

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

WRIT PETITION NO. 11138 OF 2010
WITH CA/907/2020 IN CA/14334/2019
WITH CA/461/2020 WITH CA9962/2012
WITH CA/14204/2011 WITH CA/4671/2021
WITH CA/7079/2021 WITH CA/5454/2023

Jalgaon Zilha Sahakari Dudh Utpadak
Sangh Maryadit, Jalgaon,
Through its Managing Director,
Ravindra S/o. Sadashiv Lahane,
Age : 49 years, Occu. : Service,
R/o. Jalgaon,
Tq. and Dist. Jalgaon.

....Petitioner

Versus

- 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 (Dairy),
Nashik Division, Nashik.
- 4) The Assistant Commissioner,
Backward Class Cell,
Nashik Division, Nashik.
- 5) Jalgaon Zilla Mazdoor Congress
Sanghatma, through its President,
Yashpal Devidas Patil,
Age : 40 years, Occu. : Service,
R/o. Plot No. 33, Survey No. 28,
S.M.I.T. College, Road,
Muktainagar Colony, Jalgaon,
Tq. & Dist. Jalgaon.

....Respondents

Advocate for the Petitioner : Mr. D.K. Thoke
Addl. GP for Respondent Nos. 1 to 4 : Mr. S.B. Yawalkar
Advocate for Respondent No. 5 : Mr. P.B. Rakhunde h/f. Mr. S.B. Bhapkar
Applicant in Person in CA/461/2020 : Mr. Nagraj Janardan Patil
Advocate for Applicant in CA/4671/2021, CA/7079/2021, CA/9962/2012,
CA/14204/2011 : Mr. P.B. Rakhunde
Advocate for Applicant in CA/5454/2023 : Mr. D.B. Thoke
Advocate for Applicant in CA/907/2020 : Mr. Vikram A. Pawar and Mr.
Pradeep B. Salunke

WITH
WRIT PETITION NO. 11431 OF 2018
WITH CA/14146/2018 WITH CA/3419/2022 WITH CA/7074/2021

The Jalgaon Jilha Sahakari Dudh Utpadak
Sangh Ltd. Jalgaon,
Through its Managing Director,
Manoj Gopal Limaye
Age : 55 years, Occu. : Service,
R/o. Shivaji Nagar, Jalgaon.

....Petitioner

Versus

- 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 Mazdoor Congress
Sanghatma, through its President,
Yashpal Devidas Patil,
Age : 40 years, Occu. : Service,
R/o. Plot No. 33, Survey No. 28,
S.M.I.T. College, Road,
Muktainagar Colony, Jalgaon.

....Respondents

Advocate for the Petitioner in WP/11431/2018 & in CA/3419/2022 : Mr.
Vikram A. Pawar and Mr. Pradeep B. Salunke
Addl. GP for Respondent Nos. 1 to 4 : Mr. S.B. Yawalkar
Advocate for Respondent No. 5 : Mr. P.B. Rakhunde
Applicant in Person in CA/14146/2018 : Mr. Nagraj Janardan Patil

WITH
WRIT PETITION NO. 8204 OF 2021
WITH CA/8355/2022

Jalgaon Jilha Majdoor Congress Sanghatana
Through its President

VERSUS

The Jalgaon Jilha Sahakari Dudh Utpadak
Sangh Ltd. Jalgaon

Advocate for the Petitioner : Mr. P.B. Rakhunde
Advocate for Respondent No. 1 : Mr. Vikram A. Pawar
and Mr. Pradeep B. Salunke
Addl. GP for Respondent Nos. 2 to 5 : Mr. S.B. Yawalkar

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Judgment reserved on : 09 OCTOBER 2023
Judgment pronounced on : 08 NOVEMBER 2023**

JUDGMENT (PER : SHAILESH P. BRAHME, J.) :

1. Rule. Rule is made returnable forthwith. Heard learned counsel for both the sides for final disposal of the matters.
2. These two matters were clubbed with PIL No. 72 of 2021 and Writ Petition No. 8204 of 2021. Other matters are segregated from these petitions. The petitioner is common and core issue which falls for adjudication is also common. Shorn of unnecessary details, we propose to decide core issue – “Whether the provisions of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act of 2001 (here in after referred to as ‘Reservation Act’ for the sake of convenience and brevity) are applicable to the petitioner – Co-operative Society ?”
3. In Writ Petition No. 11198 of 2010, the petitioner is challenging judgment and order dated 08.11.2010 passed by respondent no. 1 – Minister, holding that Reservation Act applies to the petitioner and directing the Sub-ordinate Officers to take steps

to fill up the backlog of reservations. In Writ Petition No. 11431 of 2018 letter dated 12.06.2018 addressed by respondent no. 3 - Divisional Deputy Registrar to the petitioner instructing to fill up the backlog in view of application of Reservation Act to the petitioner, is under challenge. The declaration that Reservation Act is not applicable to the petitioner Co-operative Society and ancillary reliefs are also sought.

4. The petitioner is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act of 1960. The petitioner suffered losses due to mismanagement. From 15.09.1995 National Dairy Development Board was appointed as an administrator over the petitioner for a period of ten years. The period was further extended up to 2015. In 2015, the administrator was removed and newly elected committee for the period 2015-2020 was restored the administration.

5. The respondent no. 5 is an Association of Employees of the petitioner which was persuading for application of the reservation policy to the petitioner at various levels. During tenure of administrator, the representations were made to follow the reservation policy in the matter of recruitment. Writ Petition No. 5428 of 2006 was filed by the respondent no. 5 for the directions against administrator to implement a reservation policy. It was disposed of with directions to consider the representations. The respondent no. 5 also made representation to the respondent no. 2

- Divisional Commissioner which was not responded to favourably. Ultimately, the respondent no. 5 made a representation to the respondent no. 1 and the impugned order was passed on 08.11.2010.

6. After the order was passed by the respondent no. 1 on 08.11.2010, the respondent no. 3 - Divisional Deputy Registrar instructed the petitioner by letter dated 12.06.2018, for taking steps to fill up backlog by adverting to the policy of reservation. It is a common contention of the petitioner in both the petitions that the petitioner is not covered by definition of Section 2 (c) provided under Reservation Act. It is further submitted that there is no share holding by the State Government in the petitioner - Society. The petitioner is not controlled by the Government, therefore, the Reservation Act cannot be made applicable to the establishment of the petitioner.

7. The respondents have filed affidavits-in-reply to contest the contentions and the prayers of the petitions. The respondent no. 5 has filed a separate affidavit-in-reply opposing the claim of the petitioner.

8. It is contended that the petitioner was extended financial assistance of Rs. 6.25 Crores by Government Resolution dated 21.06.1996. The condition no. 9 was incorporated in the resolution mandating implementation of reservation policy in the recruitment to be undertaken by the petitioner. Thereafter, a

reference is made to the correspondence amongst the respondents for implementing the reservation policy and for following the roster. It is contended that due to the persuasion of the respondent no. 5 the impugned order dated 08.11.2010 was passed by the respondent no. 1 bringing the petitioner within the purview of the Reservation Act.

9. The petitioner has filed rejoinder stating that Rs. 6.25 Crore was disbursed as a loan and it was repaid by the petitioner. It is further contended that the petitioner is not a public authority as contemplated by the Reservation Act. There is no attribute of share holding by the Government. The averments in the reply are denied. An additional affidavit is also filed stating that there is no share holding by the government, which is tried to be demonstrated by referring to an annual report. The breakup of the posts occupied and vacant is provided in the additional affidavit.

10. The respondent no. 5 has filed additional affidavit-in-reply bringing on record certain documents which have a material bearing over the merits of the matter. It is stated in paragraph no. (8) at page no. 224 that by memorandum dated 16.09.1975, 9 Hecter and 65 Are of land was allotted to the petitioner by the Government. Thereafter, again land measuring 7 Hecter and 29 Are was allotted on 24.07.1975 to the petitioner. The land allotted to the petitioner was mutated in the right of record and the possession was also handed over. The petitioner is in possession of

the lands. It is contended that the explanation attached to Section 2 (c) of the Reservation Act is applicable and brings the petitioner society within its purview.

11. It is further stated in the additional affidavit that the financial assistance was given from time to time to the petitioner by the State Government. By Government Resolution dated 16.09.2016, an amount of Rs. 24.70 Crore was sanctioned under Rashtriya Krishi Vikas Yojana and disbursed to petitioner. The shareholding of the Government is reflected in the annual report which is shown to be Rs. 20 Crores at the relevant time. Besides the direct financial assistance, the petitioner also received subsidy of Rs. 5/- per litre which was modified to Rs. 3/-. To demonstrate the extension of subsidy, the Government Resolutions dated 08.03.2019, 31.07.2018 and 17.09.2018 are placed on record. Thus, it is a case of the respondents that the petitioner is bound to follow the policy of the reservation and the respondent no. 1 has rightly held that Reservation Act is applicable.

12. Learned counsel for the petitioner has relied upon the following judgments :

- i) *The order dated 09.02.2021 passed in Civil Application No. 14334 of 2019 in Writ Petition No. 11138 of 2010 ;*
- ii) *Madhya Pradesh Rajya Sahakari Bank Maryadit Versus State of M.P. and others, 2007 AIR (SC) (Supp) 540 ;*

iii) *The judgment and order dated 31.07.2018 in Pune Zilla Sahakari Doodh Utpadak Sangh Versus The State of Maharashtra and others ;*

iv) *Chaitanya Pandit Nanaware Versus Jalgaon District Central Cooperative Bank, PIL No. 108 of 2019 ;*

v) *Daman Singh and others Versus State of Punjab and others, (1985) 2 SCC 670.*

13. The learned counsels for the respective sides made submissions in accordance with the pleadings and the documents placed on record. Having considered the rival submissions and the documents placed on record a short question falls for the consideration is **“Whether Reservation Act is applicable to the petitioner - Co-operative Society ?”**

14. The petitioner is a Co-operative Society registered under Maharashtra Co-operative Societies Act, 1960. The petitioner was allotted lands on two occasions namely vide order dated 24.07.1975 and order dated 23.10.1975. The petitioner was given financial assistance of Rs. 6.25 Crores by Government Resolution dated 26.06.1996. From time to time, the financial assistance was given to the petitioner under National Agricultural Development Scheme. Besides that subsidy was also given to the petitioner. The amount of Rs. 6.25 Crores was repaid by the petitioner to the Competent Authority. These are the relevant and decisive facts to answer the question involved in the matter.

15. Before adverting to the merits of the matter, it is appropriate to refer to the following relevant provision of Reservation Act :

Section 2 (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

2 (i) : “public services and posts” means the services and posts in connection with the affairs of the State and includes services and posts in, -

(i) a local authority ;

(ii) a co-operative society established under the Maharashtra Co-operative Societies Act, 1960, in which Government is a shareholder ;

(iii) a Board or a Corporation or statutory body established by or under a Central or a State Act which is owned and controlled by the Government

or a Government Company as defined in Section 617 of the Companies Act, 1956 ;

(iv) an educational institution owned and controlled by the Government, which receives grant-in-aid from the Government including a university established by or under a Maharashtra Act ;

(v) any establishment ; and

(vi) respect of which reservation was applicable by Government order on the date of commencement of this Act and which are not covered under sub-clauses (i) to (v) ;”

16. It is the submission of the petitioner that to bring the petitioner within the purview of the Act, it has to be established that the petitioner - Society, has a share capital of the Government. The petitioner is Co-operative Society. Our attention is invited to the affidavit-in-reply filed by the respondent in Writ Petition No. 11431 of 2018. In paragraph no. 6 of the reply, it is specifically stated that the State Government did not invest any share capital in the petitioner - Society. It is not shown by the respondents that for the formation of the petitioner any financial assistance was extended. It is also not shown that the petitioner since its inception is getting regular aid from the respondents. The petitioner is a private entity it cannot be termed as an Government Aided Institution.

17. The only relevant factor to bring a Co-operative Society within the purview of the Reservation Act, is sharing of the capital by the Government. The respondents have placed on record that the financial aid of Rs. 6.25 Crores was extended to the petitioner, by Government Resolution dated 21.06.1996. The Government Resolution is placed on record at Exhibit R-2 in the additional affidavit of respondent no. 5. An amount of Rs. 6.25 Crore was given as a loan with the interest at the rate of Rs. 4% per annum refundable within 11 years. Certain conditions were incorporated in the Resolution. Later on, it is contended by the petitioner that the amount was refunded with interest to the respondent. What is relevant is that amount of Rs. 6.25 Crore cannot be treated to be a financial assistance on regular basis extended to the petitioner. Therefore, the said instance cannot be said to be sharing of a capital by the Government.

18. The respondents have brought on record the financial aids extended to the petitioner from time to time. It is stated in the additional affidavit of the respondent no. 5 that an amount of Rs. 24.70 Crore was given to the petitioner for the purpose of dairy expansion and modernization. It was under National Agricultural Development Scheme. The assistance provided to the petitioner vide Government Resolution dated 16.09.2016 cannot be said to be the permanent aid extended by the respondent authorities. Under the scheme and for certain developmental and modernization

activity, the funds were given to the petitioner. This cannot change the character of the petitioner as government aided institution.

19. The respondents have further contended that subsidy was given to the petitioner from time to time by various government resolution dated 17.11.2018 31.07.2018 and 08.03.2019. Giving subsidy also cannot be said to be extending permanent aid to the petitioner. The subsidies were extended in the year 2018 and 2019. The petitioner was incorporated much earlier to that. It means that when impugned orders were passed that time there was no extension of concession or subsidy to the petitioner.

20. The respondents have vehemently submitted that from time to time financial assistance was given to the petitioner in the form of loan, funds for the development, subsidy, etc. which changes the character of the petitioner and is covered by Section 2(c) of the Reservation Act. Whatever the financial assistance provided to the petitioner cannot partake share capital held by the Government. Therefore, we are of the considered view that the petitioner is not covered by Section 2(c) of the Act.

21. It is further canvassed by the respondents, that the explanation to Section 2(c) covers the aid in the form of government land given at concessional rate and monetary concessions given to the petitioner. The explanation relates to the Government Aided Institutions. The Institutions or the Industries which are given aid in the form of land at a concessional rate or any

other monetary concession by the Government are covered by the expression 'Government Aided Institutions'. Therefore, the words monetary concessions appearing in the explanation are in the context of Institutions or the Industries. The petitioner is neither Institution or Industry much less any Government Aided Institution. Under these circumstances, we are not prepared to accept the submissions of the respondents.

22. The learned counsel for the respondents have drawn our attention to the Government orders dated 24.07.1975 and 23.10.1975, which are placed on record. By order dated 24.07.1975, a land measuring 7 Hectar and 29 Are was allotted to the petitioner from Survey Nos. 304, 305, 306, 307 and 308. By another order, the petitioner was allotted 9 Hectar and 65 Are of land from Survey Nos. 322, 323 and 324. After the allotment, the formalities were completed and possession was also handed over to the petitioner. It is submitted that the allotment of the Government land at a concessional rate brings the petitioner within the purview of Reservation Act as per explanation to Section 2(c).

23. The words Government land at a concessional rate appearing in the explanation are used in altogether different context. If any Institution or the Industry which is given any aid in the form of Government land at a concessional rate or any other monetary concessions by the Government falls within the sweep of Government Aided Institutions and such a Government Aided Institution is an establishment as per Section 2(c) of the Act. It is

not the purport of the explanation that if a land is allotted at a concessional rate to any Cooperative Society then such a Co-operative Society is to be brought within the purview of Section 2(c) of the Reservation Act. The allotment of a land at a concessional rate has to be to the Institutions or the Industries, then and then only it can be said to be a Government Aided Institutions. Admittedly, it is nobody's case that petitioner is an Institution or Industry. Therefore, the submissions relying upon the Government orders allotting land to the petitioner is of no assistance to the respondents.

24. Learned counsels for the respondents have also invited our attention to the annual report for 2019 - 2020 in which an amount of Rs. 20 Crore was shown as the Maharashtra Government Bhandvali Capital. The stray entry in the report of the 2019-2020 may not be helpful to the respondents to show that there was a shareholding by the State Government. There is nothing on record to demonstrate share capital of government in the petitioner - Society.

25. It was tried to be argued by the respondents that there is a supervision and control of the respondents - Authorities on the petitioner. Any Co-operative Society which is incorporated under the provisions of the Maharashtra Co-operative Societies Act, has a supervision and control by the Authorities under the provisions of the Maharashtra Co-operative Societies Act, 1960. Therefore, the

supervision and the control by the Authority is not a decisive criteria to bring a particular Society within the purview of Reservation Act. The ingredients of Section 2(c) has to be satisfied.

26. As per Section 4 (2) of the Reservation Act, reservation is provided to the persons belonging to the various categories for direct recruitment in the Public Services and the Post specified under Section 2 (i). The definition clause of Section 2 (i) provides the meaning of Public Services and Posts. Sub-Clause (ii) of Section 2 (i) reiterates that a Co-operative Society in which the Government is a shareholder is covered for the reservation. The public services and the post in the Co-operative Society in which the government is a shareholder shall be covered by the policy of reservation for direct recruitment. Thus the decisive factor is shareholding of the Government which is lacking in the present matter.

27. The learned counsel for the petitioner has relied upon various judgments and orders to support its submissions. However, the orders passed in Civil Application No. 14334 of 2019, was an application for review and the order therein passed by learned Single Judge may not be useful to decide the question posed in the present matters. Another order which is relied upon was passed in Pune Zilha Sahakari Dudh Utpadak Versus State of Maharashtra. The Writ Petition was admitted and interim relief was granted by the Division Bench. The order is interlocutory one and cannot be taken as a decision on the point so as to constitute a precedent.

28. The judgment and order passed in Chaitanya Pandit Nanaware Versus Jalgaon District Central Co-operative Bank (supra), clutches the issue involved in the present matters. In that matter it was held that the provisions of Reservation Act cannot be made applicable to the Jalgaon District Central Co-operative Bank. The definition of Section 2(c), Section 4(2) and Section 2(l) were considered. The paragraph nos. 11, 12 and 17 read as follows :

“11. A bare perusal of the above definition of ‘establishment’ as contained in Section 2(c) of the Act No. VIII of 2004 would demonstrate that the provisions of Act No. VIII of 2004 would be applicable only to a co-operative society in which share capital is held by the Government or any Government Aided Institution. The explanation further defines the expression “Government aided institutions” to include institutions which have been given aid:

- (i) in the form of Government Land at concessional rate or
- (ii) any other monetary concessions by the Government, or
- (iii) is (a) recognized, (b) licenced, (c) supervised or
- (d) controlled by the Government.

In order to make the Act No. VIII of 2004 applicable to the respondent No.1, it will have to be demonstrated that the Government or a Government aided institution (as clarified in the Explanation to Sec.2(c) of the Act of 2004) is a shareholder in the respondent No.1.

12. The above position is fortified from reading of Section 4(2) of the Act No. VIII of 2004, which provides for reservation of posts in “Public

Services and posts", specified under clause (j) of Section 2. The mention of clause (j) of Section 2 in Section 4(2) is obviously a typographical error, as it is clause 2(i), which defines "Public Services and Posts" as against clause (j), which defines "Recruitment Year". Clause (i) of Section 2 reads as under:

"2(i) "Public Services and Posts" means the services and posts in connection with the affairs of the State and include services and posts in -

(i)-----

(ii) A co-operative society established under the Maharashtra Co-operative Societies Act, 1960, in which Government is a share holder.

It is, thus, apparent that for the purposes of the provisions of the Act No. VIII of 2004 to become applicable to a co-operative society established under the provisions of the Maharashtra Co-operative Societies Act, 1960, the necessary requirement is for the Government or a Government aided institution, to be a share holder in such a society. This flows not only from the language of Section 2(c), but also from the language of Section 2(i), (ii) of Act No. VIII of 2004.

17. This being the position, it is apparent that the provisions of The Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 i.e. Act No. VIII of 2004 are clearly not applicable to the respondent No.1-society, as it does not fall within the definition of the word 'establishment' as defined in Section 2(c) of the Act No. VIII of 2004 and, so also, the posts as advertised by it, are not covered under the definition of 'Public Services and Posts', as defined in Section 2(i) of

the Act No. VIII of 2004, in the light of the fact that the Government or a Government aided institution as per the position on record, is not a share holder in the respondent No.1-society, as required by the provisions of Section 2(i)(ii) of the Act No. VIII of 2004.”

29. We respectfully agree with the view. We are further guided by law laid down by the Supreme court in the matter of Madhya Pradesh Rajya Sahakari Bank Maryadit Versus State of M.P. and others (supra). In that matter, the Registrar of the Co-operative Society had exercised powers under Section 55 and issued orders for applying the policy of reservation for the recruitment of the appellant – Bank which was Co-operative Society under Madhya Pradesh Co-operative Societies Act. That order was challenged before High Court and was quashed and set aside. Being aggrieved the appellant – Society had preferred Appeal before the Supreme Court. The Appeal was dismissed.

30. Like Section 2(c) of the Reservation Act involved in the present matters, in the matter before Supreme Court the definition clause of Section 2(b) of Madhya Pradesh Lok Seva (Anusuchit Jatiyo, Anusuchit Janjatiyo aur Anya Bichde Vargo K Liye Aarakshan) Abhiniyam, 1994 was under consideration. Section 2 (b) of the Act of 1994 also contemplated the condition of share holding by the State Government for falling within the purview of the Act. In that context, the relevant discussion is in paragraph no. 10, which is as under :

10. Now, the question before us in the present case is whether the power exercised by the Registrar of Co-operative Societies under Section 55 of the Act of 1960 can be sustained or not in the light of Act of 1994. Act of 1994 was promulgated by the State Government for the benefit of providing reservation in the vacancies in public services and posts in favour of persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. Therefore, this Act only contemplates reservation in public services. In order to claim reservation in public offices, the definition of establishment as mentioned in Section 2(b) of the Act of 1994 will have to be fulfilled. Section 2(b) of the Act of 1994 reads as under :

"(b) "Establishment" means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society in which not less than fifty one percent of the paid up share capital is held by the State Government and includes a work charge or contingency paid establishments."

Therefore, Section 2(b) clearly says that the establishment would include any office of the State Government or local authority or statutory authority constituted under the Act of the State or a University, or a company, Corporation or a Co-operative Society in which not less than 51 percent paid up share capital is held by the State Government and including work charge and contingency paid establishments shall be 'establishment' and in that case reservation can be made for the members of Scheduled Castes, Scheduled Tribes and other Backward classes. The

very object of the Act is to provide reservation in public service and posts. Therefore, it confined only for reservation in public services and not any other private institutions. For the purpose of public service, an establishment should answer the requirement as given in Section 2(b) of the Act of 1994. Therefore, reading the object and reason along with the definition of establishment it clearly transpires in the context of the Co-operative Society in which the State Government has paid up share capital of 51 percent or more, then the reservation can be made in such Co-operative Society. The object & reason of the Act reads as under:

"An Act to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto."

Therefore, reading of objective of the Act of 1994 along with the definition of establishment it transpires that the Registrar under Section 55 of the Act of 1960 can lay down service condition for Co-operative Society in which the State has 51 percent of share capital. In case any Co-operative Society in which the State does not have 51 percent of share capital, then that Co-operative Society will not come within the definition of establishment under Section 2(b) of the Act of 1994 and the Registrar of Co-operative Societies shall have no power to frame rule for reservation. It is true that under Section 55 of the Act of 1960 the Registrar can give direction for reservation for the Scheduled Castes and Scheduled Tribes and other Backward classes while exercising the mandate under [Article 16\(4-A\)](#) of the Constitution but at the same time he cannot

ignore the State legislation i.e. the Act of 1994. In fact, the Act of 1994 was also promulgated for achieving the object under [Article 16\(4-A\)](#) of the Constitution. Once the State Legislature has framed an Act which is subsequent legislation in point of time i.e. the Madhya Pradesh Co-operative [Societies Act](#), 1960 (Act 17 of 1961) came in 1960 whereas the present Act has come in 1994. It is presumed that Legislature was aware of the power of the Registrar of the Co-operative Societies under [Section 55](#) of the Act of 1960 to frame condition of service of employees of Co-operative Societies despite that the Legislature has promulgated the Act of 1994 and laid down ceiling that the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes should be made in the establishment where Government has more than 51% share holding. Thus, on reading of both these two enactments it is more than clear that the Registrar of Co-operative Societies under [Section 55](#) of the Act of 1960 has power to frame rules but at the same time he cannot ignore the impact of the Act of 1994. The Registrar of Co-operative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes as general condition of service only in Co-operative societies in which the State has more than 51 percent paid up share capital and not for any other co-operative societies. But the notification dated 6.3.1997 is of general in nature and does not make any distinction with Co-operative societies which do not have 51 per cent paid up share capital of State. Therefore, to this extent the rule framed by the Registrar of Co-operative Societies, Madhya Pradesh by notification dated 6.3.1997 cannot be upheld and the same is struck down. But by this it does not

mean that the Registrar of Co-operative Societies, Madhya Pradesh is not denuded of his power to frame rules but he will have to keep in view the impact of the Act of 1994.”

31. In the present matter also, we find that Reservation Act is a state legislation which is subsequent to the Maharashtra Co-operative Societies Act, 1960. The Reservation Act has laid down condition that the reservation in favour of Scheduled Caste, Scheduled Tribe and other Backward Classes should be made applicable to the establishment when Government is holding share capital in the establishment. We are fortified in holding that the considering provisions of Section 2(c), 2(l), Section 4 (2) of the Reservation Act, the petitioner - Society does not fall within its purview. Accordingly, we answer that the Reservation Act cannot be made applicable to the petitioner Co-operative Society.

32. Considering our analysis, we pass following order :

ORDER

i. The order dated 08.11.2010 passed by the respondent no. 1 from Writ Petition No. 11138 of 2010 and the communication dated 12.06.2018, issued by Divisional Deputy Registrar, Nashik, from Writ Petition No. 11431 of 2018, are quashed and set aside.

ii. It is held and declared that the Maharashtra State Public Services (Reservation for Scheduled

Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act of 2001, does not apply to the petitioner - Society.

iii. It is clarified that this judgment shall not affect the appointments which are already made by the petitioner during pendency of these petitions.

iv. The Rule is made absolute in above terms.

v. There shall be no order as to costs.

vi. Pending Civil Applications are disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]