

LATEST DEVELOPMENT IN CO-OPERATIVE LAW AND APPOINTMENT OF AUDITORS

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Introduction:

During a century of its existence, the Co-operative sector in India has built a network consisting of more than 6 lakh individual cooperative enterprises and over 250 million members. India's co-operative movement is numerically the largest movement of its kind in the world. Its presence is felt in practically all walks of rural life and a coverage spanning almost all villages of the country. Co-operatives play a dominant role in the economic and social life of the nation. In Maharashtra, nearly 2.30 lakh co-operative enterprises are functioning, of which about 88,000 are co-operative housing Societies.

However, the Constitutional guidelines for the regulation of this key sector were, until now, very sketchy. As a result, there was great divergence and dis-uniformity between the laws governing co-operatives in various states, and the core values of democratic functioning and autonomy were greatly diluted. Towards remedying this, the 97th Constitutional Amendment was passed last year, triggering a cascade of changes in the legislation and governance of this sector.

The changes that have happened in co-operative law are explained in Seven levels:

1) 97th Constitutional Amendment in January 2012: The Constitutional Amendment was passed by the Parliament and is applicable to the whole country. It gives a constitutional definition to co-operative societies, makes it a fundamental right to form co-operatives, gives a directive principle for the State to ensure autonomy and democratic functioning in co-operatives, and mandates that every state must amend its co-operative laws to bring uniformity and sweeping reforms, including electoral reforms, by February 2013. It mandates that access to information and records must be ensured by the Registrars.

2) Amendment of Maharashtra Co-operative Societies (MCS) Act 1960 vide Ordinance and Amendment Act in August 2013: The MCS Act amendment was on 13.8.2013 which is applicable to all the co-operatives in the State of Maharashtra, including co-operative businesses and co-operative housing societies. The amended Act defines a new authority i.e. State Co-operative Election Commissioner, who will now supervise and conduct the elections of all co-operatives in Maharashtra. It creates a new distinction between members – “Active” and “Non Active”, and creates mechanisms to enable Active members, and disenfranchise and expel persistently non-active members. It also specifies reservation of a minimum of 5 seats in all co-operative elections for SC/ST/OBC/VJ and women on the managing committees of all societies. It seeks to limit the role and tenure of administrators in all co-operatives. It defines a large and

powerful role for statutory auditors, and mandates them to register FIRs (First Information Reports) in case of fraud, misappropriation etc. The societies are required to appoint the auditor from the panel of Auditors approved by the Government. It also defines a more dominant role for the office of the Registrar of Co-operatives, with powers to impose stiff penalties, dismiss office office-bearers and debar them from contesting the next term.

3) **Amendment to MCS Rules, 1961 and MCS Election Rules, 2013** : The state Government has published both the draft Rules and invited the suggestion from the public at large. The final notification of them has not been done so far.

4) **Various Notifications:**

(a) Govt has issued notification for setting up of Election Authority and its office at Pune. However, no officer has been appointed to head the election authority.

(b) Notification is issued that the term of the committee which has expired and election of which is not done effective from 14.2.2013 shall continue to hold the office till the proper election is done by the election authority but they cannot take any policy decision in the matter.

(c) Notification is issued to upload the information of the societies online of Govt website and also annual returns also need to be uploaded on the website every year before 30th Sept.

(d) Notification is issued to amend the bye-laws as per the amendment carried out.

5) **Court Orders:**

97th Constitutional Amendment was challenged before the Hon'ble Gujarat High Court. Gujarat High Court has set aside the major portion of amendments which had restricted the states power in law making for co-operative sector. It was made clear that as per Constitution, state enjoys powers to make laws for co-operative sector and if the same has to be incorporated in the constitution more than 50% of the state legislature has to approve the constitutional amendment which was not done before the same was approved by President. Thus it was held to be unconstitutional. However, many state governments including Maharashtra have carried out the amendment to their respective state laws based on 97th Constitutional amendments. Once amendments have been approved in the state law, they are binding and will not be affected by the Hon'ble Gujarat High Court judgment.

6) **Amendment of Maharashtra Co-operative Society Model Bye-Laws:**

These Model Bye-Laws were framed by the office of the State Registrar of Co-operatives and is published on the Govt. website. All societies in Maharashtra are required to hold a Special General Body Meeting and adopt them at the earliest. It gives a bigger role to the General Body vis-à-vis the Managing Committee, and also vis-à-vis individual members. The General Body can now impose larger penalties, and participate to a greater extent in the society's management.

Although the amendments in the Constitution are well-intentioned, their interpretation in the MCS Act and the Maharashtra co-operative Bye-laws makes one wonder whether autonomy is being given, or whether the existing autonomy of co-operative societies is being encroached by the State Co-operation Department. Some seemingly well-intentioned sections and bye-laws are likely to produce undesirable side-effects on the peaceful functioning of societies. They may cause rifts and divisions between members, and give rise to bitter disputes.

(7) Development regarding the Appointment of auditors:

There are many developments regarding the panel of auditors, their appointment by societies ,fees fixation based on many court judgments and the latest passing of Maharashtra Co-operative Societies (Amendment) Act, 2013 published in the Gazzete on 13.8.2013 effective from 14.2.2013.

(a) The Aurangbad bench of Mumbai High Court held that the fees of the auditor should be fixed as per the scale of fees prescribed by the Govt. Accordingly, the Govt had constituted the fee fixing committee to recommend the scale of fees. The committee has submitted its report to the Govt to publish the fees to be charged to the various type of societies. So far the Govt has not published the revised audit fees scale. Therefore, it is my view that the auditor should be paid audit fees as per the earlier G.R dated 1992 or as per the General Body decision.

(b) The MCS (Amendment) Ordinance, 2013 had restricted to an auditor to audit not more than 20 co-operative societies audit having paid capital more than Rupees One Lakh. The same was set aside. However, in the final Amendment done on 13.8.2013, the same provision has been retained. Thus now the auditor cannot accept more than 20 audits of co-operative societies having more than Rs 1 lakh paid up capital. He can accept any audits having paid up capital less than Rs.1 Lakh.

(c) On 1st Oct, 2013, the Hon'ble High Court set aside the Audit Panel prepared by the Co-operative Department. The Hon'ble High Court held that preparing the panel of auditors based on Commissioner circular of March, 2013 without the proper amendment to MCS Rules cannot be acted upon. Now the draft MCS Rules are published. Once the same is finalized, the Govt will issue notification to invite the names for panel of Auditors. It is my view that till such time, the auditors who are eligible to enroll their name in the panel of auditors as per the provisions made in MCS Act, 1960 and who will apply for enrollment may accept the audit and carry out the same. The Govt has not issued any clarification to this effect.

(d) The amendment done to the MCS Act on 13.8.2013 changed the qualification required to empanel as auditors such as CA now need one year experience instead of 3 years prescribed earlier and CA firm does not require any experience, if the firm need to be get itself empanelled. The GDCA need 3 years experience instead of 5 years experience prescribed earlier. The MCS rules are not yet published, therefore, Govt is not in a position to bring out any procedure to prepare the panel of auditors.

Again, if the new panel is cancelled, naturally, the auditors in the old panel or as per the old provision of the law where a CA holding Certificate of practice with WIRC Certificate regarding undergoing Co-op Audit course should be eligible to be appointed as the auditor. But no clarification is issued by the Co-op Department so far. We have requested the govt to issue Govt order to clarify their stand regarding the appointment of auditors. What will happen, if the audit is done by the auditor who are in the new panel which High court has set aside and if done by auditors who are not in the panel like CA or GDCA or who are in the old Panel. The Societies are required to do the audit but whom to appoint as auditor is not yet clarified.

Therefore, we need to wait for the govt to prepare MCS Rules, bring out the new procedure to prepare the panel and then prepare new panel and till such time the confusion will prevail. IT is my view that CA who has more than one year COP as per the amended act should be eligible to do the audit pending the preparation of panel by the Govt. Again my views are subject to correction by the judgment that may follow, if any person challenges such appointments in court. The worst that can happen, is the court may order for reaudit by the new panel auditor and there may not be any mistake on the part of auditor as there is no panel at all as the same is set aside.