

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.148 OF 2011
IN
WRIT PETITION NO.1133 OF 2011
WITH
CIVIL APPLICATION NO.181 OF 2011
IN
LETTERS PATENT APPEAL NO.148 OF 2011**

Sadashivrao Mandlik Kagal Taluka
Sahakari Sakhar Karkhana Ltd.,
Hamidwada Kaulage, Tal. Kagal,
Dist. Kolhapur.

.....Appellant

versus

1. The Regional Jt. Director (Sugar)
Kolhapur Region, Kolhapur.
2. Shri Yuvraj Dattatraya Patil,
age 56 years, Occu – Agriculture,
r/o Mouje Sangaon, Tal. Kagal,
Dist. Kolhapur.
3. Shri Pratap Yashwantrao Mane,
Age 49 years, Occu – Agriculture,
R/o Kagal, Tal. Kagal, Dist. Kolhapur.
4. Shri Vikas Hambirrao Patil,
Age 35 years, Occu – Agriculture,
R/o Kurukali, Tal. Kagal, Dist. Kolhapur.
5. Shri Balasaheb Parsu Turambe,
Age 50 years, Occu – Agriculture,
R/o Sak, Tal. Kagal, Dist. Kolhapur.
6. Shri Dattatraya Tukaram Patil,
Age 40 years, Occu – Agriculture,
R/o Kenawade, Tal. Kagal, Dist. Kolhapur.
7. State of Maharashtra,
Through Hon'ble Minister for Co-operation,
Mantralaya, Mumbai.

..... Respondents

Mr.A.A.Kumbhakoni i/by Mr.Amit B. Borkar, for the appellant.

Mr.Y.S.Jahagirdar, Senior Advocate i/by Mr.S.S.Kulkarni, for respondent Nos.2 to 6.

Mr.R.M.Patne, AGP, for respondent Nos.1 and 7.

**CORAM: P.B.MAJMUDAR &
A.A.SAYED, JJ.**

DATE: 28th JUNE, 2011

ORAL JUDGMENT (PER P.B.MAJMUDAR, J.) :

1. This appeal is directed against the judgment and order passed by the learned Single Judge in Writ Petition No.1133 of 2011, by which the learned Single Judge allowed the writ petition filed by respondent Nos.2 to 6 herein and set aside the order of remand passed by the respondent No.7.

2. Respondent Nos.2 to 6 are the members of the appellant (for the sake of brevity, hereinafter referred to as “**Karkhana**”). The said Kharkhana is a specified Co-operative society engaged in the business of crushing sugarcane and manufacturing of sugar. Respondent No.1, Regional Joint Director (Sugar), is an authority who exercises, control supervision and functioning of the said Kharkhana. Respondent No.7 is the appellate authority under Section 152(a) of the Maharashtra Co-operative Societies Act, 1960 [for short “**the Act**”].

3. Respondent Nos.2 to 6 preferred an application to the appellant Kharkhana on 07-07-2010 for supplying the list of its members.

By another application dated 26-07-2010, the said respondents also applied for certified copy of Agenda and Minutes of Meetings of Board of Directors held during period between 01-04-2008 to 30-06-2010. Since the aforesaid documents were not supplied by the Kharkhana, respondent No.1 informed the Managing Director of the Kharkhana in connection with the respondent's grievance and it was directed that list of members of Kharkhana should be made available after receiving necessary copying charges. It is the case of present respondent Nos.2 to 6 that in spite of various reminders, the said documents were not made available to them. Respondent No.1 thereafter, informed the Kharkhana by a letter dated 24-09-2010, asking them to supply list of its members. It is also the case of respondent Nos.2 to 6 that in spite of deposit of requisite charges, the said documents were not supplied to them. Similarly, Minutes of Meetings of Board of Directors were also not made available to the concerned respondents, as according to the appellant Kharkhana, the said respondents are not entitled to have copy of the said Minutes of Meetings of Board of Directors, especially when it is not pertaining to the transaction of the said respondents and therefore, copies of Minutes of the Meetings is not required to be given to the respondent Nos.2 to 6. Respondent No.1 thereafter, on 10-11-2010 passed an order under Section 79 of the said Act, thereby directing the Kharkhana to supply list of its

members, copies of Agenda and Minutes of Meetings of Board of Directors held between 01-04-2008 to 30-06-2010. The said order was challenged by the present appellant by filing an appeal before respondent No.7. Respondent No.7 allowed the said appeal and remanded the matter to respondent No.1 on the ground that the order was passed without giving opportunity of hearing to the Society. The said remand order was challenged by respondent Nos.2 to 6 herein, before the learned Single Judge by way of Writ Petition No.1133 of 2011. The learned Single Judge came to the conclusion that looking to the scheme of Section 79 of the Act, no hearing is contemplated under sub-Section (2) of the Act. However, an opportunity of hearing is contemplated under sub-Section (3) to the officer of the society, but no hearing is contemplated so far as Society is concerned. The learned Single Judge came to the conclusion that a member is entitled to have copy of any of the documents/Registers within one month from the date of payment of such cost and as per Section 32 of the Act, a member cannot be denied of such right. The learned Single Judge also held that a member is also entitled to have Minutes of Committee Meetings and it should not be restricted only in connection with transaction in respect of such a member. According to the learned Single Judge, any transaction discussed in such meetings of the Committee, should be made available to the person at his request or

demand. The learned Single Judge accordingly found that since no hearing is contemplated under Section 79 of the Act, the State Government was wrong in remanding the matter to the original authority i.e. respondent No.1. The learned Single Judge allowed the writ petition filed by respondent Nos.2 to 6 herein, which has given rise to the present appeal at the instance of the appellant Kharkhana.

4. Learned counsel for the appellant submitted that the learned Single Judge has gravely erred in holding that no hearing is contemplated to the Society before taking any action under Section 79 of the Act. Learned counsel for the appellant submitted that there is no prohibition in Section 79 regarding giving opportunity of being heard to the concerned society. It is submitted that in any case, even if learned Single Judge found that hearing under Section 79 is not contemplated, yet the learned Single Judge should have remanded the matter back to the appellate authority for deciding the other issues raised by the appellant in appeal. But the learned Single Judge decided the entire matter and on merits, it is found that the order of respondent No.1, which was subject matter of appeal before respondent No.7, was correct.

5. Mr.Jahagirdar, learned Senior Advocate appearing for respondent Nos.2 to 6, in his turn, submitted that looking to the scheme of the Act, no hearing is contemplated as per provisions contained in Section

79 of the Act. It is submitted that in such a case, hearing the Society would nothing but, a mere formality, as respondent Nos.2 to 6, being the members, are entitled to have list of members as well as relevant documents from the Society and Society cannot deny giving such documents to its members. It is submitted by the Senior learned counsel for the respondent Nos.2 to 6 that there is nothing in Section 79, which contemplates hearing before taking any action and in a given case, if the Court so thinks, may direct the authority to give hearing to the party. It is submitted that affording hearing to the Society in the instant case, would be a mere futile exercise. It is submitted that the order in question is passed under Section 79(2). It is submitted that if the order is passed under Section 79(2) (a) of the Act, hearing is not contemplated as time limit is already prescribed under Section 32 i.e. 30 days for furnishing documents. Learned Senior counsel further submitted that when no time limit is provided in the statute for taking such action, then only hearing is required to be given and the case would fall under Section 79(2) (b) of the Act. It is contended that hearing is required to be given to the concerned Officer and not to the Society, as has been contemplated under Section 79(3) of the Act. It is also submitted that in the instant case, so far as furnishing of list of members is concerned, a notice was already issued by respondent No.1 and therefore, it cannot be said that principles

of natural justice is not complied with.

6. Learned AGP appearing for respondent Nos.1 and 7 supported the order passed by the respondent No.7 in Appeal.

7. We have heard the learned counsel appearing in the matter at length and have gone through the order passed by the learned Single Judge and the documents forming part of the appeal. In order to examine the controversy, it would be apposite to reproduce relevant provisions of the Maharashtra Co-operative Societies Act. Section 32 and 79 of the Act, read as under : -

“32. Rights of members to see books, etc.

(1) Every member of a society shall be entitled to inspect, free of cost, at the society's office during hours, or any time fixed for the purpose by the society, a copy of the Act, the Rules and by-laws, the last audited annual balance sheet, the profit and loss Account, a list of members of the committee a register of members, the minutes of general meeting, minutes of committee meetings and those portions of the books of records in which his transactions with the society have been recorded.

(2) A society shall furnish to a member, on request in writing and on payment of such fees as may be prescribed therefor, a copy of the documents mentioned in the foregoing sub- section within one month from the date of payment of such fees.”

“79. Registrar's power to enforce performance of obligations -

(1) The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by

the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(2) Where any society is required to take any action under this Act, the Rules or the bye-laws, or to comply with an order made under the foregoing sub-section, and such actions is not taken-

(a) within the time provided in this Act, the Rules or the Bye-laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer of officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the Rules or the Bye-laws, or the order made under sub-section (1) and after giving such officer of officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's direction are carried out.”

8. As per the provisions of Section 32(1) of the Act, a member of the society is entitled to inspect, free of cost, a copy of the Act, the rules and the by-laws, audited annual balance sheet, the profit and loss account, a list of members of the committee, a register of members, the minutes of general meeting, minutes of committee meetings, as

contemplated under the said Section. A society is required to furnish to a member, on his request in writing and on payment of such fees as may be prescribed, a copy of any documents mentioned in the said Section, within one month from the date of payment of such fees, as is contemplated in sub-Section (2) of Section 32 of the Act.

9. In the instant case, respondent No.2 to 6 demanded list of members as well as resolutions passed by the Managing Committee from time to time during the relevant period. During the course of hearing, a list of members of the Society is already provided to the learned Senior counsel appearing for respondent Nos.2 to 6. The same is also accepted by the Advocate on record, subject to right of verification of the said list. So far as the other document i.e. resolutions passed by the Managing Committee is concerned, it is argued by the learned counsel for the appellant that since the concerned respondents are not entitled to get the same as it did not pertain to any transaction in connection with such a member. The consequence of non-compliance i.e. not furnishing the documents as provided under Section 32 of the Act, is provided under Section 79 of the Act.

10. The question which requires consideration is as to whether while passing any order under Section 79 of the Act, hearing is required to be given to the concerned Society, against whom such orders is to be

passed. In view of the provisions of Section 79, the Registrar is empowered to give necessary direction to any Society or class of societies to keep proper books of accounts in connection with money received and expenditure incurred. Sub-section (2) is in connection with failure on the part of the Society to comply with the provisions of the Act or rules or by-laws. The Registrar in such eventuality, is entitled to take such action at the expense of the Society and such expense shall be recoverable from the society as if it were arrears of land revenue. Sub-Section (3) no doubt provides clear provision of observing principles of natural justice so far as officer of the society is concerned, who is responsible for not complying with the provisions of the Act.

11. Learned counsel for the appellant, in order to substantiate his say that before taking any action under Section 79(2) of the Act, the concerned society is required to be heard, has placed reliance on a decision of the Supreme Court in the case of *Management of M/s.M.S.Nally Bharat Engineering Co. Ltd. V/s. State of Bihar*¹ wherein the Supreme Court observed in para 17 and 24 as under : -

17. In *Swadeshi Cotton Mills V/s. Union of India*² Sarkaria, J., speaking for himself and Desai, J., said that irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental

¹ (1990) 2 SCC 48

² (1981) 1 SCC 664 : (1981) 2 SCR 533

principles of substantive justice is generally implied. The presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly. In the same case, Chinnappa Reddy, J., added (at p 212) that the principles of natural justice are now considered so fundamental as to be 'implicit in the concept of ordered liberty'. They are, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. The learned Judge went on to state that where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of statute or by necessary implication.

24. In the present case, the State has withdrawn the pending reference from the Labour Court, Dhanbad and transferred it to another Labour Court at the distant District of Patna, on the representation of the workman, without getting it verified from the management. The State in fairness ought to have got it verified by giving an opportunity to the management which is a party to the pending reference. Denial of that opportunity is a fatal flaw to the decision of the government.

12. Learned counsel for the appellant also placed reliance on a decision of the Supreme Court in the case of Indian National Congress (I) V/s. Institute of Social Welfare and Ors.,¹ wherein it was held as follows :

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid decisions are these :

where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending

¹ (2002) 5 SCC 685

parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

13. Reliance has also been placed by the learned counsel for the appellant on a ruling of the Apex Court in the case of *Prakash Ratan Sinha V/s. State of Bihar & Ors.*,¹ in which case, the Supreme Court has held :-

10. In Canara Bank V. Debasis Das², this Court has held in para 19 (SCC p 572) that

“19..... Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

This Court has elaborated the expression “civil consequence” by observing that (Debasis Das case) “encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.

This Court has further stated that in its wise umbrella

¹ (2009) 14 SCC 690

² (2003) 4 SCC 557 : 2003 SCC (L&S) 507

comes everything that affects a citizen in his civil life.

13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.

14. Learned Senior counsel for the respondent Nos.2 to 6 on the other hand, placed reliance on a ruling of the Apex Court in the case of *Ashok Kumar Sonkar V/s. Union of India and Ors.*,¹ wherein it was held in para 26 as follows : -

26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible, the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation, issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

15. Relying on the said observations, it is argued by the learned Senior counsel for the respondent Nos.2 to 6 that in a given case, it is not necessary to follow principles of natural justice or to hear a person if it may be a mere formality. As per the scheme of the Act, a member is

¹ (2007) 4 SCC 54

entitled to have a copy of requisite documents on payment of fees as per Section 32 of the Act. The consequence of not complying with the said provision, is provided under Section 79 of the Act. However, in our view, in a case where society is a defaulting society who is not complying with any of the provisions of the Act and has not taken any action as per the requirements of the Act or the rules or by-laws, as the case may be, the Registrar is entitled to take appropriate action as per Section 79 of the Act. Considering the provisions of Section 79 of the Act, it is not possible for us to accept the submission of the learned counsel for the respondents that hearing is contemplated only in a case which may fall under Section 79(2) (b) and not under Section 79(2)(a) on the ground that when time limit is given under Section 32 of the Act for taking action, then the Registrar can straight way take action if the society fails to take action in this behalf. But when no time limit is given for taking such action, then only hearing can be given and the case would under Section 79(2)(b) of the Act. The Section clearly provides that the Registrar or through a person authorized by him, can take such action as deemed fit, at the expense of the society meaning thereby that in a given case, the Registrar can take action, which action is required to be taken by the Society. In the present case, the expense can be recovered from the society as an arrears of land revenue as contemplated by Section 79 of the Act. When the Registrar is empowered

to take action under Section 79, the Registrar is taking the same action which the Society is required to take under Section 32 of the Act. However, in a given case, there may be justification on the part of the society for not providing documents sought for by the person, like in a given case, if there is a dispute whether such person demanding the documents is a member or not or if the documents are destroyed by any natural calamity. In a given case, balance sheet for some reasons might not have been prepared. In such an eventuality, even if society fails to take any action under Section 32 of the Act in connection with demand of certain documents and if the Registrar is taking such action, in our view, the minimum requirement of principles of natural justice regarding giving hearing to the society is required to be given and it cannot be said that principles of natural justice could not be applicable on the ground that it is a mere administrative action or that it is an action which is being taken by the Registrar on behalf of the society. In the instant case, it is the submission on behalf of the appellant that Minutes of Meetings of Managing Committee or Resolutions of the Committee wherein transaction of such a member has taken place, is the only relevant document which can be given to him. We do not accept the said proposition and in our view, the learned Single Judge is right in coming to the conclusion that such a restricted meaning cannot be given, as argued by the learned

counsel for the appellant. Yet when civil consequences are provided in the form of recovering expenses by way of land revenue, in our view, before passing any order or taking any action under Section 79(2) (a) or (b), the principles of natural justice is required to be followed by giving opportunity of hearing and asking the explanation of the society as to why action should not be taken against the society. It cannot be presumed that in other case of such a nature, hearing would be academic because time limit is already provided for not providing documents under Section 32 of the Act and if that period is over, straightway Registrar can take action and give necessary documents to the concerned person and recover the expenses. It is not possible therefore, to give restricted meaning that hearing is required to be given only in connection with Section 79(2) (b) and not under Section 79(2) (a), as period of 30 days is already prescribed in Section 32(2) and hearing is only required to be given when there is no time prescribed. When ultimately the amount in question is required to be recovered as arrears of land revenue from the society, at least minimum requirement of hearing or to know the say of the society by way of asking society to submit its say, is required to be followed. It is no doubt true that hearing is provided under Section 79(3) of the Act to the officer against whom if recovery order is to be passed. It is required to be noted that in any case, at the first instance, order of recovery of expenses is to be

passed against the society itself and if the officer is provided hearing regarding personal recovery from him, there is no reason as to why no hearing can be given to the society before passing any order of recovering expenditure. Even for the purpose of any order under Section 79(2) (a), which may result into order of passing recovery of expenditure and which may have civil consequences, principles of natural justice is required to be followed. It is also required to be noted that any order passed under Section 79 is appealable under Section 152 of the Act. It would be relevant to reproduce Section 152 of the Act, which reads as under : -

152. Appeals

(1) An appeal against an order or decision under Sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 88 and 105 including an order for paying compensation to a society, shall lie -

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government.

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.

(3) An appeal under sub-Section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in

this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.

15. If an order passed under Section 79 of the Act, is made appealable, that itself shows that the Registrar is required to apply his mind and pass appropriate order and it is not merely a clerical or administrative action on the part of the Registrar, otherwise there is no question of providing appeal against the order passed by the Registrar. Considering the aforesaid aspect, it is not possible for us to accept the submissions of Mr.Jahagirdar that it is not necessary to give hearing as it is nothing but a mere formality, especially when the said order is subjected to further appeal under Section 152 of the Act, as indicated above, it is presumed that the first authority would require to apply his mind before passing any order. It is also not possible for us to accept the submissions of the learned counsel for the respondents that the right of hearing is excluded in connection with the provisions under Section 79(2)(a) of the Act. The Registrar is required to ask for explanation from the society as to why appropriate action should not be taken and after considering reply if any, the Registry should take decision in this behalf. It is not necessary to have full-fledged enquiry or hearing, but at least minimum requirement regarding giving show cause notice and asking the explanation from the

society, is required to be followed by the Registrar before passing any final order. There is no prohibition in the Act by which principles of natural justice is excluded.

16. At this stage, it is required to be noted that in the present case, there may not be any justifiable ground available to the society for not complying with the provisions of Section 32. However, in some cases, the society may have plausible explanation for not furnishing documents on the ground of unavailability due to any natural calamity and in such circumstances, the society can point out that aspect to the Registrar, if opportunity of being heard is given to the society. In view of the same, we are not in a position to accept the view taken by the learned Single Judge that the scheme of Section 79 do not prescribe right of hearing or natural justice is excluded. Considering the said aspect, the order of the learned Single Judge is required to be set aside and that of respondent No. 7 is required to be restored.

17. As pointed out earlier, list of members is already given to the other side subject to verification. Whether there is any justifiable case available for the society for not giving other documents demanded by the respondents, is the aspect which is left for the consideration of the said authority and we express no opinion on this aspect.

18. Considering the aforesaid aspects, this appeal is allowed

and the judgment and order passed by the learned Single Judge is set aside. The Registrar shall now decide the matter *de novo*, on its own merits and after hearing the appellant or after calling an explanation in this behalf and may pass appropriate order as deemed fit under Section 79 of the Act. It is clarified that it is for the Registrar to take appropriate action and decision and the matter is remanded with a view to see that say of the appellant may be taken into consideration in this behalf. The Registrar shall thereafter pass appropriate order in connection with the documents in question, except the list of members, which is now already given and the question is required to be decided *qua* rest of the documents which is the subject matter before the Registrar. It is further clarified that the Registrar may decide the said aspect uninfluenced by the observations of the learned Single Judge and of this Court.

19. At this stage, learned counsel for the respondent No2 to 6 states that Registrar may be directed to decide the proceedings within the stipulated time. Considering the fact that proceedings are pending since long, we direct the Registrar to hear the concerned parties and take final decision in this behalf within a period of two months from today without further delay. Learned counsel assure the Court that the parties will co-operate in the proceedings in order to adjudicate the same within the stipulated period.

20. The appeal is accordingly allowed to the aforesaid extent.

21. In view of the disposal of the Letters Patent Appeal, the Civil Application No.181 of 2011 does not survive and the same is accordingly disposed of.

(A.A.SAYED, J.)

(P.B.MAJMUDAR, J.)