



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

WRIT PETITION NO. 4321 OF 2022

Sagharsh Matsya Vyavasayeeek Sahkari
Sanstha Ltd. Pimpalwadi, Tq. and
Dist. Beed, through its Chairman
Shamrao Sadashiv Tupe,
Age : 51 Years, Occu. : Fisherman,
R/o Pimpalwadi, Tq. & Dist. Beed. .. Petitioner

Versus

1. The Commissioner (Fishery),
Maharashtra State, Mumbai.
2. The Deputy Registrar,
Co-operative Societies (Fishery),
Mumbai.
3. The Assistant Registrar,
Co-operative Societies (Dairy),
Beed, Dist. Beed.
4. The Assistant Commissioner of
Fishery, Beed, Dist. Beed.
5. Shri Bandu Sadhashiv Zungure,
Age : 35 Years, Occu. : Agril.,
Alleged Chairman,
Tuljai Bhu Matsya Sahakari Sanstha
Ltd. Ukhanda, Tq. Patoda,
Dist. Beed. .. Respondents

Shri Kamlakar J. Suryawanshi, Advocate for the Petitioner.
Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1 to 4.
Shri C. V. Thombre, Advocate for the Respondent No. 5.

CORAM : SHAILESH P. BRAHME, J.
DATE : 17TH APRIL 2024.

ORAL JUDGMENT :-

. Rule. Rule is made returnable forthwith. With the consent of the parties heard matter finally at the admission stage.

2. The petitioner is challenging order dated 17.12.2020 passed by the respondent No. 1/Commissioner (Fisheries), Maharashtra State and order dated 24.10.2019 passed by the respondent No. 2/Deputy Registrar, Co-operative Societies (Fisheries), Mumbai. Grievance of the petitioner is that without extending any opportunity of hearing, the respondent No. 2/Deputy Registrar passed order approving amendment under Sec. 13(2) of the Maharashtra Co-operative Societies Act (for the sake of brevity and convenience hereafter referred to "Said Act").

3. There was delay in preferring Appeal No. 25 of 2019. It was condoned by the respondent No. 2/Deputy Registrar. vide order dated 10.10.2019. Immediately matter was kept for hearing by the respondent No. 2 and it was allowed on 24.10.2019. Being aggrieved, the petitioner had preferred Revision Petition No. 582 of 2019. It was dismissed on 17.12.2020 by the respondent No. 1/Commissioner.

4. Learned counsel submits that no notice of hearing was issued to it. Though the petitioner was a party, no opportunity

was extended. The illegality and arbitrariness perpetuated even by the order passed by the Commissioner.

5. Learned Assistant Government Pleader for respondent Nos. 1 to 4 would support the impugned orders by filing affidavit in reply. Additionally, he places on record roznama along with communication dated 01.01.2024. He would submit that when the matter was at the stage of consideration of application for condonation of delay on 27.06.2019, the Chairman of the petitioner society Mr. Shamrao Sadashiv Tupe and Secretary B. D. Bharad were present. Matter was adjourned to 25.07.2019. Thereafter on 10.10.2019, the respondent No. 2 condoned the delay. He would submit that as office bearers of the petitioner society had participated in the proceedings, there was no need to issue separate notice. According to him petitioner-society was aware of the dates of hearing, but remained absent.

6. Learned counsel for the respondent No. 5 supports the impugned order by filing affidavit in reply. He would submit that due procedure was followed and opportunity was extended to the petitioner-society and its officer bearers. He adopts the submissions of the learned A. G. P. Additionally, he would vehemently submits that petition is liable to be dismissed for suppression of material facts. It has not been disclosed by the petitioner that on 18.10.2019, the respondent No. 3 passed order under Sec. No. 13(2) of the said Act approving amendment. Against that Appeal No. 03 of 2020 was preferred by the

petitioner/society. It was dismissed by the Deputy Registrar on 21.09.2020. There is no substance in the petition and the petition is liable to be dismissed. He would further submit that the respondent No. 5 is executing a contract at Vanjarwadi, Tq. and Dist. Beed.

7. I have considered rival submissions of the litigating sides. Short issue falls for consideration is as to whether order passed by the Deputy Registrar on 24.10.2019 is against principles of natural justice or not. This Court is not supposed to decide the factum of identification of tank, entity who is executing contract or the duration of the contract.

8. It needs to be clarified that the petitioner-society is Sagharsh Matsya Vyavasayeeek Sahkari Sanstha Ltd. Pimpalwadi, Tq. and Dist. Beed. It had proposed changes in the bye-laws. By proposal dated 26.11.2014 it approached respondent No. 3/Assistant Registrar for approval U/Sec 13(2) of the Act. By order dated 30.01.2015 approval was granted. It was challenged by the respondent No. 5 after about four years along with application for condonation of delay bearing Application No. 09 of 2019 before the respondent No. 2/Deputy Registrar. Delay was condoned and Appeal No. 25 of 2019 was registered. It was allowed on 24.10.2019.

9. In contradistinction proceedings initiated vide proposal dated 07.11.2019 were by Tuljai Bhu Matsya Sahakari Sanstha

Ltd. Ukhanda, Tq. Patoda. The respondent No. 3 approved the amendment vide order dated 18.11.2019. It was challenged by the petitioner-society vide Appeal No. 03 of 2020 before the respondent No. 2/Deputy Registrar. It met with dismissal on 21.09.2020.

10. The grievance of the petitioner in the present petition is in respect of the approval granted by the Deputy Registrar to the amendment of bye-laws of Sagharsh Matsya Vyavasayee Sahkari Sanstha Ltd. Pimpalwadi, Tq. and Dist. Beed and not in respect of Tuljai Bhu Matsya Sahakari Sanstha Ltd. Ukhanda, Tq. Patoda. Therefore, the proceedings initiated vide proposal dated 07.11.2019, its approval, filing of Appeal No. 03 of 2020 and final decision dated 21.09.2020 in Appeal No. 03 of 2020 are not relevant to decide the controversy involved in the petition.

11. The learned A. G. P. has pointed out the roznama. There was delay in preferring appeal and a separate application was preferred by the respondent No. 5 bearing Application No. 09 of 2019. Roznama shows that on 27.06.2019, Chairman and Secretary of the petitioner were present and the matter was adjourned to 27.09.2019. Thereafter, by order dated 10.10.2019 delay was condoned. Petitioner has no grudge against this order.

12. After condonation of delay, Appeal No. 25 of 2019 was registered. It appears from the judgment that matter was heard on 22.10.2019. Present petitioner was respondent No. 3 in

appeal. It has been recorded that no reply or submissions were made by the petitioner.

13. It is a matter of record that Appeal No. 25 of 2019 was finally decided on 24.10.2019, within a period of fourteen days. Though office bearers of the petitioner society were present on 27.06.2019, it was incumbent upon the *quasi judicial* authority to see that the petitioner is independently served and given adequate opportunity of hearing before deciding appeal on merits. There is nothing on record to indicate that any notice was issued to the petitioner who was a contesting party. Presence of office bearer of petitioner on 27.06.2019 would not dispense with the requisite procedural formalities in adherence to the principles of natural justice.

14. Impugned judgment dated 24.10.2019 even does not disclose that despite notice or intimation, petitioner-society remained absent. I am of the considered view that this is brazen violation of principles of natural justice. I have carefully gone through the judgment passed by the respondent No. 1/Commissioner dismissing the revision. No finding is recorded in respect of the grievance of the petitioner, though specific ground was raised in para No. 11 of the memo of the revision. This is non application of mind and patent illegality. Revisional authority, the respondent No. 1 overlooked grievance of the petitioner.

15. Learned counsel for the petitioner seeks reliance on the judgment rendered by the learned Single Judge of this Court in the matter of Savitri Chandrakesh Pal Vs. State of Maharashtra and others reported in *2009(4) Mh. L. J. 406*. Learned Single Judge has stipulated modalities to be followed by the quasi judicial authority while deciding matters. My attention is invited to the guidelines stipulated in para No. 17 of the judgment. Relevant guidelines are as follows :

- (6) For issuance of summons to the opponents/respondents, Court fees/postal stamps of sufficient amount shall be affixed on the application form/memo of appeal or revision as the case may be.
- (12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing.
- (19) Record of hearing shall be meticulously maintained in a separate Roznama.

16. I find that impugned judgment and orders are passed in violation of guidelines laid down by the learned Single Judge. Both the impugned orders are unsustainable. I, therefore, pass following order.

O R D E R

A. The writ petition is partly allowed.

B. Impugned judgments and orders are quashed and set aside.

C. The respondent No. 2/Deputy Registrar shall hear Appeal No. 25 of 2019 on its own merits after extending opportunity of hearing to the parties. The parties shall appear before the respondent No. 2/Deputy Registrar on 16.06.2024.

D. Rule is made absolute in above terms. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb / April 24