

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20061 of 2022

Aska Service Cooperative Society Ltd., Petitioner
Ganjam

Miss Deepali Mahapatra, Advocate

-versus-

State of Odisha and others Opp. Parties

Mr. Suvashish Pattanaik,
Additional Government Advocate
(For Opposite Party Nos.1 to 3)

Mr. G. N. Sahu, Advocate
(For Opposite Party No.4)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
07.09.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Counter Affidavit by Opposite Party No.3 filed in Court today is taken on record. Copies of the same are served on learned counsel for the Petitioner as well as Opposite Party No.4.
3. Petitioner in this writ petition prays for a direction to the authority to accept the Petitioner-Society to be a member of Opposite Party No.4-Aska Cooperative Sugar Industries Ltd., which is a Central Society.
4. Miss Mahapatra, learned counsel for the Petitioner-Society submits that members of the Petitioner Society by a resolution dated 24th September, 2018 (Annexure-1) took a decision to be a member of the Central Society, i.e., Opposite Party No.4 and made an application to that effect on 5th July,

2019 enclosing a copy of the resolution passed by the Committee of Management of the Petitioner-Society. However, no communication was made to the Petitioner-Society with regard to fate of its application.

4.1 It is her submission that Section 16(2) of the Odisha Cooperative Societies Act, 1962 (for short, 'the Act') deals with the membership of a Primary Society in the Central Society (Opposite Party No.4). On an application filed by the Petitioner-Society, the Central Society should formally accept its membership or if it takes a decision to refuse the application for membership, such decision should be communicated to the applicant with reasons of such refusal within a period of ninety days of such application. In the instant case, although an application, complete in all respect, submitted to the Central Society on 5th July, 2019 no decision on the said application was either taken or communicated to the Petitioner-Society within ninety days. Hence, the Petitioner is deemed to be a member of the Central Society-Opposite Party No.4 in view of the aforesaid statutory provision. Thus, the Petitioner-Society remained under an impression that it has become a member of the Central Society. But when the electoral roll of the Central Society was published, Petitioner-Society came to know that its membership was not accepted. As such, the Petitioner-Society filed Dispute Case No.103 of 2022 before the Registrar, Cooperative Societies-Opposite Party No.2 under Section 68 of the Act. The Opposite Party No.4 filed its written statement enclosing document of rejection of membership of the Petitioner-Society. It is further submitted that from the written statement, it is clear

that no decision rejecting its application to be a member of the Central society could be taken within ninety days. However, a decision was taken on 5th May, 2020 rejecting the application of the Petitioner-Society to be a member of the Central Society, which is apparently beyond the statutory period. As such, the Petitioner-Society should be accepted as a member of the Central Society and allowed to participate in the ensuing election of the Opposite Party No.4. It is further submitted that a copy of the resolution of the Central Society annexed to the written statement discloses that the application of the Petitioner was rejected on flimsy ground. It is stated therein that writ petition in W.P.(C) No.19059 of 2019 is pending with regard to acceptance of membership of Sugarcane farmers as members of the Central Cooperative Society. It has nothing to do with the application of the Petitioner-Society. It is her submission that after lapse of ninety days as provided under Section 16(2) of the Act, the Petitioner-Society is deemed to be a member of the Central Society by operation of such statutory provision. Hence, rejection of its application to be a member of the Central Society is not sustainable. She further submits that in order to move this writ petition, the Petitioner-Society has already withdrawn the aforesaid Dispute Case pending before Opposite Party No.2. Hence, this writ petition is maintainable and as such she prays for the aforesaid direction.

5. Mr. Pattanaik, learned AGA objecting to the above submission of learned counsel for the Petitioner, contends that the application of the Petitioner-Society to be a member of the Central Society has already been rejected, so the contention

made in the instant writ petition is not sustainable. Besides, during pendency of the aforesaid Dispute Case, this writ petition has been filed. Thus, the instant writ petition is not maintainable in the eye of law. Further, since the Petitioner has already availed the statutory remedy the instant writ petition is incompetent. He, therefore, prays for dismissal of the writ petition.

6. Mr. Sahu, learned Counsel for Opposite Party No.4-Society submits that assailing the rejection of its application, the Petitioner-Society has the statutory remedy under Section 68 of the Act, which it has already availed. Thus, the instant writ petition is not maintainable.

7. Taking into consideration the submissions of learned counsel for the parties and on perusal of record, it appears that assailing the rejection of its application to be a member of the Opposite Party No.4-Society, the Petitioner Society has already approached the Registrar, Cooperative Society-Opposite Party No.2 in Dispute Case No.103 of 2022 under Section 68 of the Act, who is competent to take a decision on the same. It is submitted by learned counsel for the Petitioner that the said Dispute Case has already been withdrawn to approach this Court. When efficacious statutory remedy is available to the Petitioner for redressal of its grievance and in fact it has availed the same, writ petition for the self-same relief is incompetent.

7.1 It further appears that a decision has already been taken by the Central Society on 5th May, 2020 rejecting the application of the Petitioner to be a member of the Central Society.

Petitioner accepting the same has again approached Opposite Party No.4 with a fresh application on 3rd June, 2022 enclosing the earlier resolution already passed by the Petitioner-Society. The said application is still pending before Opposite Party No.3-Collector-cum-Administrator of Aska Cooperative Sugar Industries Ltd., who is in the management of Opposite Party No.4. Thus, the effect of the deeming clause under Section 16(2) of the Act is no more applicable to the instant case, as accepting the decision of the Opposite Party No.4, a fresh application has already been made by the Petitioner-Society to be a member of the Opposite Party No.4. It appears that before expiry of ninety days of making the 2nd application, (made on 3rd June, 2022), the Petitioner-Society approached Opposite Party No.3 by filing Dispute Case No.103 of 2022 and thereafter the present writ petition on 8th August, 2022, which was premature.

8. In view of the above discussions, neither the Dispute Case No.103 of 2022 nor the present writ petition is *prima facie* maintainable. In that view of the matter, the writ petition sans merit and the same stands dismissed accordingly.

9. However, the Petitioner, if so advised, may pursue the matter before the competent authority.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge