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04-WP3712.2017-J.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3712 OF 2017

1. Kalaskarwadi Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Kalaskarwadi, Tandali, Taluka Shirur,
District Pune,
Through its Directors.
 2. Shrasgaon Kata Vividh Karyakari
Sahakari Sanstha Maryadit
Shirasgaon Kata, Taluka Shirur,
District Pune,
Through its Directors
- ...Petitioners

Versus

1. The State of Maharashtra
Through the Hon'ble Minister
for Cooperation, Marketing & Textile,
Mantralaya, Mumbai.
 2. The Commissioner for Cooperation &
Registrar for Cooperative Societies,
State of Maharashtra, having its Office
at Sakhar Sankul, Shivaji Nagar,
Pune – 411 005.
 3. The District Deputy Registrar,
Cooperative Societies, Pune Rural,
Having its office at 5, B.J. Road,
Maharashtra Rajya Sahakari Sangh,
Building, Pune 411 001.
 4. The Assistant Registrar,
Cooperative Societies, Shirur,
Taluka Shirur, District Pune.
- ...Respondents

WITH
CIVIL APPLICATION NO.957 OF 2017
IN
WRIT PETITION NO.3712 OF 2017

Proposed Kalbhairavnath Vividh Karyakari
Seva Sahakari Sanstha Maryadeet,
Tardobachiwadi, Taluka Shirur,
District Pune
Through its Chief Promoter
Kantilal Yashwant Kardile

...Applicant
(Intervener)

IN THE MATTER BETWEEN:-

1. Kalaskarwadi Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Kalaskarwadi, Tandali, Taluka Shirur,
District Pune,
Through its Directors
2. Shrasgaon Kata Vividh Karyakari
Sahakari Sanstha Maryadit
Shirasgaon Kata, Taluka Shirur,
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Having its office at 5, B.J. Road,
Maharashtra Rajya Sahakari Sangh,
Building, Pune 411 001.
4. The Assistant Registrar,
Cooperative Societies, Shirur,
Taluka Shirur, District Pune.

...Respondents

WITH
CIVIL APPLICATION NO.958 OF 2017
IN
WRIT PETITION NO.3712 OF 2017

Proposed Abasaheb Sarode Vividh Karyakari
Seva Sahakari Sanstha Maryadeet,
Saradwadi, Taluka Shirur, District Pune
Through its Chief Promoter
Dattatraya Machhindra Sarode

...Applicant
(Intervener)

IN THE MATTER BETWEEN:-

1. Kalaskarwadi Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Kalaskarwadi, Tandali, Taluka Shirur,
District Pune,
Through its Directors
2. Shrasgaon Kata Vividh Karyakari
Sahakari Sanstha Maryadit
Shirasgaon Kata, Taluka Shirur,
District Pune,
Through its Directors

...Petitioners

Versus

1. The State of Maharashtra
Through the Hon'ble Minister
for Cooperation, Marketing & Textile,
Mantralaya, Mumbai.
2. The Commissioner for Cooperation &
Registrar for Cooperative Societies,
State of Maharashtra, having its Office
at Sakhar Sankul, Shivaji Nagar,
Pune – 411 005.
3. The District Deputy Registrar,
Cooperative Societies, Pune Rural,
Having its office at 5, B.J. Road,
Maharashtra Rajya Sahakari Sangh,
Building, Pune 411 001.

4. The Assistant Registrar,
Cooperative Societies, Shirur,
Taluka Shirur, District Pune.

...Respondents

WITH
CIVIL APPLICATION NO.959 OF 2017
IN
WRIT PETITION NO.3712 OF 2017

Proposed Mesaimata Vividh Karyakari
Seva Sahakari Sanstha Maryadeet,
Kardelwadi, Taluka Shirur, District Pune
Through its Chief Promoter
Yuvraj Paraji Kardile
Age 53 years, Occupation – Agriculturist
Residing at Kardilewadi, Taluka Shirur,
District Pune.

...Applicant
(Intervener)

IN THE MATTER BETWEEN:-

1. Kalaskarwadi Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Kalaskarwadi, Tandali, Taluka Shirur,
District Pune,
Through its Directors
2. Shrasgaon Kata Vividh Karyakari
Sahakari Sanstha Maryadit
Shirasgaon Kata, Taluka Shirur,
District Pune,
Through its Directors

...Petitioners

Versus

1. The State of Maharashtra
Through the Hon'ble Minister
for Cooperation, Marketing & Textile,
Mantralaya, Mumbai.
2. The Commissioner for Cooperation &
Registrar for Cooperative Societies,
State of Maharashtra, having its Office
at Sakhar Sankul, Shivaji Nagar,
Pune – 411 005.

3. The District Deputy Registrar,
Cooperative Societies, Pune Rural,
Having its office at 5, B.J. Road,
Maharashtra Rajya Sahakari Sangh,
Building, Pune 411 001.
4. The Assistant Registrar,
Cooperative Societies, Shirur,
Taluka Shirur, District Pune.

...Respondents

WITH
WRIT PETITION NO.4943 OF 2017

1. Vijay Namdev Kusekar
Adult, Indian Inhabitant,
Occupation Farmer,
R/o. At Post Village Andhalgaon,
Taluka Shirur, District Pune
2. Diliprao Mohanrao Mokashi
Adult, Indian Inhabitant,
Occupation Farmer,
R/o. At Post Village Inamgaon
Taluka Shirur, District Pune

...Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Ministry of Cooperation, Irrigation & Textile,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.
2. Minister for Cooperation,
Irrigation & Textile,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.
3. Regional Joint Director,
Cooperative Societies, Pune Division,
Pune.
4. District Deputy Registrar,
Cooperative Societies, Pune Rural.

5. Assistant Registrar,
Cooperative Societies, Shirur, Pune.

6. Commissioner of Cooperation and
Registrar, Co-operative Societies,
Maharashtra, Pune.

...Respondents

WITH
WRIT PETITION NO.13990 OF 2023

1. The Dighanchi Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Dighanchi, Tal. Atpadi, Dist. Sangli,
Through its Chairman,
Hanmantrao Dhondisaheb Deshmukh
Occupation Service,
R/at: A/P Dighanchi Taluka Atpadi,
District Sangli.

2. Siddhanath Vividh Karyakari
Seva Sahakari Sanstha Maryadit
Dighanchi, Tal. Atpadi, Dist. Sangli,
Through its Chairman,
Avinash Sadashiv More,
Dighanchi, Taluka Atpadi,
District Sangli.

...Petitioners

Versus

1. The State of Maharashtra
Through the Hon'ble Minister,
of Cooperation, Marketing & Textile,
Mantralaya, Mumbai – 400 032.

2. The Commissioner of Co-operation
And Registered of Co-operative Societies,
having office at Kolhapur.

3. The District Deputy Co-operative Societies,
District Sangli.

4. Assistant Registrar,
Cooperative Societies,
Atpadi, District Sangli
having its office at Atpadi, Sangli.

5. Proposed Pant Shetkari Vikas Seva Society Ltd., Dighanchi, Tal. Atpadi, District Sangli
6. Proposed Goyaba Vikas Seva Society Ltd., Dighanchi, Tal. Atpadi, District Sangli
7. Proposed Baliraja Vikas Seva Society Ltd., Dighanchi, Tal. Atpadi, District Sangli
8. Proposed Manganga Vikas Seva Society Ltd., Dighanchi, Tal. Atpadi, District Sangli

...Respondents

Mr. S. S. Kanetkar a/w. Mr. Yash Dewal for Petitioners in WP/3712/2017.

Mr. Sagar A. Rane for Petitioners in WP/4943/2017.

Mr. Nilesh Wable a/w. Adv. Rutuja Khatmode i/b. Mr. Umesh Mankapure for Petitioners in WP/13990/2023.

Mr. N. C. Walimbe a/w. Ms. Kavita N. Solunke, AGP for Respondent-State.

Mr. Sandesh D. Patil a/w. Mr. Chintan Shah and Mr. Krishnakant Deshmukh for Respondent No.5.

Mr. Ramanand Salunke, Under Secretary, Legal & Mr. Rahul Shinde, Desk Officer present in the Court.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the arguments concluded : 9th AUGUST 2024

Date on which the Judgment is delivered: 30th AUGUST 2024

JUDGMENT (Per Jitendra Jain, J.) :-

1. Rule. Since, the pleadings are completed, by consent of the parties, all three petitions are heard finally.

2. These three writ petitions mounts a common challenge to the Government Corrigendum No.SSV-911/Case no.1047/2-dated 14th February 2017 issued by Respondent No.1- Ministry of Cooperation, Marketing & Textile. Since the issues raised in all the petitions are common, same is disposed of by common order.

3. Petitioners are registered Co-operative Societies in various villages who are aggrieved by the impugned corrigendum. There are three Civil Applications filed in Writ Petition No.3712 of 2017 who are seeking to intervene in the present *lis* to oppose the Petitioner and in support of the impugned corrigendum.

4. Petitioners seek to challenge the authority of Respondent No.1 to issue impugned corrigendum dated 14th February 2017 to the Government Resolution dated 23rd September 2013, whereby in clause (1) of the Government Resolution dated 23rd September 2013, which states that there should be “**only one**” Primary Agricultural Credit Cooperative Society (PACCS) in one Revenue Village is now sought to be replaced by following clauses 1, 1A and 1B which is impugned in present petitions and reads as under:-

“1. As far as possible, there should be single Primary Agricultural Co-operative Credit Society in a single revenue village. However, registration of more than one such societies can be permitted in a single revenue village where there is a scope therefore, after complying the other criteria related to financial capacity.

1A. The proposed primary agricultural cooperative credit society should accumulate minimum share capital amounting to Rs.5.00 lakhs before the registration of the society.

1B. The society is required to commence at least one of its business within a period of one year from the date of its registration.”

[emphasis supplied]

Original Marathi version of corrigendum dated 14th February 2017 is as under :-

राज्यात नवीन प्राथमिक कृषी पत पुरवठा
सहकारी संस्था नोंदणी करणे व कार्यरत
संस्थांचे सक्षमीकरण करणेबाबत.

महाराष्ट्र शासन
सहकार, पणन व वस्त्रोद्योग विभाग
शासन शुध्दीपत्रक क्र. ससेवा ९११/प्र.क्र. १०४७/२ स
मंत्रालय(विस्तार) मुंबई— ४०००३२
दिनांक—१४ फेब्रुवारी २०१७

वाचा— १. शासन निर्णय क्र. ससेवा— ९११/प्र.क्र. १०४७/२—स, दि. २३.०९.२०१३
२. सहकार आयुक्त व निबंधक, सहकारी संस्था, महाराष्ट्र राज्य. पुणे यांचे
दि. २०.०९.२०१६ चे पत्र.

प्रस्तावना—

राज्यात नवीन प्राथमिक कृषी पतपुरवठा संस्थांची नोंदणी करणे व कार्यरत संस्थांचे सक्षमीकरण करण्याबाबत दि. २३ सप्टेंबर, २०१३ रोजी शासन निर्णमित करण्यात आला आहे. सदर शासन निर्णयातील निकष क्र. १ व ३ विचारात घेता एका महसुली गावात संस्था अस्तित्वात असल्यास व त्याच महसुली गावात नवीन प्राथमिक कृषी पतपुरवठा सहकारी संस्थेचा प्रस्ताव दाखल झाल्यास व शासन निर्णयात नमुद केल्याप्रमाणे संभाव्य कृषी व कृषी पुरक पतपुरवठा तसेच जोखीम संपत्तीचे भांडवलशाही प्रमाण याची पूर्तता होत असल्यास अशा वेळी त्याच महसुली गावात अस्तित्वात असलेल्या संस्थे व्यतिरीक्त नवीन नियोजित संस्थेची नोंदणी करावी किंवा कसे याबाबत मार्गदर्शन मिळण्याची सहकार आयुक्त व निबंधक यांनी शासनास विनंती केली आहे.

संदर्भ. क्र. १ मधील शासन निर्णयाच्या अनुषंगाने नियोजित प्राथमिक कृषी पतपुरवठा सहकारी संस्थांच्या नोंदणीबाबत सहायक निबंधक, जिल्हा उपनिबंधक व विभागीय सहनिबंधक, सहकारी संस्था यांनी दिलेल्या निर्णयाविरुद्ध मोठ्या संख्येने पुनरिक्षण अर्ज शासनास प्राप्त झाले आहेत. अशा प्रस्तावांची गुणवत्तेवर छाननी केली असता अनेक नियोजित संस्था संदर्भ क्र.१ मधील शासन निर्णयातील निकष क्र.२ मधील निकषाची पूर्तता करीत असल्याचे निदर्शनास आले आहे.

उपरोक्त वस्तुस्थिती विचारात घेता संदर्भ क्र. १ मधील शासन निर्णयातील निकष क्र.१ मध्ये सुधारणा करणे आवश्यक असल्याची शासनाची खात्री झाल्यामुळे या निकषात सुधारणा करण्याची बाब शासनाच्या विचाराधीन होती.

शासन शुध्दीपत्र

संदर्भ क्र. १ मधील शासन निर्णयातील निकष क्र. १ ऐवजी खालीलप्रमाणे वाचावे.
१) एका महसुली गावात शक्यतो एकच प्राथमिक कृषी पतपुरवठा सहकारी संस्था असावी. तथापि, अर्थक्षमतेचे अन्य निकष विचारात घेउन ज्या गावात एकापेक्षा संस्थांची नोंदणी करण्यास वाव आहे, अशा गावात एकापेक्षा जास्त संस्थांची नोंदणी करता येईल.
१अ) नियोजित प्राथमिक कृषी पत पुरवठा सहकारी संस्थेने संस्थेच्या नोंदणीपूर्वी किमान रु. ५ लाख भांगभाडवल जमा करणे आवश्यक आहे.
१ब) नियोजित संस्थेची नोंदणी झाल्यानंतर एक वर्षाच्या कालावधीत संस्थेने किमान एक व्यवसाय सुरू करणे आवश्यक राहील.

Submissions of Petitioners in Writ Petition No.4943 of 2017:-

5. Petitioner represented by Shri. S. Rane, learned counsel submits that the impugned corrigendum dated 14th February 2017 is patently arbitrary and violates Article 14 of the Constitution of India, since there is abrupt change in policy without any rational. Petitioner further submitted that the impugned corrigendum is issued merely on the basis of a letter addressed by the Commissioner of Cooperation and same is not based on recommendation of any expert committee and, therefore, it suffers from non-application of mind. Petitioner further submitted that the impugned corrigendum has amended only clause (1) without amending other clauses of Government Resolution dated 23rd September 2013, which would lead to patent absurdity. It is further submitted that under the garb of “Corrigendum” substantive change has been made in the existing policy which permitted registration of only one PACCS in one revenue village. It is further submitted that the impugned corrigendum has been issued to regularise 47 PACCS in different villages in Shirur by giving retrospective effect and the impugned corrigendum is issued for political reason and in violation of model code of conduct which was in force in view of the ensuing elections to zilla parishad and panchayat samiti. Petitioner further submitted that the changes sought to be made by way of impugned

corrigendum does not fall within the meaning of the term “Corrigendum”. Petitioner further submitted that the decision of this Court in Writ Petition Nos.1747 of 2013 and 1164 of 2017 interpreting clause (1) of Government Resolution dated 23rd September 2013 having attained finality, the impugned corrigendum runs foul of the law laid down therein. Petitioner further relied upon the decision in the case of *Shikshak Bharti Vs. State of Maharashtra*¹ and *Ashwin Prafulla Pimpalwar & Ors. Vs. State of Maharashtra & Ors.*², in support of its submissions and prayed for setting aside of the impugned corrigendum dated 14th February 2017.

Submissions of the Petitioners in Writ Petition No.3712 of 2017:-

6. The learned counsel Mr. S. S. Kanetkar for the Petitioners in Writ Petition No.3712 of 2017 adopted the arguments of the Petitioners in Writ Petition No.4943 of 2017 and further submitted that the impugned corrigendum is contrary to the Rule 9 read with Second Schedule to the Maharashtra Government Rules of Business, 1975 which requires proposals involving change in policy to be brought before the Council of Ministers and same having not been done the corrigendum is bad in law. In support of the said submissions, Petitioner relied upon the decision of the Supreme Court in the case of

1 2018 SCC OnLine Bom 241

2 1992 (2) BOMCR 280

MRF Limited Vs. Manohar Parrikar & Ors³.

7. Petitioners represented by Mr. Wable in Writ Petition No.13990 of 2023 adopted the arguments made by the Petitioners in the above two petitions and prayed for similar prayer of quashing the impugned corrigendum dated 14th February 2017.

Submissions on behalf of Respondent No.5 in Writ Petition No.13990 of 2023:-

8. Respondent No.5 represented by Mr. S. Patil learned counsel in Writ Petition No.13990 of 2023 submits that the proposed society, is affected by the challenge made to the impugned corrigendum since they have been granted registration on 7th July 2023 and, therefore are opposing the petition on various grounds. Respondent No.5 submits that putting a blanket bar on the registration of new societies in a particular village would be in violation of Article 19(1)(c) and Article 14 of the Constitution of India. Respondent No.5 further submitted that it is nobody's case that the authority issuing the corrigendum had no power to issue the same and once it is admitted that the State has power to issue such a corrigendum, it cannot be said that the impugned corrigendum was a colourable exercise of power. Respondent No.5 further submitted that the impugned corrigendum was issued after following due process of law and after obtaining the approval of the

3 2010 (11) SCC 374

Governor under Article 166 of the Constitution of India. Respondent No.5 further submitted that there is no malice in law as proposed to be canvassed by Petitioners, since in none of the petitions, it is contended as to or for whose benefit, the corrigendum was issued. Respondent No.5 submitted that there is no case made out for challenge to the impugned corrigendum since none of the grounds laid down by the decision of the Supreme Court in the case of *State of Tamil Nadu Vs. P. Krishnamurthy*⁴ is satisfied in the present case. Respondent No.5 further submitted that this Court should not entertain the present petition, since it would amount to entering the arena of policy decision taken by the State and same is not permissible. Respondent No.5 further submitted that there is no rectification in the Government Resolution dated 23rd September 2013 by the impugned corrigendum, but only replacement of the phrase “only one”. Respondent No.5 further submits that allowing the petition would amount to surfacing new illegal order because by setting aside illegal order another illegality would come into existence. Respondent No.5 further submitted that consequences of striking down the corrigendum would be severe since during the interregnum period, many societies have been formed and transactions of loans and deposits have taken place, which would now be irreversible if the impugned corrigendum is quashed as prayed for by the Petitioner. Respondent No.5, therefore, prayed for dismissal of the

4 2006 (4) SCC 517

petition. Respondent No.5 has relied upon the following decisions in support of its submissions :-

- (i) *“K. C. Gajapati Narayan Deo Vs. State of Orissa⁵,*
- (ii) *Maharashtra State Board of HSC & Anr. Vs. Paritosh Bhupeshkumar Sheth⁶,*
- (iii) *Pune Municipal Corporation Vs. Promoters & Builders Association⁷,*
- (iv) *Maharaja Chintamani Sarannath Shahdeo Vs. Bihar⁸,*
- (v) *Nildhwaj Motiramji Kamble Vs. State of Maharashtra⁹,*
- (vi) *State of U.P. Vs. Hirendrapal Singh & Ors.¹⁰,*
- (vii) *Gajapati Narayan Deo Vs. State of Orissa¹¹,*
- (viii) *P. V. George & Anr. Vs. State of Kerala & Ors.¹²”*

Submissions of Respondent-State:-

9. Respondent-State represented by Mr. Walimbe, Additional Government Pleader vehemently opposed the petition. Respondent-State submitted that the impugned corrigendum is made applicable prospectively and not retrospectively and all the pending proposals for registration of societies will be examined on the basis of norms laid down by the Government Resolution dated 23rd September 2013 and impugned corrigendum thereto dated 14th February 2017. Respondent-

5 (1953) 2 SCC 178

6 (1984) 4 SCC 27

7 (2004) 10 SCC 769

8 (1999) 8 SCC 16

9 (2022) 2 AIR Bom R 288

10 (2011) 5 SCC 305

11 (1953) 2 SCC 178

12 (2007) 3 SCC 557

State further submitted that even the new society has to comply with norm No.2 of Government Resolution dated 23rd September 2013 which provides for quantum of business done in the preceding year by the proposed society as one of the condition for being eligible for registration. Respondent-State further submitted that the corrigendum is issued to removed contradiction between norm Nos.1 and 3 of Government Resolution dated 23rd September 2013 and, therefore, Respondent-State is justified in clarifying the inconsistency/contradiction by way of the present corrigendum dated 14th February 2017. In the Affidavit-in-reply of Dr. Sudin Gaikwad affirmed on 15th April 2017 and filed in Writ Petition No.3712 of 2017, Respondent-State prayed for discontinuance of the interim relief granted by this Court on 6th April 2017, which restrained Respondent-State and its officers to process any application for registration based on the impugned corrigendum. With regard to the Rules of Business, Respondent-State submitted that there is no financial implication arising out of the corrigendum and, therefore, the Minister In-charge of Co-operative Department had the authority to take such policy decision without referring to the Council of Ministers. Respondent-State further, by way of Affidavit of one Mr. Santosh Patil affirmed on 7th August 2024 and filed in Writ Petition No.13990 of 2023 contended that the approval of Council of Ministers for such decision is not required on a reading of

Rule 4 of the Rules of Business read with Schedule-I and Serial No.23 which deals with Co-operation, Marketing and Textile Department. Respondent-State relied upon the decision of this Court in the case of *Ganeshrao Deshmukh Vs. Dev Vyankatesh Singh*¹³, in support of this submission. The Respondent-State also in the said affidavit referred to the suggestions received from General Administration Department, which department had suggested Respondents to issue “addendum” instead of “corrigendum” and based on this suggestion, Respondent-State in the said affidavit have stated that they will be issuing such “addendum” instead of “corrigendum”. Respondent-State also filed letter dated 15th April 2024 issued by Sangram Dubal, Officer from Cooperation Department and addressed to Additional Government Pleader on the basis of which the aforesaid submissions were made. Respondent-State, therefore, submitted that the corrigendum has been correctly issued by following due process of law and to clarify the Government Resolution dated 23rd September 2013 and, therefore, all the three petitions should be dismissed.

10. We have heard learned counsel for Petitioners and the Respondents and with their assistance we have perused the documents which were brought to our notice. We have also perused the written submissions filed by Petitioners in Writ Petition No.4943 of 2017 and

13 AIR 1972 Bom 369

Respondent No.5 in Writ Petition No.13990 of 2023. By an order dated 7th September 2023, Petitioner in Writ Petition No.13999 of 2023 was granted leave to amend to join proposed Cooperative Societies who had filed intervention application being Civil Application Nos.957 of 2017, 958 of 2017 and 959 of 2017. Pursuant to this order, petition was amended and Proposed Cooperative Societies were added as party Respondent Nos.5 to 8. There is an office note dated 27th October 2023, wherein it is stated that Affidavit of service is filed on 29th September 2023 and that notice sent to Respondent Nos.5 to 8 (the Proposed Cooperative Societies) through RPAD with tracking report is filed. However, it appears that Respondent Nos.6, 7 and 8 inspite of the service have chosen not to appear when this matter was taken up for hearing.

Analysis and conclusion:-

11. Following issues arises for our consideration:

- (i) *Issue No.1:- Whether the impugned corrigendum dated 14th February 2017 seeking to amend Government Resolution dated 23rd September 2013 can at all be considered as "Corrigendum".*
- (ii) *Issue No.2:- Whether Respondent-State has followed the procedure prescribed as per Article 166 of the Constitution of India read with the Maharashtra Rules of Business, 1975 for issuing the impugned corrigendum.*

(iii) *Issue No.3:- Whether the impugned corrigendum is invalid for any other reasons ?*

(iv) *Issue No.4:- If answer to Issue No.2 is in affirmative then whether the impugned corrigendum dated 14th February 2017 is prospective or retrospective.*

(v) *Issue No.5:- If the impugned corrigendum is held to be unconstitutional then what would be the consequences / fall out of decisions taken during the period 14th February 2017 till the date of present judgment ?*

“Issue No.1:- Whether the impugned corrigendum dated 14th February 2017 seeking to amend Government Resolution dated 23rd September 2013 can at all be considered as Corrigendum.”

12. Before we proceed to adjudicate upon Issue No.1, it would be worthwhile to narrate the background facts leading to the impugned corrigendum.

13. Respondent-State is entrusted with regulating the registrations of PACCS. On 7th February 2001, Respondent-State issued a Government Resolution for regulating the registration of PACCS and Condition No.3 of the said Government Resolution read as under:-

“In a village **as far as possible** there should be only one Society. Even if there is a demand for another Society, there should be

business of 50 lakhs for each Society. In a village even if there are more than two Societies, the Gat Secretary, however, should be only one”

[emphasis supplied]

14. The aforesaid Government Resolution dated 7th February 2001 contemplated that as far as possible, there should be only one society in revenue village.

15. The Government of India on 5th August 2004 constituted a committee headed by renowned economist Shri. A. Vaidyanathan for suggesting action plan for reviving Rural Cooperative Credit Institutions. The said Committee gave a detail report on 4th February 2005 to the Government of India dealing with all the issues relating to Rural Cooperative Credit Institutions and it was also suggested that the report of this Committee be implemented by States. In the backdrop of this report and development, Respondent-State issued Government Resolution dated 3rd December 2011 by which a decision to stop new registration of PACCS was taken till a policy decision is taken in respect of the registration of new PACCS, to divide and amalgamate the existing PACCS which are financially not viable or sound, cancellation of PACCS which are required to be liquidated, etc. was under consideration of the Respondent-State.

16. On 23rd September 2013, Respondent-State after deliberation and considering various recommendations from various stakeholders issued a Government Resolution laying down new conditions/parameters for the registration of new PACCS. It is important to reproduce relevant conditions which reads thus:-

*“1) There should be **only one** Primary Agricultural Credit Co-operative Society in one Revenue Village.*

2) Estimated loan disbursal of the proposed Primary Agricultural Credit Co-operative Society should be as follows in the financial year preceding the year in which application is made for registration of the Society in terms of the crop loan rate fixed by the District Central Co-operative Bank:-

Western Maharashtra and North Maharashtra (Khandesh) -Rs.1.5 Crore.

Konkan, Marathawada and Vidarbha -Rs.1.0 Crore.

Villages in the tribal areas of the State -Rs. 50 Lacs

3) In villages, where there is no independent existing Primary Agricultural Credit Co-operative Society, when the new Primary Agricultural Co-operative Society is proposed to be registered there, the villagers who are members of the existing Primary Agricultural Credit Co-operative Society in the neighbouring village, such Primary Agricultural Credit Co-operative Society is bound to comply with the condition laid down in Point No. 2 above in respect of credit supply stated hereinabove. If due to the establishment of a new Primary Agricultural Credit Co-operative Society in an independent revenue village, the existing Primary Agricultural Credit Co-operative Society is in danger of the facing the Negative Net Worth, or their CRAR is likely to fall below 4%, then in such new revenue village, there be would be no registration of the new Primary Agricultural Credit Co-operative Society.

4)

5)

6) Following would be the policy in the State in respect of Primary Agricultural Credit Co-operative Societies which are currently functioning but which are financially unsound and whose Negative Net Worth and CRAR is less than 4%,:-

a) The Primary Agricultural Credit Co-operative Societies which

can be amalgamated with the nearest Societies, such Primary Agricultural Credit Co-operative Societies may be amalgamated with the nearest Societies.

b) Those Primary Agricultural Credit Co-operative Societies which are capable of being made financially sound, such Societies shall make their Financial Empowerment Action Plan for the next three years i.e (Year 2014-15 to 2016-17) and submit it to the concerned Registrar upto 31.03.2014.”

[emphasis supplied]

Original Marathi version of Government Resolution dated 23rd

September 2013 is as under :-

राज्यात नवीन प्राथमिक कृषी पत पुरवठा
सहकारी संस्था नोंदणी करणे व कार्यरत
संस्थांचे सक्षमीकरण करणेबाबत.

महाराष्ट्र शासन
सहकार, पणन व वस्त्रोद्योग विभाग
शासन शुध्दीप्रवक्त क. ससेवा ९११/प्र.क्र. १०४७/२ स
मंत्रालय(विस्तार) मुंबई- ४०००३२
दिनांक-२३ सप्टेंबर, २०१३

- वाचा-** १. शासन निर्णय क्रमांक. ससेवा-१०२०००/प्र.क्र. ५७०/२-स, दि. २३ फेब्रुवारी, २००१
२. सहकार आयुक्त व निबंधक, सहकारी संस्था, यांचे परिपत्रक क्र. अर्थ/अरा/विकास/
नापूप/वैसमिती-०७ दि. ५/३/२०१७.
३. शासन निर्णय क्रमांका सीसीआर-१४११/प्र.क्र. १०२८/२-स, दि. ३ डिसेंबर, २०११.
४. सहकार आयुक्त व निबंधक, सहकारी संस्था पुणे यांचे पत्र दि. ६/२/२०१३.

प्रस्तावना-

.....

शासन निर्णय-

राज्यात नव्याने प्राथमिक कृषी पतपुरवठा संस्थांची नोंदणी करण्यासाठी खालीलप्रमाणे सुधारित
निकष निश्चित करण्यात येत आहे.

१) एका महसुली गावात एकच प्राथमिक सहकारी संस्था असावी.

२) नोंदणीसाठी प्रस्ताव दाखल झालेल्या लगतपुर्वीच्या आर्थिक वर्षातील जिल्हा मध्यवर्ती सहकारी
बँकांनी निश्चित केलेल्या पीक कर्ज दरानुसार नियोजित प्राथमिक कृषी पतपुरवठा सहकारी संस्थेचा
संभाव्य कृषि व कृषिपुरक पतपुरवठा खालीलप्रमाणे आवश्यक आहे.

पश्चिम महाराष्ट्र व उत्तर महाराष्ट्र (खानदेशसह)----- रुपये १.५ कोटी
कोकण, व मराठवाडा व विदर्भ ----- रुपये १.० कोटी
राज्यातील आदिवासी भागातील गावे ----- रुपये ५० लाख

३) ज्या स्वतंत्र महसुली गावात सध्या स्वतंत्र कृषी पतपुरवठा सहकारी संस्था अस्तित्वात नाही अशा
गावामध्ये नव्याने प्राथमिक कृषी पतपुरवठा संस्थेची नोंदणी करताना अशा गावातील सभासद सध्या
शेजारच्या ज्या गावातील प्राथमिक कृषी पतपुरवठा सहकारी संस्थेशी संलग्न आहेत अशा संस्थेने देखील
वरील मुदा क्र.२ मध्ये नमुद केल्याप्रमाणे पतपुरवठ्यांचे निकष पूर्ण करणे बंधनकारक राहील. तसेच
स्वतंत्र महसुली गावात नवीन प्राथमिक कृषी पतपुरवठा सहकारी संस्था सीपन केल्यामुळे अस्तित्वात
असलेल्या संस्थेचे नक्त मूल्य उणे होत असेल किंवा अस्तित्वात असलेल्या संस्थेच्या जोखीम संपत्तीचे
भांडवलाशी प्रमाण (CRAR) ४% पेक्षा किंवा कमी होत असेल तर नविन महसुली गावात नव्याने
प्राथमिक कृषी पतपुरवठा सहकारी संस्था नोंदणी करता येणार नाही.

४) नव्याने नोंदणी होणारया प्राथमिक कृषी पतपुरवठा सहकारी संस्थेची सभासद संख्या (खातेदार सभासद) किमान ७५ एवढी असावी.

५) नियोजित प्राथमिक कृषी पतपुरवठा सहकारी संस्थेच्या प्रस्तावाची छाननी करण्यासाठी व प्रस्तावाची आर्थिक सक्षमता तपासण्यासाठी खालीलप्रमाणे समिती राहिल:-

१. अप्पर आयुक्त व विशेष निबंधक, सहकारी संस्था, महाराष्ट्र राज्य, पुणे	अध्यक्ष
२. संबंधित जिल्ह्याचे जिल्हा उपनिबंधक, सहकारी संस्था	सदस्य
३. संबंधित जिल्हा विशेष लेखापरिक्षक, सहकारी संस्था	सदस्य
४. संबंधित तालुक्याचे <u>उप/सहायक</u> निबंधक, सहकारी संस्था	सदस्य
५. उप निबंधक, सहकारी संस्था (अर्थ) मुख्यालय, पुणे	सदस्य

६) राज्यात सध्या कार्यरत असलेल्या परंतु अर्थक्षम नसलेल्या ज्या संस्थेचे नक्त मूल्य उणे आहे (Negative Net worth) व जोखीम संपत्तीचे भांडवलाशी प्रमाण (CRAR) ४% पेक्षा कमी आहे अशा प्राथमिक कृषी पतपुरवठा सहकारी संस्थांबाबत खालीलप्रमाणे धोरण राहिल:-

अ) ज्या प्राथमिक कृषी पतपुरवठा सहकारी संस्थांचे नजीकच्या संस्थेत विलीनीकरण करणे शक्य आहे अशा प्राथमिक कृषी पतपुरवठा सहकारी संस्थांचे नजीकच्या संस्थेत विलीनीकरण करण्यात यावे.

ब) ज्या संस्थांचे आर्थिक सक्षमीकरण शक्य आहे अशा संस्थांनी पुढील तीन वर्षांचा (सन २०१४-१५ ते सन २०१६-१७) आर्थिक सक्षमीकरणाचा कृती कार्यक्रम तयार करून संबंधित निबंधकाना दिनांक ३१/३/२०१४ पर्यंत सादर करावा.

17. Respondent-State, therefore, made a conscious departure from the language used in Condition No.1 of Government Resolution dated 23rd September 2013 as compared to the language used in Condition No.3 of Government Resolution dated 7th February 2001 which corresponds to Condition No.1 of Government Resolution dated 23rd September 2013. Condition No.3 of the Government Resolution dated 7th February 2001 provided that in a revenue village “as far as possible”, there should be only one society, whereas Condition No.1 of Government Resolution dated 23rd September 2013 did not contain the said phrase but on the contrary specifically provided that “only one” society is to be registered in one revenue village. The change in the policy from “as far as possible” to “only one” was taken in the backdrop of the situation arising in the State of Maharashtra, where more than

5,000 PACCS were found to be financially unviable.

18. Condition No.1 of Government Resolution dated 23rd September 2013, which provided that there should be only one Primary Agricultural Credit Cooperative Society in one revenue village came up for consideration before this Court in ***Vijay Kusekar Vs. State of Maharashtra and Ors.*** in Writ Petition No.1164 of 2017 and was held to be mandatory. This Court rejecting the contention of State that Condition No.1 of 2013 Government Resolution is directory observed that Respondents are not correct in contending that Condition No.3 of Government Resolution dated 23rd September 2013 and Condition No.1 are to be read disjunctive. The relevant observations of the said judgment in Writ Petition No.1164 of 2017 are reproduced herein:-

“19 Condition No.1 of the said GR dated 23/09/2013 would have to be read to mean that there could be only one Society or PACCS in one revenue village and therefore the said condition would have to be held to be mandatory.

20 In so far as the Respondents are concerned, it was the submission of the learned counsel that the second part of Condition No.3 of the said GR dated 23/09/2013 is indicative of the fact that the said Condition No.1 is directory. It was the submission of the learned counsel for the Respondents that in terms of the second part of the said Condition No.3 what is required to be seen whilst registering the second PACCS is its financial viability and if the second PACCS satisfies the requirements stipulated in the second part of Condition No.3, then it could be registered.

In my view, the said submission of the Respondents is based on a misreading of the said Condition No.3. The Respondents want to read the two parts of the said Condition No.3 disjunctively. In fact the said Condition No.3 has to be read as a whole. The second part of the said Condition No.3 flows from the first part, whereas the first part of the Condition No.3 provides for the existing PACCS in the neighbouring village to comply with Condition No.3 in the matter of estimated loan disbursal. The second part provides that if on the registration of a PACCS

in an independent revenue village, the existing PACCS in the neighbouring village is in danger of facing negative network or the CRAR is likely to fall below 4%, then in such new revenue village, such new PACCS should not be registered. If the second part is read disjunctively from the first part, as urged by the learned counsel for the Respondents, it would lead to an anomalous situation wherein the second Society can be registered in spite of the stipulations or conditions provided in the said GR dated 23/09/2013 being not satisfied or met.

21 In fact as rightly contended by the learned Senior Counsel Shri DJ Khambatta appearing on behalf of the Petitioners that the said Condition No.3 in so far as it ensures financial viability even of a PACCS in the neighbouring village, is indicative of the fact that Condition No.1 has to be construed strictly in respect of registering another PACCS in the same revenue village, and therefore no second Society can be registered in the same revenue village.

22 The Respondents rely on the Government Corrigendum dated 14/02/2017 to contend that the said Corrigendum clarifies the position in so far as the registration of the second Society in the same revenue village is concerned. In my view, the said Corrigendum dated 14/02/2017 does not further the case of the Respondents in so far as the registration of a second Society or PACCS in the same revenue village is concerned. The said Corrigendum has been issued purportedly on the ground that there was a confusion in the authorities in so far as Condition Nos.1 and 3 of the said GR dated 23/09/2013 is concerned, and it is to remove the said confusion that the said Corrigendum has been issued. By the said Corrigendum dated 14/02/2017 what has been done is substituting Condition No.1 by Clause (1) of the said Corrigendum and adding Clauses 1A and 1B to the said GR dated 23/09/2013. It is required to be noted that the said Corrigendum has been issued during the pendency of the above Writ Petition and the companion Writ Petitions. The impugned order is therefore not passed on the basis of the said Corrigendum. By substituting Condition No.1 of the said GR dated 23/09/2013 by Clause (1) of the Corrigendum and adding Clauses 1A and 1B, a new condition has been incorporated in the said GR dated 23/09/2013. Hence the Corrigendum is not by way of a clarification but it substitutes the original Condition No.1 in the said GR dated 23/09/2013 by a new condition. Implicit in the fact of issuing the said Corrigendum is the fact that the State Government was also interpreting Condition No.1 of the said GR dated 23/09/2013 to be a mandatory condition, and it is therefore to remove the impediment in registering the second PACCS, that the State Government has thought it fit to substitute the said Condition No.1 by a new condition which is Clause (1) of the said Corrigendum. Since the Corrigendum substantially amends the GR dated 23/09/2013, the same would only have a prospective effect and cannot be pressed into service to justify the impugned order which directs the registration of a second PACCS.

The Corrigendum has to be looked at from one more perspective. The background to the issuance of the said GR dated 23/09/2013 was the situation as prevailing on 30/03/2013 when the State Government found that out of 21,318 PACCS, 5498 PACCS were ineligible to get any

financial help or assistance as per the Vaidyanathan Committee's recommendations. Hence the State Government was very much concerned as regards the financial viability of a large number of PACCS in the State. It is in the said background that the policy as contained in the said GR dated 23/09/2013 was formulated. If Condition No.1 is said to be clarified by clause (1) of the Corrigendum, it would lead to an incongruous situation wherein in spite of the State Government coming to a conclusion that some remedial measures are required to be taken to maintain the financial health of the PACCS which it has done so by the GR dated 23/09/2013, but contrary thereto the Corrigendum would have the effect of the said GR providing for the registration of a second PACCS. The same would therefore be a contradiction of sorts.

This Court whilst adjudicating the above Writ Petition has not gone into the legality or validity of the said Corrigendum dated 14/02/2017, however has tested the case of the Respondents based on the said Corrigendum. Hence the legality and validity of the Corrigendum is kept open for being urged in appropriate proceedings, and the contentions of the parties in that regard are also kept open.”

19. In our view, the changes sought to be made by impugned corrigendum dated 14th February 2017 cannot by any stretch of imagination be treated to fall within the ambit and scope of “corrigendum”. Corrigendum is issued for rectifying some mistakes or errors which are obvious and which have crept in the main document. If one examines the changes sought to be made by the impugned corrigendum and in the light of what has been held by this Court in Writ petition No.1164 of 2017 which is reproduced above, in our view, there is substitution of Condition No.1 of Government Resolution dated 23rd September 2013 with a totally new condition and eligibility by the impugned corrigendum. When a new condition/eligibility is sought to be replaced by an old condition/eligibility, one cannot say that such a change would fall within the ambit and scope of “corrigendum” to clarify the errors crept in the main document which in the instant case

is Government Resolution dated 23rd September 2013.

20. The basis of issuing the impugned corrigendum is representation received from Cooperative Commissioner and Registrar of Cooperative Societies vide letter dated 20th September 2016, wherein these authorities have expressed their view that there is inconsistency in Condition Nos.1 and 3 of Government Resolution dated 23rd September 2013 and these authorities sought guidance, whether newly proposed society can be registered in the same revenue village, where PACCS is already existing if the proposed society complies with the other conditions. Respondent-State on the basis of such views expressed came to the conclusion that there is inconsistency between Condition Nos.1 and 3 of Government Resolution dated 23rd September 2013 and sought to issue the impugned corrigendum by which they not only replaced the phrase “**only one**” with the phrase “**as far as possible**” but also added new conditions being the proposed PACCS should deposit Rs.5,00,000/- and the proposed PACCS should commence atleast one of its business within a period of one year from the date of its registration. In our view, prescribing new eligibility/conditions by way of impugned communication which is styled as “corrigendum” cannot be treated to mean that Respondent-State is proposing to rectify the error crept in the Government Resolution dated 23rd September 2013.

21. In our view, a corrigendum can be issued only to correct a typographical error or omission therein. The dictionary meaning of the word “corrigendum” means things have to be corrected. It means there must be an error and there is a necessity to amend and rectify it. Under the garb of corrigendum, a Government Resolution cannot be altered and/or changed but that is what appears to have been done in the instant case. In order to alter or modify a Government Resolution the procedure adopted in issuing of the original Government Resolution has to be gone through. A modification is an alteration or change which may characterise in quantitative change as either increase or decrease. In the instant case, by virtue of replacement of clause (1) of 2013 Government Resolution by the corrigendum, what is sought to be done is to introduce a new parameters or criteria for prescribing the eligibility for registration of new PACCS. The corrigendum also departs from having “only one” PACCS to “as far as possible” to have one PACCS, which means by corrigendum more than one PACCS is sought to be permitted subject to fulfillment of the new conditions / parameters sought to be introduced by way of the impugned corrigendum. The Supreme Court in *State of Rajasthan Vs. J. K. Udaipur Udyog Limited*¹⁴ observed that the use of word “corrigendum” indicates the intention of correction and to rectify that what the State thought has been erroneously done. In the instant case as observed by us above, certainly

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replacement of condition (1) by way of impugned corrigendum in the Government Resolution dated 23rd September 2013 cannot be considered as correction of any error, but it is a substantive change in the policy conditions which is sought to be introduced under the garb of corrigendum. Therefore, in our view, the changes sought to be introduced in the alleged corrigendum cannot be upheld by way of introduction of a corrigendum to the Government Resolution dated 23rd September 2013 and, therefore, cannot be considered as “corrigendum”.

“Issue No.2:- Whether Respondent-State has followed the procedure prescribed as per Article 166 of the Constitution of India read with the Maharashtra Rules of Business, 1975 for issuing the impugned corrigendum.”

22. We now propose to deliberate Issue No.2 as to whether the prescribed procedure has been followed for issuing the impugned corrigendum.

23. Article 166(3) of the Constitution of India provides that the Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution is required to act in his discretion.

24. Pursuant to above Article 166, on 26th June 1975 the Maharashtra Government Rules of Business (“Rules of Business”) came

to be framed by the Governor of Maharashtra. Rule 4 of the said Rules of Business prescribes that the business of the Government shall be transacted in the Departments specified in the First Schedule and shall be classified and distributed between those departments as laid done therein. Entry 23 of the First Schedule to the said Rules of Business specifies "Cooperation and Textile Department". First Schedule describes various departments of the Government who shall transact the business. For example, Home Department, Finance Department, Planning Department etc. In our view, Rule 4 of the Rules of Business only specifies the compartmentalisation of various business of the Government into various departments and nothing further. Therefore, contention of Respondent-State justifying the issue of corrigendum by Minister of Co-operation by placing reliance on Rule 4 read with First Schedule is to be rejected. Rule 4 does not empower any Ministry to issue the corrigendum with respect to the department of which the Minister is the head. Therefore, the procedure adopted by Respondent-State to issue the corrigendum by the Ministry of Cooperation by placing reliance on Rule 4 is misconceived.

25. Rule 9 of the Rules of Business prescribes that all cases referred to in the Second Schedule shall be brought before the Council either by the Governor or the Chief Minister or the Minister-in-charge with the consent of the Chief Minister. Second Schedule to the Rules of

Business provides for various proposals which are required to be brought before Council of Minister. Entry 19 of the Second Schedule refers to “proposals involving any important change of policy or practice.” We have already observed above, that what is sought to be introduced by way of corrigendum is prescribing new eligibility criteria for registration of PACCS. We have already observed that the changes sought to be made are substantial changes to the Government Resolution dated 23rd September 2013. Therefore, in our view, the impugned corrigendum could not have been issued without following the procedure prescribed in Rule 9 of Rules of Business. Though we have already held that in any case such changes cannot be made by way of corrigendum Respondent-State in their affidavit have admitted that the changes sought to be made by way of impugned corrigendum is not required to be referred to the Council of Minister, which means that this issue was never referred to the Council of Minister. In our view as observed hereinabove, the changes sought to be made by way of impugned corrigendum was required to be brought before the Council of Ministers and having not done that clearly there is breach of Rule 9 which is mandatory. Therefore, Petitioners are justified in contending that the impugned corrigendum having been introduced without following the procedure prescribed by Rule 9 of Rules of Business, same is required to be quashed and set aside.

26. The Petitioners are justified in placing reliance on the decision of the Supreme Court in the case of ***MRF Limited (supra)***, wherein it is held that the decision of the State Government have to be in conformity with the mandate of Articles 154 and 166 Constitution of India as also the Rules framed thereunder as otherwise such decisions would not be a Government decision and will be a nullity. The Supreme Court further observed that if the Council of Ministers or the Chief Minister has not been a party to a decision taken by individual Minister, that decision cannot be the decision of the State Government and it would be *non-est* and *ab-initio void*. The Supreme Court further observed that Rules of Business framed under the provisions of Article 166(3) of the Constitution of India are mandatory and must be strictly adhered. Any decision by the Government in breach of these Rules will be a nullity in the eye of law. In the instant case before us admittedly Rule 9 of the Rules of Business has been violated and, therefore, the impugned corrigendum dated 14th February 2017 is required to be set aside following ratio of the decision of the Supreme Court in the case of ***MRF Limited (supra)***.

27. Respondent-State in its affidavit dated 7th August 2024 has admitted that General Administration Department have suggested issuance of “addendum” instead of “corrigendum” and the Respondent-State will be issuing such an addendum. By this, Respondent-State

have admitted that the changes sought to be made were wrongly sought to be introduced by way of corrigendum. Therefore, even on this admission, the impugned corrigendum dated 14th February 2017 is required to be set aside.

28. The reliance placed by Respondent-State in the case of *Ganeshrao Deshmukh (supra)* is misconceived. Respondent-State have relied on the observation “it is not disputed that under the Rules of Business framed under the Constitution of India, the State Government means in practice the Minister-in-charge of the department concerned” in support of its impugned action. In our view, this decision is not applicable since it was rendered on 27th July 1971 which is prior to the 1975 Rules of Business which we are concerned. Therefore, the 1975 Rules of Business were not for consideration before the High Court in the said decision. Furthermore, it was on the basis of undisputed position therein that the said issue came to be rendered which is not the case before us. Therefore, on facts and in law, the decision relied upon by Respondent-State in the case of *Ganeshrao Deshmukh (supra)* is not applicable to the instant case.

29. Respondent-State has sought to justify the corrigendum by stating that it was to remove contradiction in Condition Nos.1 and 3 of Government Resolution dated 23rd September 2013. In our view, the

whole basis of there being any contradiction in Condition Nos.1 and 3 of the Government Resolution dated 23rd September 2013 is itself misconceived. Condition No.1 of 2013 Government Resolution expressly states that there should be a one PACCS within a **single** revenue village, whereas Condition No.3 dealt with a situation where by virtue of registration of a PACCS in a revenue village where there is none-existing, the effect of the said registration on PACCS of the neighbouring village has to be considered. Therefore, Condition Nos.1 and 3 both operate in different areas, Condition No.3 is to judge the effect of a neighbouring PACCS when a new PACCS is sought to be registered in a village where none-exists. Therefore, the whole basis of there being any inconsistency in Condition Nos.1 and 3 of Government Resolution dated 23rd September 2013 is fallacious and consequently the corrigendum issued dated 14th February 2017 on such erroneous basis is required to be quashed and set aside.

Issue No.3:- Whether the impugned corrigendum is invalid for any other reasons ?

30. It is also important to note that the impugned corrigendum results in creation of an inconsistent position. Respondent-State in their affidavit have submitted that Condition No.2 of Government Resolution dated 23rd September 2013 has to be complied with by the new PACCS. Condition No.2 provides for quantum of business done in the

immediately preceding financial year by PACCS of the amount specified therein. In the impugned corrigendum, a condition is prescribed that the new PACCS is required to commence atleast one of its business within a period of one year from the date of its registration. If that be so, then we fail to understand how Condition No.2 of Government Resolution dated 23rd September 2013 prescribing quantum of business to be done in preceding year can be satisfied by a new PACCS as per the impugned corrigendum. Therefore, even on this count, the impugned corrigendum seems to have been issued without considering these relevant aspects and is required to be quashed and set aside.

31. One more reason for quashing the impugned corrigendum is that on 11th January 2017, the State Election Commission announced election dates for Zilla Parishad and Panchayat. The election programme was scheduled from 1st February 2017 and on 28th February 2017, the result of election would have to be announced. During this period, i.e., from 11th January 2017 till announcement of result, i.e., 28th February 2017, Model Code of Conduct was effective and as per the guidelines laid down by the Election Commission of India for enforcement of Model Code of Conduct, it was imperative on the part of the Ministry in-charge not to have issued such corrigendum which according to us was an important and substantive policy decision which was sought to be enforced by the impugned corrigendum. Looking at the spirit of Model

Code of Conduct, the Ministry in-charge could not have taken an important policy decision moreso in letter and spirit of such Model Code of Conduct and even on this count, in our view, the impugned corrigendum is required to be quashed and set aside.

Issue No.4:- If answer to Issue No.2 is in affirmative then what would be whether the impugned corrigendum dated 14th February 2017 is prospective or retrospective.

32. Since we are of the opinion that the impugned corrigendum is required to be set aside, Issue No.4 on whether the corrigendum is prospective or retrospective is not required to be adjudicated even though Respondent-State in their affidavit have accepted that same is prospective and this Court in Writ Petition No.1164 of 2017 have also held same to be prospective.

Issue No.5:- If the impugned corrigendum is held to be unconstitutional then what would be the consequences / fall out of decisions taken during the period 14th February 2017 till the date of present judgment ?

33. Now we come to the fall out of our decision above in the light of the contention raised by Respondent No.5 in Writ Petition No.13990 of 2023. In this context it is relevant to re-produce orders passed by the Co-ordinate Benches of this Court in the three petitions which are subject matter before us.

34. On 6th April 2017, this Court in Writ Petition No.3712 of 2017 (Coram : Shantanu S. Kemkar and B. P. Colabawalla, JJ.) granted interim order in terms of prayer clause (d) and the said interim order continued from time to time. Prayer clause (d) reads as under:-

“(d) Pending hearing and final disposal of the present Writ Petition, the Respondent Nos.2, 3 and 4 be directed not to consider any application or grant registration of any new Society on the basis of said impugned Corrigendum No.SS.911/CN1047/2S dated 14th February 2017, being Exhibit “G” to this Writ Petition.”

The effect of the above interim order was Respondent-State, the Commissioner for Cooperation and Registrar for Co-operative Societies, the District Deputy Registrar Co-operative Societies and the Assistant Registrar Co-operative Societies were directed not to consider any application or grant registration to any new Society on the basis of impugned corrigendum dated 14th February 2017.

35. On 3rd May 2017, this Court in Writ Petition Nos.4943 of 2017 and 3712 of 2017 (Coram : Shantanu S. Kemkar and A. M. Badar, JJ.) modified the interim order by observing that the process of registration of the new Primary Cooperative Society may go on however, no final decision regarding registration shall be taken by the competent authority till the next date of hearing. The said order also continued from time to time.

36. On 8th December 2020, this Court (Coram: S. J. Kathawalla and Riyaz I. Chagla, JJ.) in Writ Petition (Stamp) No.94596 of 2020 passed following order:-

“1. The grievance of the Petitioners in the above Writ Petition is that though the Petitioners have applied for registration of the Society in the year 2015, the Respondents have declined to register the same in view of the Order passed by this Court dated 3rd May, 2017 in Writ Petition No.4943 of 2017, which reads thus:

“Parties through their counsel. Having considered the statement made by the learned counsel for the parties in regard to continuation of interim order, we modify the interim order to the extent that the process of registration of the New Primary Co-op. Society may go on, however, no final decision regarding registration shall be taken by the Competent Authority till the next date of hearing.

As agreed, list the matter on 8th June 2017.”

2. The said order is limited to the parties to the said Writ Petition and is not a blanket order directing the Respondents not to take final decision regarding registration of any society. In view thereof, the said order dated 3rd May, 2017 should not preclude the Respondents from registering the Petitioner-Society if all the other requirements are complied with by the Petitioners. In view thereof, we pass the following order:

(i) The Order dated 26th July, 2019 passed by Respondent No.2 is set aside.

(ii) The Respondents are directed to forthwith process and decide the Petitioners’ proposals seeking registration as Credit Resource Societies under the provisions of the Maharashtra Co-operative Societies Act, 1960.

(iii) The above Writ Petition is accordingly disposed off.

3. This order will be digitally signed by the PA/PS of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.”

37. We have held the impugned corrigendum dated 14th February 2017 as unconstitutional. However, during interregnum, the Respondent-State and its authorities have granted registrations to PACCS on the basis of the impugned corrigendum and on the basis of

the order dated 8th December 2020 passed in Writ Petition (St.) No.94596 of 2020 wherein it was observed by Co-ordinate Bench that the restraint order dated 3rd May 2017 passed in Writ Petition No.4943 of 2017 is not a blanket order restraining the Respondents not to take final decision regarding registration of any society but the restrained order passed is limited to the parties to the Writ Petition No.4943 of 2017.

38. The natural corollary of our holding the impugned corrigendum as unconstitutional would be that all PACCS that had made the applications for registration on the basis of the impugned corrigendum and the Respondent-State and its authorities have granted the registrations on that basis would have to be held as non-est and registrations would have to be cancelled. However, during the period 14th February 2017 till today, the fact remains that the registrations have been granted on the basis of the impugned corrigendum and such PACCS have started conducting the business of receiving deposits and lending in respective villages. If on the basis of this order, the registrations of such PACCS have to be cancelled then the multiplier economic consequences would be disastrous. We say so because over a period of 7 years from 2017 till 2024, these PACCS have conducted their activities on the basis of registrations granted by relying upon the impugned corrigendum and order dated 8th December 2020. There

would be severe economic crisis if these PACCS are now required to be wound up or closed down. Many depositors would lose their money leading to economic crisis of already fragile rural cooperative institutions. The ill-effects of such cancellation of registrations would be far-reaching then one can think of to the extent that it may also lead to deaths of various people. As a Writ Court, we have to keep in mind the equity jurisdiction conferred under Article 226 of the Constitution of India. The Court, when faced with such type of situation, has to balance the competing rights. The Court should make an attempt to ensure that atleast future economic crisis if possible, can be avoided as a consequence of an illegal act. Therefore, keeping in mind the balance between the illegal acts and the consequences of economic crisis ensuing in future on account of no fault of PACCS, we are of the view that registrations granted on the basis of the impugned corrigendum dated 14th February 2017 and on the basis of the order dated 8th December 2020 passed in Writ Petition (St.) No.94596 of 2020 will not be affected or cancelled by reason of our holding the impugned corrigendum as bad-in-law. We make it clear that only those PACCS who have been registered on the basis of the impugned corrigendum during the period 14th February 2017 till the date of this order will be saved. It goes without saying that from the date of this order, no further registrations would be granted on the basis of the impugned

corrigendum since we have struck down the same.

39. We are guided in our above approach by the decision of the Supreme Court in the case of ***P. V. George & Ors. Vs. State of Kerala & Ors.***¹⁵, and for the sake of convenience, we reproduce paragraph 14 of the said decision.

*“14. For the views we propose to take, it is not necessary for us to consider all the decisions relied upon by Mr Rajan. The legal position as regards the applicability of doctrine of prospective overruling is no longer res integra. This Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in ***Golak Nath v. State of Punjab*** the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.”*

40. We have not given any finding with respect to other submissions made by the parties since, according to us, the writ petitions are being decided on the primary issue of validity of the impugned corrigendum.

41. In view of above, we pass the following order :-

ORDER

- (i) The impugned corrigendum dated 14th February 2017 is unconstitutional and same is quashed and set aside.

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- (ii) The registrations granted to PACCS during the period from 14th February 2017 till today would not be cancelled only on account of this judgment.

42. Rule is made absolute in above terms with no order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]