

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

WRIT PETITION NO. 11652 OF 2022

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Dattakripa Sahakari Dudh
Vyayasayak Sanstha Myt.
Aini Paiki Huda, Taluka Radhanagri,
District Kolhapur – 416 212

...Plaintiff

Versus

- 1 Minister for Dairy Development
Mantralaya Mumbai
- 2 Joint Registrar Co-operative
Societies (Dairy) Mumbai
- 3 Divisional Deputy Registrar Co-operative
Societies (Dairy), Pune Division, Pune
- 4 Assistant Registrar, Co-operative
Societies (Dairy) Kolhapur
- 5 Shri Pawanai Devi Mahila Sahakari
Dudh, Vyayasayak Sanstha Myt. Anini
Paiki Huda, Taluka Radhanagri,
District Kolhapur 416 212
- 6 P. P. Rameshkaka Kulkarni Sahakari
Dudh, Vyayasayak Sanstha Myt. Anini
Paiki Huda, Taluka Radhanagri,
District Kolhapur 416 212
- 7 Shri Jyotirlinga Sahakari Dudh
Vyayasayak Sanstha Myt. Anini Paiki
Huda, Taluka Radhanagri, District
Kolhapur 416 212
- 8 Shri Bhairavnath Sahakari Dudh
Vyayasayak Sanstha Myt. Anini Paiki
Huda, Taluka Radhanagri,
District Kolhapur 416 212

...Defendants

Mr. Ruturaj Pawar, for the Petitioner.
Mr. C. D. Mali, AGP for the State/Respondent Nos.1 to 4.
Mr. Prashant Bhavake, for Respondent No.5.
Mr. Dheeraj Patil, for Respondent No.8.

CORAM: N. J. JAMADAR, J.

DATED : 11th APRIL, 2023

JUDGMENT:-

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

2. This petition assails the legality, propriety and correctness of an order dated 29th March, 2022 passed by Minister (Dairy Development) in Revision Application No.1 of 2022, whereby the application preferred by the petitioner came to be rejected by affirming an order dated 1st February, 2021 in Appeal No.5 of 2019 passed by the Joint Registrar, Cooperative Societies, allowing the appeal preferred by respondent No.5.

3. Shorn of unnecessary details the background facts can be stated as under:

(a) The petitioner is a Dairy Cooperative Society. To promote dairy development, the State Government in Dairy Development Department, issued a Government Resolution on 4th January, 2000 prescribing thereby a two stage process of registration of a dairy cooperative society. Few of the salient features of the policy enshrined in the said GR dated 4th January, 2022 are;

(i) There should be minimum 50 milk producing members of the society.

- (ii) Average milk collection in a revenue village should be more than 250 liters.
- (iii) A society fulfilling the aforesaid conditions shall make an application to the concerned Assistant Registrar, Cooperative Society, seeking permission to collect the milk and open a bank account.
- (iv) In the second stage, if average collection of milk exceeds 250 liters for two months, post such permission, the Society be registered in accordance with the provisions contained in the Maharashtra Cooperative Societies Act, 1960 ("the Act, 1960").
- (v) The power to grant registration to a third society in a village can be exercised by the Deputy Registrar. However, the power to grant permission to a fourth society can be exercised by the Joint Registrar.
- (vi) Revisional power vests in the State Government.

(b) In conformity with GR dated 4th January, 2000, the petitioner Society made an application to respondent No.4 Assistant Registrar, Cooperative Societies, on 20th April, 2017 for permission to collect the milk and open a bank account. The Assistant Registrar forwarded the proposal to Deputy Registrar, Cooperative Societies, respondent No.3.

(c) By an order dated 4th December, 2017 the Deputy Registrar rejected the permission to collect the milk and open the bank account.

(d) Being aggrieved, the petitioner preferred an appeal being Appeal No.1 of 2018 before the Joint Registrar, Cooperative Societies. By an order dated 7th January, 2019, the Joint Registrar was persuaded to allow the appeal by setting aside the order passed by the Deputy Registrar.

(e) Thereupon the Assistant Registrar vide communication dated 10th January, 2019 addressed to the Executive Director, District Federal Society, conveyed permission to the petitioner to collect the milk and open the bank account. Pursuant thereto on 27th March, 2019 registration certificate was issued in favour of the petitioner.

(f) Respondent No.5 - Dairy Society preferred an appeal before the Joint Registrar, Cooperative Societies assailing the order dated 1st February, 2021 passed by the Assistant Registrar granting registration to the petitioner Society. The Joint Registrar, after appraisal of the material, was persuaded to allow the appeal and quash and set aside the order of the Assistant Registrar granting registration to the petitioner.

(g) The Joint Registrar was of the view that respondent No.5 had assailed order dated 7th January, 2019 passed in Appeal No.1 of 2018 (setting aside the order of the Deputy Registrar rejecting permission to the petitioner) before the State Government in a revision and, thus, during the pendency of the said revision application the Assistant Registrar could not have granted permission to collect the milk and open the bank account. It was also observed that though by order dated 7th January, 2019 the order of the Deputy Registrar refusing permission was set aside, the petitioner had not obtained specific permission from the Deputy Registrar to collect the milk and open the bank account. Thus the registration was obtained by the petitioner by misrepresentation of facts and it was liable to be cancelled under Section 21A of the Act, 1960.

(h) Being aggrieved the petitioner preferred revision before the State Government. Initially by an order dated 7th January, 2021 the Minister (Dairy Development) stayed the order passed by the Joint Registrar. However, by the impugned order the Minister rejected the revision application upholding the order passed by the Joint Registrar.

4. Being aggrieved the petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Pawar, the learned Counsel for the petitioner, Mr. Mali, the learned AGP for the State – respondent Nos.1 to 4, Mr. Bhavake, the learned Counsel for respondent No.5 and Mr. Patil, the learned Counsel for respondent No.8.

6. Mr. Pawar strenuously urged that the Minister (Dairy Development) and the Joint Registrar, Cooperative Societies, have committed a manifest error in recording a finding that the petitioner had obtained the registration by misrepresentation. The view of the Joint Registrar, Cooperative Societies that though by order dated 7th January, 2019, he had set aside the order of Deputy Registrar dated 4th December, 2017 refusing permission to collect the milk and open the bank account, yet no permission was granted to collect the milk and open the bank account was clearly erroneous. Similarly, the authorities below fell in error in arriving at the conclusion that there was misrepresentation by the plaintiff for the reason that a revision application was preferred by respondent No.5 assailing the order dated 7th January, 2019 passed in Appeal No.1 of 2018. According to Mr. Pawar, no case of suppression much less misrepresentation was made out. The authorities were thus not justified in revoking the registration by ascribing unsustainable reasons.

7. The learned AGP, however, endeavoured to support the impugned order. It was urged that the Minister and the Joint Registrar were justified in revoking the registration as the order passed by the Joint Registrar in Appeal No.1 of 2018 was under challenge before the Minister.

8. Mr. Bhavake, the learned Counsel for respondent No.5 - the appellant before the Joint Registrar, would submit that the mere fact that in Appeal No.1 of 2018 the Joint Registrar had set aside the order of the Deputy Registrar refusing the permission was not, in itself, sufficient. The said order ought to have been executed in conformity with the GR. Mr. Bhavake made an earnest endeavour to impress upon the Court that after passing of the said order, the petitioner ought to have approached the Deputy Registrar, Cooperative Societies, seeking permission to collect the milk and open the bank account. It was urged that the Assistant Registrar was, in the facts of the case, not competent to issue the communication permitting collection of the milk and opening of the bank account.

9. To being with, it may be necessary to note the provisions contained in Section 21A of the Act, 1960, which has been resorted to by the authorities below to deregister the Society. 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.”

10. 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.

11. In the light of the aforesaid provisions, reverting to the facts of the case the deregistration of the petitioner was sought to be sustained on two counts. First, there was no express permission granted by the competent authority to collect milk and open the bank account and thus the first of two stage registration process was not legal. This ground was sought to be pressed into service by asserting that no specific permission was granted by the Deputy Registrar, post the order passed by the Joint Registrar in Appeal No.1 of 2018.

12. This ground is wholly untenable. It is simply contradiction in terms to urge that the order passed by the Joint Registrar in Appeal No.2 of 2018 though set aside the order of Deputy Registrar refusing permission to collect the milk and open the bank account yet there was no express permission. Once, the Appellate Authority sets aside the order of the lower authority, the consequences must follow. The only logical and legal consequence of setting aside of the order of the Deputy Registrar rejecting permission was, the grant of permission to collect the milk and open the bank account. From this standpoint, the communication by the Assistant

Registrar dated 10th January, 2019 permitting the collection of the milk and opening of the bank account can be said to be in conformity with the conditions stipulated in the GR.

13. The second count of misrepresentation is equally infirm. Misrepresentation has not been specifically attributed to the petitioner. In P. Ramanatha Aiyar's, Advanced Law Lexicon, 3rd Edition, 'misrepresentation' has been defined as under:

“1. The act of making a false or misleading statement about something, usu. with the intent to deceive. 2. The statement so made; an assertion that does not accord with the facts.

.....

Misrepresentation may consist as well in the concealment of what is true as in the assertion of what is false. If a man conceals a fact that is material to the transaction, knowing that the other party acts on the presumption that no such fact exists, it is as much a fraud as if the existence of such fact were expressly denied or the reverse of it expressly stated.”

14. In the appeal preferred by respondent No.5 against the grant of registration before the Joint Registrar it was contended that respondent No.4 Assistant Registrar was apprised that respondent No.5 had preferred a revision against the order passed in Appeal No.1 of 2018 before the State Government. It was not alleged that the petitioner was served with a copy of the revision application and the said fact was suppressed by the petitioner in getting the registration.

15. Evidently, respondent No.5 did not claim that the order passed in Appeal No.1 of 2018 was stayed by the State Government and yet the registration was granted. In the impugned order, the Minister has observed that on 12th April, 2019 a circular was issued to all the authorities not to register the Societies during the pendency of revision application on 12th April, 2019 and yet the Assistant Registrar had granted registration to the petitioner. The fallacy of this reasoning is self-evident. The said circular was issued a fortnight after the issue of registration certificate in favour of the petitioner. This could not have been arrayed against the Assistant Registrar far less against the petitioner. It is thus incomprehensible as to how misrepresentation could have been attributed to the petitioner.

16. The conspectus of the aforesaid consideration is that none of the grounds is sturdy enough to bear the weight of the decision to deregister the petitioner Society. 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.

17. Resultantly, the petition deserves to be allowed.

18. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) Order dated 29th March, 2022 passed by the Minister (Dairy Development) and the order passed by the Joint Registrar, Cooperative Societies, dated 1st February, 2021 deregistering the petitioner Society stand quashed and set aside.
- (iii) The certificate of registration dated 27th March, 2019 granted to the petitioner Society stands restored.
- (iv) It is, however, clarified that the revision preferred by respondent No.5 against the order passed by the Joint Registrar in Appeal No.1 of 2018 may be decided on its own merits and in accordance with law.

Rule made absolute to the aforesaid extent.

No order as to costs.

[N. J. JAMADAR, J.]