

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4071 OF 2021

Late Bhaurao Markad Matshya
Vyavasayeeek Sahakari Sanstha Mrayadit,
Songiri, Tq. Bhoom, Dist. Osmanabad,
through its Chairman namely
Bhausahab s/o Bhaskar Markad,
Age : 35 years, Occu. Fishery,
R/o Songiri, Tq. Bhoom,
District Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Agri., Animal Husbandry, Dairy
Development and Fishery Department,
Mantralaya, Mumbai
2. The Commissioner of Fishery
and Additional Registrar,
Cooperative Societies (Fishery),
Maharashtra State, Mumbai,
Taraporwala Matshalaya,
Netaji Subhash Road,
Charni Road, Mumbai
3. The Deputy Registrar,
Cooperative Societies (Fishery),
Maharashtra State, Mumbai,
Taraporwala Matshyalaya,
Netaji Subhash Road,
Charni Road, Mumbai
4. The Regional Deputy Commissioner
of Fishery, Latur, Latur Region,
Latur, Old Collector Office premises,
Administrative Building, 2nd Floor,
Latur
5. The Assistant Commissioner of
Fishery, Osmanabad,
Central Administrative Building,
1st Floor, Osmanabad

6. The Fishery Development Officer,
Osmanabad, Tq. & Dist. Osmanabad
7. The Assistant Registrar
Cooperative Societies (Dairy),
Osmanabad, Sathe Chowk,
Tuljapur Road, Osmanabad,
Tq. and District Osmanabad
8. Proposed Tuljabhavani Matshya
Vyavasayeeek Sahakari Sanstha Maryadit,
Songiri, Tq. Bhoom, Dist. Osmanabad,
through its Chief Promoter namely
Siddheshwar s/o Somnath Kute,
Age : 46 years, Occu. Agril.,
R/o Songiri, Tq. Bhoom,
District Osmanabad

RESPONDENTS**AND****WRIT PETITION NO.4820 OF 2021**

Late Bhaurao Markad Matshya
Vyavasayeeek Sahakari Sanstha Maryadit,
Songiri, Tq. Bhoom, Dist. Osmanabad
through its Chairman namely,
Bhausahab s/o Bhaaskar Markad,
Age : 35 years, Occu. Fishery,
R/o Songiri, Tq. Bhoom,
District Osmanabad

PETITIONER**VERSUS**

1. The State of Maharashtra,
through its Secretary,
Agri., Animal Husbandry, Dairy
Development and Fishery Department,
Mantralaya, Mumbai
2. The Commissioner of Fishery
and Additional Registrar,
Cooperative Societies (Fishery),
Maharashtra State, Mumbai,
Taraporwala Matshalaya,
Netaji Subhash Road,
Charni Road, Mumbai

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1st Floor, Osmanabad
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Osmanabad, Tq. & Dist. Osmanabad
7. The Assistant Registrar
Cooperative Societies (Dairy),
Osmanabad, Sathe Chowk,
Tuljapur Road, Osmanabad,
Tq. and District Osmanabad
8. Proposed Om Raje Nimbalkar Matshya
Vyavasayee Sahakari Sanstha Maryadit,
Songiri, Tq. Bhoom, Dist. Osmanabad,
through its Chief Promoter namely
Yuvraj s/o Tatya Kute,
Age : 25 years, occu. Agril.,
R/o Songiri, Tq. Bhoom,
District Osmanabad

RESPONDENTS

WITH

**CIVIL APPLICATION NO.11813 OF 2021
IN
WRIT PETITION NO.4071 OF 2021**

Jay Malhar Matsya Vyavsaya Sahakari Sanstha
Maryadit, Songiri, through its Secretary
Kundlik s/o Abhiman Goyakar,

Age : 26 years, Occu. Fisherman,
R/o Songiri, Tq. Bhoom, Dist. Osmanabad

APPLICANT

VERSUS

1. Late Bhaurao Markad Matshya
Vyavasayeeek Sahakari Sanstha Mrayadit,
Songiri, Tq. Bhoom, Dist. Osmanabad,
through its Chairman namely
Bhausahab s/o Bhaskar Markad,
Age : 35 years, Occu. Fishery,
R/o Songiri, Tq. Bhoom,
District Osmanabad
2. The State of Maharashtra,
through its Secretary,
Agri., Animal Husbandry, Dairy
Development and Fishery Department,
Mantralaya, Mumbai
3. The Commissioner of Fishery
and Additional Registrar,
Cooperative Societies (Fishery),
Maharashtra State, Mumbai,
Taraporwala Matshalaya,
Netaji Subhash Road,
Charni Road, Mumbai
4. The Deputy Registrar,
Cooperative Societies (Fishery),
Maharashtra State, Mumbai,
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Netaji Subhash Road,
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5. The Regional Deputy Commissioner
of Fishery, Latur, Latur Region,
Latur, Old Collector Office premises,
Administrative Building, 2nd Floor,
Latur
6. The Assistant Commissioner of
Fishery, Osmanabad,
Central Administrative Building,
1st Floor, Osmanabad

7. The Fishery Development Officer,
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8. The Assistant Registrar
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9. Proposed Om Raje Nimbalkar Matshya
Vyavasayeeek Sahakari Sanstha Maryadit,
Songiri, Tq. Bhoom, Dist. Osmanabad,
through its Chief Promoter namely
Yuvraj s/o Tatya Kute,
Age : 25 years, occu. Agril.,
R/o Songiri, Tq. Bhoom,
District Osmanabad

RESPONDENTS

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Mr. A.N. Nagargoje, Advocate for the petitioner
in both writ petitions

Mr. K.B. Jadhavar, A.G.P. for respondent Nos.1 to 7

Mr. A.B. Girase, Advocate for respondent No. 8
in both writ petitions

Mr. Manoj U. Shelke, Advocate for the applicant

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CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED : 24.11.2021

DATE OF JUDGMENT PRONOUNCED : 26.11.2021

COMMON JUDGMENT :

Though the petitioners in both these writ petitions are different and even respondent No.8 are different entities, since common questions based on similar facts leading to the passing of the impugned orders, which are also similar, the matters are being decided by this common judgment.

2. Heard.

3. Rule. The Rule is made returnable forthwith. The learned A.G.P. waives service on behalf of respondent Nos.1 to 7 whereas learned Advocate Mr. A.B. Girase waives service for respondent No.8 in both the writ petitions. I have also heard learned Advocate Mr. M.U. Shelke on Civil Application No.11813/2021, seeking to intervene. At their joint request, the matters are heard and being disposed of finally at the stage of admission.

4. The petitioners, seeking their registration as a fisheries societies under Section 9 read with Section 4 of the Maharashtra Cooperative Societies Act, 1960 ("the Act", for short), are taking exception to the orders passed by the Commissioner of Fisheries, Maharashtra State, Mumbai of the same date i.e. 25.01.2021 whereby the order of the Assistant Registrar of Cooperative Societies dated 23.11.2020, directing registration of the petitioner Societies, has been quashed and set aside, simultaneously quashing and setting aside the registration certificate granted by the Deputy Registrar (respondent No.3) dated 16.09.2020 and cancelling no objection certificate issued by the Assistant Commissioner (respondent No.5) dated 10.09.2020 on the basis of which eventually the petitioners were duly registered as fisheries societies for the respective water bodies.

5. The main bone of contention of learned Advocate Mr. A.N. Nagargoje for the petitioners is that Government Resolution dated

03.07.2019 of the State Government lays down the guidelines for grant of registration to the fisheries societies. After following due procedure and the guidelines, the petitioner societies were duly registered. Simultaneously, even respondent Nos.8 in both these petitions had also applied for registration as fisheries societies in respect of the same water bodies. They were refused such registration as they were not complying with prerequisites as laid down in the guidelines contained in Govt. Resolution dated 03.07.2019. Without there being any challenge to the orders refusing such registration by preferring an appeal under Section 152 of the Act, the respondent Nos.8 have simply challenged the orders of registration of the petitioners. They have no locus standi and still, by the impugned orders, the revision under Section 152 has been allowed and the matter has been remanded for decision afresh.

6. Mr. Nagargoje, learned Advocate would further point out that the impugned orders are not orders in the eye of law. By mere reproduction of the rival contentions, the operative order has been passed. Those are sans any reason much less justifying the conclusion. The orders are perverse, arbitrary and illegal.

7. Learned Advocate Mr. Nagargoje would submit that the petitioner societies have already spent huge amount for seeding and would be put to a great loss and inconvenience if the matter is allowed to be reheard.

8. Mr. Nagargoje, lastly, submitted that the impugned decisions have been taken under political pressure. Even while the impugned orders directing remand have been passed, the selfsame Commissioner (respondent No.2) has now, by his communication dated 24.09.2021, called upon the lower authorities to initiate a process for considering the requests of respondent Nos.8 for registration. This attempt on the part of respondent No.2 (Commissioner) is highly objectionable and clearly demonstrates mala fides.

9. The learned A.G.P and learned Advocate Mr. A.B. Girase for respondent Nos.8 would strenuously submit that without there being sufficient compliance with the guidelines dated 03.07.2019, at the behest of politicians, the selfsame fisheries officer, who was holding the charge as Assistant Registrar, Divisional Joint Registrar and Assistant Commissioner of Fisheries, has shown undesired haste and promptness and has facilitated registration of the petitioner societies within a span of few days under his own signature in different capacities. Having indulged in such illegalities and misconduct, the officer has even subsequently been suspended.

10. The learned A.G.P and learned Advocate Mr. Girase would further submit that though the proposals of respondent Nos.8 and few other societies for the selfsame water bodies were pending and some of which were even filed before the petitioners' proposals, the decision was taken in respect of the petitioners hastily, with mala fide intention to

deprive the other societies from being registered. By referring to the guidelines dated 03.07.2019, they would further point out that only one society can be registered in respect of one water body and that is why the petitioners got their societies registered. In fact, that is the ground on the basis of which registration of respondent No.8 in writ petition No.4820/2021 has been refused.

11. The learned A.G.P. and learned Advocate Mr. Girase would then submit that going by the definition of an 'active fisherman' laid down in the guidelines dated 03.07.2019, a person who is exclusively dependent on the fishing and allied activities is considered to be an active fisherman. As per entry 1.5 of clause (A) of guideline No.1, a society can be registered only if there are atleast 25 active fishermen as members. They would submit that the petitioners' application for registration clearly indicates that their occupation is agriculture and fishing, meaning thereby that they are not active fishermen and their societies could not have been registered legally.

12. Learned A.G.P. and learned Advocate Mr. Girase would lastly submit that though the impugned orders of respondent No.2 – Commissioner do not disclose all these grounds, these were the facts, which had weighed with him and he has simply remanded the matters for decision afresh. No prejudice is likely to be caused to the petitioners. They would get an opportunity of being heard and the petitions be

dismissed.

13. Learned Advocate Mr. M.U. Shelke for the intervener would adopt the arguments advanced by the learned A.G.P. and learned Advocate Mr. A.B. Girase. In addition, he would submit that factually incorrect statement has been made in writ petition No.4820/2021 to the effect that the intervener society had preferred an appeal challenging the order refusing its registration but it was dismissed. In fact, its appeal was allowed. The petitioner is seeking discretionary relief while invoking writ jurisdiction of this Court and still, has made such incorrect statement in the petition and therefore, for this reason also, the petition is liable to be dismissed.

14. I have carefully considered the rival submissions and perused the papers. Except the fact that there is an inconsistent stand as regards the decision in the appeal of the intervener, which, according to the petitioners was dismissed but according to the intervener, was allowed, there is no dispute as to the happenings discussed hereinabove.

15. It is a common ground that eligibility of a proposal for registration as a fisheris society under Section 9 read with Section 4 of the Act is governed by the guidelines dated 03.07.2019. It is one of the prerequisites as laid down in entry No.1.5 of clause (A) of guideline No.1 that the proposed society should have at least 25 active fishermen as members. The term `active fisherman' has also been specifically defined to

mean that a person who actually engages himself in fishing or allied activity and his livelihood is wholly dependent on such a vocation. The proposals of the petitioners indicate the occupation of their members as agriculture and fishing. If such was the state-of-affair, *prima facie*, the petitioners were not entitled to be registered as fisheries societies.

16. Ofcourse, it is a matter for the concerned authority to take a decision, now that the matter has been remanded to it for the decisions afresh. The fact remains that it is a vital fact, which does not seem to have been considered while granting registration to the petitioner societies.

17. Again, there is enough material on the record to demonstrate that the proposals of not only the petitioners but few other proposed societies were also pending and awaiting decision, some of which were filed before the proposals of the petitioners were moved. As can be seen, the selfsame officer, holding different charges, was bold enough to submit a report regarding practical examination regarding skills of fishing, putting up a proposal, granting no objection and issuing certificate of registration under his own signature within a span of few days. Irrespective of the fact that the learned A.G.P now makes a statement that the officer has subsequently been suspended, the very conduct demonstrates that though he was vested with a power which he was expected to exercise judiciously, when there were rival claims for registration by the proposed societies, he has apparently acted in a biased manner.

18. There is also material on record to demonstrate that certain people's representatives had put up recommendations to the same person requesting for considering the proposals of the petitioners favourably. If such is the state-of-affair, I find no hesitation in reaching to a conclusion that necessary objective scrutiny before granting registration to the petitioner societies was not undertaken.

19. True it is that in the impugned orders, respondent No.2 – Commissioner has no-where discussed all these facts and circumstances and the orders are sans any semblance of reasons. But then the petitioners have called upon this Court to exercise a discretion under the writ jurisdiction. If the facts and circumstances discussed hereinabove are startling enough to demonstrate the illegalities in granting registration, the impugned orders, which merely seek to remand the matters for decision afresh, would rather be innocuous. The petitioners would certainly get sufficient opportunity to prosecute their proposal and establish their entitlement within the four corners of the guidelines dated 03.07.2019. In view of such peculiar state-of-affair, the writ petitions are liable to be dismissed.

20. The Writ Petitions are dismissed. It is made clear that the observations made hereinabove are confined to the decision of the present writ petitions and the authorities shall not feel influenced by those while taking the decision pursuant to the impugned orders.

21. The authority to whom the matters have now been remanded shall take a decision on the proposals by following the due process within a period of four weeks from today.

22. The Rule is discharged.

23. The civil application is disposed of.

[MANGESH S. PATIL]
JUDGE

24. After pronouncement of judgement, a request is made on behalf of the petitioner societies that the respective petitioners may be allowed to harvest the fish from the water bodies as they have already put the seeds.

25. The learned Advocates for the contesting respondents oppose the request.

26. Having considered the nature of the dispute and the fact that the petitioners have made an attempt towards undertaking the activity of fishing by releasing seeds, interest of justice would be met if they are allowed to harvest. The request is accepted, however, such activity shall be completed within two weeks from today.

27. The parties to act upon the authenticated copy of this order.

[MANGESH S. PATIL]
JUDGE

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