Gadchiroli Zilla Sahakari Krushi and Gramin Bahu-Udeshiya Development Bank Limited and Another Vs State of Maharashtra and Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 16, 2003

Citation: (2003) 4 ALLMR 283 : (2003) 5 BomCR 389 : (2003) 4 MhLj 160 : (2003) 2 MhLj 790

Hon'ble Judges: R.S. Mohite, J

Bench: Single Bench

Advocate: A.B. Chaudhari, R.M. Ahirrao, J. Mokadam, P.C. Madkholkar, K.V. Deshmukh, S.S. Ghate and A.L. Palikundwar, for the Appellant; B.R. Gawai, Govt. Pleader, A.S. Fulzele, AGP, A.S. Sonare, AGP and T.R. Kankale, AGP, for the Respondent

Judgement

R.S. Mohite, J.
Heard learned counsel for the respective parties.

2. These writ petitions impugn interim winding up orders passed u/s 102(1) of the Maharashtra Co-operative Societies Act, 1960. The petitioners

are members of the Managing Committees, who are affected by the impugned orders insofar as they have been visited by its consequences and

have been required to hand over to the Liquidators appointed under the impugned orders, the custody and control of all the property, effects,

actionable claims, books, records and other documents pertaining to the business of the societies, which they were managing, in accordance with

Section 103(2) of the said Act.

3. As the possible fall of one more bastion of old style commerce is under consideration, the history of its building and collapse would bear

scrutiny.

4. The problem of reducing indebtedness and of bringing credit facilities within the reach of agriculturists on reasonable terms had engaged the

attention of the Government of India since 1870. In Europe, a system of rural credit societies invented by Raiffeisen was under trial. The idea of

using co-operation as a means of solving the Indian Rural problem was first conceived by the Government of Madras, which sent Sir Frederick

Nicholson to Europe to study the theory and practice of agricultural banking and to suggest means by which a similar movement might be started in

their residency. The report of Sir Nicholson submitted between 1895 and 1897 summarised his conclusions as ""Find Raiffeisen"". In the light of the

report, scattered Agricultural rural credit societies were started in the United Provinces and the Punjab but Lord Curzon, the then Viceroy realised

the futility of uncoordinated individual efforts and appointed a committee under Sir Edward Law to examine the working of the existing pioneering

societies. This eventually led to the enactment of the Co-operative Credit Societies Act, 1904, which classified Co-operative Societies as ""Urban

and ""Rural"". The Co-operative Societies Act, 1912, reclassified societies as those with ""limited liability"" and ""unlimited liabilities"" and made possible

of the registration of ""non credit"" type of societies paving way for a wider range of rural development activities. In 1915, the Government of India

took stock and appointed a committee under the Chairmanship of Sir Edward Maclagan which issued a comprehensive report called ""The report

of the Committee on Cooperation in India, 1915"", suggesting far reaching financial reforms. In 1919, Cooperation became a transferred subject

and came under the purview of the Provincial Governments. The Province of Bombay took the lead and in 1925, the Bombay Co-operative

Societies Act, 1925 was passed which was amended to inter alia allow the State Government to extend financial assistance to Societies and to

guarantee the repayment of loans given by Banks to Societies. Eventually, in 1956, the Government of Bombay appointed a Committee under the

Chairmanship of G. M. Laud and in 1960, brought a bill which was enacted into the Maharashtra Co-operative Societies Act, 1960, which

contained special provisions relating to the establishment of the ""Land Mortgage Banks"", for the purpose of granting long term agricultural credit for

rural development. By Mah. 43/72, the Chapter on Land Mortgage Bank was suitably redrafted providing for all relevant provisions of the Land

Improvement Loans Act, 1883 and there came to be established ""State Land Development Banks"" in place of ""Land Mortgage Banks"" and in

1988, by a further amendment the land development banks came to be renamed as ""Agriculture and Rural Development Banks"".

5. While the superstructure of such banks was under continuous improvement, in practice, inept management and other such human factors were

eroding the real value worth and usefulness of such banks. The shining exterior hid a crumbling interior. It appears that the banks were not in a

position to make effective recovery of the loans granted by them and therefore, the non-performing assets, had increased to staggering proportion.

I am informed at the Bar that by 1996, the State of Maharashtra refused to give a guarantee of the principal and interest on the debentures which

could be issued u/s 114 of the Act. Such grant of guarantee by the State Government was contemplated u/s 115 of the Act and was a matter of

discretion vested in the State Government. As an immediate result thereof, NABARD which was granting amounts for refinance, stopped such

refinance. In view of such stoppage of refinance by NABARD, the main function of the Agricultural and Rural Development Banks relating to

advances of long term loans as contemplated u/s 111 of the Act came to an end. With such functioning coming to an end, its source of income

from differential interest also dried up. Since the banks did not have a licence for normal commercial banking, the only way in which the banks

could sustain themselves was to recover their dues and get themselves into such better financial shape where the State Government could be

persuaded to revive guarantees and NABARD could be persuaded to resume refinancing.

6. It, appears that the 1998 balance sheet of the Agricultural and Rural Development Bank reflected this sorry picture and on the basis of the facts

and figures found in the said balance sheet, the State of Maharashtra decided to take certain further concrete steps in an attempt to revive the

fortunes of the said bank. On 21-12-1988, in the Annual General Body meeting of the Maharashtra State Co-operative Agricultural and Rural

Development Act, a decision was taken to effect a division of the bank and to establish independent registered Co-operative banks for each

district in the State of Maharashtra. It was further resolved to make a request to the State of Maharashtra to give effect to the said resolution.

7. In pursuance of such a request, the State of Maharashtra initiated proceedings u/s 18 of the Maharashtra Co-operative Societies Act and on

20-3-1999, it invited objections to the proposed division and reorganisation as aforesaid and ultimately after hearing the objectors, by an order

dated 29-12-1999 passed u/s 18 read with Section 144-(1A) of the Act, the State of Maharashtra directed division and reorganisation of the

erstwhile single bank into the Maharashtra State Co-operative Agricultural and Rural Multipurpose Development Banks (Apex Bank) and 29

District Agriculture and Rural Development Multi-Purpose Co-operative Banks Limited. In a further consequent development, an order was

issued by the State of Maharashtra on 31-12-1999, which according to the Government Pleader, incorporated the policy directives u/s 4 of the

Act for registration of the newly contemplated district banks. In this order, it was contemplated that the properties and responsibilities of each

District Bank should be decided and a report regarding the same should find place in the balance sheet of the year ending 31-3-1999. It was

further contemplated that each District Bank should prepare a programme in consultation with experienced officers, District Deputy Registrars and

Assistant Registrars to identify areas and schemes by which fresh loans could be granted. It contemplated that after repayment of Rs. 180 crores

of money due to NABARD, an amount of Rs. 50 crores by way of refinance could be distributed through the apex bank to the various

independent District Banks and the principal business of the banks i.e. distribution of loans should start again. It was further, contemplated that till

the dues of the apex bank remained subsisting, the District Banks would remit recovered loans to the apex bank and in this regard, it was further

specified that out of the amount recovered by the District Banks, 70 percent amount would be remitted by them to the apex bank on a monthly

basis and 30 percent of the amount would remain with the District Bank to meet their administrative and other expenditures.

8. In view of such orders passed u/s 18 of the Act and keeping in mind the policy directives declared by the State of Maharashtra u/s 4 of the Act,

on 10-9-2001 orders were passed directing the registration of the District Agriculture and Rural Development Multi-Purpose Co-operative Banks

Limited in almost all the districts of Maharashtra which registration took effect from 1-10-2001. The Bank in Nagpur District came to be

registered a little later under an order dated 12-11-2001 and this registration took effect on 7-12-2001. It appears from the record that this

attempt of division and reorganisation did not have the desired effect of rendering banks financially viable. It was noticed that the administrative

costs in most of the banks exceeded 30% and that 70% remittances were not being made by the District Agriculture and Rural Development

Multi-Purpose Co-operative Banks Limited as contemplated under policy directives issued u/s 4 of the Act. On the contrary, the management of

most of the District Agriculture and Rural Development Multipurpose Co-operative Banks Limited were spending much larger amount than the

30% earmarked for administration and other purposes of the District banks. As a result of inadequate remittances, the Scheme of reviving finances

by NABARD could not be brought into effect.

9. In such a background, on 26-3-2002, the State of Maharashtra issued an order u/s 79A of the Maharashtra Co-operative Societies Act which

was issued to the Chairman of the apex bank and all District Agriculture and Rural Development Multi-Purpose Co-operative Banks Limited

calling upon them to follow certain stringent procedures and streamlining the management of the District Agriculture and Rural Development Multi-

Purpose Co-operative Banks. A perusal of this order passed by the State of Maharashtra u/s 79A of the Act would clearly indicate that its

objective was to reduce administrative expenditure and expenses. In this order it was, inter alia, contemplated that the entire recovery from the

members should be utilised for repayment of dues to NABARD and from such recovered amount, no amount should be used for any other

purpose, Even this order could not have the desired effect and, therefore, on 25-10-2002, in a meeting of the Cabinet of the Government of

Maharashtra, the Cabinet considered the performance of various District Agriculture and Rural Development Multi-Purpose Co-operative Banks.

The District Agriculture and Rural Development Multi-Purpose Co-operative Banks were divided into three grades i.e. "A", "B" and 4C". Such

banks which had remitted above 30 per cent of the amount of demand made by the NABARD were put in Grade "A". From the chart which has

been filed by the State of Maharashtra, it can be seen that 14 District Agriculture and Rural Development Multi-Purpose Co-operative Banks

whose remittance has met the required criteria of being above 30% of the amount of demand, were put in grade "A". 11 District Agriculture and

Rural Development Multi-Purpose Co-operative Banks were put in Grade "B" and these were the banks in respect of which the ratio of

remittances to demand was between 11 and 19%. 4 District Agriculture and Rural Development Multi-Purpose Co-operative Banks were put in

grade "C" and these banks were the banks in respect of which the ratio between remittance and demand was below 10%. In this meeting of the

Cabinet held on 25-10-2002, the Government of Maharashtra took a decision that the 15 District Agriculture and Rural Development Multi-

Purpose Co-operative Banks which fell in grade "A" should be continued and that these 14 District Agriculture and Rural Development Multi-

Purpose Co-operative Banks should obtain regular banking licence from the Reserve Bank of India and should stand on their own legs and that

others in Grade "B" and Grade "C be wound up. It was also resolved that out of the money obtained from sale of the assets of the banks sought to

be wound up, the employees should be paid their dues and that the State Government would not have any responsibility in this regard.

10. Subsequently, the orders which are impugned in the present batch of petitions came to be issued by the concerned District Deputy

Registrars/Joint Registrar. Since the orders are separate and differently worded, I propose to give the gist and substance of the grounds on which

the orders came to be passed, which are reproduced here in under:

(a) Writ Petition No. 4113 of 2002 impugns an order of interim winding up dated 12-11-2002 passed by the District Deputy Registrar,

Gadchiroli, in respect of Gadchiroli District Agriculture and Rural Development Multi-Purpose Cooperative Bank, Briefly speaking, the order is

passed on the ground of violation of Clause 12 of the refinance agreement between the apex bank and NABARD, for violation of the directives

issued u/s 79A, dated 26-3-2002 and lack of any recovery or disbursement as required. The order states that the same has been passed u/s

102(1)(c)(i) and (ii) of the Maharashtra Co-operative Societies Act, 1960.

(b) Writ Petition No. 4114 of 2002 impugns an order dated 11-11-2002 passed by the District Deputy Registrar, Wardha, directing the winding

up of the Wardha District Agriculture and Rural Development Multi-Purpose Co-operative Bank. The ground given is that there has been no

disbursement of the loan or commission of any act in furtherance of objects as per bye-laws No. 4(1) to 4(29) of the Bank, that as per the balance

sheet dated 31-3-2002, the assets of the bank were 15.55 crores whereas its accumulated losses were Rs. 15.82 crores and, therefore, it was

clear that the assets of the bank had eroded, that there had been no payment of salary and that the administrative and other expenses of the bank

for effecting recovery was 58% that the remittance was only 24%. The order stated that it was passed u/s 102(1)(c) of the Act.

(c) Writ Petition No. 4115 of 2002 impugns an order dated 13-11-2002 passed by the District Deputy Registrar, Chandrapur, directing the

winding up of the Chandrapur District Agriculture and Rural Development Multi-Purpose Cooperative Bank. The grounds given for passing of the

order were that there was no disbursement of loan or commission of any act in accordance with the objectives of the bank contained in its bye-law

No. 4(1) to 4(29). That as per the balance sheet dated 31-3-2002, the assets of the bank were 7.84 crores and the accumulated losses were 9.31

crores rendering the value of the share as ""zero"". That the establishment costs were being paid from recoveries thereby adding to accumulated

losses. That 68% of the members were in default and that there was only 11% recovery which indicated that there was no likelihood of clearance

of overdues. The order stated that it was being passed u/s 102(1)(c) of the Act.

(d) In Writ Petition No. 4195 of 2002, the order impugned is of Joint Registrar, Bhandara, dated 12-11-2002, directing the interim winding up of

Bhandara District Agriculture and Rural Development Multi-Purpose Cooperative Bank. The order is passed on the ground that against dues of

12.32 crores, the amount recovered till 31-10-2002 was 43 lakhs and, therefore, the recovery was negligent. That it had become difficult to pay

the expenses and since there was no disbursement, the bank had ceased to function. The order stated that it has been passed u/s 102(1)(c)(ii) and

(iv) of the Act.

(e) Writ Petition No. 4197 of 2002 impugns an order of interim winding up dated 11-11-2002 passed by the District Deputy Registrar, Yavatmal

in respect of Yavatmal District Agriculture and Rural Development Multi-Purpose Cooperative Bank. The order was passed on the ground that

there was no disbursement of long term loans since 1998-99. That the recovery of the year 1999-2000 was unsatisfactory. That the recovery

schedule as laid down by the Commissioner of Co-operative Societies and the Registrar of Co-operative Societies had not been met. That there

was failure on the part of the Special Recovery Officer to meet the target in this regard and there was lack of supervision by the Managing

Committee and other officers of the Bank. That against a demand of 31 crores, a total recovery of 13 crores was made and thus the bank had

become unviable and that there was violation of the order issued by the State of Maharashtra u/s 79A of the Act as the entire amount recovered

had not been remitted to the apex bank, that 63% of the amount recovered had been used for administrative purposes by the management of the

District Agriculture and Rural Development Multi-Purpose Co-operative Bank and that there was no satisfactory recovery or distribution of long

term loans. The order stated that the same was being issued u/s 102(1)(c)(iv) of the Maharashtra Co-operative Societies Act, 1960.

(f) Writ Petition No. 4198 of 2002 impugns an order passed by the District Deputy Registrar, Amravati, on 11-11-2002, directing interim winding

up of the Amravati District Agriculture and Rural Development Multi-Purpose Cooperative Bank. The order was passed on the grounds that there

had been no banking activity except recruitment and hence there was no commencing of its business. There there had been breach of condition of

deposit of 70% of amount of recovery with the apex bank. There was violation of the Government order dated 31-12-1999. The order stated that

the same has been passed u/s 102(1)(c)(i) and (iv) of the Act.

(g) Writ Petition No. 4199 of 2002 impugns an order dated 11-11-2002 passed by the District Deputy Registrar, Buldhana, directing interim

winding up of the Buldhana District Agriculture and Rural Development Multi-Purpose Cooperative Bank. The order is passed on the ground that

there was no 70% remittance as out of 374 lakhs recovered, only about 147 lakhs were remitted to the apex bank, that the administrative

expenses were 55% and that there was violation of the government directives dated 30-12-1999. The order stated that the same was issued u/s

102(1)(c)(iv) of the Act.

(h) Writ Petition No. 4200 of 2002 impugns an order dated 11-11-2002 passed by the District Deputy Registrar, Akola, directing the interim

winding up of the Akola District Agriculture and Rural Development Multi-Purpose Cooperative Bank Limited. The said order was passed on the

ground that there was a violation of letters dated 9-11-2001 and 26-3-2002 issued by Commissioner for Co-operation and Registrar of Co-

operative Societies, fixing targets for recovery. There was further violation of letter dated 20-9-2001 calling upon the banks to remit 70% of the

recovered collection to the apex bank and to utilise 30% for administrative needs because the percentage of recovery remitted was 42% and

percentage of amount recovered and used for administrative purposes was 50%, that there was no loans disbursed in one year and hence there

was violation of bye-laws No. 3(15) and 4(2A) that no steps were taken to increase the recovery as required under bye-law No. 35(10) and that

no permission had been obtained from the Reserve Bank for regular banking transactions. The order stated that the same had been issued u/s

102(1)(c)(iv) of the Act.

(i) Writ Petition No. 4492 of 2002 and Writ Petition No. 4493 of 2002 have been filed by different set of petitioners impugning a common order

dated 12-11-2002 passed by the District Deputy Registrar, Nagpur. The order had been passed on the ground that out of total amount of Rs.

20.97 crores only Rs. 0.516 crores were recovered. That no steps were taken to formulate new schemes for recovery, that recovery was

insufficient even to pay establishment cost, that there had been no disbursement of loan to farmers and operation of the bank was not according to

the Act, Rules and Bye laws. The order stated that the same had been issued u/s 102(1)(c)(ii) and (iv) of the Act.

11. The submissions which were made by the various advocates who appeared on behalf of various petitioners can be summed up as under:

(a) That the impugned order had been passed ex parte, without prior opportunity of hearing. The orders were, therefore, vitiated as having been

passed in violation of principles of natural justice. In this regard, it was also contended that though Section 102(1) of the Act did not expressly

provide for a prior hearing before the passing of an interim order of winding up, the requirement of such hearing prior to the passing of the order

should be read into the said provision.

(b) That there was no such urgency or alarming situation that would have required the dispensing with the prior hearing in accordance with the rules

of natural justice.

(c) That there was complete non-application of mind because the impugned orders themselves admitted that some recoveries have been made. It

was contended that the making of recovery was one of the facets of the working of the bank and once the making of some recovery was admitted,

then it could not be said that the bank had not commenced working within the meaning of Section 102(c)(i) of the Act or that it has ceased

working within the meaning of Section 102(c)(ii) of the Act.

(d) That in some of the impugned orders, there was no specific mention as to which condition of Registration or management of the Act or the rules

or bye-laws had been violated and, therefore, the orders suffered from non-application of mind.

(e) That the reliance by the State Government on figures for the last three years in deciding as to which of the banks are to be wound up rendered

the impugned orders as having been passed on improper and irrelevant considerations insofar as the District Agriculture and Rural Development

Multipurpose Co-operative Banks had been registered only in the year 2001.

(f) That there was violation of the principles laid down by the Division Bench of this Court in the case of Phaltan Sahakari Sakhar Karkhana

Limited v. State of Maharashtra, reported in 1989 C.T.J. 27, wherein it has been laid down that the officer passing such an order should form an

independent opinion without considering irrelevant extraneous material and after applying his own mind. In this regard, after referring to the return it

was contended that it had been conceded by the State that it was in accordance with the policy decision taken by the Government that the 15

District Agriculture and Rural Development Multi-Purpose Co-operative Banks Limited which came under grade "B" and "C" were to be

liquidated and that the action of liquidation was in accordance with the general policy adopted by the Government and not upon an independent

application of mind by the concerned District Deputy Registrar/Joint Registrar, as required to be done before passing an interim order of winding

up.

12. The reply filed on behalf of the respondents to the aforesaid submissions, can be summarised as follows:

(a) That there was no necessity in law for affording a prior opportunity of hearing as there was no express provision for grant of prior hearing and

that the requirement of such a hearing could not be read into Section 102(1) of the Act by implication.

(b) That if it was held that there was no legal requirement for affording a prior hearing, then the question of existence of necessity became

redundant and irrelevant. That in any case, the assets of the District Agriculture and Rural Development Multi-Purpose Co-operative Banks

Limited were being eroded by excessive administrative costs on a monthly basis and that, therefore, there was grave urgency which required the

passing of the impugned orders.

(c) That the recovery was only an administrative function of the banks whereas the main purpose of the bank was disbursement of long term loans

for agricultural and rural development. Since no loans had been disbursed by the District Agriculture and Rural Development Multi-Purpose Co-

operative Banks from the date of its registration, it would not be said that the banks had commenced their business and in any case it could be said

that they had ceased working.

(d) That the facts mentioned in each of the orders indicated that there was inadequate recovery or excessive administrative expenses. That the

Government had issued directives for registration u/s 4 of the Act on 31-12-1999 and had also issued an order dated 26-3-2002 u/s 79-A of the

Act. Whereas the former contemplated a 70% remittance of amounts recovered to the apex bank and 30% for use of the District Agriculture and

Rural Development Multi-Purpose Co-operative Bank, the latter provided for 100% remittance from recoveries to be paid to the apex bank. That

these two orders were passed under the Act and in some of the impugned orders they were expressly referred to. It was contended that even if in

any order, these statutory orders were not expressly referred to, yet the facts as stated in the order would indicate the violation of these

government orders which were well within the knowledge of the management of the District Agriculture and Rural Development Multi-Purpose

Co-operative Banks. It was also contended that the banks had adopted model bye-laws and the objects of the bank were specified u/s 111 of the

Maharashtra Co-operative Societies Act, 1960, being the grant of long term loan and were also contained in bye-laws No. 4(1) to 4(29) of the

Model Bye Laws and these were the main activities of the bank required to be undertaken by the District Agriculture and Rural Development

Multi-Purpose Co-operative Banks, which were not being done. There was, therefore, violation of the bye-laws within the meaning of Section

102(1)(c) of the Act.

(e) It was contended that the figures of three years had been relied upon by the State Government in taking the general policy decision. That the

policy decision taken by the Government had not been relied upon in any of the impugned order while considering the situation and state of affairs

of each individual District, Agriculture and Rural Development Multi-Purpose Co-operative Bank. That the impugned orders indicated that the

authorities who had passed the impugned orders had not relied or referred to the general policy decision of the government but had gone into the

facts and figures concerning the each individual bank. It was contended that the figures of the last three years had been taken into account by the

State Government in formulating the general policy. However, while passing the impugned orders, no reference was made to either the Cabinet

decision or the figures relied upon by the Cabinet.

(f) It was contended that there was no violation of the guidelines or any observations of this Court made in the case of Phaltan Sahakari Sakhar

Karkhana Limited (supra), as the concerned District Deputy Registrar/Joint Registrar had applied their minds independently and had not taken into

account any irrelevant consideration.

13. Before I go into the individual submissions, it is necessary to state the scope of judicial scrutiny when an interim order is under challenge. The

nature and the scope of such judicial scrutiny was laid down by the Apex Court in the case of Liberty Oil Mills and Others Vs. Union of India

(UOI) and Others, . In the said case, an ex parte interim order under Clause 8-B of the Import (Control) Order, 1955, was under consideration

before the Supreme Court. The Apex Court concluded that the said action under Clause 8-B was of an interim nature and it could be made ex

parte. While examining the scope of the judicial scrutiny, the Apex Court in para 26 of the judgment laid down as follows:

26. We have held that action under Clause 8-B is of an interim nature and it may be ex parte, in which case the affected party may make a

suitable representation bringing out all the outweighing circumstances in his favour. That is the real remedy of the party. Courts do not enter the

picture at that stage unless the action is mala fide or patently without jurisdiction. The action will be patently without jurisdiction if it is not based on

any relevant material whatsoever. If the authority declines to consider the representation, or if the authority after consideration of the representation

eschews relevant considerations and prefers to act on irrelevant considerations or from oblique motive, or the decision is such as no reasonable

man properly directed on the law would arrive at on the material facts, it will be open to the party to seek the intervention of the court at that stage.

13-A. Keeping in mind the scope and ambit of judicial scrutiny in such matters, I now proceed to deal with various submissions raised on behalf of

the various petitioners and enumerated by me hereinabove.

14. As regards the submission of the petitioner enumerated in para 11(a) hereinabove, to the effect that there should have been a prior hearing

before the passing of the interim winding up order, which would have serious consequence on the rights of the petitioners and the reply given on

behalf of the respondents in para 12(a) hereinabove, it would be necessary to reproduce the provisions of Section 102 which are as under:

102. Winding up.--(1) If the Registrar;

(a) after an inquiry has been held u/s 83 or an inspection has been made u/s 84 or on the report of the auditor auditing the accounts of the society,

or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting

called for the purpose, or

(c) of his own motion, in the case of a society which-

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members'' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws, is of the opinion that a

society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under Sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its

explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society and

to the creditors of the society, if any, of being heard, may issue a final order vacating or conforming the interim order.

15. The analysis of Section 102 of the Act would indicate that there is no express provision for hearing before the Registrar passes an interim order

directing the Co-operative Society to be wound up. It is further clear that in Sub-section (2) of Section 102 of the Act, a copy of the interim

winding up order is required to be communicated in the prescribed manner to the society calling upon the society to submit its explanation to the

Registrar within a month from the date of issue of such order and the Registrar on giving an opportunity to the society and the creditors of the

society, if any, of being heard, may issue a final order, vacating or confirming the interim order.

16. In my opinion, the hearing which is contemplated under Sub-section (2) is essentially in order to consider as to whether the ex parte interim

order passed u/s 102(1) of the Act needs to be vacated. The explanation required to be submitted and the hearing which is contemplated u/s

102(2) of the Act is on the question as to whether the ex parte interim order should be vacated. The hearing contemplated u/s 102(2) of the Act, is

therefore, in the nature of a statutory post decisional hearing on the question as to whether the ex parte interim order is required to be vacated. At

such hearing only if the Registrar comes to a conclusion that the interim order is not required to be vacated then and only then can the Registrar

pass a final order: In this sense, the hearing, though essentially a hearing contemplated for deciding the question of vacating the ex parte interim

order passed u/s 102(1) of the Act, can also be said to be a hearing for deciding the question as to whether the final order needs to be passed. In

other words, it is a post decisional hearing for deciding the validity and necessity of passing of the ex parte interim order u/s 102(1) of the Act is

also a pre-decisional hearing for deciding as to whether the final order confirming the interim order is required to be passed u/s 102(2) of the Act.

The question remains as to whether such a post-decisional hearing amounts to sufficient compliance for, the rules of natural justice. This question

has been squarely answered by the Apex Court in the case of Liberty Oil Milts v. Union of India (supra). In that case, the question arose relating

to the interpretation of Clause 8-B of the Import (Control) Order, 1955. Clause 8-B of the said order contemplated that where any investigation

into any of the allegations mentioned in Clause 8 was pending against a licensee or importer or any other person, and the Central Government or

the Chief Controller of Imports and Exports was satisfied that without ascertaining further details in regard to such allegation, the grant of licence or

allotment of imported goods will not be in the public interest, then notwithstanding anything contained in the Order, the Central Government or the

Chief Controller of Imports and Exports could keep in abeyance any application for grant of licence from such person, or direct the State Trading

Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency to keep in abeyance allotments of

imported goods to such person, without assigning any reason and without prejudice to any other action that could be taken in this behalf. The

argument in the said case was that such powers conferred on the Central Government or the Chief Controller of Imports and Exports, were in

violation of principles of natural justice and, therefore, arbitrary and violative of Articles 14 and 19(1)(g) of Constitution of India. While dealing

with this contention, the Apex Court after relying upon several authorities including the decisions in Queen v. Randolph et a 56 DLR (2d) 283

decided by the Supreme Court of Canada; Commissioner of Police v. Tanos, 98 CLR 383, decided by the High Court of Australia; Lewis v.

Heffer, (1978) 3 All ER 354; Chingleput Bottlers Vs. Majestic Bottling Company, , concluded as follows (vide para 21):

The requirements of natural justice will be met in the case of action under Clause 8-B by considering bona fide, any representation that may be

made in that behalf by the person aggrieved. Clause 8-B itself gives an indication that such a post-decisional opportunity on the request of the

person concerned is contemplated. We have seen that action under Clause 8-B is to be taken if the authority is satisfied in the public interest that

such action may be taken without ascertaining further details in regard to the allegations. It clearly implies that when further facts are ascertained by

the authority or brought to the notice of the authority, such action may be reviewed. As we have earlier pointed out while ex parte interim orders

may always be made without a pre-decisional opportunity or without the order itself providing for a post-decisional opportunity, the principles of

natural justice which are never excluded will be satisfied if a post-decisional opportunity is given if demanded. So we hold that in the case of action

under Clause 8-B is not necessary to give a pre-decisional opportunity but a post-decisional opportunity must be given if so requested by the

person affected.

17. The advocates for the petitioners relied upon the decision of the Apex Court in the case of Swadeshi Cotton Mills Vs. Union of India (UOI), .

In that case an order passed by the Central Government u/s 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951, (in short

IDR Act), taking over the Swadeshi Cotton Mills, was under challenge. The said order was not an order of interim nature but was in fact a final

order. The IDR Act contained Section 18F which provided for power to cancel the order passed u/s 18-AA on the ground that the purpose of the

order made u/s 18-A had been fulfilled or that for any other reason, it was not necessary that the order should remain in force. The majority

decision in the aforesaid case was that the post decisional hearing available to the aggrieved owner of the undertaking u/s 18F was illusory as in its

operation and effect the power of review, if any, conferred thereunder, was prospective and not retrospective, being strictly restricted to and

dependent upon the post-take-over circumstances. In fact the learned Government Pleader, appearing on behalf of the respondents also relied

upon the certain observations of the decision of the Apex Court contained in para 44, which observations according to him were against the

petitioners. The part relied upon by the petitioners is reproduced hereinbelow:

44. In short, the general principle--as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in

terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then

such a statute would be construed as excluding the audi alterant partem rule at the pre-decisional stage. Conversely, if the statute conferring the

power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority

involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely

reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at

the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude.

18. As regards the submissions made by both sides in para 11(a) regarding the ratio as laid down by the Apex Court in the case of Swadeshi

Cotton Mills v. Union of India (supra), the facts and circumstances which arose in the aforesaid case were different and distinct from the present

one. Firstly, the order under challenge before the Apex Court was not an interim order. Secondly, as held by the Apex Court, the power of review

u/s 18-F was held not to amount to a power of complete review of the final order passed u/s 18-AA(1)(a). In the present case, on the plain

reading of Section 102(2) of the Act, the power of review is clearly complete in itself because at the time of the hearing, it is open for the Registrar

to totally vacate the interim order and that while doing so, he can clearly go into all aspects which have necessitated the passing of such interim

winding up order.

19. The advocates for the petitioners then relied upon a judgment of the Single Bench of the Gujarat High Court delivered in the case of

Mansukhlal Nandlal Doshi and Ors. v. State of Gujarat and Ors. in Special Civil Application No.2467 of 1984. In the said case, by an order

dated 23-10-1972, the Assistant District Registrar, Co-operative Societies had ordered interim liquidation of a Co-operative Society on the

ground that the working of the society had not commenced. This order had been passed u/s 107(1) of the Gujarat Co-operative Housing Societies

Act, 1961, which was pari materia with Section 102(1) of the Maharashtra Co-operative Societies Act, 1960. Subsequently the applications had

been made to the liquidator for reviving the society and since this was not done, the petitioners had filed a writ petition for writ or direction to the

Assistant District Registrar, Co-operative Society to revive the society u/s 19 of the Act of 1961. My attention was drawn to certain observations

made by the learned Single Judge. The relevant portion of which is reproduced as under :

In the instant case, the condition which is sought to be invoked is the society having not commenced its working. It is not in dispute that before

passing the interim order as to winding up by the third respondent, no opportunity as to hearing was given to the petitioner societies or to any of

their members, nor any explanation was called for by the Assistant Registrar for not having commenced the working of the societies. What is

contended by Mr. Raval is that it was not incumbent upon the third respondent to provide any hearing before passing the interim order of winding

up of the petitioner-societies. It is not the case of the respondents that there existed any compulsive necessity of the situation for passing the interim

order of winding up of the society. As is argued by Mr. Gaurang Bhatt, the learned Advocate appearing for the petitioner-societies that there were

no facilities as to water, electricity, road, etc. at the relevant time and on account of undeveloped situation, the petitioners could not make any

attempt to construct the residential houses on the land purchased by them for the purpose. If the petitioners were given an opportunity of hearing

before passing the interim order of winding up, it is likely that the petitioners would have explained these difficulties on account of which they were

unable to carry out or commence the construction of the residential houses on the lands in question and as a result of which it would not have been

necessary for the third respondent to pass the order of interim nature winding up the society. It is also the grievance of the petitioners that no

speaking order setting out the grounds for the exercise of the powers u/s 107 and the reasons which necessitated to pass such interim order is

made and as such the impugned orders become vulnerable. It is an admitted position that no such speaking order was passed by the respondent

No. 3. It is only when such an order is passed that it would be possible to ascertain whether the power u/s 107 of the said Act of 1961 has been

exercised within the terms of the statute or whether it is ultra vires as being vitiated by any of the errors. In view of the facts and circumstances of

the case, the third respondent should have given an opportunity to the petitioners of being heard in the matter before passing the interim order of

winding up of societies. In my opinion, the impugned orders are, therefore, bad in law and violative of the principles of natural justice.

20. With respect, I am unable to agree with the view taken by the learned Single Judge of the Gujarat High Court. The view taken by the Gujarat

High Court does not take into account the view taken by the Supreme Court of India, in the case of Liberty Oil Mills v. Union of India, (supra), to

which I have made reference hereinabove. I, therefore, hold that it is not necessary to give a pre-decisional hearing before passing an interim

winding up order u/s 102(1) of the Maharashtra Co-operative Societies Act, 1960, in view of the fact that there is a statutory post-decisional

hearing which is provided for by Section 102(2) of the said Act.

21. As regards the contention raised by the petitioners in para 11(b) regarding there being no urgency or alarming situation to do away with the

pre-decisional hearing is concerned, once it is held that there is no right to pre-decisional hearing, the point relating to urgency or alarming situation

being necessary for dispensing with such hearing does not survive. It is clear from the scheme of Section 102 of the Act that the statutory post-

decisional hearing is contemplated to be an expeditious procedure. This can be seen from the fact that an explanation is required to be submitted

within 30 days from the issue of order. Needless to say that such matters should be given priority and decided as expeditiously as possible by the

Registrar, who gives a hearing to the society and to the creditors u/s 102(2) of the Act.

22. As regards the contentions of the petitioners raised in para 11(c) to the effect that an admission in the impugned orders to the effect that some

recoveries were made, should necessarily mean that the society has commenced working and had not ceased to work, I may say that effecting

recovery of old dues is not the purpose of the establishment of such District Agriculture and Rural Development Multi-Purpose Co-operative

Banks. The principal object for which the banks were established is contained u/s 111 of the Maharashtra Cooperative Societies Act, 1960 and

this purpose is for advancing long term loans for various purposes enumerated in the said section. In the present case, it is an admitted position that

after the registration of these District Agriculture and Rural Development Multi-Purpose Co-operative Banks, the management of the banks were

not in a position to create conditions which would enable NABARD to resume its refinance, it is not disputed before me that after their

incorporation, no loans were issued for refinance by NABARD. I am of the prima facie view that the main purpose of various District Agriculture

and Rural Development Multi-Purpose Co-operative Banks, which are before this Court could not be said to have commenced. On the contrary,

the facts indicate that the management was utilising a very large percentage of the recoveries which could be recovered for the internal purposes. In

many ways it amounted to the fence eating up the field and if this situation was allowed to continue, the amounts due to the Apex Agriculture and

Rural Development Multi-Purpose Co-operative Banks would only be swallowed up for internal administrative purposes, leaving the dues to the

NABARD unpaid, resulting in accumulation of interest which would ultimately dry the assets base of the banks in question. Therefore, I am not in a

position to accept the proposition that because some recovery was admittedly made, the same would indicate that the banks in question had

commenced working.

23. As regards the submissions raised in para 11(d) about the non mention of as to which condition of registration or management of the Act or the

rules or bye laws had been violated and, therefore, the orders suffered from non-application of mind, I may state that the order passed by the State

of Maharashtra on 31-12-1999 was clearly a general policy directive contemplated u/s 4 of the Maharashtra Co-operative Societies Act, 1960.

These directions were in fact specifically made for the purpose of registration of District Agriculture and Rural Development Multi-Purpose Co-

operative Banks. Similarly, direction dated 26-3-2002 is a statutory direction u/s 79-A of the Act issued by the State of Maharashtra. The order

of the State Government dated 31-12-1999 laid down a policy that the banks would remit 70 per cent of the recovered amount to the apex bank

whereas the direction u/s 79-A of the Act laid down a requirement that 100 per cent of the amount recovered should be deposited with the apex

bank. This direction u/s 79-A was also admittedly issued to all the District Agriculture and Rural Development Multi-Purpose Co-operative Banks

before this Court. In my opinion, the first general direction contained in the order of the State Government dated 31-12-1999 can be said to

incorporate the condition as to registration under the Act and the second direction issued by the State of Maharashtra dated 26-3-2002 can be

said to be condition as to management under the Act, within the meaning of Section 102(1)(c)(iv) of the said Act. In my opinion, it is not necessary

to make express reference to these orders of the State Government in the impugned orders when from the reading of the impugned orders it could

be gathered that the violation in question was referable to the directions given by the State of Maharashtra in the said two orders. I have found

from the record that all the letters addressed by the Government Officers to the individual societies and also mentioned in the impugned orders are

also in pursuance of these two State Government orders. Therefore, in my opinion, the impugned orders cannot be struck down on the basis of the

submission made.

24. As regards submissions raised in para 11(e) to the effect that the State Government should not have relied upon the figures of the last three

years while deciding its policy as to which of the District Agriculture and Rural Development Multi-Purpose Co-operative Banks should be wound

up, the same has no substance. It can be seen that the decision made by the Cabinet in its meeting dated 25-10-2002 laid down a general

government policy. There is no prohibition in law to take such a policy decision since the State Government is empowered under the Constitution

to legislate or give executive orders on the subject of cooperation. It is pertinent to note that none of the impugned orders proceed on the basis of

the Cabinet decision. All the impugned orders passed by the District Deputy Registrar/Joint Registrar are clearly based on individual positions and

circumstances pertaining to each District Agriculture and Rural Development Multi-Purpose Co-operative Bank.

25. As regards contentions raised in para 11(f) that there was violation of the principles laid down by the Division Bench of this Court in Phaltan

Sahakari Sakhar Karkhana Limited v. State of Maharashtra (supra), in my view, there was no extraneous material which was relied upon by the

District Deputy Registrar. All the orders of the Government and correspondence of the bank were clearly a matter within the knowledge of the

management of each individual bank. In the present case it is clear that the authorities who have issued the orders have done so, considering the

relevant material in hand and available to the petitioners.

26. In the net result, I find that there is no substance in the Writ Petitions Nos. 4113 of 2002, 4114 of 2002, 4115 of 2002, 4195 of 2002, 4197

of 2002, 4198 of 2002, 4199 of 2002 and 4200 of 2002 and hence the rule is discharged. Insofar as Writ Petitions Nos. 4492 of 2002 and 4493

of 2002 which pertain to Nagpur District Agriculture and Rural Development Multi-Purpose Co-operative Banks, these were not admitted but in

view of the aforesaid finding, in my opinion, these writ petitions also have no substance and do not deserve to be admitted and the same are also

dismissed.

27. In the facts and circumstances of the case, there shall be no order as to costs.