Enquiries under Section 83 & 88 of Maharashtra Co-operative Societies Act, 1960

BY CA. B. B. MANE



(1) The Registrar may *suo motu*, *or*, (of his own motion, and shall) on the application of *one-fifth* (one-third of the) members of the (a) society, or on the basis of Special Report under the third proviso to sub-section (5B) of Section 81, himself or by a person duly authorised by him in writing, in this behalf, *shall* hold an inquiry into the constitution, working and financial conditions of a society. (2) Before holding any such inquiry on an application, the registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine, towards the cost of the inquiry. If the allegations made in

the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following, the procedure laid down in that section, direct from whom and to what extent the cost of the enquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.

(3) (a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the enquiry is in possession of information, books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give. (b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1), any⁴ book or papers which it is his duty under clause (a) to

produce or to answer any question which put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence punish the defaulter with a penalty not exceeding (five hundred) five thousand rupees. Any sum imposed as penalty under this section shall on the application by the Registrar or the person authorised by him to a Magistrate having jurisdiction be recoverable by the Magistrate as if it were a fine imposed by himself.

(c) The Registrar or the officer authorised by him shall complete the inquiry and submit his report as far as possible within a period of six months and in any case not later than nine months.

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.

(1) An order authorising inqiry under Section 83 or inspection under Section 84 shall, among other things, contain the following;-

(a) the name of the person authorised to conduct the inquiry or inspection;

(b) the name of the society whose affairs are to be inquired into or whose books are to be inspected;

(c) the specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry, or inspection is to be completed and report submitted to the Registrar;

(d) cost of inquiry;

(e) any other matter relating to the inquiry or inspection.(2) A copy of every order authorising inquiry under Section83 or inspection under Section 84 shall be supplied to thefederal society or societies to which the society in respect ofwhich the order is issued is affiliated.

(3) If the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (I), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection and the Registrar, if he

is satisfied, grant such extension of time *not exceeding time limit as specified in clause (c) of sub-section (3) of section 83* for the completion of the inquiry or inspection as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust it to such other person as he deems fit.

(4) On receipt of the order referred to in sub-rule (J), the person authorised to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts and other documents in possession of the society or any of its officers,

members, agents or servants and obtain such information or explanation from any such officers, members, agents or servants of the society in regard to the transactions and working of the society as he deems necessary for the conduct of such inquiry or inspection.

(5) The person authorised to conduct the inquiry or inspection shall submit his report to the Registrar, on all the points mentioned in the order referred to in subrule (i). The report shall contain his findings and the reasons therefor supported by such documentary or other evidence as recorded by him during the course of his inquiry or

inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned, amongst the parties specified in sub-section (I) of Section 85. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the person or persons concerned.

(6) The costs of the inquiry or inspection apportioned by the Registrar under subsection (1) of Section 85 shall be recovered as provided in Section 86. The Registrar may

direct that such costs or any part thereof shall be paid in the first instance from the funds of the society or in case of inspection, from the amount deposited by the creditor under clause (b) of sub-section (i) of Section 84 and then recovered and repaid to the society or the creditor, as the case may <u>be</u>.



SEC 88 : - POWER OF REGISTRAR TO ASSESS DAMAGES DELINQUENT PROMOTERS,ETC

(1)Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorized to make inquiry under section 83 or the person authorized to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part, in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to ¹[the date of 13 commencement of such audit or date of order for inquiry,

SECTION 88 : - POWER OF REGISTRAR TO ASSESS DAMAGES DELINQUENT PROMOTERS ETC., --

inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty misfeasance or breach of trust in relation to the society, the Registrar or a person authorized by him in that behalf may frame charges against such persons or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits, his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorized under this section may determine, or to

SECTION 88 : - POWER OF REGISTRAR TO ASSESS DAMAGES DELINQUENT PROMOTERS ETC., --

contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

Provided that, proceedings under this subsection, shall be completed by the authorized person within a period of two years from the date of issue of order by the registrar:

Provided further that, the Registrar may, after recording the reasons therefore, extend the said period for maximum period of six months.

(2) The Registrar or the person authorized under sub-section
(1) in making any order under this section, may

SECTION 88 : - POWER OF REGISTRAR TO ASSESS DAMAGES DELINQUENT PROMOTERS ETC., --

provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, not with standing that the act is one for which the person concerned may be criminally responsible.

RULE 72: PROCEDURE FOR ASSESSING DAMAGES AGAINST DELINQUENT PROMOTERS, ETC. UNDER SECTION 88

(1) On receipt of a report referred to in section 86 or otherwise the Registrar or any other person authorised by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the organisation or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society. In case of deceased person, the society shall furnish information regarding is representative who inherits his estate.

RULE 72: PROCEDURE FOR ASSESSING DAMAGES AGAINST DELINQUENT PROMOTERS, ETC. UNDER SECTION 88

(2) On the completion of the further inquiries under sub-rule (1) where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statements in his or their defense within fifteen days of the date of issue of the notice.

(3) On receipt of the statements referred to in sub-rule $(2)_{18}$ the Registrar or the person authorized by him, if he is

satisfied that there are reasonable grounds for holding the or persons liable, shall frame charges. person (4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorised by him may permit production of other documentary or oral evidence, if considered necessary, subsequently. (5) The Registrar or the person authorised by him, shall thereafter record the evidence led by the society or the 19 person or persons concerned and take on record the

RULE 72: PROCEDURE FOR ASSESSING DAMAGES AGAINST DELINQUENT PROMOTERS, ETC. UNDER SECTION 88

documents proved by them and shall thereafter fix a date for arguments of hearing both the parties. (6) On the day fixed for hearing under sub-rule (5), the Registrar or the person authorised by him, shall hear the arguments and may pass his final orders on the same day or on any date fixed by him within sixty days from the date on which the hearing was completed. On the date so fixed, the Registrar or as the case may be, the person authorised by him shall, make his final order,] either, ordering repayment of the money or return of the property to the society together 20 with interest at such rate as may be specified by him or to

SECTION 88

contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society. (7) The Registrar or the person authorised by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any part of such cost as he thinks just.

(8) The Registrar or the person authorised by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes ²¹ his final order.

BASIS ON WHICH REGISTRAR CAN ORDER INQUIRY

- a. Auditor's report; or
- b. An authorized person's inquiry report U/s 83; or
- c. An authorized person's inspection report U/s84; or
- d. Liquidator's report U/s 105; or
- e. Otherwise, i.e. any other departmental report; or any other information which registrar may have in possession.

REGISTRAR SHOULD SATISFY ON THE BASIS OF REPORT, THAT ANY PERSONS WHO HAS TAKEN PART IN THE

- 1) Organization; or
- 2) Management or
- 3) Winding up; of society

and who have taken such part, within period of 5 years prior to commencement of audit or inquiry, inspection, winding up of society; (such person may be deceased / past / present officer of society)

Such persons should have

a)Misapplied or

b)Retained or

REGISTRAR SHOULD SATISFY ON THE BASIS OF REPORT, THAT ANY PERSONS WHO HAS TAKEN PART IN THE

- c) He has became liable or accountable for
 - i. Any money; or
 - ii. Property;

and such person has been guilty of

- Misfeasance; or
- Breach of trust; in relation to Society

MISFESANCE

 Improper performance of some lawful Act, "In other words it means misconduct, delinquency and breach of duty resulting loss to the Institution"

(Delinquency means neglect of duty or wrong doing or misdeed)
LOSSES

 Proceeding Under Section 88 have to be ordered when losses are actually incurred by a Society and not on losses may occur depending on some future events. Losses to society must be direct one and not remote one.

BREACH OF TRUST

 Violation or non-performance of duty imposed by law on a person standing in a fiduciary relation to another.

MISAPPLICATION

* Using the money of the society in a manner not warranted by the law or rules made under the Act or by the bye-laws of the society.

RETENTION

 Retention is an act of retaining or withholding or keeping for oneself. In such a case the property may not be misapplied but it is kept by the person for his own use in his own custody unlawfully.

WHO CAN CONDUCT INQUIRY U/S 83 AND 88



ar himself; or

authoriz<mark>ed by h</mark>im.

QUALIFICATION OF AUTHORIZED OFFICER (INQUIRY OFFICER) CIRCULAR NO. ADM/184(SU) DT. 2-12-1963.

- i. He should be held an post not lower in rank that is District
 Dy Registrar, Dy. Collector, or Civil Judge
- ii. If above persons are not available than the person to be selected should possess legal qualification and background, which will help him to take judicious view.
- iii. The character, moral background and reputation should indicate capacity to give judgment without fear or favors.

SECTION 89 : POWER TO ENFORCE, ATTENDANCE ETC.,

The registrar or the person authorized by him, when acting under section 83, 84 or 88 shall have the power to summon and enforce the attendance of any person ⁴[and examining him on oath or affirmation or by affidavit] or to compel the production of any document or other material object by the same means and in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

"SECTION 31 AND 32 OF CIVIL PROCEDURE CODE AND ORDER XVI"

ORDER XVI SUMMONING AND ATTENDANCE OF WITNESSES

In lieu of or at the time of issuing such proclamation, or ⇒ at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any time which may be imposed under rule 12:

DRAFT OF SUMMONS

.../.../20.. USA/INQ./1/20..-20..

To The chairman / Secretary Co-op Society,

Ref.: - Registrar of Co-operative Societies Order No. 100 / NESS / NEYAMAN / INQUIRY / 88 / 20.., Dated .../.../20... Sir,

As an Inquiry Officer, appointed by the Registrar of Cooperative Society, Delhi, by his order dated .../.../20... Issued Under Section 88 of The Maharashtra Co-operative Societies Act, 1960, to assess damages and to pronounce final order of recovery of damages with interest from delinquent persons.

Whereas your attendance is necessary, you are hereby required to produce documents and papers as listed below, and give information before me on the ...day of ... 20.. at ...:.. am/pm in the forenoon/afternoon at our/ your office. If you are fail to comply with this order without lawful excuse,

you will be subject to the consequences of non-attendance laid down in Rule 12 of order XVI of Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of an Enquiry Officer, this ... day of 20...

SD/-

(U.S. Athyasi)

(Inquiry Officer)

Copy to: - The Registrar of Co-op., Societies, Delhi.

Enclosed List of Documents to be produced.

- 1) Names of directors along with present address for the period-----
- 2) An expenses details like Purchases of lime, Mill Sanitation Material and advances., etc., stated in above referred order issued by Registrar of Delhi.
- 3) An audit report along with Balance Sheet, Profit & Loss Accounts for period as stated above.



LIST OF DOCUMENTS AND RECORDS TO BE MAINTAINED BY INQUIRY OFFICER

- **1.** Copy of Order of Appointment of inquiry officer,
- 2. Copy appointment acceptance/rejection letter,
- **3.** Copy of summons issued to principal officer,
- 4. Working papers of prima-facie Inquiry,
- 5. Section 83 Inquiry report or Special audit report, audit report or liquidator's report, or inspection report or any other report on which basis inquiry has been institute.
- 6. List of delinquents along with their address.

LIST OF DOCUMENTS AND RECORDS TO BE MAINTAINED BY INQUIRY OFFICER

- 7) List of all relatives of decease delinquent who have inherited property of delinquent.
- 8) Copies of show cause notices issued to delinquents.
- 9) **Replies received from delinquents to show cause notice.**
- 10) List of delinquents to be prepared and maintained on whom charges are framed.
- 11) Copies charges framed to be maintained.
- 12) List of witnesses.
- 13) Replies received from delinquents to charges.

LIST OF DOCUMENTS AND RECORDS TO BE MAINTAINED BY INQUIRY OFFICER

- 14) Relevant laws and other statutory circulars etc., should be kept in separate file.
- 15) Notes, noting of important points to be verified subsequently, come across during hearing.
- 16) Enquiry Report and order proclaimed U/s 88.



LIST OF FILES TO BE MAINTAINED

- 1. Statutory papers file
 - i. Order of Appointment
 - ii. Acceptance letter of appointment
 - iii. Copies of summons issued
 - iv. List of delinquents with their addresses
 - v. Show cause notices
 - vi. Orders issued to officer of Society
 - vii. Rojnama (Dairy)
 - viii. Vakaltanamas of Advocates
 - ix. Application received from advocates.



List of files to be maintained

- **x.** List of delinquents against whom charges are framed
- xi. Copies of Charge sheets
- xii. List of witnesses

c)

- xiii. Affidavit of Society received as per rule 72(5)
- xiv. Correspondences with registrar
 - a) For seeking extensions for enquiry
 - **b)** Ad-interim reports
 - Receipt of fees vouchers



- d) Copy of report on which basis enquiry ordered
- **x.** Important copies of judgments
- xi. Final letter of submission of inquiry report

List of files to be maintained

- 2. Replies to Show Cause Notice File
 - i. Copies of acknowledgments
 - ii. Replies from delinquents
- 2. Replies to Charges File
 - i. Copies of acknowledgments
 - ii. Replies from delinquents
 - iii. Witnesses evidence recording papers
- 2. Supporting documents File
 - i. Relevant evidences like statements of fact,
 - ii. Bye laws of society
 - iii. Copies of resolutions passed
 - iv. Audit report etc.



PROCEDURE TO BE FOLLOWED TO CONDUCT INQUIRY

- 1) After receipt of appointment order (letter) inquiry officer should give letter to Registrar stating his acceptance or rejection Inquiry officer appointment.
- 2) Inquiry officer should issue summons to principal officer of the society, asking him to keep records ready for make prima-facie inquiry.
- 3) On the basis of records of society and report which basis of inquiry U/s 88 has order, Inquiry officer should make further inquires as he may thinks necessary to find out persons, who have taken part in organization, management of the society and has misapplied, retained money or property of the society, or who has committed misfeasance, breach of trust in relation to society.

PROCEDURE TO BE FOLLOWED TO CONDUCT INQUIRY

- 4) Inquiry officer should obtain names and addresses of concern persons and heirs of deceased delinquents .
- 5) In case of deceased person society shall furnish information regarding hi representative who inherits his estate.
- 6) Inquiry officer should issue show cause notices to all such delinquent, who are responsible for loss to the society.
- 7) An inquiry officer should call delinquents to put their defense within 15 days from the date of issuance of notice.
- 8) The show cause notice should contain:
 - a. An act of person to whom notice has been issued i.e. whether the act is misfeasance, misapplication, breach of trust or retention in relation to society,

INQUIRY

- b. Details of loss caused to society due to such acts and amount of liability of such persons.
- c. Show cause notice should clearly state in case of failure to submit defense, further action will be taken on the basis of available records.
- 9) After receipt of statement of defense from the delinquents, and if inquiry officer comes to conclusion that there is sufficient ground to frame charges, then he should frame charges.
- List of persons against whom charges are framed should
 be prepared.

PROCEDURE TO BE FOLLOWED TO CONDUCT INQUIRY

- 11) Copy of charges should be issued to the concern persons, at the time of hearing or sent by register AD post.
- 12) After framing of charges, concern persons should be asked to put their statement of defense either orally or in writing.
- 13) Inquiry officer should ask society to lead evidence in this respect as per rule 72(5).
- 14) After receipt of evidence from society, date should be fixed for hearing of both the parties
- 15) After final arguments inquiry officer may pass order on the same day or fix any other day for pronouncement final order, it should within 60 day from the completion of hearing.

PROCEDURE TO BE FOLLOWED TO CONDUCT INQUIRY

- 16) On the date of pronouncement of final order, inquiry officer may order to repay money or return the property of the society with interest or ask to contribute to the assets of society by way of compensation in respect of misfeasance, breach of trust or retention of the society.
- 17) Inquiry officer may provide cost of inquiry proceeding in the final order.
- Inquiry officer should provide copy of final order to
 concern parties within 10 days from the date of his
 final order.

Reasonable opportunity implied: -

- 1) One is person against whom the charges are leveled should be informed about the details of charges.
- 2) Reasonable time is given to him to put forth his say about the charges leveled against him for submitting his explanation against charges.
 "The reasonable opportunity means real and adequate opportunity."
 Charge sheet should include following things: -
 - Details of charges leveled.
 - Specific allegations against each of the individual, one who has charge-sheeted.
 - ➢ How misfeasance or non-feasance has led to a loss.
 - ➤ The amount of loss should clearly indicated.

Chapter 1

Introduction & Points of Inquiry

This chapter will consist

Details of order by which report/final order is being prepared

- a) Details of report on which basis U/s 88 enquiry has ordered i.e. on audit report, Sec 83 report, Liquidators report etc,
- b) What are the points of Inquiry
- c) Name's of delinquents, representatives Advocates; and
- d) Diary of hearings (Rojnama)

Chapter 2

Details of action after receipts of order This chapter will consist

- a) Details of proceedings in short after receipts of defense,
- b) List of concern persons to whom inquiry officer consider

to be issued show cause notice.





Chapter 3 Reasons to issue show cause notices

This chapter will consist

 a) Reasoning why the Inquiry officer felt necessary to issue show cause notices to the concern



Chapter 4 Defense received from delinquents This chapter will consist

- a) What is defense in short?
- **b)** Have you agreed to defense or not?
- c) Reasons for if agreed or disagreed to the defense.
- d) Comments on the defense and final conclusion which may be
 - i. Legal defense
 - ii. Factual evidence.

Chapter 5 **Reasons to Frame Charges** This chapter will consist

- List of persons against whom charges are **a**) framed.
- List of persons against whom charges are not **b**) framed.
- Reasons frame detailing charge, to **c**) involvements of persons, act of persons whether it is misapplication, breach of trust or retention etc., **49**

"Charge sheet and details of hearings there on"

This chapter will consist

a) Details of hearings and conclusions drawn

b) Recording of witnesses.



Chapter 7

"Affidavit from society as per rule 72(5) of the Maharashtra Co-operative Societies Rules 1961."

This chapter will consist

- Synopsis of society affidavit and
- Inquiry Officer's Comments and Conclusion





Chapter 8

"Scrutiny of replies received from delinquent person"

This chapter will consist

- a) Replies received from person and inquiry officers comments, conclusions etc.,
- b) Person wise replies received and it's silent features and inquiry officers comments and conclusions.

Chapter 9

"Summary of proceeding and final order."

This chapter will consist

a) Summary of proceedings, conclusions and draw of Final order.



TALENT & TACT

Talent knows what to do, Tact knows how to do, Talent makes man respectable, Tact makes man acceptable. Talent is wealth Tact is ready money "Don't waste time learning the tricks of trade, Instead learn the trade." **"GOOD INQUIRY OFFICER IS ONE, WHO HAS EAGLE EYE** & LION'S HEART"

