

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7214 OF 2020

Ahmednagar Zilha Maratha Seva Nagari
Sahakari Patsanstha Ltd., Ahmednagar
Through it General Manager

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Co-operation Department,
Mantralaya, Mumbai – 32.
2. The District Deputy Registrar,
Co-operative Societies, Third Floor,
ADCC Bank Building, Ahmednagar.
3. The Divisional Joint Registrar,
Co-operative Societies,
Nasik Division, Nasik.

.. Respondents

...

Mr. Shivaji T. Shelke, Advocate for Petitioner

Mrs. V. S. Choudhari, Assistant Government Pleader for
Respondents No. 1 to 3

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04-01-2022

PER COURT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned Advocate for the petitioner and learned
Assistant Government Pleader for respondents.

2. This petition impugns orders dated 21.11.2019 (Exhibit-F) and 18.01.2020 (Exhibit-I) passed by respondent no. 2 thereby rejecting the proposed amendment of bye laws of the petitioner and order dated 18.01.2020 (Exhibit-I) passed by respondent no. 3 by which the appeal of the petitioner challenging the order of respondent no. 2 is held to be not maintainable.

3. The petitioner is a co-operative non agriculture credit society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. By the 97th Constitutional Amendment, the co-operative societies have been given constitutional status. Accordingly, the Co-operative Act has been amended by the State Government and the Co-operation Department has prepared the Model bye-laws for co-operative non agricultural credit societies.

4. The petitioner, in it's Annual General Meeting dated 22.09.2019, unanimously passed resolution no. 10, thereby adopting the Model bye-laws. A proposal was forwarded to respondent no.2 for registering Model bye-laws as amended bye-laws of the petitioner. By pointing out certain deficiencies, the proposal was returned by respondent No.2 on 17.10.2019. The proposal was again forwarded to respondent No.2 on 13.11.2019. By the impugned order dated 21.11.2019 (Exhibit-F), respondent No.2 informed the petitioner that the amended bye-laws cannot be

approved and registered.

5. The petitioner again submitted a fresh proposal on 02.12.2019 to respondent No.2 seeking approval and registration of Model bye-laws as amended bye-laws. By the impugned order dated 18.01.2020, the same was ordered to be filed in the original record by respondent No. 2. The petitioner preferred Appeal before the Divisional Joint Registrar, Co-operative Societies, Nasik Division, Nasik / respondent No.3, challenging the order of rejection of proposal of the petitioner passed by respondent No.2. By the impugned order (Exhibit-G), respondent no.3 rejected the appeal filed by the petitioner on the ground that the order passed by respondent No.2 is not as per Section 13/14 of the Maharashtra Co-operative Societies Act, 1960 (in short, "said Act") and the petitioner can avail the remedy under Section 154 of the said Act.

6. Heard learned Advocate for the petitioner and learned Assistant Government Pleader for the respondents-State.

7. The learned Advocate for the petitioner submits that the amendment of bye-laws is carried out in terms of Rule 12 of the Maharashtra Co-operative Societies Rules, 1961 (in short, "said Rules"). The procedure prescribed in Rule 12 of the said Rules is properly followed and the proposal was submitted to respondent

no.2. Respondent no.2 has rejected the proposal on erroneous grounds mentioning that there are no signatures of all the Directors below the model bye-laws. About certain bye-laws adopted by the petitioner, there is litigation going on at Co-operative Court, Ahmednagar, as well as in this Court and there are certain objections raised by some of the members of the petitioner-society for sanctioning of the amended bye-laws.

Learned Advocate submits that it is not requirement of law that the signatures of all the Directors should be there at the end of model bye-laws. He further, from the record, pointed out that no litigation in respect of model bye-laws is pending either in the Co-operative Court or in this Court. According to him, if some of the members have any objection in respect of the amended model bye-laws, they can challenge it before the appropriate forum. He, therefore, submits that the impugned order passed by respondent no. 2 is unsustainable in law and facts of the present case.

By placing reliance on a Judgment in *Wadala Shriram Industrial Premises Co-operative Society Limited, Mumbai Versus Kotecha and Company and others*, 2001(4) Mh.L.J. 616, he submits that appeal under Section 152 of the said Act is maintainable against any order either registering or refusing to register amendment to a bye-law under Section 13 of the said Act.

Therefore, he submits that, the impugned order passed by respondent No. 3 holding appeal is not maintainable cannot be sustained, hence, he submits that the petition may be allowed by quashing both the impugned orders.

8. Per contra, learned Assistant Government Pleader for respondents, by placing reliance in the affidavit-in-reply filed by respondent no.2, supported the impugned orders, stating that it is not clear from the proposal as to whether there was sufficient quorum at the time of Annual General Meeting. Learned AGP, therefore, supported the impugned orders and submitted that there is no substance in the petition and the petition may be dismissed.

9. In "Wadala Shriram Industrial Premises Co-operative Society Limited, Mumbai" (*supra*), the learned Single Judge of this Court has held that any order either registering or refusing to register amendment to a bye-law under Section 13 of the said Act is appealable under Section 152 of the said Act at the instance of an aggrieved party.

10. In the light of above ratio, the order (Exhibit-F) passed by respondent no. 2 refusing to register amendment to the bye-laws of the petitioner has to be treated to be the one passed under

Section 13 of the said Act and respondent no.3 ought to have considered the Appeal filed by the petitioner under Section 152 of the said Act, on its own merits. Since the same is not done, the impugned order (Exhibit-G) passed by respondent no.3 is liable to be quashed and set aside. In the result, following order is passed :-

ORDER

- I) Writ petition is partly allowed.
- II) The impugned order (Exhibit-G) passed by respondent no. 3 is hereby quashed and set aside.
- III) The matter is remanded back to respondent no. 3 - The Divisional Joint Registrar, Co-operative Societies Nasik Division, Nasik, who shall, after hearing the concerned parties, decide the matter within a period of eight weeks from the date of first hearing of the matter.
- IV) Parties to appear before respondent no.3 on 01.02.2022.
- V) Rule is made absolute in above terms. No costs.

**(NITIN B. SURYAWANSHI)
JUDGE**