

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 7431 OF 2021

- | | | | |
|-----|---------------------------------------|---|-----------------|
| 1. | Anil Gulab Kawale |] | |
| 2. | Gautam Budha Kamble |] | |
| 3. | Ajit Ramchandra Awale |] | |
| 4. | Madhukar Jaysing Raut |] | |
| 5. | Kundan Manohar Bhise |] | |
| 6. | Rangrao Mahadev Borate |] | |
| 7. | Sanjay Shamrao Sharma |] | |
| 8. | Sarjerao Shamrao Kamble |] | |
| 9. | Ramesh Shamrao Pandare |] | |
| 10. | Vijay Shankarrao Wagh |] | |
| 11. | Rajaram Shivaji Satpute |] | |
| 12. | John Hindurao Mahapure |] | |
| 13. | Sou. Sujata D. Tamberi |] | |
| 14. | Sou. Ranjana Shripati Sawant |] | |
| 15. | Matoshri Ramabai Ambedkar Backward |] | |
| | Class Co-operative Spinning Mill Ltd. |] | |
| | At- Kasarwadi, Tal-.Hatkanagale, |] | |
| | District Kolhapur |] | |
| | Through Secretary |] | |
| | Ashok Aambadas More |] | ... Petitioners |

V/s.

- | | | |
|----|-------------------------------------|---|
| 1. | Commissioner Of Textile, |] |
| | Maharashtra State at Nagpur |] |
| 2. | Regional Dy. Commissioner, |] |
| | Textile at Solapur |] |
| 3. | Manohar Mali |] |
| | Dy. Registrar, Co-operative Society |] |
| | At Karad, Dist.Satara |] |
| 4. | State of Maharashtra |] |
| | Ministry of Co-operative Department |] |
| | Mantralaya, Mumbai |] |
| 5. | State of Maharashtra |] |
| | Ministry of Textile Department |] |

	Mantralaya, Mumbai	]	
6.	Bapu Laxman Lokhande	]	
7.	Vilas Dadu Lokhande	]	
8.	Laxman Dadu Lokhande	]	
9.	Uttam Baburao Doifode	]	
10.	Dastgir Nurkhan Mullani	]	
11.	Nandkumar Ramrao Desai	]	
12.	Amit Vilas Sakate	]	
13.	Ramesh Shivaji Patole	]	
14.	Mahesh Yashwant Sathe	]	
15.	Sachin Pandit Akurde	]	
16.	Raju Shamu Chandane	]	... Respondents

**WITH
INTERIM APPLICATION NO. 1096 OF 2022
IN
CIVIL WRIT PETITION NO. 7431 OF 2021**

1.	Ashok Kashinath Satpute & Ors.	]	
2.	Balu Krushna Chougule	]	
3.	Ramesh Vishwas Devkule	]	
4.	Shashikant Ashok Mane	]	
5.	Rajendra Appaji Chogule	]	... Intervenors

In the matter between :-

Anil Gulab Kawale & Ors.	]	... Petitioners
V/s.		
Commissioner Of Textile & Ors.	]	... Respondents

Mr.S.S. Shah i/b. Mr. Sandeep S. Koregave for Petitioners.
Mr.S.H. Kankal, A.G.P for Respondent Nos.1, 2, 4 & 5.
Mr.Vijay Patil i/b. Mr.Kedar Lad for Respondent Nos.6 to 16.

**CORAM : A.S. GADKARI, J.
CLOSED ON : 14th March 2022.
PRONOUNCED ON : 22nd March 2022.**

JUDGMENT :

1. By the present Petition under Article 227 of the Constitution of India, the Petitioners have impugned Order dated 14th October 2021 passed by the Hon'ble Minister of Respondent No.5 in Revision Application No. 261 of 2021, rejecting the said Revision preferred by the Petitioners and confirming the Order dated 12th November 2020 passed by the Respondent No.1 under Section 78A(1) of The Maharashtra Co-operative Societies Act, 1960 (for short, 'M.C.S. Act') thereby superseding Committee of Petitioner No.15 Co-operative Spinning Mill and appointing Respondent No.3 as 'Administrator' on Petitioner No.15.

2. Heard Mr.S.S. Shah, learned counsel for the Petitioners, Mr.S.H. Kankal, learned A.G.P for Respondent Nos.1, 2, 4 & 5 (State) and Mr.Vijay Patil, learned counsel for Respondent Nos.6 to 16. Perused record.

3. Record discloses that, on the basis of a complaint dated 25th January 2020 addressed by the member of the Legislative Assembly (MLA) from Hatkanangale Legislative Constituency to the Hon'ble Minister of Respondent No.5, the Respondent No.1 issued a notice dated 13th March 2020 under Section 78A of the M.C.S. Act to the Chairman/Deputy Chairman/Directors of Petitioner No.15, calling upon them, as to why the Managing Committee of Petitioner No.15 be not superseded. The Respondent No.1 also called upon the Petitioners to submit their say within a period of 15

days from the date of receipt of the said notice. An interim Order dated 12th November 2020 was passed by the Respondent No.1 appointing the Respondent No.3 as 'Administrator' of Petitioner No.15. The said interim Order was set-aside by this Court by an Order dated 21st October 2020 by giving direction to the Respondent No.1 to decide the said case within a period of four weeks after hearing the concerned parties.

4. Admittedly the Petitioners filed their reply to the said show cause notice on 18th September 2020, i.e. much after the period of 15 days, as was prescribed in notice dated 13th March 2020. The Respondent No.1 after hearing all the concerned passed Order dated 12th November 2020, superseding the Managing Committee of the Petitioner No.15-Society and appointing Respondent No.3 as its Administrator, as contemplated under Section 78A(1) of the M.C.S. Act. An appeal preferred under Section 152 of the M.C.S. Act before the Hon'ble Minister of Respondent No.5 has been rejected by impugned Order dated 14th October 2021.

5. Mr.Shah, learned counsel for the Petitioners submitted that, the Respondent No.1 at the first instance and the Respondent No.5 in appeal have failed to take into consideration the mandate of law of having effective consultation from the Federal Society to which the Petitioner No.15 is officiated/affiliated, before passing impugned Orders. He submitted that, though a specific contention was raised before the Appellate Authority, i.e.

Respondent No.5, which is recorded in ground No.4 on internal page No.8 (page 250 of Petition) of impugned Order dated 14th October 2021, the Respondent No.5 has not even touched the said issue of 'effective consultation' and has proceeded to pass the impugned Order. He submitted that, the entire proceeding for superseding the Managing Committee and appointing administrator on Petitioner No.15 has been initiated at the instance of the sitting M.L.A. from Hatkanangale Constituency, who is also interested in a Spinning Mill having competition with Petitioner No.15-Society. He submitted that, in the impugned Order dated 12th November 2020, the Respondent No.1 has taken new grounds/additional grounds, which were not mentioned in the first notice dated 13th March 2020. He further submitted that, in the impugned Order passed by the Hon'ble Minister of Respondent No.5, again some additional grounds have been taken into consideration, which were not mentioned in the initial notice. He therefore submitted that, the impugned Order may be quashed and set-aside by allowing the present Petition.

6. Per contra, Mr.Vijay Patil, learned counsel for Respondent Nos.6 to 16 opposed the Petition and submitted that, the contention now raised by the Petitioners that, their reply dated 18th September 2020 to the show cause notice dated 13th March 2020 was not sent to the Federal Society for having effective consultation has been raised for the first time before this Court. He submitted that, the Petitioners filed reply to the show cause notice leisurely

after a period of six months and not within the period as prescribed in the said notice dated 13th March 2020. By relying on a decision dated 22nd September 2017 in the case of Lalsing C. Rajput & Ors. Vs. The Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune & Ors., in Writ Petition No. 2646 of 1998, of the Division Bench of this Court, and in particular para Nos.9 and 11 thereof, Mr.Patil submitted that, if the contention of not sending reply of the Petitioner No.15 to the Federal Society is not raised before the authorities below, the same cannot be raised before this Court for the first time. He submitted that, the Respondent No.1 cannot be expected to wait for uncertain period till the Federal Society sends its 'effective consultation'. He submitted that, in view of the mandate of law which prescribes period of 45 days from the date of receipt of intimation to the Federal Society by the Respondent No.1, it cannot be expected that the Respondent No.1 shall wait till the reply/effective consultation is received by the Federal Society even beyond the period of limitation. He submitted that, the ground No.D as raised in the present Petition has been raised for the first time before this Court and the said ground was not raised before the First Appellate Authority, i.e. before the Respondent No.5 herein. He submitted that, there are no merits in the Petition and therefore it may be dismissed.

7. Mr.Kisan Gopinath Pawar, Assistant Commissioner Textiles, Solapur, has affirmed Affidavit dated 14th January 2022 and Additional

Affidavit dated 7th March 2022. In the first Affidavit, in para No.4, he has simply stated that, the show cause notice dated 13th March 2020 was referred to the Federal Society for consultation and opinion of the Federal Society was sought for, but the Federal Society failed to consult or give the opinion against the show cause notice. That, after the mandatory period of 45 days and after compliance of the mandate of Section 78A(1), the Respondent No.1 has passed the Order. In his Additional Affidavit dated 7th March 2022, in para Nos.3 & 4 he has stated that, the show cause notice dated 13th March 2020 was issued and served through email upon the Federal Society. That the show cause notice dated 13th March 2020 is duly served upon the Federal Society and therefore there is 'effective consultation' with the Federal Society, as per Section 78A(1) of the M.C.S. Act. It is further stated that, the mandate of law for getting effective consultation from the Federal Society, the notice was duly issued but the Federal Society has failed to give the consultation, despite of sufficient time given to it. To the Additional Affidavit, copy of email dated 13th March 2020 allegedly issued by the Respondent No.1 to the Federal Society with a heading "Kalam 78(A) Nusar Karne dhakhawa notis" is also annexed.

8. At the outset, it is to be noted here that the said email also mentions about one attachment to it, which is neither annexed with the present Affidavit nor any explanation for the said attachment is offered for not annexing it to the present Affidavit by the concerned affiant. A certificate as

contemplated under Section 65B(4) of The Indian Evidence Act for producing the said email on record as a piece of evidence has also not been annexed to the said Affidavit. Both the Affidavits are absolutely and conspicuously silent on the vital aspect and about the fact that, along with the show cause notice, whether entire relevant material which prompted Respondent No.1 to issue the said show cause notice dated 13th March 2020 was forwarded to the Federal Society to which the Petitioner No.15 is officiated/affiliated. None of the respondents have clarified the said important aspect before this Court. It clearly appears to this Court that, Mr.Kisan Pawar, who has affirmed the aforestated Affidavits, has not only tried to hide but has suppressed material facts from this Court on the said aspect. A safe inference therefore has to be drawn that, while forwarding the said email dated 13th March 2020 to the Federal Society, the Respondent No.1 did not forward all the necessary and relevant material, on the basis of which it came to the conclusion that an Order under Section 78A(1) has to be issued.

9. This Court in the case of *Hemchandra Madhukar Shaligram Vs. Sonal Sanjeeva Shetty*, reported in 2019 0 Supreme (Bom) 1407, in para No.16, sub-para Nos.9, 10 & 11, has held as under :-

(9) *The 'Consultation' with the Federal Society is pre-requisite for taking action under both these provisions. The provisos of both the provisions indicate that the Federal Society is to render its*

“opinion” only. Obviously, therefore, such ‘an opinion’ of the Federal Society is not binding on the authority considering the issue of taking or not taking an action under these provisions.

(10) The various legal aspect, in this regard that are very well settled are to the following effect:

- (a) The consultation with the Federal Society is mandatory and not just directory.*
- (b) The consultation has to be ‘a prior’ or previous and not ‘a post facto’ consultation.*
- (c) The consultation has to be meaningful, effective and not merely superficial.*
- (d) The Federal Society has to apply its mind in order to render an effective consultation.*
- (e) In order to enable to the Federal Society to render an effective and meaningful consultation not only the show cause notice but also the entire relevant material has to be forwarded/supplied to the Federal Society by the authority.*
- (f) A time of 45 days from the date of receipt of the entire material must be made available to the Federal Society to apply its mind. Provisos to Section 78 as also 78A provide for a deeming fiction in case the Federal Society fails to communicate its opinion with the said period of 45 days.*
- (g) Meeting of minds of the Management Committee of the Federal Society is pre-requisite, which is to be reflected by way of a resolution passed by it. A mere communication of the Managing Director cannot be treated as a sufficient*

compliance with the Consultation.

(11) The officials of the Co-operative Department handling matters relating to Sections 78 and 78A of the said Act have been sending copies of the show-cause notices itself to the federal societies, even before receipt of the relies of the persons against whom action thereunder is proposed. The only purpose in taking its steps is only to keep the Federal Society apprised of the proposed action and to keep it informed in advance so as to give it sufficient time for considering the matter in its proper perspective. At this stage Consultation or opinion from the Federal Society is neither expected nor anticipated and received. Therefore, there is no double consultation as such.”

10. As noted above, the record clearly indicates that, the Respondent No.1 did not sent entire relevant material to the Federal Society for having effective and meaningful consultation in the matter. According to me, the Respondent No.1 has created a farce of sending the said email to the Respondent No.1 only to show that an intimation was given to it and thereafter waited for the statutory period before proceeding to pass impugned Order dated 12th November 2020. The Respondent No.5 while exercising appellate jurisdiction has not even considered the said vital aspect of the matter, while upholding the Order passed by the Respondent No.1 being first Appellate Authority.

11. In view of the aforestated deliberation, it is imperative to quash and set-aside impugned Orders dated 14th October 2021 and 12th November 2020, which is accordingly done.

12. Petition is allowed in terms of prayer Clause (a).

No Order as to costs.

13. In view of disposal of Petition, Interim Application No. 1096 of 2022 filed for intervention does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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by OMKAR
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