

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

WRIT PETITION NO.2629 OF 2018

(JAI BHAVANI MACHHIMAR SAHKARI SANSTHA LTD....VS.. STATE OF MAH. THR. ANIMAL
HUSBANDRY, DAIRY AND FISHERIES DEPT. & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.M.Samarth, Advocate for Petitioner.
Shri H.D.Dubey, A.G.P. for Respondent Nos.1, 3 to 5.
Shri Mahesh Sonawane, Adv.h/f. Shri Ravindra Ade, Advocate for Resp. No.6.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 30, 2023.

1. Heard.

2. The challenge raised in the present petition is to the order passed by the Hon'ble Minister dated 07/12/2017 allowing the appeal and thereby setting aside the order dated 12/02/2016 passed under Section 21A of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Act of 1960") by the Commissioner of Fisheries and Additional Register, Cooperative Societies, de-registering the respondent No.6-Society.

3. Admittedly, the Hon'ble Minister set aside the order of de-registration passed under Section 21-A of the Act of 1960 against the respondent No.5 on the ground that there was no compliance of Section 21A of the Act of 1960.

4. On a specific query put to the petitioner about the compliance, he fairly admits that the notice was only issued to the Society and not to the members or promoters of the society.

5. Thus, at this stage, it would be relevant to refer to Section 21A(1) of the Act of 1960, which reads thus:

“21A. 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.”

6. From the language of Section 21A(1) of the Act of 1960 it is evident that there is no element of doubt that the order of de-registration can only be passed after giving an opportunity of being heard to the Chief Promoter, the Committee and the members of the Society.

7. In the present matter, it is evident from the record that, the notices were not issued to the members of the society, but the notice was issued only to the Society. Hence, the order of de-registration is in violation of Section 21A(1) of the Act of 1960.

8. In the circumstances, I do not find any infirmity in the impugned order passed by the Hon'ble Minister.

9. At this stage, the learned counsel for the petitioner has pointed out that in the given facts and circumstances, the Hon'ble Minister ought to have remanded the matter back to the Commissioner of Fisheries for fresh decision after making necessary compliance of the provisions of Section 21A of the Act of 1960. However, while setting aside the order of the Commissioner of Fisheries and Additional Registrar, Cooperative Societies, no such directions were issued by the Hon'ble Minister. He, therefore, submits that the impugned order needs to be modified to that effect.

10. I find substance in the submission of the learned counsel for the petitioner that if in the opinion of the Hon'ble Minister, for want of compliance of Section 21A of the Act of 1960, the de-registration is bad, he ought to have referred the matter back to the Commissioner of Fisheries to make necessary compliance and then to pass a fresh order.

11. In the circumstances, I am of the considered view that the impugned order needs to be modified. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.

- ii) The impugned order dated 07/12/2017 is modified to the effect that the matter is remanded back to the respondent No.3-Commissioner of Fisheries and Additional Registrar, Cooperative Societies to take a decision afresh after due compliance of Section 21A of the Maharashtra Cooperative Societies Act, 1960.
- iii) The respondent No.3-Commissioner of Fisheries and Additional Registrar, Cooperative Societies shall decide the matter afresh, on its own merits, within six months from today.

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

JUDGE

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