

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 650 OF 2022

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Mira Bhayander Mahanagarpalika
Shramik Sahakari Karmachari
Sahakari Patsanstha Limited, Having
address at Mira Bhayander Head Office,
Chhatrapati Shivaji Maharaj Marg,
Bhayander (Wes), Taluka and District
Thane – 401 101

...Petitioner

Versus

- 1 The Divisional Joint Registrar, Konkan
Division, Navi Mumbai
 - 2 The Deputy Registrar, Co-operative
Societies, Taluka Thane, having office at
Rashtriya Sant Acharya Shree
Padmasagar Suri Swaraj Bhavan Mira
Bhayander Municipal Corporation
Building, Mira Road, East, District –
Thane 401 017
 - 3 Mira Bhayander Mahanagar Palika
Karmachari Sahakari Patpedhi Situated
at Mira Bhayander, Mahanagar Palika,
Ground floor, Swargiya Indira Gandhi
Bhavan, Chhatrapati Shivaji Maharaj
Marg, Bhayander (West), Taluka and
District Thane 401 101
 - 4 The Hon'ble Minister of State, Co-
operation Department Mantralaya,
Mumbai
- Respondent Nos.1, 2 and 4 are
represented by State of Maharashtra
through learned Assistant Government
Pleader, having office address at PWD
Building, High Court premises, Fort,
Mumbai 400 001

...Respondents

Mr. Sandesh Patil, i/b Mr. Prithviraj Gole, for the Petitioner.
Mr. Kishor Patil, a/w Mr. Shantanu Raktale and Saurav
Katkar, i/b Mr. Amar Parsekar, for Respondent Nos.3.
Mr. P. P. Pujari, AGP for the State/Respondent Nos.1, 2 & 4.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 17th MARCH, 2023
PRONOUNCED ON: 3rd MAY, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order passed by the Minister (Cooperation) in Revision Application No.8 to 2020 thereby upholding the order dated 19th December, 2019 passed by the Divisional Joint Registrar, Co-operative Society, Konkan Division, in Appeal No.49 of 2018 allowing the appeal preferred by respondent No.3 Society and ordering the deregistration of the petitioner Society purportedly under the provisions of Section 21A of the Maharashtra Cooperative Societies Act, 1960 ("the Act, 1960").

3. Background facts leading to this petition can be stated in brief as under:

(a) The petitioner is an employees' society, classified as "Salary Earners Society". Members of the petitioner are the

employees of Mira Bhayander Municipal Corporation (“the Corporation”). Respondent No.3 is also a society of the salary earners who are employed with the Corporation. Respondent No.3 was registered under the provisions of the Act, 1960, in the year 1995.

(b) Pursuant to the request of the promoters of the petitioner on 15th December, 2016 the Commissioner of the Corporation issued a certificate to the effect that the persons mentioned at Sr. No.1 to 120 in the list annexed to the certificate were the permanent employees on the establishment of the Corporation. After due enquiry the petitioner Society was registered on 31st January, 2017 under the provisions of the Act, 1960 under the name and style of Mira Bhayander Mahanagar Palika Shramik Karmchari Sahakari Patsanstha Ltd. The Executive Engineer of the Corporation allotted a premises for the office of the petitioner Society within the precincts of the Corporation. On 20th May, 2019 the Corporation also granted ‘no objection certificate’ to deduct the amount towards shares and loan installments etc., from the salary of the members – employees.

(c) Respondent No.3 Society preferred an appeal before the Divisional Joint Registrar challenging the grant of

registration certificate to the petitioner, under Section 152 of the Act, 1960, on the grounds, *inter alia*, that the petitioner had not obtained no objection certificate from respondent No.3, the Commissioner of the Corporation had not granted no objection certificate to register the petitioner Society, out of the members of the petitioner Society, 110 members were already the members of respondent No.3 Society and there were only 258 new members of the petitioner Society and the operation of the petitioner Society in the same establishment will affect the business of respondent No.3 Society and it would become unviable to run the said Society.

(d) By a judgment and order dated 19th December, 2019 the Divisional Joint Registrar, Konkan Division was persuaded to allow the appeal and cancel the registration certificate issued in favour of the petitioner. The Divisional Joint Registrar was of the view that no objection certificate of respondent No.3 Society and the Commissioner of the Corporation to register a new Society was required to be obtained, practicability of operation of another Society in the same establishment was required to be considered and there was a possibility of both the petitioner and respondent No.3 Society facing financial constraints and eventually become unviable. The fact that 110 members of the

petitioner were already the members of respondent No.3 Society was also arrayed against the petitioner.

4. Being aggrieved, the petitioner preferred a revision before the State Government. The Minister (Cooperation) by the impugned order was persuaded to dismiss the revision application. The Minister (Cooperation) found that there was similarity in the name of the petitioner and respondent No.3 and only the word “Shramik” was the addition in the name of the petitioner. Secondly, according to the Minister (Cooperation) if two societies operated in the same establishment there would be disputes and by exerting political pressure the members of the old Society (respondent No.3) may be compelled to become the members of the petitioner Society and the employees would not afford payment of subscription to two societies.

5. Being aggrieved the petitioner has invoked the writ jurisdiction. When the petition was listed before the Court on 15th July, 2022 in view of the reasons assigned by the authorities below to deregister the petitioner Society and the contentions on behalf of respondent No.3 Society, this Court directed the Divisional Joint Registrar to file an affidavit to apprise the Court as to whether there is an embargo to have two credit cooperative societies of the employees in the same

establishment and whether the petitioner Society can be permitted to operate if it changes its name substantially and the employees who are already the members of respondent No.3 Society are removed from the membership of the petitioner Society.

6. Affidavits-in-reply are filed by the Divisional Joint Registrar – respondent No.1, and on behalf of respondent No.3 Society.

7. I have heard Mr. Sandesh Patil, the learned Counsel for the petitioner, Mr. Kishor Patil, the learned Counsel for respondent No.3 and Mr. Pujari, the learned AGP for respondent Nos.1, 2 and 4. With the assistance of the learned Counsel for the parties, I have perused the pleadings, orders impugned in this petition and the material on record.

8. At the outset, Mr. Sandesh Patil, the learned Counsel for the petitioner, would urge that the Divisional Joint Registrar, respondent No.1, and Minister (Cooperation), respondent No.4, have assigned diverse reasons to deregister petitioner Society. However, none of those reasons constitutes the ground under which the Registrar, Co-operative Societies is empowered to deregister a Society under Section 21A of the Act, 1960. The reason of economic viability of respondent No.3 Society is a

wholly extraneous consideration. In fact, according to Mr. Sandesh Patil, the material on record indicates that after the petitioner Society started operations in the Corporation the share capital and the profit of respondent No.3 has increased. With the willingness of the petitioner to change its name substantially and even remove the employees, who are already members of respondent No.3 Society, there can be no justifiable ground to deny registration to the petitioner and thereby trample upon the fundamental rights of the members of the petitioner Society to form association and co-operative societies guaranteed under Article 19(1)(c) of the Constitution.

9. In opposition to this, Mr. Kishor Patil, the learned Counsel for respondent No.3 stoutly submitted that the very registration of the petitioner Society was in breach of the circular dated 8th August, 2002 which proscribes the registration of Societies with identical names. Mr. Kishor Patil would further submit that the petitioner Society did not comply with requirements envisaged by the circular dated 3rd February, 2014 in the matter of the number of members as well as the share capital. Therefore, the petitioner cannot be permitted to now cure the defects in the face of the concurrent findings recorded by the authorities below. Mr. Kishor Patil would further urge that the authorities

below were fully justified in ordering deregistration of the petitioner on the count of financial viability as registration of too many societies in one establishment would ultimately affect all the societies and erode the cooperative movement. Thus, it cannot be urged that economic viability is not a relevant consideration, submitted Mr. Kishor Patil.

10. Before advertizing to consider the aforesaid submissions, it may be apposite to note the stand of the State Government manifested in the affidavit-in-reply filed by the Divisional Joint Registrar – respondent No.1. It is categorically asserted that there is no bar for registering two societies in one establishment. However, economic viability check is necessary while registering new society when one society already operates in the same establishment. As regards minimum requirement as to membership and share capital the Divisional Joint Registrar affirms that in accordance with the circular issued by the Commissioner Cooperation and Registrar Cooperative Societies on 16th May, 1986 for the registration of the employees credit society minimum 100 members are required, and, in exceptional cases with the prior approval of the Joint Registrar Cooperative Societies such society can be registered with minimum 50 members. And the minimum paid up share

capital, is Rs.10,000/- with a target of Rs.1,00,000/- share capital to be achieved by the Society within first three years of its registration. The Divisional Joint Registrar further asserts that the petitioner Society could have been registered with 602 employees of the Corporation, who are not the members of respondent No.3 Society, and 110 members of the petitioner Society were already the members of respondent No.3 Society.

11. In the light of the aforesaid stand of respondent No.1, it becomes abundantly clear that the petitioner Society satisfied the norms for registration as an Employees Credit Society prescribed in the circular dated 16th May, 1986. Both its membership and the share capital exceeded the norm prescribed thereunder. Secondly, it also becomes clear that there is no embargo in registration and operation of two employees credit societies in one and the same establishment. Thirdly, the aforesaid stand of respondent No.1 dismantles the objection sought to be raised on behalf of respondent No.3 that the petitioner Society has not complied with the norms prescribed for registration of the Society under the circular dated 3rd February, 2014. Evidently, the said circular prescribes norms for registration of general urban and rural non-agricultural credit cooperative societies.

12. In the light of the aforesaid clarity on facts the submissions canvassed on behalf of the parties now fall for consideration. To begin with, the challenge to the impugned orders on the ground that the deregistration has been ordered *de hors* the statutory prescription contained in Section 21A of the Act, 1960. It reads as under:

“21-A. De-registration of societies.—

(1) If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, [or any primary agricultural co-operative credit society using the word ‘Bank’, ‘Banking’, ‘Banker’ or any other derivative of the word ‘Bank’ in its name,] he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing of each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.”

13. The text of Section 21A would indicate that the power to deregister Society can be exercised by the Registrar only on

specified grounds, *inter alia*, (i) a Society is registered by making misrepresentation, (ii) where the work of the Society is completed or exhausted or (iii) the purposes for which the Society has been registered are not served. There is no general power of deregistration vested in the Registrar. Before passing an order of deregistration, the Registrar is enjoined to arrive at the satisfaction that one of the specified grounds mentioned in Sub-section (1) of Section 21A is made out.

14. On the aforesaid touchstone reverting to the facts of the case, the reasons which weighed with the authorities below to deregister the petitioner society deserve to be appraised. On the aspect of the confusion which might occur due to similarity in name of the societies, the circular dated 8th August, 2002 undoubtedly proscribes registration of two societies with identical, or for that matter, deceptively similar names, and for valid reasons. In the case at hand, as noted above, the only change in the name of the petitioner and respondent No.3 is the addition of the word, "Shramik". However, this objection loses significance as the petitioner had shown willingness to change its name substantially. Name of the society, in a sense, is to establish its identity only. If the petitioner is willing to change its name substantially so as to unmistakably indicate that it is

distinct from respondent No.3, the constitutional guarantee of right to form association cannot be jeopardised on the count that the petitioner cannot be now permitted to cure the defect. Name of a Society is not a matter which inexorably affects its eligibility for registration. If the name is suitably altered, registration cannot be denied if the other conditions are fulfilled.

15. The second objection which found favour with the authorities below was that 110 employees who became the members of the petitioner were already the members of respondent No.3 Society. A feeble attempt was also made to show that the suppression of the said fact constituted misrepresentation. I find it difficult to accede to this line of reasoning. First and foremost, it could not be demonstrated that there is a prohibition in one employee becoming a member of two employees credit societies. Secondly, the right to form association subsumes in its fold right to be not associated with a particular group or institution. Thirdly, there is no prohibition in law for the members of one society to voluntarily forsake the membership of the said society and join another. Thus, on facts and in law no case of misrepresentation due to the employees, who were already members of respondent No.3, becoming the members of the petitioner was made out.

16. Lastly, the worth of the objection of economic viability of two societies operating in one of the same establishment deserves to be tested. As noted above, there is no embargo on operation of two credit societies in the same establishment. Economic viability is not a specific ground on which a new society can be denied registration. The circular dated 16th May, 1986 prescribing eligibility is required to be read in a correct perspective. The object behind prescribing a lower threshold of a minimum 100 members and minimum share capital of Rs.10,000/- cannot be lost sight of. The avowed object is to promote the spirit of cooperation and not to put hindrances in the employees coming together to form a society by prescribing a higher threshold of membership and capital.

17. In any event, in the facts of the case at hand, there were 602 employees who were not the members of respondent No.3. Such a strength of the employees provides ample scope for formation and operation of another society. The authorities below committed a grave error in upholding an unsustainable apprehension that registration of the petitioner society would be a death knell for the financial viability of respondent No.3, without any factual foundation to draw such an inference.

18. The upshot of the aforesaid consideration is that the reasons which weighed with the authorities below are not sturdy enough bear the weight of the decision to deregister the petitioner Society. Those reasons do not fall within the ambit of the provisions contained in Section 21A of the Act, 1960. Refusal of registration at the first instance for non-compliance of the requirements and deregistration of a Society, already registered, stand on different footings. Deregistration can be ordered only on one of the grounds specified in Sub-section (1) of Section 21A. In a sense, deregistration is a drastic action. It entails the consequence of appointment of an official assignee to recover the assets of the Society and liquidate its liability. The power cannot be exercised in a routine manner.

19. At any rate, in view of the willingness of the petitioner to change its name substantially and remove the employees who are already the members of respondent No.3, from the membership of the petitioner Society, the continued resistance to the operation of the petitioner becomes unsustainable. Hence, the petition deserves to be allowed subject to certain conditions.

20. Thus, the following order:

: O R D E R :

- (I) The petition stands allowed.
- (II) The impugned order dated 6th January, 2022 passed by the Minister (Cooperation) and the order dated 19th December, 2019 passed by the Divisional Joint Registrar in Appeal No.49 of 2018 stand quashed and set aside.
- (III) The certificate of registration granted to the petitioner on 31st January, 2017 stands revived subject to the following conditions:
 - (a) The petitioner shall change its name substantially so as to unmistakably indicate that the petitioner Society is independent of and distinct from respondent No.3.
 - (b) The petitioner shall remove 110 employees who are already the members of respondent No.3 Society from its membership, after duly settling their accounts.
 - (c) The aforesaid exercise be carried out on or before 31st May, 2023 and thereupon the petitioner shall be

permitted to commence its operation from 1st June, 2023.

(IV) There shall be no order as to costs.

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]