

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

Writ Petition No.2553 of 2016
(Magaswargiya Pashu Va Pakshi Palan Sahakari Sanstha through its
Chairman .vs. The Divisional Deputy Registrar, Co-operative Societies
(Milk), Nagpur.)

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

Mr. S.P. Kshirsagar, Advocate for Petitioner.
Mr. S.B. Bissa, AGP for Respondent No.1.

CORAM : Manish Pitale, J.
DATED : April 08, 2019.

The petitioner society has filed the present writ petition challenging the order of the respondent-Divisional Deputy Registrar, Co-operative Societies (Milk) in dismissing a revision application filed by the petitioner society under Section 154 of the Maharashtra Cooperative Societies Act, 1960, thereby confirming order dated 11.01.2016 passed by the Assistant Registrar, whereby power was exercised under Section 102 (1) of the aforesaid Act of passing an interim order directing winding up of the petitioner society.

2. The Assistant Registrar proceeded to pass the aforesaid order dated 11.01.2016 on the basis that the petitioner society had allegedly failed to submit audited reports for a long period of time and that in the said situation exercise of power under Section 102(1) of the Act was warranted. The revision application filed on behalf of the petitioner society before the respondent

failed, despite a contention raised on behalf of the petitioner society that proper opportunity was never granted by the Assistant Registrar before passing said order dated 11.01.2016.

3. This Court issued notice and granted interim stay in favour of the petitioner society as reliance was placed on judgment of this Court in the case of **Chandrapur Zilla Sahakari Krushi and Gramin Bahuuddeshiya Development Bank Ltd. .vs. State of Maharashtra and others**, reported in **2004(1) Mh.L.J. 232**, wherein it has been laid down that the principles of natural justice are required to be followed even when an interim order of liquidation is to be passed against the society under the provisions of the said Act.

4. Since specific contention was raised on behalf of the respondent that despite repeated opportunities, the petitioner society was not placing proper documents on record, by order dated 28.01.2019, this Court directed the petitioner society to place on record relevant documents. Pursuant thereto, the petitioner has placed on record additional documents and it is claimed that the said documents would show that the order passed the Assistant Registrar under Section 102(1) of the aforesaid Act in the present case was not justified.

5. The short question that arises for consideration in the present case is as to whether the

Assistant Registrar of the Cooperative Societies followed the mandate of Section 102 (1) of the aforesaid Act in its true spirit, in the light of law laid down by the Division Bench of this Court in the aforesaid judgment. A perusal of the aforesaid judgment of this Court shows that it has been held that not only the Assistant Registrar of the Cooperative Societies is required to issue notice and follow the principles of natural justice while passing a final order of liquidation under Section 102 (2) of the aforesaid Act, but even while passing an interim order directing winding up of a society under Section 102(1) of the aforesaid Act, the said Authority is required to issue notice to the concerned society. Thus the Division Bench of this Court in the aforesaid judgment has read the principles of natural justice even in the said provision i.e. Section 102(1) of the said Act pertaining to passing of interim order of winding up.

6. A perusal of the order dated 11.01.2016 does not show that any such notice was issued by the Assistant Registrar of the Cooperative Societies to the petitioner society before passing interim order of winding up. The note appended below the operative portion of the said order only calls upon the petitioner society to show cause as to why a final order of winding up should not be passed against it under Section 102(2) of the aforesaid Act. Therefore, it becomes evident that the mandate of the statute as interpreted by the Division Bench of this Court has not been followed in the present case. Although it appears that the Assistant Registrar of the Cooperative Societies as well as the

respondent herein i.e. the Divisional Deputy Registrar have noted that the petitioner society has failed to submit audited reports and relevant documents despite repeated opportunities, the interim order of winding up cannot be justified because a show cause notice prior to issuance of order dated 11.01.2016 was not issued to the petitioner society.

7. In view of the above, the writ petition is partly allowed. The impugned order i.e. the order dated 11.01.2016 passed by the Assistant Registrar of the Cooperative Societies and the order dated 13.04.2016 passed by the respondent -Divisional Deputy Registrar are quashed and set aside. The Assistant Registrar of the Cooperative Societies is granted liberty to issue proper show cause notice to the petitioner society if it is so advised to take action under Section 102(1) of the said Act for passing interim order of winding up. The Assistant Registrar of the Cooperative Societies shall grant proper opportunity to the petitioner society to respond to the said show cause notice along with all relevant documents. The petitioner society is directed to cooperate with the Assistant Registrar of the Cooperative Societies in such proceeding and it is further directed that the Assistant Registrar of the Cooperative Societies shall complete the proceedings and pass order under Section 102 (1) of the aforesaid Act, within a period of eight weeks from today.

JUDGE