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

WRIT PETITION NO.1978/2023

Dattapur Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1968/2023

Sonora Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1969/2023

Sawla Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1970/2023

Taroda Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1971/2023

Deogaon Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1972/2023

Wathoda Seva Sahakari Society Ltd. Through its President and another
…Versus...

Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1973/2023

Tuljapur Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1974/2023

Sonegaon Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1975/2023

Gavha Farkade Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1976/2023

Asegaon Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1977/2023

Kharda Seva Sahakari Society Ltd. Through its President and another
…Versus...
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.1979/2023

Wagholi Seva Sahakari Society Ltd. Through its President and another
…Versus...

Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.2307/2023

Amdori Seva Sahakari Society Ltd. Through its President and another
…Versus...
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2308/2023

Dhotra Seva Sahakari Society Ltd. Through its President and another
…Versus...
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2309/2023

Mogra Seva Sahakari Society Ltd. Through its President and another
…Versus...
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2310/2023

Savanga Vithoba Seva Sahakari Society Ltd. Through its President and another
…Versus...
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2311/2023

Dahigaon Dhawade Seva Sahakari Society Ltd. Through its President and another
…Versus...
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2312/2023

Jalka Jagtap Seva Sahakari Society Ltd. Through its President and another

…Versus…
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2313/2023

Malkhed Seva Sahakari Society Ltd. Through its President and another
…Versus…
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2314/2023

Shirajgaon Korda Seva Sahakari Society Ltd. Through its President and another
…Versus…
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2315/2023

Bagapur Seva Sahakari Society Ltd. Through its President and another
…Versus…
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.2316/2023

Tembhurni Seva Sahakari Society Ltd. Through its President and another
…Versus…
Assistant Registrar, Co-operative Society, Chandur Railway, District Amravati and others WITH

WRIT PETITION NO.1967/2023

Ashata Zada Seva Sahakari Society Ltd. Through its President and another
…Versus…
Divisional Joint Registrar, Cooperative Society, Amravati Division Amravati and others WITH

WRIT PETITION NO.2584/2023
Borgaon-peth Seva Sahakari Society Through its President
…Versus…

The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2580/2023
Bhugaon Seva Sahakari Society Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2579/2023

Kandli Seva Sahakari Society Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2581/2023

Kushta Seva Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2583/2023

Vadnerbhujanga Seva Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2582/2023

Shindi Seva Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2578/2023

Salepur Seva Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2577/2023

Nizampur Seva Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2585/2023

Khairy Sewa Sahakari Society, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative, Pune and others WITH

WRIT PETITION NO.2622/2023

Borgaon Dori Seva Sahakari Sanstha Maryadit, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2623/2023

Shampur Seva Sahakari Sanstha Maryadit, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2627/2023

Naygaon Seva Sahakari Sanstha Maryadit, Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2741/2023

Gramseva Sahakari Sanstha Maryadit, Bori Adgaon Tq. Khamgaon Through its Director
…Versus…
Assistant Registrar, Co-operative Society, Khamgaon, Buldhana and others WITH

WRIT PETITION NO.2759/2023

Gramseva Seva Sahakari Sanstha Akoli Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2760/2023

Gramseva Sahakari Sanstha, Pimprala Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2761/2023

Gramseva Seva Sahakari Sanstha, Nagapur Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2762/2023

Gramseva Seva Sahakari Sanstha, Amsari Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2763/2023

Gramseva Seva Sahakari Sanstha, Poraj Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2764/2023

Gramseva Seva Sahakari Sanstha, Awar Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2765/2023

Gramseva Seva Sahakari Sanstha, Gondhanapur Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2766/2023

Gramseva Seva Sahakari Sanstha, Jaypur Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2767/2023

Gramseva Seva Sahakari Sanstha, Bhandari Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2768/2023

Gramseva Seva Sahakari Sanstha, Ambetakali Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2769/2023

Gramseva Seva Sahakari Sanstha, Hingana Karegaon Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2770/2023

Gramseva Seva Sahakari Sanstha, Palshi Through its President
…Versus...
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2771/2023

Gramseva Seva Sahakari Sanstha, Sutala Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2772/2023

Gramseva Seva Sahakari Sanstha, Lakhanwada Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others WITH

WRIT PETITION NO.2773/2023

Gramseva Seva Sahakari Sanstha, Kalegaon Through its President
…Versus…
The State of Maharashtra, Through Commissioner of Co-operative Societies, Pune and others

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Mr. C.S. Kaptan, Senior Advocate a/b Mr. R.S. Kalangiwale, Advocate; Mr. M.V. Samarth, Senior Advocate a/b Mr. V.P. Ingle, Advocate; Mr. S.S. Shingane, Mr. Anand Deshpande and Mr. U.J. Deshpande, Advocates for the respective petitioners
Ms N.P. Mehta; Ms Tajwar Khan, Mrs. M.A. Barabde; Mr. N.R. Patil, AGPs for the respondents/State
Mr. A.H. Daga, Mr. J.B. Kasat and Mr. A.A. Naik, Advocates for the respective intervenors/respondents
Mr. H.S. Chawhan; Mr. V.V. Dahat and Mr. Pranav Deshmukh, Advocates for the respective liquidators
Mr. A.M. Ghare, Advocate, addressed to this Court

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/04/2023

O R D E R :

1. Heard Mr. Kaptan, learned senior counsel and Mr. M.V. Samarth, learned senior counsel, Mr. S.S. Shingane; Mr. Anand Deshpande and Mr. U.J. Deshpande, learned counsels for the respective petitioners.

2. In all these petitions, Assistant Government Pleader Ms N.P. Mehta appears for the respondents/State and the authorities; Advocate Mr. A.H. Daga appears for the respondent No.5/complainant in Writ Petition No.1978/2023 and the complainant in other writ petitions.

3. Mr. A.A. Naik and Mr. J.B. Kasat, learned counsels appear for the Amravati District Central Cooperative Bank, Mr. H.S. Chawhan, Mr. V.V. Dahat and Mr. Pranav Deshmukh, learned counsels appear for the respective liquidators and Mr. Ajay Ghare, learned counsel has also addressed on this issue.

4. All these petitions have been heard and can be decided together as the basic pleas raised in all of them is the lack of opportunity of hearing being granted to the petitioners before the order of appointment of an interim liquidator under Section 102(1)(c)(iv) of the Maharashtra Co-operative Societies Act, 1960 (for

short, "MCS Act", hereinafter), came to be passed by the Assistant Registrar, Co-operative Societies and the Revisional Authority, in Revision there against has refused to stay its effect and operation. A plea is also raised that the Assistant Registrar, Co-operative Societies, did not follow the mandate and requirements of Section 102 (1) of the MCS Act, while passing the order appointing an interim liquidator and therefore the same is vitiated. A plea is also raised that the relevant Government Resolutions as applicable thereto, have been totally misconstrued and though they spelt out a position in favour of the petitioners, they have been not applied. A further plea is raised that though the revisions are pending, the Revisional Authority ought to have stayed the effect and operation of the order passed by the Assistant Registrar, during the pendency of the revision, order refusing which is also the order impugned herein.

5. As the pleas are common they can be decided by a common order. For the sake of ready reference the facts in Writ Petition No.1978/2023, are being considered.

The petitioner/society was issued a show-cause notice on 14/02/2023 by the respondent No.2 calling upon it to show cause as to why the interim liquidator ought not to be appointed by fixing the date of appearance on 21/02/2023 (Annexure-E/pg. 71). The petitioner filed Writ Petition No.1135/2023 challenging the show-cause notice in which an order was passed on 20/02/2023 that in case if any order adverse to the petitioner is passed at the end of the hearing to be held upon the impugned show-cause notice, the same shall not take effect for next two weeks from the date of passing of such an order, in terms of which, the petition came to be disposed of. The hearing was kept on 21/02/2023, on which date, another bunch of petitions was listed before this Court being Writ Petition No.1156/2023 and connected matters, in which, stay to the impugned show-cause notices issued by the Assistant Registrar of Cooperative Societies was granted. Before the Assistant Registrar/respondent no.2 time to file reply was filed on 21/02/2023 and the matter was posted on 28/02/2023. The copy of stay order granted by this Court on 21/02/2023 in Writ Petition No.1156/2023 and connected matters was placed before the Assistant Registrar, as a result of which, on 28/02/2023, on account of the stay as none appeared, the Assistant Registrar adjourned the matter by observing that the action would be taken in terms of the order which may be passed in Writ Petition No.1156/2023 and connected matters, without fixing a date for further appearance. On 03/03/2023, Writ Petition No.1156/2023 and connected matters was disposed of in terms of the order passed in Writ Petition No.1135/2023 (page 38). The Assistant Registrar on 15/03/2023 passed an order appointing an interim liquidator which came to be challenged before the Divisional Joint Registrar by way of a revision in which the prayer for stay has been rejected on 24/03/2023. A similar state of affairs prevails in all other matters except for some change in dates and in some cases where replies have been filed by the societies in pursuance to the show-cause notices issued by the Assistant Registrar.

6. Mr. C.S. Kaptan, learned senior counsel for the respective petitioners contends as under :

a] The action against all the societies have been initiated by the Assistant Registrar, Co-operative Societies, not *suo motu* but based upon a complaint sent by the complainant to the Commissioner cooperation, which has been sent downstairs, and has ultimately landed with the Assistant Registrar instructing him to take action as per law, for which reliance is placed by him upon the letter by the Commissioner to the District Deputy Registrar ("DDR" for short) dated 06/02/2023 (page 20) and the consequent letter by the DDR to his subordinate Officer dated 13/02/2023 (page 21) asking them to take action. The show-cause notice dated 14/02/2023, has therefore been issued in pursuance to the aforesaid communication calling upon the petitioner/society to show cause.

b] Mr. Kaptan, learned senior counsel for the petitioner, contends that before taking any action against the petitioner/society, the Assistant Registrar has to satisfy himself about the requirements of Section 102 (1) of the MCS Act, for the purpose of which, since the action of passing of an interim order of liquidation ensues in drastic consequence to the petitioner/society, the requirement of a show cause notice and an opportunity of being heard, is necessarily inbuilt in the provision itself of which, there has been a violation. He submits, that though this position was recognized by the Assistant Registrar Co-operative Societies, as a result of which, he has issued a show-cause notice dated 14/02/2023 calling upon the petitioner/society to show cause as to why an interim order appointing a liquidator ought not to be issued, sufficient opportunity of being heard has been denied. It is submitted, that inspite of the order dated 03/03/2021 passed in Writ Petition No.1165/2023 and connected matters which in turn, in not so many words indicated the requirement of an opportunity of hearing, the order sheets would indicate denial of the same. It is also submitted that inspite of the fact, that time was sought for placing the reply on record, the opportunity was not granted and in cases in which the reply was submitted, the same has not been considered and so also an opportunity of hearing has also not been granted.

c] By relying upon ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd. Vs. State of Maharashtra and others 2004 (1) Mh.L.J. 232***, it is submitted, that since the action under Section 102 (1) of the MCS Act, results in a drastic consequence *vis-a-vis* the society which is sought to be put into liquidation by an interim order, the opportunity of hearing by applying the principles of *audi alteram partem*, has to be held to be inbuilt in the provisions of Section 102 (1) of the MCS Act, prior to the passing of even an interim order appointing a liquidator. He further relies upon the ***State Bank of India and others Vs. Rajesh Agarwal and others, 2023 SCC OnLine SC 342***, in support of this contention.

d] It is also contended, that by such an order of appointing an interim liquidator not only the managing committee of the society is affected but the rights of the members of the society is also effected, inasmuch as, even though the aims and objects of the society are to provide financial assistance to the farmers, however since the proceedings for liquidation, take years together to decide, it is the farmers who are the primary members of the society, who are deprived of the financial assistance, and therefore, when the order under Section 102 (1) of the MCS Act, results in stoppage of the work of the society itself, the question of pre-decisional hearing before passing of the impugned order of liquidation assumes significance and is something which cannot be denied to the societies. It is also contended, that in fact in some of the matters the societies have shown a profit in the preceding years, and therefore, there was no requirement at all for invoking of Section 102 (1) of the MCS Act in their cases, and therefore, on this count itself also the need of a pre-decisional hearing before appointing an interim liquidator assumes significance.

e] It is also contended, that the resolutions dated 23/09/2013, 06/09/2014 and 11/06/2021 and 13/04/2023, all are aimed at ensuring the empowerment, survival and continuance of the societies and are not with an intention to see that their functioning is impaired.

f] Insofar as the resolution dated 23/09/2013 is concerned, it is contended that the entire purpose of the resolution, was to ensure empowerment of the societies in its functioning for the purpose of assuring its aims and objects and even otherwise only clause 6 of the said resolution was attracted inasmuch as, it provided an opportunity for the undertaking of the exercise of amalgamation or financial empowerment, prior to its liquidation being effected.

g] It is also contended that the powers for amalgamation as contained in Section 18 B of the MCS were to be exercised by the registrar and not by the society. It is therefore submitted that this exercise of amalgamation and financial empowerment has to be read into in the provisions of Section 102 (1)(c)(iv) of the MCS Act as it created a legitimate expectation in the societies of an option to be exercised before the drastic steps of liquidation, interim or otherwise, was to be taken, for which reliance is placed upon ***Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries (1993) 1 SCC 71*** (para 8) and ***Shantilal Lalchand Changede and***

others Vs. Prasad Oak and others 2009 SCC OnLine Bom 1269 (para 14) regarding the approach of the District Registrar to be adopted in such cases. It is therefore submitted that since the opportunity of hearing has not been afforded by the Assistant Registrar before passing of the impugned order, the same was not sustainable as a result of which the Revisional Authority i.e. Joint Registrar should have exercised his powers and granted stay to the effect and operation of the order appointing an interim liquidator under the aforesaid provision.

7. Mr. M.V. Samarth learned senior Counsel for the respective petitioners adopts the argument of Mr. C.S. Kaptan learned senior Counsel and submits that apart from there being no inquiry under the provision as mentioned in Section 102(1) of the MCS Act, the other Government Resolutions on which reliance is placed, also support the empowerment of the societies instead of throwing them into liquidation by an order, interim or otherwise.

8. Mr. S.S. Shingane appearing for the petitioners in Writ Petition Nos.2622/2023, 2623/2023 & 2627/2023; Mr. Anand Deshpande, learned Counsels appearing for the petitioners in Writ Petition No.2741/2023 and Mr. U.J. Deshpande, learned counsel

appearing for the petitioners in Writ Petition Nos.2759/2023 to 2773/2023 adopt the arguments of the aforesaid learned Senior Counsels.

9. The learned Additional Government Pleader Ms. N.P. Mehta opposes the contention and submits that the provisions of Section 102(1) of the MCS Act do not contemplate a pre-decisional hearing to be afforded to the societies against which the order under Section 102(1)(c)(iv) of the MCS Act has to be passed, as according to her there is no such requirement built in, in the said provision. By relying upon the language of the aforesaid provision, it is submitted that what is contemplated is a post decisional hearing under Section 102(2) of the MCS Act, of which the petitioners can always avail of, as the proceedings before the Assistant Registrar has not culminated into the passing of a final order. It is thus submitted that on this count the writ petition is itself premature and requires to be dismissed as such. Reliance for this proposition that no pre-decisional hearing is provided before an order appointing an interim liquidator is passed, is placed upon ***Chandrakant Jagannath Ghodke and others Vs. Commissioner for Co-operation & Registrar, Co-operative Societies & others 2003 (6)***

Bom C.R. 238 (paras 16, 22, 24 to 28 and 43) and on ***Gadchiroli Zilla Sahakari Krushi and Gramin Bahu-Udeshiya Development Bank Limited Vs. State of Maharashtra and others 2003 SCC OnLine Bom 48*** (paras 11 to 14 , 16 and 17). It is also submitted that the later judgment of the learned Division Bench of this Court in ***Dughganga Sahakari Dudh Utpadak Sangh Maryadit Vs. Divisional Joint Registrar, Pune and others 2020 (5) ALL MR 545*** which takes a contrary view is *per incuriam* and therefore cannot be relied upon, for which reliance is placed upon ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680*** (para 28). It is further submitted that the order appointing an interim liquidator is a detailed order and therefore, does not call for any interference at the hands of this Court.

10. Advocate Mr. Ajay Ghare supporting the argument of Ms. Mehta, learned Assistant Government Pleader and submits that Section 102 requires a subjective satisfaction, only at the stage of Section 102 (2) of the MCS Act and it is not necessary for the Assistant Registrar to go in for amalgamation only. He submits that in so far as the plea for amalgamation is concertinaed, there is no ground whatsoever raised in any of the replies filed by the

petitioners in those cases where replies have been filed and even otherwise, the plea can be gone into even post the stage of the passing of the order of the appointment of interim liquidator. It is his contention that considering the language of Section 103(2)to (4) of the MCS Act, the passing of an order appointing interim liquidator is merely a temporary suspension of the right of being elected as an executive committee member, which can be restored upon satisfaction being found by the Assistant Registrar, to the material placed before him regarding the financial health of the societies and therefore, the apprehension by the Petitioners is clearly unjustified.

11. Mr. Alok Daga, learned counsel for the original complainant supports the argument made by the learned Assistant Government Pleader

12. Mr. Dahat, learned counsel for the liquidator submits that he has not yet taken charge and would be bound by whatever decision as is rendered.

13. Mr. A.A. Naik and Mr. J.B. Kasat, learned counsels for the District Central Co-operative Bank, Amravati, support the stand taken by the Petitioners and contend that the action of appointing an interim liquidator is one which would adversely affect the

working of the Bank also, as on account of the said order, the repayment of loans of the bank do not take place jeopardizing the financial viability of the bank. It is also contended that since Section 102 (2) of the MCS Act, grants an opportunity of hearing to the creditors of the society, which in this case is the District Central Co-operative Bank, Amravati and the consequences of an interim order appointing an interim liquidator as well as that of a final order of appointing a liquidator are the same, the opportunity of hearing to a creditor before passing of an interim order appointing a liquidator will have to be held inbuilt in the provisions of Section 102(1) of the MCS Act.

14. On 29.03.2023 while issuing the notice the following position was recorded :

> *"2. The petitions challenge the order dated 24.03.2023 passed by the respondent No.1 in revision against the order dated 15.03.2023 passed by the respondent No. 2 appointing a liquidator, whereby the request for grant of stay has been rejected.*
>
> *3. Mr. Kaptan, learned Senior Counsel for the petitioners submits, that upon the show cause notice dated 14.02.2023 which fixed the date as 21.02.2023, Writ Petition No. 1165/2023 alongwith other connected matters came to be filed by the petitioners before the learned*

Division Bench of this Court, in which by an order dated 21.02.2023, the effect and operation of the notice was stayed. It is contended, that this position was brought to the notice of the respondent No.2 on 27.02.2023, which was taken into consideration by him on 28.02.2023 by observing the matters shall be decided after the decision of the Writ Petitions by the High Court. It is however contended, that no date was fixed thereafter and without intimating any date, the interim order appointing the liquidator came to be passed on 15.03.2023, as the Writ Petitions filed by the petitioners came to be disposed on 03.03.2023. It is therefore submitted, that no opportunity of hearing was afforded to the petitioners before the interim order appointing the liquidator dated 15.03.2023 was passed. In the revision filed there against, the prayer for interim relief seeking stay of the order dated 15.03.2023 has been rejected without considering this position."

15. For the sake of ready reference Sections 102 and 103 of the Maharashtra Co-operative Societies Act, 1960 Act being relevant are quoted as under :

*"**Section 102. Winding up***
(1) <u>If the Registrar</u>,—
(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 [or 89A] or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which—

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members' deposits not exceeding five hundred rupees, or

(iv) <u>has ceased to comply with any conditions as to registration and management in this Act or the rules or the by-laws.</u>

<u>is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound-up.</u>

(2) A copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society [and to the creditors of the society, if any,] of being heard, may issue a final order, vacating or confirming the interim order.

Section 103. Appointment of Liquidators

(1) When an interim order is passed under the last preceding section or a final order is passed under that section, for the winding-up of a society, the Registrar may, in accordance with the rules, appoint a person to be Liquidator of the society, and fix his remuneration.

(2) <u>On issue of the interim order, the officers of the society shall hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled and, of all books, records and other documents pertaining to the business of the society and, shall have no access to any of them</u>.

(3) <u>When a final order is passed confirming the interim order, the officers of the society shall vacate their offices,</u>

> *<u>and while the winding up order remains in force the general body of the society shall not exercise any powers</u>.*
>
> *(4) The person appointed under this section as Liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 105. The Registrar may remove such person and appoint another in his place, without assigning any reason.*
>
> *(5) <u>The whole of the assets of the society shall on the appointment of Liquidator under this section vest in such Liquidator, and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by a Liquidator on behalf of the society, the title over the land shall be complete as soon as the mutation of the name of his office is effected, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession</u>.*
>
> *(6) In the event of the interim order being vacated, the person appointed as Liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done, and the proceedings taken by Liquidator, shall be binding on the society, and such proceedings shall, after the interim order has been cancelled under the preceding section, be continued by the officers of the society."*

16. Section 102 of the MCS Act, provides for the Winding up of a Society. A plain reading of the aforesaid provisions would indicate that Section 102(1) of the MCS Act, on the face of it does not contemplate a pre-decisional hearing to be afforded to a party before passing of an order appointing an interim liquidator.

17. For the invoking of Section 102(1) (a) of the MCS Act, four contingencies are provided :

(i) an inquiry to have been held under Section 83 by the Registrar into the constitution, working and financial condition of the Society, in the manner as contemplated therein ; or

(ii) an inspection has been made under Section 84 of the MCS Act; or

(iii) an inspection has been made under Section 89A of the MCS Act, or

(iv) on receipt of the report of the auditor auditing the accounts of the society.

In all these contingencies, before invoking of the power to appoint an interim liquidator, there is already in existence an inquiry/inspection/report of the auditor, that is to say material collected/ inspected /gathered by the Registrar/ auditor, which can form the basis on which action can be taken for the appointment of an interim liquidator.

18. The invoking of Section 102(1) (b) of the MCS Act, can be on receipt of an application made upon a resolution carried by three-fourth of the members of a society present at a special general

meeting called for the purpose. In this situation, the society itself has called for the winding up of the society by passing a resolution in its special general meeting by a three-fourth majority and therefore the Registrar in such a situation, has only to be satisfied regarding the legality and validity of such a resolution and nothing else.

19. The invoking of Section 102 (1) (c) of the MCS Act, can be by the Registrar of his own motion, in the case of a society which — (i) has not commenced working, or ; (ii) has ceased working, or ; (iii) possesses shares or member's deposits not exceeding five hundred rupees, or ; (iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by-laws, and the Registrar is of the opinion that a society ought to be wound-up. In the situations as contemplated by Section 102(1)(c) (i), (ii) and (iii) of the MCS Act, the record as maintained by the Registrar under various provisions of the MCS Act, including the audited reports of the Societies would be available with the Registrar, to consider the health of the Society. However, in case of the situation as contemplated in Section 102(1)(c) (iv) of the MCS Act, the factum of ceasing to comply with any conditions as to

registration and management in this Act or the rules or the by-laws of the society, would be a position which will have to be ascertained.

In all the above contingencies, it is open for the Registrar to issue an interim order directing it to be wound-up.

20. It is however necessary to note that in any of the situations as contemplated by the various sub-sections of Section 102(1) of the MCS Act, the result is that the society, due to the order of appointment of an interim liquidator, tends to loose, its functionality and working, as on account of passing of such an order, in view of Section 103(2) of the MCS Act, on issuance of the interim order, the officers of the society have to hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled; of all books, records and other documents pertaining to the business of the society and have no access to any of them. Thus, for all purposes, the entire functioning and working of the society, including its control is lost to the managing committee and vests in the liquidator under Section 103(5) of the MCS Act, as the said provisions do not make any distinction between the passing of an interim or final order for the provision to come into effect. This is further confirmed

by the provisions of Section 103(3) of the MCS Act, which merely says that when a final order is passed confirming the interim order, the officers of the society shall vacate their offices, and while the winding-up order remains in force, the general body of the society shall not exercise any powers. Thus for all purposes, the entire control of the society, including that of its assets, pass on to the liquidator once the order appointing an interim liquidator is issued under Section 102(1) of the MCS Act. This would clearly indicate the extremely penal nature of the provision, as the consequences, of passing of such an order of appointment of an interim liquidator, deprives the managing committee of the society of not only the functioning of the society for the furtherance of its aims and objects but also of any control over its assets, till the time the interim appointment is in force. Thus when the deprivation of rights is of such a nature, it is necessary that such deprivation can only be made, after following the principles of *audi alterm partem*. All that it contemplates is an opportunity of being heard.

21. In ***Rajesh Agarwal*** (supra) the Hon'ble Apex Court, while considering the applicability of the principle of *audi alterm partem*, in the context of directions as contained in the Reserve Bank

of India (Frauds Classification and Reporting by Commercial Banks and Select FI's) Directions 2016, issued by the Reserve Bank of India, and that it did not envisage any opportunity of being heard to the borrowers before classifying their accounts as fraudulent, considered the entire law, on the point till the date of its decision and held as under :

> *"**29.** We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.*
>
> ***31.** Chapter VIII of the Master Directions on Fraud provides detailed procedures to be followed by the banks before*

forming an opinion to proceed with a criminal complaint against the borrowers. Under the said chapter, the lender banks have to report a borrower to the CBI after classifying the borrower's account as fraudulent. However, the classification of the borrower's account does not simpliciter lead to reporting of criminal complaint with the enforcement authorities; it also entails penal consequences for the borrowers as laid down under Clause 8.12.

32. *<u>The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature</u>. This has also been acceded to by RBI and lender banks in their written submissions. <u>It is now a settled principle of law that the rule of audi alteram partem applies to administrative actions, apart from judicial and quasi-judicial functions</u>. <u>It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity</u>.*

57. *<u>The RBI and the lender banks have contended that the Master Directions on Frauds impliedly exclude the right to be heard</u>. The objective of the Master Directions on Frauds is to ensure timely detection and reporting of cases of fraud to alert other banks and initiate criminal proceedings. The Directions contemplate an opportunity of hearing to a third party who is involved in the commission of fraudulent activity, but do not explicitly provide for hearing to a borrower. <u>Thus, it is urged that hearing to the borrowers is excluded by necessary implication</u>.*

58. *The Master Directions on Frauds do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated. <u>The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to</u>*

a party whose rights and interests are likely to be affected by the orders that may be passed.

71. *Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.*

85. *In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the*

> *<u>failure to observe the rule of audi alteram partem</u>. In the present batch of appeals, this Court passed an ad-interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision. "*

Thus, when an entity is to be visited with penal consequences, what is least expected is an opportunity of filing a reply and of being heard, as based upon the reply and hearing it may be found that the case did not merit any further action at all, thereby resulting in dropping of the proceedings altogether, indicating the requirement of a pre-decisional hearing, as against a post decisional hearing, which would amount to putting the cart before the horse.

22. In fact, in ***Shantilal Lalchand Changede*** (supra), the learned Division Bench of this Court, while considering an order of appointment of an interim liquidator under Section 102(1) of the MCS Act, has held that the continuation of the society, ought to be ensured by the Registrar, in the following words:

> *"14. The co-operative housing societies in Mumbai are established by the persons so as to facilitate construction of residential accommodation for them. They are not established for liquidating. The members are interested in getting residential accommodation. With such a hope to get*

> *a home, since 1972 some members and managing committee members of the Petitioner No. 6 society were prosecuting the litigation so as to get back possession of the plot so that it can be developed. This basic object of the housing society has been overlooked by the respondent No. 1 while passing the order of liquidation. <u>Continuation of the functioning of the society either at the hands of the managing committee members or by appointing an Administrator on the said society so that the activity of the society can be continued should have been the approach of the Deputy Registrar. The Deputy Registrars are expected to see that the co-operative societies remain functional and are continued instead of liquidating them. Liquidation of the society is the last resort to be taken by the Registrar, namely, after having made all efforts and only if the society cannot be made a functional one or the society is so burdened with loans that is impossible for the society to repay then only the Registrar should take the extreme step of liquidating the society</u>. The approach of the Respondent No. 1 in the instant case is to the contrary, and it seems the Respondent No. 1 was in a hurry to appoint a liquidator for reasons which are not far to seek."*

in view of the order of appointment of an interim liquidator, was quashed and set aside.

23. In ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd.*** (supra) the learned Division Bench of this Court while considering the applicability of the principles of audi alterem partem, to an action under Section 102(1)(c) of the MCS Act, categorically held that the applicability of the

principles of natural justice cannot be dispensed with, in the following words :

> *“15. We will begin from beginning of the issue under consideration. Section 102(1) of the Act provides for issue of “interim order’ directing the Society to be wound up. There is no specific provision of opportunity of hearing to be granted to the Society before passing of the interim order under section 102(1) of the Act. Thereafter under section 102(2), there is a specific provision to hear the Society before passing of the final order, vacating or confirming the interim order. Section 104 provides for appeal against the final order only. There is no provision for appeal against any interim order passed by the Registrar under section 102(1) of the Act. In effect, it is clear that there is no specific provision of hearing before the interim order and there is no provision for appeal against the interim order. The Registrar is, however, obliged to communicate the interim order to the Society calling upon the Society to explain before the final order would be passed and such final order confirming the interim order is made appealable.*
>
> *16. It is, therefore, obvious that there is neither pre-decisional hearing before the interim order is passed nor such order is allowed to be appealed against. There is only post-interim decisional hearing before the final order is passed to vacate or confirm the interim order. Section 103 further empowers the Registrar to appoint a Liquidator of the Society, even after the interim order of winding up of the Society. It further mandates that after the interim order is passed the Society shall hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the Society is entitled and the whole record pertaining to the business of the Society and thereafter the Society will have no access to the same. Such is the drastic and draconian provision empowering the Registrar to issue an interim order to the Society to be wound up. There is no*

appeal also against the interim order. Can it be legitimately inferred that there is no implicit provision of hearing and compliance of the principles of natural justice before passing of such a very harsh and drastic action of ordering the winding up of the very running existing Society? The consequence of such an interim order to hand over to the Liquidator virtually the entire Society. Can it be construed that the Legislature intended to put such a draconian power to wind up or wipe out any Society in the hands of a Registrar without hearing before passing an interim order, the consequence and effect of which is not less injurious or harmful than a final order? We do not think so."

After considering the issue of pre-decisional hearing it held :

"17. ----------. We are of the opinion that the present case can be very safely taken away from the above illustrative contingencies. Ours is a case which practically violates Art. 300A of the Constitution of India by taking away the property of the Societies without lending an ear to them Such exercise of the power certainly cannot and do not exclude the hearing before the drastic action under section 102(1).

It is, therefore, crystal clear that before passing an interim order affecting the crystallised and vested rights, pre-decisional hearing would be necessary as such orders would have "immediate and grave prejudicial repercussions on the person concerned" and, therefore, it would be desirable to hear him before the order of suspension is passed. It would further reflect the fact situations where pre-decisional hearing could be straightway ruled out. The Supreme Court has very pertinently observed that there is "no tape measure" of the extent of natural justice and that it must vary from statute to statute and situation to situation and case to case. There is no straight-jacket formula to be applied. The ratio of the Liberty Oil Mills' case is that the pre-decisional hearing is *required if the decision would be of grave prejudicial nature affecting adversely the crystallised rights of a party. In other case, post-decisional hearing would suffice to satisfy the principles of natural justice. In fact, the ratio of this case fortifies our view that section 102(1) contemplates a pre-decisional hearing before interim order as the effect of such interim order is of immediate and grave prejudicial nature of virtually threatening extinction of the very Society which is legally functioning. Can we say that the interim order ex parte passed to order to wind up a Society is not truly disastrous and imminently harmful? In our opinion, any interim order to wind up an existing and running establishment or Undertaking would amount to sounding a death bell and nothing less. The entire business and the affairs of the Society on the door of which the Registrar would hang an interim order of winding up would come to standstill and complete halt as the consequent steps would be to hand over the Society including its property and the record to a Liquidator. All the business transactions and relations would be snapped by the customers and the depositors/creditors would queue up to knock the doors to demand their deposits and the debts. Every such order would take half of the life out of the Society and even if finally it succeeds in getting the interim order vacated, it would perhaps be too late for the Society to revive. The interim order would perhaps prove to be its "final terminator". Besides, if the Society can convince the Registrar finally why cannot it do the same exercise at the outset at the time of interim order? We are, therefore, of the considered opinion that unless there is a danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay such as war like conditions or devastating flood or outbreak of an epidemic, a pre-decisional hearing or show cause to the parties would be necessary as is implicit in the provisions of the Act. Under the Act, when the affairs of the Society are subject to full control and supervision of the Authorities and when the accounts are annually audited, it cannot be said that an*

> *<u>emergency situation abruptly arose to warrant an action of ex parte interim order to seize and freeze the Society overnight like a surprise raid. The Societies do not become sick overnight though under the constant vigil of the Authorities under the Act. We, therefore, are of the firm opinion that the principles of natural justice cannot be dispensed with for the action under section 102(1)(c) of the Act. The Registrar is duty bound to grant hearing to the concerned Society against which an interim order of winding up is proposed or contemplated</u>.*
>
> *18. We fail to understand how the Registrar can act "on his own" unless he puts the material gathered by him to concerned Society? There is always an otherwise in every matter. <u>All the facts situations prescribed in section 102(1)(c) from the very nature do warrant hearing the Society before issue of interim order to wind up. In all these eventualities the Registrar must act on very good and tangible material before passing the semi-fatal order of winding up of a Society. Under section 102(1)(a)(b) the Registrar has tangible material collected from the Society itself under an enquiry under section 83 or section 84 of the Act. The Society has a full fledge hearing in these enquiries and thereafter the Registrar is justified to act to order winding up by interim order. There is element of surprise or total unawareness of the imminent action likely to be taken by the Registrar. Similar material is expected in the circumstances mentioned under section 102(1)(c), a suo motu action by the Registrar to wind up the Society by an interim order</u>."*

24. A similar position fell for consideration in ***Dughganga Sahakari Dudh Utpadak Sangh Maryadit*** (supra) wherein the learned Division bench of this Court, considering the plea that there was no pre-decisional hearing provided for in Section 102(1) of the MCS Act,

has after considering ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd.*** (supra) agreed with what has been held therein, and has held that the principles of *audi alteram partem* have to be read in Section 102(1) of the MCS, having regard to the consequences that would befall a society against which such an order has been passed, in the following words :-

> *"24. Upon thorough consideration of the provisions contained in section 102 (1)(c) read in conjunction with section 103 of the Act, we are in respectful agreement with the views expressed in Chandrapur (supra). Though an order passed under sub-section (1) of section 102 is termed as an 'interim order', considering the consequences that would befall a society against which such an order has been passed having regard to the mandate of section 103 of the Act there can be no manner of doubt that principles of audi alteram partem has to be read into in the said provision because an order passed thereunder entails adverse civil consequences on the society in question."*

25. Thus, two learned Division Benches of this Court, in ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd.*** (supra) and ***Dughganga Sahakari Dudh Utpadak Sangh Maryadit*** (supra) have held that an opportunity of hearing has to be held to be available to a society against which an order under Section 102(1) of the MCS Act, is proposed to be passed for appointment of an interim liquidator.

26. Clause 6 of the circular dated 23/9/2013, being material is reproduced as under :

> "६) राज्यात सध्या कार्यरत असलेल्या परंतु अर्थक्षम नसलेल्या ज्या संस्थांचे नक्त मुल्य उणे आहे (Negative Net worth) व जोखीम संपत्तीचे भांडवलाशी प्रमाण (CRAR) ४% पेक्षा कमी आहे अशा प्राथमिक कृषी पतपुरवठा सहकारी संस्थांबाबत खालीलप्रमाणे धोरण राहिल :-
>
> अ) ज्या प्राथमिक कृषी पतपुरवठा सहकारी संस्थांचे नजीकच्या संस्थेत विलीनीकरण करणे शक्य आहे अशा प्राथमिक कृषी पतपुरवठा सहकारी संस्थांचे नजीकच्या संस्थेत विलीनीकरण करण्यात यावे.
>
> ब) ज्या संस्थांचे आर्थिक सक्षमीकरण शक्य आहे अशा संस्थांनी पुढील तीन वर्षाचा (सन २०१४-१५ ते सन २०१६-१७) आर्थिक सक्षमीकरणाचा कृती कार्यक्रम तयार करुन संबंधित निबंधकांना दिनांक ३१/०३/२०१४ पर्यंत सादर करावा.
>
> ज्या संस्था वरिलप्रमाणे दिनांक ३१/०३/२०१४ पर्यंत कृती कार्यक्रम तयार करणार नाहीत, पुढील तीन वर्षात कृती कार्यक्रमाची अंमलबजावणी करणार नाहीत व कृती कार्यक्रमाची अंमलबजावणी केल्यानंतरही पुढील तीन वर्षात आर्थिकदृष्टया सक्षम होणार नाहीत अशा संस्थांचे नजीकच्या सक्षम प्राथमीक कृषी पतपुरवठा सहकारी संस्थेमध्ये विलीनीकरण करणे अथवा अशा संस्था अवसायनात घेणेबाबत संबंधीत निबंधकामार्फत कारवाई करण्यात यावी."

The issuance of the circular dated 23/9/2013, and specifically clause 6 therein, in fact supports the contention that all efforts are first necessary to be exhausted such as amalgamation and improving the financial health of the society, before passing an order of liquidation, which is in consonance with what has been held by the learned Division Bench in ***Shantilal Lalchand Changede*** (supra) as the formation of a Society, is a process which takes a lot of effort and time on the part of its promotors, which once having been registered then takes further efforts, time and energy to continue on the path of fulfilling its aims and objects. The path cannot always be smooth and there may be instances when the functioning would be disturbed nay delayed for any number of reasons, however that by itself cannot lead to a presumption that the society has become incapable of functioning and has lost its objectives. It is such a situation which calls for a helping hand to be given to such society, which the circulars indicate, in order to ensure its revival, rather than a premature death, leading to all the efforts in creating, establishing, nurturing and building the society at naught. Destruction is easy, for it takes no time and little effort, however the joy of creation, nurturing and building something, inspite of its trials and tribulations, knows no bounds. The principle of *audi alteram partem*, in such circumstances, leads a helping hand to survival as opposed to destruction and is a principle which has been universally applied for ensuring survival. The applicability of the principles of natural justice at the stage of Section 102(1) of the MCS Act, is therefore supported by Clause 6 of the circular dated 23/09/2013, for without such opportunity of hearing, the intention to ensure the survival of the society, by either considering its amalgamation or financial bolstering as contemplated by clause 6, cannot be achieved.

27. The principles of statutory interpretation would indicate that where the literal meaning of a provision would lead to an incongruity, it must be given a purposive interpretation. Placing a literal meaning over the language of Section 102(1) of the MCS Act, would lead to a situation, where the principles of natural justice, which have a universal applicability, would stand ousted, which could not have been the intention of the legislature while enacting Section 102(1) of the MCS Act and therefore in order to accommodate the principle of *audi alteram partem*, the provision will have to be purposefully read to mean that even while exercising the power under Section 102(1) of the MCS Act, the principles of *audi alteram partem* have to be adhered to.

28. Though reliance has been placed by learned AGP on ***Chandrakant Jagannath Ghodke*** (supra) and on ***Gadchiroli Zilla Sahakari Krushi and Gramin Bahu-Udeshiya Development Bank Ltd.*** (supra) both of which hold that the provisions of Section 102(1) of the MCS Act, do not contemplate any pre-decisional hearing before the passing of an order for appointment of an interim liquidator, it is however necessary to note that even in these decisions, it has not been held that the principles of natural justice are not applicable. What has been held in ***Chandrakant Jagannath Ghodke*** (supra) is that the principles of natural justice have been recognised by enacting that no final order of winding up would be passed by the Registrar without affording an opportunity to the society of being heard (see para 26). ***Chandrakant Jagannath Ghodke*** (supra) has been followed in ***Gadchiroli Zilla Sahakari Krushi and Gramin Bahu-Udeshiya Development Bank Limited*** (supra) reiterating the same position. What is necessary to note is that the issuance of the circular dated 23/09/2013, by the State and the subsequent circulars as stated above, have indicated the stand of the State, to ensure survival of the societies by granting them an opportunity, to either amalgamate or to revive by standing on their own legs by infusion of

financial inputs. This stand changes the contextual background in which Section 102(1) of the MCS Act, has to be viewed and applied, for when the State itself intends the survival of the societies, the subsequent judgments in ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd.*** and ***Dughganga Sahakari Dudh Utpadak Sangh Maryadit*** (supra) merely recognise this by holding that the principles of natural justice are available to the Societies even at the stage of Section 102(1) of the MCS Act before the order of appointment of interim liquidator is made. The judgment of the hon'ble Apex Court in ***Rajesh Agarwal*** (supra) in fact widens the scope and applicability of the principles of natural justice and therefore must be held to hold the field and sway over everything. The reliance, therefore, by the learned Assistant Government Pleader on ***Pranay Sethi*** (supra) would not be justified in view of the change in the scenario, on account of the subsequent circulars and specifically the one dated 23/09/2013.

29. On the facts of the matter also it has been brought on record that consequent to the interim order dated 21/02/2023 passed in Writ Petition No.1156/2023 and other connected matters, the proceedings were adjourned and kept in abeyance by the

Assistant Registrar, awaiting the final decision. When the writ petitions were disposed off on 03/03/2023, it appears that in some cases, no notices were issued which was the need, as no date was fixed and straight away the order appointing an interim liquidator came to be passed and in some cases though a date was given no opportunity of hearing was given. The very fact that before passing the order appointing an interim liquidator, show cause notices were issued to the societies on 14/02/2023 and other dates, calling them to show cause as to why the order of appointment of an interim liquidator ought not to be made, itself indicates that even the Assistant Registrar had felt the need to hear the societies before passing such an order in spite of the material which was available with him. However later on what prevailed upon him, to deny this opportunity to the petitioner/societies, remains unexplained.

30. In the instant matters also, if the petitioners are able to point out material to demonstrate the good financial health of the society, that may lead to dropping of the proceedings altogether, as that is the only ground on which the appointment of interim liquidator is made. To say that such an opportunity, ought not to be granted and straight away, the interim liquidator is to be appointed,

would in my considered opinion not sub-serve the rule of law, but on the contrary would lead to a situation where the provision would become capable of exploitation, in the hands of officials with unscrupulous intentions, which can never be said to have been the intention of the framers of the provisions as such an action would be an anathema to the rule of law. When the rule of *audi alteram partem*, is held to be applicable even to directions issued by the Reserve Bank of India as held in ***Rajesh Agarwal*** (supra) there is no reason why it cannot be held to be inbuilt in Section 102(1) of the MCS Act, which provides for penal consequences for the societies, without even hearing it. I, therefore hold that the rule of *audi alteram partem*, is inbuilt in the provisions of Section 102(1) of the MCS Act, and before passing any order for the appointment of an interim liquidator, it would be necessary for the Assistant Registrar, not only to issue a notice to the society, but also grant an opportunity of being heard to such society, and pass a reasoned order, only after taking into consideration the reply and supporting documents which may have been placed before him by the society in pursuance to such notice.

31. Section 102(2) of the MCS Act, contemplates hearing to be given to the society as well as to its creditors. Since it has been held that the principle of *audi alterim partem* is applicable to the society at the stage of passing of an order for appointment of an interim liquidator under Section 102(1) of the MCS Act, the position of the creditor, whose monies have been borrowed by the Society and in turn lent to its members, would be of an entity more interested in ensuring the well being of the society in order to secure its monies which are also public monies, in view of which the same principle would equally be applicable to the creditors of the Society, as it would be in its interest to see that the society does not go into liquidation.

32. I, have restricted the consideration in this judgment to the challenge in respect of the applicability of the principle of *audi alteram partem* to proceedings under Section 102(1) of the MCS Act, as the question whether the requirements of Section 102 (1) of the MCS Act, were satisfied or not would be a question which would be required to be addressed on the basis on material which was available with the respondent no.2, which has not been placed before me by the respondents and so also material which may be

placed by the petitioners on record of the respondent no.2, in light of what has been held that the petitioners are required to be given an opportunity of being heard. Similarly the question whether there was a need for amalgamation or financial enforcement in terms of clause 6 of the circular dated 23/09/2013 is also a question which needs to be decided by the Assistant Registrar, on the basis of material as would be available before him and has therefore not been addressed.

33. However, considering the fact that the order appointing an interim liquidator by the respondent no.2, dated 15/03/2023 and other similar orders are under challenge before the Respondent no.1/ Divisional Joint Registrar in revision, it would be inappropriate for me to set-aside the same, as that would be the domain of the respondent no.1. I, therefore while partly allowing these petitions, set aside the impugned order dated 24/03/2023, passed by the respondent no.1, refusing to grant stay to the order appointing an interim liquidator and similar orders passed in all these writ petitions and direct that order dated 15/03/2023, passed by the respondent no.2, shall stand stayed till the decision of the revision

application filed by the petitioners, which shall be decided in light of what has been said in this judgment.

34. The writ petitions are partly allowed in the aforesaid terms. Considering the circumstances, there shall be no order as to costs.

35. All the parties shall appear before the Divisional Joint Registrar in the respective writ petitions filed by them, on 04/05/2023 without any notices required to be issued to the petitioners/respondents and place copy of this order before him, who, after hearing the parties, shall decide the respective revisions in light of what has been stated in these petitions.

(AVINASH G. GHAROTE, J.)

Rvjalit/Wadkar