IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5120 OF 2026

Chaitanya Suresh Kambli
Age 50, Occ.Certified Auditors, residing at B-401/402, Aasopalav Co-operative Housing Society Ltd,
MIG Complex Mira Road East, Thane .. Petitioner

Versus

1. State of Maharashtra, through the Secretary, Dept.of Co-operation, Marketing and Textile, Mantralaya, Mumbai 400032.
2. The Commissioner of Cooperation and Registrar of Cooperative Societies, Maharashtra State, Central Building, Pune.
3. Divisional Joint Registrar, Cooperative Societies, Konkan Division, Navi Mumbai. .. Respondents
4. District Deputy Registrar, Thane
5. District Special Auditor, Co-operative Societies, Thane.
6. The Assistant Registrar, Co-operativei Societies, Thane

…

Mr.Subhash V. Gutte with Ms. Sayali S. Gutte and Mr.Saurabh S. Gutte for the petitioner.
Smt.Savita A. Prabhune, APP for the State.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 29th JULY, 2026

JUDGMENT:- (Per Bharati Dangre, J)

1 By consent of the Parties, we issue 'Rule'. Rule is made returnable forthwith.

2 The petitioner, qualified as certified Auditor and empanelled on with State Panel of Auditors maintained by Government of Maharashtra , since the year 2001-2004, is seeking a direction to accept his application form pursuant to the process initiated for empanellment of the Auditors by the State, as he is apprehensive that in the wake of the disqualification imposed upon for a limited period, his application form may not be accepted.

We have heard learned counsel Mr.Subhash v. Ghutte for the petitioner and learned AGP Ms. Savita Prabhune for the State. By consent of parties, we deem it appropriate to issue Rule which is made returnable forthwith.

3 In the backdrop of the pleadings in the petition and the reliance placed by the Government Advocate on certain G.R/ Circulars, by order dated 22/6/2026, we noted thus :-

> "2. We have also perused the order dated 07/10/2024 and could note that the removal of the Petitioner is on account of the fact that he continued to be the Auditor for New Sunder Tower Co-operative Housing Society Ltd., Bhayandar, Thane from 2008-2009 to 2020-2021 i.e. for a period of 13 years, despite the

existence of a proviso appended to Section 75(2A) of the Maharashtra Cooperative Societies Act, 1960, which provide that the same Auditor shall not be appointed for more than 3 consecutive years by the Annual General Body Meeting of the same Society.

In the order removing the name of the Petitioner from the list of Auditors published on 07/02/2024, there is a reference of two Government Resolutions, viz. GR dated 27/02/2018 and GR Dated 07/02/2024 and the order record that the Auditor to be appointed must comply with 32 and 26 conditions contemplated n the said Resolutions and one of the condition is the one contemplated by the proviso of Section 75(2A). There is also reference to condition 9, when, with the consent of the Auditor and with the approval of the Registrar, some exception is made out, but we are unable to really appreciate the contents of the GR and the provision therein as the reasoning in Para 3 of the order of 07/10/2024 appear to be cryptic.

3. Hence, we request the learned AGP to produced before us both the GRs so as to ascertain as to what is the Policy of the government as regards the appointment of Auditor by a Society and particularly in the wake of the proviso appended to Section 75(2A) of the Act of 1960.

4. In compliance, the leaned AGP has placed the said resolutions on record.

Similarly, an affidavit in reply is also filed by the Divisional Joint Registrar, Co-operative Societies, specifically adopting the following stand

"8. I say that one Shri. Nikunj Rungta, the member of the New Sunder Co-operative Society made complaint by his application dated 17.08.2024 to the Commissioner for Cooperation and Registrar Cooperative Society. Pune for removal of the Petitioner on the above fact.

9. I say that as per circular by Commissioner for Cooperation and Registrar Cooperative Society, Pune reference no. ……….
instruction and guideline are issue for the preparation of the panel of Cooperation Society audit, covering the period from 01.04.2026 to 31.03.2028, in that Clause No. 6 (x), certified auditor whose name have been removed from the panel of auditor under rule 69(1)(g) of MCS rule 1961, shall not illegible for re-inclusion in the new panel.

> 10. I say that this provision serves for imposing restriction as per section 81(1)(a) and (b) of MCS Act 1960, against those who violate law. So preventive action against the petitioner has become necessary due to their violation of law, which is naturally correct. So there has not been violation of right to do any business of petitioner.

5 The learned counsel Mr.Gutte representing the petitioner alleged before us that being a qualified certified auditor, the petitioner maintained an unblemished record. However, while conducting the audit of New Sunder Tower Co-operative Housing Society Limited, Bhayander, Thane, a complaint was filed by the member of the Society alleging that the petitioner had conducted consecutive audits for 13 years (2008-2009 to 2020-2021), without General Body Resolution of the Society.

Based on the aforesaid complaint, the Commissioner (Co-operation) and Registrar Co-operative Societies passed an order on 7/10/2024, premised on Rule 69(1)(g) of the Maharashtra Co-operative Societies Rules, 1961, and the order has reference to two G.Rs i.e. 27/2/2018 and 7/2/2024, which mentioned that while appointing the auditors, the Society shall ensure compliance of condition no. 32 and 36 of the said resolution and also condition no.10, which imposed a restriction on appointing the auditor consecutively for more than three years. Noting that the present auditors was appointed for continuous period of 13 years, there was breach of the terms and conditions set out in the said resolution. It is also further indicated in the order that not only the Society but equally the auditor is responsible for ensuring, that he is not appointed for more than three years and since the appointment of the petitioner was not made in the Annual General Body Meeting, there was a disobedience of condition no.(ix) of the Government Resolution.

As per the provision contained in the Maharashtra Co-operative Societies Act, 1960, in form of Section 81(1)(a) and Section 75(2))(a), a decision is taken to remove the name of the petitioner from the list maintained of Auditors by the State Government. However, in the operative portion of the said order, while allowing the application/complaint filed, it is directed that the name of the petitioner shall be removed from the list published on 7/2/2024 which was to remain in force till 31/3/2026.

6 As the name of the petitioner is removed from the said list prepared for two years, the petitioner is apprehensive that he may not be considered for empanelment for the further years and what is urged before us is the adverse impact of a permanent removal of the name of the petitioner as an auditor, as it is urged to be violative of Article 19(1)(g), as for a trivial cause, if some action is taken and his name is removed from the list of auditors prepared for a limited time, the harsh condition of he being permanently debarred from being enrolled as an auditor of the State Government, is urged to be a totally disproportionate action.

On the contrary, the State Government has justified the action by submitting that the petitioner is dispaneled and therefore, he is not entitled to be empaneled any time in future and the reason for his dispanelment, is serious i.e. the Society never appointed him in it's Annual General Meeting, nor did the Registrar of Co-operative Societies issue any audit for the said period, and in terms of Section 75(2)(a), the Society is empowered to appoint an Auditor from the panel of Auditors for current statutory year and the decision has to be taken by passing a resolution in the Annual General Meeting. It is specifically urged that since one Nikunj Rungta, Member of the New Sunder Tower Co-operative Societies Limited, made a complaint for removal of the petitioner finding merit and substance, his name has been removed from the list of auditors, for the period 2024 to 2026.

7 Before we consider the rival contentions, it is necessary for us to refer to certain statutory provisions contained in the Maharashtra Co-operative Societies Act and Rules.

Section 81 is the provision for audit, when it is open for the Society to be audited its account atleast once in each financial year by an auditor or auditing firm from a Panel prepared by the Registrar and approved by the State Government or an authority authorised by it in his behalf, possessing required qualifications and experience as may be prescribed to be eligible for auditing accounts of societies, and he being appointed by the General body of society, as provided in sub-section (2A) of Section 75 or by the Committee as provided in sub-section (2B) thereof.

Such audit report shall then thereafter be placed before the General Body.

The said provision, is however accompanied with a proviso which state that no auditor shall accept audit for more than 20 societies for audit in a financial year, excluding societies having paid up share capital of less than Rupees Two lakhs. Another proviso appended to the section prescribe that the Registrar shall maintain a panel of auditors and auditing firms as approved by the State Government.

8 Yet another provision which is relevant for the said purpose is section 75(2A) and (2B) which reads thus :-

> **"75(2A)** Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in section 81, for the current financial year and shall also file in the form of return to the Registrar, the name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting :
>
> Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.
>
> **75(2B)** The Committee shall, in the financial year 2020-21 (and year 2021-2022 have the power to decide on the disposal of surplus and annual budget for the next year and to appoint an auditor or auditing firm from a penal approved by the State Government in this behalf having such minimum qualifications and experience as laid down in Section 81. The decisions of the Committee in respect of the above matters shall be laid in the annual general body meeting of a society held thereafter for ratification."

9 Section 81 (5B) deal with the Audit report to be prepared

by the auditor and it is imperative for him to submit the audit report within one month from its completion and in any case, before issuance of notice of the AGM to the Society and to the Registrar, in such form as may be specified on the accounts being examined by him and on the balance sheet and profit and loss account, as on the date, for the period upto which the audit has been conducted.

If the auditor has come to a conclusion in his report that if any person is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days, and the auditor shall also obtain permission of the Registrar, to file a First Information Report. An auditor who fails to file such First Information Report, is however, liable for disqualification and his name is liable to be removed from the panel of auditors and is also liable for any other action as the Registrar may deem fit.

The third proviso of sub-section (5B) of Section 81 further provide that if the auditor find that there are apparent instances of financial irregularities resulting into losses to the Society caused by any member of the committee of officers of the society, then he shall prepare a Special Report and forward the same to the Registrar along with his audit report. Failure to file such report is construed as negligence in the duties and the auditor shall be liable for disqualification for appointment as an auditor or any other action shall be taken against him, as the Registrar deem fit.

10 One more relevant provision which deserve reproduction is Rule 69 of the Maharashtra Co-operative Societies Rules, 1961 which relate to the audit, inquiry, inspection and supervision.

Under Rule 69, the manner in which the audit shall be conducted as well as the manner of appointment of Auditors is set out.

What is relevant for our purpose is clause (g) which has prescribed the reasons for removal of the name of auditor and auditing firms from the panel and the said provision reads thus :-

> **(g) The criteria for removal of the name of auditor and auditing firms from the panel shall be as follows, namely** :-
>
> (i) non-submission of audit report as specified in sub-section (5B) of section 81, to the society and the Registrar within the period of one month from the date of completion and in any case before the issuance of notice of the general body meeting;
>
> (ii) not-disclosure the true and correct picture of accounts as specified in clause (c) of sub-section (3) of section 81;
>
> (iii) after giving consent for audit by the auditor or auditing firm and after issuance of order of appointment of auditor or auditing firm, audit is not completed within stipulated period as specified in sub-section (1) of section 81;
>
> (iv) non-submission of specific report stating that, any person is guilty of any offence relating to the accounts or any other offences within a period of fifteen days from the date of submission of audit report to the society and the Registrar;
>
> (v) failure to file special report to the Registrar if any;
> (vi) failure to file the First Information Report, if required thereof;
>
> (vii) non-submission of scrutiny of audit rectification report within six months to the society;
>
> (viii) if in the test audit or re-audit of the society it is found that, the auditor or auditing firm is responsible for commissions and

omissions;

(ix) if the auditor is borrower of the society and has conducted the audit of the same society without disclosing the said fact to the society; concerned Co-operative society;

(x) if the auditor or his-family member is employee or ex-employee of the concerned Co-operative society;

(xi) if the auditor is an auditor or a partner of an auditing firm which is also conducting internal or concurrent audit of concerned Co-operative society;

(xii) if the auditor or his family member, as specified under explanation (1) of sub-section (2) of section 75 of the Act, is committee member of the concerned co-operative society;

(xiii) if the auditor has conducted audit, without appointment order, issued by the society with the prior approval of general body or the Registrar, if any, as the case may be;

11 In light of the aforesaid statutory scheme, it is noted that by invoking the power under Rule 69(1)(g) clause 13, namely,. the auditor has conducted the audit, without appointing order issued by the Society with prior approval of general body or the Registrar, if any, the name of the petitioner is directed to be removed from the list of auditors maintained at the State level and this removal is from the list which is published on 7/2/2024, which was to remain in operation from the said date i.e. 3/1/2026.

The question raised by the petitioner is that, when the life of the said list has expired or come to an end, and when the new panel is to be prepared, why should he be debarred from his name being included in the panel?

In the response to the said query which is raised in the petition by the petitioner, the learned AGP would place reliance upon the Circular issued by the Commissioner (Co-operation) on 1/4/2026, when the process for preparation of panel of the auditors for the year 2026–2028 is initiated by inviting applications, and pursuant to the procedure being followed, the list shall be published by the State Government.

The learned APP would rely upon a clause in the said Circular in form of clause 6(x), which provide that those certified auditors whose names have been removed from the list of auditors, by taking recourse to Rule 69(1)(g) of the Maharashtra Cooperative Societies Rules 1961, they shall be disqualified from being included in the list i.e. the list to be prepared for the year 2026-2028.

12 The learned Government Advocate Ms.Prabune had placed before us the Government Resolution dated 27/2/2018 and 7/2/2024, which is issued by the State Government in connection with Section 81 of the Maharashtra Cooperative Societies Act, and 69 of the Rules of 1971.

As per the Government Resolution dated 27/2/2018, the appointment of the auditor is subjected to the terms and conditions as set out in Appendix C, and she would place reliance upon condition no.(x), which reads to the following effect :-

> “The Society shall ensure that the appointment of the auditor shall be done in it’s Annual General Meeting, but the same auditor shall not be appointed for a period more than 3 years, and this condition should also be ensured by the auditor.”

It is the submission of the Government Advocate that by reading of the said condition, it is also imperative for the auditor not to conduct the audit of the Society for more than 3 years, and since the petitioner was working as an auditor from 2008-2009 to 2020-2021 and that too, without he being appointed in the general body meeting of the Society, he has been disqualified, and his name is directed to be removed from the list of the auditors published on 7/2/2024, which was valid for a period of two years.

13 It is the contention of the petitioner that the name of the petitioner being removed from one list, there is no embargo that he can never be empaneled for a future period, and we find substance in his submission, as if an auditor is disqualified and his name is directed to be removed from the list of auditors, which is for a fixed period, there is no provision either in the Cooperative Societies Act or Rules, which put an embargo from him being empaneled in a list to be prepared by the Government to be operational for the future period. The only inference of the restriction being imposed upon an auditor, not being appointed on a Society for more than 3 years, is that though his name continue to be empaneled in the list of auditors, he shall be appointed as Auditor for some other Society. Thus, there is no embargo on the Society to pick up the name of an auditor who is empaneled by the State Government, but no auditor shall be appointed by it, who had audited its account for 3 years.

14 We do not find any provision in the Act or the Rules, which will create a permanent embargo, once the name of the Auditor is removed from the panel, which is prepared for every 2 years, and in absence of any such provision or embargo, we find that imposition of a clause by the Government in the Circular dated 1/4/2026 for empanelment of the auditors of the Cooperative Societies for the year 2026-2028, which prohibit the persons like the petitioner, who are empanelled from applying to the State Government, when the applications are invited afresh for empanelment of the auditors for the year 2026-2028 to be unsustainable.

Condition no.6(x), in our view, is clearly violative of Article 19(1)(g), as removing an auditor permanently from the list of auditors is a serious consequence, and definitely, neither Section 81 of the Co-operative Societies Act, nor Rule 69(1)(g) contemplate a permanent debarment, and from the perusal of the order dated 7/10/2024 passed by the Commissioner (Co-operation) removing the name of the petitioner from the list of empaneled auditors, it is evident that it was only from the list of 7/2/2024, which was in operation till 31/3/2026.

15 In the wake of the aforesaid, we do not find that the petitioner can be prohibited from participating in the process for empanelment of the auditors by the State Government pursuant to the Circular dated 1/4/2026, by which the process is initiated for empanelment for the year 2026-2028, merely on the ground that he was the depaneled from the list of auditors for the year 2024-2026, and since the period of the said list is already over, we declare that if the petitioner make an application for the empanelment in the year 2026-2028, and his previous depanelment shall not be construed as an impediment, and his application shall be considered on his own merits.

Writ Petition is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE, J) **(BHARATI DANGRE, J.)**

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