

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5760 OF 2022

1. Sudam s/o. Ganpat Kothambire,
Age 43 years, Occu. Business & Director,
Parner Taluka Sainik Sahakari Bank Ltd.
Parner, Tq. Parner, Dist. Ahmednagar,
R/o. Near Professor Colony, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
2. Baban s/o. Dagadu Dighe,
Age 70 years, Occu. Pensioner & Director,
Parner Taluka Sainik Sahakari Bank Ltd.
Parner, Tq. Parner, Dist. Ahmednagar,
R/o. Vadzire, Tq. Parner, Dist. Ahmednagar.
3. Sampat s/o. Maruti Shirsath,
Age 49 years, Occu. Agriculture & Director,
Parner Taluka Sainik Sahakari Bank Ltd.
Parner, Tq. Parner, Dist. Ahmednagar,
R/o. Kolgaon, Tq. Shrigonda, Dist. Ahmednagar.
4. Balasaheb s/o. Haribhau Narsale,
Age 45 years, Occu. Agriculture & Director,
Parner Taluka Sainik Sahakari Bank Ltd.
Parner, Tq. Parner, Dist. Ahmednagar,
R/o. Goregaon, Tq. Parner, Dist. Ahmednagar.
5. Vinayak s/o. Dronagiri Goswami,
Age 58 years, Occu. Auditor & Member of,
Parner Taluka Sainik Sahakari Bank Ltd.
Parner, Tq. Parner, Dist. Ahmednagar,
R/o. Goregaon, Tq. Parner, Dist. Ahmednagar.Petitioners

Versus

1. The State of Maharashtra
Co-operation, Textile and Marketing
Department, Mantralaya, Mumbai.
2. The Commissioner for Cooperation and
Registrar, Co-operative Societies,
Maharashtra State, Central Building,
Pune.
3. The District Deputy Registrar,
Co-operative Societies, Ahmednagar,
Dist. Ahmednagar.

4. The Assistant Registrar,
Co-operative Societies, Parner,
Tq. Parner, Dist. Ahmednagar.
5. The Parner Taluka Sahakari Bank Ltd.
Having its registered office at 1374,
Yash Complex, Lal Chowk, Parner,
Tq. Parner, Dist. Ahmednagar,
Through its Chairman/Chief Executive Officer.Respondents

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Mr. Ajinkya S. Kale h/f. Talekar & Associates, Advocate for petitioners.

Mr. N.T. Bagat, AGP for respondent Nos. 1 to 4.

Mr. Mr. V.D. Hon, Sr. Advocate h/f. Mr. Mr. A.V. Hon, Advocate for respondent No. 5.

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CORAM : ARUN R. PEDNEKER, J.
CLOSED ON : 31/01/2023
DELIVERED ON : 08/03/2023

JUDGMENT :

1) Rule. Rule made returnable forthwith. With the consent of learned advocates for the respective parties, heard finally.

2) By the present writ petition, the petitioners are challenging the impugned judgment and order dated 11.05.2022 passed by the Hon'ble Minister, Co-operation, Textile and Marketing Department of State of Maharashtra, thereby dismissing the Revision being REV-2021/Pra.Kra.348/15-S. The petitioners also pray for quashing the letter/communication dated 24.12.2020 issued by the Commissioner, Co-operative and Registrar Co-operative, Societies, Maharashtra State thereby declaring that membership of 1392 newly added members is legal and valid out of 1405 newly added members.

3) Brief facts, leading to the filing of the present writ petition can be summarised as under :-

The petitioner Nos. 1 and 2 are the Directors, the petitioner Nos. 3 and 4 are the co-opted Directors and the petitioner No. 5 is the member and account holder of the respondent No. 5 – Parner Taluka Sahakari Bank Ltd. The respondent No. 5 is a Co-operative Society duly registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and is carrying the business of banking.

4) It is the case of the petitioners that respondent No. 5/Bank illegally inducted 1405 members without following due procedure on 26.7.2019. The newly added members are inducted as they being favourable to the elected body and only with the purpose of ensuing election. The petitioners filed several complaints/representations before respondent No. 2 – The Commissioner for Cooperation and Registrar, Co-operative Societies, Ahmednagar. Thereafter, the petitioners approached the High Court by filing Writ Petition No. 890/2020, seeking directions against the respondent No. 2 to decide the complaints/representations dated 13.9.2019 and 27.11.2019 of the petitioners. Statement was made before the High Court that the complaints/representations filed by petitioners would be considered and decided within three months. In view of the same, the writ petition came to be disposed of with direction to decide the complaints/representations of the petitioners within a period of three months.

5) Accordingly respondent No. 2 called inquiry report from respondent No. 3 - District Deputy Registrar, Co-operative Societies, Ahmednagar and respondent No. 4 – Assistant Registrar, Co-operative Societies, Parner, Dist. Ahmednagar. The respondent No. 4 conducted inquiry and submitted an inquiry report to the respondent No. 3 on 7.7.2020. The respondent No. 4,

in its report submitted that there were near about 144 members, who have not signed the membership application form nor completed K.Y.C. procedure. The respondent No. 4, after considering all these illegalities, recommended action under section 79A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'MCS Act' for short) against the respondent No. 5/Bank. Thereafter the respondent No. 3 forwarded the inquiry report of respondent No. 4 to the respondent No. 2, pointing out the illegalities committed by the respondent No. 5/Bank.

6) The respondent No. 2 called respondent No. 5/Bank to produce entire record in respect of membership of newly inducted 1405 members on 24.8.2020. The respondent No. 5/Bank admitted that documentation of only 13 newly inducted members was not proper or complete and as such, respondent No. 5/Bank took action against 13 members and informed the same to respondent No. 2 and also produced the entire record before the respondent No. 2. The respondent No. 2, on perusal of the record, by communication dated 24.12.2020 declared that membership of 1392 is legal and valid and that membership of only 13 members was invalid. The petitioners, therefore, challenged the order/communication dated 24.12.2020 of respondent No. 2 before the Hon'ble Minister and the Hon'ble Minister, by the impugned order dated 11.5.2022 dismissed the revision petition filed against communication/order dated 24.12.2020 passed by respondent No. 2. Hence, the present writ petition.

7) In the written notes of arguments, Mr. Ajinkya S. Kale, learned advocate for the petitioner, in para 3 to 12 submitted as under :-

"3. 1405 members are added by the respondents on a single day i.e. 26.07.2019 only with an ulterior motive to get favour in the ensuing election of the Society/Bank.

- In an inquiry conducted by the Divisional Assistant Registrar, Cooperative Societies, Nasik it is noted that more than 187 members did not submitted the KYC documents along with the application form; Most of the members were ineligible for becoming members; even persons were ineligible for becoming members; even persons below 18 years of age were inducted as members.
 - The details of each member (1405 members) would show that they deposited a cash amount for subscription of membership on a single day i.e. 26.07.2019 that too at midnight when the bank hours were not functional.
4. The Assistant Registrar, Cooperative societies, Parner as well as the District Deputy Registrar, Cooperative societies, Ahmednagar prima facie found 144 members did not sign the membership form nor completed the KYC norms and submitted a proposal to initiate action under Section 79-A of the Maharashtra Cooperative societies Act
 5. Aforementioned authorities request the Commissioner and Registrar, Cooperative societies, Pune to initiate action and issue directions under Section 79-A of the Act in the interest of the Bank.
 6. This Hon'ble Court directed the respondents to decide the representation of the petitioners vide its order dated 16.01.2020 within a period of three months.
 7. The Commissioner and Registrar, Cooperative societies, Pune called authorities and bank for hearing but did not call the petitioners for hearing.
 8. Bank gave an undertaking that they have terminated the membership of 13 members in its meeting dated 29.09.2020 and the same be noted accordingly. The act was done only to nullify the effect of the proposal submitted by the Assistant Registrar, Cooperative societies, Parner as well as the District Deputy Registrar, Cooperative societies, Ahmednagar.
 9. The Commissioner and Registrar, Cooperative societies, Pune

reproduces the contents of communication dated 17.10.2020 and resolution dated 29.09.2020 submitted by the Bank and without application of mind and without even referring to earlier reports of Assistant Registrar, Cooperative societies, Parner as well as the District Deputy Registrar, Cooperative societies, Ahmednagar, simply holds that – membership of 1392 members is valid and membership of 13 members is held invalid.

10. The Commissioner and Registrar, Cooperative societies, Pune ought to have applied his minds and issued directions under Section 79-A of the Act along with deciding the representation preferred by the petitioners in the interest of the Cooperative Bank.
11. Even the Hon'ble Minister without application of mind and without referring to earlier reports of Assistant Registrar, Cooperative societies, Parner as well as the District Deputy Registrar, Cooperative societies, Ahmednagar, simply holds that – membership of 1392 members is valid and membership of 13 members is held invalid.
12. The objections of the respondents about availability of alternate remedy under Section 91 of the Act is without basis for the reasons-
 - Proviso to Section 91 of the Act mentions that -

"Provided thatany orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152 A and revision under section 154 of the Act have been provided shall not be deemed to be a dispute for the purpose of this section."

- Meaning thereby, order which is revisable under section 154 of the Act would not fall within the ambit of Section 91 of the Act.
- The petitioners are challenging the communication dated 24.12.2020 as well as the order dated 11.05.2022 passed by the Hon'ble Minister under Section 154 of the Act, the only remedy available to the petitioners is to file the present Writ Petition.
- The challenge in the petition is restricted only to the inaction of the Commissioner and Registrar, Cooperative

societies, Pune in taking action under section 79-A of the Act as requested by his subordinate and deciding representation without hearing the petitioners, therefore, the present petition is maintainable.

8) Mr. V.D. Hon, learned Senior Advocate appearing for respondent No.5/ Cooperative Society/Bank submits that the society has open membership and in view of section 23 of the MCS Act, the society is obliged to grant membership to all the qualified applicants. He further submits that in the event, the respondent No. 5/Society, Cooperative Bank does not grant membership, then the same can be challenged before the Registrar and there is appeal provided under section 23 (2) of the MCS Act.

9) Mr. Hon, learned Senior Advocate further submits that the resolution adopting the membership can be challenged under section 91 of the MCS Act and that section 79-A of the MCS Act has no application in the present case. The learned Senior Advocate further submits that the petitioners being Directors of the respondent No. 5/Cooperative Bank, were party to the resolution and they had opposed the resolution at the relevant time for inducting membership to 1405 members.

10) The learned Senior Advocate further submits that without challenging the membership and setting aside the resolution passed by the respondent No. 5/Cooperative Bank, there can be no proceedings under section 79A of MCS Act and the only option available to the petitioners is to challenge the resolution adopting membership of aforesaid members under section 91 of the MCS Act, if they are aggrieved by the same. The learned Senior Advocate further submits that section 79A relates with the Government's powers to give directions in the public interest etc. The learned Senior Advocate further submits that the petitioners have not made party to 1392

members to whom membership has been granted. He further submits that respondent No. 5/Cooperative Bank has accepted the order passed by respondent No. 2 and has deleted the membership of 13 members in view of incomplete documents of the said members.

11) The learned Senior Advocate for respondent No. 5/Cooperative Bank further submits that in view of the order passed by the Hon'ble High Court wherein petitioners had submitted that complaints/ representations filed by the petitioners are pending before respondent No. 2 and direction was sought to decide the representations and in view of the directions given by this Hon'ble Court to decide the representations, the respondent No. 2 proceeded with the complaints filed by the petitioners. He lastly submits that as section 79A has no application in the facts of instant case and complaint under section 79A is completely misconceived and thus, the present writ petition may be dismissed.

12) Having considered the rival submissions, the relevant provisions of the MCS Act i.e. sections 23 and 79A are required to be considered. Section 23 is reproduced as under :-

"23. (1) No society shall without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

(1A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount

by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar within a period of sixty days from the date of decision of the society. Every such appeal, as far, as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation."

13) Section 23 specifically provides that no society shall without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the MCS Act and its by-laws. Sub-section (1A) of Section 23 specifically provides that if a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in

respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society.

14) Sub-section (2) of Section 23 provides that any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. Thus, any qualified person is entitled to be the member of the cooperative society. In view of this legal position, the admission of membership to any qualified member being mandatory, the cooperative society could not refuse the admission of qualified individuals. The induction of 1405 members on one day is not prohibited by law. Rather there is mandate of law that if an application is made by a qualified individual, the same has to be accepted. Merely because, the member may support any one group, which is presently in the majority does not change the situation.

15) Section 79A is reproduced as under :-

"79A. (1) If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue

directions to them from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as it may deem fit.

(3) Where the Registrar is satisfied that any person was responsible for complying with directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed, without any good reason or justification, to comply with the directions, the Registrar may by order —

(a) if the person is a member of the committee of the society, declare him to be disqualified to be or to continue to be a member of the committee of any society for a period of six years from the date of the order;

(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, declare them disqualified as provided in clause (a) above :

Provided that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated :

Provided further that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the Registrar shall be at liberty to proceed further to take action accordingly.

Any order made by the Registrar under this section shall be final.”

to give directions in the public interest. It provides that if the State Government on the report received from the Registrar is satisfied, then in public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government or to secure the proper management of the business of the society generally or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions. However, there can be no public interest direction by the State in contravention of section 23 of MCS Act.

17) The argument canvassed by the learned counsel for the petitioners that the applications are accepted in one day, makes no difference since the applications were scrutinized and found to be valid by the respondent No. 2. In any event, the resolution inducting 1405 new members could have been only challenged under section 91 of the MCS Act with due notice to the affected persons. It is the contention of the petitioner that in view of the proviso to section 91 of the MCS Act, the resolution inducting members is appealable before the Registrar and thus, is not a dispute within the meaning of section 91 of MCS Act, meaning thereby that the resolution granting membership cannot be challenged under section 91 of MCS Act. The submission is misconceived as only for rejection of application for membership, an appeal is provided to the Registrar. There is no appeal provided for before the Registrar against the grant of membership.

18) This Court in the case of **Prerana Nagari Sahakari Bank Ltd. and Anr. Vs. Divisional Joint Registrar and others in Writ Petition No. 2872/2022 decided on 17.11.2022** has held that the remedy of challenging the issue of eligibility of the membership and validity of the resolution adopted can be challenged before the Cooperative Court. On the complaint made by the petitioner the respondent No. 2 has called for the report from respondent No. 4 in which it was noted that 144 members have not submitted KYC documents along with application. The respondent No. 2 thereafter has verified the record and found that out of 1405 newly added members, the membership of 1392 members is legal and valid.

19) If membership is granted to any person is in contravention of MCS Act and is thus disputed, then the same can be remedied only by filing a dispute under section 91 of MCS Act by giving proper notice to the aggrieved person and the same has to be done by adopting appropriate proceedings before the Cooperative Court. Merely because respondent No. 3 in its report submitted that 144 members did not sign the membership form or did not comply the KYC norms will alone not be sufficient to revert their membership and in any event, the respondent No. 2 has verified the entire record and held that the membership of 1392 members is legal and valid. If the petitioners are aggrieved by the resolution of the society inducting the newly added members, they are free to pursue the remedy before the competent cooperative Court under section 91 of MCS Act and the proceedings under section 79A are misconceived. As there can be no public interest direction under section 79A of MCS Act in contravention of

section 23 of MCS Act, the writ petition is dismissed. Rule is discharged.

[ARUN R. PEDNEKER J.]

20) After pronouncement of the judgment, the learned advocate for the petitioners submits that in the event that the petitioner files an appeal challenging the resolution passed by the society inducting 1405 members before the Cooperative Court under section 91 of MCS Act, the time spent in the present proceedings before this Court be excluded under section 14 of the Limitation Act.

21) In the event, the petitioners file an appeal challenging the said resolution before the Cooperative Court, the time spent in the present proceeding before this Court would be excluded under section 14 of the Limitation Act for preferring the appeal under section 91 of the MCS Act.

[ARUN R. PEDNEKER J.]

SSC/