

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

WRIT PETITION NO. 2135 OF 2021

Bhandara District Labour Co-operative
Societies Federation, Reg. No. BHD/
PRD/L-119, through its President,
R/o Sainath Nagar, Near Nagpur
Checkpoint, Bhandara – 441904.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Secretary of Ministry of
Co-operation, Mantralaya, Mumbai.
- 2) The District Deputy Registrar,
Co-operative Societies, Bhandara.
- 3) Ma Bhavani Majoor Sahakari Sanstha,
Kandri, R.No.496, Tah. - Mohadi,
District – Bhandara, through its
President, R/o Kandri, Tahsil – Mohadi,
District – Bhandara.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 2136 OF 2021

Bhandara District Labour Co-operative
Societies Federation, Reg. No. BHD/
PRD/L-119, through its President,
R/o Sainath Nagar, Near Nagpur
Checkpoint, Bhandara – 441904.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Secretary of Ministry of
Co-operation, Mantralaya, Mumbai.
- 2) The District Deputy Registrar,
Co-operative Societies, Bhandara.
- 3) Raje Chhatrapati Majoor Sahakari Sanstha,
Sahuli, R.No.310, Tah. & District Bhandara,
through its President, R/o Sahuli,
Tahsil – Mohadi, District – Bhandara.

.... **RESPONDENTS**

Shri A.M. Ghare, Counsel for the petitioner,
Ms. T.H. Khan, A.G.P for respondents 1 and 2,
Mr. M.V. Samarth, Senior Counsel assisted by Mr. S.K. Tambde, counsel
for respondent 3.

CORAM : **ROHIT B. DEO, J.**
DATED : **15th FEBRUARY, 2022**

ORAL JUDGMENT :

The petitioner is federation of Labour Co-operative Societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (Act) with the revenue district of Bhandara as its area of operations.

2. Petitioner contends that the purpose underlying its formation was to provide job opportunities and facilities and avenues of employment to labours who are members of the Primary Labour Co-operative Societies.

3. Respondent 3 is irrefutably a Primary Labour Co-operative Society and its area of operations is the revenue district of Bhandara.

4. The grievance of the petitioner is that respondents 1 and 2 committed a serious error in overruling the decision of the General Body of the petitioner-federation of denying membership to respondent 3 on the premise that the work available is not sufficient. Petitioner would contend that proceeding on an erroneous understanding of the statutory scheme, respondents 1 and 2 have directed the petitioner-federation to grant membership to respondent 3.

5. Considering the issue involved, only few facts may be noticed. It is common ground that the by-laws of the petitioner-federation do not contain a specific provision which enables rejection of membership to an otherwise eligible Primary Labour Co-operative Society on the premise that the work available is not sufficient and that granting memberships would reduce the share of the existing members in the work available.

6. The petitioner contends that even if respondent 3-Primary Labour Co-operative Society is not admitted to the membership of the petitioner-federation, respondent 3 would none the less be eligible to

participate in the e-Tender and to bid for Government works of the value of Rs.3,00,000/- (Rupees Three Lac) to Rs.30,00,000/- (Rupees Thirty Lac).

7. The petitioner contends that the work which is available, is barely sufficient for the existing 97 members and addition of members would certainly be prejudicial to the interest of the existing members, and therefore, the petitioner-federation was well justified in refusing membership to respondent 3.

8. In rebuttal, the learned Senior Counsel Mr. M.V. Samarth would submit that in the absence of an enabling power in the by-laws the federal society is precluded in law from denying membership to an applicant who is otherwise eligible on the basis that the work is not sufficient. The learned Senior Counsel would emphasize, that the submission of the petitioner that respondent 3 can participate in the e-Tender process applies with equal vigor to the existing members of the petitioner-federation. The learned Senior Counsel would submit that the right to participate in the e-Tender is available not only to respondent 3, such right is available to the existing members of the petitioner-federation and private contractors and others. The learned Senior Counsel would submit, that the fact that certain Government

works are allotted in e-Tender would hardly be relevant in the context of the fact that the existing members of the petitioner-federation too can participate in the said process.

9. The learned Counsel for the petitioner-federation Mr. A.M. Ghare would invite my attention to the provisions of Section 23 of the Act, which read thus :

“23. Open membership.- (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. (within a period of sixty days from the date of the decision of the society) (Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.”

Mr. A.M. Ghare submits that the expression “without sufficient cause” employed in sub-section (1) of Section 23 of the Act will have to be understood as conferring a power to a society to deny membership to an applicant, and the authority would be under a corresponding duty to decide whether there was sufficient cause for the denial.

10. I have given due consideration to the submission noted supra, and in my considered view, the same merits outright rejection. The words “without sufficient cause” is a negative expression which emphasizes and brings into focus the legislative intent that if an applicant is otherwise eligible and qualified, ordinarily the membership cannot be rejected. The expression “without sufficient cause” cannot be

understood *de hors* the provisions in the by-laws. In the absence of an enabling provisions in the by-laws, where-under the federation could have rejected membership on the ground of absence of sufficient work, it would be impermissible for the petitioner-federation to deny membership to respondent 3 on the premise that sub-section (1) of Section 23 of the Act confers a general and omnibus power to reject membership if in the opinion of the society there is sufficient cause. However, I need not delve deeper nor is a definite observation on the submission necessary since in my considered view, even if the submission is accepted *auguendo*, on facts there was no cause, muchless sufficient cause for the federation to deny membership to a Primary Labour Co-operative Society on the ground that the Government work which is to be allotted is not sufficient.

11. The fact that the General Body of the petitioner-federation has resolved so, is irrelevant.

12. The learned Senior Counsel Mr. M.V. Samarth points out that in any event, the Government work which is to be assigned to Labour Co-operative Societies, is allotted by a Work Allotment Committee constituted at the District level which comprises, *inter alia* District Deputy Registrar, Chairman of the Federation, Executive Engineer,

Public Works Department, Executive Engineer, Irrigation and Assistant Registrar (Administration) working in District Deputy Registrar office as Member Secretary and that the petitioner-federation has no role to play in allotting the work.

13. The petitions are dismissed.

JUDGE

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