Before holding any such inquiry on an application the Registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine towards the cost of the inquiry. If the allegations made in the application are substantially proved at the enquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following, the procedure laid down in that section, direct from whom and to what extent the cost of the inquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.

(3) (a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the inquiry is in possession of information, of books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a), the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defense, punish the defaulter with a penalty not exceeding five hundred rupees. Any sum imposed as penalty under this section shall, on the application by the Registrar or the person authorised by him, to a Magistrate having jurisdiction, be recoverable by the Magistrate as if it were a fine imposed by him.

(4) The result of an enquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted, and to hold the inquiry himself or entrust it to any other person as he deems fit."

27. On a bare reading of Section 83(1) it is manifestly clear that the Registrar may suo motu, or, on the application of the one-fifth members of the society or on the basis of Special Report under the third proviso to sub-section (5B) of Section 81, himself or by a person duly authorized by him in writing, in this behalf, shall hold an inquiry into the constitution, working and financial conditions of the society. The provisions of sub-section (2) to sub-section (5) of Section 83 may not be relevant in the present context, as what has been invoked by the Divisional Joint Registrar is ordering an inquiry as per the powers conferred on him under sub-section (1) of Section 83. Sub-section (2) and (3) would pertain to the facets in the course of the inquiry. Whereas sub-section (4) provides that the result of any inquiry under this Section shall be communicated to the society, whose affairs were investigated. Sub-section (5) provides that it shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.

28. It is the petitioner's case that the Registrar before ordering an inquiry under Section 83 ought to have granted an opportunity to the petitioner of rectification of defects as provided for under Section 82. In other words, the submission is that an inquiry could not have been ordered by the Registrar under Section 83 unless a prior opportunity to rectify the defects as available under Section 82 is utilised by the society. In my opinion, such contention as urged on behalf of the petitioner cannot be accepted, on a plain and cumulative reading of Sections 82 and 83 of the Act. Section 82, as discussed above, is an independent provision, which as noted above in the first part deals with the rectification of the defects in the accounts, by providing an opportunity to the society to explain the defects and irregularities pointed out by the auditor and to take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken as also place the same before the general body of the society within three

months from the date of the audit report. Thus, it casts an obligation on the society to remove any such defects and bring about an accountability and orderliness in regard to the irregularities as pointed out by the audit report, which needs to be undertaken by the society within a period of three months. Apart from this, on the second part of the provision as noted above, it confers powers on the Registrar to make an order directing the society or its officers to take such action as may be specified in such order, to remedy the defects and within the time as may be specified by the Registrar. Such time may vary in the facts and circumstance of any such order, which may be fixed depending upon the exigency of the situation and the nature of the society, requiring the Registrar to use his discretion to make such an order. Significantly, the consequences of non compliance of such order are quite serious, as if despite such orders of the Registrar, an audit rectification report is not submitted by the Committee of the Society, to the Registrar and to the Annual General Body meeting, the members of the committee are deemed to have committed an offence under Section 146 of the Act and render themselves liable for a punishment as provided under Section 147 of the Act for such offence to be tried, by no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate First Class as provided by Section 148 of the Act. The second proviso to Section 82 stipulates that it shall be the responsibility of the auditor to offer his remarks on the rectification report of the society, itemwise, till entire rectification is made by the society and submit his report to the Registrar. Thus, in regard to the rectification of the defects, Section 82 lays down a complete mechanism, so as to achieve an object of accountability, transparency for the lawful conduct of the affairs of the society, by removal of the defects and deficiencies as pointed out in the audit report. There is an obligation that the society and the Registrar and the General Body of the members are kept aware about such defects and its rectification. It is hence clear that Section 82 is intended to achieve accountability by rectification and compliance of the defects and irregularities so as to generate confidence of the members of the society, as also the general public in a given case, on the committee of the society, managing its affairs as per the rules and regulations by maintaining the society's house in order, by rectifying the defects pointed out in the audit report. The first proviso below Section 82 confers power on the Registrar or a person authorized by him to scrutinise such audit rectification report and inform the society about such report within six months from the date of such receipt.

29. In contradistinction, Section 83 is a power conferred on the Registrar to hold an inquiry on the wider issues like constitution, working and financial conditions of the society, the basis of such inquiry can also be a special report under the third proviso to sub-section (5B) of Section 81. Section 83 nowhere makes it discernible, that it takes within its fold anything in regard to the rectification of defects in the account in a manner as provided by Section 82. Thus, the petitioner's contention that an opportunity of rectification as available under Section 82 needs to be a condition precedent for ordering an inquiry under

Section 83, is certainly a proposition alien to the plain consequence brought about by the provisions of Section 83. Such a proposition, if accepted, would amount to reading something into Section 83 which has not been provided for by the legislature and/or explicitly kept out. Moreover, the inclusion of the rigors of the third proviso to sub-section (5B) of Section 81 for the purposes of an enquiry to be ordered under Section 83, namely, of a Special Report being prepared by the auditor, if he finds interalia that there are apparent instances of financial irregularities resulting into losses to the society has been consciously included by the legislature within the purview of Section 83 as a vital aspect, for initiating an inquiry to be ordered by the Registrar. Hence, substantive powers are conferred on the Registrar to order an inquiry on the basis of such Special Report which stand fully independent and unconnected with anything in relation to the provisions of Section 82 or its implication. Section 83, thus operates independent of Section 82 as there is neither any inter-dependency between Section 82 and/ or it has any other bearing creating any fetter on the operation of Section 83 for the Registrar to exercise a power to order an enquiry. Thus, no fault can be found with the Divisional Joint Registrar to order an enquiry, when sufficient material was available, interalia, on the basis of a Special Report dated 20 August 2021 to order an inquiry under Section 83 against the petitioner. Hence, no illegality whatsoever in the Registrar ordering an inquiry in the present facts. The second question stands accordingly answered.

30. In so far as the petitioner's contention that also an opportunity is available to the petitioner under the provisions of Section 87 to comply with any difficulties in the audit report and for removal of such difficulties within sixty days as provided for in sub-section (2). In my opinion, the contention is pre-mature as sub-section (1) of Section 87 clearly provides that the Registrar would bring to the notice of the society, difficulties disclosed in any inquiry held under Section 83 and make an order against the society or its officers to take such action to remedy the difficulties which are revealed in the inquiry. Similarly, directions can be issued when such difficulties are noticed in the inspection under Section 84. The provision of sub-section (4) of Section 87 of the Act do not in any manner impede the powers of the Registrar to order an enquiry under Section 83.

31. Before parting, it also needs to be observed that no prejudice would be caused to the petitioner, if an inquiry is ordered under Section 83 more particularly when the nature of the business as conducted by the petitioner is banking business which involves trust and confidence of its depositors and which certainly would have cascading effect on the public at large. Even if such an inquiry is undertaken and on conclusion of an inquiry, there are defects which are pointed out, clearly Section 87 of the Act provides for an opportunity to the petitioner to comply with the deficiencies and/or defects which may be pointed out even in such inquiry. In these circumstances, the petitioner ought not to be concerned, when an inquiry has been ordered to bring about transparency and accountability in the affairs of the petitioner, more particularly, when financial irregularities and/ or substantial defects are alleged to be noted in the audit

report as also in the report of the Special Auditor.

32. As a sequel to the above discussion, no case has been made out by the petitioner for grant of any reliefs as prayed for. The petition is accordingly dismissed. No costs.

