

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7279 OF 2023  
WITH  
CA/8857/2023 IN WP/7279/2023  
WITH  
CA/11562/2023 IN WP/7279/2023  
WITH  
CA/11559/2023 IN WP/7279/2023

Parashar Hamal Kamgar Co-Operative  
Society Limited, Paradh (Bu)  
Tq. Bhokardan, District Jalna,  
Through its Vice Chairman  
Shri. Asharaf Khan Wahid Khan  
Age 40 years, Occ. Labour work,  
R/o. Sant Rohidas Raheman Ganj Jalna,  
Tq. Jalna, District Jalna.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra  
Through the Secretary for  
Food, Civil Supply and Consumer  
Protection Department,  
Mantralaya, Mumbai.
- 2) The Secretary,  
Co-Operative Marketing and  
Handloom Department  
Maharashtra State, Mumbai.
- 3) The Collector, Aurangaba,  
Civil Supply Department,  
Collector Office, Aurangabad.
- 4) The District Supply Officer  
Collector Office, Aurangabad  
District Aurangabad.

... **Respondents**

...

Advocate for the Petitioner : Mr. V.D. Hon, Senior Advocate i/b Mr. A.V. Hon  
Addl.G.P. for Respondent nos. 1 to 4 : Mr. S.B. Yawalkar  
Advocate for Applicant in CA/8857/2023 : Mr. R.N. Dhorde, Senior  
Advocate I/b Mr. R.L. Kute.

Advocate for Applicant in CA/11559/2023 : Mr. R.L. Kute  
Advocate for Applicant in C.A. No. 11562/2023 : Mr. V.D. Sapkal Senior  
Advocate i/b Mr. S.R. Sapkal

...

**AND**

**WRIT PETITION NO. 9408 OF 2023**

**WITH**

**CA/12324/2023 IN WP/9408/2023**

Jai Malhar Hamal & Mapadi Kamgar  
Sahakari Sanstha,  
Swastishri Apartment, C-Wing, Block No. 1,  
Govind Nagar, Nashik Tq. & Dist. Nashik

... **Petitioner.**

**VERSUS**

- 1) The State of Maharashtra  
Through Food Civil Supply  
Consumer Protection Department,  
Mantralaya, Mumbai.
- 2) The Collector,  
Nandurbar, Tq. & Dist. Nandurbar.
- 3) The District Supply Officer,  
Nandurbar, Tq. & Dist. Nandurbar.

... **Respondents**

...

Advocate for Petitioner : Mr. Swapnil Joshi i/b J.P. Legal Associates.  
Addl.G.P for Respondent nos. 1 to 3 : Mr. S.B. Yawalkar  
Advocate for Applicant in CA 12324/2023 : Mr. R. L. Kute

...

**AND**

**WRIT PETITION NO. 10906 OF 2023**

Shri. Hamal Mathadi Kamgar Majoor Sahakari  
Sanstha Maryadit, Shrirampur, Tq. Shrirampur,  
District Ahmednagar.  
Through its Chairman  
Shri. Datttray Savaleram Sable,  
Age 55 years, Occ. Business,  
R/o. Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.

... **Petitioner**

**VERSUS**

- 1) The State of Maharashtra,  
Through its Secretary,  
Food, Civil Supply and Consumer  
Protection Department,  
Mantralaya Mumbai -32.
- 2) The Divisional Commissioner,  
Nashik Division, Nashik,  
Having its Office at Nashik Road,  
Nashik.
- 3) The Collector, Ahmednagar,  
District Ahmednagar.
- 4) The District Supply Officer  
Ahmednagar, District Ahmednagar.
- 5) Jay Bajrang Mathadi Kamgar Majoor Sahakari  
Sanstha Limited, Shrirampur,  
Tq. Shrirampur, Dist. Ahmednagar,  
Through its Chairman,  
Shri. R.B. Waghmare,  
Age 75 years, Occ. Business,  
R/o. Saraswati Nagar, Ward No. 7,  
Shrirampur, Tq. Shrirampur, Dist.  
Ahmednagar.

... Respondents.

...

Advocate for Petitioner : Mr. Shahaji K. Shinde  
Addl.G.P. for Respondent Nos. 1 to 4 : Mr. S.B. Yawalkar  
Advocate for Respondent No. 5 : Mr. Mazhar A. Shaikh Jahagirdar

...

**AND**

**WRIT PETITION NO. 3681 OF 2023**

Vaijapur Hamal Kamgar Sahakari  
Sanstha Vaijapur, Tq. Vaijapur,  
Dist. Aurangabad, through authorized  
representative  
Narhari Vithal Nikam, Age 67 years,  
Occ. Secretary of above society  
R/o. Police Station road, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.

... Petitioner.

**VERSUS**

- 1) The State of Maharashtra,

Through Principal Secretary  
Food and Civil Supply and Consumer  
Protection Department,  
Mantralaya, Mumbai – 32.

- 2) The Hon'ble Minister,  
Food & Civil Supply and Consumer  
Protection Department,  
Mantralaya Mumbai-32.
- 3) The District Collector,  
Aurangabad, Tq. & Dist. Aurangabad.
- 4) District Supply Officer,  
District Supply Office, Aurangabad.
- 5) Sai Malhar Hamal Mathadi Kamgar  
Sahakari Sanstha Maryadit Nashik,  
Through Chairman  
Shashikant Kachru Raut, Age 55 years,  
Occ. Service, r/o. 11, Shriganesh  
Residency, Gangotri Vihar  
Panchvati Nashik.

... Respondents

...

Advocate for the Petitioner : Mr. R.L. Kute  
Addl. G.P. for Respondent Nos. 1 to 4 : Mr. S.B. Yawalkar  
Advocate for Respondent No. 5 : Mr. Sanket S. Kulkarni.

**CORAM : MANGESH S. PATIL &  
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 08.11.2023  
PRONOUNCED ON : 29.11.2023**

**JUDGMENT : ( PER : MANGESH S. PATIL, J.)**

Since all these petitions raise a common issue, at the joint request of the parties, these are heard simultaneously and are being disposed of by this common judgment to avoid rigmarole.

2. Rule in all these petitions. It is made returnable forthwith. Learned Addl. G.P. Mr. Yawalkar waives service for the respondents/State. Learned

Senior Advocate Mr. R.N. Dhorde waives service for the applicant in CA No. 8857/2023. Learend Senior Advocate Mr. S.R. Sapkal waives service for the applicant in CA No.11562/2023 Learned advocate Mr. R.L. Kute waives service for applicants in CA No.11559/2023 and 12324/2023. Learned advocate Mr. Mazhar Shaikh waives service for respondent no. 5 in WP No. 10906/2023. Learned advocate Mr. Sanket Kulkarni waives service for respondent No. 5 in WP No. 3681/2023.

3. The petitioners are the labour cooperative societies duly registered under the Maharashtra Cooperative Societies Act, 1960 and are engaged in loading and unloading of the goods at the Government godowns. The petitioner from Writ Petition No. 9408/2023 is registered and engaged in handling of goods in Nashik district. Petitioner from Writ Petition No. 10906/2023 undertakes the work in Ahmednagar district. The petitioner from Writ Petition No. 3681/2023 undertakes the work from Aurangabad district, whereas the petitioner from writ petition No. 7279/2023 undertakes the work in Jalna district.

4. The petitioners are challenging the government resolution dated 06.03.2023 and particularly clause no. 2 therein, whereby, in accordance with the government resolution dated 12.09.2014 it has been resolved that the labour societies which are registered under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter 'Mathadi Act') and which have been following necessary stipulations regarding payment to the labourers and depositing levy with the Mathadi Board etc. and which have been following the terms and conditions strictly and doing the work timely, can be allotted work by granting them extension if they are ready to come with the offers at competitive rates. However, it further stipulates that pursuant to the circular of the Cooperative Department of 21.12.2004 the work to be allotted/continued by a particular labour society should be restricted to the district where it is registered.

5. At the outset it is necessary to note that the learned advocate Mr. Kute for the petitioner in Writ Petition No. 3681/2023, on instructions, sought leave to withdraw the writ petition. It is also necessary to note that though the petitioner in Writ Petition No. 10906/2023 initially had not challenged the clauses in the government resolution dated 06.03.2023 and had merely prayed for quashing of the order passed by the respondent no. 2 therein allotting the work in respect of 10 talukas from Ahmednagar district to the respondent no. 5 therein, by way of amendment, even a similar challenge was put up to the government resolution dated 06.03.2023. However, during the course of arguments, the learned advocate Mr. Shinde for that petitioner, on instructions, expressly stated that the petitioner was not pressing for the pleadings and the prayer, putting up challenge to the government resolution dated 06.03.2023 and would only pray for the original prayers.

6. The learned Senior Advocate Mr. Hon and the learned advocates for the petitioners would vehemently submit that such a stipulation restricting the societies to the area of operation to a particular district is arbitrary and discriminatory and is violative of Article 14 and also affects adversely the fundamental right guaranteed under Article 19 (1)(g) of the Constitution of India. He would submit that since it is a matter of tenders being floated by the Department of Civil Supplies of the state government, imposing the condition of area would in a way to avoid the competition, restricting the competition to the societies from the very district, is likely to burden the public exchequer. More the competition, lesser would be the burden. If the petitioner societies are prevented from competing with the societies registered in a particular district it would indirectly promote monopoly. There is no rationale behind the object sought to be achieved and the impugned clause being unconstitutional be struck down.

7. Mr. Hon would place reliance on the decision in the matter of **Reliance Energy Ltd. And another Vs. Maharashtra State Road Development**

**Corporation Ltd. And other (2007) 8 Supreme Court Cases 1.** He would submit that the government resolution under challenge is unreasonable and avoids level playing field to all the labour cooperative societies and should be struck down.

8. The learned Addl. G.P. Mr. Yawalkar, learned Senior Advocate Mr. Dhorde for the intervenor in Writ Petition No. 7279/2023, learned Senior Advocate Mr. Sapkal who has filed application for intervention in Writ Petition No. 7279/2023, learned advocate Mr. Jahagirdar who appears for the respondent no. 5 in Writ Petition No. 10906/2023 and Mr. Kulkarni for respondent no. 5 in Writ Petition No. 3681/2023 would strongly oppose the petitions. They would submit that the petitioner in Mr. Hon's matter is blowing hot and cold. It is a clear case of approbate and reprobate. Though it is a society registered in Jalna district and has derived the benefit of the self-same clause while getting extension for undertaking the work and has been allotted the work in that district, is now putting up challenge to the same clause in respect of a similar tender process being undertaken in the other districts. They would submit that pursuant to the same clause which is under challenge, without resorting to any fresh tender process, it has secured the extension and has entered into a contract by agreeing to be abided by all the terms and conditions *inter alia* even laid down in the government resolution dated 06.03.2023. They would submit that the petitioner has been taking a convenient stand to suit his purpose and cannot be allowed to be heard as regards the stipulation under challenge.

9. They would submit that in fact the petitioner in Writ Petition No. 7279/2023 has obtained the interim order by not disclosing the fact that simultaneously he was also indulging in getting the extension to the contract for Jalna district. They would submit that the petition was filed on 27.06.2023 and during pendency of the petition it entered into the contract with the Collector, Jalna on 01.08.2023. Copy of which is produced by the interevenor along with Civil Application No. 8857/2023. They would

therefore submit that the petitioner is guilty of changing the stands and has resorted to concealment as well, of a material fact and no relief be granted to him. The learned advocates would refer to the decision in the matter of **Bhaskar Laxman Jadhav and other Vs. Karmveer Kakasaheb Wagh Education Society and others; (2013) 11 Supreme Court Cases 531.**

10. The learned Addl.G.P and the learned advocates for the intervenors would also submit that the petitioner in Mr. Hon's matter has, again, having participated in the tender process floated in the Aurangabad district cannot legitimately question the stipulations in the tender conditions. Putting up a challenge to a clause from the government resolution dated 06.03.2023 once having participated in the tender process and having failed to secure the contract is not permissible in law. Had it secured the contract it would not have raised any objection to the clause in question. Therefore, even for this reason that petitioner is not entitled to put up challenge to the terms and conditions and the clause from the government resolution in question.

11. The learned Addl.G.P and the learned senior advocates for the intervenors would further submit that since it is a matter of tender process, there is inherent limitations on the powers of this Court to undertake a judicial review. It is not a matter of discrimination. All those societies whose area work is restricted to a particular district are entitled to participate. The stipulation applies equally across all the districts from the State and applies uniformly. The labour societies registered and operating in a specific district are allowed to participate in the tender process for loading and unloading from the government godowns which situate in that district and it is not a matter of discrimination or unreasonable classification. The stipulation also does not affect any fundamental right. It is a restriction which cannot be said to be arbitrary or unreasonable.

They would cite the decisions in the matters of :

(i) **Prithviraj Enterprises Vs.State of Maharashtra;**

**A.I.R. Online 2021 Bom 2616.**

**(ii) M/s. Michigan Rubber (India) Ltd. Vs. State of Karnataka and ors; A.I.R. 2012 Supreme Court 2915.**

**(iii) Rai Sahib Ram Jawaya Kapur and others Vs. The State of Punjab; A.I.R. 1955 Supreme Court 549**

**(iv) Balaji Goods Transport Company Vs. The State of Maharashtra, in Writ Petition No. 1043/2014 decided on 07.01.2014.**

**(v) Shri. Ganesh Goods Transport Company Vs. The State of Maharashtra and others; in Writ Petition No. 6868/2020 decided on 03.03.2021.**

12. The rival submissions now fall for our consideration.

13. Since it is a matter of policy it would be apt to recapitulate the history leading to the passing of the resolution under challenge. As can be appreciated, the basic resolution issued by the Food and Civil Supplies department of the State Government is dated 12.09.2014. Since it was a matter of loading and unloading of the goods at the Government godowns under that department, obviously, even the issue was involving the labour cooperative societies and even the labour societies registered under the Mathadi Act. Though the government resolution dated 12.09.2014 was issued by the department of Food and Civil Supplies, as can be noticed from the prephase of that resolution, even the Mathadi Board and the representatives of the labourers were allowed to participate in the meetings and consequently, the resolution was passed covering all the aspects involving the labour cooperative societies and the Mathadi Board. Detail modalities were provided for allotment of contracts for the work of loading and unloading at the Government godowns, the manner in which the tenders would be floated, which labour societies would be entitled to participate, the obligations cast on them, so on and so forth. It also requires

that the societies or the contractors with whom the agreements would be entered into shall be necessarily required to be registered as employers, under Section 14 of the Mathadi Act. Even it contained a draft of the agreement to be entered into.

14. Admittedly, as an exception, a decision was taken by the department of Food and Civil Supplies as notified on 08.05.2018, wherein the other stipulation from the government resolution dated 12.09.2014, regarding restricting the area of operation of the society to a particular district was relaxed for the reason that it was found that it was a drought situation and it was needed to overcome it.

15. It is necessary to note that even before the resolution dated 06.03.2023 was issued by the Food and Civil Supplies Department, the Department of Cooperation by its circular dated 21.12.2004, having noticed that there were some irregularities and manipulations done at the time of registration of labour societies, expressly notified that the labour cooperative societies and the Hamal Kamgar Cooperative Societies fall under the same category. It *inter alia* directed that the labour societies' area of operation would be restricted to the same district where it was registered. It was also mentioned therein that even this circular be brought to the notice of the Food and Civil Supplies Department and the authorities working under it.

16. Conspicuously, since inception, even the department of Food and Civil Supplies religiously followed this circular issued by the Department of Cooperation on 21.12.2004 and finds reference in all the resolutions issued by former department, including resolutions dated 12.09.2014 and 08.05.2018. Even there is a reference to it in the impugned resolution dated 06.03.2023. In fact, it has been expressly mentioned in the impugned clause no. 2 stating that the work to be allotted to a labour cooperative society would be restricted to its area of operation of a particular district, as was notified in this very circular dated 21.12.2004.

17. It is thus quite apparent that the impugned clause has its origin in the circular issued by the Department of Cooperation on 21.12.2004 and has been followed for these many years without there being any objection by any society. It has stood the test of time, albeit that alone cannot be a ground to refute an objection on the ground of discrimination and unreasonableness.

18. However, one cannot but emphasize the fact that as has been mentioned herein above, the petitioner from Writ Petition No. 7279/2023 who has succeeded in obtaining a contract by resorting to the very same clause, as can be noticed from the agreement which it has entered with the Collector Jalna, is now putting up a challenge to the same clause when it comes to the tender process undertaken in Aurangabad district. Interestingly, noticing similar incompatibility in the stands being taken by the petitioner society from Writ Petition No. 3681/2023, though it had challenged the self-same clause no. 2 of the government resolution dated 06.03.2023, the society has filed an application for intervention in Writ Petition No. 7279/2023 and by filing affidavit in reply expressly mentioned that it was comfortable with the impugned clause and sought dismissal of the Writ Petition No. 7279/2023. Faced with the situation, Mr. Kute learned advocate for the petitioner from Writ Petition No. 3681/2023, on instructions, sought leave to withdraw the writ petition.

19. Similar is the case with the petitioner from Writ Petition No. 10906/2023. Though it was not its initial stand, by obtaining leave to amend the petition, even a challenge was put up to the clauses from the government resolution dated 06.03.2023. However, as is observed herein above, even its learned advocate, on instructions, expressly informed that the petitioner would not be pressing for the amended portion and the amended prayer clause, challenging the clauses from the government resolution dated 06.03.2023. In our considered view, this very conduct of these two petitioners simultaneously putting up a challenge to the clauses

from the government resolution dated 06.03.2023 and still seeking to derive benefit therefrom is incompatible. Even their such a stand would suffer from the same vice of approbation and reprobation.

20. As far as the virus of the clause is concerned, in our considered view, by no stretch of imagination can it be said to be arbitrary or unreasonable. It is only considering the interest of the labourer and the labour cooperative societies and in the light of having fair distribution of work to the labourers from different districts, the stipulation restricting only the societies registered from a particular district, has been provided. As can be gathered from the aforementioned facts and circumstances, we see no unreasonableness. Even we are not ready to accept the arguments that even this clause affects any fundamental right of the petitioner societies. The impugned clause merely seeks to regulate the allotment of the contract. There is no merit in the petitions.

21 The writ petitions are dismissed. All the pending applications are disposed of.

22. Rule is discharged.

**( NEERAJ P. DHOTE, J.)**

**(MANGESH S. PATIL, J.)**

23. After pronouncement of the judgment learned advocate Mr. Hon for one of these petitioners and Mr. Joshi who also appears for petitioner in one of these matters claim that since the interim relief has been in operation till date the same may be continued for a while to enable the petitioners to approach the Supreme Court.

24. The other sides strongly oppose the request.

25. Considering the view which we have taken, the request in both the matters is rejected.

**( NEERAJ P. DHOTE, J.)**

**(MANGESH S. PATIL, J.)**

mkd/-