

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

WRIT PETITION NO.11921 OF 2022

Mauli Sai Samarth Dhanya Adhikosh
Seva Sahakari Sanstha Maryadit,
Shahapur, Tq. & Dist. Parbhani
Through its Chairman
Prakash s/o. Kishanrao Pardhi
Age : 54 years, Occ : Agri.,
R/o. Padgaon, Tq. & Dist. Parbhani. .. **PETITIONER**

VERSUS

- 1] The State of Maharashtra,
Through its Principal Secretary
Co-operation, Marketing and
Textile Department, Mantralaya,
Mumbai.
(Copy to be served on Govt.
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)
- 2] The Hon'ble Minister for
Co-operation, State of Maharashtra,
Mantralaya, Mumbai.
- 3] The Commissioner for Co-operation
and Registrar, Co-operative Societies,
State of Maharashtra, Pune.
- 4] The Divisional Joint Registrar,
Co-operative Societies, Aurangabad
Tq. & Dist. Aurangabad.
- 5] The Deputy Registrar,
Co-operative Societies, Aurangabad,
Tq. & Dist. Aurangabad.

- 6] The District Deputy Registrar,
Co-operative Societies, Parbhani
Tq. & Dist. Parbhani
- 7] The Assistant Registrar,
Co-operative Societies, Parbhani,
Tq. & Dist. Parbhani
- 8] Vividh Karyakari Seva
Sahakari Sanstha Ltd.
Dhanor-Motya,
Through its Chairman
Nandkumar Laxmanrao Dakhore
Age : 52 years, Occ : Agri.,
R/o. Dhanora-Motya, Tq. Purna,
Dist. Parbhani.

.. RESPONDENTS

...

Mr.R.N.Dhorde, Senior Counsel i/b. Mr.V.R.Dhorde,
Advocate for the petitioner.

Mr.D.R.Kale, Government Pleader for the respondent-State

Mr.V.D.Salunke, Advocate holding for Mr.M.V.Nagargoje,
Advocate for the respondent no.8.

Mr.V.D.Hon, Senior Counsel i/b. Mr.P.D.Bachate, Advocate
for the intervener

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WITH

WRIT PETITION NO.11906 OF 2022

Sarangpur Shetkari Dhanya Adhikosh
Seva Sahakari Sanstha Ltd., Sarangpur
Tq. Manvat, Dist. Parbhani
through its Chairman

1. Smt.Sumanbai Panditrao Chokhat
Age : 45 yrs. Occu : Agril.
2. Shri Gulab Pralhadrao Chokhat

through its Secretary
Age: 46 yrs, Occu : Agril.

Both R/o. At Post Sarangpur,
Tq.Manvat, Dist. Parbhani.

.. PETITIONERS

VERSUS

1] The State of Maharashtra
Through Secretary for Co-operation
and Textile, Maharashtra State,
Mantralaya, Mumbai-32.

2] Commissioner of Co-operation and
Registrar for Co-operative Societies,
Maharashtra State, Pune,
Central Building, Pune.

3] Assistant Registrar,
Co-operative Societies,
Manvat, Tq. Manvat, Dist. Parbhani

(Copies of respondents 1 to 3 to be
served through office of the Government
Pleader, Bombay High Court Bench at
Aurangabad)

4] Vividh Karyakari Seva Sahakari Sanstha Ltd.
Dhanor Motya,
Through its Chairman
Nandkumar Laxmanrao Dakhore.

.. RESPONDENTS

...

Mr.Mahesh S. Deshmukh, Advocate holding for Mr.Umesh
B. Gite, Advocate for the petitioner.

Mr.D.R.Kale, Government Pleader for the respondent-State

Mr.V.D.Salunke, Advocate holding for Mr.M.V.Nagargoje,
Advocate for the respondent no.4.

Mr.V.D.Hon, Senior Counsel i/b. Mr.P.D.Bachate, Advocate
for the intervener

WITH
WRIT PETITION NO. 11907 OF 2022

Gurukrupa Shetkari Dhanaya Adhikosh
Seva Sahakari Sanstha Ltd. Chudava,
Tq. Purna, Dist. Parbhani.
Through its Authorized person and Chairman
Shri Balaji s/o. Ramrao Desai
Age : 58 years, Occ : Agri.
R/o. Chudawa, Tq. Purna,
Dist. Parbhani.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Principal Secretary,
Cooperation, Textiles and Marketing Department
Government of Maharashtra, Mantalaya,
Mumbai.
- 2] The Hon'ble Minister,
For Cooperation
The Government of Maharashtra
Cooperation, Marketing and Textile
Department, Hutatma Rajguru Chowk,
Madamkama Road, Main Building,
Mantralaya, Mumbai 400 032.
- 3] The Commissioner for Cooperation
and Registrar, Cooperative Societies
Maharashtra State Pune
New Central Building,
BJ Road, Pune
Email mlldb2016@gmail.com
Ph N.020-26122846/47
- 4] Divisional Joint Registrar,
Cooperative Societies, Aurangabad
Anjuman Banglow, Adalat Road,

Kranti Chowk, Aurangabad
Email : [dj_r_agd@rediffmail.com](mailto:djr_agd@rediffmail.com)
Ph. 0240-2334755.

- 5] The District Deputy Registrar,
Cooperative Societies, Parbhani
Near Chhatrapatti Maharaj Statue
Station Road, Parbhani
Email ID ddr_pbn@rediffmail.com
Ph. No. 02452-220046
- 6] The Assistant Registrar,
Cooperative Societies, Purna
New Mondha Purna, Tq. Purna,
Dist. Parbhani.
- 7] The Assistant Registrar,
Cooperative Societies, Selu
Tq. Selu, Dist. Parbhani
- 8] The Assistant Registrar,
Cooperative Societies, Parbhani
Tq. & Dist. Parbhani.
(Copy to be served on Govt. Pleader
Hon'ble High Court Bench at Aurangabad)
- 9] The Parbhani District Central Cooperative Bank Ltd.
Parbhani, Near Chhatrapati Maharaj Statue
Station Road, Parbhani
Through its General Manager.
- 10] Vividh Karayakari Seva Sahakari Sanstha Ltd.
Dhanora Motya, Tq. Purna, Dist. Parbhani
Through Chairman
Nandkumar Laxmanrao Dakhore
Age : 60, Occ : Agri.
R/o. Dhanora Motya, Tq. Purna
Dist. Parbhani

.. RESPONDENTS

...

Mr.S.B.Ghatol Patil, Advocate for the petitioner.

Mr.D.R.Kale, Government Pleader for the respondent-State

Mr.V.D.Salunke, Advocate holding for Mr.M.V.Nagargoje,
Advocate for the respondent no.10.

Mr.V.D.Hon, Senior Counsel i/b. Mr.P.D.Bachate, Advocate
for the intervener

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**WITH
WRIT PETITION NO.11910 OF 2022**

Kohinoor Shetkari Samuha Krushi Sahitya

Purvatha Va Dhanya Godam Sahakari

Sanstha Maryadit, Pathri, Tq. Pathri,

District-Parbhani

Through its Chairman,

Abdulla Khan Latif Khan Durrani,

Age-65 years, Occu. Agri & M.L.C.,

R/o. Fakaraba Mohalla, Pathri,

Tq. Pathri, Dist. Parbhani.

.. PETITIONER

VERSUS

- 1] State of Maharashtra,
Through Secretary for Co-operation
and Textile, Maharashtra State,
Mantralaya, Mumbai-32.
- 2] Commissioner of Co-operation and
Registrar for Co-operative Societies,
Maharashtra State, Pune,
Central Building, Pune.
- 3] Assistant Registrar,
Co-operative Societies,
Sailu, Tq.Sailu, Dist. Parbhani.

(Copies of respondents 1 to 3 to be

served through office of Government Pleader,
Bombay High Court Bench at Aurangabad)

- 4] Vividh Karyakari Sevak Sahakari
Sanstha Limited, Dhanor Motya,
Tq. Purna, Dist. Parbhani
Through its Chairman,
Nandkumar Laxmanrao Dakhore,
Age-Major, Occu. Agri.
R/o. Dhanor Motya,
Tq. Purna, Dist. Parbhani.

.. RESPONDENTS

...

Mr.Manish P. Tripathi, Advocate for the petitioner.
Mr.D.R.Kale, Government Pleader for the respondent-State
Mr.V.D.Salunke, Advocate holding for Mr.M.V.Nagargoje,
Advocate for the respondent no.4.
Mr.V.D.Hon, Senior Counsel i/b. Mr.P.D.Bachate, Advocate
for the intervener

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 25.01.2027
Pronounced on : 08.03.2023

JUDGMENT :

- 1] The petitioners are challenging the impugned order dated 02.11.2022 passed by the Hon'ble Minister for Co-operation in Appeal No.246 of 2022. By the impugned order, the Hon'ble Minister has confirmed the instructions – order dated 08.04.2022 issued by the Commissioner for Co-

operation – respondent no.2 in Writ Petition No.11906 of 2022, changing the classification of the Dhanya Adhikosh Societies and issuing instructions to amend the bye laws of the said societies. The changes are made applicable for new as well as existing Dhanya Adhikosh societies.

2] All petitions involve identical issue and as such are taken up for consideration together.

3] Facts are taken from Writ Petition No.11906 of 2022. The petitioner in Writ Petition No.11906 of 2022, Sarangpur Shetkari Dhanya Adhikosh Seva Sahakari Sansths Ltd. is registered society under the provisions of the Maharashtra Co-operative Societies Act, 1960 [for short ‘the Act of 1960’] and as per the bye-laws, the petitioner - society is classified as ‘Resource Society’ and Sub-classification is ‘Service Society’ falling in the class of Service Co-operative and Multi-purpose Co-operative Societies. The petitioner society is classified under Section 12 (1) of the the Act of 1960 read with Rule 10 (8) (c) of the Maharashtra Cooperative Societies Rules, 1961 [for

short 'the 1961 Rules'] as 'Resource Society' and sub-classification is 'Service Resource Society' and the petitioner - society is falling in the class of Service Co-operative and Multi-purpose Co-operative Societies. As per the bye-laws of the societies, there are 21 objects specified and in terms of bye-laws and the objects of the petitioner-society, fulfills the criteria of resource society. The petitioner – society provides services of good go down / storage to the farmers. By virtue of the resource society, they are eligible to cast votes and also to contest elections for Agriculture Produce Market Committee as well as for the District Central Co-operative Bank.

4] As per Section 13 of the Maharashtra Agricultural Produce Market [Development and Regulation] Act, 1963, the market Committee is constituted amongst 15 agriculturists residing in the market area, 11 of which shall be elected by the Members of the Managing Committee of the Agricultural Credits Societies and Multi-purpose Co-operative Societies [within a meaning of Maharashtra Co-

operative Societies Act, 1960] functioning in the market area. Accordingly, the petitioner being registered as 'Resource Society' and is a Service Co-operative and Multi-purpose Co-operative Society, the petitioners are eligible to contest the elections of the Agricultural Produce Market Committee. The petitioners are also members of the Federal Society i.e. Parbhani District Central Co-operative Bank and as per clause No. 8 of the Bye laws of the District Central Co-operative Bank, the Managing Committee of the Bank is comprising of 21 Managing Committee members, 14 members are elected from primary agricultural credit societies, VKSS Societies, Joint Farming Societies as Dhanya Adhikosh Co-operative Societies. The authorized representative of the petitioner - society has earlier contested the elections of the Parbhani District Central Co-operative Bank and has also won elections.

5] The Commissioner Co-operation constituted a Committee for discussing criteria of registration of the societies as 'Dhanya Adhikosh Societies'. The Committee

made certain recommendations to the Commissioner of Co-operation and in pursuance of the recommendation of the Committee, the Commissioner for Co-operation has issued Circular / Order dated 08.04.2022 observing therein that the 'Dhanya Adhikosh Societies' do not have object of providing loan to the members of 'Dhanya Adhikosh Societies' and the only object of the societies is to provide services to its members, therefore, the classification given to such society as a Resource Society and Sub Classification as Credit Resource Society is contrary to the MCS Rules, 1961. The said order dated 08.04.2022 further observed that the word 'Adhikosh' cannot be used in the name / title of the 'Dhanya Adhikosh Societies' without permission of Reserve Bank of India as per Section 7 of the Banking Regulation Act and thus issued directions to correct the name of the petitioner societies as well as change the classification of 'Dhanya Adhikosh Societies' from 'Resource Society' to 'general society' and sub classification as 'other general societies' and further directed the societies to carry out necessary amendments in its bye laws as per Section 14 of

the MCS Act, 1960.

6] Consequential to above directions issued by order dated 08.04.2022, the Divisional Joint Registrar, Co-operative Societies, Aurangabad, instructed the District Deputy Registrar, Co-operative Societies, Aurangabad, Jalna, Parbhani and Hingoli to implement the order dated 08.04.2022 by making necessary amendment in bye laws of the Dhanya Adhikosh Societies. As per the said instructions of Divisional Joint Registrar, the District Deputy Registrar, Co-operative Societies has instructed the Assistant Registrar, Co-operative Societies to effect necessary changes / amendment in bye laws of 'Dhanya Adhikosh Societies'.

7] The petitioners challenged the order dated 08.04.2022 by way of filing appeal before the Hon'ble Minister of Co-operation, Government of Maharashtra, Mantralaya, Mumbai. By the order dated 22.06.2022, the Hon'ble Minister had granted stay to the order dated 08.04.2022. Thereafter, by final order dated 02.11.2022, the Hon'ble Minister for Co-operation dismissed the appeal

filed by the petitioners.

The petitioners by the present Writ Petitions are challenging the impugned order dated 02.11.2022 passed by the Hon'ble Minister for Co-operation, Government of Maharashtra, Mantralaya, Mumbai in the present Writ Petitions.

Submissions :-

8] The learned Senior Advocate Mr.Dhorde, for the petitioners submit that the petitioners are classified as 'Dhanya Adhikosh Societies' in view of the object of the society, which is clearly indicated from its bye-laws. The petitioners are conducting their business for last more than 10 years in pursuance of object and as such there classification from the services society cannot be altered to that of a general society. The order dated 08.04.2022 is omnibus, general in nature and cannot be implemented qua the present petitioners without proper adjudication. The order is passed without giving opportunity of hearing to the petitioners.

9] It is further contended by the petitioners that the word 'Adhikosh' used in the name of the petitioner indicates 'go down storage' and has no reference or indication to anything under Section 7 of the Banking Regulation Act and there is prohibition to the use of words 'bank, banker, banking or banking company' in the said Section and that the name of the petitioner does not contravene Section 7 of the Banking Regulation Act. The petitioners also rely upon its bye laws and the objects to indicate its working as 'resource society'. The petitioners submit that re-classification is to deprive the petitioner society from contesting the elections of the Agricultural Produce Market Committee and District Central Co-operative Bank and the order passed by the Commissioner of Cooperation is politically motivated. The Commissioner of Cooperation does not have jurisdiction and authority of law to change the classification of the petitioner societies.

10] Mr.M.S. Deshmukh, learned counsel for the petitioner in Writ Petition No.11906 of 2022 submits that

there can be no direction to change the object of the society. The petitioner further submits that the model bye laws are also of 'service resource society'. Therefore, re-classification from 'service resource' to 'general society' in any event would be bad in law. The learned counsel submits that appeal No.246 of 2022 was preferred against the impugned order dated 08.04.2022 before the Hon'ble Minister for Co-operation, Maharashtra State, Mumbai and the same was also dismissed. The learned counsel further submits that bare reading of Section 12 (2) of the MCS Act, 1960, there is classification of the societies, which is sought to be altered and section 14 (1) and (2) deals with the procedure to be undertaken to amend bye laws as per model bye-laws. He further submits that the impugned order is passed without conducting any enquiry, without giving notice to the petitioner - society and the same is general in nature, and thus, cannot be implemented qua the petitioner – society.

11] Mr.M.S.Deshmukh, the learned counsel relied

upon the affidavit filed by Mr. Yogiraj s/o Vasantrao Surve at paras 8, 10 and 20 and submits that the order under Section 12 of the Act of 1960 passed for re-classification is not sustainable in law, hence, the reasons of re-classification are absolutely illegal and that it is without notice to the petitioner - society. Subsequent notice issued under Section 14 (1) of the the Act of 1960 is merely implementation of the decision under Section 12 of the the Act of 1960 of re-classification. Therefore, this petition is not pre-mature.

12] Mr.S.B.Ghatol Patil, learned counsel adopted arguments of Mr.Deshmukh and also relies upon the judgments in the case of **Pimpla Lokhande Shetkari Dhanya Adhikosh Seva Sahakari Sanstha Ltd. & others Vs. The State of Maharashtra & others** in Writ Petition No.1669 of 2017, decided on 21.02.2027, in the case of **Anant Ramkrushna Deshmukh Vs. State of Maharashtra & others** reported in 2010 [5] Mh.L.J. 457, in the case of **Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune & another Vs. State of Maharashtra & others** reported in 1989 Mh.L.J.320, in

the case of **Marotrao s/o. Nanaji Pachbhai Vs. State of Maharashtra & others** reported in 2015 [5] Mh.L.J. in the case of **Runj Shetkari Dhanya Adhikosh Bahuuddeshiya Seva Sahakari Sanstha Marayadit, Runj and others Vs. The State of Maharashtra & others** in Writ Petition No.12999 of 2022, decided on 22.12.2022 and in the case of **Smt. Damyanti Naranga Vs. The Union of India & others** reported in AIR 1971 SC 966.

13] The learned counsel relying on the judgment passed in Writ Petition No.1669 of 2017 submits that certificates issued under Section 10 of the the Act of 1960 are conclusive evidence of due registration of societies.

14] Mr.R.N.Dhorde, learned Senior Counsel appearing for the petitioner in Writ Petition No.11921 of 2022 relies upon the judgment in the case of **Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune** [supra] wherein the Division Bench has held that the Registrar cannot compel the members of the society to change its bye laws and to foist new members who are not acceptable to

the existing members of the society.

15] *Per contra*, the affidavit in reply filed on behalf of the respondent nos.1 to 4 in Writ Petition No.11907 of 2022, it is stated in paras 2 to 5 of the said affidavit in reply, as under :

2. *I say that, the present petition is filed, challenging the circular dated 8.4.2022 issued by the Respondent No. 3 for making necessary amendment in the bye laws of concern societies under section 14 of the Maharashtra Co-operative Societies Act 1960. And order dt. 2/11/2022 passed by Respondent No.2 in Appeal no.246/2022.*

3. *I say that, there is 3 tier system providing crop loan facilities to the agriculturist members i.e. MSC Bank, DCC Bank and Primary Agricultural Co-operative Credit Society in the State of Maharashtra. The MSC Bank is providing credit facilities at State level, DCC Bank is providing credit facilities at District level and Primary Societies (PACS) are providing credit facilities at Village level.*

4. *I say that, the Primary Agricultural Co-operative Credit Societies (PACS) are disbursing crop loan facilities to its members, therefore they are classified as credit resource society as per rule 10 (8) (a) of the MCS Rule 1961 as well as per section 2 (25) of MCS Act, 1960.*

5. I say that, the petitioner societies are not providing any crop loan facilities to its members, therefore they cannot be classified as credit resource societies as per rule 10 (8) (c) MCS Rules 1961. However at the time of registration of petitioner society, they were wrongly classified as credit resource societies contrary to the provisions of Act and Rules.

16] It is the contention of Mr.D.R.Kale, appearing for the respondent / State that the respondent no.2 had formed one committee, namely, Dhanya Adhikosh Sahakari Sanstha Registration Committee, which was headed by the respondent no. 4, Divisional Joint Registrar, Aurangabad. The said Committee had called the relevant information with remarks from concern field officers about registration of Dhanya Adhikosh societies and its classification and bye laws. After considering the relevant material, the Committee found that wrong classification has been given to the societies like the present petitioners and the said Committee recommended to re-classify those societies under Rule 10 (9) (c) of the MCS Rules, 1961. After receipt of report of Committee, the Respondent No.2 - The Commissioner for Co-operation and Registrar Co-operative

Societies, M.S.Pune directed to re-classify and sub-classify the societies like the petitioner as 'general societies' and sub classification as 'other general societies' as per recommendation of Committee under Rule 10 (9) (c) of the 1961 Rules and issued Circular / order dated 08.04.2022 directing the Registrar of concerned societies, like the present petitioners to make proper amendments in their bye-laws as per provisions of Section 14 (2) of the 1960 Act, also to take proper action under Section 14 (2) of the Act, 1960 if the concern societies do not follow the directions. Along with the said Circular, the respondent no.2 has also circulated the copy of model bye laws applicable for the societies like the petitioners.

17] It is further the contention of the respondent – State that the word used 'Adhikosh' in the name / title of the petitioner is not permissible as per Section 7 of the Banking Regulation Act, 1949 and thus further directions are issued under circular dated 08.04.2022 to remove the word 'Adhikosh' from the names of the societies. It is

further contention of the respondent – State that in order to give effect to the direction issued on 08.04.2022, notices under Section 14 (2) of the MCS Act are issued to the petitioners. The petitioners filed appeal No. 246/2022 before the Hon'ble Minister, challenging the Circular issued by the respondent no.2 dated 08.04.2022 and appeal is dismissed on 02.11.2022. It is further the contention of the respondent – State that there is no perversity in the order dated 02.11.2022 passed by the Hon'ble Minister and the Circular dated 08.04.2022 issued by the respondent no.2.

18] The learned counsel for the respondent – Vividh Karyakari Seva Sahakari Sanstha Ltd., Advocate Mr.V.D.Salunke, submits that there were complaints and the enquiries were initiated. He further submits that the word used 'Adhikosh' is in violation of Section 7 of the Banking Regulation Act and the correct word would be 'Dhanyakosh'. He further submits that the District Central Cooperative Bank is for agriculturist and the basic society is Vividh Karyakari Seva Sahakari Society. But in view of

unhealthy competition, there was ban on increasing number of Vividh Karyakari Seva Sahakari Society per village. There was a Committee constituted to look into this aspect. There were 420 societies in the Parbhani and Hingoli Districts and that 7 Directors of the District Central Co-operative Bank are from the 'Dhanya Adhikosh Societies'. He further submits that the interference in the present Writ Petitions is not in public interest.

19] On the complaint being received that the petitioners society are wrongly classified, report was called from the Committee. Based on the report, the Commissioner Co-operation directed to change the classification and sub-classification of the petitioner - societies. It was found that the object of Adhikosh is overlapped with the Vividh Karyakari Seva Society. He further submits that there were no model bye laws for "Adhikosh Societies" when the petitioners society came into existence. Therefore, the model bye laws are now prepared for Dhanya Adhikosh societies. He further submits that notice issued under

Section 14 (1) read with Rule 13 (1) of the MCS Act and Rules does not change classification. There is appeal provided before the Minister and section 14 (2) of the 1960 Act is yet to commence and the order passed under Section 14 is appealable before the Minister. Only after hearing and consultation of the Federal Society, the order under Section 14 (2) of the MCS Act can be passed and the same is challengeable before the Minister under Section 152 of the MCS Act, 1960. The learned counsel relies upon the judgment in the case **Kisan Narayan Shriram & another Vs. State of Maharashtra & others** reported in 2005 (4) All M.R. 94 and the Judgment in the case of **Marotrao Nanaji Pachbhai Vs. State of Maharashtra & others** reported in 2015 (5) Mh.L.J. 878.

For the purpose of deciding the the Writ Petitions, the relevant provisions of the applicable Acts are as under:

20] Section 7 of the Banking Regulation Act, 1949
[for short 'the Act of 1949'] is as under :

7. Use of words “bank”, “banker”, “banking” or “banking company”. - (1) No company other than a banking company shall use as part of its name [or in connection with its business] any of the words “bank”, “banker” or “banking” and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words “bank”, “banking” or “banking company”.

(3) Nothing in this section shall apply to -

(a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;

(b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956 (1 of 1956).]

21] Section 2 (5), (6), (10), (15) and (25) of the Maharashtra Co-operative Societies Act, 1960 is as under :

2. **Definitions**

(5) “**bye-laws**” means bye-laws registered under this Act and for the time being in force and includes registered amendments of such bye-laws;

(6) “**Central Bank**” means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies; but does not include the primary urban co-operative bank;

(10) “**co-operative bank**” means a society which is doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as [a Co-operative Agriculture and Rural Multipurpose Development Bank] under Chapter XI];

(15) “**general society**” means a society not falling in any of the classes of societies defined by the other clauses of this section;

(25) “**resource society**” means a society, the object of which is the obtaining for its members of credit, goods or services required by them.

22] Section 9 and 12 and 14 of the Maharashtra Co-operative Societies Act, 1960 is as under :

9. Registration

(1) If the Registrar is satisfied that a proposed society has complied with the provisions of this Act and the rules, [or any other law for the time being in force, or policy directives issued by the State Government under Section 4] and that its proposed bye-laws are not contrary to this Act or to the rules, he [shall, within two months], from the date of receipt of the application register the society and its bye-laws.

(2) Where there is a failure on the part of the Registrar to dispose of such application within the period aforesaid, the Registrar shall, within a period of fifteen days from the date of expiration of that period refer the application to the next higher officer and where the Registrar himself is the registering officer, to the State Government, who or which, as the case may be, shall dispose of the application within two months from the date of its receipt and on the failure of such higher officer or the State Government, as the case may be, to dispose of the application within that period, the society and its bye-laws shall be deemed to have been registered [and thereafter the Registrar shall issue a certificate of registration under his seal and signature within a period of fifteen days].

(3) Where the Registrar refuses to register a proposed society, he shall forth-with communicate his decision, with the reasons therefor, to the person making the application and if there be more than one to the person who has signed first therein.

(4) The Registrar shall maintain a register of all societies registered, or deemed to be registered, under this Act.

12. Classification of societies

(1) The Registrar shall classify all societies into one or other of the classes of societies defined in section 2 and also into such sub-classes thereof as may be prescribed by rules.

(2) The Registrar may, for reasons to be recorded in writing, alter the classification of a society from one class of society to another, or from one subclass thereof to another; and may, in the public interest and subject to such terms and conditions as he may think fit to impose, allow any society so classified to undertake the activities of a society belonging to another class.

(3) A list of all societies so classified shall be published by the Registrar every three years in such manner as the State Government may, from time to time direct.

14. Power to direct amendment of bye-laws

(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such society, [or any by-laws of the society are inconsistent with the provisions of this Act or rules and that amendment is necessary in such by-laws,] he may call upon the society, in the manner prescribed, to make the amendment within such time as he may specify.

(2) If the society fails to make the

amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard and after consulting such State federal society as may be notified by the State Government, register such amendment, and issue to the society a copy of such amendment certified by him. With effect from the date of the registration of the amendment in the manner aforesaid, the bye-laws shall be deemed to have been duly amended accordingly; and the bye-laws as amended shall, subject to appeal (if any), be binding on the society and its members :

[Provided that, such notified State 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 State federal society has no objection to the amendment and the Registrar shall be at liberty to proceed further to take action accordingly :

Provided further that, the Registrar may specify the Model by-laws, for such type of societies or class of societies, as he may deem fit.]

23] Rule 10 of the Maharashtra Co-operative Societies Rules, 1961 is as under :

10. Classification and sub-classification of societies

(1) After registration of a society, the Registrar shall classify the society into one or other of the following classes and sub-classes of

societies prescribed below according to the principal object provided in its bye-laws :

Class		Sub Class		Examples of societies falling in the class or sub-class, as the case may be
1		2		3
[1	Agriculture Society	(a)	Marketing Society	All Purchase and Sale Unions and Marketing Societies of Agricultural Produce.
		(b)	Other Agricultural Societies	Dairy and Cattle Breeding Societies.
1A	Crop Protection Society		...	...
1B	Life Irrigation Society		...	...]
2	Consumers' society		...	Stores and Canteens
3	Co-operative Bank	(a)	Central Bank	[District Central Co-operative Banks]
		(b)	Other Banks	Urban Banks [***]
[3A.	[Co-operative Agriculture and Rural Multipurpose Development Bank] having provisions in their bye-laws to advance loans to Co-operative Societies]			
4	Farming society	(a)	Collective Farming Society	Farming Societies where major area of lands is acquired from outside agency for cultivation by members
		(b)	Joint Farming society	Societies where the major area of land

				brought together for cultivation is held by members.
		[(c)	Dairy Farming Society	Farming societies undertaking dairy activities complimentary to their arable farming activities or vice versa.
5	Housing society	(a)	Tenant Ownership Housing Society	Housing Societies where land is held either on lease-hold or free-hold basis by Societies and houses are owned or are to be owned by members.
		(b)	Tenant Co-partnership Housing Society	Housing Societies which hold both land and buildings either on lease-hold or free-hold basis and allot them to their members.
		(c)	Other Housing Societies	House Mortgage Societies and Housing Construction Societies
6	Processing Society	(a)	Agricultural Processing Society	Societies, which process agricultural produce like Co-operative Sugar Factories and Oil Mills.
		(b)	Industrial Processing Society	Wool Processing and Tanners Societies
7	Producers' Society	(a)	Industrial Producers' Society	Weavers' and Carpenters' Societies
		(b)	Labourers' Industrial Society	Forest Labourers' Societies and Labour Contract Societies
		[(c)	*****	
8.	Resource society	(a)	Credit Resource Society	[Agricultural Credit, Thrift, Urban Credit and Salary Earners' Societies
		(b)	Non-Credit	Seeds and Implements

			Resource Society	and Agricultural Requisites Societies
		(c)	Service Resource Society	Service Co-operative and Multi-purpose Co-operative Societies
9.	General Society	(a)	Social	Better Living Societies and Education Societies.
		(b)	Commercial	Insurance and Motor Transport Societies
		(c)	Other	Not falling in either of the above sub-classes
[10.	Apex Societies			The Maharashtra State Co-operative Bank.]

Consideration and conclusion :

24] After considering rival submissions it is to be noted that enquiry was conducted as regards the classification of the “Dhanya Adhikosh Societies” by the Committee constituted by the Commissioner of Co-operation - respondent no.2 and as per the report submitted by the Enquiry Committee, it was noticed that there were various Dhanya Adhikosh Societies, which were not performing the job of credit resource society and were wrongly using the word ‘Adhikosh’ in the name of the society and also that they were taking the benefit of being enrolled as voting members of the District Central Co-

operative Banks by virtue of being a 'Adhikosh' society. It was, thus, decided that the society be directed to alter their classification from 'resource society' to 'general society'.

25] Even the general societies have representation before the District Central Co-operative Bank, as also, the Agricultural Produce Market Committees. However, representation is small in number and thus the Commissioner of Cooperation was of the view that 'Adhikosh' societies are not performing functions of 'credit society' and as such they should be removed from the classification of 'Resource Society' and categorized as 'general societies'.

26] The questions which requires to be decided in the present Writ Petitions are (a) whether the re-classification of the petitioners societies from 'Dhanya Adhikosh society' to 'General Society' is lawful and whether the re-classification can be done without notice to the individual Dhanya Adhikosh societies, and (b) whether the consequent directions issued after change in classification

from 'Dhanya Adhikosh Society' to 'General Society' to adopt model bye laws under Section 14 of the MCS Act, 1960 is legal ?

27] After the 97th Constitutional Amendment, the law relating to Co-operative Societies has substantially changed. Right to form co-operative societies is made a fundamental right under Article 19 (1) (c) of the Constitution of India. Article 43B is inserted in the Constitution of India and it provides that the States shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Article 243ZI provides for the State Legislature to make law with respect to the incorporation, regulation and winding-up of co-operative societies, based on principle of voluntary formation, democratic member-control, member-economic participation and autonomous functioning. The State of Maharashtra has substantially adopted the principles applicable to the multi-state co-operative societies and

brought about various changes to the Maharashtra Co-operative Societies Act after the 97th Amendment to the Constitution of India.

28] Section 12 of the Maharashtra Co-operative Societies Act, 1960 deals with classification of societies. Section 2 [15] of the MCS Act, 1960 deals with general society and Section 2 [25] deals with resource society [supra]. The word 'resource society' would mean a society, the object of which is obtaining for its members of credit, goods or services required by them. Thus, a resource society is not limited to societies providing to its members credit but would also include societies which provide for its members goods and / or services. Based on the principal object in the societies bye-laws classification and sub-classification of the society, is done by the Registrar [Rule 10].

29] The petitioner – societies render services to the farmers within its area of operation in providing food, storage and other services. Some of the objects specified in

the bye-laws of the Sarangpur Shetkari Dhanya Adhikosh Seva Sahakari Sansths Ltd. in marathi as well as the english translation reads as under :

उद्देश :-

(1) कृषि विद्यापिठ, जिल्हा परिषद, महाराष्ट्र शासन यांचे सहकार्याने शेती संशोधन संस्थेचे सदस्यांमार्फत व इतर यंत्रणा उभारून आवश्यक ते तंत्रज्ञान व मार्गदर्शन शेतक—यापर्यंत पोहाचविणे व शेती उत्पादन वाढीसाठी व हरितक्रांतीसाठी जिरायत व बागायत भागांमध्ये तदनुषंगिक योजना संस्थे मार्फत हाती घेणे व शेतक—यांना शेती उपयोगी साधने, रासायनिक खते बियाणे यांच्या योग्य दरात पुरवठा करणे.

2) संस्थेने सभासद व इतर सभासदांना निर्भेळ व उच्च प्रतीचा भाजीपाला व फळफळावळ इ.माल उत्पादनास प्रोत्साहन देणे.

3) 'शेतक—यांना शेतीचा माल साठविण्यासाठी गोदाम व शितगृहाची व्यवस्था करणे संस्थेचे शितगृहे, गोदाम निर्माण करणे, एन.सी.डी.सी. सारख्या वित्तीय संस्थाकडून आवश्यक तो कर्ज पुरवठा करणे.

4) शेतक—यांना शेती मालासाठी योग्य भाव मिळण्यासाठी योग्य अशी बाजारपेठ उपलब्ध करून देणे तसेच उत्पादित मालाच्या निर्यातीसाठी यंत्रणा उभी करणे.

5) शेतक—या साठी व शेतमजुरांसाठी समाजकल्याण, पाणी पुरवठा, बांधकाम, कृषिविषयक

शासनाच्या अथवा स्थानिक स्वायत्त संस्थेच्या योजना संस्थे मार्फत राबविणे.

True English translation :

3. Objectives :-

1. *To provide necessary technologies and guidance to the farmers with the co-operation of Agricultural University, Zilla Parishad, Government of Maharashtra through the members of Agricultural Research Institute and others and to undertake schemes through the corresponding organisations for increasing agricultural production and green revolution in arable and cultivated areas and to supply agricultural tools, chemical fertilizers and seeds to the farmers at reasonable rates.*
2. *The Society is required to encourage the members and others to produce pure and high quality vegetables and fruits.*
3. *To make available warehouses and cold storage for the agricultural goods of farmers, to construct society's warehouses and cold storage and provide agricultural loan from the financial institutions like N.C.D.C.*
4. *To make available a suitable market for gaining appropriate market price to farmers for the agricultural goods as well as to establish the system for exportation of the cultivated goods.*
5. *To run the schemes of the Government or Local Administrative Bodies related to Social*

*Welfare, Water Supply, Construction,
Agriculture through this Society for farmers and
agricultural labourers.*

On examination of the objects and bye-laws of the petitioner – societies and functions undertaken by the petitioner – societies, *prima facie* it is apparent that the petitioner societies performs functions of ‘resource societies’ within the sub-classification of ‘service resource societies’ and will fall within ‘service co-operative and multi-purpose co-operative societies’ of Rule 10 (8) (c) of the MCS Rules, 1961. However, classification and sub-classification has to be done in individual cases after examination of the principal object of the society from its bye-laws and the functions undertaken by the societies.

30] Section 12 of the MCS Act, 1960 provides that classification of a society may be altered by the Registrar “for reasons to be recorded in writing”, from one class of society to another, or from one sub-class to another. The order of reclassification of society passed by the Registrar under Section 12 [2] of the MCS Act, 1960 is a quasi-

judicial order and can only be passed after hearing the individual societies and only on satisfaction that the society in view of its principal object and its bye-law and functions undertaken by it, does not fall within one of the class or sub-class in which it is classified. In the case of **Anant Ramkrushna Deshmukh** [supra] it has been held that the order of classification cannot be read as an administrative order and it is a quasi-judicial order.

31] Article 19 (1) (c) of the Constitution of India guarantees the right to form associations or unions or cooperative societies. The Hon'ble Supreme Court while dealing with the rights of members of the Co-operative Societies in the case of **Andhra Pradesh Dairy Development Corporation Federation Vs. B. Narasimha Reddy and others** reported in 2011 [9] SCC 286 has held in para 61 as under :

61. Cooperative law is based on voluntary action of its members. Once a society is formed and its members voluntarily take a decision to get it registered under the X Act, the registration authority may reject the

registration application if conditions prescribed under the X Act are not fulfilled or for any other permissible reason. The registration authority does not have a right to register the said society under the Y Act or even a superior authority is not competent to pass an order that the society would be registered under the Y Act. Such an order, if passed, would be in violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily. Introducing such a concept of compulsion would violate Article 19 (1) (c) of the Constitution of India. It is not permissible in law to do something indirectly, if it is not permissible to be done directly. (See Sant Lal Gupta V. Modern Coop. Group Housing Society Ltd.)

32] In the case of **Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune** [supra] it has been held that the Government cannot compel members of society to accept membership of other society. The right to form an association is a fundamental right, and there can be no direction to alter the nature or purpose of association.

33] The classification of the society would depend upon the principal object of the society to be ascertained from its bye-laws and the business conducted by the society. In the instant case the classification of the society is done on the basis of the object of the society and its bye-laws and the classification is continued for long period of time. The unilateral direction by the State to alter classification without individually examining the cases of each society, infringes upon the right its members to carry on the nature and purpose for which the society is formed. The society also loses its existing voting rights in the District Central Co-operative Bank and the APMC and the same cannot be taken away by re-classifying the societies.

34] The formation of a society for a particular purpose is a right of each member of the society and covered within the scope under Article 19 (1) (c) of the Constitution of India and there can be no direction to change the nature or purpose of the association.

35] In the instant case after unilateral re-

classification of the petitioner – societies under Section 12 [2] of the MCS Act, 1960, subsequent action under Section 14 of the MCS Act, 1960 for adoption of model bye-laws is initiated. The unilateral re-classification of the societies under Section 12 of the MCS Act, 1961 which I have held to be bad in law, forms basis for action for adoption of model bye-laws under Section 14 of the MCS Act, 1960 is, thus, also bad in law.

36] In view of the same, the order dated 08.04.2022 issued by the Commissioner for Co-operation, directing re-classification of the petitioners, 'Dhanya Adhikosh societies' to the 'General society' is bad in law. Further direction to change the bye laws based on the re-classification of society would also be not applicable to the petitioners societies.

37] The Authorities constituted under the MCS Act are at liberty to issue notice to the individual Dhanya Adhikosh Societies for re-classification of society under Section 12 of the MCS Act, 1960 and only on being satisfied that, the society is wrongly classified, based upon its

principal object, bye-laws and functions undertaken by the society, may re-classify the individual society.

38] When the society has multiple objects, the Registrar, should ascertain the principal object of the society for classification and sub-classification of the society. The Registrar may ascertain the principal object on the basis of bye-laws of the society and the functions undertaken by the society. There can be no direction to change the object of the 'Dhanya Adhikosh Society' as it would violate Article 19 (1) (c) of the Constitution of India of the members forming the society. In the event the society does not function as per its object and / or its bye-laws, steps can be taken to de-register the society but there can be no direction to change the object of the society unless the society voluntaries to change its object and bye-law of the society.

39] As regards violation of Section 7 of the Bombay Banking Regulation Act is concerned, *prima facie* translation of the word 'Adhikosh', in english would be 'storage' or a 'bank'. The petitioner societies names are

mentioned as 'Dhanya Adhikosh Societies' which would mean 'food/grains storage' societies. Since I am quashing the entire action initiated by the Commissioner of Co-operation qua the petitioners, by its general order dated 08.04.2022, I am not expressing final opinion on the usage of word "Adhikosh" by the petitioner – societies. Liberty is granted to the appropriate authority to issue fresh notice to the petitioners / societies for change of use of the word 'Adhikosh' in their name / title and after considering the reply of the petitioners / societies, final orders can be passed, subject to the right of the petitioners to challenge the same as may be available in law.

40] In view of the same, the order dated 08.04.2022 issued by the Commissioner for Cooperation, so far as it made applicable to all the four present petitioners societies, is set aside and the order passed by the Hon'ble Minister dated 02.11.2022 is also set aside.

41] The Writ Petitions are partly allowed with liberty as aforesaid.

42] In view of disposal of the main Writ Petitions,
all Civil Applications stand also disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC