

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.7942 OF 2012 WITH
CIVIL APPLICATION NO.2542 OF 2017

Terna Matsyavyavsai Sahakari
Sanstha Ltd.,
Goverdhanwadi/ Kolewadi,
Taluka and District Osmanabad,
through its Chairman
Rajkanya d/o Rajendra Raut,
Age 26 years, Occu. Fishery and
Household, R/o Kolewadi,
Taluka and District Osmanabad

... PETITIONER

VERSUS

1. The State Minister (Fisheries)
Government of Maharashtra,
Mantralaya, Fort, Mumbai
2. The Deputy Registrar,
Co-operative Societies, Fisheries,
Maharashtra State, Mumbai.
3. The Assistant Registrar,
Co-operative Societies (Dairy),
Osmanabad, Taluka and
District Osmanabad.
4. Sahebrao Maruti Shinde,
Age 38 years, Occu. Fishery
5. Yuvraj Janardhan Shinde,
Age 28 years, Occu. Fishery
6. Sachin Janardhan Shinde
Age 25 years, Occu. Fishery
7. Kantabai Sahebrao Shinde
Age 32 years, Occu. Fishery

8. Reshma Hanmant Shinde,
Age 33 years, Occu. Fishery
9. Rangnath Shankar Shinde
Age 45 years, Occu. Fishery
10. Santosh Rangnath Shinde
Age 27 years, Occu. Fishery
11. Ratan Shankar Shinde
Age 25 years, Occu. Fishery
12. Pandurang Bandu Shinde,
Age 50 years, Occu. Fishery
13. Gunwant Pandurang Shinde,
Age 38 years, Occu. Fishery
14. Goroba Bandu Shinde,
Age 60 years, Occu. Fishery
15. Rajendra Goroba Shinde
Age 40 years, Occu. Fishery
16. Ranjit Goraba Shinde,
Age 35 years, Occu. Fishery
17. Sudhakar Dnyanoba Shinde,
Age 55 years, Occu. Fishery
18. Somshersingh Rameshchandra Salvi
Age 50 years, Occu. Fishery
19. Bhaskar Dnyanoba Kamble
Age 50 years, Occu. Fishery
20. Bharat Shripati Kamble
Age 40 years, Occu. Fishery
21. Uddyav Pralhad Shendge
Age 40 years, Occu. Fishery
22. Nishant Devidas Lavate
Age 35 years, Occu. Fishery
23. Pandurang Laxman Thodsare
Age 35 years, Occu. Fishery

All R/o Govardhanwadi,
Taluka and District Osmanabad ... RESPONDENTS

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Shri A.N. Irpatgire, Advocate for petitioner
Shri A.V. Deshmukh, A.G.P. for respondent Nos.1 to 3
Shri S.S. Wakure, Advocate for respondent No.4 to 23
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CORAM: S. B. SHUKRE, J.

DATED: 21st February, 2017.

ORAL JUDGMENT :

1. Heard Mr. Irpatgire, learned counsel for the petitioner, Shri Deshmukh, learned A.G.P. for respondent Nos.1 to 3 and Mr. Wakure, learned counsel for respondent No.4 to 23.

2. The grievance of the petitioner Society is that, firstly the Assistant Registrar, then the Deputy Registrar and then the Hon'ble Minister, all authorities have failed to follow the basic requirement of Section 23(1) of the Maharashtra Co-operative Societies Act, making these authorities to record satisfaction that there was sufficient cause for declining membership of the petitioner Society to respondent No.4 to 23. Shri Irpatgire, learned counsel for the petitioner places heavy reliance upon the case of **New Sion Co-operative Housing Society Ltd. Vs. State of Maharashtra & others**, reported in **2007(1) Mh.L.J. 416.**

3. According to learned A.G.P. appearing for respondent Nos.1 to 3, this basic requirement has been met with by the authorities below and, therefore, there is no scope for making any interference with the impugned order. Learned counsel for respondent No.4 to 23 also reiterates the same argument.

4. In the case of New Sion Co-operative Housing Society Ltd., this Court has held that, if a Society has to reject membership to a person, Section 23(1) of the Maharashtra Co-operative Societies Act would require the Society to record reasons, showing that there is adequate cause behind rejection of the membership and not only that, the Assistant Registrar as well as the appellate and revisional authority would also have to record a finding that there is a sufficient cause or otherwise for declining the membership. This Court has also held that, an assessment of the facts as regards existence of sufficient cause or otherwise must be made by the competent authority.

5. In the instant case, there are two grounds which weighed with the authorities below in recording a concurrent finding that refusal of membership to respondent No.4 to 23 by the petitioner Society was incorrect. Of course, learned counsel for the petitioner Society submits that, these authorities have not categorically found that the rejection of the membership by the

petitioner was without any sufficient cause. But, I find it very difficult to accept this contention as at least one of the grounds mentioned in the impugned order does disclose that in the opinion of these authorities, the petitioner Society has declined membership without any sufficient cause. As the record shows, the only ground on which the petitioner Society rejected membership was that the fishing area was spread over 507 hectars of Terna Tank and as there were already 90 members on roll of the petitioner Society, additional members could not be admitted and this ground of rejection, has been found by the authorities below, as not disclosing any sufficient cause. In their consistent opinion, the area of 507 hectars of the fishing tank was large enough to accommodate 20 more members and that is the reason why these authorities have summarized the ground in the words that the reason for rejection does not appear to be consistent with the facts and circumstances of the case.

6. In my considered view, this is a finding which is based upon assessment of facts by the authorities below, and I must add, it is a finding based upon the material available on record and it has not been shown to be perverse or resulting from consideration of some irrelevant factors. Therefore, such an assessment of facts could not be gone into in exercise of the writ jurisdiction and given its nature, I am of the view that, it

amounts to coming to a conclusion that rejection of the membership of the petitioner Society was without any sufficient cause.

7. As regards the other ground on which the impugned orders are resting, I must say that this ground is not borne out from the record of the case. This ground relates to failure of the petitioner Society to inform rejection of membership to respondent Nos.4 to 23 within stipulated period of time. As a matter of record, there is an admission given by these respondents about communication having been received by them regarding rejection of their membership applications and, therefore, this other ground resorted to by the authorities below is perverse. But, this perversity would not make the impugned order as arbitrary as a whole because, as stated earlier, there is already an assessment of factual situation, based on material available on record, leading to a conclusion that on an insufficient ground, the membership applications were rejected. Thus, on this count, I do not see that any prejudice has been caused to any of the parties.

8. There is also a contention raised on behalf of the petitioner that the Hon'ble Minister did not give them sufficient opportunity of hearing as no proper notice was given to them of the hearing held on 12/6/2012 and that, when they learnt about

the hearing, they tried to reach the office of the Hon'ble Minister in time, but they were denied access to the Chamber of the Hon'ble Minister for security reasons and that they could make entry only in the second half of that working day. This contention, however, is not supported by grounds taken in the adjournment application filed on 12/6/2012 by the petitioner, which is at Page 64 of the Paper Book of the petition. Nothing is mentioned in this application that the petitioner was not informed of the date of hearing sufficiently in advance and that its representative was denied access to the chamber of the Hon'ble Minister in the early hours of the day. On the contrary, an application was made on behalf of the petitioner that grant of one adjournment was necessary for the reason that petitioner's Advocate was not ready to argue the matter and was also not willing to give his no objection for engagement of another counsel. In this application, the petitioner also sought some time to enable it to file a written argument. It appears that, thereafter, no effort whatsoever was made by the petitioner to submit the written argument, although there was available the time of about two months before the impugned order was passed by the Hon'ble Minister, it was passed on 13/8/2012. This application, the own application of the petitioner, itself negates the contention of the petitioner now raised before this Court.

9. In the result, I see no merit in the petition and the petition deserves to be dismissed with costs. The petition stands dismissed with costs. Rule is discharged.

10. In view of dismissal of the Writ Petition, Civil Application No.2542/2017 stands disposed of.

(S. B. SHUKRE)
JUDGE

fmp/wp7942/12