

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 519 OF 2022

Yavatmal Zilla Parishad Employees
Credit Cooperative Society, Yavatmal,
through Chief Executive Officer,
having Registered Office at Godhani
Road, Swastik Square, Yavatmal,
Tq. and District Yavatmal.

.... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through Principal Chief Secretary,
Department of Cooperation Marketing
and Textile, Maharashtra State,
having office at Hutatma Rajguru
Chowk, Madame Cama Road, Mantralaya,
Mumbai- 400032.
- 2) The Divisional Joint Registrar,
Cooperative Societies, Amravati
Division, Amravati.
- 3) The District Deputy Registrar,
Cooperative Societies, Yavatmal,
District Yavatmal.
- 4) Shri Sanjay s/o Vishwanath Gawande,
Aged about 50 years, Occ. - Service,
R/o Narendra Nagar, Yellora Factory,
Tq. Yavatmal, District Yavatmal.
- 5) Shri Mukesh s/o Dagambar Bhoyar,
Aged about 49 years, Occ.- Service,
R/o 29, Damle Layout, Wadgaon,
Yavatmal, District Yavatmal.

.... **RESPONDENTS**

Mr. F.T. Mirza, Counsel for the petitioner,
Mr. K.L. Dharmadhikari, AGP for respondents 1 to 3,
Mr. K.S. Narwade, Counsel for respondents 4 & 5.

CORAM : **ROHIT B. DEO, J.**
DATED : **17th FEBRUARY, 2022**

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner-Yavatmal Zilla Parishad Employees Credit Co-operative Society, Yavatmal (Society) is assailing the order dated 23-12-2021 rendered by the Hon'ble Minister of Cooperation and Textile whereby entertaining revision application preferred by respondents 4 and 5, the order dated 06-5-2019 passed by the Divisional Joint Registrar, Co-operative Societies, Amravati is set aside. The effect of the order of the Hon'ble Minister is that the amendment to by-law (d)1.1(7) approved in the General Body Meeting of the Society held on 27-7-2018 is rejected.

3. Perusal of the proceedings of the General Body Meeting dated 29-7-2018 reveal that the amendment which was approved, introduced by-law (d)1.1(7) which provided that any citizen would be entitled to become ordinary member of the Society and while such member would

be entitled to make deposits in the Society, he would not be entitled to avail loan.

4. The District Deputy Registrar, Co-operative Societies, Yavatmal was pleased to reject the amendment approved by the General Body of the Society vide order dated 13/14th December, 2018 reasoning that the Society is of salaried employees and since in view of by-law (d)1.1(1) the employee shall be a permanent employee, the proposed amendment is contrary to the provisions of the by-laws. The said authority also rejected the proposed deletion of by-law (d)1.6(7) on the premise that the deletion concerns the by-law (d)1.1.(7).

5. The Society preferred Appeal 4/2019 under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (Act) which the Divisional Joint Registrar, Co-operative Societies, Amravati allowed vide order dated 06-5-2019. The operative part of the said order reads thus :

“महाराष्ट्र सहकारी संस्था अधिनियम, 1960 चे कमल 152 व महाराष्ट्र शासन सहकार व वस्त्रोद्योग विभाग, मंत्रालय मुंबई यांचे आदेश क. सीएसएल-1493/1162/ सीआर47/15 सी, दिनांक 7 ऑगस्ट, 1993 अन्वये मला प्रदान केलेल्या अधिकारानुसार,

1. अपिलार्थी यांचे प्रस्तुत अपील मान्य करण्यात येत आहे,
2. प्रतिवादी यांचा महाराष्ट्र सहकारी संस्था अधिनियम, 1960 चे कमल 13 अन्वयेचा आदेश दिनांक 14.12.2018 रदद् करण्यात येत आहे. तसेच प्रतिवादी

यांनी महाराष्ट्र सहकारी संस्था अधिनियम, 1960 चे कलम 13(1अ) चे तरतुदीनुसार उपविधी दुरुस्तीची कार्यवाही करावी.

3. खर्चाबाबत आदेश नाहीत.”

6. The appellate authority noted that in view of the provisions of Section 13 of the Act, the District Deputy Registrar was obligated to dispose of every application for registration of an amendment of the by-laws within a period of two months from the date of its receipt, and where there is a failure on the part of the authority to dispose of such application within the period of two months from the date of its receipt, the said authority was further obligated to, within a period of fifteen days, to refer the application to the next higher officer. The appellate authority noted that since the application for registration of the amended by-laws was received by the first authority on 30-7-2018, the same ought to have been decided before 30-9-2018 and failure to so decide, required the first authority to refer the application to the superior officer within the next fifteen days. The appellate authority held that contrary to the statutory provisions, the District Deputy Registrar passed an order of rejection of the application on 14-12-2018. The appellate authority further noted the statutory scheme that if the superior officer fails to decide the application referred by the first authority within two months, it shall be deemed that the amendment of the by-laws is registered. On facts, the appellate authority noted that in

view of the provisions of Section 12(1) of the Act, the Society is classified as co-operative bank and that the nominal members have deposited approximately Rs.200 Crores (Rupees Two Hundred Crores) with the Society which deposits have enabled the Society to extend financial assistance to the regular members. The appellate authority reasoned that if the nominal members withdraw the deposits, the very existence of the Society shall be in jeopardy. On a holistic consideration, the appellate authority was pleased to allow the appeal and to direct the first authority to register the amendment to the by-laws of the Society. In view of the decision of the appellate authority, the first authority did register the amendment to the by-laws.

7. The Hon'ble Minister entertained a revision application under Section 154 of the Act, at the behest of respondents 4 and 5 herein and allowing the revision set aside the order of the appellate authority and maintained the order of the first authority whereby the registration of the amendment to the by-laws was rejected. Perusal of the order of the Hon'ble Minister reveals that what weighed with the Hon'ble Minister was that the Society was of salaried employees and that the interest of the salaried employees demand that the membership ought to be restricted. Adverting to the view of the appellate authority that the very existence of the Society may be jeopardized if the nominal

members are dismembered and the deposits of Rs.200 Crores or thereabout are withdrawn, the Hon'ble Minister observes that rather than the quantum of deposits, the interests of the salaried employees will be sub-served if the focus is on the economic progress of such salaried employees who are the members of the Society. The Hon'ble Minister expressed an apprehension that if the amendment to the by-laws is registered, the possibility of substantial increase in members of members other than salaried employees cannot be ruled out, and in such a situation, the basic structure and object of the Society will be in peril. The Hon'ble Minister further held that the initial rejection of the registration of the by-laws, on the premise that the amendment is inconsistent with the by-laws of the Society, is well justified.

8. I have heard the learned Counsel for the Society Mr. F.T. Mirza, the learned Assistant Government Pleader for respondents 1 to 3 Mr. K.L. Dharmadhikari and the learned Counsel Mr. K.S. Narwade who appears on behalf of respondents 4 and 5 who are the revisionist at whose behest the Hon'ble Minister entertained and allowed the revision and rendered the order impugned. With the able assistance of the learned Counsel, I have perused the material on record in the context of the relevant statutory provisions.

9. Mr. F.T. Mirza would submit that the first order of the District Deputy Registrar which is rendered on 13/14th December, 2018, is illegal and indeed void in view of the embargo engrafted in Section 13 of the Act, which precludes the authority from deciding the application seeking registration of the by-laws after the period of two months from the receipt of the application. Mr. F.T. Mirza would submit that the Hon'ble Minister could not have revived a void order. Mr. F.T. Mirza would further submit that the Hon'ble Minister committed a grave error in holding that the registration of the amendment to the by-laws merits rejection since the amendment is inconsistent with the existing by-laws. Mr. F.T. Mirza would, after inviting my attention to Section 13(1B) of the Act, which provision mandates that no amendment of the by-laws of a Society shall be registered, if the amendment is repugnant to the policy directives, if any, issued by the State Government under Section 4 of the Act, submit that irrefutably there is no policy directives issued by the State Government under Section 4 of the Act to which the amendment is repugnant. Mr. F.T. Mirza would then invite my attention to Rule 12 of the Maharashtra Co-operative Societies Rules, 1961 (Rules) which cast an obligation on the registering authority to examine the amendment proposed by the Society and if he is satisfied that the amendment is not contrary to the Act or the Rules and is in the interest of the Society and the co-operative movement, to register the

amendment.

10. Mr. F.T. Mirza would submit that on a conjoint and holistic reading of Section 13(1B) of the Act and Rule 12(5) of the Rules, the legislative intent which is manifest is that registration of the amendment cannot be refused **unless** :

- (i) The amendment is not in the interest of the Society and the co-operative movement,
- (ii) The amendment is contrary to the Act or the Rules, and
- (iii) The amendment is repugnant to the policy directives issued by the State Government under Section 4 of the Act.

11. Mr. F.T. Mirza would submit that it is not even the case of the objectors-respondents 4 & 5 herein nor is it held by the Hon'ble Minister, that there is any policy directives issued to which the amendment is repugnant or that the amendment is contrary to the Act or the Rules. Mr. F.T. Mirza would submit that any amendment to the by-laws, more often than not, is likely to be inconsistent with an existing by-law and it would be illogical and irrational to reject an amendment on the ground of such inconsistency, assuming *arguendo* that there is any inconsistency. Mr. F.T. Mirza would submit that every amendment to the by-laws is sought precisely because the existing by-

laws need certain addition or deletion or modification and to refuse amendment on the premise that the amendment is inconsistent with the existing by-laws is destructive of the legislative intent as is manifested in the statutory scheme.

Mr. F.T. Mirza would submit that the ground that the amendment is not in the interest of the Society and the co-operative movement was also not available to the Hon'ble Minister since, all that the amendment seeks to provide is a right of membership to persons other than the existing salaried employee members, which would ensure that the financial health of the Society is not at risk due to the withdrawal of the deposits. Mr. F.T. Mirza would invite my attention to the provisions of Section 22 and in particular the Clause (g) of sub-section (1) of the Act of which provides that the depositor or the financial service user is entitled to be a member of a Society. Mr. F.T. Mirza would submit that the said provision which is introduced in the Act by the Amending Act of 2008 serves a salutary purpose which is that a depositor or financial service user who is a stakeholder and is vitally interested in proper and transparent functioning of the Society, is entitled to membership of the Society to which such depositor or financial service user may have entrusted, as deposits by whatever nomenclature, his or her hard earned money. The extension of the submission is that denying membership to a depositor, which is the effect of the rejection of the

amendment, defeats the legislative intent discernible from the amendment and introduction of Clause (g) in Section 22(1) of the Act.

12. In rebuttal, Mr. K.S. Narwade would submit that the certificate of registration which refers to the classification of the Society as co-operative bank will have to be read and understood in the context of provisions of the Act, Rules and the by-laws. Mr. K.S. Narwade would question the very character and status of the Society as co-operative bank and would urge that the appropriate classification would be “credit resource society” since the Society is salary of earners. In the context of the said submission, the affidavit-in-response filed on behalf of respondents 4 and 5 avers that though the business in which the petitioner-Society is engaged, is similar to banking business, the Society cannot claim the status of co-operative bank in view of the provisions of the Banking Regulation Act. It is further urged on behalf of respondents 4 and 5 that since the Society is of the employees of the Yavatmal Zilla Parishad, the area of operation is restricted to the area of operation of the Yavatmal Zilla Parishad and that the existing by-laws restrict the eligibility of the membership to permanent employees. It is further emphasized that the provision in the existing by-laws is that if a member employee is transferred from the area of operation of the Society, he shall cease to be a member. It is urged in the affidavit-in-

response, and Mr. K.S. Narwade would argue on similar lines, that the proposed amendment is inconsistent and contrary to the existing by-law which provides that the member shall be a permanent employee. In essence, the submission of Mr. K.S. Narwade is that the Hon'ble Minister was justified in concluding that the proposed amendment would be subversive of the basic constitution and structure of the Society and harmful to the interest of the salaried members. It is specifically averred in the affidavit-in-response, and a similar submission is canvassed by Mr. K.S. Narwade, that the proposed amendment is an indirect attempt of conferring right of vote on the general public which would be destructive of the interests of the salaried members.

Mr. K.S. Narwade would argue that since in substance the Society is a credit Society, the provisions of Chapter XI-1A of the Act would be relevant and accepting deposits from any person who is not a member, would be prohibited.

13. I have given due consideration to the submissions canvassed at the bar, and having done so, I am of the considered view that rather than considering the challenge to the order of the Hon'ble Minister which is predicated on entertaining a time barred revision, in the absence of an application for condonation of delay, it would be

appropriate to decide the legality of the order of rejection of the registration of the amendment on merits. In this view of the matter, I would further refrain from considering the implication of the first authority not deciding the application seeking registration of the amendment within the stipulated period. Notably, the mandate of Section 13(1B) of the Act is that even if the amendment is deemed to have been registered, the same shall not have effect, if the amendment is repugnant to the policy directives, if any, issued by the State Government. While sub-section (1B) of Section 13 of the Act speaks only of repugnancy to the policy directives, an arguable issue would be the effect of the deeming provision if the amendment is demonstrably contrary to the provisions of the Act, or the Rules or against the interest of the Society or the co-operative movement. No definite observation on the said aspect is necessary in the present petition, since I intend to decide the merits of the rejection of the registration of the amendment.

14. It is irrefutable that the proposed amendment is not inconsistent with any policy directive issued under Section 4 of the Act nor is the proposed amendment contrary to the provisions of the Act or the Rules. *Au contraire*, the proposed amendment is consistent with the legislative intent manifested in Section 22(1)(g) which is introduced on the statute book in 2008. I accept the submission of Mr. F.T. Mirza that the

registration of proposed amendment cannot be rejected on the ground of inconsistency with an existing amendment. Ordinarily, an amendment is proposed when the existing by-laws need addition or deletion or modification, in the considered view of the general body of the Society.

15. The seminal issue is, whether the proposed amendment is against the interest of the Society or the co-operative movement, and the answer must be an emphatic No. I have noted supra, the legislative intervention which enables a depositor or the financial service user to membership. A depositor is an important stakeholder in the Society. Judicial note can be taken of the ever increasing instances of the depositors being left in lurch due to the financial collapse of the co-operative Society or bank due to misfeasance or malfeasance or similar reasons. Notably, the proposed amendment does not entitle the depositor or common man to seek financial assistance. It is only a salaried employee, who can seek financial assistance from the Society. Opening membership of the Society to depositors is imperative to ensure transparency. I have no hesitation in holding that the amendment is absolutely necessary and is further in the interest not only of the Society, is in the interest of the cooperative movement.

16. One important aspect of the matter is brought to my notice by placing on record additional affidavit dated 17.2.2022, the relevant portion of which, reads thus:

1. That, on 31.7.2021, the General Body of the petitioner Society resolved to amend bye-law No. F-1.1 and raised number of elected Members of Management Committee from 17 to 21. Out of this 21 members only one is to be elected by the Depositors, rest 20 are to be elected amongst the Employees only, nobody other than the employees can contest for these 20 posts.

*2. That, the proposal of amendment was submitted to the respondent no. 3 – District Deputy Registrar on 2.8.2021. The amendment was allowed and registered by order dated 25.8.2021 by the respondent no. 3. copy of the order dated 25.8.2021 alongwith its Annexures is annexed herewith and marked as **ANNEXURE-M.***

17. The amendment to by-law (f)–1.1 allays the apprehension of the objectors that the Society may be taken over or hijacked by the depositors. The Managing Committee comprises 21 elected members and only one is to be elected by the depositors and the rest 20 members of the Managing Committee are to be elected from amongst the employees and the right of vote is restricted to the employee members.

18. I do not find any justification much less rationale in the objection to the by-laws which, rather than militating against the interest of the employee members shall serve the interest of the employee members

and the Society. Risking repetition, it is the employee members, who alone are entitled to avail loan and who alone are entitled to contest and vote for/in the election to 20 Board of Directors in the Managing Committee and the members to whom the amendment opens the doors can elect only one member of the Managing Committee and are entitled to vote not in the elections to the other 20 members, but in the elections to the one seat reserved for them.

19. The argument of the learned Counsel Mr. K.S. Narwade which is predicated on the classification of the Society as credit co-operative Society of salary earners and, therefore, precluded from accepting deposits from non members, is misconceived. Firstly, the said argument ignores that the Society is classified as co-operative bank, and secondly, the proposed amendment confers membership of the Society on depositors, with the result, that the objection premised on the purported bar to acceptance of deposits from non-members, is rendered irrelevant.

20. The order of the Hon'ble Minister dated 23-12-2021 is unsustainable in law and is set aside.

21. The petition is allowed, in terms of prayer clause (a), which reads

thus :

“(a) to quash and set aside the impugned order dated 23-12-2021 (Annexure-L) Case No.593/2015 passed by the Hon’ble Minister, Department of Co-operation and Textile, Maharashtra State in REV/2019/CR-593/15-S and be pleased to restore order dated 06-5-2019 (Annexure-H) Case No.4/2019 passed by the respondent No.2-The Divisional Joint Registrar, Co-operative Societies, Amravati Division, Amrvati and order dated 09-5-2019 (Annexure-I) passed by respondent No.3-The District Deputy Registrar, Co-operative Societies, Yavatmal, District Yavatmal.”

JUDGE

adgokar/belkhede