

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8465 OF 2024

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| 1. Nahidtai Mujahid Sheikh |] |
| 2. Madhubalatai Rameshsheth Bhore |] |
| 3. Kokila Madan Wagh |] |
| 4. Pushpalatatai Vijayrao Udawant |] |
| 5. Shobhatai Pandurang Bodke |] |
| 6. Shashikalatai Murlidhar Bhavar |] |
| 7. Sarojtai Raosaheb Dhumne |] |
| 8. Muktabai Bhagwani Rayte |] |
| 9. Premlatatai Arun Junnare |] |
| 10. Shobhatai Harish Sonawane |] |
| 11. Sampada Nivrutti Savkar |] |
| 12. Chandar Parsharam Padavi |] |
| Petitioner No.1 – Chairman and |] |
| Petitioner Nos.2 to 12 – Directors of |] |
| Nashik Zilla Mahila Sahakari Bank Ltd. |] .. Petitioners |

Versus

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|---|-------------------------|
| 1. Nashik Zilla Mahila Sahakari Bank Ltd., Nashik |] |
| 2. The Commissioner and Registrar of |] |
| Co-operative Societies, Pune |] |
| 3. Archana Saindhane, Assistant Registrar, |] |
| Co-operative Societies, Igatpuri, Nashik |] |
| 4. District Deputy Registrar, |] |
| Co-operative Societies, Nashik |] |
| 5. State of Maharashtra, |] |
| Through Department of Co-operation |] .. Respondents |

Mr. Pramod N. Joshi, Advocate for the Petitioners.

Mr. Abhishek Patil Bankar with Mr. Nilesh Khaakikar, Advocates for Respondent Nos.1 and 3.

Mr. N.C. Walimbe, Additional Government Pleader with Mr. Aditya R. Deolekar, Assistant Government Pleader for Respondent Nos.2, 4 and 5.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 9TH OCTOBER 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

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

2. The petitioners who are elected members of the Managing Committee of the Nashik Zilla Mahila Sahakari Bank Limited, Nashik – respondent no.1 have challenged the order dated 31st May 2024 passed by the Commissioner and Registrar of Co-operative Societies - 2nd respondent under the provisions of Section 77(A) of the Maharashtra Co-operative Societies Act, 1960 (*for short, “Act of 1960”*) by virtue of which an Authorized Officer has been appointed for a period of six months. The principal ground of challenge as raised is that without complying with the mandatory requirements of Section 77(A) of the Act of 1960 thereby failing to record any satisfaction for dispensing with issuance of notice to the members of the Managing Committee, the Authorized Officer has been appointed.

3. Facts in brief are that the Managing Committee of the respondent no.1-Bank comprises of 15 elected members. There are 8 nominated members on the Managing Committee. The tenure of the Managing Committee is for a period of five years from 2023 to 2028. According to the petitioners, 8 members of the Managing Committee tendered their

resignations on 12th April 2024. In the meeting of the Managing Committee held on 25th April 2024, the resignations of only 2 Managing Committee members were accepted. The resignations of the other 6 Managing Committee members were not accepted by assigning reasons. Since the petitioners apprehended that an Administrator was likely to be appointed in view of such resignations, they made a representation to the Commissioner of Co-operation on 29th May 2024. Notwithstanding aforesaid, the Authorized Officer came to be appointed on 31st May 2024 by the Additional Registrar (Administration), Co-operative Societies, M.S., Pune. Being aggrieved, the petitioners have challenged the said order.

4. Mr. Pramod Joshi, the learned counsel for the petitioners inter alia submitted that the impugned order appointing the Authorized Officer has been passed without complying with the provisions of Section 77(A)(1) and the provisos thereto. Under the said provisions, before passing an order under Section 77A(1) of the Act of 1960, the Registrar is required to publish a notice on the Notice Board so as to invite objections and suggestions on the order proposed to be passed and thereafter consider the objections and suggestions received within the specified period. The requirement of publishing such notice could be dispensed with in a case where the Registrar was satisfied that immediate action was required to be taken or that it was not reasonably practical to publish such notice. He

submitted that in the present case, no such notice was published inviting objections and suggestions to the proposed order. Hence, it was necessary for the Registrar to indicate the manner in which satisfaction was recorded that immediate action was required or that it was reasonably not practical to publish such notice. There was no material on record to justify the dispensing with publication of such notice. Placing reliance on the decisions in *B.S. Potey Vs. B.A. Joshi, District Deputy Registrar, (1982) 84 BOMLR 363*; *Swapnil s/o. Sunil Likhar Vs. The District Deputy Registrar, Co-operative Societies, Nagpur and Ors. (Writ Petition No.4442 of 2017, decided on 17th July 2018 at Nagpur Bench)*; *Hariram s/o. Atmaram Warkhade and Ors. Vs. State of Maharashtra, through Department of Co-operation and Ors. (Writ Petition No.4084 of 2018, decided on 1st August 2018 at Nagpur Bench)*; and *Vinayak Ukharam Chavhan Vs. Divisional Joint Registrar, Co-operative Societies, Aurangabad and Ors. (Writ Petition No.521 of 2023, decided on 3rd August 2023 at Aurangabad Bench)* it was submitted that considering the settled legal position it was clear that in absence of such satisfaction being recorded, the exercise of power under the second proviso of Section 77(A)(1) could not have been exercised. Hence, it was prayed that the impugned order be set aside.

5. Mr. N.C. Walimbe, learned Additional Government Pleader for respondent nos.2, 4 and 5 at the outset raised an objection to the

tenability of the writ petition on the ground that an alternate and efficacious remedy of appeal under Section 152(1) of the Act of 1960 was available. Without exhausting that remedy, the petitioners had approached this Court. Without prejudice to the aforesaid, it was submitted that in view of the vacuum created in the Managing Committee of the respondent no.1-Bank in view of resignations of 8 members out of 15, it was clear that majority of the members had resigned. Since deposits of about 33,568 members to the extent of Rs.123 crores were with the Bank, it was found necessary to act under the second proviso to Section 77(A)(1) of the Act of 1960. Hence, without issuing any notice as required under the first proviso of the said provision, the Authorized Officer came to be appointed. Since the Registrar was empowered to dispense with issuance of such notice, the said power has been exercised in the interest of depositors. There was no case made out to entertain the writ petition and exercise discretion in favour of the petitioners.

. Mr. Abhishek Patil Bankar, learned counsel appearing for respondent nos.1 and 3 supported the stand taken by the learned Additional Government Pleader.

6. We have heard the learned counsel for the parties at length and we have also perused the documents on record. The impugned order dated 31st May 2024 passed by the Additional Registrar (Administration), Co-

operative Societies, M.S., Pune under the provisions of Section 77(A) of the Act of 1960 records that out of 15 elected Directors of the Managing Committee, 8 Directors had resigned and the strength was reduced to 7. There was absence of quorum for conducting further proceedings. After referring to the provisions of Section 77(A)(1) of the Act of 1960, the order appointing the Authorized Officer came to be issued. The provisions of Section 77(A)(1) empowers the Registrar to either suo-motu or on an application of any officer or member of the society appoint a committee to manage the affairs of the society till a new committee enters office. By the first proviso, it is necessary for the Registrar to publish a notice on the Notice Board inviting objections and suggestions with respect to the proposed order within a period specified in the notice and thereafter consider the objections and suggestions received. The requirement of publishing such notice can be dispensed with subject to the Registrar being satisfied that immediate action was required to be taken or that it was not reasonably practical to publish such notice. It goes without saying that in a case where the Registrar deems that it is not necessary to publish such notice, the order passed under Section 77(A)(1) of the Act of 1960 ought to reflect due application of mind by indicating the reason as to why the stage of publication of such notice has been dispensed with. In the impugned order, there is no such satisfaction recorded that the Additional Registrar (Administration), Co-operative Societies, M.S., Pune thought it

necessary to dispense with such requirement. The decisions in *B.S. Potey (supra)*, *Swapnil s/o. Sunil Likhar (supra)*, *Hariram s/o. Atmaram Warkhade and Ors. (supra)* and *Vinayak Ukharam Chavhan (supra)* have considered this aspect and held that the order passed under Section 77(A) (1) ought to disclose due application of mind to this requirement when the same is dispensed with.

7. The learned Additional Government Pleader by referring to the affidavit-in-reply sought to justify the appointment of the Authorized Officer without publishing the notice and inviting objections under Section 77(A)(1) first proviso of the Act of 1960. It is well settled that the reasons that are missing in the impugned order cannot be supplied by way of an affidavit in the proceedings raising a challenge to that order. For this reason, it would not be permissible for the learned Additional Government Pleader to support the impugned order by referring to extraneous material that does not form part of the order.

8. Since we find that the Additional Registrar (Administration), Co-operative Societies, M.S., Pune failed to comply with the mandatory statutory provisions as well as the law laid down by this Court and as there are no disputed questions of fact arising for consideration, the submission that an alternate remedy is available to the petitioners cannot be a reason not to entertain the writ petition. We are satisfied that a case

has been made out for this Court to exercise discretion under Article 226 of the Constitution of India since the irregularity going to the root of the matter is evident on record.

9. Hence, for aforesaid reasons, the writ petition is allowed in terms of prayer clause (c), which reads as under :-

“(c) This Hon’ble Court, in the interest of justice, be pleased to issue an appropriate writ / order quashing and setting aside the order dated 31.05.2024 passed by the respondent no.2 to be illegal, void and is without jurisdiction and is therefore liable to be quashed and set aside.”

10. It would however be open for the respondent no.2 to exercise jurisdiction under Section 77(A) of the Act of 1960 in accordance with law if the situation so warrants. It is clarified that the reliefs sought in prayer clauses (a) and (b) of the writ petition are kept open for being urged in an appropriate case.

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

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]