



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

WRIT PETITION NO.7023 OF 2022

Ambika Sahakari Majoor Sanstha Maryadit, Nagpur through its President/Secretary,
 Shri Suresh Moreshwarraoji Rawerkar and others .Vs. Hon'ble State Minister for
 Cooperation, Maharashtra State, Mantralaya, Mumbai-32 and others

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
 or directions and Registrar's order

Court's or Judge's Order

Shri N.L. Jaiswal, Advocate for petitioners.
 Ms H.N. Jaipurkar, A.G.P. for respondent Nos.1 to 3/State.
 Shri P.S. Tidke, Advocate for respondent No.4.
 Shri Pushkar Ghare, Advocate for intervenor.

CORAM : ANIL S. KILOR, J.

DATED : 13/09/2023

1. The respondent No.4-Federation alleged to have passed a resolution on 13.03.2021 in its Annual General Body Meeting for amending its bye-laws and moved a proposal before the respondent No.3-District Deputy Registrar (hereinafter referred to as "D.D.R.") for approval. The said proposed amendment was opposed by 69 members out of 102 members of the respondent No.4-Federation, on the ground of not providing proportionate representation to its members. Thereupon, considering the objections, the respondent No.3 rejected the amendment vide order dated 02.07.2021.

2. The respondent No.4-Federation carried the said order in appeal preferred under Section 152 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter

referred to as “the Act of 1960) before the Joint Registrar, Cooperative Society who allowed the proposed amendment to bye-laws, vide order dated 26.07.2021.

3. Thereupon, the petitioners filed a revision before the Hon’ble Minister which came to be rejected vide order dated 16.02.2022. Hence, this petition.

4. Admittedly, the petitioners are the objectors to the proposed amendment to the bye-law No.32.1 and considering the objections of the petitioners, the respondent No.3-D.D.R. rejected the said amendment to the bye-law No.32.1. It is further clear that, despite the same, the respondent No.4-Federation did not make the petitioners as party to the appeal filed under Section 152 of the Act of 1960, before the Joint Registrar, Cooperative Society, who has allowed the proposed amendment in favour of the respondent No.4-Federation.

5. The Hon’ble Supreme Court of India in the case of *Automotive Tyre Manufacturers Association Vs. Designated Authority and others*¹, has held thus:

“79. In Swadeshi Cotton Mills Vs. Union of India⁶⁵, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus: (SCCp. 666)

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such

1 (2011) 2 SCC 258

rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied by us)

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective

of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.”

6. In light of the aforesaid legal position, in absence of compliance of principle of natural justice and as the reasonable opportunity of being heard has not been given to the petitioners before passing the adverse order to the interest of the petitioners, the order dated 26.07.2021 passed by the Joint Registrar, Cooperative Society vitiates and consequently, the order of the Hon'ble Minister order dated 16.02.2022 vitiates.

7. In the circumstances, I am of the opinion that, the matter needs to be remanded back to the Joint Registrar, Cooperative Society for deciding the appeal afresh. Accordingly, I pass the following order:

- i) The writ petition is **partly allowed**.
- ii) The order passed by the Divisional Joint Registrar, Nagpur dated 26.07.2021 in Appeal No.35 of 2021 and the order dated 16.02.2022 passed by the Hon'ble Minister in Revision No.465 of 2021, are hereby quashed and set aside.

- iii) The matter is remanded back to the Joint Registrar to be decided the appeal afresh after joining the petitioners as party to the appeal and after hearing the petitioners.
- iv) The Joint Registrar shall decide the issue of jurisdiction if so raised by the petitioners.
- v) On a joint request made by learned counsel for the respective parties and the applicant in application for intervention, the parties are directed to remain present in the office of the Joint Registrar on **29.09.2023** at 03.00 p.m.

Writ Petition is **disposed of** accordingly. No order as to costs.

CIVIL APPLICATION (CAW) NO.353 OF 2023

In view of the remand of the appeal to the Joint Registrar, Cooperative Society, the application is disposed of with liberty to the applicant to make such request before the Joint Registrar, Cooperative Society, who shall take the decision on such application if so made, in accordance with law.

Civil application is **disposed of**.

JUDGE