
(2025) 10 BOM CK 1104
In the Bombay High Court
Case No : Writ Petition No. 6911 Of 2025

Ramdas Yashwant Mandlik

APPELLANT

Vs

B.Y. Pagare

RESPONDENT

Date of Decision : 17-10-2025

Acts Referred:

Maharashtra Cooperative Societies Act, 1960 — Section 2, 73, 81, 84, 88, 105, 152, 154

Citation : (2025) 10 BOM CK 1104

Hon'ble Judges : Aarti Sathe, J;G. S. Kulkarni, J

Bench : Division Bench

Advocate : N.N. Bhadrashete, Priyanka N. Bhadrashete, Ketan Joshi

Final Decision : Allowed

Judgement

G. S. Kulkarni, J

1. This Letters Patent Appeal is directed against the judgment and order dated 28 July, 2006 passed by the learned Single Judge whereby Writ Petition No. 6911 of 2004 filed by the appellant/petitioner came to be dismissed. The impugned order was rendered on a batch of writ petitions. The appellant's writ petition was one of such petitions. The Writ Petitions before the learned Single Judge impugned a common order dated 3 February 2003 passed by respondent no. 1-Authorized Officer and Assistant Registrar, Cooperative Societies under Section 88(1)1 of the Maharashtra Cooperative Societies Act, 1960 (for short "MCS Act) as confirmed by the appellate/revisonal authorities, whereby an individual liability was fixed on each of the writ petitioners, who (except the appellant) were elected directors of the managing committee of respondent no. 2-Society, directing them to pay an amount of Rs.21 lakhs each to respondent no.2-Society as damages/ losses suffered by respondent no.2 on account of their irregularities/ illegalities.

2. Briefly the facts are : Respondent no. 2-Hindustan Aeronautics Limited (Nashik

Division) Employees Credit Society (for short "Society") is a Cooperative Society registered under the provisions of the MCS Act. It was formed by the employees of Hindustan Aeronautics Ltd., Nashik, which is an undertaking of the Government of India. The writ petitioners were employees of Hindustan Aeronautics Ltd. At the relevant time, they were elected as the Managing Committee members. In all, there were 13 members of the Managing Committee and one expert director, namely, the appellant/petitioner (since deceased) who was co-opted by the Managing Committee, having the total strength of directors to 14. Allegedly, there were two groups in the Managing Committee.

3. The entire controversy for an action to be taken under the provisions of Section 88 of the MCS Act (supra), revolves around a circulation resolution of the managing committee dated 8 December, 2000 (for short the "said resolution") under the signature of the Vice-Chairman proposing to transfer "fixed deposits" maintained by Respondent No.2 with the State Bank of India, to Cooperative Banks, namely, The Nashik District Central Cooperative Bank, Nashik Merchants Cooperative Bank, Janlaxmi Cooperative Bank, Business Cooperative Bank and Jawahar Cooperative Urban Bank Ltd. Such proposal was moved mainly on the ground that as per the decision of the Supreme Court, the interest earned on the fixed deposits with the Nationalized Bank was taxable, whereas if such fixed deposit was maintained with a Cooperative Bank, the interest amounts were not taxable. Such resolution was signed by seven members of the Managing Committee representing one group whereas six Managing Committee members representing the other group did not sign the said resolution. Such resolution was also not a subject matter of confirmation or placed for discussion in the ensuing meeting of the managing committee held on 8 December, 2000. Accordingly, between the period 11 December 2000 to 4 April, 2001, an amount of Rs.2.20 crores was invested in a Cooperative Bank, namely, the 'Jawahar Cooperative Urban Bank Ltd.' at Hyderabad, in a fixed deposit, purportedly on the basis of the said resolution dated 8 December, 2000. Such deposit was revealed to be in violation of the circular issued by the Reserve Bank of India on 20 July, 2000 by which a moratorium was imposed against the Jawahar Cooperative Urban Bank Ltd. restraining it from accepting any fixed deposit. Also, the Reserve Bank of India (RBI) on 13 November, 2000 issued a show-cause notice to the said bank to show cause as to why its banking licence should not be cancelled. After conducting an inquiry, ultimately its banking licence was cancelled on 15 May, 2002 by the RBI. This was much after the amount of Rs.2.20 crores was received in a fixed deposit from the Society. The Jawahar Cooperative Urban Bank filed a Writ Petition before the High Court at Andhra Pradesh challenging the order passed by the RBI. In the said Writ Petition, the Deputy General Manager of the RBI filed a counter affidavit and pointed out that the Bank had fraudulently resorted to mobilization of deposits of Rs.2.20 crores from respondent no.2-Society.

4. It appears that in the meantime, the audit reports of the Society for the year 2000-2001 under Section 81 of the MCS Act were made available, on the basis

of which the District Deputy Registrar, Cooperative Societies passed an order on 17 August, 2002 directing an inquiry under Section 88(1) of the MCS Act, by appointing respondent no. 1 as the Inquiry Officer/Authorized Officer, who submitted his report on 3 February, 2003, thereby fixing the liability. The names of the managing committee members (writ petitioners in the proceedings before the learned Single Judge) appeared in the said report. The authorized officer on such premise ordered these directors to pay an amount of Rs.21 lakhs each to Respondent No.2 / Society, so as to make good the recovery of Rs.2.20

crores plus an amount of Rs.3,000/- towards the expenses incurred in conducting the inquiry.

5. The said order passed by the Authorized Officer/respondent no. 1 was unsuccessfully challenged by the petitioner before the Divisional Joint Registrar in an appeal under section 152 of the MCS Act and subsequently before the State Government in a Revision Application filed under Section 154 of the MCS Act. As the said adjudicating authorities concurrently upheld the orders passed by the Authorized Officer/respondent no. 1, fixing such liability against the members of the Managing Committee, which included the present appellant, a batch of writ petitions was filed before this Court. These writ petitions fell for consideration of the learned Single Judge.

6. On such backdrop, the learned Single Judge considering the provisions of Section 88 of the MCS Act, which conferred powers on the Registrar to assess damages against delinquent promoters, etc. as also considering the provisions of Rule 72 of the MCS Rules, which inter alia stipulate a "Procedure for assessing damages against delinquent promoters", was not persuaded to accept the case of the writ petitioners against the concurrent findings of the authorities below, fixing the liability on each of the directors of the managing committee. The learned Single Judge held that the petitioners (directors) had taken part in the "organization and management" of the Society and accordingly had become liable or accountable for the loss of money caused to respondent no.2 society. The relevant observations as made by the learned Single Judge in such context are required to be noted, which reads thus:

"7. Section 88 of the Act empowers the Registrar to assess the charges against the Directors etc., including the persons who have taken part in the administration or the management of the society or the officers of the society and, therefore, the members of the Managing Committee do fall within the sweep of the Registrar's powers to order an inquiry against them so the qualification of to assess the damages i.e. the loss caused the society by each of them Individually or collectively and to recover the In the instant case, as noted earlier, the as to employees of from them. members of the society are the Hindustan Aranatics Ltd. and it is co-operative society. a Its deposits are not same M/s. credit ensured like the deposits of the Banks and, therefore. the Managing Committee are required to be more alert and careful The while discharging their duties as such. elected directors are the custodians of the funds

and property of the society. performed and They are required to their duties strictly as per the Act, Rules Dye-laws and they cannot usurp their powers. Failure to discharge their duties as per the statutory provisions and the Bye-laws makes them accountable and liable to Compensate the loss/damage from their for the cannot be personal property.”

7. On the aforesaid observations, Writ Petitions were dismissed, which include the writ petition filed by the appellant, who was not an elected director, but a nominated “expert director”. It is on such backdrop, the appellant has filed the present Letters Patent Appeal, being aggrieved by the judgment and order passed by the learned Single Judge. We may observe that during the pendency of this appeal, the appellant has expired and the proceedings are now pursued by his legal heirs, however, for convenience, we continue to refer him as ‘the appellant’.

8. At the outset, we may observe that except for the present appeal, the Letters Patent Appeals filed by other writ petitioners (elected directors) assailing the orders passed by the learned Single Judge were dismissed. This appeal was admitted by a detailed order dated 21 November 2006 and more particularly in terms of the observations made in paragraph 7 of the said order, which reads thus:

“7. So far as this LPA is concerned, it is required to be admitted. Because, the appellant in this case was a Technical director. The learned advocate for the appellant drew our attention to the bye-laws of respondent no. 2 particularly bye-law no. 7, Sr. No. 49. It is in respect of Managing Committee. It states that one Technical director can be co-opted. But such a Director, who may be representative of the State or Bank, or the Technical director will have no right of vote and his presence will not be computed for the purpose of quorum. It is, therefore, prima facie clear that the present appellant, who was the Technical director, had no right of vote and his presence could not have been co-ordinated for deciding the quorum and, therefore, even if he has voted for the resolution, his LPA is required to be admitted. Therefore, this LPA is admitted.”

9. On such conspectus, the following question has arisen for determination in this appeal :

“Considering the provisions of Section 73 of the MCS Act, 1960 read with provisions of Section 88 and Bye-laws no. 7(49) of respondent no.2-Society, the appellant, being a co-opted “Expert Director” on the Managing Committee of respondent No.2-Society, whether could be rendered liable to suffer an order under Section 88 of the MCS Act ?”

10. At the outset, it needs to be noted that it is not in dispute that the appellant was a nominated director (an expert director) or who was not an elected director. The appellant had taken a specific plea that the appellant could not be held responsible for the alleged irregularities, as he was not part of any decision making process, in the meetings of the Managing Committee in his capacity as

an expert director. The appellant also contended that considering the clear provisions of the bye-laws of respondent no.2-Society in the capacity of an expert director, he had no right to vote.

11. At this stage, we may observe that in the impugned order passed by the learned Single Judge, which was on a batch of writ petitions, as noted hereinabove, the learned Single Judge has not recorded any specific finding on the role and/or the liability of the appellant as an expert director, which was not the case of the other directors. In this context, it is urged on behalf of the appellant that there was no independent consideration of the appellant's case before the learned Single Judge.

12. Mr. Bhadrashete, learned counsel for the appellant in assailing the impugned order has made the following submissions:

In Bye-law No. 7(49), the appellant was co-opted as an expert director on the Managing Committee of respondent no. 2 having no right to vote in the meeting of the Managing Committee nor his presence could have been counted for the quorum of the meeting. It is submitted that the appellant had not taken part in the "organization or management" of the Society. It is next submitted that the appellant had no authority, nor he was empowered to take any specific position of any commanding nature in regard to business of the Society, hence he could not be said to be an "Officer" for the purposes under Section 88 read with Section 2(20) of the MCS Act. Considering such legal position qua an expert director, the appellant could not have been held responsible for any decisions of the Managing Committee merely for the reason that he signed the said draft resolution. For such reasons, the order passed by the Authorized Officer under Section 88 of the MCS Act, against the appellant was without jurisdiction, as there could not have been any inquiry against the appellant under Section 88 of the Act. In supporting such submission, reliance is placed on the decision of the Division Bench of this Court in *Shriram Dhonduji Raut vs. Bahu Uddesiya Sahakari Sanstha*².

13. On the other hand, Mr. Joshi, learned counsel for the State has supported the impugned order. It is his submission that the impugned order would not warrant any interference on the contentions as urged on behalf of the appellant and more particularly considering the fact that the appellant had signed the minutes of the Meeting by circulation dated 8 December, 2000, the effect of which was that the fixed deposits with the State Bank of India, were proposed to be transferred to Jawahar Urban Cooperative Bank. It is hence his submission that it would not be a correct contention that the appellant had not taken part in the organization or management of the Society, considering the role of the members of the Managing Committee of which the appellant was a part, when the appellant signed the said minutes of the meeting. Hence, no fault can be attributed in the decision taken by the Authorized Officer and as confirmed by the Appellate Authorities and by the learned Single Judge. In supporting such contention, Mr. Joshi has placed reliance on the decision of Division Bench of this Court in *Gopal*

Analysis

14. Having heard learned counsel for the parties and having perused the record, at the outset, we note the provisions of the MCS Act, which are relevant in the adjudication of this proceedings. These provisions are:

"Definitions

Section 2(7) "Committee" means the Committee of Management or Board of Directors or other directing body, by whatever name called, in which the management of the affairs of a society is vested under Section 73.

Section 2(20) "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society.

Section 73. Committee, its powers and functions.—

(1) The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws.

(1AB) the members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to the effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period shall be deemed to have vacated his office as a member of the Committee:

Provided that, before fixing any responsibility mentioned above, the Registrar shall inspect the record of the society and decide as to whether the losses incurred by the society are on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members:

Provided further that, any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution. Such dissenting member, if he so desires, may also

communicate in writing, his dissenting note to the Registrar within seven days from the date of the said resolution or decision. Any member, who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society.

(1-A) Notwithstanding anything contained in this Act, the rules made there under or in the bye-laws of any society or class of societies,—

(a) The first general meeting of a society shall be convened within three months from the date of its registration to appoint a provisional committee and to transact other business as may be prescribed. The term of the members of such provisional committee shall be for a period of one year from the date on which it has been first appointed or till the date on which a regular committee is duly constituted in accordance with the provisions of the rules or bye-laws made under this Act, whichever is earlier; and all the members of such provisional committee shall vacate office on the date of expiry of such period or such constitution of the committee:

(b) notwithstanding anything contained in clause (a), the provisional committees for the Co-operative Sugar Factories and Co-operative Spinning Mills and such other class of societies, as the State Government may, by special or general order, in the Official Gazette, specify in this behalf, shall be appointed by the State Government; and the members thereof shall hold office for a period of three years, which period may be extended by one year, at a time, so however that, the total period shall not exceed five years, in the aggregate;

Provided that, the State Government shall have the power to change or reconstitute such committee or, any or all members thereof at its discretion even before the expiry of the period for which a member or members were nominated thereon:

Provided further that, the member or members assuming office on such change or re-constitution of the committee shall hold office for the period for which the provisional committee has been appointed under this clause.

(c) pending the first constitution of the committee of a society, the provisional committee of the society shall exercise the powers and perform the duties of the committee of such society as provided in this Act, the rules and bye-laws and make necessary arrangements for holding election of the committee, before the expiry of its term.

(2) Notwithstanding anything contained in any bye-laws of a society or class of societies, the Registrar may, having regard to the area of operation, subscribed share capital or turnover of a society or class of societies, by general or special order, published in the Official Gazette, prescribe the maximum number of members on the committee of such society or class of societies, as may be

specified in such order.

(3) (a) Notwithstanding anything contained in this Act or the rules made there under or in the bye-laws of any society or any other law for the time being in force, in a general election of members of the committee of a society, on the election of two-thirds or more number of members, the returning officer or any other officer or authority conducting such election shall within seven days after the declaration of results of the election of such members or where such election is held before the date of commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1986, and such number of members have been elected but the committee has, for whatever reason, not been so far constituted, forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by him, publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon such publication the committee of the society shall be deemed to be duly constituted. In determining two-Thirds of the number of members, fraction shall be ignored:

Provided that, such publication shall not be deemed-

(i) to preclude the completion of elections of the remaining members and the publication of their names and the permanent addresses of the elected members likewise as and when they are available; or

(ii) to affect the term of the office of members of the Committee under the Act;

(b) The names of the remaining members after they are elected (together with their permanent addresses), may also thereafter be likewise published by the Registrar)."

Section 88. Power of Registrar to assess damages against delinquent promoters, etc.—

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspection or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order

requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible."

The Maharashtra Co-operative Societies Rules, 1961 Rule 72. Procedure for assessing damages against delinquent promoters, etc. under Section 88:-

(1) On receipt of a report referred to in Section 88 or otherwise, the Registrar or any other person authorised by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the organisation or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society.

(2) On the completion of the further inquiries under sub-rule (1), where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statement in his or their defence within fifteen days of the date of issue of the notice.

(3) On receipt of the statements referred to in sub-rule (2), the Registrar or the person authorised by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.

(4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorised by him may permit production of other documentary or oral evidence, if considered necessary subsequently.

(5) The Registrar or the person authorised by him shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.

(6) On the day fixed for hearing under sub-rule (5), the Registrar or the person authorised by him, shall hear the arguments and may pass his final orders on the same day or any date fixed by him within sixty days from the date on which the hearing was completed. On the date so fixed, the Registrar or, as the case may be, the person authorised by him shall make his final order] either ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.

(7) The Registrar or the person authorised by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any part of such cost as he thinks just.

(8) The Registrar or the person authorised by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes his final order.

(Emphasis supplied)

Society's Bye-Laws [See Section 2(5)]

Bye Law No. 7 – Committee

.....

49) This Committee shall look after the management of the business affairs of the Society, the Committee shall comprise of total 15 members, as under.

Ten seats: From General Category.

One seat: For the members belonging to Scheduled Caste and Scheduled Tribes.

One seat: For the members belonging to Nomadic and Denotified Tribes.

One seat: For Other Backward Classes.

Two seats: Reserved for women candidates

These members shall be elected by secret ballot method for a period of five years as per the provisions of Rule No. 58. The elected Committee members shall select the Chairman and Vice-chairman for a period of one year. This Committee will look after the day-to-day business affairs until the next Committee gets elected and commences the business affairs. However, it will not be able to take any policy decisions without calling the meeting of the Board of Directors. If 8 members are present for the meeting of Committee members, the quorum will be fulfilled. If the Society has entered into any financial transactions with the District Central Co-operative Bank Ltd., Government, Nationalized and other Banks and if they have appointed a representative, then he will be accepted by following the bye-laws of the Society and by taking approval therefor in the

meeting of the Committee members. Similarly, by the majority of the votes of the Board of Directors, one expert-Director can be appointed as a co-opted member. However, the representative of the Government and also any Bank and expert-Director shall not have a right to vote or his name shall not be counted for fulfilling the quorum."

(emphasis supplied)

15. On a reading of the aforesaid provisions, it is seen that Section 2(7) of the MCS Act when it defines 'Committee', it means the Committee of Management or Board of Directors or other directing body, by whatever name called, in which the management of the affairs of a society are vested under Section 73. Section 2(20) defines the term "Officer" which includes a person who is elected or appointed by a society to any office of such society according "to its bye-laws" to inter alia include such member of the committee and any other person, elected or appointed under the Act "who can give directions in regard to the business of such society".

16. Section 73 of the MCS Act provides for 'Committee, its powers and functions'. Sub-section (1) of the said provision ordains that the management of every society shall vest in a committee, constituted in accordance with this Act and the rules and bye-laws, to exercise such powers and perform such duties as may be conferred or imposed respectively under the Act, "rules and the bye-laws". The proviso below sub-section (1AB) of Section 73 is pertinent. It provides that before fixing any responsibility mentioned above, the Registrar shall inspect the record of the society and decide as to whether the losses incurred by the society are on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members. The second proviso is also significant when it ordains that any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and that such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution.

17. The next provision is Section 88, being the 'power of the Registrar to assess damages against delinquent promoters, etc.'. This provision provides that in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, if the Registrar is satisfied on the basis of the report inter alia of the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise, that any person who has taken any part in the organisation or management of the society, has misapplied or retained, or has become liable or accountable for any money or property of the society, or has been guilty misfeasance or breach of trust in relation to the society, the Registrar or a person

authorised by him in that behalf may frame charges against such person(s) and after giving a reasonable opportunity to the person concerned to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorised under this section may determine.

18. In our opinion, the provisions of Section 88 when it uses the word who has taken 'any part' in the organization or management of the society would necessarily be a person who would form part of the decision making process, in the organization or management of the Society. An expert director, who has no authority to vote in the meetings of the Managing Committee or any authority to issue directions in regard to the business of the society as ordained under section 2(20) of MCS Act, cannot be said to be discharging any role in the decision making, touching the management, organisation or affairs of the society. Thus, the role of an expert director would be advisory in relation to the expertise he wields, and such a role is not of a nature that it would be binding on the elected managing committee. This position is synonyms to the metaphorical meaning of the phrase "toothless tiger" who cannot be considered to have any active or authoritative role in the organization or management of the society.

19. Section 73 which provides for the management of every society to be vested in a committee, itself is constituted in accordance with the provisions of law, the rules and the bye-laws. Once the bye-laws in the present case provides for appointment of an expert director and who would have no right to vote in the meetings of the Managing Committee, then certainly the role of an expert director is deemed to be advisory. In these circumstances, even if an expert director endorses his signature on a document like the circulated Minutes of the meeting dated 8 December, 2000 (resolution), which are not signed by some of the Directors, it cannot have any significance, as mere signing of the minutes of the meeting would not amount to an expert director casting any vote or taking any authoritative or binding decision in the organization and management of the society, which itself is not permissible to be exercised by an expert director under the bye-laws as also under the Constitution of Committee under section 73 of the MCS Act. An act which is not authorised to be performed is void ab initio, and it would be inconsequential for all purposes.

20. Thus, in our opinion, it was not correct for the Authorized Officer to proceed to attribute any role to the appellant overlooking the fact that the appellant was an expert director as nominated by the Managing Committee, having no right to vote and participate in the organization and management of the Society. If such contention as urged on behalf of the State is accepted, it would amount to reading something contrary to what has been explicitly provided in Section 73 of the MCS Act, which mandates Constitution of the Committee as per the rules and "bye-laws". It cannot be a situation that when the bye-laws provide for co-option of an expert director in considering the role of an expert director in his participation of the Managing Committee meetings, it is given a different

meaning contrary to the express provisions as noted hereinabove. We are thus in agreement with Mr. Bhadrashete when he contends that the authorities below were not correct in proceeding against the appellant under Section 88 of the MCS Act so as to foist recovery of damages as ordered. The reason being that this is not a case that the appellant in his position as an expert director has usurped and/or misused his position for committing any fraud or malfeasance. It is nobody's case that the appellant was involved in any such actions, in the absence of any such findings against the appellant, of causing any monetary loss to the society by his individual action.

21. We may further observe that on a reading of report of the Authorized officer it is seen that it does not in any manner attribute any specific role played by the appellant, except he signing the minutes of the said meeting by circulation which, in our opinion, cannot attract the provisions of Section 88. This for two fold reasons; firstly, the ultimate decision is of the managing committee to be taken as per the procedure prescribed in law; and secondly, under Section 88, no liability can be foisted on a director unless there was an active involvement of a member of the Managing Committee in the organization and management of the Society before initiating any penal action under the said provision.

22. In the light of the above discussion, the decision of the Division Bench in Gopal Shrinivasan vs. National Spot Exchange Ltd. (supra) as relied by Mr. Joshi in the present facts, in our opinion, would not assist the State, as the issue in the said proceedings had arisen from an order passed by the learned Single Judge in a civil suit on an application filed under Order 7 Rule 11 for rejection of plaint against the said appellant /Director. Such application of the appellant was dismissed on the ground that the appellant although was a nominated Director on the board of directors of the company, however, in the facts of the case, there were serious allegations of fraud, which were levelled against the directors, which included the appellant therein. The complexion of an expert director in the statutory scheme under the Maharashtra Cooperative Societies Act would certainly be different than that of the board of directors under the Companies Act. However the fact remains that in the event if a nominee/ expert director is guilty of any fraud or of any criminal acts and has played an active role in that regard and if such actions are proved in any enquiry as contemplated by Section 88 of the MCS Act, in such event even a nominee expert director would be required to be held to be liable for an action under section 88 of the MCS Act. However, considering the facts of the present case, the appellant does not fall in this category.

23. The decision of the learned Single Judge in the case of Shriram Dhonduji Raut vs. Bahu Uddesiya Sahakari Sanstha, Virsi & Ors.⁴ as relied by Mr. Bhadrashete would assist the appellant, as this Court in such decision has clearly held that the directions in regard to the business of the Society normally emanate from the Managing Committee of the Society or an officer empowered to give such direction. In the present case, the appellant a nominated director, in

the context of Section 2(20) of the MCS Act, had no power to give directions in the business of such society.

24. Before parting we may observe that although definition of "an expert director" was incorporated under section 2(11-A) of the MCS Act by Maharashtra Act No. 16 of 2013 with effect from 13 August 2013, as also a corresponding amendment to the definition of "officer" as defined under section 2(20) of the MCS Act underwent an amendment, the legal position prevailing at the relevant time that an officer would be such who would be in a position to give directions in regard to the business of such society has remained unaltered. We note the definition of expert director under section 2(11-A) and the amendment to the definition of an "officer" under section 2(20) hereinbelow as they stand under the said amendment of 2013:-

Section 2 (11-A) "expert director" means a person having experience in the field of banking management, co-operation and finance and includes a person having specialisation in any other field relating to the objects and activities undertaken by the concerned society."

(20) "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes [any office bearer such as a chairperson, vice-chairperson, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person, by whatever name called,]5 elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society.

25. This position is noted for the sake of completeness as the same was not applicable to be relevant period in dispute i.e. in the year 2000-2001.

26. In the light of the above discussion, in our opinion, this appeal needs to succeed. The impugned judgment and order dismissing the Writ Petition is quashed and set aside. Writ petition is allowed in terms of prayer clause (a) which reads thus:-

"a) Issue an appropriate Writ / Order quashing and setting aside the Judgment and Order dated 05.06.2004 passed by the Secretary, Department of Co-operation and Marketing, Mantralaya, Mumbai in Revision Application No. RVA 16044/CR/130/15C

AND

The Order / Report dated 03.02.2003 issued by the Respondent No.1 under Section 88 of the Maharashtra Co-operative Societies Act, 1960."