

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 04.12.2024
Pronounced on 03.01.2025**

CRM(M) No. 317/2024

Bharat Bhushan

.....Appellant(s)/Petitioner(s)

Through: Mr. Salih Pirzada, Adv.
(th. virtual mode)

vs

Anti Corruption Bureau Jammu and
another

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

CRM(M) No. 133/2024

The Jammu Ladies Cooperative
House Building Society Limited.

.....Appellant(s)/Petitioner(s)

Through: Mr. Salih Pirzada, Adv.
(th. virtual mode)

vs

Anti Corruption Bureau Jammu

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The issues involved in the instant petition are akin and analogous to each others, as such, are being disposed of hereunder at this stage with the consent of the appearing counsel for the parties.

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2. In the instant petition, the petitioner herein has invoked the inherent power of this Court saved under section 482 Cr.P.C. for quashing of the summons issued by the respondents under Section 91 of the Code of Criminal Procedure

(for short the Code) vide communication No. SSP/MSA/Misc.16/2023/ACB/1712 dated 02.04.2024.

3. The facts in brief pertaining to the case in hand as stated in the petition are that the respondents upon initiation of a preliminary verification bearing No. Misc-16/2023 ACB Jammu issued a communication bearing No. SSP/MSA/Misc.16/2023/ACB/8961-62 dated 20.12.2023 requesting the Chair of the Managing Director, “J&K Cooperative Housing Cooperation Ltd, Jammu” (For short ‘the Corporation’) which the petitioner herein is holding, to provide various record/information pertaining to the “Ladies Cooperative House Building Society Limited, Samba” (for short ‘the Society’), whereupon the petitioner, in consequence whereof claims to have written to the Secretary of the Society to furnish the record/information, however, the Society instead is stated to have challenged the said verification initiated by the respondents herein before this Court in CRM(M) No. 133/2024 (the connected petition) wherein an interim order dated 02.03.2024 was passed by this Court providing that the preliminary verification may go on, however, the respondents shall not register FIR on the basis of the verification without seeking prior permission of the Court, whereafter, the passing of the said order dated 02.03.2024 by this Court, the impugned summons dated 02.04.2024 is stated to have been issued by the respondents.
4. The petitioner herein has challenged the impugned summons in the instant petition primarily on the premise that the power under section 91 of the Code cannot be invoked in absence of the initiation of an investigation and that since no investigation has been initiated and no enquiry or trial under the

Code is pending before any court in the matter therefore, the issuance of the impugned summons under section 91 of the Code is without jurisdiction.

5. Respondents have not filed the reply to the petition.

Heard learned counsel for the parties and perused the record.

6. Before advertng to the aforesaid challenge urged by the petitioner herein in the instant petition, a reference to the provisions of section 91 of the Code becomes imperative, which reads as under:

“91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3).....”

A plain reading of section 91(supra) would reveal that the power under the section can be invoked by any court or an officer incharge of a police station, if the court or such officer considers that the production of any document or other things is necessary or desirable for the purposes of any **investigation, inquiry, trial or other proceedings under this Code** by or before such court or officer. The words/expressions used in the section are “investigation”, “inquiry” and “trial”, a reference whereof is made hereunder:-

Section 2(g) of the section 91 of the Code defines inquiry as under

“2. Definitions.—In this Code, unless the context otherwise requires,—

(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

Section 2(h) defines the investigation as under:

“(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

The expression “trial”, however, is not defined in the Code, however, in criminal jurisprudence, a trial is said to have commenced when a court takes substantive steps in the judicial process for adjudicating upon the guilt or innocence of an accused and the exact stage of commencement depends on the types upon the trial under the Code.

7. From the conjoint readings of the aforesaid definitions of the terms/expressions, **“inquiry”**, **“investigation”** and **“trial”** under section 91 of the Code, it is manifest that the power under section 91 of the Code can be invoked only during an inquiry, investigation or trial under the Code and the term “inquiry” under the Code refers to a judicial act and does not encompass steps undertaken by the Police which are classified as either “investigation” following the registration of a case under section 154 of the Code or as a “preliminary inquiry” contemplated/conducted prior to the registration of an FIR.
8. A preliminary verification, on the other hand, is a limited process aimed at to assess the genuineness of a complaint or allegations before initiating a formal investigation and whether a cognizable offence is made out, which would warrant registration of an FIR. It thus postulates a limited inquiry or verification of facts and documents without the formal order or procedural safeguards associated with a full-fledged investigation, in that, the preliminary verification does not amount to an investigation under the Code.

It needs to be pointed out here that the scope of a preliminary verification is limited and narrow and signifies that it must not involve investigative powers unless specifically permitted by law. The scope of a preliminary verification as has been held by the Apex Court in case titled as **Lalita Kumari vs. Government of U. P.** reported in **(2014) 2 SCC 1** is not to verify the veracity or otherwise of the information received, but only to ascertain whether the information reveals commission of a cognizable offence.

9. Perusal of the record reveals that in the case in hand, the matter is at the stage of preliminary verification being conducted by the respondents and respondents admittedly have no power under section 91 of the Code directing summoning of the record from the petitioner pertaining to some preliminary verification being conducted by the respondents, which in the face of the aforesaid position of law, the respondents herein could not seek in exercise of power under section 91 of the Code, thus, the impugned communication/summons dated 02.04.2024 issued by the respondents to the petitioner cannot, but said to be without jurisdiction and legally unsustainable.
10. For what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, the impugned communication/summons bearing No. SSP/MSA/Misc.16/2023/ACB/1712 dated 02.04.2024 issued by the respondent 1 herein is quashed.

CRM(M) No. 133/2024

1. In this petition, as well, the petitioner-the **“Jammu Ladies Cooperative House Building Society Limited, Samba”** (for short “the petitioner Society”) has invoked the inherent power of this Court enshrined under section 482 of the Code for quashing of the preliminary verification No.

Misc-16/2023 ACB Jammu initiated pursuant to the communication bearing No. SSP/MSA/Misc. 16/2023/ACB/8961-62 dated 20.12.2023 (for short the impugned verification).

2. The petitioner Society herein claims to be a Society registered under the Jammu and Kashmir Cooperative Societies Act, 1989 (for short the Act of 1989), stating that its transactions with the J&K Cooperative Housing Cooperation Limited (for short the Corporation) including advancement of loans, repayment thereof etc. dated back to the year 1990 and the impugned verification undertaken by the respondent herein relating to the period about three decades old violates its rights and interests recognized under law including that of its members, in that by now the information/documents sought by the respondent herein in connection with the impugned verification being more than three decades old, have been lost rendering the petitioner-Society and its members defenseless, while stating further that there is no audit report of the Registrar of the Corporative Societies in terms of the Act of 1989 that would otherwise indicate any irregularity in the financial aspect of the petitioner-Society.
3. The petitioner-Society has maintained the instant petition on the following grounds:

- a) That the Jammu & Kashmir Cooperative Societies Act, 1989 contains an inbuilt mechanism to regulate the functioning of registered Societies, modulating such affairs pertaining to the object of the Society as permitted by the Act. The regulation includes financial monitoring and holding and disposing of properties by the Societies. Such regulatory powers are expressly provided and nominate the Registrar for the enforcement. The Registrar is conferred with the sole responsibility to manage the affairs of the Societies in compliance of the scheme as provided under the Act which includes financial regulation to be scrutinized

by carrying out mandatory audits followed by rectificatory modes in the event of any default by any Society. In the event of any default, the Registrar can take corrective measures followed by retributive action resulting in winding up or cancellation of registration. The Registrar while exercising powers of Civil Court in conducting an inquiry, has unimpeded access to scrutinize the books of any Society, in pursuance of which the finding of the Registrar can be enforced. This inbuilt mechanism is the sole methodology as provided under the Act by virtue of which any default, which may eventually be attracted to criminal culpability, can be determined. The Respondent-ACB in the instant case is seeking to siphon the determinative powers, requiring technical expertise, to come to a conclusion under the garb of criminal investigative powers. Such an action to supplant the statutory methodology for determining any misdoing by the petitioner-society is without any jurisdiction and violative of the procedure prescribed under the Act of 1989. Therefore, the impugned verification launched by the Respondent-ACB is without any legal justification and liable to be set aside,

b) That the impugned verification has been initiated after a period of around 34 years from the date of the incident as contained in the communication addressed by the Respondent-ACB. The petitioner cannot be subjected to the peril of loss of defence due to efflux of time, lest to be exposed to an incurable defect and loss of the Constitutional right of the leading effective defence. The investigating agency in the instant case is proscribed from carrying the impugned inquiry at this belated stage and in contravention to the components of the Prevention of Corruption Act. The Respondent ACB is not possessed with the statutory competence to carry out the inquiry in the instant case and the conferment of jurisdiction upon the investigating agency in absence of satisfying the prerequisite stipulation is violative of the procedure regulated under the said Act, Moreover, the embargo against initiating any inquiry or investigation prior to the statutory assent to be granted by the relevant authority is absolute and cannot be permitted under the cover of the impugned verification. Therefore, the initiation of inquiry being incompetent and rendered otiose due to efflux of time is liable to be set aside.

c) That the registration of the impugned verification in respect of the determination of criminal culpability is without any jurisdiction or sanctity of law as being registered after a period of over 3 decades. In this regard, it is submitted that the petitioner while facing such inquiry is divested from the constitutional guarantees of defence and as such the inquiry in contrary to the criminal jurisprudence. The petitioner cannot be exposed to an unreasonable prosecution emanating from delayed registration of the impugned verification, lest to be exposed to an incident uninsulated by the procedure established by law including the right to defend even before the investigating agency. The anticipated action of the prosecution to subject the petitioner to an unmerited

prosecution in the underlying event cannot be allowed to sustain. The dilution of the rights of the petitioner as a result of such delay renders the impugned verification without any plausible cause or justification. Therefore, the impugned verification being devoid of sanction of law is liable to be set aside.

d) That the authorities prescribed under the Jammu & Kashmir Cooperative Societies Act including the Registrar, being vested with the power of rendering a decision pertaining to any financial default or otherwise by any Society, restrictively possess the powers to rule on the technicalities of the subject. In absence of any such adjudication by the Registrar pertaining to the financial irregularities or dealing with the properties of the societies, the respondent does not have any jurisdiction to determine the same in circumvention of the mandates of the Cooperative Societies Act, the impugned inquiry is sought to be undertaken to the detriment of the petitioner. Therefore, the impugned verification launched by the respondent is liable to be set aside.

e) That the petitioner cannot be subjected to investigation or trial in the impugned verification for determination of culpability as none of the ingredients of any offence are made out so as to enable the respondent from carrying the impugned investigation after a period of over three decades. The prejudice to be caused to the petitioner is manifest as the defence in the likelihood of a trial is impaired beyond redemption by the efflux of time and in no manner can assume the fairness required for trying the petitioner in accordance with procedure established by law. In this regard, it is submitted that the prejudice caused by such a delay renders the impugned verification otiose and thus liable to be set at naught. Moreover, petitioner cannot be subjected to face the investigation or the prospective trial in the instant case as being divested of the constitutional right to defend. The alleged incident being of the year 1990 and the prospect of an early trial already lost exposes the petitioner to the loss of evidence and constructive defence, as the Ex-President of the Society before whom the relevant record was kept had expired on 22nd of May, 2017 and as such, could not be examined, In such an event, subjecting the petitioner to an unmerited investigation and trial is an abuse of process of law and thus demands interference by this Hon'ble Court under the inherent powers to remedy the wrong.

f) That the impugned verification has resulted in severe miscarriage of justice, therefore, the inherent jurisdiction of this Hon'ble Court is invoked to secure the ends of justice.

4. Reply to the petition has been filed by the respondent herein, wherein the petition is being opposed, *inter alia*, on the premise that upon receipt of a complaint, a miscellaneous verification came to be initiated by the respondent herein and during the course of said verification, the Managing Director J&K

Cooperative Housing Cooperation Limited, in terms of letter dated 20.12.2023 came to be called upon to provide copies of requisite record/information of the Corporation pertaining to the finance/loans advanced by the Corporation in favour of the petitioner-Society during the period with effect from 1990 till date, besides the present status of such finances/loans, revenue papers/record pertaining to the land in question and other related information, which information, however, was not furnished by the said Managing Director of the Corporation, however, the Managing Director of the Corporation forwarded a copy of letter dated 22.12.2023 to indicate that the information has been sought from the Secretary of the petitioner-Society for its onward submission to the respondent herein, has not been provided so far by the petitioner-Society till date, while stating further that the petitioner-Society avoided the furnishing of the record, while referring to the provisions of the J&K Cooperative Societies Act, 1989.

Heard learned counsel for the parties and perused the record.

5. Before proceedings further in the matter, a reference to the following provisions of the Act of 1989 would be appropriate, having regard to the respective pleadings of the parties:-

Section 3 The Registrar

- 1) The Government may appoint a person to be the Registrar of Cooperative Societies for the whole State for all types of societies and may appoint a person or persons to assist him.
- 2) The Government may, by general or special order, confer on any person appointed to assist the Registrar, all or any of the powers of the Registrar under this Act.
- 3) Every person appointed to assist the Registrar shall exercise the powers conferred on him under sub-section (2) subject to the general superintendence and control of the Registrar.
- 4) The Government may appoint any number as Additional Registrar Cooperative Societies to assist the Registrar. The person or persons so appointed to assist the Registrar and on whom any

power of Registrar is conferred shall work under the general guidance, superintendence and control of the registrar.”

Section 30. Supersession/removal of Committee

1) If in the opinion of the Government or Registrar, a Committee or Board, by whatever name called, of a Co-operative Society is persistently making a default or is negligent in the performance of the duties imposed on it by this Act or the Rules or the Bye-laws made thereunder or has committed any act which is prejudicial to the interests of the Society or its members, or has failed to comply with any direction given to it by the Govt. or by the Registrar for the purpose of securing proper implementation of Cooperative production and other development programmes or that, there is a failure in constituting or functioning of, the Committee or the Board, the Government or Registrar, may, after giving the Committee or the Board, as the case may be, opportunity to state its objections, if any, within 15 days and after considering the objections, if received by an order in writing remove the Committee or the Board and appoint one or more Administrators to manage the affairs of the Society for a period not exceeding two months and the elections shall be held within such period for the reconstitution of the Committee or the Board, as the case may be:

Provided that the Government or the Registrar may, for the reasons to be recorded in writing, extend the period of such appointment for a further period but in any case such extension shall not exceed six months from the date of such appointment:

Provided further that the supersession of the Committee of an Apex Co-operative Bank or a Central Co-operative Bank shall be done only in consultation with the Reserve Bank.

Notwithstanding anything contained in sub-section (1), the committee of a Primary Agricultural Credit Society shall be superseded by the Registrar only under the following circumstances, namely:

- (a) that the Society has incurred losses for three consecutive years; or
- (b) that serious financial irregularities or frauds have been identified ; or
- (c) that there are judicial directives to this effect ; or
- (d) there is perpetual lack of quorum for three consecutive meetings

Provided that members of the committee of a Primary Agricultural Credit Society which has been superseded shall be disqualified to contest the election to any committee for a period of at least three consecutive years from the date of supersession].

(2) The Registrar may fix such remuneration for the Administrators, as he may think fit and the remuneration shall be paid out of the funds of the Cooperative Society.

(3) The Administrator shall, subject to the control of the Registrar and to such instructions, as he may, from time to time give, have power to perform all or any of the functions of the Committee or the Board or of any officer of the Co-operative Society and take all such actions as may be required in the interests of the Society.

(4) Save as otherwise provided in sub-section (5), the Administrator shall, before the expiry of his term of office, arrange

for the constitution of a new Committee or Board, as the case may be, in accordance with the bye-laws of the Co-operative Society.

(5) Where the Administrator is appointed under sub-section (1), the Registrar may, by order in writing giving reasons therefor, direct the Administrator to arrange for the constitution of a new Committee or Board for such Co-operative Society in accordance with the bye-laws of such Society and immediately on the constitution of such Committee or the Board, the Administrator shall hand over the management of such Society to such newly constituted Committee or the Board and shall cease to function.

(6) Before taking action under sub-section (1), the Registrar shall consult the Federal Society concerned.

(7) Notwithstanding anything contained in this Act, the Registrar shall in case of Co-operative Bank, if so required ¹[in consultation with the Reserve Bank] or National Bank for Agriculture and Rural Development, in the public interest or for preventing the affairs of the Co-operative Bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of a Co-operative Bank, pass an order for the supersession of the Committee or the Board of that Co-operative Bank and for the appointment of an Administrator for such period or periods ²[not exceeding two years] in the aggregate as may, from time to time, be specified by the Reserve Bank or National Bank for Agriculture and Rural Development.”

Section 31 Securing possession of records:

(1) If the Committee or the Board, as the case may be, of Co-operative Society is reconstituted at a general meeting of the Society or the Committee or the Board of a Co-operative Society is removed by the Registrar under section 30 or if the Society is ordered to be wound up under section 74 and the outgoing member, of the Committee or the Board refuse to hand over charge of the records and property of the Society to the new Committee or Board or to the Administrators or the liquidators, as the case may be, the new Committee or Board or the Administrators or the liquidators may apply to the Executive Magistrate, within whose jurisdiction the Society functions, for securing the records and property of the Society.

(2) If the custodian of records and the property, movable and immovable, of the Society refuses to hand over the records or property of the Society to the newly constituted Committee, Administrators or liquidators or refuses to produce such records or property before an officer or official of the Cooperataive Department conducting enquiry, audit, inspections under the provisions of this Act, such Committee, Board, Administrators, liquidators, officers or officials, as the case may be, may apply to the Executive Magistrate within whose jurisdiction the Society falls for securing the possession of records and property of the Society.

Explanation.—For the purposes of this section, Accountant, paid Secretary and Storekeeper, Cashier and salesman shall be deemed to be the custodian of records, stocks and property respectively.

(3) The officer or official conducting enquiry, inspection or audit shall not remove the records from the headquarter of the Society. However, the authorities deciding disputes, appeals, revision or review can call for such records and these records shall be produced before such authorities on a written requisition made by them.

(4) On receipt of an application under sub-section (1), the Executive Magistrate may by a warrant authorise any Police Officer, not below the rank of Inspector to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and property and the records and property so seized shall be handed over to the newly constituted Committee, Board or Administrators of the Society or the liquidator, officer or officials, as the case may be.

(5) Where the Registrar or any other officer of the Department not below the rank of the Deputy Registrar is satisfied that the books and records of the society are likely to be suppressed or destroyed, or the funds and property of the society are misappropriated, or misapplied or likely to be misappropriated or misapplied, the Registrar or any other person not below the rank of Deputy Registrar may apply to Executive Magistrate 1st Class within whose jurisdiction the Society is functioning for seizing and taking possession of records and property of the Society.

(6) On the receipt of an application under sub-section (5), the Executive Magistrate 1st Class may authorise any police officer, not below the rank of Inspector to enter and search any place where the records and property are kept or likely to be kept, and to seize them and hand over the possession thereof to the Registrar or any other person empowered under sub-section (5), as the case may be.

Section 64. Audit

(1) The Registrar shall audit or cause to be audited by a person authorised by him by general or special order in writing in this behalf, the accounts of every co-operative society at least once in each year.

¹[(1A) A Primary Agricultural Credit Society shall get its accounts audited at least once in each year by the Registrar or by a person authorised by him, by general or special order in writing in this behalf, or a Chartered Accountant appointed by its committee.

(1B) Notwithstanding anything contained in sub-section (1), the accounts of an Apex Co-operative Bank or a Central Co-operative Bank shall be audited and certified by Chartered Accountants appointed by its committee from the panel approved by the National Bank.

(1C) The Registrar shall get conducted a special audit of an Apex Cooperative Bank or a Central Co-operative Bank ²[in consultation with the Reserve Bank and the National Bank within the time] stipulated by the Reserve Bank and shall endorse a copy of the report of such special audit to the Reserve Bank and the National Bank within the time stipulated by the Reserve Bank.]

(2) The audit ³[under sub-sections (1), (1A), (1B) or (1C)] shall include an examination of overdue debts, if any, the verification of

cash balance and securities and valuation of the assets and liabilities of the society.

(3)⁴[The Registrar or the authorised person or the Chartered Accountant appointed under sub-sections (1A), (1B) or (1C)] shall 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.

(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 the⁴[Registrar or the person authorised by him or the Chartered Accountant appointed under sub-sections (1A), (1B) or (1C)] may require.

Explanation.—For purposes of this section,—

(1) ‘Audit’ shall mean annual audit of accounts of a co-operative society for each co-operative year and shall include Recurring Audit and Re-audit.

(2) Recurring audit shall mean audit of accounts of a co-operative society within a co-operative year on monthly or quarterly basis as the Registrar may decide.

(3) ‘Re-audit’ shall mean audit of the accounts of a co-operative society for checking up the quality or standard of any previous audit. A co-operative society shall pay for every audit recurring audit or re-audit such audit fee in such manner as may be prescribed :

⁵[Provided that a Co-operative Credit Structure Society shall be free to decide the compensation for audit, recurring audit or re-audit.]

Section 65. Communication of defects in audit to Co-operative Society

(1) If the result of the audit held under section 64 discloses any defects in the working of a co-operative society, the Registrar may bring such defect to the notice of the society and if the society is affiliated to another co-operative society also to the notice of that other society.

(2) A co-operative society shall rectify the defects pointed out in the audit report and submit to the Registrar a report of compliance within 45 days from the date of receipt of the audit report from the Registrar.

(3) Where the Registrar is of the opinion that the defects pointed out in the audit report have not been fully rectified by the co-operative society, he may direct the co-operative society to rectify defects still persisting in the accounts and to submit a further report of compliance with explanation within 45 days from the date of receipt of such direction, and the co-operative society shall rectify such defects and submit a further report of compliance accordingly.

Section 66. Inspection of books of a co-operative society

(1) The Registrar may of his own motion and shall on the application of a creditor of a cooperative society, inspect or direct any person authorised by him by order in writing to inspect the books of the society and the Registrar or the person so authorised

shall have all the powers of the Registrar when holding an inquiry/ inspection under section 67 :

Provided that no such inspection shall be made on an application of a creditor under sub-section (1) unless the creditor—

(a) satisfies the Registrar that the debt or deposit is a sum then due and that he has demanded payment or return thereof and has received satisfaction within a reasonable time ; and

(b) deposits with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection,—

(a) where the inspection is made of his own motion to the society ; and

(b) where the inspection is made on the application of a creditor, to creditors including the Financing Bank, to which the society is indebted and the society.

(3) A Financing Bank may cause the books of a co-operative society affiliated to it to be inspected by an officer of such Bank or by a member of its paid staff, authorised by the Registrar, by order in writing in this behalf. The officer or member so inspecting shall at all reasonable times have free access to books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may also call for such information, statements and returns as may be necessary to ascertain the financial condition of the society.

Section 67. Inquiry by Registrar

(1) The Registrar may of his own motion and shall on the application of a majority of the committee or of not less than one third of the members hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold enquiry into the constitution, working and financial condition of a co-operative society.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:—

(a) he shall at all reasonable times, have free access to the books, documents, 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, securities, cash or other properties to produce the same at any place, at the headquarters of the society or any branch thereof;

(b) he may summon any person who he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place, at the headquarter of the society or any branch thereof and may examine such person on oath ; and

(c) (i) he may, notwithstanding any rule or bye-law prescribing the period of notice for a general meeting of the society, require the officers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the officers of the society refuse or fail to call such a meeting he shall have power to call it himself ;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws ;

(iii) the Registrar shall communicate the result of any such inquiry where the inquiry is held of his own motion or on the application of the majority of the committee or of not less than one-third of the members, to the society and to the Financing Bank, if any, to which the society is indebted.

Section 69. Surcharge

(1) If in the course of an audit, enquiry, inspection or the winding up of a co-operative society, it is found that any person, who is or was entrusted with the organization or management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willful negligence or misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him, by an order in writing in this behalf, to inquire into the conduct of such person.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.

Section 74 Winding up of Co-operative Societies

(1) If the Registrar, after enquiry has been held under section 67 or an inspection has been made under section 66 or on receipt of an application made by not less than three-fourth of the members of a Co-operative Society, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up. Before issuing such an order the Registrar shall consult the concerned federal society.

(2) The Registrar may of his own motion make an order directing the winding up of a co-operative society—

(a) Where it is a condition of the registration of the society that the society shall consist of at least one hundred members in respect of primary Agricultural Societies, fifty members in respect of primary non-Agricultural Societies and number of members has been reduced to less than one hundred or fifty, as the case may be ;

(b) where the co-operative society has not commenced working has ceased to work.

(3) The Registrar may cancel an order for the winding up of a cooperative society at any time, in any case, wherein his opinion, the society should continue to exist.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), no Co-operative Bank shall be wound up except with the previous sanction in writing of the NABARD or Reserve Bank or India.

(5) Notwithstanding anything to the contrary contained in this Act the Registrar shall make an order for the winding up of a Co-operative Bank, if so required by the NABARD or Reserve Bank of India in the circumstances mentioned in section 13-D of the Deposit Insurance Corporation Act, 1961.

(6) Where a Co-operative Bank, being an insured Bank within the meaning of the Deposit Insurance Corporation Act, 1961, is wound up or is taken into liquidation and the Deposit Insurance

Corporation has become liable to pay to the depositors of the insured Bank under sub-section (1) of section 66 of that Act, the Deposit Insurance Corporation shall be reimbursed in the circumstances, to the extent and in the manner provided in section 21 of the Deposit Insurance Corporation Act, 1961.”

As is evident from the aforesaid provisions, section 3 provides for the appointment of the Registrar and section 30 empowers the Government or Registrar to remove the Managing Committee of the Society if it fails in its duties, neglects compliance, or harms society’s interest. Section 31 provides for securing possession of records, etc and empowers the Registrar to direct seizure of the record of the society, if the same are at the risk of suppression or funds misappropriated and the Registrar or Deputy Registrar can request the magistrate to authorize police the seizure of Society’s property or record. Section 64 provides for mandatory annual audits, covering accounts, recurring audits (monthly/quarterly) and re-audits, whereas Section 65 provides for communication of defects in audit to co-operative society. Sections 66 and 67 empower the Registrar to initiate inquiries or inspection into a society’s financial and operational condition on its own or at members’ request. Section 69 provides that if the mismanagement, negligence or misappropriation is discovered, the Registrar can order responsible persons to repay losses or compensate the society, whereas Section 74 provides for winding up of a society by the Registrar following an enquiry, inspection or application by 3/4 of the members with prior consultation of the federal society.

6. As is manifest from the aforesaid provisions of the Act of 1989, same provides a frame work for regulation, scrutiny, audit and accountability of a corporative society in Jammu and Kashmir, aimed at to ensure transparency, accountability and safeguarding the members’ interest in a society and in the

event, an irregularity is noticed and found by the Registrar, he has sufficient and ample power to deal with same under the provisions of the Act of 1989.

7. Having regard to the aforesaid provisions and reverting back to the case in hand, indisputably the transactions under inquiry initiated by the respondent date back to the year 1990. The petitioner-Society admittedly is in existence even today and in terms of the provisions of the Act of 1989, is subject to audit, scrutiny and inspection envisaged under the Act of 1989 and in view of the fact that the Registrar has never initiated an action under any of the provision of the Act of 1989 against the petitioner-Society, same tends to give rise to a strong presumption that there has been no irregularity in the affairs of the petitioner-Society, which would necessitate holding of a verification by the respondent herein. Furthermore, the fact of a considerable delay in initiating the preliminary verification relating to a three decades old transaction cannot, but said to be inherently prejudicial to the society and its members rendering it unable to effectively defend itself and it cannot be overlooked that such prolonged delay might have resulted in irretrievable loss of the records, documents and the names of the individuals involved in the transactions of the petitioner- Society and as such, under these circumstances, it can safely be concluded that the petitioner-Society would be incapable of mounting an effective defence essentially affecting and violating the principles of natural justice, placing the petitioner-Society at an insurmountable disadvantage violating its right to a fair defence and such delayed initiation of verification proceedings against the petitioner-Society is bound to give room for allegations of bias, *mala fide* and misuse of power.

8. Lastly, it would be pertinent to note here that in view of the activities of the petitioner-Society being aimed at public welfare, the verification inquiry initiated against the petitioner-Society would certainly disrupt its operations and in the process harm the interests of its members.
9. Having regard to the aforesaid position obtaining in the matter and the peculiar facts and circumstances of the case, this Court deems it proper and appropriate and in the interest of justice to allow the instant petition.
10. Accordingly, the petition is allowed and the preliminary verification No. Misc-16/2023 ACB Jammu ordered vide No. SSP/MSA/Misc.16/2022/8961-62 dated 20.12.02023 initiated by the respondent herein is quashed. However, the quashing of the same shall not be treated as a binding precedent for other cases, in that, no general principle of law has been laid down in the instant case applicable beyond the peculiarity of the present matter and shall be deemed to have been confined strictly to the issues involved in the instant petition and the parties herein.
11. A copy of this judgment shall be placed on the record file of each petition.
12. The record produced by the counsel for the respondents be returned back.

(JAVED IQBAL WANI)
JUDGE

Jammu
03.01.2025
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No