



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.431/2019

Gramin Abhilasha Sahakari Pat Sanstha
Ltd., Helodi, Tah. Selu, Dist. Wardha,
through its Secretary.

... Petitioner

- Versus -

1. Joint Registrar Cooperative Societies,
Nagpur, Office at Dhanwate Chamber
Sitabuldi, Nagpur.
2. Assistant Registrar, Cooperative Societies,
Taluka Selu, Dist. Wardha.
3. Sou. A.S. Raut,
Liquidator,
Cooperative Officer Class 2
under Assistant Registrar
Cooperative Societies, Taluka Wardha,
Dist. Wardha.

... Respondents

Mr. R.V. Kinarkar, Counsel for the Petitioner.
Ms. R.V. Sharma, A.G.P. for respondent Nos.1 and 2.

CORAM: MRS. VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT : 18.10.2023
DATE OF PRONOUNCING THE JUDGMENT : 20.10.2023

JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioner has challenged the order dated 17.10.2018 passed by the respondent No.1 in Revision No.530/2018 thereby confirming the orders dated 29.9.2016 and 1.9.2017. On 29.9.2016 the interim order of liquidation was passed, by order dated 1.9.2017 the final order of liquidation was passed while by order dated 17.10.2018 the order of liquidation was confirmed. As per the petitioner, interim order dated 29.9.2016 was passed without giving any opportunity of being heard and without issuing any show cause notice to the petitioner thereby denying the opportunity to submit its say. The petitioner is the Cooperative Society. The audit of the Society was conducted and after that the interim order was passed and it was confirmed. The petitioner has challenged the said order before the Divisional Registrar stating that the opportunity was not given and without following the due procedure the interim order of appointing Liquidator is passed. The said revision application was rejected and the final order of appointing Liquidator is also passed. Being aggrieved by all these impugned orders the petitioner has filed this petition.

3. The learned A.G.P. has opposed the petition stating that the petitioner was served and the petitioner has not come before this Court with clean hands. The respondent No.2 Assistant Registrar has acknowledgment of receiving the interim order of liquidation by the petitioner Society. The Society has filed reply to the order of liquidation which was not possible without receiving the said show cause notice. The audit report of the petitioner Society itself shows various discrepancies and inaction on the part of the Society for not submitting mandatory returns, inaction for recovery of old loans, no disbursement of fresh loan and accordingly the petitioner Society failed to satisfy and fulfil the objects as per the provisions of its own bye-laws since inception. As per the audit report of the petitioner Society there is accumulated loss and the working of petitioner Society has come to standstill. The petitioner Society is working only on the paper and hence action of liquidation initiated by the respondents is justified. The petitioner Society though received a copy of interim order of liquidation and filed its reply before the respondent No.2 during liquidation proceedings, the petitioner

Society preferred this petition and by making false statement that it has not received copy of interim order of liquidation, succeeded to get interim order from this Court. Hence prayed to dismiss the petition.

4. Heard both sides and gone through the documents filed on record.

5. The main grievance of the petitioner Society is that before passing the interim order no show cause notice was issued to the petitioner and the opportunity was not given to it to defend. On perusal of the reply of the respondents it is seen that the respondents have stated on oath that the petitioner was served before passing the interim order and acknowledgment is there. Earlier it was not filed on record but as per the order passed by this Court on 18.4.2022 the respondents have filed an affidavit along with documents to prove that the petitioner was served before passing the interim order. The document which the respondents have filed on record is the show

cause notice dated 29.8.2016. In the reply, the respondents have stated that the said show cause notice was received back and the acknowledgment is there. On perusal of said show cause notice there is no acknowledgment about receipt of it. No postal acknowledgment is filed on record to prove that said notice was issued. The extract of outward register dated 29.8.2016 is filed on record. The extract of outward register is not sufficient to prove that said notice was received by petitioner and it cannot be termed as an acknowledgment. Therefore, the acknowledgment as stated by the respondents is not filed on record.

6. The another document is the interim order dated 29.9.2016. The respondents have stated that the petitioner has received the show cause notice and, therefore, the petitioner has filed the reply to the liquidation proceedings. The document shows that on 7.11.2016 the matter was kept for appearance after passing the interim order of appointing liquidator, therefore, from the documents filed on record it cannot be ascertained that the petitioner

was served and opportunity was given to the petitioner before passing the interim order of appointing Liquidator. As it is necessary to give opportunity to the petitioner before passing any adverse order against it, which is not done in this case and which has caused the violation of principle of natural justice, hence the impugned orders dated 29.9.2016, 1.9.2017 and 17.10.2018 are set aside. The matter is remanded back to the Assistant Registrar to consider it afresh in accordance with law by giving opportunity to the petitioner to file the reply and contest the proceeding. The parties shall appear before the Assistant Registrar on 1.11.2023 at 11 a.m. The learned A.G.P. is requested to communicate this order to the Liquidator - respondent No.3.

7. Rule is made absolute in the aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)