

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

WRIT PETITION NO.260/2021

1. Ananta Madhukarrao Bhuibhar,
Aged about 60 years, Occupation : Practitioner,
R/o Old Radha Kisan Plot, Dist. Akola, 444001.
2. Vijay Shamrao Mule,
Aged about 70 years, Occupation: Retired,
R/o Near old RTO Office, Pratap Nagar,
Dist. Wardha.
3. Janata Central Wholesale and
Retail Co-operative Consumer Stores Ltd.,
through the Manager Devidas Narayan Saphale
R/o Pandit Nehru Marg, Opp. State Bank
of India, Dist. Akola 444001.
4. Wardha District Co-operative Wholesale
and Retail Consumer Society through the
Manager Mohan R. Gourshettiwar, Near
Old RTO Office, Pratap Nagar, Dist. Wardha. **PETITIONERS**

// VERSUS //

1. State of Maharashtra through its
Divisional Joint Registrar, Co-operative
Societies, Nagpur.
2. State of Maharashtra through its District
Deputy Registrar, Co-operative
Societies, Hindustan Colony, Amravati
Road, Nagpur.
3. Vishal Grahak Sahakari Sanstha Ltd.,
Nagpur R.N. 101, Gandhi gate, Shivaji Putala,
Ganeshpeth Road, Mahal, Nagpur,
through its President.
4. Nagpur District Central Co-operative
Consumer Wholesale and Retail Stores Ltd.,
Nagpur R. N. 146 Sahkar Mandir, Tilak
Road, Mahal, Nagpur through its President.

5. Pilaji Narayan Dhapodkar,
Aged about 62 years,
Occupation : Business,
R/o Ganeshpeth, Mahal, Nagpur,
Dist Nagpur.
6. Vijay Ramji Kapse,
Aged about 58 years
Occupation: Business,
R/o Sahkar Mandir, Mahal, Nagpur. **RESPONDENTS**

Mr. A. M. Ghare, Advocate for petitioners.
Mr. A. A. Madiwale, AGP for respondent Nos.1 and 2.
Mr. Samarth, learned Senior counsel along with Mr. S. K. Tambde,
Advocate for respondent Nos.3 and 4.

CORAM : AVINASH G. GHAROTE, J.
DATED : 25/11/2021

ORAL JUDGMENT :

1] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2] Heard Mr. Ghare, learned counsel for the petitioners, Mr. Madiwale, learned AGP for respondent Nos.1 and 2 and Mr. Samarth, learned Senior Counsel along with Mr. Tambde, learned counsel for respondent Nos.3 and 4. Mr. Tapas, learned counsel for respondent Nos.5 and 6, is absent.

3] The present petition challenges the order dated 16.07.2020 passed by the respondent No.1 in appeal Nos.14 of 2020 and 15 of 2020 whereby the de-registration of the respondent Nos.3 and 4, has been set aside and so also the orders of putting the societies in liquidation has

been set aside.

4] Mr. Ghare, learned counsel for the petitioners submits that though the orders of liquidation are dated 28.08.1971 and 04.01.1992, the application for condonation of delay did not make any mention about these orders and the delay occasioned in challenging the same but merely referred to the order of de-registration passed under Section 21 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred as 'MCS Act'). That apart by inviting my attention to Section 152 (1) of the MCS Act, the learned counsel submits that any order under Section 102 and 109 of the MCS Act regarding liquidation is not an appealable order, and therefore, the respondent No.1, did not have any jurisdiction, to entertain any purported appeal challenging the same. He further submits that perusal of the original record which has been summoned and received would indicate that there was no order of issuance of notice. The record also does not indicate that the notices have been served upon the respondent No.2. The reply of the respondent No.2 was not sought in the application for condonation of delay, which indicates serious infirmities in the manner in which the entire proceedings have been conducted by the respondent No.1, and therefore, the impugned order dated 16.07.2020 passed in exercise of Section 21 of the MCS Act and also the order dated 09.06.2020 passed upon the applications for condonation of delay cannot be sustained.

5] Learned Senior counsel, Mr. Samarth, tries to justify the impugned orders, contending that the respondent No.1 had submitted his reply after being duly served.

6] Perusal of the original records of the proceedings before the learned respondent No.1, however, indicates otherwise inasmuch as no notices appear to have been issued on the applications for condonation of delay as the order sheet at record page 74 which is the only order sheet in the original record also indicates. The original record of the proceedings also does not indicate any order of issuance of notice or service of notice upon the respondent No.2, in view of which, the impugned orders in my considered opinion cannot be sustained. Though, Mr. Samarth, learned Senior counsel has raised objections regarding the locus of the petitioners and the availability of a remedy of revision under Section 154 of the MCS Act, in my considered opinion, in view of what has been stated above regarding the manner in which the proceedings have been conducted and decided before the respondent No.1, I do not propose to go into those objections and it will be permissible for the respondent Nos.3 and 4, to raise them before the respondent No.1. The impugned order dated 16.07.2020 under Section 21 of MCS Act and also the order dated 09.06.2020 passed upon the application for condonation of delay are therefore, quashed and set aside.

7] The matter is remanded back to the respondent No.1 to decide the same on merits after issuing notice on the applications for condonation of delay and after hearing the parties thereupon, and in case the delay is condoned issue notice and hear the parties on merits also.

8] Parties are directed to appear before the respondent No.1 on 07.12.2021.

9] Mr. Samarth, learned Senior counsel for the respondent Nos.3 and 4 undertakes to inform Mr. Tapas, learned counsel for the respondent Nos. 5 and 6 regarding the appearance before the respondent No.1 on 07.12.2021.

10] All issues are kept open.

11] The petitioners are at liberty to file application for intervention before the respondent No.1, which shall be considered and decided appropriately as per law.

12] The Writ Petition is allowed, in the above terms. No costs.

13] Rule is made absolute in the aforesaid terms.

(AVINASH G. GHAROTE, J)