

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.657/2018

Vastushilp Majoor Sahakari Sanstha Maryadit, Sarkartola and others.

Vs.

State of Maharashtra Department of Co-operation Marketing and Textile Division,
Mantralaya, Mumbai and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.A.Naik, Advocate for petitioners.

Shri V.A.Thakre, Asstt. Government Pleader for R.Nos. 1, 2, 4 to 6.

Shri A.M.Ghare, Advocate for respondent no.3.

Shri A.Y.Kapgate, Advocate for respondent no.7.

CORAM : A.S.CHANDURKAR, J.

DATED : August 05, 2019

The challenge raised in this writ petition is to the order dated 05.12.2017 passed by the Hon'ble Minister of State (Co-operation) in exercise of revisional jurisdiction under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the said Act') By that order the revision application preferred by the respondent no.3 herein has been allowed and the order passed by the Divisional Scrutiny Committee in its meeting held on 02.12.2016 has been set aside. Consequentially, the order dated 20.12.2017 as regards classification of the petitioner-Societies as ordered on 06.11.2017 has also been set aside.

The facts relevant for adjudicating the writ petition are that the petitioner nos. 1 to 14 are Labour Co-operative Societies that are duly registered under the provisions of the said Act. As per policy dated 19.04.1985 the Societies were granted no objection certificate by the Labour Federation. There was a litigation in respect of the aforesaid policy decision of the State Government and with regard to the matter of grant of registration to the petitioners-Societies. During the pendency of that

litigation, on 06.12.2008 the State Government formulated a new policy in place of its earlier policy in the matter of grant of registration to Labour Co-operative Societies. The dispute with regard to registration of the petitioners-Societies had reached this Court in Writ Petition No. 6739/2015 at the instance of the present petitioners. This Court on 28.07.2016 held that the petitioners-Societies were required to be registered in terms of the policy decision dated 06.12.2008 and granted liberty to the petitioners to seek such registration accordingly. The said judgment was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 29.08.2016 after maintaining the judgment of this Court observed that the Divisional Scrutiny Committee would examine the claims of the petitioners-Societies at pre-registration stage on the applications that would be filed by each of the Society. The scrutiny was directed to be undertaken expeditiously within a period of three months from the date of receipt of the said order.

In pursuance to the aforesaid order the petitioners made a request on 09.09.2016 to grant them registration under the provisions of the said Act. Accordingly, the Divisional Scrutiny Committee held its meeting on 02.12.2016 and after considering the proposals moved by the petitioners, by majority of 3:2 came to the conclusion that the Societies were eligible to be so registered. The proposal was accordingly forwarded for the purposes of such registration. The District Deputy Registrar was directed to issue fresh registration certificates to the said Societies. Pursuant thereto, the Assistant Registrar, registered the aforesaid societies and on 06.11.2017 an order in respect of classification of the said Societies was also issued. The respondent no.3 herein-the Federation being aggrieved by the aforesaid order dated 02.12.2016 passed by the Divisional Scrutiny Committee preferred a revision application under Section 154 of the said Act before the State Government. The Hon'ble Minister of State (Co-operation) by the order dated 05.12.2017 found that the matter of registration of the Co-operative Societies was required to be considered in the light of policy

decision dated 06.12.2008. Since it was found that the petitioners had not applied in terms of that policy decision and the norms as per earlier policy decision dated 19.04.1985 had been taken into consideration while directing registration, the order passed by the Divisional Scrutiny Committee on 02.12.2016 was set aside. As a result of that order the action in respect of classification of the Societies dated 06.11.2017 was also set aside. Being aggrieved the said Labour Co-operative Societies have filed the present writ petition.

Shri A.A.Naik, learned counsel for the petitioners at the outset submitted that the revision application preferred by the Federation before the State Government under Section 154 of the said Act itself was not tenable as the proceedings of the meeting of the Divisional Scrutiny Committee did not indicate passing of any order that could have been challenged under Section 154 of the said Act. According to him, revisional powers could have exercised only if a decision or an order had been passed by any sub-ordinate Officer. The business transacted in the meeting of the Divisional Scrutiny Committee did not amount either a decision or an order for being subjected to challenge under Section 154 of the said Act. Without examining this aspect, the Hon'ble Minister proceeded to exercise revisional jurisdiction. It was then submitted that the respondent no.3 through its President was not at all concerned with the grant of registration of the Labour Societies and the President in fact had no locus to raise challenge to the minutes of the meeting of the Divisional Scrutiny Committee. In any event it was submitted that the President of the Federation was present in the meeting and the minutes were confirmed by accepting the majority view of the members of the Committee. Pursuant to these minutes registration was granted to the Labour Societies. However without challenging the registration of the Societies, the Federation chose to challenge the minutes of the said meeting. He referred to the provisions of Section 9 of the said Act and submitted that an appeal for challenging the registration of a society was maintainable under Section 152 of the said Act. That remedy ought to

have been availed even before the revision application could be filed, all the Societies had been registered. This aspect of the matter was also lost sight of by the Hon'ble Minister. It was further submitted that since all necessary requirements had been complied with by the Labour Societies, they were rightly directed to be registered. According to him, the act of registering the Societies was not a ministerial act and that the procedure as prescribed in the Circular dated 06.12.2008 and especially Clause 10 thereof was required to be complied with. Since the order of registration was passed by the Assistant Registrar, the remedy of filing an appeal under Section 152(1)(b) of the said Act was available. It was thus submitted that ignoring these aspects, the impugned order came to be passed. In support of his submissions, the learned counsel placed reliance on the decisions in *Sayeeda Gulamrasul Sayed Vs. State of Maharashtra and others 2015(1) Mh L.J.936* and *Adarsha Mahil Nagri Sahakari Bank Ltd. and anr. Vs. State of Maharashtra and others 2012 2 BCR 163*. He thus submitted that the impugned order were liable to be set aside.

Shri A.M.Ghare, learned counsel for the respondent no.3 as well as Shri V.A.Thakre, learned Assistant Government Pleader for the respondent nos. 1, 2, 4 to 6 supported the impugned orders. It was submitted by the learned counsel for the respondent no.3-Federation that the revision application as filed under Section 154 of the said Act was maintainable since the decision of the Divisional Scrutiny Committee of directing grant of registration to the petitioners-Societies was under challenge. According to him, the Divisional Scrutiny Committee had by majority of 3:2 taken a decision and had directed the District Deputy Registrar to grant registration to the said Societies. Since a revision application for challenging any decision or order was permissible, the revision application preferred by the respondent no.3 was maintainable. He then submitted that the Federation since inception was concerned with the registration of the petitioners-Societies. It was at the instance of the Federation which was insisting upon complying with the requirements of the

policy decision dated 06.12.2008 that the earlier registrations were cancelled. He submitted that in the earlier round of litigation, it was noted that the Societies were required to comply with the policy decision dated 6.12.2008 and hence the proposals made earlier by the Societies were registered. Even after being so directed by the Hon'ble Supreme Court, the Societies failed to apply afresh by complying with the requirements of the policy decision. The Societies insisted on pursuing the earlier applications. The Divisional Scrutiny Committee without considering true spirit of the orders passed by this Court and the Hon'ble Supreme Court directed the Societies to be registered. In fact, the Divisional Scrutiny Committee could not have considered the old proposals in the light of the fact that grant of registration was to be considered in the light of the subsequent policy decision. The Hon'ble Minister rightly noticed this fact and hence directed cancellation of the registration as ordered. He further submitted that since the directions issued by the Divisional Scrutiny Committee itself were under challenge, it was not necessary to challenge the orders granting registration. If it was demonstrated that the proposals of the Societies would not have been considered at all and the decision of the Divisional Scrutiny Committee was set aside, the orders granting registration would automatically not survive. He referred to the decision in *Kalabharti Advertising Vs. Hemant Vimalnath Narichania and others 2010(9) SCC 437* in that regard. He further submitted that since the revisional authority had rightly applied its mind to the relevant aspects it was not necessary to interfere with that order. It was thus submitted that the writ petition was liable to be dismissed.

Shri A.Y.Kapgate, learned counsel appeared for the respondent no.7.

I have heard the learned counsel for the parties and I have perused the documents placed on record. I have also given due consideration to the respective submissions. Since it has been urged that the revision application preferred by the respondent no.3 before the State

Government was not maintainable as no order was passed therein, it would be necessary to peruse the minutes of the meeting of the Divisional Scrutiny Committee dated 01.12.2016. In the said meeting, the scrutiny of the applications made for registration was to be undertaken and it was at the pre-registration stage. After making such scrutiny, it was observed by the Committee that there was a scope for registering all the sixteen Labour Co-operative Societies. A decision by the majority of 3:2 was taken and the District Deputy Registrar, Co-operative Societies was directed to cancel the registration granted earlier and then grant said Societies a fresh registration numbers and the registration certificates. In other words a decision was taken by majority to grant registration to the petitioners-Societies. It is to be noted that this exercise conducted by the Divisional Scrutiny Committee was pursuant to the policy decision dated 06.12.2008 and especially Clause 10 thereof. In the order dated 29.08.2016 passed by the Hon'ble Supreme Court such exercise was directed to be conducted in the light of the said policy decision dated 06.12.2008.

A revision application under Section 154 of the said Act is maintainable for raising a challenge to any decision or order passed by any sub-ordinate Officer in any enquiry or proceedings of any matter other than those proceedings referred to in Section 149(a) of the said Act. From the minutes of the Divisional Scrutiny Committee, it can be seen that a "decision" was taken by it by majority holding the petitioners –Societies eligible for grant of registration. Directions were issued to the District Deputy Registrar to cancel the earlier registration certificates and thereafter grant fresh registration numbers as well as to issue registration certificates. It is therefore clear that the Divisional Scrutiny Committee had taken a "decision" to grant registration to the petitioners Societies. As the respondent no.3-Federation was aggrieved by its decision, it preferred a revision application under Section 154 of the said Act. In the nature of directions issued by the said Committee pursuant to its decision to grant registration, it is found that the revision application preferred by the

respondent no.3 under Section 154 of the said Act was clearly maintainable before the State Government. The decision taken therein by the Divisional Scrutiny Committee cannot be labelled as merely minutes or by any other nomenclature to hold that the revision application was not maintainable. It is thus held that the Divisional Scrutiny Committee had taken a decision which thus revisable. The ratio of the decisions relied upon by the learned counsel for the petitioners thus do not apply to the case in hand.

Perusal of the earlier order passed in Writ Petition No. 6739/2015 with connected matters on 28.07.2016 indicates that the petitioners were held entitled to seek registration in terms of the policy dated 06.12.2008. The said judgment was maintained by the Hon'ble Supreme Court with a further direction to the Divisional Scrutiny Committee to expeditiously conduct the exercise of scrutiny of the applications that would be filed by each Labour Co-operative Society. The earlier proposals that were made by the petitioners-Societies came to be rejected on 06.06.2007 after which policy decision dated 06.12.2008 came into force. Since it was already found in the earlier round of litigation that the Societies would be required to comply with the requirements of the policy dated 06.12.2008, the Hon'ble Minister rightly found that the proposals for grant of registration had to be scrutinized in the light of that policy decision. It was however found that such exercise was not conducted and instead the proposals made prior to 06.12.2008 were taken into consideration by the said Divisional Scrutiny Committee while directing registration of the Societies. There is no reason to have another view of the matter. It has not been shown by the Societies that they had complied with the requirements of the policy decision dated 06.12.2008. It is thus found that there is no reason to interfere with the order passed by the Hon'ble Minister in exercise of revisional jurisdiction.

Insofar as the aspect of grant of registration pursuant to the recommendations of the Divisional Scrutiny Committee is concerned, once

the decision of the Divisional Scrutiny Committee stands set aside, the order directing grant of registration would automatically fall to the ground. The orders of registration are dependent on the decision taken by the Divisional Scrutiny Committee. Though it is true that grant of registration would not be a ministerial act in the light of the same having been required to be undertaken as per policy dated 06.12.2008, the decision of the Divisional Scrutiny Committee is found to be not in accordance with law. Consequently directions of registering said Societies would not survive. In these facts therefore a separate challenge to the order of registration under Section 152 of the said Act is not warranted. The observations in *Kalbharti Advertising* (supra) relied upon by the learned counsel for the respondent no.3 would apply to the case in hand.

It is thus found that the impugned order dated 05.12.2017 does not suffer from any jurisdictional error. The same has been passed by taking into consideration all relevant aspects. The writ petition therefore stands dismissed with no orders as to costs.

At this stage, the learned counsel for the petitioners prays that the interim order passed on 02.02.2018 be continued for a period of six weeks. This request is opposed by the learned counsel for the respondent no.3. The interim order granted on 02.02.2018 shall continue to operate for a period of six weeks and it shall cease to operate automatically thereafter.

JUDGE

Andurkar.