

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

**CIVIL APPLICATION NO.14334 OF 2019
IN
WRIT PETITION NO.11138 OF 2010**

The Jalgaon Jilha Sahakari Dudh
Utpadak Sangh Ltd., Jalgaon,
through its Managing Director,
Shri.Sanjeevkumar Gautam,
Age : 53 years, Occ. Service,
r/o. Shivaji Nagar, Jalgaon

..Applicant
(orig. petitioner)

Vs.

1. The State of Maharashtra,
Through its Secretary,
Agriculture, Animal Husbandry
Dairy Development and Fisheries
Department, Mantralaya,
Mumbai
2. The Divisional Commissioner,
Nashik Division, Nashik
3. The Divisional Deputy Registrar,
Co-operative Societies (Dairies),
Nashik Division, Nashik
4. The Assistant Commissioner
Backward Class Cell,
Nashik Division, Nashik
5. Jalgaon Jilha Majdoor Congress
Sanghatna, Through its President,
Devidas s/o. Kashinath Patil,

Age : 66 years, Occ. Nil,
Plot No.33, S. No.28,
SMIT College Road,
Muktainagar Colony,
Jalgaon

..Respondents

Mr.V.R.Pawar along with Mr.P.B.Salunke, Advocates for applicant
Mr.S.N.Morampalle, Advocate for respondent nos.1 to 4
Mr.P.B.Rakhunde, Advocate for respondent no.5

CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 03, 2021
PRONOUNCED ON : FEBRUARY 09, 2021

ORDER :-

Heard learned counsel for the parties.

2. The petitioner in Writ Petition No.11138 of 2010 has moved this application with following prayers :-

(B) By issuing appropriate order, the order dated 28/2/2011 passed in Writ Petition No.11138 of 2010 may kindly be recalled.

(C) By appropriate order, the applicant society may be discharged from the undertaking dated 28/2/2011 submitted by the then MD in WP No.11138/2010.

3. The applicant - the Jalgaon Jilha Sahakari Dudh Utpadak Sangh Ltd., Jalgaon, is a co-operative society

registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The State of Maharashtra passed the Act: The Maharashtra State Public Services (Reservation For Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category And Other Backward Classes) Act, 2001 ("Act of 2001", for short). Due to financial constraints, in the year 1994-95, the management of the applicant was handed over to National Dairy Development Board (N.D.D.B.), a body corporate constituted under the National Dairy Development Board Act, 1987. For the period 1995-2015, N.D.D.B. was in the management of the applicant – Society.

4. Respondent no.5 - Jalgaon Jilha Majdoor Congress Sanghatna had made a representation for application of the provisions of Act of 2001 to the applicant – Society. Hon'ble Minister for Agriculture, Animal Husbandry, Dairy Development and Fisheries, vide his order dated 08.11.2010, directed to fill-up the vacancies in the applicant – Society applying reservation under the Act of 2001. Being aggrieved and dissatisfied with

the order of Hon'ble Minister, the applicant - society preferred Writ Petition No.11138 of 2010 for setting aside the order dated 08.11.2010. Said Writ Petition was filed through the Managing Director, who was in-charge of the affairs as a representative of N.D.D.B. During hearing of the said Writ Petition, the Managing Director filed an undertaking on 28.02.2011 and submitted that the backlog of the vacancies would be filled-up by applying reservation policy. The Managing Director gave a further undertaking that the future vacancies that would occur in non-isolated posts, would also be filled-up from the reserved category till the backlog is made good. In view of the undertaking, the Writ Petition came to be disposed of in terms of the following order:-

"6. In view of this the undertaking as furnished is accepted and petitioner is directed to fill in 10 vacancies in accordance with the impugned orders. Petitioner shall also comply with said direction while filling in the vacancies becoming available.

7. With these directions, writ petition is disposed of. No costs."

5. The afore-stated undertaking and the order in Writ Petition No.11138 of 2010 is sought to be recalled by this Civil Application.

6. Mr.Pawar, learned counsel for the applicant, would submit that the N.D.D.B. was in the management of the applicant – Society for a limited period. The Managing Director appointed by the N.D.B.B. did not have authority to give aforesaid undertaking and bind the applicant – Society forever. The applicant – Society is not an establishment within the meaning of Section of 2(c) of the Act of 2001. The provisions of said Act have, therefore, no application to the applicant – Society. A concession made against the statutory provision would not bind the applicant – Society. The applicant – Society has filed a Writ Petition, being Writ Petition No.11431 of 2018, to quash and set aside the order dated 12.06.2018 passed by the Divisional Deputy Registrar (Dairies), Nashik, holding that the reservations are applicable to the petitioner – Society. The Division Bench, by its order dated 20.11.2019 in Writ Petition No.11431 of 2018, observed that the Act of 2001 appears to

have no application to the applicant – Society. The Division Bench, however, observed that in view of the undertaking furnished on behalf of the applicant – Society, Writ Petition No.11138 of 2010 was disposed of on 28.02.2011. The applicant – Society is required to take appropriate steps in disposed of Writ Petition i.e. Writ Petition No. 11138 of 2010, and thereafter, Writ Petition No.11431 of 2018 would be considered.

7. Mr.Rakhunde, learned counsel for respondent no.5, would submit that the applicant – Society has been covered by the definition under Section 2(c) of the Act of 2001. He took me through said definition and particularly, the explanation thereto. He also placed on record the documents indicating the State of Maharashtra to have extended the applicant – Society hefty financial assistance many a time. According to him, the applicant – Society could not be allowed to withdraw from its undertaking.

Learned AGP for respondent nos.1 to 4 made submissions on the same lines.

8. The applicant – Society was under management of N.D.D.B. for a period of twenty years i.e. 1995 to 2015 only. The Managing Director of the applicant – Society was a representative of N.D.D.B. There was a tripartite agreement between the applicant – Society, State of Maharashtra and N.D.D.B. as regards handing over management of the applicant – Society to N.D.D.B. with a view of its rehabilitation, as it was in financial doldrums. Since the N.D.D.B. was in management of the applicant – Society for limited period, it did not have authority to take decision and thereby bind the applicant – Society in perpetuity. The Managing Director, representative of N.D.D.B., therefore, did not have an authority to give the questioned undertaking. By virtue of the undertaking, the provisions of Act of 2001 have been made impliedly applicable to the applicant society. In the case of **Union of India Vs. Mohanlal Likumal Punjabi**, AIR 2004 SC 1704, the Apex Court in paragraph 9 observed thus :-

In Uptron (India) Ltd. Vs. Shammi Bhan and anr., 1998(6) SCC 538, it was held that a case

decided on the basis of wrong concession of a counsel has no precedent value. That apart, the applicability of the statute or otherwise to a given situation or the question of statutory liability of a person/institution under any provision of law would invariably depend upon the scope and meaning of the provisions concerned and has got to be adjudged not on any concession made. Any such concessions would have no acceptability or relevance while determining rights and liabilities incurred or acquired in view of the axiomatic principle, without exception, that there can be no estoppel against statute.

9. True, whether Act of 2001 applies to the applicant – Society is a matter in issue in Writ Petition No.11431 of 2018 before the Division Bench of this Court. I am, however, required to make *prima facie* observation so as to find whether the undertaking (concession) given by the Managing Director on behalf of the applicant/Society is against the statutory provisions.

10. Section 2(c) of the Act of 2001 defines the terms “establishment” as under :-

"(c) "establishment" means any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or a University or a

Company, a Corporation or a Co-operative Society in which share capital is held by the Government or any Government aided Institutions."

Explanation.—For the purposes of this clause the expression " Government aided institutions " shall also include institutions or industries which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by Government, or is recognised, licenced, supervised or controlled by Government

11. The State has filed affidavit, stating therein it to have not invested in the share capital of the applicant/Society. The explanation to Section 2(c) speaks about the term 'Government aided institution' appearing in the definition of the term "establishment".

12. Mr.Rakhunde, learned counsel for respondent no.5, did not point out anything to suggest that any Government aided institution has invested in the share capital of the applicant/Society. It, therefore, *prima facie*, appears that Act of 2001 has no application to the applicant – Society. The

Managing Director did not have authority to give questioned undertaking and bind the applicant – Society forever. In the aforesaid factual backdrop, the applicant – Society needs to be discharged from the given undertaking and the order passed in Writ Petition 11138 of 2010 by virtue of said undertaking needs to be recalled.

13. The Civil Application, therefore, succeeds. The same is allowed in terms of prayer clauses (B) and (C). The Writ Petition stands restored.

[R.G. AVACHAT, J.]

KBP