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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 15581/2022 & CM APPL. 48476/2022

JAN UTKARSH NIDHI LIMITED .....Petitioner

Through: Mr. Lalit Chauhan, Mr. Manish Yadav, Mr. Rustam Singh, Mr. Anith Johnson, Ms. Khushi Seharawat, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Ms. Avshreya Pratap Singh Rudy, CGSC with Ms. Usha Jamnal, Ms. N. Sharma, Mr. Ankit Khatri, Advs. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANISH DAYAL

<u>O R D E R</u>

% **16.04.2026**

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following prayers:

> *"I. Declare Rule 3(1) of Nidhi (Amendment) Rules, 2022 as unconstitutional and ultra vires; and/or*
> *II. Issue any appropriate writ/order/direction in the nature of mandamus to set aside and quash the impugned Order dated 22.08.2022 passed by the respondent no.2; and/or*
> *III. Issue any appropriate writ/order/direction in the nature of mandamus directing the respondents to declare the petitioner as 'Nidhi' under section 406 of the Companies Act, 2013 r/w Rule 3A of Nidhi Rules,*

2014; and/or

IV. Issue any appropriate writ/order/direction in the nature of mandamus directing the respondents to allow the petitioner to continue its business until the petitioner is declared as 'Nidhi' under section 406 of the Companies Act, 2013 r/w Rule 3A of Nidhi Rules, 2014; and/or

V. Issue any appropriate writ/order/direction in the nature of mandamus directing the respondents to allow the petitioner to continue its business until the petitioner is declared as 'Nidhi' under section 406 of the Companies Act, 2013 r/w Rule 3A of Nidhi Rules, 2014; and/or

VI. Issue any appropriate writ/order/direction in the nature of mandamus to respondents to grant an opportunity of hearing to the petitioner for reconsideration of its application for Declaration of Nidhi under section 406 of the Companies Act, 2013 r/w Rule 3A of Nidhi Rules, 2014."

2. Rule 3(1) of Nidhi (Amendment) Rules, 2022, which inserted various provisos to Rule 3A of the Nidhi Rules, 2014 ('***impugned Rule***'), is under challenge as being unconstitutional and *ultra vires*, on the ground that it is arbitrary, unreasonable, and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. As per the impugned Rule, the following companies have been prohibited from raising any deposit from their members or providing any loan to their members under the Nidhi Rules, 2014:

a) The company who has not complied with the requirement of rule 3A;

b) The company who fails to comply with the requirement of rule 3A on or after the commencement of the Nidhi (Amendment) Rules, 2022;

> c) *The company whose application has been submitted but the same is or has been rejected by the Central Government.*

4. The grievance of the petitioner is that the impugned Rule fails to reasonably classify different classes of companies, and same treatment has been meted out to all the companies, including those carrying on business as '*Nidhi'* companies but whose application for declaration has been rejected on frivolous grounds. It is contended that such companies, which are already operating as '*Nidhi',* would stand on a better footing than those which had not submitted the application for declaration at all.

5. The petition also challenges the impugned order dated 22nd August 2022 issued by the respondent no. 1 rejecting the petitioner's application in Form NDH-4 for declaration as a '*Nidhi'* company on the basis that satisfaction cannot be drawn that the petitioner company meets the requirements to be declared as a '*Nidhi'* company under Section 406 of the Companies Act, 2013.

6. At the outset, counsel for the petitioner relies upon the following two decisions:

i. ***Annamanada Gramakshemam Nidhi Limited v. Union of India and Ors*** in WP (C) No. 38860/2023 passed on 19th March 2024, which was filed challenging amendments brought into Section 406 of the Companies Act, 2013, through Act 1/2018 and also, the corresponding amendments to the Nidhi Rules, 2014, namely Rules 3A and 23A. In the said judgment, the High Court of Kerala at Ernakulam, while keeping the challenge to Section 406 of the Companies Act, 2013 amendments and Nidhi Rules, 2014 open, gave liberty to petitioners to apply for compounding within 2 months and directed the authority to consider it leniently. The High Court further held that after compounding, petitioners may file fresh ‘NDH Form’, which must be decided the same within 3 months. If defects exist, applications should not be rejected peremptorily; petitioners must be given notice and a period of at least 1 month to rectify, and further opportunity before final decision;

ii. ***M/s Abayambigai Nidhi Limited v Union of India and Ors***. in WP (C) No. 23402/2024 and 23408/2024 dated 20th March 2025, whereby, while dealing with a similar case, the High Court in interregnum granted liberty to petitioner to file fresh reply regarding compliance of the defects and directed the respondent to provide an opportunity to petitioner and only then pass appropriate final orders.

7. On this basis, the petitioner's counsel contends that while the issue of unconstitutionality and validity of the impugned Rule can remain open, the petitioner, at this stage, seeks liberty to approach the authority with a fresh representation for reconsideration after being provided an opportunity of hearing.

8. To assess this plea, it would be important to understand the context and the sequence of events in which this issue has got triggered.

9. Under the Companies Act 1956, Section 620A provided for the declaration of a company as a ‘*Nidhi’* or ‘*Mutual Benefit Society*’. This provision was repealed by the Companies Act 2013, wherein Section 406 of the Companies Act, 2013 provided for the incorporation of a company as ‘*Nidhi*’.

10. Further, the Nidhi Rules, 2014 for regulation of, ‘*Nidhi Companies*’ were promulgated, which classified 3 types of companies:

A) Company declared as 'Nidhi' or 'Mutual Benefit' under section 620A of the Companies Act, 1956.

B) Company functioning as 'Nidhi' or 'Mutual Benefit' but did not applied or awaiting for declaration under section 620A (1) of the Companies Act, 1956.

C) Company incorporated as a 'Nidhi' under section 406 of the Act.

11. The Central Government enacted the Companies (Amendment) Act 2017, whereby the original Section 406 of the Companies Act 2013 was substituted by a new section rolling back the position as prevalent during the 1956 Act, requiring declaration of a company as '*Nidhi*' or '*Mutual Benefit Society*'.

12. The Nidhi (Amendment) Rules, 2019 were issued, introducing another category of companies in sub-clause (d) of Rule 2 and provided definition of '*Nidhi*' under sub-clause (da) of Rule 3. It further inserted Rule 3A prescribing filing of application in Form NDH-4 by companies for declaration as to '*Nidhi*'. The first proviso to Rule 3A provided that '*Nidhi*' incorporated under the Act on or after commencement of the rules shall also file an application in Form NDH-4 within 60 days of expiry of 1 year from the date of incorporation or the extended period.

13. The Nidhi (Amendment) Rules, 2022 were issued, inserting a proviso in Rule 12 of the Companies (Incorporation) Rules, 2014, requiring companies filing for incorporation as '*Nidhi*' to also file a declaration that they will obtain a declaration by the Central Government under Section 406 of the Companies Act, 2013 before commencing operation.

14. Under the 2022 Amendment Rules, Rule 3B was introduced in the 2014 Rules mandating that a company desirous of being declared as a '*Nidhi'* has to apply for a Form NDH-4 within a period of 120 days of its incorporation.

15. It is, in in this context, that petitioner's facts have to be appreciated.

16. After the 2019 Amendment Rules, petitioner submitted Form INC-32 under Rule 12 of the Companies (Incorporation) Rules, 2014 for the incorporation of the company as a '*Nidhi'* Company.

17. Petitioner was granted a certificate of incorporation and then submitted a form for declaration of commencement of business under Form INC-20A. As per the 2019 Amendment Rules, Form NDH-4 was also submitted. On 16th April 2021, an email was received from respondent no.1 seeking additional information for Form NDH-4. Due to the COVID lockdown, the information was submitted a bit delayed on 7th June 2021, and yet again on 11th June 2021.

18. After a year, the impugned order was issued rejecting the application for declaration as a '*Nidhi'* under Section 406 of the Companies Act 2013, without affording any hearing to the petitioner. The petitioner filed a representation on 2nd September 2022, seeking reconsideration and a request to appear in person with the opportunity for a hearing.

19. In this context, it is mentioned that various '*Nidhi'* companies whose applications or declarations were rejected filed petitions in which various High Courts, including the Kerala at Ernakulam and the Madras High Court, *vide* the decisions recorded above, passed interim orders permitting the companies to enrol members additionally up to *10%* of the membership to ensure that there was some movement of funds.

20. Aside from the unreasonable classification under the impugned Rule, the petitioner argues that there is a legitimate expectation of being declared as a '*Nidhi'* since, after incorporation as '*Nidhi'*, they have been conducting business in the absence of any timeline provided for disposal of the application.

21. This Court has considered the plea of the petitioners and the counsel for the respondents.

22. Keeping the issue of the challenge to the validity to the impugned Rules open, this Court, in line with the approach of other High Courts, including that of Kerala and Madras, is inclined to give liberty to the petitioners to file a fresh representation against the rejection of Form NDH-4, which can be decided by the competent authority, in accordance with law by passing a reasoned and speaking order.

23. It is not in dispute that petitioner had applied for a declaration as a '*Nidhi*' within the prescribed time and had also furnished additional documents as sought by the respondents. The application has, however, been rejected on the grounds of non-compliance with the applicable Rules.

24. The contention of the respondents that the decision is based on the material available on record and that no further hearing was warranted does not merit acceptance. This Court is of the opinion that if there were alleged deficiencies, the applicant should have been put to notice of the precise grounds and afforded a reasonable opportunity to meet the same, including by rectifying curable defects.

25. Moreover, in ***Annamanada Gramakshemam*** (*supra*), while allowing the petitioner to file fresh reply, *prima facie*, the Court noted that while it was not deciding the constitutional validity of the amendments, the

petitioners' concern was that the amended Section 406 of the Companies Act, 2013, along with Rules 3A and 23A of the Nidhi Rules, 2014, effectively reintroduced strict governmental control similar to the old regime under the 1956 Act, making their functioning difficult or even impossible, especially due to rejection of NDH-4 applications on trivial or undisclosed grounds, which are frivolous reasons. The Court noted that such apprehensions have some merit, as regulation should not become so oppressive that it makes the operation impossible.

26. Accordingly, in the interim, the Kerala High Court directed the authorities not to reject applications outright but to give notice of defects and time to rectify them, along with an opportunity of hearing.

27. Similarly, the Madras High Court in ***M/s Abayambigai Nidhi Limited*** (*supra*), permitted the petitioner to submit a fresh response and directed reconsideration after affording an opportunity of hearing.

28. In view of the aforesaid discussion, and without entering into the merits of the impugned order at this stage, this Court deems it appropriate to dispose of the present petition with the following directions:

(i) Petitioner is at liberty to approach the competent authority by way of a fresh representation, along with all relevant documents, within a period of 3 weeks from today.

(ii) Upon such application being made, the competent authority shall consider and decide the same in accordance with law, by passing a reasoned and speaking order, within a period of 3 months thereafter.

(iii) In the event any deficiency is found in the petitioner's application, the same shall not be rejected summarily, but the petitioner shall be duly notified of such defects and be granted reasonable time to rectify the same.

(iv) Till such time the aforesaid exercise is completed, and a final decision is communicated, no coercive steps shall be taken against the petitioner, and the impugned order shall be in abeyance.

(v) It is made clear that all rights and contentions of the parties on merits are left open to be agitated, if required, in appropriate proceedings.

29. The question of the validity of Rule 3(1) of Nidhi (Amendment) Rules, 2022, is not being decided and shall remain open.

30. Accordingly, the Writ Petition is disposed of with the above-noted directions.

31. Pending applications, if any, are rendered infructuous.

32. Order be uploaded on the website of this Court.

DEVENDRA KUMAR UPADHYAYA, CJ

ANISH DAYAL, J

APRIL 16, 2026/RK/*bp*