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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 195/2014**

**AYAM MILTI STATE MULTI PURPOSE AND CREDIT
CO-OPERATIVE SOCIETY LIMITED** Petitioner

Through: Mr. Rajesh Yadav and Ms. Ruchira,
Advocates

versus

**THE CENTRAL REGISTRAR OF COOPERATIVE SOCIETIES &
ANR** Respondent

Through: Mr Vikas Mahajan and Mr S.S. Rail,
Advs.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **26.07.2017**

1. The petitioner has filed the present petition praying *inter alia* for directions to the respondents to issue a registration certificate in its favour under Section 8 of Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as “the said Act”) on an assumption that it has been deemed as registered in terms of the second proviso to sub-section (3) of Section 7 of the said Act due to failure on the part of the respondent to communicate its order of refusal to register it as a Multi-State Cooperative Society within the stipulated time line.

2. We may note that the present petition was filed by the petitioner in the

month of January, 2014. Prior thereto, an order dated 14.08.2013 was passed by the Office of the Central Registrar rejecting the petitioner's application seeking registration as a Multi-State Cooperative Society, on the ground that it did not meet the requirements of law. It is the case of the petitioner that the aforesaid order dated 14.08.2013 was received by it on 16.09.2013 and by that date, the period of four months, as contemplated under the second proviso to sub-section (3) of Section 7 of the Act, had expired. Hence the plea of deemed registration has been taken in the petition.

3. On 21.09.2013, the petitioner filed an application before respondent No.1, for seeking recall of the order dated 14.08.2013 on which a rejection order came to be passed by the Central Registrar on 23.12.2013. Aggrieved by the order dated 23.12.2013, the petitioner filed an appeal, as prescribed under Section 99 of the said Act, on 20.02.2014. However, in the said appeal the petitioner did not raise any plea claiming deemed registration under the second proviso of sub-section (3) of Section 7 of the Act, though such a plea was available to it at that stage.

4. Mr Yadav, learned counsel for the petitioner states that Section 99 empowers the Appellate Authority to decide all pleas including the plea of deemed registration. But the point is that for deciding the said plea, the

petitioner ought to have raised such an objection in its appeal. As per the petitioner's own case, a copy of the order dated 14.8.2014 was served on it after expiry of four months reckoned from the date of submission of the application for seeking registration. Therefore, it was incumbent for the petitioner to have taken the plea of deemed registration while filing its appeal against the order dated 23.12.2013 passed by the Central Registrar. Having failed to do so, this Court cannot be called upon to adjudicate on this aspect as if it is the first court. The scope of judicial review cannot be permitted to be enlarged to a point that such a plea would be raised for the first time in writ proceedings when the petitioner had a remedy of appeal and had elected to exhaust it during the pendency of the present petition.

5. Vide order dated 13.6.2014, the Appellate Authority had remanded the matter back to the respondent No.1/Central Registrar for a fresh adjudication. Vide order dated 11.9.2014, the respondent No.1 rejected the petitioner's request for registration under the MSCS Act with a rider that such an application could be reconsidered after a final order is passed by the High Court of Bombay, Aurangabad Bench in WP(C)4904/2013, a petition filed by a third party and in case any directions are issued in the present petition. It is relevant to reproduce herein below the findings returned by the

responded No.1 in para 7 of the order dated 11.9.2014:

“7. It is observed that non-submission of documents mentioned in the order dated 29.05.2013 were not treated as a deficiency in the order of refusal dated 14.08.2013 in view of the interim order dated 21.06.2014 passed by the Hon’ble High Court of Judicature of Bombay Bench at Aurangabad in the matter of writ petition No.4904 of 2013 directing the CRCS not to pass any adverse order in pursuance to notice dated 29.05.2013. Subsequently, this office sought legal opinion from the Central Government Counsel on 05.07.2013 regarding the applicability of the interim order dated 21.06.2013 passed by the Hon’ble High Court of judicature of Bombay Bench at Aurangabad on the societies which were not the petitioners to the writ petitions filed before the Hon’ble High Court of judicature of Bombay Bench at Aurangabad. The Central Government Counsel clarified that the order of the Hon’ble Court is applicable only to the societies which had filed the writ petition. In view of the clarification given by the Central Government Counsel non-submission of documents mentioned in the order dated 29.05.2013 were treated as a deficiency in the order of refusal dated 23.12.2013. It is clarified that the documents contained in the order dated 29.05.2013 have been prescribed by the CRCS with the approval of the competent authority in the Central Government. The CRCS is bound to comply with the instructions given by the competent authority in the Central Government. It is also clarified that there has been no report indicating that the societies are facing difficulty in obtaining NOC and credential certificates from the RCS of the concerned States/UTs. As regards the suggestion of the Appellate Authority that CRCS should examine the feasibility of conducting verification of the concerned society and its promoters/members at his end, it is clarified that in view of non presence at the state level it will not be feasible for the CRCS to undertake this work. The RCS of the States/UTs have wide network of offices ranging from

state to block level with which they can easily conduct the verification of the concerned society and its promoters/members. Further, involvement of RCS of the concerned States/UTs at the stage of registration of the societies having credit and thrift objectives has been prescribed after receipt of reports of fraud and misappropriation of deposits collected by the credit cooperative societies. Therefore, any proposal for registration of a multi state cooperative society having credit and thrift as its objects is treated as a deficient proposal if it is submitted without the documents mentioned in the order dated 29.05.2013. In view of this, at present, the application of Ayam Multi State Multi Purpose and Credit Cooperative Society Ltd., cannot be considered for registration under the MSCS Act, 2002 because it is found to be deficient. However, the application can be re-considered after passing of final order by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in the matter of writ petition No. 4904 of 2013 and/or any directions of the Hon'ble High Court of Delhi at New Delhi in respect of Writ Petition (C) 195/2014 filed by the society."

6. Admittedly, the petitioner did not prefer an appeal against the order dated 11.9.2014 passed by the respondent No.1, though such a remedy has been provided for under Section 99 of the Act. Instead, it sought an amendment of the present petition by incorporating prayer (b) whereunder, a prayer has been made for quashing the order dated 29.5.2013 passed by the respondent No.1 declaring that Multi-State Cooperative Societies that have the object and functions relating to thrift and credit, shall be registered only after obtaining a No Objection Certificate from the Registrar of Cooperative

Societies of the State concerned and verification of the credibility of its promoters for which purpose, certain documents have been prescribed.

7. In our opinion, when the petitioner had a remedy of filing an appeal against the order dated 11.9.2014 passed by the respondent No.1, there was no justification for it to seek an amendment of the present petition and lay a challenge to the order dated 29.5.2013 on the ground that it cannot be extended to an application that was filed anterior to issuance of the said order.

8. It is also relevant to note that it is not the petitioner's case that the respondent No.1 had passed the order dated 11.9.2014 beyond the period of four weeks reckoned from the date when the matter was remanded back by the Appellate Authority for fresh adjudication. In view of the subsequent events that have transpired during the pendency of this petition, the plea of deemed registration cannot survive for adjudication. If the petitioner had a grievance against the remand order dated 11.9.2014 passed by the respondent No.1, the legal recourse of filing an appeal, as prescribed under the statute, was available to it.

9. Accordingly, the present petition is disposed of with liberty granted to the petitioner to challenge the order dated 11.9.2014 passed by the

respondent No.1/Central Registrar before the Appellate Authority, under Section 99 of the Multi-State Co-operative Societies Act. Needless to state that if the petitioner approaches the Appellate Court by filing an appeal and seeks condonation of delay on the ground of pendency of the present petition, the said plea shall be duly considered and decided in accordance with law.

10. We make it clear that the observations made herein above are limited to the aspect of maintainability of the present petition and it shall not be treated as an expression on the merits of the case, which is left open for adjudication before the Appellate Court.

11. The petition is disposed of.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 26, 2017

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