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

WRIT PETITION NO. 427 OF 2024

Krantijyoti Savitribai Phule Nidhi Limited., Having its registered office at Shop No. G3, Meenakshi Plaza, Opp. ST Stand, Buldhana, Maharashtra – 443 001.
Through its Director,
Shri Yogesh Punjaji Gawali,
Aged about 28 years,
R/o. Nandrakoli, Buldhana,
Maharashtra – 443 001.

.... **PETITIONER**

// **VERSUS** //

1) **The Union of India**,
Through its Secretary,
Ministry of Corporate Affairs,
'A' Wing, 5th floor, Shastri Bhawan,
New Delhi – 110 001.

2) **Joint Secretary**,
Ministry of Corporate Affairs,
'A' Wing, 5th floor, Shastri Bhawan,
New Delhi – 110 001.

3) **The Assistant Director**,
Ministry of Corporate Affairs,
'A' Wing, 5th floor, Shastri Bhawan,
New Delhi – 110 001.

4) **The Deputy Director**,
Ministry of Corporate Affairs,
'Room no. 525, A' Wing, Shastri Bhawan,
New Delhi – 110 001.

5) **The Regional Director (Western Region)**,
Ministry of Corporate Affairs,
100, Everest, 5th floor,
Marine Drive, Mumbai-400 002.

6) **The Registrar of Companies**,
Mumbai 100, Everest, Marine
Drive, Mumbai – 400 002.

7) **The Director**, **CRC Centre,**
Ministry of Corporate Affairs,
Government of India,
Manesar, Gurugram. .... **RESPONDENTS**

Mr. Kapil Hirani, Advocate for the Petitioner.
Mr. N. S. Deshpande, Deputy Solicitor General of India for the Respondents.

CORAM : SMT. M.S. JAWALKAR, AND
SHRI M.W. CHANDWANI, JJ.

DATE : 11th JUNE, 2025.

ORAL JUDGMENT : (Per : Smt. M.S. Jawalkar, J.)

1. Heard learned Counsel for the Petitioner and learned Deputy Solicitor General of India for all Respondents.

2. **RULE**. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

3. By this Petition, the Petitioner is challenging a Communication dated 23.10.2023, rejecting the NDH-4 Form issued by the Assistant Director, Ministry of Corporate Affairs/Respondent No.3.

4. The contention of the Petitioner is that the Petitioner is a “Nidhi Company” incorporated under the provisions of Section 406 of the Companies Act, 2013. The said company is incorporated vide Certificate of Incorporation on 15.07.2019 (Annexure-A, Page-43). After submitting statutory Form 20A, the Petitioner was entitled under law to commence business and accordingly the Petitioner commenced its business. At the relevant time, the Nidhi Rules, 2014 (for short the “Nidhi Rules”) were in existence and applicable to the company. By way of Amendment in the year 2019, the Nidhi Rules were amended and Sub-rule 3(A) is introduced. As per this provision, the Nidhi Company has required to submit Form NDH-4, which is a declaration wherein the Central Government after approval of Form NDH-4, declares/ notifies the company as “Nidhi Company” in the Official Gazette.

5. There was a second amendment in year 2022 in the Nidhi Rules. Sub-rule 2 of Rule 5 of the Nidhi Rules reads as under :

> *“**5. Requirements for minimum number of members, net owned fund etc.-** (1) ……….*
>
> *(2) Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year,*

> *Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.*

In second line of Para 6, the word Petition is corrected as "Petitioner" as per the order dated 23.06.2025.

6. As such, it is mandatory to file return in Form NDH-1. Our attention is drawn by the learned Counsel for the **Petitioner** for Annexure-E (page-107), which is an acknowledgment of submission of Form NDH-1, wherein type of fee is mentioned as 'Normal'. No late fee is imposed. Our attention is also drawn to the Annexure-F (page-112), a Circular No.12/2020, by which time is extended to submit documents till 30.09.2020 in view of outbreak of Covid-19 Pandemic. The said period was further extended upto 31.12.2020 vide Circular No.30/2020. The Petitioner has submitted NDH-1 Form on 22.12.2020 (page-107), even there also no late fee imposed as the same was filed within extended period.

7. In fact, there is no specific notice to show cause is issued to the Petitioner pointing out any compliance remained to be complied. There was only one communication by way of e-mail dated 16.04.2021, which appears to be a common notice issued to

all concerned. There is no specific notice to the Petitioner company for any specific compliance. There is no other communication placed on record to show that there is any individual or separate notice issued to the Petitioner company. However, suddenly by the Communication dated 23.10.2023 (Annexure-J), it was intimated that the Form NDH-4 is rejected for the deficiencies as mentioned in the said communication.

8. First ground for rejection appears to be that company was incorporated on 15.07.2019 and the company has filed a return of statutory compliance in Form NDH-1 after its due date, thus violating Rule 5(2) of the Nidhi Rules. However, it appears that there is no consideration for extension of period in view of outbreak of Covid-19 Pandemic. The time was extended till 31.12.2020 and the Form is submitted on 22.12.2020. Thus, ground No.1 for rejection does not survive.

9. The second ground is that the company has failed to file half yearly return – Form NDH-3 for the half year ending on 30.09.2022 and 31.03.2023, thus violating Rule 21 of the Nidhi Rules. It is to be noted here that alleged notice was issued on 16.04.2021 by way of e-mail. As such, this subsequent events of

non filing of half yearly return for the year ending on 30.09.2022 and 31.03.2023 cannot be the reason for rejecting the Form NDH-4. However, it appears that no consideration is given by the Authority to this aspect and passed the erroneous order. The purpose of notice is to call explanation from the concerned on contentions of the authority or person. If there is no specific notice issued, the ground of rejection would survive.

10. So far as the third ground for rejecting the Form NDH-4 is concerned, it is alleged that the company has not furnished the Auditor Certificate with Form AOC-4 for financial year 2021-22, thereby violated Rule 22 of the Nidhi Rules. Learned Counsel for the Petitioner submitted that in fact, the Auditor Certificate was obtained but it is inadvertently not annexed along with the Form AOC-4. In absence of any specific notice for compliance, the order of rejection of Form NDH-4 is in violation of principle of natural justice as well as contrary to the provisions of Nidhi Rules. In fact, there is no provision or guidelines in the Nidhi Rules under what circumstances the NDH-4 Form can be rejected.

11. If the Nidhi Rules are perused specifically Proviso of Rule 3(A), rejection of Form NDH-4 has wide and wild repercussion on the company. The Proviso of Rule 3(A) reads as under :

> *"Provided also that no company, which has not complied with the requirements of this rule, or fails to comply with such requirement on or after the commencement of the Nidhi (Amendment) Rules, 2022, or in case the application submitted by the company in Form NDH-4 is or has been rejected by the Central Government, shall raise any deposit from its members or provide any loan to its members under the provisions of these rules from the date of such non-compliance, or from the date of the commencement of the above said rules, or the date of rejection of the application in Form NDH-4, whichever is later:"*

12. If Rule 3(A) of the Nidhi Rules is perused, in view of the proviso, there is no remedy appears to be available to the company like the petitioner after rejection of NDH-4 Form. Moreover, the company cannot function after rejection. It is also submitted that on rejection, the company could not submit any form/report online.

13. Even on perusal of Rule 23, which contemplates the opportunity of being heard shall be given to the concerned Nidhi Company by the Central Government before appointing Special

Officer in pursuance to the enforcement of compliance of the Rules. At any rate, the opportunity of explanation is required to be given to the Petitioner. On the face of order, it appears that there is no consideration to the extended period due to outbreak of Covid-19 Pandemic. Though, learned Counsel for the Respondents Deputy Solicitor General of India argued that the Authority is empowered to reject the Form NDH-4, there is no illegality in the order and even subsequent events can be taken into account for rejection of such NDH-4 Form. In our considered opinion, before taking such drastic steps of rejection, an opportunity of explanation as well as if there is any deficiency, opportunity for compliance is required to be given to the Petitioner. There is provision of imposing penalty for non-compliance, however, recourse of rejection of NDH-4 Form is unwarranted specifically when there is no show cause notice as per the provisions of law. Accordingly, the impugned communication is liable to be set aside. Hence, we pass the following order :

(i) The Writ Petition is allowed.

(ii) The impugned Communication dated 23.10.2023 (Annexure J) issued by Respondent No.3 – Assistant

Director, Ministry of Corporate Affairs is hereby quashed and set aside.

(iii) So far as ground Nos.1 and 2 in the impugned communication does not survive and rejection on the said grounds of the NDH-4 Form is set aside.

(iv) So far as ground No.3 is concerned, the Authority may reconsider the same in view of subsequent submission of Auditor Report along with return AOC-4 Form within a period of four weeks.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(M.W. CHANDWANI, J.) **(M.S. JAWALKAR, J.)**

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