
(2011) 12 BOM CK 0153

In the Bombay High Court

Case No : Writ Petition No. 8510 of 2009

Talbeed Vividh Karyakari Seva (V.K.S.) Sanstha Ltd., Talbeed,
Tal. Karad, District - Satara

APPELLANT

Vs

Prop. Shri Chandrasen Vividh Karyakari Seva Sanstha Ltd.
Talbeed, TalKarad, DistSatara, Deputy Registrar, Co-operative
Societies, Karad, Tal-Karad, Dist-Satara, Commissioner for
Cooperation and Registrar of Co-operative Societies,
Maharashtra State, Pune and The State of Maharashtra

RESPONDENT

Date of Decision : 17-12-2011

Acts Referred:

Citation : (2012) 2 ALLMR 145 : (2012) 5 BomCR 310 : (2012) 2 MhLj 608

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

Bench : Single Bench

**Advocate : Amit Borkar, for the Appellant; Dhawal Patil instructed by . M/s.
S.K.Legal Associates and Ms. P. S. Cardozo, AGP for Respondent Nos. 2 to 4, for
the Respondent**

Judgement

G.S. Godbole, J.—By order dated 16th September, 2011, notice for final disposal at the stage of admission was issued. Accordingly, S. K. Legal Associates have filed appearance on behalf of Respondent No. 1.

2. RULE. Rule made returnable forthwith and heard by consent of the parties.

3. I have heard Mr. Borkar for the Petitioner, Mr. Patil for Respondent No. 1 and learned AGP for Respondent Nos. 2 to 4.

4. The Commissioner for Cooperation and Registrar of Co-operative Societies, Maharashtra State, Pune had issued circular dated 5th March, 2007 thereby informing all the subordinate Officers not to forward any proposals for opening of bank account and name reservation. Respondent No. 1 filed an application for name reservation and opening of bank account. The Dy. Registrar, Co-operative Societies, Karad rejected the said application by relying on the circular dated 5th March, 2007. Aggrieved by this order, Respondent No. 1 filed Appeal No. 26 of

2009 before the Divisional Joint Registrar, Kolhapur Division, Kolhapur. However, on 28th July, 2009, the said Appeal was withdrawn on the ground that only the Government has power to sanction the proposal for Registration of Society and, hence, Appeal was being withdrawn for filing an Appeal before the State Government. Thereafter, an Appeal was filed before the State Government u/s 152. The said Appeal was opposed by the Petitioner, inter alia on the ground of maintainability of the Appeal before the State Government and on various other grounds. By Judgment and Order dated 17th September, 2009, the Hon''ble Minister of State Cooperation, Marketing and Textile allowed the said Appeal filed by Respondent No. 1 and the Deputy Registrar was directed to register the Respondent No. 1 Society. This is the order impugned in this Writ Petition.

5. Affidavits have been filed by the Respondents. Respondent No. 1 has stated that the society is already registered and has disbursed the loan of more than 55 lacks to its members and, if this Court interferes in writ jurisdiction, that will cause irreparable harm and loss to the Respondent No. 1 Society.

6. The Maharashtra Co-operative Societies Act, 1960 provides the hierarchy under which Appeal against order passed u/s 9 lies to the State Government only if the order is made by the Registrar or the Additional or Joint Registrar on whom the power of registration are conferred. Section 152(i)(b) provides that if the order is made or sanctioned by any person other than the Registrar or the Additional or Joint Registrar on whom the powers of registration are conferred, the Appeal shall lie with the Registrar.

7. Section 154 provides for power of Revision and it is clear that such a power of Revision can be exercised only in a case where no Appeal is proved.

8. In the present case, the order refusing the name reservation and permission to open the bank account was admittedly order u/s 9 of the said Act. That order has been passed by the Deputy Registrar. Thus, Appeal u/s 152 would lie before the Registrar which power is exercised by the Divisional Joint Registrar of the Co-operative Societies and Respondent No. 1 had, therefore, rightly filed Appeal before the learned Divisional Joint Registrar, but that Appeal was withdrawn on the ground that he desires to file an Appeal before the State Government.

9. It is well settled that Appeal is a creation of statute and even by consent of the parties, an authority which is not conferred with the powers of hearing Appeal can not assume to itself power to hear the Appeal which it is otherwise not competent to hear. In the present case, though the State Government is a superior authority under scheme of the Act, in view of the clear provisions of Section 152, the State Government could not have heard the Appeal nor can the State Government exercise power of Revision in view of the clear bar contained in Section 154 which provides that if an Appeal is maintainable, the revision will not lie.

10. The Hon''ble Minister has, however, held the Appeal to be maintainable and the gist of the reasoning of the Hon''ble Minister in that regard can be found on

pages 31 and 32 and relevant portion quoted herein below:-

..... In short, the impugned Order is passed on behalf of Commissioner for Cooperation & Registrar of Co-operative Societies, Maharashtra State, Pune. In this context, Ld. Adv. Mr. K. V. Patil for the Appellant vehemently submitted that the impugned order is passed on behalf of Commissioner for Cooperation and therefore, said Order can not be challenged before its subordinate authority i.e. Divisional Joint Registrar, Co-operative Societies, Kolhapur. In view of this submission advanced on behalf of Appellant, I am of the opinion that present Appeal is maintainable before this authority.

11. This reasoning is erroneous. The Deputy Registrar of Co-operative Societies cannot be held to have passed the order refusing permission for opening of bank account and name reservation on behalf of the Commissioner for Cooperation. This is the only reason given by the Hon''ble Minister for holding that the Appeal is maintainable. From a perusal of Section 152 of the Act, it is clear that the aforesaid reason is wrong. It is well settled that if the statute provides for doing of a particular thing in a particular manner and confers the statutory powers on a particular authority, that power can be and has to be exercised only by that authority and even a superior authority cannot have or exercise such power. In view of this, the Hon''ble Minister was not competent to hear and decide the said Appeal.

12. On this ground alone, the Writ Petition deserves to succeed and is accordingly allowed.

13. The impugned Judgment and Order dated 17th September, 2009 is quashed and set aside. Respondent No. 1 Society will, however, be at liberty to apply before the learned Divisional Joint Registrar, Kolhapur to revive Appeal No. 26 of 2009 and if an application is made for said revival, Appellate Authority shall favourably consider such application since Respondent No. 1 cannot be left without any remedy. If the Appeal is revived, all contentions of the parties on merits of the controversy are kept open to be agitated in the Appeal. It will be open to Respondent No. 1 to contend that irrespective of the circular dated 5th March, 2007, registration of new society was permissible and it will also be open to contend that the circular dated 5th March, 2007 does not have the effect of taking away the power granted to the Deputy Registrar to register the society. All the rival contentions of the parties are kept open. It is made clear that the impugned order is quashed and set aside only on the ground that Appeal itself was not maintainable and all other contentions of the parties are kept open.

14. It is needless to state and it is hereby clarified that in so far as loans which are distributed by Respondent No. 1 Society are concerned, despite this order and despite the cancellation of registration, which is a consequence of this order, the Respondent No. 1 Society will be entitled to recover loans distributed by the Respondent No. 1 Society to its members and interest thereon.

15. Rule made absolute in the aforesaid terms with no order as to costs.