



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

WRIT PETITION NO. 2553 OF 2024

Sahyog Matsya Vyavsaya Sahkari
Sanstha, Borgaon Mandi,
Registration No. 303,
Tahsil and District – Yavatmal,
Through its President.
Mobile No.8010102964.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
Through its Deputy Registrar,
Co-operative Societies (Fish),
Having its office at C-24,
Second Floor, Mittal Tower
C-Wing, Nariman Point,
Mumbai – 400 021.
- 2) Government of Mahaharashtra,
Fisheries Department,
Through its Assistant
Commissioner of Fisheries,
C/o Collectorate Compound,
Yeotmal, M. S. Yavatmal.
- 3) Assistant Registrar,
Cooperative Societies (Diary),
Yavatmal, Having its office
at MIDC, Lohara, Yavatmal.
- 4) Shri Vikki Prabhakar Diwate,
Aged about Major, occ : Not known,
R/o. Borgaon Madni,
Tah. and District : Yavatmal.
- 5) ~~Samta Mahila Matsya Vyavsaya
Sahkari Sanstha Limited, Borgaon,
having its Registration No. 1622,
Madni, Tahsil and Dist. Yavatmal,
Through its Authority.~~

R.No.5 deleted as
per the Registrar (J)
order dt.20.09.2024.

.... **RESPONDENTS**

Mr. S. K. Tambde, Advocate for the Petitioner.

Mr. S. C. Joshi, Assistant Government Pleader for Respondent Nos.1 to 3.

Mr. V. M. Kulsange, Advocate for the Respondent No.4.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 28/02/2025

DATE ON PRONOUNCING THE JUDGMENT : 01/04/2025

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

2. Being aggrieved by the order of respondent No.1 – Deputy Registrar, Co-operative Societies (Fisheries), Mumbai, dated 11/03/2024 received on 18/03/2024 and thereby rejected the application of the petitioner, present petition is filed.

3. Petitioner society is registered under the Maharashtra Co-operative Societies Act, 1960 (for short the “MCS Act”). It provides regular and steady employment to its members on obtaining the tanks, ponds, lake water reservoir from Zilla Parishad, Gram Panchayat, Government of Maharashtra, B & C Department and Public Works Departments. Petitioner submitted that respondent No.4 is the son of Prabhakar Diwate. The father of the respondent No.4 was not a regular and steady legal member of the petitioner Society. He was only

nominal member, thus, his membership cannot be transferred. After the death of Shri. Prabhakar Diwate, the respondent No.4 i.e. Vikki Prabhakar Diwate moved an application for grant of membership with respondent No.3 i.e. Assistant Registrar Co-operative Societies (Dairy), Yavatmal on dated 15/11/2019. The respondent No.3 has rejected the application of respondent No.4 vide its communication dated 15/01/2020.

4. Petitioner society vide its communication dated 23/01/2022 informed to the Assistant Registrar I.e Respondent No. 3 that father of the respondent no.4 was only nominal member and therefore, no share amount was deposited by the late Shri Prabhakar Z. Diwate, hence, application of the respondent no.4 was rejected by the office of Assistant Registrar Co-operative Societies, Yavatmal.

5. The respondent no.4 has again made a request to the petitioner society for grant of membership vide its letter dated 14/10/2022 and moved an application in proforma of Rule 19(1) of Maharashtra Co-operative Societies Rules, 1961. Petitioner society rejected the request of the respondent no.4 vide its communication dated 16/11/2022 denying that the respondent no.4 cannot be admitted as a member as his father has not paid the share amount with the petitioner society.

6. Then the respondent no.3 conducted the meeting under Section 23 of Maharashtra Co-operative Societies Act, 1960 and passed an order on 08/02/2023 holding and directing the petitioner society to grant membership to the respondent no.4 vide its communication dated 08/02/2023. Respondent no.3 has further directed to issue directions under Section 79 to the petitioner society on 08/02/2023.

7. Against which, the petitioner Society preferred and filed Appeal which is wrongly mentioned under Section 152 of Maharashtra Co-operative Societies Act, 1960. In fact, it should have been a revision under Section 154 in the title of the revision application. The respondent No.1 being revisional authority is having a limited jurisdiction to decide the matters on the basis of revision application or at the most can call for the record from the office of respondent No.3 – Assistant Registrar, Co-operative Societies (Diary), Yavatmal. Instead of doing that, he asked the technical report from the respondent No.2 whether the respondent No.4 is a fisherman or not and for that, he has directed to conduct the enquiry and submit his report vide letter dated 19/01/2024. The respondent No.1 has asked for the report of present respondent No.2/Assistant Commissioner of Fishery, Amravati vide its communication dated 16/01/2024 without issuing notice to remain present at the time of inspection, whether the respondent No.4 is a fisherman or not and without supplying the copy of said report dated

05/02/2024 and without granting a fair and proper opportunity to the petitioner order of respondent No.1 dated 11/03/2024 and order of respondent No.3 came to be passed. The aforesaid order is the subject matter of challenge in the present writ petition.

8. Learned counsel for the petitioner contended that the respondent No.1 has further mentioned in its order that the respondent Nos.3 and 4 neither appeared nor filed any reply to the said revision/appeal memo of the present Petitioner Society dated 16/10/2023. Thus, in absence of any rebuttal to allegations of appeal memo of respondent No.1 was duty bound to allow revision application and to quash and set aside the order of respondent No.3 dated 08/02/2023 and also the direction of respondent No.3 under Section 79 dated 08/11/2023.

9. It is further contended that the respondent No.1 has only recorded the contention of the present petitioner Society (page no.2) of the order dated 11/03/2024 but the respondent No.1 has utterly failed to record his independent judicial reasoning and findings in its order dated 11/03/2024. Thus, require the interference by this Court and it also need to be set aside.

10. Learned counsel for the respondent No.4 submitted that the appeal under Section 152 or revision under Section 154 of the MCS

Act lies before the same quasi-judicial Authority of respondent No.1 and it exercises concurrent jurisdiction. Hence, conversion of appeal under Section 152 into revision under Section 154 of the MCS Act has no legal impediment. It is specifically submitted that issuance of certificate by the respondent No.5 in favour of respondent no.4 regarding the experience of fishing is not disputed. The certificate issued by respondent No.5 cannot be subject matter of consideration in the writ jurisdiction of this Court. It is further specifically submitted that the veracity of the certificate issued by respondent No.5 is considered by the respondent No.3 and respondent Nos.1 and 2 and have come to concurrent finding of fact and law about the genuine purpose for such certificate. The said concurrent finding is not assailable as per the assumptions and surmises of the petitioner society, hence prayed for the dismissal of the present petition.

11. Learned counsel for the Respondent No. 3 supported the orders passed by the respondent No. 1 and 3 as legal, correct and proper hence needs no interference and also prayed for the dismissal of the present writ.

12. Heard the learned Counsel for the petitioner and learned Counsel for respondents. The State Government or the Registrar Suo Motu or on an application may call for and examined the record of any enquiry or proceedings of any matter other than those referred to in

Sub-Section 9 of Section 149, where any decision or order has been passed by any Subordinate Officer, and no appeal lies against such decision or order for the purpose of satisfying themselves, as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. The State Government or the Registrar, in any case, appears to it that any decision or order to recall or, should be modified, annulled or reversed, the State Government or the Registrar as the case may be may after giving the person affected thereby an opportunity of being heard pass such orders thereon as to it may seem just.

13. It appears that there is scheme formulated by Government of Maharashtra vide its Circular dated 03/07/2019, by which, revised criteria were provided for registration of Fishery Societies and also the criteria registering membership to the said Society. In Clause 1.4 in the proposed society a person entitled to become member who is having active business in fishing and those are residing within the territory of 10 Kms from the concerned lake.

14. On perusal of impugned order, it appears that Advocate Shrikant Nagarikar was representing the applicant and Vicky Prabhakar Diwate was representing respondent. However, it is contention of the petitioner that it was not the appeal but the revision and wrongly mentioned as appeal. It is contention of the Petitioner that without

granting any opportunity, without supplying the documents, Vicky Prabhakar Diwate was granted membership in violation of principles of natural justice. The claim of Prabhakaran Diwate was rightly rejected by learned Assistant Register Co-operative Societies (Dairy Institute) Yavatmal and in view of Section 23(1), there were already 50 members in the Society and if the application of said Prabhakar Diwate is accepted, it would adversely affect to the income of other members. Without considering all these facts, Assistant Registrar Co-operative Society passed order on 08/11/2023, whereby, said Prabhakar Diwate was given with membership. Learned Authority also failed to consider that certificate of experience in fishing issued by one Samta Mahila Masemari Sanstha, Borgaon, is closed Society and even not registered one. Admittedly, there was no written submission filed by respondent No.1 and 2. It appears that during the hearing of appeal, it was revealed to the respondent No.1/Deputy Registrar Co-operative Society, State of Maharashtra, Bombay, that Assistant Registrar while passing order under Section 23 has not verified whether he is eligible to become a member, after considering Act and Rules and the Government Resolutions. As such, on 16/01/2024, stay was granted to the order passed by Assistant Register dated 08/11/2023. Accordingly, the Assistant Registrar Fisheries, Yavatmal, directed to submit the report in respect of eligibility of Shri Diwate that he is active fisherman. Accordingly, report was submitted on 05/02/2024 by Assistant

Registrar Fisheries and on the basis of same, it was concluded by the Deputy Registrar Co-operative Societies Fisheries, Mumbai, that Shri Diwate, is active fisherman and is fulfilling all the criteria to become a member as per Act and Rules and appeal came to be dismissed. There is no reference that after calling report any opportunity was granted to the petitioner to submit their contentions on the report. As there were no written submissions on behalf of respondent Nos. 1 and 2, the learned Deputy Registrar Co-operative Societies Fisheries ought to have allowed the revision. However, he called report from the Assistant Registrar Fisheries, Yavatmal, and on the basis of the same without recording any evidence any independent finding and without granting any opportunity to the petitioner to comment on report, passed the impugned order.

15. The Deputy Registrar Cooperative Society called for the report however there is no date fixed or notice issued, after receipt of report so as to comment on the same. The copy of said report is also not supplied. The said communication of Deputy Registrar Cooperative Societies demanding technical report in the matter of Vikky Prabhakar Diwate was challenged by filing Writ Petition Stamp No. 2258/2024. This information was duly communicated to Depute Registrar of Fisheries, State of Maharashtra and during the pendency of this petition, the impugned order came to be passed. Therefore, petitioner

required to seek the copy of the said report under Right to Information Act. As such, the order passed without giving independent reasoning for conforming order of the Assistant Register and without granting any opportunity to file submission in respect of report called by the Authority is against the principle of natural justice. In view thereof, order passed by learned Deputy Registrar, Mumbai, is liable to be set aside. Accordingly, I proceed to pass the following order :-

ORDER

1. Writ Petition is allowed.
2. The order dated 11/03/2024, passed by Deputy Registrar Co-operative Societies Fisheries, Bombay in Appeal(Revision) No. 2/2024 is hereby quashed and set aside.
3. Matter is remitted back to the learned Deputy Registrar Co-operative Societies, Fisheries to consider afresh after giving due opportunity to the party and after supplying copy of report of Assistant Registrar Co-operative Society.
4. Parties to appear before the Registrar cooperative societies Fisheries, Mumbai on 16/04/2025 at 11:00 p.m.

Writ Petition stands disposed of in the above terms.

(SMT. M.S. JAWALKAR, J.)

Jayashree..