

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11099 OF 2015

Dabhad Sahakari Aaudyogik
Vasahat Maryadit
through Its President
Shri Ramchandra S/o Kikshanrao Dabhadkar
@ DadaJwar
age: 74 years, occu: retired
having its Office at Dabhad,
Tq. Aradhapur
District: Nanded

Petitioner

Versus

- 1 The State of Maharashtra,
through: Secretary in the
Department of Co-operation,
Mantralaya, Fort, Mumbai 32
- 2 The District Deputy Registrar,
Cooperative Societies, Nanded
- 3 The Assistant Registrar,
Cooperative Societies, Ardhapur
Tq. Ardhapur, District Nanded
- 4 The District Collector,
Nanded

Respondents

Mr.Amit Mukhedkar advocate for the petitioner
Mr.M.B. Bharaswadkar, AGP for Respondents

CORAM : **R.M. BORDE &
A. I. S. CHEEMA, JJ.**

Dated : 1st DECEMBER, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule.

3 With the consent of the parties, petition is taken up for final disposal at admission stage.

4 The petitioner is objecting to the order issued under sub-section 1 of Section 102 of the Maharashtra Cooperative Societies Act, 1960, whereby, the Assistant Registrar – Cooperative Societies, Ardhapur issued preliminary order in respect of liquidation of the petitioner society and directed appointment of an Administrator. The petitioner is called upon to submit its' explanation in terms of section 102(1), within a period of one month.

5 The petitioner contends that, the order issued by the Assistant Registrar, impugned in the petition, issued under

subsection 1 of Section 102, is bad in law, on account of non-observance of principles of natural justice. It is the contention of the petitioner that, the order issued under subsection 1 of Section 102 leads to serious consequences and that, there is no remedy of appeal provided against the said interim order. It has been passed without extending an opportunity of hearing to the petitioner. The observance of principles of natural justice and extending pre-decisional hearing to the petitioner before issuance of interim order is a mandatory pre-requisite. Reliance is placed on the Judgment in the matter of **Chandrapur Zilla Sahakari Krushi & Gramin Bahuudeshiya Development Bank Ltd V/s State of Maharashtra and others** reported in 2004 (3) Bom. C.R. 889. In paragraph No.16 of the Judgment, the Division Bench has observed thus:-

“ 16. It is, therefore, obvious that there is neither pre-decisional haring before the interim order is passed nor such order is allowed to be appealed against. There is only post-interim decisional hearing before the final order is passed to vacate or confirm the interim order. Section 103 further empowers the Registrar to appoint a Liquidator of the Society, even after the interim order of winding up of the society. It further mandates that after the interim order is passed the society shall hand over to the liquidator the custody and control of all the property, effects and actionable claims to which the society is entitled and the whole record pertaining to the business of the society and thereafter the society will have no access

to the same. Such is the drastic and draconian provision empowering the Registrar to issue an interim order to the society to be wound up. There is no appeal also against the interim order to the society to be wound up. There is no appeal also against the interim order. Can it be legitimately inferred that there is no implicit provision of hearing and compliance of the principles of natural justice before passing of such a very harsh and drastic action of ordering the winding up of the very running existing society ? The consequence of such an interim order to hand over the liquidator virtually the entire society. Can it be construed that the legislature intended to put such a draconian power to wind up or wipe out any society in the hands of a Registrar without hearing before passing an interim order, the consequence and effect of which is not less injurious or harmful than a final order ? We do not think so. “

6 It would also be appropriate to refer to the observations of the Division Bench in paragraph No.17 which read thus:-

“ It is, therefore, crystal clear that before passing an interim order affecting the crystallized and vested rights, pre-decisional hearing would be necessary as such orders would have ‘ immediate and grave prejudicial repercussion on the person concerned ’ and, therefore, it would be desirable to hear him before the order of suspension is passed. It would further reflect the fact situation where pre-decisional hearing could be straightway rule out. The Supreme Court has very pertinently observed that there is ‘no tape measure’ of the extent of natural justice and that it must vary from

*statute to statute and situation to situation and case to case. There is no straight-jacket formula to be applied. The ratio of the **Liberty Oil Mills** case, A.I.R. 1984 S.C. 127 is that the pre-decisional hearing is required if the decision would be of grave prejudicial nature affecting adversely the crystallized rights of a party. In other case, post-decisional hearing would suffice to satisfy the principles of natural justice. In fact, the ratio of this case fortifies our view that section 102(1) contemplates a pre-decisional hearing before interim order as the effect of such interim order is of immediate and grave prejudicial nature of virtually threatening extinction of the very society which is illegally functioning. Can we say that the interim order ex parte passed to order to wind up a Society is not truly disastrous and imminently harmful? In our opinion, any interim order to wind up an existing and running establishment or undertaking would amount to sounding a death bell and nothing less. The entire business and the affairs of the Society on the door of which the Registrar would hang an interim of winding up would come to standstill and complete halt as the consequent steps would be to hand over the Society including its property and the record to a Liquidator. All the business transactions and relations would be snapped by the customers and the depositors/creditors would queue up to knock the doors to demand their deposits and the debts. Every such order would take half of the life out of the Society and even if finally it succeeds in getting the interim order vacated, it would perhaps be too late for the Society to revive. The interim order would perhaps prove to be its 'final terminator'. Besides, if the society can convince the Registrar finally why cannot it do the same exercise at the outset at the time of interim order ?*

We are, therefore, of the considered opinion that unless there is a danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay such as war like conditions or devastating flood or outbreak of an epidemic, a pre-decisional hearing or show cause to the parties would be necessary as is implicit in the provisions of the Act. Under the Act, when the affairs of the Society are subject to full control and supervision of the authorities and when the accounts are annually audited, it cannot be said that an emergency situation abruptly arose to warrant an action of ex parte interim order to seize and freeze the society overnight like a surprise raid. The societies do not become sick overnight though under the constant vigil of the authorities under the Act. We, therefore, are of the firm opinion that the principles of natural justice cannot be dispensed with for the action under section 102(1)(c) of the Act. The Registrar is duty bound to grant hearing to the concerned society against which an interim order of winding u p is proposed or contemplated.. . . .”

7 In view of ratio laid down in the Judgment in the matter of **Chandrapur Zilla Sahakari Krushi & Gramin Bahuudeshiya Development Bank Ltd V/s State of Maharashtra** and others, the contention of the petitioner in the instant petition deserves acceptance. It is not a matter of dispute that no pre-decisional hearing has been given by the Assistant Registrar – Cooperative Societies, before issuance of an interim order under subsection 1 of section 102 of the Maharashtra Cooperative Societies Act.

8 In view of above, the order passed by the Assistant Registrar – Cooperative Societies, Ardhapur impugned in this petition deserves to be quashed and set aside and the same is accordingly quashed and set aside. It would be open for the Assistant Registrar – Cooperative Societies to take appropriate steps in observance of the provisions of law, if deemed necessary.

9 Rule is accordingly made absolute.

10 There shall be no order as to costs.

(A. I. S. CHEEMA, J)

(R.M.BORDE, J)