

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5109 OF 2018

Proposed Akshay Co-operative
Matsvyavasay Society Ltd., Shirala .. Petitioner
Vs.
Dhopeswar Matsya Vyavsayik
Co-operative Society Ltd. & Ors. .. Respondents

**ALONG WITH
WRIT PETITION NO.4610 OF 2018**

Shirala Petha Bhoiraj Matsya Vyavsaay
Sahakari Saunsta Maryadit .. Petitioner
Vs.
Dhopeswar Matsya Vyavsayik
Co-operative Society Ltd. & Ors. .. Respondents

**ALONG WITH
WRIT PETITION (ST.) NO.11882 OF 2018**

Dharangrast Machhimar Sahakari
Sanstha Ltd. (proposed), Padali .. Petitioner
Vs.
Dhopeswar Matsya Vyavsayik
Co-operative Society Ltd. & Ors. .. Respondents

Mr.Sushant Prabhune for the petitioner in WP No.5109 of 2018.
Mr.Tejas Dande i/by Mr.Sampatrao Pawar for the petitioner in WP
No.4610 of 2018.
Mr.A.M.Kulkarni i/by Mr.Vaibhav Gaikwad in WP St. No.11882 of 2018.
Mr.Sangramsingh Yadav i/by Mr.S.R. Ganbavale for the respondent no.1.
Mr.S.H. Kankal, AGP for the respondent nos.2 to 6- State.

**CORAM : R.D. DHANUKA, J.
DATE : 4th July 2018**

P.C.:

. Matters were argued at great length by learned counsel for
the parties to these three petitions.

2. The petitioners have impugned the order passed by the Commissioner (Fisheries) Maharashtra State allowing the Revision Application Nos.40 of 2016 and 39 of 2016 filed by the respondent no.1 challenging the order passed by the Assistant Registrar, Co-operative Societies (Fisheries) Maharashtra State. The petitioners in these three petitions and the respondent no.1 had applied for registration under the provisions of the Maharashtra Co-operative Societies Act, 1960.

3. A perusal of the record prima facie indicates that all the applications were supposed to be decided on merits according to the date of filing of the application of the registration and other relevant conditions applicable to the parties. The record further indicates that the letter of authority dated 1st March 2014 records a handwritten endorsement that the Fisheries Minister State Shri Uday Samant had telephonically instructed the authorities to stop the action in respect of the proposal of the respondent no.1 society until further orders.

4. On 18th September 2014, the respondent no.1 was granted NOC by citing it as a special case on the recommendation of the learned Fisheries Minister. Though the record prima facie indicates that the applications filed by the petitioners were in order whereas the application of the respondent no.1 was defective, on the basis of the oral as well as communication in writing made by the Fisheries Minister, the Commissioner (Fisheries) has interfered with the order passed by the Assistant Registrar, Co-operative Societies and restored the registration granted in favour of the respondent no.1.

5. Before the Aurangabad bench of this Court in Writ Petition No.643 of 2014 filed by the Gulhati Matsya Vyavsay Sahakari Sanstha Maryadit against State of Maharashtra and others, the learned Special Counsel for the State had made a statement that department of fisheries will not interfere with in any manner with the authority and power of the authorities under the MCS Act in so far as registration of the Co-operative Society is concerned. It was further recorded that the Commissioner or the Deputy Commissioner will do is to record on the proposal their no objection but the proposal in no way would be decided or finalised by them. It was further recorded that the discretion, power and jurisdiction of the Assistant Registrar, Co-operative Societies will not be interfered with or disturbed in any manner by the superior officers. They would not issue any instructions or directions to the Assistant Registrar or Deputy Registrar and the authority, power and discretion to register a Co-operative society would be completely left to the Assistant Registrar. The instructions given by the learned Minister to the adjudicating authority are contrary to the statement made before this Court/Aurangabad Bench.

6. A perusal of the record clearly indicates that the authorities have favoured the respondent no.1 based on written and oral instructions of the learned Minister and contrary to the statement made by the State Government before the Aurangabad Bench of this Court in Writ Petition No.643 of 2014. In my view, such interference by the learned Minister with the adjudication process in the hands of the authorities was totally unwarranted and illegal.

7. At this stage, learned counsel for the respondent no.1, on instructions, states that his client has no objection if the impugned order passed by the learned Commissioner (Fisheries) Maharashtra State on 25th September 2017 is set aside and the Revision Application Nos.40 of 2016 and 39 of 2016 are restored to file before the learned Commissioner (Fisheries). Statement made by the learned counsel for the respondent no.1 is accepted.

8. I therefore pass the following order :-

- (i) The impugned order dated 25th September 2017 passed by the learned Commissioner (Fisheries) is quashed and set aside.
- (ii) Revision Application Nos.40 of 2016 and 39 of 2016 are restored to file before the learned Commissioner (Fisheries).
- (iii) The learned Commissioner (Fisheries) shall make an endeavour to dispose of the aforesaid revision applications after hearing all the parties and after complying with the principles of natural justice and on its own merits without being influenced by the observations made and the conclusions drawn in the impugned order dated 25th September 2017 and without any interference of any nature whatsoever from the learned Fisheries Minister or any other authority.
- (iv) The aforesaid revision applications shall be decided within three months from the date of next hearing. It is made clear that if the learned Commissioner (Fisheries) who has passed the impugned order is still in place in the same position, he shall not be assigned the work of hearing of these revision applications. The said revision applications in that event shall be heard by any other

officer who is competent to hear such revision applications.

- (v) Parties are directed to appear before the learned Commissioner (Fisheries) on 19th July 2018 at 11.00 a.m.
- (vii) Learned Commissioner (Fisheries) shall also not take into consideration the oral as well as written instructions earlier given by the learned Fisheries Minister to the authority to favour the respondent no.1 while passing a fresh order.
- (viii) Till such Revision Applications Nos.40 of 2016 and 39 of 2016 are heard by the learned Commissioner (Fisheries) and a fresh order is passed and for a period of two weeks from the date of communication of such order, certificate of registration in favour of the respondent no.1 shall remain stayed.
- (ix) Though the revision applications are filed by two of the petitioners out of these three petitioners, learned Commissioner (Fisheries) shall pass an order after hearing all the three petitioners as well as the respondent no.1.
- (x) All three writ petitions are disposed of in aforesaid terms. No order as to costs.
- (xi) Parties as well as the learned Commissioner (Fisheries) to act on the authenticated copy of this order.

R.D. DHANUKA, J.