

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5543 OF 2013

1. Yogakshema Multistate Co-operative
Credit Society Ltd., Kallamb,
Through its Chief Promoter,
Vivekanand s/o. Maruti Pawar,
Age 35 years, Occu. Agril.,
R/o. Kallamb, Tq. Kallamb,
District - Osmanabad and Others **....Petitioners.**

Versus

1. Union of India,
Through its Secretary,
Agricultural and Cooperation Department,
Krishi Bhavan, New Delhi - 110 001
and others. **....Respondents.**

Mr. A.N. Nagargoje, Advocate for petitioners.

Mr. S.B. Deshpande, ASG for respondent Nos. 1 and 2.

Mr. D.S. Jape/Ansingkar, AGP for State.

WITH
WRIT PETITION NO. 4904 OF 2013

1. Vardhan Multistate Co-operative
Credit Society Ltd., Osmanabad
Through its Chief Promoter,
Sanjay s/o. Atmaran Yadav,
Age 45 years, Occu. Agril.,
R/o. Surya Niwas, Bhagirathi
Housing Society, Kurne Nagar,
Osmanabad, Tq. & Dist. Osmanabad
and Another **....Petitioners.**

Versus

1. Union of India,
Through its Secretary,

Agricultural and Cooperation Department,
Krishi Bhavan, New Delhi - 110 001
and others.

....Respondents.

Mr. A.N. Nagargoje, Advocate for petitioners.

Mr. S.B. Deshpande, ASG for respondent Nos. 1 and 2.

Mr. D.S. Jape/Ansingkar, AGP for State.

WITH
WRIT PETITION NO. 710 OF 2014

Athithi Multi State Co-operative Credit
Society Ltd., Killari, Tal. Ausa, Dist. Latur
Through its Chief Promoter Shri. Vikas
s/o. Chandar Patil, Age 39 years,
Occu. Agriculture, R/o. Kavatha, Tal.
Omerga, Dist. Osmanabad.

....Petitioner.

Versus

1. The Union of India,
Through the Secretary to Ministry of
Agriculture, Department of Agriculture
and Co-operation, New Delhi - 110 001
and Another.

....Respondents.

Mr. A.R. Devakate, Advocate for petitioner.

Mr. S.B. Deshpande, ASG for respondent Nos. 1 and 2.

Mr. D.S. Jape/Ansingkar, AGP for State.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JANUARY 15, 2018.**

ORDER :

- 1) Writ Petition Nos. 5543/2013 and 4904/2013 are filed to
challenge legality and validity of order dated 29.5.2013 issued by

respondent No. 2 and also for the relief of quashing and setting aside the said order. Further, the relief of mandamus, direction is claimed against respondent No. 2 to see that respondent No. 2 does not insist for compliance of conditions laid down in order dated 29.5.2013. Direction is also claimed for setting aside circular dated 23.8.2013. Writ Petition No. 710/2014 is filed to challenge the order made by respondent No. 2 by which the application filed by the petitioner for registration of applicant as Multi-State Co-operative Society under Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as 'the Act of 2002 for short) is rejected. Other reliefs claimed by this petitioner are similar to the reliefs claimed in the aforesaid two writ petitions. Both the sides are heard.

2) The petitioners from the three petitions wanted to have registration under the provisions of the Act of 2002. The petitioners from the first two proceedings had made proposals, applications and to them direction is given by Central Registrar of Co-operative Societies vide order dated 29.5.2013 to comply the conditions mentioned in the order. The conditions are as under :-

"1. No Objection Certificate from the Registrar of Cooperative Societies of the State/U.T. concerned where the proposed area of operation of the society extends.

2. Verification certificate of the background and

other credentials of the Chief Promoter/promoters duly certified by the Registrar of Cooperative Societies of the State where Registered Office of the Society is proposed to be located.

3. Submission of N.O.C. from the concerned Registrar of Co-operative Societies shall also be applicable to the existing societies which desire to extend their area of operations to other States/U.T."

3) The submissions made show that in the past, no rules were framed under the Act of 2002 with regard to aforesaid requirements, but by amendment of Rules, with effect from 17.8.2016 such requirements are brought in existence. The learned counsels for petitioners submitted that as there applications were pending from prior to the date of amendment, they cannot be asked to comply the new provisions introduced by amendment of 2016. This submission cannot be accepted in law. If application for getting such registration is pending and the new procedure or new requirement comes in to force, the applicant needs to follow that procedure and fulfill the requirements mentioned by way of amendment.

4) The learned counsels for the petitioners from the three proceedings submitted that the Registrar appointed under the Maharashtra Cooperative Societies Act 1960 has issued circular

dated 23.8.2013 and in that circular for issuing no objection certificate mentioned in aforesaid order of Central Registrar of Co-operative Societies, the applicant is required to comply with the following conditions :-

- (i) The applicant must have collected share capital of atleast Rs. one crore.
- (ii) The applicant who wants to have registered office in Maharashtra needs to have atleast one thousand shareholders who are residents of Maharashtra.

Some other requirements are also mentioned which are with regard to the Chief Promoters and promoters, but argument was not advanced on those requirements.

5) The learned counsels for the petitioners submitted that in view of provision of section 6 (2) (a) of the Act of 2002 the application needs to be signed only by 50 persons from each of the State concerned and so, the Registrar under Maharashtra Co-operative Societies Act, 1960 could not have put a condition to have one thousand residents of Maharashtra State as members. On this, the learned counsel for respondents submitted that the condition mentioned in section 6 (2) (a) of the Act is with regard to signing of application filed for registration and it is not with regard to the

requirement of minimum members for formation of Multi-State Co-operative Society. This Court holds that there is force in this submission. Further, in Constitution of India the subject of co-operative society is mentioned at Sr. No. 32 as State subject. The learned counsel for respondents submitted that the Central Government has made the Act of 2002 for replacing previous enactments which were of 1942 and 1984 and the Act is made only for those societies which intend to do the business in more than one State. He submitted that the machinery in co-operative sector is created by the State Government and the authority created under the Act of 2002 has the power to collect necessary information in public interest. He drew the attention of this Court to the provision of section 6(3) of the Act of 2002 which is as under :-

"6. Application for registration.-

(1)

(2)

(3) The application shall be accompanied by four copies of the proposed bye-laws of the multi-State Co-operative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require."

6) This Court holds that there is force in the submission made by the learned counsel for respondents that in public interest,

the information which is sought by the Central Registrar, can be collected by him. Further, for giving no objection certificates as required by the Central Registrar, the machinery of the State Government can ask to satisfy some conditions. The learned counsel for respondents has produced on record the circular issued by Registrar appointed under Maharashtra Act and dated 3.2.2014. It shows that for area like New Mumbai, the Society to be registered under Maharashtra Act needs to have atleast five thousand members and Rs. one crore as collected capital. For small cities, having municipalities, the members need to be two thousand and other particular places are also mentioned with specific requirements. It is not disputed that the objections raised by the authority are in accordance with this circular.

7) The circular of the State Government shows that for registration of a society under the State Act, there are some requirements and the State authority wants to see that those requirements are complied with by the applicants who want to get registration under the Central Act of 2002. The submissions made and the record show that these requirements are made to protect the interest of public at large. Many incidents of fraud were noticed in such societies and even the Central Registrar had noticed such incidents in the societies registered under the Act of 2002 and so,

steps were taken to see that precautionary measures are taken. The aforesaid measures are such precautionary measures.

8) In view of the aforesaid position and particularly, due to the circumstance that co-operation is State subject, the State Government can impose the conditions which are there for the registration of societies under the State Act for the societies like present one also. When under the Rules made under the Central Act of 2002, such requirement is there and when the authority of the State Government under the State Act which can issue certificate, has drawn attention to requirements which need to be complied with as per the policy of State Government in that regard, the applicants need to comply them. This Court sees no reason to interfere in the objections taken for registration in first two cases and the order of rejection made in the last case on aforesaid grounds.

9) The learned counsels for petitioners placed reliance on some observations made by Kerala High Court in the case reported as **AIR 2016 Ker 107 [Haldar Vikas Credit Co-operative Society Ltd. Vs. Central Registrar of Co-operative Societies and Ors.]** and also some observations made by this Court in the case reported as **2008 (1) Mh.L.J. 3000 [Adarsh Ginning and Pressing Factory Vs. State of Maharashtra and Ors.]**. In the

case cited supra, Kerala High Court considered the matter from different angle, the possibility of delegation of power of Central Registrar. Further, the case was decided on 18.8.2015 when the amendment came to be made in Central Rules in the year 2016. In view of this circumstance and subsequent developments, this Court holds that the observations made by the learned Judge of Kerala High Court can be of no use to the petitioners. The facts of the second case cited supra were altogether different and they were with regard to the powers of recovery officers created by the State Act when such society gets converted in to Co-operative Society under the Act of 2002. The point involved in the present matter was not involved in the case decided by this Court in the year 2007 cited supra. This Court holds that the applicants need to follow the procedure now laid down and that procedure is in public interest. In the result, all the three writ petitions stand dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/