



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**REVIEW APPLICATION NO. 154 OF 2024 IN  
CIVIL WRIT PETITION NO. 10906 OF 2023**

Shri Hamal Mathadi Kamgar Majoor  
Sahakari Sanstha Maryadit, Shrirampur,  
Taluka Shrirampur,  
Dist. Ahmednagar  
Through its Chairman,  
Shri Dattatray Savaleram Sable,  
Age : 56 years, Occu : Business,  
R/o Shrirampur,  
Tal. Shrirampur, Dist. Ahmednagar

.. Applicant

Versus

- 1] The State of Maharashtra,  
Through it's the Secretary,  
Food, Civil Supply and Consumer Protection,  
Department, Mantralaya,  
Mumbai – 32.
- 2] The Divisional Commissioner,  
Nashik Division, Nashik,  
Having it's Office at Nashik Road,  
Nashik
- 3] The Collector, Ahmednagar  
Tq. & Dist. Ahmednagar
- 4] The District Supply Officer,  
Ahmednagar, Dist. Ahmednagar
- 5] Jay Bajrang Mathadi Kamgar Majoor  
Sahakari, Sanstha Limited, Shrirampur,  
Taluka Shrirampur, Dist. Ahmednagar,  
Through its Chairman,  
Shri. R.B. Waghmare,  
Age : 7 years, Occu : Business,  
R/o Saraswati Colony, Ward No. 7,  
Shrirampur, Tal. Shrirampur,  
Dist. Ahmednagar

.. Respondents

...

Advocate for applicant : Mr. K.N. Shermale  
Addl. G.P. for respondents no. 1 to 4 : Mr. P.S. Patil  
Advocate for the respondent no. 5 : Mr. Sk. Mazhar A. Jahagirdar

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

**RESERVED ON : 28 JUNE 2024  
PRONOUNCED ON : 03 JULY 2024**

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

By way of this application under section 114 r/w. Order XLVII of the Code of Civil Procedure, the original petitioner is seeking review of the judgment and order dated 29-11-2023 dismissing its writ petition.

2. In fact, the judgment sought to be reviewed, was a common judgment in several matters of same kind filed by different labour co-operative societies duly registered under the Maharashtra Co-operative Societies Act, 1960 and the petitioner was a society registered under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter "**Mathadi Act**"). All these societies have been engaged in loading and unloading of the goods at the government godowns. These societies were registered in different districts.

3. All the petitioners including the present one had put up a challenge to the government resolution dated 06-03-2023 which in turn was issued in accordance with the earlier government resolution dated 12-09-2014. By the impugned government resolution, it was resolved

that the labour societies which were registered under the Mathadi Act and were following necessary stipulations regarding payment to the labourers and depositing levy with the Mathadi board etc. and which were strictly following the terms and conditions and doing the work punctually could be allowed to work by granting them extension if they were ready to offer competitive rates.

4. The resolution dated 06-03-2023 further stipulated that following the circular of the co-operative department of the state dated 21-12-2004, the work to be allotted / continued by a particular labour society should be restricted to the district where it was registered. Meaning thereby, that the decision to grant extension was with a rider that the labour society was registered in that district. This was the clause which was challenged by all those petitioners.

5. The present applicant – petitioner initially had not put up any challenge to this clause. It had merely prayed for quashing the order passed by respondent no. 3 – Collector, Ahmednagar who was arrayed therein as respondent no. 3, allotting the work in respect of 10 talukas from Ahmednagar district to respondent no. 5 in the writ petition. By way of amendment, applicant – petitioner also sought to put up challenge to the government resolution dated 06-03-2023, however, during the course of arguments, its learned advocate who

was representing it in the writ petition, on instructions, expressly stated that it was not pressing for the prayer putting up challenge to the government resolution and was restricting its original prayers questioning the order passed by respondent no. 3 in favour of respondent no. 5 – labour society for allotment of work.

6. After hearing both the sides and for the reasons recorded in the order under review, considering the facts and circumstances of each case all the writ petitions were dismissed including that of the applicant – petitioner herein. Hence, this review application.

7. Mr. Shermale for the applicant – petitioner would vehemently submit that may be because it was a common judgment disposing of several petitions of the same kind, this Court had failed to consider the original prayers from the writ petition whereby applicant – petitioner had prayed for quashing and setting aside of the order passed by respondent no. 3 – Collector allotting the contract of labour supply to respondent no. 5 for 10 talukas of Ahmednagar district and also praying for a direction to him, to allot the work to it to the extent of government godowns of Sangamner taluka. He would submit that there are no specific and precise reasons recorded by this Court in the order under review as to why the applicant – petitioner was not entitled

to these two reliefs. It is an error apparent on the face of the record sufficient to undertake review.

8. Mr. Shermale would further refer to the decision in the matter of ***S. Murali Sundaram Versus Jothibai Kannan and others; 2023 SCC OnLine SC 185*** (Civil Appeal Nos.1167-1170 of 2023). He would submit that the merits of the petition cannot be gone into at this stage and the limited scope for entertaining any review application, is to ascertain whether the parameters laid down under section 114 read with Order XLVII of the Code of Civil Procedure are available. He would therefore submit that it is only after this Court undertakes such a exercise that it can thereafter proceed to consider the merits.

9. Per contra, Mr. Patil, learned AGP would advert our attention to paragraphs no. 5 and 19 of the order under review, to submit that a conjoint reading of these paragraphs is eloquent enough to demonstrate that this Court had rejected even the prayers which according to the applicant – petitioner were not decided. He would submit that this Court had expressly noted that the applicant – petitioner was taking inconsistent stands that too by way of amendment, by putting up a challenge to the government resolution dated 06-03-2023 and still seeking to derive benefit therefrom, and was guilty of approbation and reprobation. Mr. Patil would, therefore, submit

that there is no error much less apparent. It was always open for the applicant – petitioner, if he was aggrieved by the judgment and order of this Court to approach the Supreme Court. Instead, he has found a shortcut without there being sufficient grounds for undertaking a review.

10. Mr. Jahagirdar for respondent no. 5 would also strenuously submit by referring to his affidavit in reply that there is no legal ground for resorting to review. Apart from addressing the merits of the applicant – petitioner's reliefs which according to it were not considered by this Court, he would submit that there is no error apparent on the fact of record or any other sufficient reason. All the petitioners were coming with similar prayers and having reasons recorded elaborately, all these petitions were dismissed.

11. Mr. Jahagirdar would further submit that even the conduct of the applicant – petitioner in preferring the review application through a different advocate and not the same advocate who had addressed this Court has been deprecated by the Supreme Court in the matter of ***Tamil Nadu Electricity Board and another V. N. Raju Reddiar and another; (1997) 9 SCC 736.***

12. Mr. Jahagirdar would submit that no arguments were advanced by learned advocate who was representing the applicant in respect of these two prayers and unless it is demonstrated otherwise, it

should be regarded as having been consciously left out and cannot be allowed to be re-opened. The prayers which were not granted can certainly be regarded as having been refused entitling the applicant – petitioner to challenge the judgment and order, however, he cannot resort to remedy of review. To buttress his such submission, he would refer to ***Daman Singh and others Vs. State of Punjab and others; (1985) 2 SCC 670.***

13. In this context, Mr. Jahagirdar would also submit that High Court being a Court of record under Article 215 of the Constitution of India, a sanctity is attached to the proceeding and record of the Court. When the judgment and order under review does not expressly refer to the submissions of the learned advocate representing applicant - petitioner addressing the Court regarding its entitlement to the original relief claimed in the petition, one will have to proceed on the premise that he had not addressed the Court on that aspect. He would refer to the decision in the matter of ***Shantilal Manganlal and another V. Chunilal Ranchoddas Through LRs. and others; (1984) 4 SCC 236.*** He, would, therefore pray to reject the application.

14. At the first blush, submission of Mr. Shermale is attractive regarding the original prayers having been left out of consideration. However, a careful reading of the entire judgment and order and

particularly in the context of the disputes being raised in this petition coupled with the reasons and observations of this Court in paragraphs no. 5 and 19 of the imugned judgment and order are indeed eloquent enough to reach a conclusion that this Court was even not in favour of the applicant – petitioner to the extent of original prayers whereby it was putting up a challenge to the work allotted by respondent no. 3 – Collector to respondent no. 5 – labour society and to the extent of Sangamner taluka.

15. Obviously, one cannot undertake any exercise as has been rightly submitted by Mr. Shermale touching the merits of the writ petition, yet in order to entertain this review application it is essential to ascertain as to of the prayers which were stated to have been left out of the consideration, were considered or not.

16. As can be seen from the entire judgment and order sought to be reviewed, different labour societies had put up challenge to the government resolution dated 06-03-2023 which was in the nature of restriction on the labour societies registered in one district from having the work from another district. As can be noticed from the averments in the writ petition, the applicant – petitioner was objecting to allotment of contract to respondent no. 5 resorting to government resolution dated 06-03-2023 in respect of 10 talukas from Ahmednagar district including taluka Sangamner in which the applicant – petitioner was interested. It

was specifically alleged that government resolution had the effect of creating a monopoly of respondent no. 5. It is thus quite clear that though initially applicant – petitioner was not putting up any challenge to government resolution dated 06-03-2023, the ground on which he was relying upon for seeking the original reliefs, was the selfsame government resolution dated 06-03-2023. Like the petitioners from other matters it had sought amendment so as to put up a challenge to the resolution. For the reasons recorded in the judgment and order challenge to that government resolution on the ground of arbitrariness and unreasonableness in seeking to strike it down was turned down. Even the applicant – petitioner herein expressly waived challenge to the government resolution dated 06-03-2023 and apparently the ground on which it was challenging the allotment of work to respondent no. 5 was turned down with specific and precise observation that the stand it was taking, was incompatible and it was guilty of approbation and reprobation.

17. Observations in paragraphs no. 5 and 19 of the judgment and order under review are reproduced herein-below for the sake of convenience and read thus :-

“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.

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.”

18. It is thus quite apparent that the above observations in the context in which those were made are eloquent enough justifying the ultimate conclusion drawn by this Court that even the writ petition

preferred by the applicant – petitioner was liable to be dismissed. It cannot be said that the original prayers were left out of the consideration and were not decided.

19. There is no formal defect or error apparent on the face of the record or any other sufficient ground to enable this Court to undertake the review.

20. The review application is dismissed.

**[ NEERAJ P. DHOTE ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**

arp/