

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3448 OF 2015**

Dagu Zumbar Tambe

..Petitioner

Vs.

The Gonde Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3450 OF 2015**

Pandit Shankar Nagre

..Petitioner

Vs.

The Bargaon Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3451 OF 2015**

Sopan Manohar Ugle

..Petitioner

Vs.

The Patpimper Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3452 OF 2015**

Bhaskar Shankar Dalvi

..Petitioner

Vs.

The Vinchurdalvi Shetkari Vividh Karyakari Seva Society Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3453 OF 2015**

Dilip Balasaheb Harakh

..Petitioner

Vs.

The Borkhind Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3454 OF 2015**

Dnyaneshwar Nivrutti Thorat

..Petitioner

Vs.

The Panchale Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3455 OF 2015**

Ravindra Vinayak Chine

..Petitioner

Vs.

The Pathare (BK) Shetkari Vikas Sahakari Sanstha Maryadit & Ors.

..Respondents

**WITH
WRIT PETITION NO. 3457 OF 2015**

Vishnupant Navling Pabale

..Petitioner

Vs.

The Quality Fale & Bhajipala Sahakari Sanstha Maryadit & Ors.

..Respondents

Mr. S. S. Patwardhan i/b Mr. Drupad Patil for the Petitioners
Mr. P. S. Dani Senior Advocate i/b Mr. S. M. Sabrad for the Respondent
No.1
Mr. A. D. Kango AGP for the Respondent Nos.2 to 4

CORAM : R. M. SAVANT, J.
DATE : 6th APRIL, 2015

P.C.

1 The above Writ Petitions filed under Articles 226 and 227 of the Constitution of India, take exception to the common order dated 17-3-2015, by which order the Revision Applications filed by the Respondent No.1 to each of the above Petitions, came to be allowed and resultantly the order dated 16-2-

2015 passed by the Divisional Joint Registrar, Nashik, Division Nashik, came to be stayed.

2 It is not necessary to burden this order with unnecessary details. Suffice it to state that the present proceedings arise out of the applications for registration made by the Respondent No.1 in each of the above Petitions for being registered as a resource society by amending its bye-laws. In the said context, it would be apposite at this stage to refer to the order dated 8-4-2014 passed by a Learned Single Judge of this Court in a group of Petitions challenging the registration of the societies as Primary Agricultural Credit Co-operative Societies (for brevity sake hereinafter referred to as PACCS), amongst which were the Respondent No.1 in each of the above Petitions. By the said order dated 8-4-2014, a Learned Single Judge of this Court (Ranjit V. More J.) had set aside the registration of the Respondent No.1 societies in the said Writ Petitions and had issued the directions which were to the following effect :

1. The impugned orders dated 8th January, 2013, passed by the Hon'ble Minister (Corporation) are quashed and set-aside. Consequently, the orders dated 25th March, 2013, passed by the Assistant Registrar granting amendment to the bye-laws are also quashed and set-aside.

2. Respondent No.1-Societies, are at liberty, to apply afresh to the Assistant Registrar for amendment of bye-laws.

3. In the event, such applications are preferred by respondent No.1-Societies, the Assistant Registrar, is directed to consider the same in accordance with Government Resolution dated 23rd September, 2013, inasmuch when the earlier proposals were made there was a ban on registration of PACS.

It is pursuant to the said directions that the applications were made afresh by the Respondent No.1 to the each of the above Petitions for amendment of their bye-laws so as to convert themselves into PACCS. It is required to be noted that at this stage that in terms of the direction as contained in clause (3) of the said order dated 8-4-2014, the Assistant Registrar was to consider the application in accordance with the Government Resolution dated 23-9-2013 in as much as when the earlier applications were made there was a ban on registration of PACCS. Apart from laying the prerequisites for registration of a society as PACCS, one of the facets of the said Government Resolution dated 23-9-2013 is that a committee is contemplated so as to inquire into the viability of a society seeking registration as PACCS when there is already an existing society. The said committee comprises of the Additional Commissioner and Special Registrar Pune and three other officers who are higher in rank than the Assistant Registrar who is also a member of the committee. The fact that a committee is provided therefore implies that the report of the said committee is undoubtedly to be taken into consideration by the Assistant Registrar whilst considering the application for registration.

3 In so far as the instant applications are concerned, the Assistant Registrar Co-operative Societies, Sinnar has allowed the same by his order dated 5-11-2014. The Assistant Registrar, as the order discloses has fleetingly referred to the requirements or conditions imposed by the said Government Resolution dated 23-9-2013. The Assistant Registrar however has not recorded any finding as to whether there is a compliance of the said Government Resolution. The Assistant Registrar has in his order adverted to the membership of the existing society as also the disbursement made by the existing society (in so far as Writ Petition No.3448 of 2015 is concerned) and thereafter by observing that if the proposed society is registered, it is likely to disburse loans to the extent of Rs.1.5 crores has, as indicated above allowed the applications for amendment of the bye-laws i.e. to register the societies as resource societies or PACCS. The Petitioners herein challenged the said order dated 5-11-2014 passed by the Assistant Registrar Co-operative Societies, Sinnar by filing Appeals being Appeal Nos.A-17 to A-25 of 2015. In the said Appeals, applications for stay were filed by the Petitioners. The said applications for stay were moved before the Divisional Joint Registrar who by his order dated 16-2-2015 passed an ad-interim order and made the applications for stay returnable on 24-3-2015. The operative part of the order passed by the Divisional Joint Registrar for the sake of ready reference is reproduced hereinunder :

1 Ad-interim status-quo is hereby granted to the impugned orders dated 5-11-2014 passed by Assistant Registrar, Co-operative Societies, Sinnar, Taluka Sinnar, District Nashik under Section 12(2) of the Maharashtra Co-operative Societies Act, 1960 till the next date of hearing i.e. up to 24th of March 2015.

2 Respondents are hereby directed to submit their paragraph-wise remarks and written statements alongwith original case pertaining to the present subject nine appeals matters on or before 24th of March 2015.

4 The Respondent No.1 in each of the above Petitions aggrieved by the said order dated 16-2-2015, invoked the Revisionary Jurisdiction of the State Government under Section 154 of the said Act. The Respondent No.1 had sought stay of the order dated 16-2-2015 passed by the Divisional Joint Registrar. The State Government i.e. Hon'ble Minister for Co-operation Marketing and Textiles, has by the impugned order dated 17-3-2015 allowed the Revision Applications filed by the Respondent No.1 in each of the above Petitions and has thereby stayed the order dated 16-2-2015, passed by the Divisional Joint Registrar, Nashik. However after allowing the said Revision Applications, the Revisionary Authority has curiously observed that the further hearing of the Revision Applications would take place on 22-4-2015.

5 The gist of the reasoning of the of the Revisionary Authority is that the Respondent No.1 in each of the above Petitions was not heard whilst the Divisional Joint Registrar had passed the order dated 16-2-2015 and that

unless the stay is granted, the Respondent No.1 in each of the above Petitions would be deprived of participating in the elections which are to be held to the Nashik District Central Co-operative Bank Ltd. As indicated above, it is the said order dated 17-3-2015, which is taken exception to by way of the above Petitions.

6 Heard the Learned Counsel for the parties. The learned Counsel for the Petitioners and the Learned Senior Counsel for the Respondent No.1 in each of the above Petitions would make submissions for and against the grant of stay by the Revisionary Authority in the Revisions filed by the Respondent No.1. Whilst it is the contention of the Learned Counsel for the Petitioners that in granting stay which has been granted by the impugned order dated 17-3-2015, the parameters for exercise of Revisionary Jurisdiction have not been followed by the Revisionary Authority as directions in the nature issued by the Revisionary Authority could not have been issued whilst exercising the Revisionary Jurisdiction.

7 Per contra, it is the contention of the Learned Senior Counsel appearing for the Respondent No.1 in each of the above Petitions that the stay was warranted having regard to the fact that the order dated 16-2-2015 passed by the Divisional Joint Registrar was without hearing the Respondent No.1 to each of the above Petitions.

8 In my view, it is not necessary for this Court to delve into the merits of the respective cases of the parties. The fact that the order dated 16-2-2015 passed by the Divisional Joint Registrar is an *ex parte* order cannot be disputed. However, the matters got compounded on account of the fact that the Revisionary Authority instead of issuing directions to the Appellate Authority i.e. the Divisional Joint Registrar has chosen to exercise the Revisionary Jurisdiction against an *ad-interim* order which was passed by the Divisional Joint Registrar. In my view, it would have been appropriate for the Revisionary Authority to have directed the Divisional Joint Registrar either to consider the applications for stay filed by the Petitioners herein or even directed the disposal of the Appeals within a particular time frame, the Revisionary Authority has erred in exercising the Revisionary Jurisdiction more so having regard to the fact that the order which was questioned before it was only an *ad-interim* order passed by the Appellate Authority. In my view therefore, the order dated 17-3-2015 passed by the Revisionary Authority in the Revisions filed by each of the Respondent No.1 to the above Petitions, as also the order dated 16-2-2015 passed by the Divisional Joint Registrar in the Appeals filed by the Petitioners herein is required to be quashed and set aside and the matter is required to be relegated back to the Divisional Joint Registrar for a decision to be rendered in the Appeals filed by the Petitioners herein. Hence the following directions:

(i) The common order dated 16-2-2015 passed by the Divisional Joint Registrar and the common order dated 17-3-2015 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, stand set aside and the matter is relegated back to the Appellate Authority i.e. the Divisional Joint Registrar for consideration of the Appeals.

(ii) The Divisional Joint Registrar to hear and decide the Appeals filed by the Petitioners within 5 weeks of the parties appearing before the Divisional Joint Registrar. The parties to appear before the Divisional Joint Registrar on 9-4-2015. The period of 5 weeks for disposal of the Appeals would commence from 9-4-2015.

(iii) Needless to state that the contentions of the parties on merits are kept open for being urged before the Appellate Authority i.e. the Divisional Joint Registrar. The Appellate Authority would hear and decide the Appeals on their own merits and in accordance with law uninfluenced by the earlier order dated 16-2-2015 as also the order dated 17-3-2015.

(iv) The Learned Counsel for the respective parties assure the Court that their clients would co-operate in the disposal of the Appeals within the time frame stipulated by the instant order.

(v) In the event, the matter is carried higher in Revision, it is not necessary for the Revisionary Authority to hear the authorities who had passed the orders against which orders the proceedings are filed. This observation is required to be made as it is found on a reading of the order passed by the Revisionary Authority in the instant matter that the Revisionary Authority has adverted to the submissions made on behalf of the Appellate Authority and that the First Authority i.e. the Assistant Registrar was also present during the hearing of the Revision Applications.

(vi) It is further clarified that this Court has not gone into the aspect as to whether the name of the Respondent No.1 in each of the above Petitions is entitled to be included in the list of voters and that the said issue is kept open for being urged at the appropriate time.

9 With the aforesaid directions the Writ Petitions are disposed of.

[R.M.SAVANT, J]