



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

Writ Petition No.3527 of 2023

1. **Shri Nana S/o Jairamji Panchbuddhe,**
Aged 70 years,
Occupation : Agriculturist,
R/o Sahakar Nagar, Bhandara,
Tahsil and District Bhandara.

2. **Shri Dhananjay S/o Madhavrao Dalal,**
Aged 65 years,
Occupation : Agriculturist,
R/o Main Road, Bhandara,
Tahsil and District Bhandara.

3. **Shri Uddhav S/o Urkadaji Dorle,**
Aged 70 years,
Occupation : Agriculturist,
R/o Rajiv Gandhi Square,
Bhandara,
Tahsil and District Bhandara.

4. **Shri Pandurang S/o Ramji Khatik,**
Aged 75 years,
Occupation : Agriculturist,
R/o Behind Jindal Petrol Pump,
Collector Chowk, Bhandara,
Tahsil and District Bhandara.

5. **Shri Mahendra S/o Husanji Gadkari,**
Aged 72 years,
Occupation : Agriculturst,
R/o Bada Bazar, Bhandara,
Tahsil and District Bhandara.

6. Jagdish S/o Kanahaji Nimbarte,

Aged 60 years,
Occupation : Agriculturst,
R/o Gurjar Chowk, Bhandara,
Tahsil and District Bhandara.

7. Shri Hemant S/o Ramdas Mahakalkar,

Aged 55 years,
Occupation : Agriculturist,
R/o Shastri Nagar, Bhandara,
Tahsil and District Bhandara.

... **Petitioners**

Versus

1. The State of Maharashtra,

through its Secretary of Co-operation
Department,
Mantralaya, Mumbai-32.

2. The Divisional Joint Registrar,

Co-operative Societies,
Nagpur, Sitabuldi, Nagpur,
Tahsil and District Nagpur.

3. Shri Vilas Deshpande,

Aged Adult,
Occupation : Service and Administrator
of the Bhandara Urban Co-operative Bank Ltd.,
Bhandara, Office of Assistant Registrar,
Co-operative Societies, Tahsil Tumsar,
District Bhandara.

... **Respondents**

Shri A.M. Ghare, Counsel for Petitioners.

Shri A.A. Madiwale, Assistant Government Pleader for Respondent Nos.1 and 2.

Shri N.L. Jaiswal, Counsel for Respondent No.3.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 4th SEPTEMBER, 2023

ORAL JUDGMENT (PER A.S. CHANDURKAR, J.) :

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in the present writ petition is to the order dated 1-6-2023 that has been passed by the Divisional Joint Registrar, Co-operative Societies, Nagpur- respondent No.2 in exercise of power conferred by Section 77A(b-1) of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Act of 1960'). By the said order, by dispensing with publishing of notice on the notice board so as to invite objections and suggestions to the order proposed to be passed, the Divisional Joint Registrar has directed appointment of an Administrator.

3. *Inter alia*, Shri A.M. Ghare, learned counsel for the petitioners, submits that as per the second proviso to Section 77A of the Act of 1960, it is only when the Registrar is satisfied that it is not necessary to publish a notice on the notice board for inviting objections and suggestions with regard to the order proposed to be passed that the Registrar can take recourse to the same. In the impugned order, it is

submitted that such satisfaction has not been indicated nor recorded and hence the said order is unsustainable in the light of the judgment in Writ Petition No.4442 of 2017 (*Swapnil s/o Sunil Likhar Versus The District Deputy Registrar, Co-operative Societies, Nagpur and others*) decided on 17-7-2018. Since there is no compliance with the mandatory statutory requirement, the petitioner has invoked the extraordinary jurisdiction of this Court notwithstanding the fact that the remedy of filing an appeal under Section 152 of the Act of 1960 is available.

4. In reply, Shri A.A. Madiwale, learned counsel appearing for the respondent Nos.1 and 2, as well as Shri N.L. Jaiswal, learned counsel appearing for the Administrator- respondent No.3, sought to urge that since the statutory remedy was available to the petitioners to challenge the impugned order, the writ petition was not liable to be entertained. Without prejudice, it was submitted that considering the tenor of the impugned order, it was clear that the requirement prescribed by Section 77A of the Act of 1960 had been duly satisfied. Since the Managing Committee has ceased to function as only seven of the nineteen members of the Managing Committee were available and as there was a vacuum created in the Management, the Divisional Joint Registrar was justified in invoking such power. The reasons stated in the order were sufficient to uphold the exercise of such power and there was no reason to interfere in writ jurisdiction at the

behest of the petitioners. In addition, it was submitted that the Bhandara Urban Co-operative Bank Ltd. was also a necessary party.

5. Having heard the learned counsel for the parties and having perused the impugned order, it can be seen that the Divisional Joint Registrar, except for stating the contingency provided under Section 77A(1)(b-1) of the Act of 1960, has proceeded to appoint the Administrator. It is to be noted that the challenge raised by the petitioners is based on the failure on the part of the Divisional Joint Registrar to comply with the first proviso to Section 77A which requires the Registrar to publish a notice on the notice board at the Head Office of the Society and invite objections and suggestions with regard to the order proposed to be passed. Though under the second proviso to Section 77A it is open for the Registrar not to publish such notice, the liberty to dispense with such publication is only when the Registrar is satisfied that immediate action is required or that it is not necessary or practical to publish such notice. It goes without saying that when recourse is taken by the Registrar to the second proviso and publishing of the notice as contemplated by the first proviso is sought to be dispensed with, the satisfaction of the Registrar ought to be reflected in the order passed under Section 77A of the Act of 1960. We find that such satisfaction of the Registrar is absent in the impugned order. Except for stating that immediate action is required to be taken, the Divisional Joint Registrar has not recorded his satisfaction that if such immediate action is not taken, the same would

not be in the interest of the Bank. Merely quoting the provisions of Section 77A of the Act of 1960 in the order appointing the Administrator would not satisfy the requirement that is contemplated.

6. The learned Single Judge in *Swapnil s/o Sunil Likhar* (supra) has considered a similar issue and observed in Paragraphs 8 and 9 as under :

“8. A bare perusal of the impugned order would show that the reasons stated for dispensing with the notice are too stereotyped to be called reasons contemplated in law. This could be seen from use of generalist expression connoted by such words as impracticable, unnecessary and unnecessarily time consuming. The order disqualifying the members was passed under Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 (in short, “Rules 1961”) on 9.5.2017 and the order impugned in this petition passed under Section 77-A was rendered on 15.5.2017 out of which, admittedly the intervening four days were holidays. Therefore, it was necessary for the Deputy Registrar to specify the events or emergency or the urgent situation which required taking of immediate action or the difficulty faced by him in publishing notice by displaying it on the notice board of the Federation as required under first proviso to the aforesaid provision of law. But, the Deputy Registrar has not done it and instead used some rhetorical expression dotted with stereotypes to justify his decision to dispense with the notice. Such a decision rendered in the absence of necessary material supporting it has to be termed as arbitrary and contrary to the said provisions of law.”

“9. After all requirement of publication of a notice under first proviso goes to subserve the cause of rule of law by which every authority exercising administrative or judicial or quasi

judicial power is governed. It also fulfills the requirement of principles of natural justice by enabling other members of the society to express their willingness or otherwise to be members of the executive committee so as to fill up the vacancy. Therefore, absent a situation of extreme urgency and as clarified in the second proviso, the power to dispense with notice must not be exercised. The scheme of the provision of Section 77-A is such that this power has to be exercised sparingly and only in exceptional circumstances, which does not seem to be the case here, as seen from the reasons stated in the impugned order, for exercise of such a power by the Registrar.”

7. We find that the aforesaid observations squarely apply to the case in hand and we find no reason for not following the same. On this short ground that the impugned order does not record the satisfaction of the Divisional Joint Registrar which warranted taking of immediate action, the impugned order is liable to be set aside.

8. Though it may be stated that the learned counsel for the parties sought to challenge/support the impugned order on the merits of the same, we do not find it necessary to go into those aspects since the mandatory compliance with the second proviso to Section 77A of the Act of 1960 is missing. Since we have found that the Divisional Joint Registrar failed to comply with the mandatory requirement of recording his satisfaction for dispensing with issuance of notice, we have entertained the writ petition since no factual aspects are required to be gone into.

9. In view of aforesaid, the impugned order dated 1-6-2023 is quashed and set aside. It is clarified that this Court has not examined the reasons for appointment of the Administrator as was done by the impugned order. The same has been set aside for want of indicating satisfaction by the Divisional Joint Registrar. It would be open for the respondent No.2- Divisional Joint Registrar to take further steps in exercise of power under Section 77A of the Act of 1960 if the situation warrants such action.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)