

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8066 OF 2022
WITH
CIVIL APPLICATION NO.11860 OF 2022
IN
WRIT PETITION NO.8066 OF 2022

1. Jagdish Lahu Badhe
Age : 56 years, Occu: Agriculture
R/o. Sawda, Tq. Raver
District Jalgaon
2. Dr. Sanjeev Krushnarao Patil
Age : 64 years, Occu: Agri. and
Medical Practitioner
R/o. Anchalgaon, Tq. Bhadgaon
District Jalgaon.
3. Pralhad Narayan Patil
Age : 60 years, Occu: Agriculture
R/o. Nery Digar, Tq. Jamner
District Jalgaon
4. Hemraj Khushal Choudhari
Age: 56 years, Occu: Agriculture
R/o. Faijpur, Tq. Yawal,
District Jalgaon
5. Mrs. Shamal Atul Zambre
Age: 40 years, Occu: Household
R/o. Varangaon, Tq. Bhusawal
District Jalgaon.
6. Sau. Mandatai Eknathrao Khadse
Age: 62 years, Occu: Household
R/o. Kothli, Tq. Muktainagar
District Jalgaon
7. Madhukar Ramchandra Rane
Age: 63 years, Occu: Agriculture
R/o. Bodwad, District Jalgaon

8. Shravan Sada Brahme
Age: 59 years, Occu: Agriculture
R/o. Amalner, Tq. Amalner
District Jalgaon
9. Vasant Jivram More
Age: 70 years, Occu: Agriculture
R/o. Parola, Tq. Parola,
District Jalgaon
10. Pramod Pandurang Patil
Age: 52 years, Occu: Agriculture
R/o. Bhamre, Tq. Chalisgaon
District Jalgaon
11. Sou. Sunita Rajendra Patil
Age: 46 years, Occu: Household
R/o. Umarkhed, Tq. Chalisgaon
District Jalgaon
12. Ashok Pralhad Patil
Age : 67 years, Occu: Agriculture
R/o. Bhatkhede, Tq. Erandol,
District Jalgaon
13. Ashok Dagdu Houdhari
Age : 70 years, Occu: Agriculture
R/o. Chahardi, Tq. Chopda
District Jalgaon

... Petitioners

VERSUS

1. The State of Maharashtra
through Deputy Secretary for
Agriculture, Animal Husbandry
Dairy Development and
Fisheries Department
Mantralaya, Mumbai
2. The Commissioner,
for Agriculture, Animal Husbandry
Dairy Development and
Fisheries Department
Worli, Mumbai

3. The Joint Registrar,
Co-operative Societies (Dairy)
Worli, Mumbai
4. The Divisional Deputy Registrar
Co-operative Societies (Dairy)
Nashik Division, Nashik
5. The Assistant Registrar,
Co-operative Societies (Dairy)
Jalgaon, District Jalgaon
6. Shri Eknath Sambhaji Shinde
Age : Major, Occu: Social work
Chief Minister of State of
Maharashtra, Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai 32. .. [Deleted]

**(Respondent no. 6 deleted as per
Court's order dated 01.08.2022)**

6. Mangesh Ramesh Chavan
Age : major, Occ: Agriculture
R/o. Chalisgaon, Tq. Chalisgaon
District Jalgaon
7. Chandrakant Nimbaji Patil,
Age : major, Occu: Agriculture
R/o. Muktainagar, Tq. Muktainagar
District Jalgaon
8. Chandrakant Baliram Sonwane
Age: major, Occu: Agriculture
R/o. Chopda, Tq. Chopda
District Jalgaon
9. Ajay Eknath Bhole
Age: major, Occ: Agriculture
R/o. Bhusawal, Tq. Bhusawal
District Jalgaon
10. Amol Chimanrao Patil,
Age : major, Occu: Agriculture
R/o Parola, Tq. Parola
District Jalgaon

11. Arvind Bhagwan Deshmukh
Age: major, Occ: Agriculture
R/o. Jamner, Tq. Jamner
District Jalgaon
 12. Rajendra Wadilal Rathod
Age: major, Occu: Agriculture
R/o. Chalisgaon, Tq. Chalisgaon
District Jalgaon
 13. Ashok Namdeo Fandelkar
Age: major, Occ: Agriculture
R/o. Bodhwad, Tq. Bodhwad
District Jalgaon
 14. Gajanan Pundlik Patil
Age : major, Occ: Agriculture
R/o. Dharangaon, Tq. Bhusawal
District Jalgaon
 15. Amol Panditrao Shinde
Age: major, Occu: Agriculture
R/o. Pachora, Tq. Pachora
Dist. Jalgaon.
- ... Respondents

...
 Advocate for the petitioners : Mr. V.D. Hon, Sr. Advocate
 i/b. Mr. A.V. Hon, Advocate
 GP for the respondent – State : Mr. D.R. Kale
 Advocate for the respondents no. 6 to 15 : Mr. D.B. Thoke
 ...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

RESERVED ON : 26 AUGUST 2022
 PRONOUNCED ON : 30 AUGUST 2022

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. Learned Government Pleader waives notice for respondents nos. 1 to 5 and learned advocate Mr. Thoke waives notice for the respondents nos. 6

to 15. By consent of the parties, the matter is heard finally at the stage of admission.

2. By way of this petition under Article 226 and 227 of the Constitution of India, the petitioners are impugning the order dated 29-07-2022, of the respondent no. 4 - who is Divisional Deputy Registrar (hereinafter 'DDR') of Co-operative Societies, in purported exercise of the powers under section 77A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter the 'Act').

3. The petitioners are the elected managing committee members of the Jalgaon Zilla Dudh Utpadak Sangh Ltd. registered under the Act, for a period 2015-2020. Their term was to expire during the COVID-19 pandemic. The elections of all the co-operative societies in the State were postponed from time to time and lastly till 30-09-2022 by a Government decision. It is the case of the petitioners that their society also prepared a provisional voters' list as per the directions of the authorities giving full particulars as is required by the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter 'the Rules'). Necessary election expenses were also deposited. It is their allegation that because of the change in the Government where a new coalition has taken over at the State level, with an ulterior motive and *mala fide*, the new Government took a decision to remove the petitioners who belong to a political party now in

the opposition. It is also alleged that on the directions of the Chief Minister dated 28 July 2022, the respondent no. 4 - DDR has obliged by passing the order under challenge.

4. The learned senior Advocate Mr. Hon would argue that ex facie the quasi judicial power has been exercised on the instructions of the Hon'ble Chief Minister. No independent enquiry was held. Giving a complete go-bye to the principles of natural justice all of a sudden, the impugned order was passed. On the previous day i.e. 28 July 2022, the Deputy Secretary to the State Government specifically informed in writing to the respondents no. 3 who is the Joint Registrar of the Co-operative Societies and the respondent no. 4 - DDR wherein it was expressly informed that they should take appropriate steps for dissolution of the petitioners' managing committee by invoking the powers under section 77A (f)(ii) of the Act. It was specifically mentioned that a new managing committee be constituted as per directions of the Hon'ble Chief Minister comprising of 11 new members who are respondents nos. 6 to 15 herein. This very communication clearly demonstrates that the respondent no. 4 - DDR had not acted independently but has acted at the behest of the Hon'ble Chief Minister, in flagrant violation of the powers supposed to be exercised by him. The fact situation is similar to the one that was before the Supreme Court in the matter of *Chandrika Jha Vs. State of Bihar and Ors.*; (1984) 2 SCC 41, which thereafter was followed in the matter of

Manohar Lal (Dead) by LRs Vs. Ugrasen (Dead) by LRs. and Ors; (2010) 11 SCC 557. Though the order is purportedly passed by the respondent no. 4 - DDR under the purported exercise of the powers under section 77A, the authority which is acting behind the curtains is none other than the Hon'ble Chief Minister. There is absolutely dearth of evidence to demonstrate that the respondent no. 4 - DDR had independently undertaken any scrutiny of material and has taken some objective decision as is expected of the authority competent to exercise quasi judicial power.

5. He would point out that in response to the directions coming from the State Government by the communication dated 28 July 2022, on the same day, the respondent no. 4 - DDR had responded by a communication of even date elaborately expressing his strong opinion as to how in the facts and circumstances, he could not exercise the powers under section 77A of the Act since it was not applicable. Still, he obliged his masters and on the very next day i.e. 29 July 2022 he passed order under challenge once again basing his decision on the basis of the communication coming from the Government. There is no objective reasoning, giving all the particulars other than the directions of the Hon'ble Chief Minister to demonstrate as to what prompted the respondent no. 4 - DDR to pass the impugned order even when on the earlier date he was of strong opinion that the circumstances did not permit him to exercise that power.

6. Mr. Hon would also point out that all the steps for conducting the elections were taken, expenses were deposited, even the election programme was declared on 27 June 2022 (Exhibit H) and still a bold decision *de hors* the provisions of law was taken.

7. Lastly, Mr. Hon would also point out that the sinister design of the Government is explicit from the fact that the respondent no. 4 - DDR was not only called upon to dissolve the petitioners - managing committee but even in the same communication indicated the names of the respondents nos. 6 to 15 to be made members of the new administrative committee even when section 77A of the Act only expects such administrative committee / board to be consisting of only 3 members to be appointed. He would, therefore, submit that the order is absolutely illegal and be quashed and set aside.

8. Learned Government Pleader would support the order. He would submit that the respondent no. 4 – DDR has exercised his quasi judicial power and the order is capable of challenge by way of an appeal under section 152 of the Act. In view of such alternate and efficacious remedy of a statutory appeal, the writ petition is not maintainable. Lastly, he would endeavour to point out that pursuant to gross mis-management, drastic step was required to be taken by respondent no. 4 - DDR which he has. He would submit that though the term of the petitioners' managing committee had expired, it is only

because of the unprecedented events, pursuant to the decision of the State Government, elections were postponed from time to time. They were not supposed to take any policy decision, still, they continued to function as if they were regularly elected managing committee which necessitated passing of the order under challenge and there is no illegality.

9. Mr. Thoke appearing for the respondents nos. 6 to 15 supported the arguments of the learned AGP and further reiterated that policy decisions were being taken by the petitioners' managing committee during extended tenure and it was imperative for the respondent no. 4 - DDR to take the drastic action.

10. The relevant portion of section 77A of the Act reads thus,

“77A. Appointment of member of committee, new committee, authorised officers, where there is failure to elect member, to constitute committee or where committee does not enter upon office, etc.

(1) Where the Registrar is satisfied that,—

(1-a) a provisional committee has failed to make necessary arrangements for holding election for the constitution of the first committee, before the expiry of its term as specified in sub-section (1A) of section 73;

(a) at the first constitution of the committee of any society there is a failure to elect all or any of the members of the committee;

(b) the term of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies;

(b-1) there is a stalemate in the constitution or committee has ceased to function and vacuum is created in the management;

(c) *any committee is prevented from entering upon office;*

(d) *a new committee has failed to enter upon office on the date on which the term of office of the existing committee expired; or*

(e) **deleted**

(f) *where more than one group of persons in a society is claiming to be elected as the committee members and proceedings in respect thereof have been filed in the Co-operative Court ;]*

The Registrar may, either suo-motu or on the application of any officer or member of the society, by order appoint—

(i) *any member or members of the society to be the member or members of the committee to fill the vacancies;*

(ii) *a committee, consisting of not more than three members of the society, or one or more authorised officers, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office:*

Provided *that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period :*

Provided further *that, it shall not be necessary to publish such notice in any case where Registrar is satisfied that immediate action is required to be taken or that it is not reasonable practical to publish such notice:*

Provided also *that, if no member or members of the society are willing to work on such committee, it shall be lawful for the Registrar, to appoint one or more authorised officers, not being a member of the society, as he may deem fit, to look after affairs of the society.”*

A bare look at the provision indicates that the Registrar has been conferred with certain powers on being satisfied of existence of

the circumstances indicated by various clauses and in the event of occurrence of a contingency.

11. Pertinently, forming an opinion that none of the circumstances indicated in any of these clauses existed in respect of the petitioners' managing committee, the respondent no. 4 - DDR by his communication dated 28 July 2022 (Exhibit A) had pointedly invited attention of the Government that there were absolutely no circumstances to take any decision under that provision and there was every possibility of the order being challenged. If on the previous day, he was of such a strong view, one cannot comprehend, at least there is nothing on record to objectively demonstrate, as to what thereafter had prompted him to pass the impugned order on the very next day. The selfsame authority exercising the quasi judicial power has come out with two different views on successive days which is indeed eye-catching and creates a reasonable doubt as to his being independent.

12. In view of such peculiar state of affairs, it is as clear as day-light and can be easily demonstrated that the respondent no. 4 - DDR was acting at the behest of the Government. He has been fair enough to indicate this in so many words in the preface to the order. Even in the reference column, he has inter alia referred to the communication received from the State on the previous day. It is, therefore, well nigh clear that none of the circumstances existed which

could have enabled the respondent no. 4 - DDR to pass the impugned order under section 77A of the Act about which he had undertaken any enquiry.

13. We are, therefore, of the firm view that the respondent no. 4 - DDR has passed the impugned order not only in the absence of any ground or by resorting to any enquiry by following the principles of natural justice but even has passed it *mala fide* with an ulterior motive to oblige the Government.

14. The brazenness with which the things have happened are also mind boggling. Even when the power vested with the respondent no. 4 - DDR to appoint an administrative board comprising of three members, apart from the State Government had called upon him to appoint a board of 11 members i.e. respondents nos. 6 to 15 without leaving any option for him to appoint someone else. The names were also coming from the State Government as to who should be the members of the administrative board. If the things are as serious as this, we have no option but to take a strong view that the respondent no. 4 - DDR exercised the jurisdiction not independently but at the instance of the State Government.

15. This is what had happened in the matter before the Supreme Court in the case of Chandrika Jha (supra). It was a matter under Bihar and Orissa Co-operative Societies Act, 1935 wherein a

similar power was vested with the Registrar to constitute the first board of a co-operative society for a specified period. The Hon'ble Chief Minister who was not competent had directed the Registrar to extend the period from time to time. It was held that neither the Hon'ble Chief Minister nor the Hon'ble Minister for Co-operation had the powers to arrogate the statutory functions of the Registrar under the bye-laws framed under that Act. The following observations are worth noticing :

"12. We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first board of directors. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in-charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29 in extending the term of the first Board of Directors from time to time. The executive power of the State vested in the Governor under Article 154 (1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government under Section 65-A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.

13. The action of the then Chief Minister cannot also be supported by the terms of Section 65-A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65-A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under Section 65-A of the Act. In our opinion, the State Government cannot for itself

exercise the statutory functions of the Registrar under the Act or the Rules.

14. *Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 29. The act of the then Chief Minister in extending the term of the Committee of Management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The Act as amended from time to time was enacted for the purpose of making the cooperative societies broad-based and democratizing the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act."*

The observations are apposite to the fact situation of the matter in hand.

16. In the matter of *Joint Action Committee of Air Line Pilots' Association of India (Alpai) and others Vs. Director General of Civil Aviation and others*; (2011) 5 SCC 435, it has been observed that even a superior authority cannot interfere with the functioning of the statutory authority. The authority who has been vested with the powers to exercise the discretion alone can pass an order and the senior official cannot provide any guideline or direction to the authority. In the matter of *Manohar Lal (supra)*, it has been summarized that no higher authority or an appellate or revisional authority can exercise the power of the statutory authority.

17. In somewhat similar set of fact situation, the learned Single Judge of this Court in the matter of *Kumbhargaoon Vividh Karyakari Sahakari Seva Society Ltd. V. Assistant Registrar, Co-operative*

Societies and Ors.; 1993 Mh.L.J. 178 by referring to similar facts and circumstances made certain observations in paragraph no. 8 which according to us squarely apply to the matter in hand:

"8. Even a bare perusal of the impugned order of the Assistant Registrar shows that it is vitiated by considerations other than germane. Not only has the Registrar pointedly referred to the letter dated 5th June, 1992, issued to him by the Deputy Secretary of the Government of Maharashtra, and the letter dated 24th June, 1992, addressed to him by the Deputy Registrar, but he has also reproduced the gist of the contents of the said letters in the preamble to his order. As if this was not sufficient, in the body of the order also, he has reproduced the arguments addressed on behalf of the fourth respondent, one of which was that the Government had already granted permission, for registration. The coup de grace is in the operative order, which it is worthwhile to reproduce. The operative order reads :

"Upon consideration of all the aforesaid facts, and, following the order of the Government, the proposed Sadguru Multi-purpose, Co-operative Society, Shendewadi, Kumbhargaoon, Taluka Patan, Dist. Satara, is hereby granted registration."

It is obvious that the Government's "order" was one of the factors which influenced the Assistant Registrar in arriving at his impugned order. I am, therefore, of the view that the Assistant Registrar has, in passing the impugned order, abdicated his statutory functions and acted at the behest of the Government, as if he was obliged to follow a directive issued by the Government. That such is not the situation in law has been pointedly made clear by a judgment of brother Tipnis, J., dated 3rd November, 1992 in Writ Petition No. 4495 of 1992 in the case of Shri Gajanan Sahakari Dudh Vyavasayeeek Sansthan Maryadeet v. State of Maharashtra and others. The learned Judge, following the Division Bench judgment referred to hereinbefore, has pointed out that the Assistant Registrar is required to decide the matter by completely ignoring any order issued to him in his behalf by the Government."

As indicated herein-above, even in the matter in hand, in the preface to the impugned order not only there reference to the communications received by the respondent no. 4 - DDR from the State Government but also that of directions of the Hon'ble Chief

Minister and that in view of such directions that he was passing the order. It is, therefore, amply clear that the respondent no. 4 - DDR has passed the impugned order at the instance of the State Government and not by reaching some objective conclusions independently. This is not the manner in which a quasi judicial authority is expected to function. The foundation and even the motive for passing the impugned order compels us to quash and set aside the impugned order.

18. As far as the arguments of the learned Government Pleader regarding availability of a remedy of statutory appeal under section 152 of the Act is concerned, pertinently, the appeal would lie to the State Government itself. When the impugned order has been passed on the instructions of the State, expecting the petitioners to resort to such statutory appeal would be an exercise in futility. When the appellate authority itself is calling upon the respondent no. 4 - DDR to pass the impugned order, availability of such statutory remedy can be said to be superfluous.

19. As a last resort, the learned Government Pleader tried to point out that though the directions were issued when the portfolio of Agriculture, Dairy Development, Animal Husbandry and Fisheries Department was with the Hon'ble Chief Minister, now the portfolio has been assigned to some other Hon'ble Minister who can decide the

appeal independent of the directions issued by the State Government at the instance of the Hon'ble Chief Minister.

20. We are afraid, the submission is completely hollow. If the Hon'ble Minister is a member of the Cabinet formed by the Hon'ble Chief Minister, one need not say anything more. In the peculiar facts and circumstances of the matter obtaining in the hand, the argument regarding availability of the statutory remedy is not available to the Government.

21. The petition is allowed.

22. The impugned order is quashed and set aside.

23. Pending Civil Application is disposed of.

24. Rule is made absolute in the above terms.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

AFTER PRONOUNCEMENT OF THE JUDGMENT:

25. After pronouncement of the order, the learned Government Pleader submits that the impugned order was passed about a month back and has even been acted upon. The charge has been taken over. He, therefore, requests for staying operation of the judgment and order

for a reasonable time to enable the State to approach the Supreme Court.

26. Learned Senior advocate Mr. Hon for the petitioners submits that the tenure of the existing committee expires by 30.09.2022. The new board is taking policy decision and even allotting contract for a period of 1 year.

27. Mr. Thoke who appears for respondents nos.6 to 15 denies the fact and contends that the transport contract which was to expire by 31 August 2022 is being extended.

28. Considering the nature of the dispute and the grounds mentioned in this order for setting aside the order under challenge, we are not inclined to stay operation of the order. The request of the learned Government Pleader is rejected.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/