

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 521 OF 2023

Vinayak Ukharam Chavhan,
Age: 53 years, Occ.: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.

...PETITIONER

VERSUS

1. Divisional Joint Registrar,
Co-Operative Societies, Aurangabad
District: Aurangabad.
2. Assistant Registrar,
Co-Operative Societies,
Taluka Kannad,
District Aurangabad.
3. Administrator,
Wadner Vividh Karyakari Seva
Sahakari Sanstha Ltd., Wadner,
Tq. Kannad, Dist. Aurangabad.
4. Wadner Vividh Karyakari Seva
Sahakari Sanstha Ltd., Wadner
Tq. kannad, Dist. Aurangabad.
Through Secretary.
5. Valmik Fula Rathod,
Age: 82 years, Occ: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.

6. Subhash Champalal Rathod,
Age: 47 years, Occ; Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
7. Bharat Soma Pawar,
Age: 47 years, Occ: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
8. Mohan Chandu Rathod,
Age: 77 years, Occ: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
9. Walmik Limchand Rathod,
Age: 55 yrs, Occ.: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
10. Rajaram Parasram Rathod,
Age: 74 yrs, Occ.: Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
11. Bramhadeo s/o Uttam Rathod,
Age; 41 years, Occ. Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
12. Bhikan s/o Mahadu Sonwane,
Age; 73 yeas, Occ; Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.
13. Rameshwar S/o; Waman Chavan,
Age;34 years, Occ; Agri,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.

14. Kashibai Ukram Rathod,
Age: 67 years, Occ; Household,
R/o: Wadner, Tq. Kannad,
District: Aurangabad.

...RESPONDENTS

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Advocate for the petitioner : Mr. Kamalakar J. Suryawanshi
AGP for Respondents/State : Ms. D.S. Jape
Advocate for Respondent Nos. 5 to 10 : Mr. L.H. Kawale
Advocate for Respondent Nos. 11 to 14 : Mr. R.V. Gore
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CORAM : KISHORE C. SANT, J.

RESERVED DATE : 28.06.2023
PRONOUNCEMENT DATE : 03.08.2023

JUDGMENT : [PER : KISHORE C.SANT, J.]

1. The petitioner is elected as Chairman to the Respondent No. 4 Society. He has challenged the order dated 08.04.2022 passed by the Divisional Joint Registrar, Co-Operative Societies, Aurangabad in Revision Application No. 5 of 2022, thereby, dissolving the Board of Directors and appointing an authorized Officer from the office of Additional Registrar, Co-Operative Societies, Kannad, as Authorized Officer under Section 77A (b (1) of the Maharashtra Co-Operative Societies Act, 1960,

(hereinafter referred to as "the said Act").

2. Respondent No. 1 is an authority, who has passed the impugned order. Respondent No. 2 is the Assistant Registrar, whose order was challenged before respondent No. 1. Respondent No. 3 is the an administrator, appointed on Respondent No. 4 Society and Respondent No. 4 is the Co-Operative Society. Respondent No. 5 to 10 are the respondents added by an order passed, on the application for intervention bearing No. 634 of 2023 in Writ Petition No. 521 of 2023 filed by them. Respondent Nos. 11 to 14 are also the interveners, who have filed application No. 4628 of 2023 in Writ Petition No. 521 of 2023.

3. The facts in short, giving rise to the present petition are that respondent No. 4 is a Wadner Vividh Karyakari Seva Sahakari Sanstha Ltd. The term of the earlier Committee of the Society expired in 2021. Therefore an election for Managing Committee of the Society was conducted on 19.12.2021. The Petitioner and 11 other members came to be elected. After the election was over an authorized officer called the meeting of the

members of the Managing Committee on 19.01.2022 for conducting election to the post of Chairman. The petitioner was elected as Chairman to the Society. However, on the same day, six members of the Committee gave resignations on 19.01.2022 itself. Thereafter, the petitioner and the Secretary of the Society issued notices on 27.01.2022 and called the monthly meeting on 02.02.2022. In the said meeting the subject number 4 was in respect of resignations tendered by the members. In the meeting dated 02.02.2022, only six members out of twelve were present, therefore, a meeting was again called on 16.02.2022 by issuing fresh notices on 09.02.2022 of the said meeting. However, before that, respondent No. 2 passed an order on 08.02.2022 removing the Managing Committee by appointing an Authorized Officer under Section 77A (b) (1) of the Act. The petitioner, therefore, filed a Revision Application No. 5 of 2022 before the Divisional Joint Registrar, Co-Operative Societies, Aurangabad, who has passed an impugned order on 08.04.2022.

4. The learned Advocate for the petitioner submits that in view of the By-Law No. 9 in respect of the Committee is that the Managing Committee will be of 13 members, out of these

members, 8 members are from the General Account Holders. One post is reserved for Scheduled Caste and Scheduled Tribes candidate. Two members from the Ladies Constituency, one from Other Backward Class, One from VJNT and Special Backward Class. In addition to these two Expert Members can be taken and one Working Director can be nominated. As regards the resignations, the By-Law provides that the resignations are to be tendered in hand writing and signed by the concerned persons. He submits that no proper procedure is adopted in accepting the resignations. The Registrar, before resignations were accepted has moved the Committee, which is illegal. Section 77A 8(2) Proviso is not applicable in case the resignations. In view of Section 78A (ii) proviso, the provision of Section 77, 8A are not applicable as respondent No. 4 does not received Government grants or funds. In the present case Rule 74 of the Election Rules should have been made applicable, that provides for filling up of casual vacancies. The Assistant Registrar has thus, exercised the powers not vested in him and therefore, the impugned order is illegal. He submits that in the meeting the resignations were yet to be accepted and still the action is taken before that. He submits that in view of interim

relief granted, the impugned order did not take effect. In the mean time, the meeting of the Society took place on 06.04.2023, in which the resignations were not accepted by the Society and thus even now there are no vacancies to be filled up under such circumstances. The Registrar, could not have stayed the proceedings to make appointment of an Authorized Officer. He relies on the following judgments :

1. 1983 Mh.L.J. 542 (Nagpur Division Bench)
- B.S. Potey Vs. B.A. Joshi, Deputy Registrar and Ors.

2. Writ Petition No. 4084 of 2018 (Nagpur) Shri Hariram s/o Atmaram Warkhade and Ors. Vs. State of Maharashtra.

3. Writ Petition No. 4442 of 2017 (Nagpur)
Swapnil s/o Sunil Likhar Vs. The District Deputy Registrar, Co-Operative Societies, Nagpur and Ors.

5. The learned Advocate for the respondent Nos. 11 to 14 submits that these respondents were not present on 21.01.2023 when resignations were accepted. Notices were served on 19.01.2022 issued by respondent No. 2 to the Directors who

resigned. The submissions were recorded on 21.01.2022 to state that they have voluntarily resigned. Respondent Nos. 5 to 10 stated that they have resigned voluntarily. The Assistant Registrar, therefore, passed an order recording that after the election of the Chairman, on 19.01.2022 the resignations were tendered. He submits that in view of By Laws, if Corum is not complete for holding meeting, then in that case the meeting would be postponed and the next meeting will be held within 15 days thereafter and in that case Corum would not be required. He thus, submits that the first meeting could have been held when six persons had resigned. He submits that in this case Section 77A, Clause (a) and (b) are rightly invoked after recording of the statements. There was no management Committee in existence. He justifies the order passed by the Registrar. He submits that the petition also suffers from the delay and latches. He, therefore, prays for rejection of the petition. He further submits that the judgments which are relied on by the petitioner are not in respect of the resignations and hence are not applicable to the present case.

6. The learned AGP supports the impugned order. He

submits that after resignations of six members out of twelve elected members, the functioning of the Society was not possible, therefore, the registrar has rightly exercised the powers under Section 77A and 8 (b)(1) of the said Act and Rules.

7. In rejoinder, the learned Advocate for the petitioner submits that the petitioner has clearly made the averments in paragraph No. 13 of the petition that though the order was passed on 08.04.2022, but the copy of the order was not served upon the petitioner by the office of Respondent No. 1. The petitioner had to undergo a by-pass surgery in May 2022 and he was admitted from 18.05.2022 to 22.08.2022. The petitioner got the copy of the impugned order only on 27.12.2022 and thereafter he preferred the Writ Petition and no fault can be found with the petitioner. The petition cannot be said to be suffered from the delay and latches. He further submits that no notice under Section 77A of the Act is shown to be given.

8. In view of the By-Laws filed that if the meeting could not be held for want of a Corum then, it is to be held within 15 days thereafter and no Corum is required for such second

meeting.

9. Section 77A of the Maharashtra Co-operative Societies Act, 1960 reads as under :

"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) [* * *]

(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 Cooperative 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."

[* * *]

(2) The Committee or [authorised officer] so appointed shall, subject to the control of the Registrar and to such instructions as he may, from time to time, give, have power to discharge all or any of the functions of the committee or of

the committee or of any officer of the society and take all such action as may be required to be taken in the interests of the society.

(3) The Committee or [authorised officer] so appointed shall hold office for a period of [twelve months] from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period and for enabling the new committee including any new committee referred to in clause (f) of sub-section (1), which is determined by the Court to have been legally elected, to enter upon office:]

[* *]*

*[**Provided** that, in no circumstances the term of office of the committee or authorised officer shall exceed [twelve months] from the date of their holding office.]*

[(4) The Registrar shall have the power to change the committee or any or all members thereof or any or all the [authorised officers] appointed under sub-sections (1) at his discretion even before the expiry of the period specified in the order made under sub section (1).

(5) The provisions of [sub-section (2) of Section 78A] shall apply mutatis mutandis for fixation of remuneration to be paid to the members or [authorised officers] appointed under sub-section (1).]"

10. Section 74 of the Maharashtra Co-operative Societies Act, 1960 reads as follows :

"74. Casual vacancies -

(1) In the event of the vacancy occurring on

account of death, resignation, disqualification or removal of an elected committee member of a society or through such a member becoming incapable of acting, prior to the expiry of his term of office or otherwise, the committee of the society shall forthwith communicate the occurrence of such vacancy to the State Co-operation Election Authority and District Co-Operation Election Officer, and the vacancy shall be filled within one month from the date of such communication, by nomination of the eligible members out of the same class of the members in respect of which casual vacancy/vacancies has arisen, in the meeting of the remaining members of the committee, which shall be presided over by an officer authorized by State Co-operation Election Authority;

Provided that, at any instance during the tenure of a committee, there shall not be nominated members of the committee exceeding one third of the total strength of the committee.

(2) The member so elected or nominated under sub-rule (1) shall hold office so long only as the member of the committee in whose place he is elected would have held it, if the vacancy had not occurred.]"

11. In the judgment in the case of **B.S. Potey** (supra) the Division Bench of this Court has considered Section 77A and held that the Registrar can exercise his powers only when any contingency mentioned therein exists. If none of the contingency exists, the Registrar would not have right to make appointment of any person as member of the Committee to fill up vacancy. Even if the contingencies as contemplated are present, the

Registrar cannot straight way proceed to make appointment. He has to follow the procedure given in First Proviso to the Rule 72 of the Election Rules.

12. The Registrar has to exercise the powers within the four corners of the law while exercising his powers under 77A (1) of the Act. Thus, in this case, we need to consider as to whether any of the contingencies had arisen to make the Registrar to exercise the powers of making appointment on the Board of Committee or authorized officer.

13. In the case of Shri Hariram (supra) the Court at Nagpur Bench had considered that mandatory notice is required to be displayed on the Board as per the First Proviso to Section 77A (1) (1) (a). It was considered that the requirement did not come into the picture as the orders therein were not passed under Sub Clause (f) of Section 77A (1) (1a) of the Act.

14. In the case of **Swapnil** (supra) the Bench at Nagpur considered the conditions those are necessary for the exercise of jurisdiction under Section 77A of the Act. It is held that unless

the conditions stated therein exists, no jurisdiction in appointing the Administrator or authorised officer could have been exercised by the Registrar.

15. Considering the arguments, this Court finds that the respondents have not answered the submissions of the petitioner that the Registrar has not issued notice under Section 77A (1) (8) (ii). The petitioner has also made out a case that in the present situation the Registrar should have seen Rule 74 of the said Rules and the same should have been followed. In this case, the respondents could not show that the notice was issued.

16. From the chronology of the events, it is seen that the meeting was scheduled on 16.02.2022, however, before that meeting the Registrar has removed the Committee and appointed the Administrator without hearing the Committee. Be that as it may, no decision was taken on the resignations. In the By Laws, it is clear that it is the Society who has to take the decision on the resignations of the members. In the Registrar's order as alleged, it is found that the Registrar only had called the persons who have lodged the Writ Petition and by recording their

statements declared that the resignations are accepted on 21.01.2022. From the said order it also appears that it was clearly stated by the Secretary of respondent No. 4 that on 19.01.2022 after the election to the post of Chairman, the resignations were received by him and thereafter he proceeded to pass the order. Taking into consideration all the facts and circumstances, this Court finds that the Registrar has hurriedly proceeded to pass the order. The By Laws were duly passed and were accepted by passing the orders dated 29.08.2023 by respondent No.2. In view of that, the meeting was scheduled to be held on 16.02.2022. It is before that meeting the action is taken. Technically no resignations were accepted till that date as it was for the Society to take decision on resignations. The impugned order, therefore, deserves to be set aside. The petition thus allowed in above terms. Hence following order :

ORDER

- a) The Writ Petition is allowed in terms of the prayer Clause (B), (C) and (D).

(KISHORE C. SANT)
JUDGE

mahajansb/