

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1164 OF 2017

- | | | |
|----|----------------------------------|---------------------|
| 1] | Vijay Kusekar |] |
| | Adult, Indian Inhabitant |] |
| | Occupation : Farmer |] |
| | R/o. At Post Village Andhalgaon, |] |
| | Taluka Shirur, District Pune |] |
| | |] |
| 2] | Mauli Sonawane |] |
| | Adult, Indian Inhabitant |] |
| | Occupation : Farmer |] |
| | R/o. At Post Village Andhalgaon, |] |
| | Taluka Shirur, District Pune |] |
| | |]..... Petitioners. |

Versus

- | | | |
|----|--|---|
| 1] | State of Maharashtra |] |
| | Through the Secretary |] |
| | Ministry of Co-operation, Irrigation |] |
| | & Textile, Government of Maharashtra |] |
| | Mantralaya, Mumbai – 400 032 |] |
| | |] |
| 2] | Minister for Co-operation, Irrigation |] |
| | & Textile, Government of Maharashtra |] |
| | Mantralaya, Mumbai – 400 032 |] |
| | |] |
| 3] | Regional Joint Director |] |
| | Co-operative Societies, Pune Division, |] |
| | Pune |] |
| | |] |
| 4] | District Deputy Registrar, |] |
| | Co-operative Societies, Pune Rural |] |
| | |] |
| 5] | Assistant Registrar |] |
| | Co-operative Societies, Shirur, Pune |] |
| | |] |
| | (Respondent Nos.1 to 5 to be served |] |
| | through Government Pleader (Writ |] |
| | Cell), Mumbai |] |

6] Rambhau Dabhade Vividh Karyakari Seva]
 Sahakari Sanstha Maryadit, Andhalgaon]
 (Proposed Society) Through its Chief]
 Promoter Shri Jitendra Rambhau Dabhade]
 Adult, Indian Inhabitant, Occupation :]
 Farmer, R/o. 2-3, Mahadev Mandir]
 Gavathan At Post Andhalgaon, Tal.Shirur]
 District Pune – 412211]..... Respondents.

Mr. D J Khambatta Senior Advocate a/w Mr. P S Dani, Senior Advocate
 a/w Dr. Abhinav Chandrachud i/by Mr. Sagar A Rane for the Petitioners in
 Writ Petition No.1164 of 2017.

Mr. P S Dani, Senior Advocate i/by Mr. Sagar A Rane for the Petitioners in
 Writ Petition No.1251 of 2017.

Mr. A Y Sakhare, Senior Advocate a/w Mr. A B Vagyan, Government
 Pleader a/w Mrs. V S Nimbalkar, AGP, for the Respondent Nos.1 to 5 in
 Writ Petition No.1164 of 2017.

Mr. S K Shinde a/w Mr. P H Gaikwad i/by Mr. Omkar G Nagwekar for the
 Respondent No.6 in Writ Petition No.1164 of 2017.

Mr. V D Patil for the Respondent No.6 in Writ Petition No.1251 of 2017.

CORAM : R. M. SAVANT, J.
 Reser/ved on : 3rd March 2017
 Pronounced on : 22nd March 2017

JUDGMENT :

1 The above Writ Petition is out of the group of Petitions filed by
 different Petitioners challenging the orders passed by the Revisionary Authority
 i.e. the Hon'ble Minister for Co-operation, Irrigation & Textile, Government of
 Maharashtra. By the said orders the Revision Applications filed by the
 Societies in question came to be allowed and resultantly the orders passed by
 the Deputy Registrar, Co-operative Societies rejecting the applications for

registration filed by the said Societies as also the orders passed by the Divisional Joint Registrar dismissing the Revision Applications filed by the said Societies came to be set aside.

2 By consent of the learned counsel for the parties, the above Writ Petition being No.1164 of 2017 is treated as a lead matter.

3 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

4 The above Petition takes exception to the order dated 27/12/2016 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Irrigation & Textile, Government of Maharashtra by which order the Revision Application No.940 of 2016 filed by the Respondent No.6 came to be allowed and resultantly the letter dated 10/10/2016 issued by the Deputy Registrar, Co-operative Societies and the order dated 21/10/2016 passed by the Divisional Joint Registrar, Co-operative Societies came to be set aside and in turn the Respondent No.6 was directed to be registered.

5 The facts giving rise to the above Petition in a nutshell can be stated thus :-

The Petitioners are the members of the Primary Agricultural Credit

Co-operative Society known as Andhalgaon Vividh Karyakari Seva Sahakari Sanstha Maryadit operating in the revenue village Andhalgaon, Taluka Shirur, District Pune. The Respondent No.6 Society sometime in the year 2016 made an application through its Chief Promoter to the Respondent No.5 herein i.e. the Assistant Registrar, Co-operative Societies, Shirur, Pune for being registered as a Primary Agricultural Credit Co-operative Society (for short "PACCS") in respect of the said village Andhalgaon, Taluka Shirur, District Pune. On receipt of the said application, the Respondent No.5 forwarded the said application to the Respondent No.4 herein i.e. the District Deputy Registrar, Co-operative Societies, Pune Rural along with a letter dated 03/10/2016 communicating that there is already in existence another society which is registered in the said village Andhalgaon. The Respondent No.4 herein rejected the application filed by the Respondent No.6 communicating the rejection by his letter dated 10/10/2016 to the Respondent No.6. In the said letter it is mentioned that the Respondent No.6 did not comply with Condition No.1 stipulated in the Government Resolution dated 23/09/2013 issued by the Department of Co-operation, Marketing and Textiles, Government of Maharashtra. The said condition stipulates that only one PACCS shall be registered for one revenue village.

6 The Respondent No.6 aggrieved by the said communication dated 10/10/2016 challenged the same by filing an Appeal before the Respondent

No.3 i.e. the Divisional Joint Registrar, Pune Division, Pune. The said Appeal was numbered as Appeal No.142 of 2016. The Respondent No.3 did not find any reason to interfere with the order passed by the Respondent No.4 and accordingly dismissed the said Appeal by order dated 21/10/2016. The Respondent No.6 thereafter aggrieved by the said order dated 21/10/2016 filed a Revision Application being No.940 of 2016 before the Revisionary Authority i.e. the State Government. The said Revision Application was heard by the Respondent No.2 herein i.e. the Hon'ble Minister for Co-operation, Irrigation and Textiles, Government of Maharashtra who by the impugned order dated 27/12/2016 has allowed the said Revision and has thereby set aside the communication dated 10/10/2016 as also the order dated 21/10/2016 passed by the Divisional Joint Registrar.

7 The Revisionary Authority as can be seen from the impugned order has accepted the fact that in so far as the Respondent No.6 is concerned, the Condition No.1 is not satisfied. However, the Revisionary Authority proceeded to consider the said case of the Respondent No.6 herein on the touchstone of Condition No.3 of the said Resolution dated 23/09/2013, and held that the Respondent No.6 is required to be registered to ensure better credit facilities and economic benefits to all the prospective account holders from the said village by providing them membership of the proposed Respondent No.6 Society. The Revisionary Authority has observed that by registration of the

Respondent No.6 Society financial health of the existing society would not be affected in any manner. As indicated above, it is the said order dated 27/12/2016 which is taken exception to by way of the above Petition.

8 The fact which is central to the issue as to whether another Society in the same village can be registered is the interpretation of the said Government Resolution dated 23/09/2013. It is therefore necessary to advert to the said Government Resolution at this stage. The background to the issuance of the said Government Resolution (for short “GR dated 23/09/2013”) has been stated in the introductory part of the said GR. The said GR dated 23/09/2013 has its genesis in the recommendations of the Prof. Vaidyanathan Committee. The State Government, with a view to facilitate the implementation of the said recommendations had issued GR dated 05/03/2007 directing that no new PACCS to be registered. The State Government accordingly took a decision that until the matters relating to the registration of the new PACCS regarding the bifurcation/amalgamation of the current existing and functional Co-operative Societies, and in respect of amalgamating the financially unsound Co-operative Societies into the nearest financial sound Co-operative Societies and to liquidate and cancel their registration was resolved, the registration of the new PACSS would stand suspended until further orders which was directed by GR dated 03/12/2011. It has been further stated in the said GR dated 23/09/2013 that the

Commissioner of Co-operation and the Registrar, Co-operative Societies, Pune had requested the Prof. Dhananjayrao Gadgil Co-operative Management Society, Nagpur to decide the relevant factors relating to the empowerment of the existing PACCS. Taking into consideration the recommendations of the said Dhananjayrao Gadgil Co-operative Management Society Nagpur, the Commissioner of the Co-operative Societies and the Registrar, Co-operative Societies, Pune decided to constitute a committee under the chairmanship of the Divisional Joint Registrar, Latur in order to make final recommendations. The Committee headed by the Divisional Joint Registrar accordingly made its final recommendations on 15/09/2011 to the Commissioner of Co-operation and the Registrar of Co-operative Societies and accordingly the office of the Commissioner of Co-operation and the Registrar of Co-operative Societies intimated the State Government regarding its approval to the final report of the Committee. It is further stated in the said GR that on 31/03/2013 it was observed that out of the existing 21,318 PACCS in the State 5498 Societies are ineligible to get any financial help or assistance as per the Vaidyanathan Committee recommendations. It is further stated that currently, the expected expenditure on account of the salaries of the employees, rent of the office, stationery, audit fees, election expenses and other allied expenses is approximately Rs.1.5 to 2.5 lakhs per annum for the existing PACCS in the State. In order to meet these financial requirement the annual income of the existing PACCS is required to be a minimum of Rs.1.5 to 2.5 lakhs per annum.

It is further stated in the said Resolution that taking into consideration the aforesaid aspects, the State Government was contemplating finalization of parameters for the registration and empowerment of the PACCS in the State. It is further stated in the said Resolution that the following new parameters/conditions have been finalized in the State for the registration of new PACCS :-

1 **There should be only one Primary Agricultural Credit Co-operative Society in one Revenue Village**

- 2 Estimated loan disbursal of the proposed Primary Agricultural Credit Co-operative Society should be as follows in the financial year preceding the year in which application is made for registration of the Society in terms of the crop loan rate fixed by the District Central Co-operative Bank :-

Western Maharashtra and North Maharashtra (Khandesh) – Rs.1.5 Crore.

Konkan, Marathwada and Vidharbha - Rs.1.0 Crore.

Villages in the tribal areas of the State - Rs.50 Lacs.

- 3 In villages, where there is no independent existing Primary Agricultural Credit Co-operative Society, when the new Primary Agricultural Co-operative Society is proposed to be registered there, the villagers who are members of the existing Primary Agricultural Credit Co-operative Society in the neighbouring village, such Primary Agricultural Credit Co-operative Society is bound to comply with the condition laid down in Point No.2 above in respect of credit supply stated hereinabove **and also** If due to the establishment of a new Primary Agricultural Credit Co-operative Society in an independent revenue village, the existing Primary Agricultural Credit Co-operative Society is in danger of the facing the negative Net Worth, or their CRAR is likely to fall below 4%, then in such new revenue village, there be would be no registration of the new Primary Agricultural Credit Co-operative Society.

- 4 The proposed Primary Agricultural Credit Co-operative Society which is to be registered should have minimum 75 members (account holder members).
- 5 In order to scrutinize the applications of the proposed Primary Agricultural Credit Co-operative Societies and to inspect and check their financial capacity, the following Committee is duly authorized :-
 - 1) Additional Commissioner and Special Registrar, Co-operative Societies, State of Maharashtra, Pune – President/Chairperson.
 - 2) District Deputy Registrar, Co-operative Societies of the concerned District - Member
 - 3) District Special Auditor of Co-operative Societies of the concerned District – Member.
 - 4) Deputy/Assistant Registrar of Co-operative Societies of the concerned Taluka – Member.
 - 5) Deputy Registrar, Co-operative Societies (Finance) Head office, Pune – Member Secretary.
- 6 Following would be the policy in the State in respect of Primary Agricultural Credit Co-operative Societies which are currently functioning but which are financially unsound and whose Negative Net Worth and CRAR is less than 4% :-
 - a) The Primary Agricultural Credit Co-operative Societies which can be amalgamated with the nearest Societies, such Primary Agricultural Credit Co-operative Societies may be amalgamated with the nearest Societies.
 - b) Those Primary Agricultural Credit Co-operative Societies which are capable of being made financially sound, such Societies shall make their Financial Empowerment Action Plan for the next three years i.e. (year 2014-15 to 2016-17) and submit it to the concerned Registrar upto 31.03.2014.

The Primary Agricultural Credit Co-operative Societies, which do not prepare their Financial Empowerment

Action Plan and Programme till 31/03/2014 and do not implement the Financial Empowerment Action Plan and Programme within next three years and who do not become financially sound even after the implementation of the Financial Empowerment Action Plan, the concerned Registrar shall take necessary steps to amalgamate them in the nearest Primary Agricultural Credit Co-operative Society or wind it up.

Taking into consideration the abovementioned policies of the registration and empowerment of the Primary Agricultural Credit Co-operative Societies, the Government is hereby revoking its previous decision dated 3/12/2011 in respect of suspension of registration of the Primary Agricultural Co-operative Societies.

The abovementioned amendments should be followed by all concerned persons strictly.

9 On behalf of the State Government an affidavit in reply has been filed by Shri Deepak Desai, Deputy Secretary, Co-operation, Marketing and Textiles Department, Government of Maharashtra. In the said affidavit the facts antecedent to the filing of the above Petition have been stated. A reference is made to the 97th amendment to the Constitution of India and especially inclusion of the word “Co-operative Societies” in Article 19(1)(c) of the Constitution of India. It is stated in the said affidavit that the said Article 19(1)(c) of the Constitution of India guarantees to all citizens, the right to form associations or unions or Co-operative Societies of their choice, subject to reasonable restrictions imposed by law. The amendment to Article 43B i.e. the directive principle has also been referred to in the said affidavit. The

impugned order dated 27/12/2016 passed by the Respondent No.2 herein directing registration of the Respondent No.6 Society is attributed to the said constitutional amendment and it is contended that the said registration is in consonance with the constitutional provisions. It is stated in the said affidavit that if the registration of the Respondent No.6 Society is read in the context of Article 19(1)(c) of the Constitution of India, then it is evident that the impugned order is not contrary to the said GR dated 23/09/2013. It is further stated that Condition No.1 of the said GR dated 23/09/2013 is directory in nature in so far as registration of a new PACCS is concerned. It is further stated in the said affidavit that the said GR does not strictly disallow the sanction to the registration of additional PACCS, if the conditions mentioned in the said GR are fulfilled. In the said affidavit a reference is made to the Government Corrigendum dated 14/02/2017 issued by the said GR dated 23/09/2013 and it is stated that by the said Corrigendum the Government has clarified the position by removing ambiguities and infirmities if any in the said GR dated 23/09/2013. By the said Corrigendum the government has clearly provided that more than one PACCS can be registered in a village, if there is a potential to do so based on the fulfillment of the financial norms. It is lastly stated that the Petitioner has made out no case for the grant of any relief and the Petition may be dismissed.

10 A reference would now be required to be made to the

Corrigendum dated 14/02/2017 which has been issued by the State Government pending the above Petitions. In the introductory part of the said Corrigendum dated 14/02/2017 it is stated that as regards Condition Nos.1 and 3 of the GR dated 23/09/2013, the Commissioner of Cooperation and the Registrar of Co-operative Society has sought clarification in respect of the registration of a new Society when there is already an existing Society and when such a new Society is fulfilling the requisite capital requirements and the Capital to Risk Adequacy Ratio (CRAR).

It is further stated that the State Government has received lot of proposals/applications to reconsider the decisions of the Assistant Registrar, District Deputy Registrar and Regional Joint Director in respect of registration of new PACCS. It is further stated that the Government is convinced that improvement has to be made in Condition No.1 of the GR dated 23/09/2013. The said Corrigendum provides for as under :-

“The following shall be read instead of and in place of Condition/Point No.1 in the aforesaid G.R. referred at Sr.No.1 hereinabove :-

1 In one revenue village, as far as possible, there should be only one Primary Agricultural Credit Co-operative Society. However, after considering the other parameters in respect of the economic capacity, if there is a scope for registering more than one Society in a village, then more than one Society may be registered in such a village.

1A) The Proposed Primary Agricultural Credit Co-operative Society should deposit minimum capital of

Rs.5 Lakhs prior to its registration.

1B) The Proposed New Primary Agricultural Credit Co-operative Society shall be obliged to start at least one new business within one year of its registration.

The above mentioned amendments should be followed by the concerned authorities strictly.

11 SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONERS SHRI D J KHAMBATTA :-

- A] That the order passed by the Revisionary Authority setting aside the orders passed by the Lower Authorities is in violation of the Resolution dated 23/09/2013.

- B] That the Revisionary Authority has erred in proceeding on the basis that Condition No.1 is not to be strictly construed and that the registration of another Society or new Society is permissible under the said Resolution dated 23/09/2013;

- C] That Condition No.1 of the said Resolution is mandatory can be seen from a reading of Condition No.3 of the said Resolution itself wherein the State Government has provided a safeguard even in respect of the existing Society in the neighbouring village.

- D] That the Revisionary Authority has mis-interpreted Condition No.3

of the said Resolution in the matter of directing the registration of a new Society when the said Condition No.3 provides a safeguard or precaution to be taken to ensure that the existing Society in the neighbouring village would not be financially affected.

E] That the reasons mentioned in the affidavit in reply do not find a place in the order passed by the Revisionary Authority and therefore the reasons mentioned in the impugned order cannot be supplemented by the reasons mentioned in the affidavit in reply to justify the impugned order. Reliance is sought to be placed on the judgment of the Apex Court reported in *AIR 1978 SC 851* in the matter of *Mohinder Singh Gill and another v/s. The Chief Election Commissioner, New Delhi and others.*

F] That the Government Corrigendum dated 14/02/2017 issued to the said Resolution dated 23/09/2017 is not clarificatory in nature but in fact a new condition is sought to be introduced in place of original Condition No.1 of the said Resolution dated 23/09/2013. The said Corrigendum would operate from 14/02/2017 and not from an earlier point of time.

G] That the said Corrigendum issued pending the Petitions shows the

intent behind issuing the same which is to somehow justify the impugned order, directing the registration of another PACCS in the same village.

12 SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONERS SHRI P S DANI :-

The learned Senior Counsel appearing for the Writ Petition No.1251 of 2017 adopted the submissions made by the learned Senior Counsel Shri D J Khambatta but in addition made the following submissions :-

- i] That the manner in which Condition No.1 is couched indicates that not more than one Society can be registered in a revenue village
- ii] That the said condition is mandatory can also be seen from the fact that when the State Government wanted more than one Society to be registered, Condition No.1 was couched in a different language as can be seen from the GR dated 07/02/2001.
- iii] That the background in which the said GR came to be issued is also indicative of the fact that Condition No.1 has to be construed as mandatory and not directory.

- iv] That the two parts of Condition No.3 cannot be read disjunctively. The 2nd part of Condition No.3 is in continuation of the 1st part, and both of them provide a safeguard in so far as the Society already registered in the neighbouring village is concerned.
- v] That the impugned order cannot be justified on the touchstone of the amendment carried out to Article 19(1)(c) of the Constitution of India pursuant to the 97th Constitutional Amendment as the said 97th Constitutional Amendment has been struck down by the Division Bench of the Gujarat High Court in the judgment reported in (2013) 2 GLR 1698 in the matter of Rajendra N Shah v/s. Union of India

13 SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NO.6 SHRI S K SHINDE :-

- a] That the Condition No.1 of the said GR dated 23/09/2013 is directory in the matter of registration of a second society in the same revenue village and the only aspect which is important is its financial viability.
- b] That the said position has now been cleared by issuance of the

Government Corrigendum dated 14/02/2017 wherein Condition No.1 of the said GR dated 23/09/2013 has been replaced by Condition No.1 in the said Corrigendum.

- c] That the financial viability of the new society to be registered in the same revenue village is the consideration which ought to weigh with the registering authority, is clear on a reading of the 2nd part of Condition No.3 of the said GR dated 23/09/2013 wherein if the conditions mentioned in the 2nd part are fulfilled then there would be no impediment for registration of another society in the same revenue village.

14 SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NO.6 SHRI VIJAY D PATIL:-

- I] That the already registered society in the same village having not taken any objection to the registration of the new society, then it is not open for the Petitioners who are the members to challenge the registration of a new society, as it is well settled that a member has to speak through the society. Reliance is sought to be placed on the judgment of a Division Bench of this Court reported in 2010(1) Bom. C.R. 31 in the matter of Girish Mulchand Mehta & Anr v/s. Mahesh S Mehta & Anr.

II] That the financial viability of the new society, without affecting the existing society financially, is the relevant consideration which ought to weigh with the Registering Authority under the said GR dated 23/09/2013 and therefore the Revisionary Authority has rightly allowed the Revision Application filed by the Respondent No.6 in the instant case.

15 SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT/STATE SHRI A Y SAKHARE IN WRIT PETITION NOS.1 TO 5:-

A] That the registration of the Respondent No.6 Society is attributed to the amendment which has taken place in Article 19(1)(c) of the Constitution of India by inclusion of the word “Co-operative Society”.

B] That the ambiguities if any in the said GR dated 23/09/2013 are now clarified by the issuance of the Government Corrigendum dated 14/02/2017 wherein Condition No.1 of the said GR dated 23/09/2013 has been substituted and made explicit in so far as registration of another Society in the same revenue village is concerned.

CONSIDERATION :-

16 The issue that is required to be considered first is the issue as to whether Condition No.1 of the said GR dated 23/09/2013 is to be strictly construed or is in the nature of a directory condition. In the context of the said issue, the background in which the said GR dated 23/09/2013 was issued assumes importance. The regulation of the registration of the PACCS had engaged the attention of the State Government from time to time. The State Government by GR dated 07/02/2001 had sought to regulate the registration of PACCS in a revenue village. Condition No.3 of the said GR dated 07/02/2001 and the manner in which it is worded is relevant for the purposes of the instant Petition. The same reads thus :-

“In a village as far as possible there should be only one Society. Even if there is a demand for another Society, there should be business of 50 lakhs for each Society. In a village even if there are more than two Societies, the Gat Secretary, however, should be only one.”

(English Translation)

Hence the said GR dated 07/02/2001 postulates that as far as possible there should be only one Society i.e. PACCS in a revenue village.

17 The State Government after deciding to implement the recommendations of the Vaidyanathan Committee had issued GR dated 03/12/2011. The State Government by the said GR took a decision to stop

registration of the PACCS till a policy decision is taken in respect of the registration of a new PACCS, to divide and amalgamate the existing PACCS, to amalgamate the PACCS which are not financially viable with the PACCS which is financially sound, or liquidate and cancel the registration of such PACCS, and since the policy guidelines for registration of new PACCS was under consideration of the State Government. Hence the State Government had stopped the registration of new PACCS till new policy guidelines were framed by it in that regard.

18 The instant GR dated 23/09/2013 contains the new policy guidelines framed by the State Government in so far as the registration of PACCS in a revenue village is concerned. In the introductory part of the said GR the background facts relating to the acceptance of the recommendations of the Vaidyanathan Committee, the decision of the State Government to stop the registration of PACCS are mentioned. The said GR refers to the situation of the PACCS in the State as on 31/03/2013. It is mentioned in the said GR that out of 21318 PACCS in the State 5498 PACCS are ineligible to get any financial help or assistance as per the Vaidyanathan Committee recommendations. It is further mentioned that monthly expenses of a PACCS on account of salaries of the employees, rent of the office, stationary, audit fees, election expenses and allied expenses are approximately Rs.1.5 to Rs.2.5 lakhs per annum. It is observed that to meet the said expenditure the annual income of the existing

PACCS should be in the region of Rs.1.5 to Rs.2.5 lakhs per annum. It is further mentioned in the said GR that taking into consideration the said aspect, that the State Government was contemplating finalization of the guidelines or parameters for the regulation and empowerment of the PACCS in the State Government. Hence reading of the introductory part of the said GR dated 23/09/2013 indicates that the financial health of the PACCS was the principal consideration with which the GR dated 23/09/2013 was issued by the State Government. It is in the aforesaid background that the Condition No.1 of the said GR would have to be read. The said Condition No.1 is once again reproduced herein under for the sake of ready reference:- (English Translation)

“There should be only one Primary Agricultural Credit Co-operative Society in one Revenue Village.”

19 The State Government has therefore made a conscious departure from the language used in the GR dated 07/02/2001 to the language used in the instant GR dated 23/09/2013 whereas Condition No.3 of the said GR dated 07/02/2001 provided that in a revenue village “as far as possible” there should be only one Society. Condition No.1 of the instant GR dated 23/09/2013 does not contain the words “as far as possible” but specifically provides in vernacular that only one Society to be registered in one revenue village. Hence when the State Government was desirous of registering more than one Society in a revenue village it did so by framing its policy guidelines

accordingly by GR dated 07/02/2001. The instant GR being issued in the background of the situation arising out of as 5498 PACCS being found to be financially unviable and the concern of the State Government to see to it that PACCS are financially viable, Condition No.1 of the said GR dated 23/09/2013 would have to be read to mean that there could be only Society or PACCS in one revenue village and therefore the said condition would have to be held to be mandatory.

20 In so far as the Respondents are concerned, it was the submission of the learned counsel that the second part of Condition No.3 of the said GR dated 23/09/2013 is indicative of the fact that the said Condition No.1 is directory. It was the submission of the learned counsel for the Respondents that in terms of the second part of the said Condition No.3 what is required to be seen whilst registering the second PACCS is its financial viability and if the second PACCS satisfies the requirements stipulated in the second part of Condition No.3, then it could be registered.

 In my view, the said submission of the Respondents is based on a misreading of the said Condition No.3. The Respondents want to read the two parts of the said Condition No.3 disjunctively. In fact the said Condition No.3 has to be read as a whole. The second part of the said Condition No.3 flows from the first part, whereas the first part of the Condition No.3 provides for the

existing PACCS in the neighbouring village to comply with Condition No.3 in the matter of estimated loan disbursal. The second part provides that if on the registration of a PACCS in an independent revenue village, the existing PACCS in the neighbouring village is in danger of facing negative network or the CRAR is likely to fall below 4%, then in such new revenue village, such new PACCS should not be registered. If the second part is read disjunctively from the first part, as urged by the learned counsel for the Respondents, it would lead to an anomalous situation wherein the second Society can be registered in spite of the stipulations or conditions provided in the said GR dated 23/09/2013 being not satisfied or met.

21 In fact as rightly contended by the learned Senior Counsel Shri D J Khambatta appearing on behalf of the Petitioners that the said Condition No.3 in so far as it ensures financial viability even of a PACCS in the neighbouring village, is indicative of the fact that Condition No.1 has to be construed strictly in respect of registering another PACCS in the same revenue village. and therefore no second Society can be registered in the same revenue village.

22 The Respondents rely on the Government Corrigendum dated 14/02/2017 to contend that the said Corrigendum clarifies the position in so far as the registration of the second Society in the same revenue village is concerned. In my view, the said Corrigendum dated 14/02/2017 does not

further the case of the Respondents in so far as the registration of a second Society or PACCS in the same revenue village is concerned. The said Corrigendum has been issued purportedly on the ground that there was a confusion in the authorities in so far as Condition Nos. 1 and 3 of the said GR dated 23/09/2013 is concerned, and it is to remove the said confusion that the said Corrigendum has been issued. By the said Corrigendum dated 14/02/2017 what has been done is substituting Condition No.1 by Clause (1) of the said Corrigendum and adding Clauses 1A and 1B to the said GR dated 23/09/2013. It is required to be noted that the said Corrigendum has been issued during the pendency of the above Writ Petition and the companion Writ Petitions. The impugned order is therefore not passed on the basis of the said Corrigendum. By substituting Condition No.1 of the said GR dated 23/09/2013 by Clause (1) of the Corrigendum and adding Clauses 1A and 1B, a new condition has been incorporated in the said GR dated 23/09/2013. Hence the Corrigendum is not by way of a clarification but it substitutes the original Condition No.1 in the said GR dated 23/09/2013 by a new condition. Implicit in the fact of issuing the said Corrigendum is the fact that the State Government was also interpreting Condition No.1 of the said GR dated 23/09/2013 to be a mandatory condition, and it is therefore to remove the impediment in registering the second PACCS , that the State Government has thought it fit to substitute the said Condition No.1 by a new condition which is Clause (1) of the said Corrigendum. Since the Corrigendum substantially

amends the GR dated 23/09/2013, the same would only have a prospective effect and cannot be pressed into service to justify the impugned order which directs the registration of a second PACCS.

The Corrigendum has to be looked at from one more perspective. The background to the issuance of the said GR dated 23/09/2013 was the situation as prevailing on 30/03/2013 when the State Government found that out of 21,318 PACCS, 5498 PACCS were ineligible to get any financial help or assistance as per the Vaidyanathan Committee's recommendations. Hence the State Government was very much concerned as regards the financial viability of a large number of PACCS in the State. It is in the said background that the policy as contained in the said GR dated 23/09/2013 was formulated. If Condition No.1 is said to be clarified by clause (1) of the Corrigendum, it would lead to an incongruous situation wherein in spite of the State Government coming to a conclusion that some remedial measures are required to be taken to maintain the financial health of the PACCS which it has done so by the GR dated 23/09/2013, but contrary thereto the Corrigendum would have the effect of the said GR providing for the registration of a second PACCS. The same would therefore be a contradiction of sorts.

This Court whilst adjudicating the above Writ Petition has not gone into the legality or validity of the said Corrigendum dated 14/02/2017,

however has tested the case of the Respondents based on the said Corrigendum. Hence the legality and validity of the Corrigendum is kept open for being urged in appropriate proceedings, and the contentions of the parties in that regard are also kept open.

23 On behalf of the State Government the registration of a second Society or PACCS in the same revenue village which is directed by the impugned order is sought to be justified by placing reliance on Article 19(1)(c) of the Constitution of India, as the said Article now reads after the 97th Constitutional Amendment. Reliance is also sought to be placed on Article 43B which is a directive principle inserted by the said 97th Constitutional Amendment. The freedom enshrined in Article 19 now includes the freedom to form Co-operative Societies as the word “Co-operative Societies” was incorporated in Article 19(1)(c) by the 97th Constitutional Amendment. The impugned order is sought to be justified on the ground that it is in conformity with Article 19(1)(c) of the Constitution of India. In so far as Article 43B is concerned it reads thus :-

“The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.”

The case of the State Government based on Article 19(1)(c) of the Constitution of India would therefore have to be considered. As a consequence of the 97th Constitutional Amendment the Maharashtra Co-operative Societies

Act, 1960 has undergone substantial amendments which amendments have come into force in the year 2013. However, in so far as Section 4 of the said Act is concerned, which provides for registration of societies, it has not undergone any change post the 97th Constitutional Amendment, and reads thus:-

“4. *Societies which may be registered*

A society, which has as its objects the promotion of the economic interest 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 this Act.

Provided 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 co-operative movement, or the registration of which may be contrary to the policy directives which the State Government may, from time to time, issue.]”

Hence the GR dated 23/09/2013 exemplifies the policy directives of the State Government as mentioned in the proviso to Section 4 of the said Act. The background to the issuance of the said GR dated 23/09/2013 has already been adverted to in the earlier part of the instant judgment. It is well settled that the freedom under Article 19(1) of the Constitution of India can be subjected to reasonable restrictions. The conditions mentioned in the said GR dated 23/09/2013 regulating the registration of the PACCS can therefore be said to be the reasonable restrictions that the State Government has decided to impose in the matter of registering another PACCS in the same revenue village.

Therefore the conditions that are imposed by the said GR dated 23/09/2013 in fact can be justified on the touchstone of the reasonable restrictions that the State Government has decided to impose on the registration of a new PACCS.

In my view Article 43B would also not aid the Respondents to justify the impugned order. The said Article 43B can be said to state as to what should be the objects of the State Government which is to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. The State Government having done so by GR dated 23/09/2013 by which a conscious decision is taken to register only one Society in one revenue village cannot now rely upon Article 43B to justify the registration of a second Society or PACCS which this Court has come to a conclusion is in breach of the said GR dated 23/09/2013.

24 The learned Senior Counsel Shri P S Dani appearing on behalf of the Petitioners has relied upon a Division Bench's judgment of the Gujarat High Court reported in **Rajendra N Shah**'s case (supra) wherein the Division Bench has set aside the 97th Constitutional Amendment on the ground that the same being not ratified by 3/4th of the State Assemblies in the country. Though the 97th Constitutional Amendment has been set aside in ***Rajendra N Shah's*** case (supra) by the Gujarat High Court, even proceeding on the basis that it has come into force the said amendment for the reasons stated herein above

would not aid the State Government to justify the impugned order. In any event the reasons mentioned in the affidavit do not find a place in the impugned order. Having regard to the judgment in *Mohinder Singh Gill's* case (supra) the said reasons mentioned in the affidavit therefore cannot be taken into consideration for deciding the legality of the impugned order.

25 Lastly coming to the locus of the Petitioners in the above Petition. It is an undisputed position that the Petitioners are the members of the PACCS which is already in existence in village Andhalgaon. Being members as such the Petitioners would be vitally concerned with the financial viability of their PACCS and would therefore be vitally affected by the registration of a new PACCS, more so, when it is the case of the Petitioners that the members of their PACCS are shown as the members of the new PACCS which is directed to be registered by the impugned order. The locus of the persons similarly situated as the Petitioners i.e. members of a Society to file a Petition to challenge the registration of another Society has been upheld by a learned Single Judge of this Court in *Writ Petition No.1747 of 2013* in the matter of *Nitin Prabhakar Bankar v/s. The Saptasringi Mahila Vividh Karyakari Seva Sahkari Sanstha Maryadit, Pimpalgaon (B) and ors.* by the judgment and order dated 04/04/2014.. In any event it cannot be expected of the Societies to file a Petition to challenge the direction issued by a functionary of the State Government acting as the Revisionary Authority to register another PACCS in

the same revenue village, lest they attract the wrath and displeasure of the State Government. In my view, the judgment of the Division Bench of this Court in **Girish Mulchand Mehta's** case (supra) would not aid the Respondents to contend that the Petitioners have no locus standi. The said judgment was rendered in the facts of the said case where the Appellants who were the members of a housing society were seeking to challenge the resolution passed by the General Body of the Society by which resolution the Society had resolved to re-develop its property. It is in the said situation that the Division Bench has held that the Appellants would be bound by the resolution and that once they have become members of the Society, they have lost their separate identity and have to speak through the Society. Hence it would have to be held that the above Petition as filed by the Petitioners above named is maintainable.

26 Hence to put the matter in perspective the said GR dated 23/09/2013 was issued by the State Government as and by way of a remedial measure in the aftermath of the acceptance of the recommendations of the Vaidyanathan Committee, when it was found that out of 21318 PACCS about 5498 PACCS were ineligible to get financial help or assistance as per the Vaidyanathan Committee's recommendations. Hence the conditions contained in the said GR for registering a new PACCS in the same revenue village were framed in the said context. Therefore Condition No.1 of the said GR would

have to be strictly construed as the same would be in consonance with the policy of the State Government as contained in the said GR. The Corrigendum dated 14/02/2017 would not aid the State Government to justify the impugned order for the reasons stated in the earlier part of the instant Judgment, that apart the said Corrigendum would also operate prospectively.

27 For the reasons as afore-stated the impugned order dated 27/12/2016 passed by the Revisionary Authority cannot be sustained, it is accordingly quashed and set aside. However, the following directions are issued :-

- (1) On the impugned order being set aside the registration of the Respondent No.6 Society would stand set aside.
- (2) It would be open for the Respondent No.6 Society to make a fresh application, if any such application is made the same would be decided by the authorities in terms of the policy decision of the State Government.
- (3) The challenge to the corrigendum dated 14/02/2017 is kept open for being raised at the appropriate time, the sequitur to the same would be that the contentions of the parties are also kept open in that regard.

- (4) The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]