

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

WRIT PETITION NO. 3466/2023

Yavatmal Zilla Parishad Karmachari Sashakario
Patsanstha, Yavatmal bearing registration no.109,
through its General Manager, Godhani Road,
Yavatmal, District – Yavatmal.

PETITIONER

.....VERSUS.....

1. The District Deputy Registrar, Cooperative Society,
Yavatmal, District - Yavatmal.
2. The State of Maharashtra, through its Secretary,
Department of Cooperation, Marketing and Textile,
Mantralay, Mumbai-32.
3. Sunita Yadavrao Gughane, Aged : Major,
R/o Plot No.16, Dhanvantari Society, Yavatmal.

RESPONDENTS

Shri K.S. Narwade, counsel for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for the respondent nos.1 and 2.
Shri R.B. Dhore, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE : JULY 05, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the communication dated 31.05.2023 that has been issued by the District Deputy Registrar, Co-operative Societies, Yavatmal thereby staying the process of recruitment at the petitioner-Society till the conclusion of the enquiry that has been initiated on the basis of the complaint dated 25.05.2023.

3. It is the case of the petitioner that it had published an advertisement on 15.04.2023 seeking to fill up various vacant posts with it. When the said process of recruitment was ongoing, a complaint was made to the District Deputy Registrar so as to stall the recruitment process by alleging that the recruitment process was not being undertaken in accordance with the revised roster points. On the basis of aforesaid complaint, the President of the petitioner-Society remained present before the District Deputy Registrar on 25.05.2023 and the proceedings were adjourned to 05.06.2023 for further consideration. After the proceedings were adjourned, the District Deputy Registrar directed maintaining a *status quo* in the matter of recruitment. Being aggrieved by this order, the present writ petition has been filed.

4. It is submitted by the learned counsel for the petitioner-Society that on the basis of a frivolous and untenable complaint the recruitment process initiated by the petitioner-Society had been stayed. The petitioner-Society was not receiving any grant or assistance from the State Government and therefore there was no question of applying any roster in the matter of recruitment. There was absence of any shareholding by the State Government and therefore the Government Resolution dated 06.07.2021 could not be made applicable. Inviting attention to the provisions of the Maharashtra State Public Services (Reservation for Scheduled Castes, Schedule Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special

Backward Category and Other Backward Classes) Act, 2001 (for short, 'the Act of 2001'), it was submitted that the petitioner-Society was not an 'establishment' as defined by Section 2(c) of the Act of 2001. Hence, the entire basis for stalling the recruitment process was without any legal basis. The petitioner-Society was being put to financial loss since the process of recruitment had already commenced and the same was required to be stalled midway. It was also submitted that after the proceedings were adjourned to 05.06.2023, the order of *status quo* came to be passed. There was no notice to the petitioner-Society in that regard. Since the petitioner-Society sought to raise a legal question as regards the applicability of the roster point to the recruitment, it was submitted that the writ petition could be entertained on merits. The learned counsel placed reliance on the decisions in *Madhya Pradesh Rajya Sahakari Bank Maryadit Versus State of Madhya Pradesh & Others* [(2007) 12 SCC 529], *Magadh Sugar & Energy Ltd. Versus State of Bihar & Others* [2021 SCC OnLine SC 801] and *Bank Karmachari Sangh, Pune Versus State of Maharashtra & Another* [2017(3) Mh.L.J. 957] in that regard. It was submitted that the order dated 31.05.2023 was liable to be set aside.

5. The learned Assistant Government Pleader by relying upon the affidavit-in-reply denied the contentions raised by the petitioner. It was submitted that in terms of the Government Resolution dated 06.07.2021 it was necessary for the petitioner-Society to undertake recruitment by

following the roster. Since the same was not done, the District Deputy Registrar was required to examine the matter. Attention was invited to the communication dated 19.06.2013 to indicate that during the course of earlier recruitment, the petitioner-Society had implemented the roster. Hence no relief ought to be granted to the petitioner-Society.

6. The learned counsel for the respondent no.3-original complainant supported the stand taken by the respondent nos.1 and 2. It was submitted that by exercising the power under Section 79A of the Maharashtra Co-operative Societies Act, 1961 the State Government had directed implementation of the roster at the petitioner-Society. Since the reservation for backward classes was applicable there was no case made out to interfere in writ jurisdiction. An alternate remedy under the statute was also available for challenging the order dated 31.05.2023. The learned counsel relied upon the decision in *Sangli Zilla Sahakari Nagari Banks Association Versus State of Maharashtra* [1989 Mh.L.J. 173] in support of his submissions.

7. We have heard the learned counsel for the parties and we have perused the documents on record. The only challenge raised in the writ petition is to the order dated 31.05.2023 passed by the District Deputy Registrar by which the petitioner-Society was directed to maintain *status quo* until further orders. It is undisputed that based on the complaint made

by the respondent no.3 alongwith others the District Deputy Registrar took cognizance of the same and conducted proceedings on 25.05.2023. While granting time to the petitioner-Society the proceedings were adjourned to 05.06.2023. It appears from the note-sheet that thereafter on the basis of the documents placed before the District Deputy Registrar he thought it fit to direct the petitioner-Society to maintain *status quo* till the issues raised in the complaints were gone into. There is a dispute between the parties as regards the timing of passing of the order of *status quo*. It is not necessary for this Court to enter into that arena. Suffice it to observe that in view of the complaints received the District Deputy Registrar has found it necessary to look into the matter and till the same was done the position as prevailing on 25.05.2023 has been directed to be maintained. It further transpires that since this order has been challenged in the present proceedings, the District Deputy Registrar has not proceeded further with the adjudication of the said complaints.

8. The larger issue as to whether the petitioner-Society is duty bound to implement the roster while undertaking recruitment is the basis of the complaints made to the District Deputy Registrar. Since the said Authority is seized with the said complaints it would be in the fitness of things that the said Authority first examines the matter and arrives at a conclusion as regards the applicability or otherwise of the roster point. Since the only prayer made in the present writ petition is to set aside the order

dated 31.05.2023 passed by the District Deputy Registrar we are not inclined to examine the larger issue as sought to be raised by the petitioner with regard to non-applicability of the Government Resolution dated 06.07.2021. Instead the parties can raise that issue before the District Deputy Registrar who can consider the same and take a decision thereon. Hence, we have not gone into the said question.

9. In the light of aforesaid, the following order in our view would meet the ends of justice.

(I) The District Deputy Registrar shall consider the complaints received by his Office as regards the recruitment undertaken by the petitioner-Society pursuant to the advertisement dated 15.04.2023.

(II) The petitioner-Society shall participate in the said proceedings and it is permitted to raise all grounds including its defence that the Government Resolution dated 06.07.2021 and the Act of 2001 are not applicable to the petitioner-Society.

(III) Within a period of fifteen days from receiving the copy of this judgment, the District Deputy Registrar shall dispose of all the complaints received by his Office with regard to the advertisement dated 15.04.2023.

(IV) By clarifying that such adjudication should be undertaken after giving due opportunity to all the parties and resolving the complaints in accordance with law, the writ petition is disposed of. The points raised in the writ petition on the larger issue of applicability of the reservation policy and the petitioner-Society not being an 'establishment' for the purposes of Section 2(c) of the Act of 2001 or the post in question not being 'public services and posts' as per Section 2(i) of the Act of 2001 are kept open.

10. Rule accordingly. There would be no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE