



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10807 OF 2016**

Mrs. Madhura Mukul Gandhe
Age: 37 years, Occupation: Labour Suppliers & House-wife,
Resident of, 14, Aaradhana, State Bank Colony,
Butkarwadi, Savedi Road, Ahmednagar
Ahmednagar, Dist.: Ahmednagar
Pin: 414 004 (Maharashtra) ..Petitioner

Versus

1. The Hon'ble Cabinet Minister
for Co-Operation Maharashtra State,
Mantralaya Mumbai – 02
2. The Commissioner of Co-Operation
& Registrar Co-Operative Societies,
Maharashtra State, Pune,
Having its Office at, The Office of the
Commissioner of Co-Operation & Registrar,
Co-Operative Societies, Maharashtra State, Pune,
PWD Building, Near Sasoon Hospital,
District: Pune Maharashtra
3. The Ahmednagar Merchant's Co-Operative Bank) Ltd.,
Ahmednagar Head Office: Plot No. 33, Market Yard,
Post Office Box No. 64,
Station Road, Ahmednagar,
Pin: 414 001 (Maharashtra)
Phone No. (0241) 2450649
Fax No.: (0241) 2450136
E-mail: mrbank@sancharnet.in
Through,
The Chief Executive Officer, (CEO)
The Ahmednagar Merchant's Co-Operative Bank Ltd.,
Ahmednagar ..Respondents

**AND
WRIT PETITION NO.10625 OF 2016**

Mr. Mukul Ramesh Ghande
Age: 39 years, Occupation: Income Tax Advisor,
Resident of, 14, Aaradhana, State Bank Colony,
Butkarwadi, Savedi Road, Ahmednagar
Ahmednagar, Dist.: Ahmednagar

Pin: 414 004 (Maharashtra)

..Petitioner

Versus

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2. The Commissioner of Co-Operation
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Through,
The Chief Executive Officer, (CEO)
The Ahmednagar Merchant's Co-Operative Bank Ltd.,
Ahmednagar ..Respondents

AND

WRIT PETITION NO.3639 OF 2018

Mrs. Shweta Amit Chopada
Age: 32 years, Occupation: Business,
Resident of, 41, Satta Colony,
Station Road, Ahmednagar,
Ahmednagar, Dist. Ahmednagar
Pin: 414 004 (Maharashtra)

..Petitioner

Versus

1. The Hon'ble Cabinet Minister
for Co-Operation Maharashtra State,
Mantralaya Mumbai – 02
2. The Commissioner of Co-Operation

& Registrar Co-Operative Societies,
 Maharashtra State, Pune,
 Having its Office at, The Office of the
 Commissioner of Co-Operation & Registrar,
 Co-Operative Societies, Maharashtra State, Pune,
 PWD Building, Near Sasoon Hospital,
 District: Pune Maharashtra

3. The Ahmednagar Merchant's Co-Operative Bank) Ltd.,
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 Through,
 The Chief Executive Officer, (CEO)
 The Ahmednagar Merchant's Co-Operative Bank Ltd.,
 Ahmednagar ..Respondents

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Mr. N. V. Gaware and Mr. A. D. Ostwal, Advocate for Petitioners.
 Mr. S. B. Jadhav, AGP for Respondent Nos.1 and 2.
 Mr. P. D. Patil, AGP for Respondent Nos.1 and 2.
 Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for
 Respondent No.4.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matters are taken up for final hearing at the stage of admission.

2. The petitioners in respective Writ Petitions approaches this Court under Article 227 of the Constitution of India impugning order dated 29.07.2015 passed by the Hon'ble Cabinet Minister for Co-operation, in Revision Applications filed by the Ahmednagar Merchant's Co-operative Bank Ltd. Ahmednagar i.e. respondent no.4.

3. Petitioners contend that they are investors or account holders of respondent no.4-Bank and having regular transactions with bank. Respondent no.4 operates in entire Ahmednagar District, admits individual members, who are found compliant of conditions stipulated under Section 22 of the Maharashtra Co-operative Societies Act, 1960 (for short 'M.C.S. Act, 1960') and bye-laws. The petitioners claims eligible to be admitted as members.

4. The petitioners preferred applications seeking membership alongwith requisite documents and Demand Drafts towards membership fees. The respondent no.4-Bank never communicated any deficiency in their applications. However, Director board of respondent no.4-Bank passed a Resolution, refusing membership to the petitioners on erroneous grounds. The decision of bank is contrary to concept of open membership, recognized under Section 23 of the M.C.S. Act, 1960.

5. The petitioners, aggrieved by the decision of respondent no.4-Bank preferred Appeal before Commissioner of Co-operation and Registrar Co-operative Societies-respondent no.2, who allowed the Appeal directing respondent no.4-Bank to admit the petitioners as members from the date of decision in Appeal. However, respondent no.4-Bank assailed decision of Appellate Authority by filing Revision Application under Section 154 of the M.C.S. Act, 1960 before the Hon'ble Minister-respondent no.1. The said Revision came to be allowed upsetting order passed in Appeal. According to the petitioners Hon'ble Ministers order is contrary to the concept of open membership. The well reasoned order passed by the Appellate Authority is reversed in casual manner and without following principles of natural justice without adding petitioners as party in Revision filed by Bank.

6. Per contra, respondent no.4-Bank justifies rejection of the membership since en-block applications were moved for membership by persons, unconcerned with the business of respondent no.4-Bank. Further applicants were not holding eligibility in conformity with bye-laws. According to respondent no.4, right of membership is qualified and not absolute. The Managing Committee of the Bank took conscious decision in the interest of administration of the Bank and refused bulk applications submitted with the obvious reasons.

7. Mr. Gaware, learned Advocate appearing for the petitioners submits that Section 22 of the M.C.S. Act, 1977 prescribes qualification for admitting member of Society. Section 27 prescribes that no Society would refuse admission to membership without sufficient cause, once the applicant is duly qualified in terms of provisions of M.C.S. Act, 1960 and bye-laws of the Society. In the present case, there is nothing to indicate that the applicants were disqualified for being admitted to the membership. The Resolution of the director board sans justifiable reasons to refuse membership to the petitioners. He placed reliance on judgment of this court in ***Writ Petition No.14305/2019*** in case of ***Mr. Ashok Sakharam Oihal and Ors. Vs. The Hon'ble Cooperative Minister, Cooperative Ministry*** dated ***15.02.2022***, wherein this Court disapproved decision of the Director Board of respondent Bank, refusing membership, consequently, issued direction to grant such application while setting aside the order of the Hon'ble Minister. Mr. Gaware would further point out that in view of the amendment in Section 27 (incorporated by Maharashtra Co-operative Societies (Third Amendment) Act, 2021) substantial change has been introduced and category "Active Member" has been deleted. Consequently, he would submit that there is no

impediment in granting membership to the petitioners and urges to issue directions against respondent no.4-Bank.

8. Mr. V. D. Hon, learned Senior Advocate appearing for respondent no.4-Bank do not dispute legal position espoused by this Court vide judgment dated 15.02.2022 in case of **Mr. Ashok Sakharam Oihal** (supra). However, he submits that the applications of the petitioners for grant of membership can be re-considered as per present legal position and bye-laws. He would further submit that bulk applications submitted with an ulterior motive had been consciously rejected by the Director Board, in the interest of administration of the Bank and such a decision of the Bank need not be disturbed.

9. Having considered submissions advanced and on perusal of the material tendered before this Court, the issue posed for consideration is as to whether the petitioners are entitled to be admitted as members of respondent no.4-Bank and whether the decision of respondent no.4-Bank refusing membership can be justified.

10. Section 22 of the M.C.S. Act, 1960 prescribes the eligibility for membership of the Co-operative Society. Section 23 promotes concept of open membership and bars the Society from refusing admission to membership to any person, who is duly qualified under the provisions of Act and bye-laws. In the present case, the petitioners applied for membership along with Demand Draft towards prescribed fees and charges of minimum shares. However, under Resolution dated 01.01.2012 bank rejected applications giving reason that bulk applications are made with obvious motive and admission to membership is likely to disturb administration of

the Bank. The Resolution further stipulates that applications and documents be returned to the petitioners.

11. Apparently, reasons as stipulated in impugned Resolution does not stand to scrutiny in face of Section 23 of the M.C.S. Act, 1977 as well as bye-laws of respondent no.4-Bank. However, the respondent no.1-Hon'ble Minister reversed the well reasoned decision of the Commissioner which was based on sound reasons. Hon'ble Minister, approved impugned decision of Bank without considering purport and scope of M.C.S. Act, 1960 and bye-laws. No reason is recorded by Hon'ble Minister justifying denial of membership to petitioners or justifying decision of the Managing Committee, in face of concept of open membership under Section 23 of the M.C.S. Act, 1960. Approach adopted by the Hon'ble Minister can only be said to be erroneous. In view of the aforesaid discussion, the applications preferred by the petitioners seeking membership of the Bank deserves to be reconsidered by setting aside the decision of the Managing Committee/Board of Directors dated 02.11.2012 as well as order passed by the Hon'ble Minister in Revision Application dated 29.07.2015. The directions needs to be issued against respondent No. 4 to grant membership to the petitioners, once they satisfy the condition of the membership in terms of bye-laws. Resultantly, following order is passed:

ORDER

- a. Writ Petitions are partly allowed.

- b. The impugned decision of respondent Bank, denying membership to the petitioners and order dated 29.07.2015 passed by the Hon'ble Minister for Co-operation, Maharashtra State-respondent no.1 is hereby quashed and set aside.

c. The order dated 23.02.2015 passed by the Commissioner of Co-operation and Registrar Co-operative Societies-respondent no.2 is hereby restored with modification that the petitioners be admitted as member of respondent no.4-Bank, once they deposit membership fees and value of minimum shares required under bye-laws.

d. In case there is any formal defect in application submitted by petitioners for membership, respondent no.4-Bank shall communicate the same to the petitioners within a period of two weeks from the date of this order. The petitioners shall remove such defect within two weeks from date communication. Upon removal of defect, respondent no. 4 shall take further decision within a period of two weeks thereafter.

e. Writ Petitions are disposed of.

f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE