

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6166/2017

Chatrapati Matsyavyavsay Sahkari Sanstha Maryadit, Sonala
Vs

The Commissioner of Fisheries and Add. Registrar Co-op Society(Fishery) and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.S.Khadse, Advocate for petitioner.
Shri A.M.Kadukar, Assistant Government Pleader for respondent nos. 1 to 4.
Shri S.D.Chande, Advocate for respondent no.5.

CORAM : A.S.CHANDURKAR, J.

DATED : September 17, 2019

The petitioner-Society is aggrieved by the order passed by the Commissioner of Fisheries in the revision application that was preferred by it for challenging the order dated 20.10.2016 passed by the Deputy Registrar Co-operative Societies (Fisheries) cancelling the registration of the Society.

It is the case of the petitioner-Society that pursuant to the Government Resolution dated 26.06.2014 it had sought its registration under Section 4 of the Maharashtra Cooperative Societies Act, 1960. No objection in that regard was given by the Assistant Commissioner (Fisheries) on 30.03.2016. Pursuant thereto the petitioner was granted registration on 13.04.2016. The respondent no.5-Society which was registered in April 2006 challenged the same by filing an appeal before the Deputy Registrar. By order dated 20.10.2016 the registration granted to the petitioner-Society came to be cancelled on the ground that the respondent no.5-Society which was registered prior to the petitioner-Society was not heard before granting registration to the petitioner-Society. Being aggrieved, the petitioner-Society filed a revision application and by the impugned order the Commissioner of Fisheries has modified

the order passed by the Deputy Registrar and has remanded the proceedings for a fresh consideration after giving due opportunity to the parties.

Shri S.S.Khadse, learned counsel for the petitioner-Society submitted that in the light of the Clause 1.6 of the Government Resolution dated 26.06.2014 for an area admeasuring about 200 hectares, four Societies were permitted to carry out fishing activities. It was only the respondent no.5-Society which was existing earlier and grant of registration to the petitioner-Society would not result in violating Clause 1.6 of the said Government Resolution. Hence grant of opportunity of hearing to the respondent no.5-Society was an empty formality. Since the area of the Tank was about 262 hectares, it was clear that even if an objection was raised by the respondent no.5-Society, grant of registration to the petitioner-Society would not result in violating the Government Resolution dated 26.06.2014. There was no reason to remand the proceedings to the Authorities for fresh consideration. In that regard the learned counsel has relied upon the decisions in *Aligarh Muslim University and Others, (2000) 7 SCC 529* and *Maharashtra Certified Auditors Association Vs. State of Maharashtra & Anr. 2004 (4) ALL M R 490*. It is thus submitted that the impugned order is liable to be set aside and the registration granted earlier ought to be restored.

Shri A.M.Kadukar, learned Assistant Government Pleader for the respondent nos. 1 to 4 and Shri S.D.Chande, learned counsel for the respondent no.5 supported the impugned order. It was submitted that the respondent no.1 was justified in observing that the respondent no.5-Society was liable to be heard before grant of registration to the petitioner-Society. Reference was made to the Government Resolution dated 30.06.2017 which had been issued after considering the shortcomings of the earlier Government Resolution dated 26.06.2014. The requirement of grant of hearing to an existing Society has been prescribed. As it was an admitted position that the petitioner-Society was granted registration

without giving any opportunity to the existing Society, the impugned order did not call for any interference.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. It is undisputed that the respondent no.5-Society was registered prior in time and it was in existence when the petitioner-Society applied for registration. It has been found by the Authorities that it was necessary to grant an opportunity of hearing to the existing Society before granting fresh registration to another Society. Though the Deputy Registrar has referred to the provisions of Section 4 of the said Act, which according to the learned counsel for the petitioner was inapplicable, it is seen as per proviso to Section 4 of the said Act the Authorities have to take into consideration the aspect whether grant of registration furthers or has any adverse effect on co-operative movement or is not in its interest. It is in that backdrop that such opportunity of hearing is required to be granted to an existing Society. The subsequent Government Resolution dated 30.06.2017 prescribing said requirement is not under challenge. This Government Resolution therefore was binding on the Authorities especially when the Commissioner decided the revision application on 07.08.2017. In these facts the ratio of the decisions relied cannot be made applicable to the case in hand.

Since the impugned order requires grant of due opportunity to the existing Society, I do not find that there is any reason to interfere with that order. It is always open for the petitioner to substantiate its claim for registration despite the presence of the respondent no.5 Society as according to it the area of the Tank exceeds 250 Hectares. Keeping the aforesaid issue open for due consideration, the writ petition stands dismissed with no orders as to costs.

JUDGE