

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8235 of 2014

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Hanuman Vividh Karykari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8236 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Harshwardhan Patil Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8237 of 2014**

AND

WRIT PETITION NOS. 8240, 8241 OF 2014

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Shriram Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

WITH

WRIT PETITION NO. 8238 of 2014

AND

WRIT PETITION NO. 8244 OF 2014

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Jay Hanuman Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8239 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Vijay Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8242 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Chaitnya Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8243 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Shri Hanuman Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8245 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		
Yashraj Vividh Karyakari Seva Sahakari Sanstha Maryadit & ors.	..	Respondents

**WITH
WRIT PETITION NO. 8246 of 2014**

Pune Zilla Madhyavarti Sahakari Bank Ltd.	..	Petitioner
vs.		

Shree Kalbhairvnath Vividh Karyakari Seva
Sahakari Sanstha Maryadit & ors. .. Respondents

WITH

WRIT PETITION NO. 8247 of 2014

Pune Zilla Madhyavarti Sahakari
Bank Ltd. .. Petitioner

vs.

Pandurang Vividh Karyakari Seva Sahakari
Sanstha Maryadit & ors. .. Respondents

Mr. S. S. Kanetkar for the Petitioner.

Mr. S.D. Rayrikar, AGP for Respondent Nos.2,3 and 4-State.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 21 April 2016.

Date of Pronouncing the Judgment : 02 May 2016.

JUDGMENT :-

1] Rule in each of these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] Learned counsel for the parties state and agree that common issues of law and fact arise in this batch of petitions and therefore, it would be appropriate, if this batch of petitions is disposed of by common judgment and order. For the sake of convenience, reference will be made to the facts and circumstances of Writ Petition No. 8235 of 2014.

3] In all these petitions, challenge is to the orders dated 1 August 2014 made by the Divisional Joint Registrar Co-operative Societies, Pune Division (respondent no.4) allowing the appeals instituted by respondent no.1 in each of these petitions and directing the petitioner to enroll respondent no.1, in each of these petitions, to membership of the petitioner-society with effect from 8 December 2009. The orders dated 1 August 2014 shall hereinafter be referred to as “*impugned orders*”.

4] The petitioner is a cooperative bank deemed to have been registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (MCS Act). The petitioner bank is also a Federal/Apex Society of primary agricultural societies registered under the MCS Act, insofar as the Pune District is concerned. Respondent No.1, in each of the petitions, are also cooperative societies registered under the MCS Act. By applications dated 1 September 2009, respondent no.1 societies applied for membership to the petitioner bank. By a resolution dated 28 November 2008, the petitioner bank resolved to deny membership to respondent no.1 societies by reference to recommendations made by Vaidyanathan Committee in the matter of registration of cooperative societies. This decision was communicated to respondent no.1 societies on 8

December 2009. After some delay, respondent no.1 societies instituted appeals under Section 23 (2) of the MCS Act before the Registrar (respondent no.4). The Registrar by order dated 8 May 2012 condoned the delay.

5] The petitioner bank, thereupon, instituted Writ Petition No. 4724 of 2012 and connected petitions to question the Registrar's aforesaid order dated 8 May 2012. The same was rejected by the learned Single Judge of this Court on 29 June 2012.

6] The petitioner bank, thereafter instituted Letters Patent Appeal Nos. 133 of 2012 to 148 of 2012 to question the aforesaid order dated 29 June 2012. The letters patent appeals were partly allowed, the order dated 29 June 2012 confirming the Registrar's order condoning the delay was set aside and the matter was remanded to the Registrar for fresh consideration of the applications for condonation of delay after afford of opportunity to the petitioner bank to cross-examine the witnesses on behalf of respondent no.1 societies in the matter of condonation of delay. This was in terms of order dated 8 August 2012 made by the Division Bench of this Court in the matter of letters patent appeals.

7] The petitioner bank cross-examined the deponent/witness in support of applications for condonation of delay on 27 September 2012. The Registrar, by order dated 6 November 2012, upon taking into consideration the evidence on record, once again condoned the delay in institution of appeals. This was made by order dated 6 November 2012.

8] The petitioner bank once again instituted Writ Petition No. 4794 of 2012 and connected petitions to question the Registrar's aforesaid order dated 6 November 2012 condoning delay in institution of the appeals. The learned Single Judge of this Court, by orders dated 29 November 2012, however, dismissed the said petitions. The letters patent appeals were dismissed by the Division Bench of this Court by orders dated 7 August 2013.

9] At the stage when all decks were cleared for the Registrar to hear and decide the appeals instituted by respondent no.1 societies, the petitioner bank on 25 June 2014, insisted that their applications relating to maintainability of the appeals be taken up for consideration before the appeals themselves are taken up for consideration on merits. On 1 July 2014, the Registrar made an order that the applications for maintainability of appeals will be

heard alongwith the appeals themselves, so that, composite orders can be made in the matter. The petitioner bank, then instituted Writ Petition No. 6809 of 2014 and other companion petitions to question the order dated 1 July 2014. The order dated 1 July 2014 was not interfered with by this Court. However, it was directed that in case the appeals are decided against the petitioner bank, then effect shall not be given to such orders for a period of four weeks from the date of communication of the same to the petitioner bank. Respondent no.4, by impugned order dated 1 August 2014 has finally dismissed the petitioner bank's applications questioning the maintainability of the appeals and further allowed the appeals instituted by respondent no.1. Hence, the present petitions by the petitioner bank.

10] Mr. S.S. Kanetkar, learned counsel for the petitioner bank, has submitted that the very registration of respondent no.1 society was in breach of the provisions contained in Section 4 of the MCS Act, which provisions are to be read alongwith Government Resolutions (GRs) dated 7 February 2001 and 3 December 2011 and Circular dated 5 March 2007 and GR dated 3 December 2011. Mr. Kanetkar submitted that the Government of India had appointed the Task Force Committee under Chairmanship of Professor Vaidyanathan for revitalization of cooperative credit structure. The said committee in

its report, submitted in February 2005, made various recommendations for revitalization of cooperative societies. The Government of India as well as State of Maharashtra have accepted most of such recommendations and resolved to implement the same. The implementation details are contained in Circular and GRs referred to earlier.

11] Mr. Kanetkar submitted that almost 35 societies, including respondent no.1 societies were registered on a single date in breach of provisions contained in Section 4(1) of the MCS Act and the Circular and GRs referred to earlier. The proviso to Section 4 of the MCS Act provides that no society shall be registered if it is likely to be economically unsound, or the registration of which may have an adverse effect on development of the cooperative movement or registration which may be contrary to the policy directives, which the State Government may, from time to time, issue. Mr. Kanetkar submitted that in the present cases, the policy directives are contained in the GRs and Circular referred to earlier and the registration in the present cases, was in breach of such policy directives.

12] Mr. Kanetkar submitted that in pursuance of the recommendations of Vaidyanathan Committee, Memorandum of

Understanding (MOU) dated 13 November 2006 was entered into between the State of Maharashtra, Union of India and the National Bank for Agricultural Rural Development (NBARD). In terms of such MOU, the Union of India had consented to release finances to promote the cooperative sector in the State of Maharashtra, though NABARD, provided, the recommendations of Vaidyanathan Committee are complied with, *inter alia*, in the matters of registration of viable cooperative societies. Mr. Kanetkar submitted that the petitioner bank was entitled to take into consideration the aspect that the very registration of respondent no.1 societies was in breach of provisions contained in Section 4 of the MCS Act, the GRs and Circular referred to earlier, which, *inter alia*, incorporate the recommendations of the Vaidyanathan Committee, in the matter of registration of cooperative societies. Mr. Kanetkar submitted that there is no proper adjudication as to reason assigned by the petitioner bank for refusal to admit respondent no.1 societies to the membership of petitioner bank. This according to Mr. Kanetkar constitutes failure to exercise jurisdiction.

13] Mr. Kanetkar also submitted that the petitioner bank is not an agro processing society and therefore, the provisions contained in Section 23(4) of the MCS Act, upon which reliance has been placed

by the appellate authority, are not at all applicable. This according to Mr. Kanetkar constitutes an error apparent on face of record.

14] Mr. S.D. Rayrikar, learned AGP for respondent Nos.2 to 4, has submitted that there was no infirmity in the registration granted to respondent no.1 societies. In any case, the petitioner bank has, at no stage, chosen to challenge the registration so granted to respondent no.1 societies wayback in the year 2009. In terms of the orders made by this Court opportunity for raising objections had been granted to the existing societies operating in the area and the record indicates such existing societies had in fact, endorsed their '*no objection*' for grant of registration to respondent no.1 societies. In these circumstances, Mr. Rayrikar contended that the petitioner bank, which is an apex society, can hardly raise issues of adverse effect on development of cooperative movement due to unhealthy competition etc.

15] Mr. Rayrikar submitted that even otherwise, the petitioner bank cannot refuse membership to an eligible society on the ground that the registration of the society was, in the opinion of the petitioner bank, unjustified. Mr. Rayrikar submitted that the petitioner bank has no legal right or authority to sit in judgment

over the decision of the Registrar for granting registration to a cooperative society and that too without initiating any proceedings to question the grant of registration.

16] Mr. Rayrikar submitted that the petitioner society has been allotted a definite zone or an area for its operation, i.e., Pune district. In such circumstances, Mr. Rayrikar submitted that the provisions contained in Section 23 (4) of the MCS Act are clearly attracted and the petitioner bank had no right or authority to refuse membership to respondent no.1 societies. For all these reasons, Mr. Rayrikar submitted that the impugned orders warrant no interference.

17] The rival contentions now fall for determination.

18] There is no merit in the contention that the very registration of respondent no.1 societies was in contravention of the provisions contained in Section 4 of the MCS Act. Section 4 of the MCS Act provides that a society, which has as its objects the promotion of economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a society established with the object of facilitating the operations of any such

society, may be registered under the MCS Act. The proviso to Section 4 of the MCS Act states that no society shall be registered if it is likely to be economically unsound, or the registration of which may have an adverse effect on development of the cooperative movement, or the registration of which may be contrary to the policy directives which the State Government may, from time to time, issue.

19] In these cases, the objects of respondent no.1 societies include the promotion of economical interests or general welfare of its member in accordance with cooperative principles. The issue as to whether such societies are economically unsound or whether the registration will have adverse effect on development of the cooperative movement, are basically issues for the Registrar to decide at the stage of grant of registration. Section 9 of the MCS Act provides that if the Registrar is satisfied that a proposed society has complied with the provisions of MCS Act and the rules made there under or any other law for the time being in force, or policy directives issued by the State Government under Section 4 and that its proposed bye-laws are not contrary to the MCS Act or the rules, he shall, within two months from the date of receipt of the application register the society and its bye-laws. Sub-section (3) of Section 9 of the MCS Act provides that where the Registrar refuses

to register a proposed society, he shall forthwith communicate his decision, with the reasons therefor, to the person making such application and if there be more than one, to the person who has signed first therein. Section 10 of the MCS Act provides that a certificate of registration signed by the Registrar, shall be conclusive evidence that the society therein mentioned, is duly registered, unless it is proved that the registration of the society has been cancelled.

20] From the aforesaid scheme, it is quite clear that so long as the registration of the society stands and so long as such registration has not been cancelled by the Registrar, the certificate of registration shall be conclusive evidence of the fact that the society was duly registered. This means that any party, without seeking and obtaining the cancellation of registration, cannot, ordinarily contend that the society in respect of whom a certificate of registration has been issued by the Registrar, was wrongly registered or that the same should be regarded as having been wrongly registered. Such collateral challenges are not consistent with the scheme of the provisions contained in MCS Act.

21] The petitioner bank, therefore, cannot contend that the registration granted to respondent no.1 societies was legally infirm or that the same ought not to have been granted and that too in proceedings relating to denial of membership to such societies by the petitioner bank, which is itself an apex society. The appellate authority, in the facts and circumstances of the present cases, was therefore, justified in rejecting such ground and allowing the appeals instituted by respondent no.1 societies.

22] Further, as rightly pointed out by Mr. Rayrikar, issues in relation to registration of respondent no.1 societies had in fact arisen in Writ Petition No. 8001 of 2013 and connected matters. Although, the petitions were not entertained, *inter alia*, on the grounds of lack of *locus standi* of the petitioners, this Court, did advert to the issue of adverse impact on development of cooperative movement, in case, registration were to be granted to respondent no.1 societies, particularly since there were large number of other cooperative societies already operating in the area. Mr. Kanetkar, appearing for the petitioners in the said petitions had submitted that such registration would breed unhealthy competition between the cooperative societies and therefore, impact upon the development of cooperative movement in the area concerned. In this context, this

Court, in its common judgment and order dated 6 May 2014 made in Writ Petition No. 8001 of 2013 and connected matters, at paragraphs 7 and 8 observed thus:

7. *That apart, the impugned order is passed on 18th August 2009 and Respondent No.1 was registered in the year 2009. Respondent No.1 thereafter filed an application for enrollment with the Pune District Central Co-operative Bank and litigation in this regard is pending. The fact remains that Respondent No.1 society has started functioning from 2009 itself. The Petitioner has contended that he came to know about the impugned order in the month of April 2012. Despite this, petition came to be filed in the month of August 2013, ie., after the lapse of one and half year from the alleged date of knowledge and near about after four years of existence of Respondent No.1. The Petitioner has not explained this delay. Therefore, on the ground of delay and laches also, I am not inclined to entertain this writ petition.*

8. *Before parting with the matters, I must make reference to the submission made by Mr. Kumbhakoni. On the basis of instructions given by Mr. Santosh Patil, Officer on Special Duty from Co-operation Department, Mr. Kumbhakoni made a submission that the existing societies in the village in which Respondent No.1 is registered, have given no objection for registration of new society. He tendered for my perusal original of such no objection given by the existing societies. Thus the existing society/societies in the village has/have no objection for the registration of Respondent No.1. However, the Petitioner having no concern with the area of operation of Respondent No.1, has challenged the impugned order. The challenge in above circumstances cannot be entertained.*

(emphasis supplied)

23] From the aforesaid, it is quite clear that this Court was satisfied that the existing societies in the area of operation had given their “no objection” for the registration of respondent no.1 societies. The contention with regard to unhealthy petition and impact upon

the cooperative movement on account of the registration of respondent no.1 societies, therefore, at this stage, cannot prevail. Further, if the petitioner bank, was indeed serious in its contention that the very registration of respondent no.1 societies was in contravention of the provisions contained in Section 4 of the MCS Act or the policy directives issued by the State Government from time to time, then, nothing prevented the petitioner bank from taking out appropriate proceedings at the appropriate stage and before the appropriate forum for frontally questioning such registration. The petitioner bank, having failed to do this, cannot indirectly ignore the effect of such registration and on the said basis, deny membership to respondent no.1 societies by raising a collateral plea that registration was itself legally infirm or ought not to have been granted by the Registrar.

24] Reliance placed by Mr. Kanetkar upon the decision of this Court in case *Hiradgaon Vividh Karyakari Seva Sahakari Society Ltd. Vs. The State of Maharashtra & ors.*¹, does not really support the case of the petitioner bank. In the said case, this Court has held that if registration of a society is likely to be counter productive for the purpose of registration of the society itself, then the proviso to Section 4 of the MCS Act enables the authority to refuse registration.

1 2014 (1) ALL MR 867

This decision is inapplicable to the issue with which we are presently concerned. In these cases, the Registrar, upon satisfaction that the registration of respondent no.1 societies was not counter productive, has in fact granted registration. Till date, such registration has not been cancelled. Attempts on the part of some other societies to challenge this registration have not met with any success. The record indicates existing societies in the area of operation have endorsed their no objection to the registration of respondent no.1 societies. For all these reasons, the decision in case of *Hiradgaon Vividh Karyakari Seva Sahakari Society Ltd. (supra)*, is not attracted to the facts and circumstances of the present cases.

25] In the aforesaid circumstances, there is no warrant to interfere with the impugned orders made by the appellate authority. Reliance placed by the appellate authority upon the provisions contained in Section 23(4) of the MCS Act is only for the purposes of buttressing its conclusion that the denial of membership to respondent no.1 societies was illegal and improper. Even without reference to the provisions contained in Section 23(4) of the MCS Act, the appellate authority would have been entitled to make the impugned orders or take the view, which it has ultimately taken in the impugned orders.

26] Mr. Kanetkar, is not right in his submission that the provisions contained in Section 23(4) of the MCS Act were not attracted because the petitioner bank is not an agro processing society and further that the provisions contained in Section 23(4) of the MCS Act apply only to admission of a natural person and not societies like respondent no.1.

27] Section 23 of the MCS Act, reads thus:

Section 23 - Open membership.- (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

[(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society.] [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar (within a period of sixty days from the date of the decision of the society). [Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.]

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.

28] Although, it may be true that the petitioner bank may not be an agro processing society, it must be noted that Section 23(4) of the MCS Act applies not merely to an agro processing society, but also to societies for which a definite zone or an area of operation is allotted by the State Government or the Registrar. In the present cases, it was not disputed that the petitioner bank being an apex bank, has been allotted a definite area of operation, i.e., Pune district. In such circumstance, it cannot be said that the provisions of Section 23(4) of the MCS Act were not at all attracted to the facts and circumstances of the present cases.

29] Further, there is no warrant to construe the expression 'every eligible person' as it appears in Section 23(4) of the MCS Act to mean

and apply to only natural person and not societies like respondent no.1. Section 23(1) of the MCS Act also provides that no society shall, without sufficient cause, refuse membership to “*any person duly qualified*” under the provisions of the MCS Act and its bye-laws. It is not even the case of Mr. Kanetkar that reference to the term “*person*” in Section 23(1) of the MCS Act is restricted only to a natural person. If this be so, then there is no reason to assign some different meaning to the same term, when it comes to interpretation of such term in Section 23(4) of the MCS Act. There is nothing, either in the plain language or for that matter in the context, to support some different construction.

30] That apart, Section 22 of the MCS Act , reads thus:

22. Person who may become member. - (1) *Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say-*

(a) *an individual, who is competent to contract under the Indian Contract Act, 1872;*

(b) *a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the societies Registration Act, 1860;*

(c) *a society registered, or deemed to be registered, under this Act;*

(d) *the State Government or the Central Government;*

(e) *a local authority;*

(f) *a public trust registered under any law for the time being in force for the registration of such trusts;*

(g) *the depositor or the financial service user;*

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college:

Provided further that, subject to such terms and conditions as may be laid down by the State Government by general or special order, a firm or company may be admitted as a member only of society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking:

Provided also that, any firm or company, which is immediately before the commencement of this Act, a member of a society deemed to be registered under this Act, shall have, subject to the other provisions of this Act, the right to continue to be such member on and after such commencement.

Explanation.-For the purpose of this section "an urban society" means a society the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area committee.

(1A) Notwithstanding anything contained in sub-section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class or societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment as the case may be; and the question whether a person is or is not so engaged in or carrying on any profession, business or employment or whether a person belongs or does not belong to such class of persons as declared under this sub-section and has or has not incurred a disqualification under this sub-section shall be decided by the Registrar under section 11.

(1B) Notwithstanding anything contained in sub-section (1), where the Registrar has decided under section 11 that a person has incurred a disqualification under subsection (1A), the Registrar or the person not below the rank of District Deputy Registrar of Co-operative Societies, authorised by him in this behalf, may, by order, remove such person from the

membership of the society; and such person shall cease to be a member of the society on expiration of a period of one month from the date of receipt of such order by him.

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

31] From the aforesaid, it is quite clear that the term “person” referred to in Section 22 includes not just an “individual”, who is competent to contract under the Indian Contracts Act, 1872, but also includes a firm, a company or any other body corporate constituted under any law for the time being in force, or a society registered under the societies Registration Act, 1860 and most importantly a society registered or deemed to be registered under the MCS Act. Reference to the provisions contained in sub-section (1A) of Section 22 of MCS Act also supports such construction. This being the position, it is not possible to accept the contention that the term “person” referred to in Section 23(4) of the MCS Act is restricted only to a natural person and not societies like respondent no.1 societies.

32] Mr. Kanetkar also contended that respondent no.1 societies are economically unsound and if they are enrolled as a member of the petitioner bank, the petitioner bank will have no option, but to advance loans or financial assistance to them. Relying upon the bye-laws of the petitioner bank, Mr. Kanetkar submitted that any member of the petitioner bank, in order to qualify as an “*active member*” is required to avail loan from the petitioner bank. For this reason, Mr. Kanetkar submitted that the membership of respondent no.1 societies cannot be foisted upon the petitioner bank, particularly since their financial position is quite unsound.

33] There are several reasons on account of which, Mr. Kanetkar's aforesaid contention cannot be accepted. In the first place, this was not the precise reason stated by the petitioner bank for the purposes of denial of membership. Secondly, there is nothing in the bye-laws of the petitioner bank, which obligates the petitioner bank to advance loans to each and every member, irrespective of whether or not claim for loan is justified or not. Obviously, the petitioner bank will have its own rules, regulations and policies in the matter of advance of loans or financial assistance. The petitioner bank will also have its own procedures for determination of viability, repayment capacity etc. All that bye-laws provide is that the petitioner bank may not advance loan to any person or entity, other

than its member. This does not mean that the petitioner bank is obliged to advance loan to each and every member, irrespective of whether or not such member fulfills other prescribed requirements in the matter of availment of such loans or financial assistance.

34] In order that a member of the petitioner bank qualifies to be “an active member”, such member is required to attend atleast one general body meeting in the preceding five years and to avail of one of the three specified services within the preceding five years. The specified services include investment of a sum of Rs. 10,000/- by way of fixed deposit for a period of two years with the petitioner bank; obtaining loan from the petitioner bank or making use of the banks locker facility for a period of one year. This means that it is not peremptory that a member has to obtain loan from the petitioner bank in order to qualify as an active member. In order to be qualified as an active member, a member may invest the prescribed amount for the prescribed period or avail bank's locker facility as prescribed. Accordingly, it is not possible to accept the belated contention of Mr. Kanetkar.

35] The petitioner bank has kept away respondent no.1 societies from the membership since the year 2009. The petitioner bank questioned the orders condoning delay in institution of appeals by

respondent no.1 societies. At the instance of the petitioner bank, the orders condoning delay were set aside by this Court and opportunity for cross-examination was granted to the petitioner bank. The Registrar, once again condoned the delay relying upon the material on record. The petitioner bank once again questioned this decision by instituting writ petitions and letters patent appeals. Upon dismissal, the petitioner bank raised preliminary objection to the maintainability of the appeals. The order stating that such objection would be considered at the stage of disposal of the appeals itself was again questioned by the petitioner bank by instituting writ petitions. In this manner, the petitioner bank has postponed even the adjudication of the appeals instituted by respondent no.1 since the year 2011.

36] In *Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil*², the Hon'ble Apex Court has held that the High Courts cannot at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution of India, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of courts or tribunal subordinate to it. The parameters of interference by High Courts in exercise of power of superintendence have been repeatedly laid down by this

2 (2010) 8 SCC 329

court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this court in *Waryam Singh Vs. Amarnath*³, which have been repeatedly followed by the subsequent Constitution Benches and various other decisions of this Court.

37] Upon cumulative consideration of the aforesaid facts and circumstances, in my judgment, this is not a fit case to interfere with the impugned orders in the exercise of extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India. These petitions are therefore dismissed

38] Rule is discharged in all petitions. The interim orders, if any, stand vacated.

39] There shall be no order as to costs.

[M. S. SONAK, J.]

3 AIR 1954 SC 215