

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK JAIN**

**ON THE 5<sup>th</sup> of SEPTEMBER, 2024**

**M.P. NO. 4079 of 2024**

***GHANSHYAM SINGH RAJPUT***

*Versus*

***ASSISTANT REGISTRAR AND OTHERS***

.....  
**Appearance:**

***Shri Anil Lala – Advocate for the petitioner.***

***Shri Anshuman Swami – Govt. Advocate for the respondent/State.***

.....

**ORDER**

The present petition has been filed challenging the order dated 03.07.2024 passed by the M.P. State Co-operative Tribunal Annexure-P/5 whereby the revision of the petitioner has been rejected.

2. The contention of the petitioner is that the petitioner was director of Rohit Grih Nirman Sahkari Sanstha for a short period of some time during the year 2006-07. It is the case of petitioner that an enquiry into the affairs of the said housing society was carried out in terms of Section 59 of M.P. Co-operative Societies Act and the said enquiry was conducted as per direction of Deputy Commissioner Co-operatives, Bhopal placed on record as Annexure-P/1 dated 04.02.2019. It is a case of the petitioner that in the said enquiry, certain findings have been recorded against the petitioner by the enquiry committee comprising of four members.

3. The petitioner was apprehending adverse actions from various authorities in terms of various provisions of M.P. Co-operative Societies Act. In view of special provisions for housing society as provided under Chapter-VIII-A of the Act, under which Section 72-A to 72-E have been inserted for Housing Co-operative Societies.

4. The petitioner filed a revision under Section 80-A of M.P. Co-operative Societies Act, 1960 contending therein that the petitioner is apprehending adverse orders from various authorities in view of the adverse findings recorded against the petitioner by the four members enquiry committee constituted under Section 59 of the Act of 1960. Therefore, he put the said adverse findings to challenge before the Joint Registrar. The Joint Registrar held that a mere enquiry report is not an order and therefore no powers of revision or supervision under Section 80-A can be exercised against a mere enquiry report, when no adverse order on basis of such enquiry report has been passed so far.

5. The petitioner put to challenge the aforesaid order of the Joint Registrar before the Co-operative Tribunal and the Co-operative Tribunal upheld the order of the Joint Registrar vide Annexure-P/5 dated 03.01.2024 and thereafter the review has also been rejected vide order Annexure-P/6 dated 03.07.2024.

6. The sole question that arises in the present petition is that once an enquiry under Section 59 is carried out against a person then whether the said person has a right to challenge the said enquiry under Section 80-A of M.P. Co-operative Societies Act when no adverse order in terms of the said enquiry has been passed and no consequence of the said enquiry so far has fallen on the person concerned.

7. Section 80-A of M.P. Co-operative Societies Act is as under:-

**“80A. [Power of Registrar to call for proceedings of subordinate Officers and committee of a society and to pass orders thereon.]”**

- The Registrar, may at any time on his own motion or on the application made by any party, call for and examine the **record of any enquiry or the proceedings** by any subordinate officer or a decision of a Committee of a Society for which Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans granted in any other form **for the purpose of satisfying himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer or committee.** If in any case, it appears to the Registrar that **any decision or order or proceedings so called for** should be modified, annulled or reversed, the Registrar, may pass such order thereon as he may deem fit:

Provided that no order under this Section shall be made to the prejudice of any party unless such party has had an opportunity of being heard:

Provided further that the powers conferred on the Registrar under this Section, shall not be delegated to any officer below the rank of Joint Registrar].”

*(Emphasis supplied)*

8. It was argued that since the enquiry has not culminated in any consequential order or decision, hence, the enquiry can only be covered under “proceedings” and it was vehemently argued by learned counsel for the petitioner that enquiry is indeed a proceedings of Sub-ordinate officer and the petitioner has a right to challenge the enquiry report independently though it may not have been culminated into a consequential order, as yet.

9. From a perusal of the aforesaid provision, it is evident that the Registrar can call for and examine the record of any enquiry or proceedings of any Subordinate officer or decision or order of Board of Revenue for the

purpose of satisfying himself as to the legality or propriety of any decision or order passed and as to regularity of proceedings of such officer or Board.

10. It is clear from a bare language of Section 80-A that the Registrar can examine the record of enquiry or proceedings or decision or order but that would be for the purpose of satisfying himself as to legality of any decision or order or regularity of proceedings.

11. The language of Section 80-A deals with examining the record of any enquiry or proceedings or decision or order. Clearly the aforesaid words of Section 80-A i.e. enquiry and proceedings are separate and from a bare language of Section 80-A, it cannot be inferred that enquiry and proceedings are one and the same.

12. Learned counsel for the petitioner has relied on the judgment of this Court reported in 2009(1) M.P.L.J. 59 to submit that this Court has held election to be a proceeding for the purpose of Section 80-A while learned counsel for the State had relied on the judgment in the case of **Maharaj Singh Vs. Narendra Singh** reported in **2015 M.P.R.N. 26** rendered by a Division Bench of this Court to submit that election proceeding is not a proceeding for the purview of Section 80-A.

13. The aforesaid judgments are in the matter of election and it has been considered by this Court whether election proceedings are proceedings for the purview of Section 80-A. The present case is not a case of election and this issue does not arise in the present case whether election proceeding is a proceeding in terms of Section 80-A. It is the case of the petitioner here who is claiming a right to challenge the enquiry report on the ground that the enquiry report is not legal and is perverse.

14. From the aforesaid discussion made above, it is clear that the legislature having used the word “enquiry” and “proceedings” independently under Section 80-A, the revision filed by the petitioner invoking provisions of Section 80-A against enquiry proceeding was not maintainable because enquiry is independent from “proceedings” in terms of Section 80-A.

15. Learned counsel for the State had argued that the petitioner would not have any remedy and the only remedy would be available to the petitioner when the consequential order is passed in terms of the enquiry report and the petitioner would have a right to challenge such adverse order. The petitioner has no right to challenge the enquiry findings prior to any adverse order being passed against him.

16. The aforesaid contention cannot be accepted because it would run counter to the basic principles of natural justice. If a coercive order is passed against the petitioner on the basis of enquiry report, without hearing the petitioner and without pointing out the perversity of the enquiry report to the said authority, it would lead to violation of principles of natural justice in as much as any sub-ordinate authority may pass any direction coercive to the interest of petitioner on the basis of enquiry report and the petitioner may not have any chance to point out to authority about any perversity in the enquiry report and to persuade the authority not to follow the said enquiry report.

17. The aforesaid aspect was considered by a constitution Bench of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others* reported in 1993 4 SCC 727. Though the aforesaid case was in the matter of a departmental enquiry but it was held that the principles of natural justice would be violated if straightway

an order on the basis of enquiry report is passed without putting the person on notice and giving him a chance to confront the enquiry report and giving him a chance to persuade authority not to accept the enquiry report and not to take any adverse action on the basis of enquiry report.

18. The petitioner seems to have a right to object to the enquiry report before any adverse order is passed against him.

19. Therefore, while confirming the orders impugned in the present petition this petition is disposed off with the observation that if any adverse and coercive order against the petitioner is issued on the basis of the impugned enquiry report Annexure-P/2 then before that the petitioner would be put to notice and given a chance to persuade the authority not to accept the enquiry report pointing out the infirmities in the said enquiry report before such authority.

20. With the aforesaid observations, this petition is **disposed off**.

**(VIVEK JAIN)**

**K.S.**