



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 ORDINARY ORIGINAL CIVIL JURISDICTION
 WRIT PETITION NO.3908 OF 2025

Apsara Co-operative Housing Society
 Ltd.

...Petitioner

V/s.

Vijay Shankar Singh ...Respondent

WITH
 WRIT PETITION NO.4146 OF 2025

Apsara Co-operative Housing Society
 Ltd.

...Petitioner

V/s.

Vijay Shankar Singh ...Respondent

*Mr. Mahesh Shukla with Mr. Udaybhan Tiwari i/b. Mr. Niraj Prajapati
 for the Petitioner.*

Mr. Ashish G. Nagwekar for the Respondent.

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON: 22 DECEMBER 2025.
 JUDGMENT PRONOUNCED ON: 05 JANUARY 2026.

JUDGMENT:

- 1) Rule. Rule made returnable forthwith. Respondent has appeared and has filed Affidavits-in Reply. He waives service of Rule. With the consent of the learned counsel appearing for parties, the Petitions are taken up for hearing and disposal.

ISSUES FOR DETERMINATION

2) Whether a housing society formed by flat owners for collective management of the building is an 'industry' for maintainability of proceedings before Labour Court under the Industrial Disputes Act, 1947 or an 'establishment' for maintainability of proceedings before the Controlling Authority under the Payment of Gratuity Act, 1971 are the issues which this Court is tasked upon to determine in these Petitions.

3) Petitioner is a cooperative housing society and questions maintainability of proceedings filed by its ex-Manager for payment of dues under Section 33-C(2) of the Industrial Disputes Act, 1947 (the **ID Act**) and for payment of gratuity under the Payment of Gratuity Act, 1971 (the **PG Act**). According to the Petitioner it is neither an 'industry' within the meaning of Section 2(j) of the ID Act nor an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (the **Maharashtra Shops Act**). According to the Petitioner, the Labour Court and Controlling Authority do not have jurisdiction to entertain any proceedings against the Petitioner. With this grievance, the present Petitions are filed.

THE CHALLENGE

4) These two Petitions challenge the orders dated 17 January 2024 passed by the Presiding Officer, 10th Labour Court, Mumbai, who is also Controlling Authority under the PG Act. Writ Petition No.3908

of 2025 challenges order passed on Application at Exh. C-4 filed by Petitioner in Application (IDA) No.111 of 2023, by which the Labour Court has rejected its prayer for dismissal of the proceedings filed under Section 33-C(2) of the ID Act. In Writ Petition No.4146 of 2025, Petitioner has challenged order dated 17 January 2024 passed by the Controlling Authority under the PG Act rejecting its application below Exh. C-4 seeking dismissal of Application (PGA) No.186 of 2023 filed by the Respondent for payment of gratuity.

FACTS

5) Petitioner is a cooperative housing society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The Respondent was working with the Petitioner as a Building Manager, who was appointed vide letter of appointment dated 5 August 2013. His services have been terminated by the Petitioner-Society vide letter dated 15 October 2022. The Respondent submitted Application in Form I claiming gratuity of Rs.4,67,308/- on 17 May 2023. He filed Application (PGA) No.186 of 2023 before the Controlling Authority seeking payment of gratuity of Rs.4,67,308/- together with interest. The Respondent also filed Application (IDA) No.111 of 2023 before 10th Labour Court under the provisions of Section 33-C(2) of the ID Act claiming total amount of Rs.3,87,000/- being bonus and leave wages for the years 2020-21, 2021-22 and 2022-23.

6) Upon receipt of notice in both the Applications, the Petitioner appeared before the Labour Court, which also functions as

the Controlling Authority under the PG Act. The Petitioner filed written statements in both the Applications. Additionally, Petitioner also filed applications seeking dismissal of both the proceedings on the ground that the provisions of the ID Act and PG Act do not apply to it. By order dated 17 January 2024, the Labour Court has rejected the Application at Exhibit C-4 filed in Application (IDA) No.111 of 2023, which is subject matter of challenge in Writ Petition No.3908 of 2025. By another order passed on 17 January 2024 on Application at Exh. C-4, the Controlling Authority has rejected the application seeking dismissal of Application (PGA) No.186 of 2023, which is the subject matter of challenge in Writ Petition No.4146 of 2025.

SUBMISSIONS

7) Mr. Shukla, the learned counsel appearing for the Petitioner would submit that a cooperative housing society is repeatedly held to be not an industry in several judicial pronouncements of the Apex Court and of this Court. He would submit that the Petitioner-Society is formed only for the purpose of managing the building occupied by its members. It does not carry out any systematic commercial activity. That mere presence of club house or telecommunication antennas is not a reason for holding that the Petitioner carries out any systematic activity satisfying the tests laid down by the Apex Court in *Bangalore Water Supply and Sewerage Board V/s. A. Rajappa and Ors.*¹ He would submit that in *Mgt. Of Som Vihar Apartment Owners Housing Maintenance Society Limited V/s. Workmen c/o. Indian Engineering and General Mazdoor*², an

¹ 1978(ii) SCC Page 213

² (2002) 9 SCC 652

association or society of apartment owners employing persons for rendering personal services to its members is held to be not an industry under Section 2(j) of the ID Act. That this Court in *Dalamal House Commercial Complex CHS and Ors. V/s. Shri S.R. Tiwari and Ors.*³ has also held that a cooperative housing society is not an industry. That order passed by this Court in *Dalamal House* (supra) is affirmed by the Apex Court by dismissal of the SLP. He also relies on judgment of this Court in *Arihant Siddhi Co-op. Housing Society Ltd. V/s. Pushpa Vishnu More & Ors.*⁴, in which it is held that a society is not an industry. In support of contention that a cooperative housing society is not an industry, he also relies on judgment of this Court in *Shantivan-II Co-op. Housing Society V/s. Manjula Govind Mahida (Smt.) and Another*⁵. He also relies on judgment of this Court in *the Bhartiya Friends Co-op. Housing Society Ltd. V/s. Bombay Labour Union & Ors.*⁶

8) So far as Application filed by the Respondent for payment of gratuity is concerned, Mr. Shukla would submit that a co-operative housing society is not an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017 (*Maharashtra Shops Act*). He relies on judgment of this Court in *Kiran Industrial Premises Co-op. Society Ltd., Mumbai V/s. Janata Kamgar Union, Mumbai and Others.*⁷

³ Writ Petition No.1858 of 2018 decided on 17 July 2018

⁴ 2018 SCC OnLine Bom 21459

⁵ 2018 SCC Online Bom 21462.

⁶ Writ Petition No.1001 of 1997, decided on 28 March 2005.

⁷ 2001 (4) Mh.L.J. 665.

9) Mr. Shukla would accordingly submit that the Labour Court and the Controlling Authority have erroneously rejected Petitioner's applications seeking dismissal of both the proceedings filed by the Respondent. He would accordingly pray for setting aside the impugned orders and for dismissal of the Applications filed under Section 33-C(2) of the ID Act and the Application under the PG Act. Mr. Shukla also submits that the Respondent was paid amount of Rs.5,00,000/- at the time of his cessation of services towards bonus and that no further payment under any head is payable to him.

10) Mr. Nagwekar the learned counsel appearing for the Respondent opposes the Petitions submitting that Petitioner-Society fulfills all the tests for being treated as an industry. That apart from managing the personal affairs of its members, Petitioner carries out specific commercial activity. That it has a full-fledged club house. That it is also engaged in commercial activity of letting out of its space for installation of telecommunication towers. Mr. Nagwekar submits that it is too early at this stage to decide the status of the Petitioner as an industry. That the Respondent must be given an opportunity to lead evidence and only evidence will bear out the exact nature of activity undertaken by the Respondent. He would therefore submit that the Labour Court and the Controlling Authority have rightly rejected the applications preferred by the Petitioner.

11) Mr. Nagwekar would submit that the Respondent was in direct employment with Petitioner-Society and has been unceremoniously terminated without paying gratuity and without paying his legal dues. That he has invoked the jurisdiction of Labour

Court and Controlling Authority, which would adjudicate his claims on merits. That even security guards and other housekeeping staff engaged through contractor are paid all benefits such as bonus, gratuity, etc. and despite being direct employee of the Petitioner-Society, the Respondent has been denied similar treatment.

12) Mr. Nagwekar would submit that for payment of gratuity under the PG Act, it is not necessary to prove that the Petitioner is an industry. That PG Act applies to every establishment, which employs more than 10 employees. He would submit that the Respondent would also prove status of the Petitioner as 'industry' within the meaning of Section 2(j) of the ID Act and 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops Act. He prays for an opportunity to lead evidence by seeking dismissal of the Petitions.

REASONS AND ANALYSIS

13) The Respondent was a Building Manager employed with the Petitioner-Society, who was appointed vide letter of appointment dated 5 August 2013. His services have been terminated by letter dated 15 October 2022. It appears that prior to his termination, the Respondent was drawing monthly salary of Rs.90,000/-. It is the case of Petitioner that Respondent was paid amount of Rs.5,00,000/- at the time of his termination towards bonus and that no further payment under any head is payable to him.

14) Respondent has not challenged his termination. He instead believed that he was not paid bonus and leave wages for three

years by the Petitioner-Society. He was advised to invoke jurisdiction of Labour Court under Section 33-C(2) of ID Act, which empowers the Labour Court to compute and direct payment of monies due to the workman. Section 33-C(2) of the ID Act provides thus:

33-C. Recovery of money due from an employer.—

(1)

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

15) Respondent has filed Application (IDA) No.111 of 2023 under Section 33-C(2) of ID Act for recovery of amount of Rs.3,87,000/-, bifurcation of which is as under:-

Bonus for the year 2020-2021 – Rs.90,000/-

Bonus for the year 2021-2022 – Rs.90,000/-

Bonus for the year 2022-2023 – Rs.52,000/-

Leave Wages for the year 2020-2021- Rs.60,000/-

Leave Wages for the year 2021-2022- Rs.60,000/-

Leave Wages for the year 2022-2023- Rs.35,000/-

Total - Rs.3,87,000/-.

16) Simultaneously, the Respondent has also filed Application (PGA) No.186 of 2023 seeking gratuity of Rs.4,67,308/- on the

strength of 9 years of services with the Petitioner-Society. Filing of Applications under Section 33-C(2) of the ID Act envisages that the Respondent is a workman within the meaning of Section 2(s) and Petitioner is an industry within the meaning of Section 2(j) of the ID Act. Similarly, Respondent's prayer for payment of gratuity is premised on assumption that the PG Act applies to the Petitioner society.

17) The Petitioner is a cooperative housing society registered under the MCS Act. It is formed by the owners of flats in the building for its collective management. It believes that provisions of the ID Act and PG Act are not applicable in respect of its employees and accordingly the Petitioner sought dismissal of both the Applications filed by the Respondent.

WHETHER A COOPERATIVE HOUSING SOCIETY IS AN 'INDUSTRY'

18) I first proceed to decide the issue of maintainability of Application (IDA) No.111 of 2023 filed under Section 33-C(2) of the ID Act. For invoking the provisions of Section 33-C(2), it becomes incumbent for the Respondent to prove that he is a 'workman' under Section 2(s) and that the Petitioner is an 'industry' within the meaning of Section 2(j) of the ID Act. Section 2(j) of the ID Act defines the term 'industry' as under:-

2 Definitions

(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen;

19) Thus the activity of business or trade is essential for an entity to qualify as an industry. In *Bangalore Water Supply and Sewerage Board* (supra) the Constitution Bench has laid down various tests for determination of status of different types of entities. So far as cooperative societies are concerned, the Apex Court has held that generally they do not fall outside the definition of the term 'industry' under Section 2(j) of the ID Act. It is held that cooperatives such as credit societies, marketing cooperatives, producers' or consumers' societies, etc are industries. It is held in para 126 thus:

126. Cooperative societies ordinarily cannot, we feel, fall outside Section 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies — credit societies, marketing cooperatives, producers' or consumers' societies or apex societies — are industries.

Thus, merely because an activity is carried out by a cooperative society, the same would not fall outside definition of the term 'industry', especially when the activity partakes character of trade. However, this would apply only when a cooperative society carries out some form of trade like a cooperative sugar factory or a cooperative bank or cooperative credit society, etc. These types of entities ultimately carry out a systematic commercial activity and merely because the business is owned by multiple persons as members of the cooperative society, the same would not be a reason for not treating its activity as industry. However, whether this would apply to a

cooperative housing society which does not carry out any trade? The answer, to my mind, appears to be in the negative. Carrying on some form of trade or business is essential for a cooperative society to partake character of an industry. A cooperative housing society which merely manages the building and is formed for collective ownership of land and building, does not carry on any trade or business and would not qualify as an industry.

20) To decide the issue, the purpose for which cooperative housing societies and associations of apartments are formed needs to be appreciated. In urban areas where multi storied buildings comprising of numerous flats are constructed, the developer/promoter sells only the flats to the purchasers. The common areas and amenity spaces of the building are to be used commonly by all the flat owners. Once all the flats in the building are sold, ownership in the land and the building is required to be conveyed by the developer/promoter to the collective body of flat purchasers. In Maharashtra the activities of construction, sale, management and transfer of flats used to be governed by the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (**MOFA**), which is now replaced by Real Estate (Regulation and Development) Act 2016 (**RERA**), which is a Central Legislation. Under both the enactments, it is incumbent for promoter/developer to transfer the title in the land and the building in favour of collective body of flat purchasers, which can be a cooperative society, association of apartments or a company. Thus one of the objectives behind formation of such collective body like a society is to secure title in the land and building, which is collectively owned by all the flat

purchasers. Once such collective body like a society is formed, it also looks after maintenance of the building. Thus the collective body of flat purchasers is not formed with the objective of carrying on any trade or business.

21) With the rise of construction of apartments in urban areas in India, professional management of the buildings became imminent. Gone are the days where smaller buildings were used to be managed through a watchman or caretaker or a security guard. Today's modern commercial and housing complexes require efficient management in various areas such as maintaining cleanliness, garbage collection, lift operations, parking management, electricity/plumbing maintenance, club house maintenance, managing sporting activities, etc. All these facilities are provided in a building for personal use by members. Since members find it difficult to themselves maintain these facilities, various personnel are required to be employed to look after and maintain those facilities. It therefore cannot be contended that the activity of maintaining those facilities is a commercial activity. Usually a cooperative housing society or co-operative commercial premises society do not have income generation sources and are largely dependent on monthly contribution by members. However, few buildings do have some commercial exploitation opportunities such as renting out some of the premises in the building for putting up hoardings or for telecommunication towers, etc. Though some income may be generated through these activities, it does not mean that the activity of earning remuneration through such exploitation acquires a characteristic of a systematic trading or commercial activity for such society. Such activities help reduce monthly contributions by the

members and are not aimed at or performed with the objective of running a systematic trade or business activity as an industry. Therefore, merely because the Petitioner has installed telecommunication towers on its building or because it earns some income through such installation, the same would not *ipso facto* convert activity of the society into a systematic commercial activity constituting an industry.

22) It is another thing if a co-operative housing society or association of apartments is found to be engaged in any systematic commercial activity such as running of a store /restaurant or running a club house for outsiders, operating banquet hall for commercial exploitation by outsiders, etc. and if any employees are appointed to exclusively look after those commercial activities. In such a case, if it is proved that the employees look after the commercial activities undertaken by the society, such activity may come in the definition of the term 'industry'. However mere employment of employees by co-operative housing society or association of apartments for offering services to the members would not bring activities of such society into the definition of the term 'industry' within the meaning of Section 2(j) of the ID Act.

23) The issue of status of a cooperative society or an association of apartments as 'industry' fell for consideration before the Apex Court in *Mgt. of Som Vihar Apartment Owners Housing Maintenance Society Limited* (supra). The Apex Court held in paragraph 7 as under:-

7. Indeed this Court in Rajappa's case (supra) noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition 2(J) of the Industrial Disputes Act. It is made clear if literally interpreted these words are of very wide amplitude and it cannot be suggested that in its sweep it is intended to include service however rendered in whatsoever capacity and for whatsoever reason. In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; service rendered by a domestic servant purely in a personal or domestic matter or even in a casual way would fall outside the definition. That is how this Court dealt with this aspect of the matter. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer who come outside the idea of industry and industrial dispute. This rationale which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat owners for rendering personal services even if that group is not amorphous but crystalised into an Association or a society. The decision in Rajappa's case if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters. It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be "industry". Therefore, the award made by the Tribunal cannot be sustained. The same shall stand set aside.

(emphasis added)

Thus, in ***Mgt. of Som Vihar Apartment Owners Housing Maintenance Society Limited*** the Apex Court has held that when personal services are rendered to the members of the Society and where the Society is constituted only for the purposes of those members, the Society cannot be treated as industry nor employees can be treated as workmen.

24) The issue of co-operative society of residential flats or commercial premises not being an industry has also been repeatedly

decided by this Court. It would be apposite to make a quick reference to those judgments. In *the Bhartiya Friends Co-op. Housing Society Ltd.* (supra) learned Single Judge of this Court referred to the judgment in *Som Vihar* (supra) and held in paragraph 3 as under:-

3. This issue is no longer res integra. In the case of Management of SOM Vihar Apartment Owners Housing Maintenance Society Ltd. v/s. Workmen C/o. Indian Engineering and General Mazdoor, 2001 LLR 599,2001 LLR 599,2001 LLR 599, the Apex Court after considering the judgment in the case of Bangalore Water Supply (supra), Kamani Properties Ltd. v/s State of West Bengal & Ors., AIR 1990 SC 2047AIR 1990 SC 2047AIR 1990 SC 2047 and T.K. Ramesan v/s. A.O. Thomas, Secretary, Maintenance Committee, 1995 Lab.I.C. 8131995 Lab.I.C. 8131995 Lab.I.C. 813 held that a housing society does not fall within the purview of the term 'industry' as defined under section 2(j) of the Industrial Disputes Act. Under section 3(7) of the MRTU & PULP Act, 'industry' has been defined in relation to which the Central Act, that is, the Industrial Disputes Act applies, as one which is defined under clause (j) of section 2 of the Central Act. Since a cooperative society is not an industry within the meaning of section 2(j) of the Industrial Disputes Act, the provisions of the MRTU & PULP Act cannot apply to the Petitioner-Society.

25) In *Arihant Siddhi Co-op. Housing Society Ltd.* (supra) the learned Single Judge of this Court has held in paragraph 4 as under:-

4. This Court, in its judgment in the case of M/s. Shantivan-II Co. Op. Hsg. Society vs. Smt. Manjula Govind Mahida¹ has considered whether a cooperative housing society can be termed as an industry within the meaning of Section 2(j) of the Industrial Disputes Act merely because it carries on some commercial activity, not as its predominant activity, but as an adjunct to its main activity. This Court has held that such society is not an industry. In a case like this, that is to say, where there is a complex of activities, some of which may qualify the undertaking as an industry **and some would not, what one has to consider is the predominant nature of services or activities. If the predominant nature is to render services to its own members and the other activities are merely an adjunct, by the true test laid down in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa², the undertaking is not an industry.**

(emphasis added)

26) Lastly, in ***Dalamal House Commercial Complex CHS and Ors.*** (supra) the learned Single Judge of this Court has held in paragraphs 3 and 4 as under:-

3. This court in M/s ShantivanII Cooperative Housing Society Vs. Smt. Manjula Govind Mahida, has considered a similar controversy. The cooperative society in that case was alleged to be carrying on commercial activities through licensing of its terrace for erection of mobile towers. This court relying on the test laid down in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and ors. held that if predominant nature of services undertaken by the cooperative society was to render services to its own members and the purported commercial activities were a mere adjunct to these services, the society could not be termed an industry. This Court in M/s ShantivanII Cooperative Housing society observed that the case of Somvihar Apartment Owners Housing Maintenance Society limited Vs. Workmen c/o Indian Engineering and General Mazdoor, on which reliance was placed by the complainants and the ratio of which was applied by the Industrial Court, has no application to such case.

4. Accordingly, the impugned order of Industrial Court suffers from a serious error of jurisdiction. Rule is accordingly made absolute and the petition is allowed. The complaint before the Industrial Court is quashed and set aside. No order as to costs. Though the petition is disposed of on the basis of law declared by this court, it is expected that the parties nevertheless would try and sit together and sort out the dispute of wages amicably.

The Special Leave Petition preferred challenging the judgment in ***Dalamal House Commercial Complex CHS*** (supra) has been dismissed by the Supreme Court by order dated 12 July 2021.

27) It is thus a settled position that a cooperative society does not fit into the definition of the term 'industry'. I am therefore of the view that the Petitioner cannot be treated as an 'industry' within the meaning of Section 2(j) of the ID Act in view of the settled law discussed above.

28) The Labour Court has egregiously erred in dismissing Petitioner's application filed in Application (IDA) No.111 of 2023 holding that the Respondent needs to be given an opportunity to lead evidence. Even if the Respondent leads evidence, he would still not be able to demonstrate that the Petitioner-Society runs any activity akin to an industry. Affidavit-in-reply filed in Writ Petition No.3908 of 2025 refers to following documents:-

- A. Account Statement of the Opponent for Aug & September 2018 (Receipt & Payments) - pages 1 to 3. Hereto annexed and marked exhibit 'A' is a copy of statement of account.
- B. Balance Sheet till 31-3-2021 & 31-3- 2023 pages 4 & 5. Hereto annexed and marked exhibit 'B' is a copy of Balance Sheet.
- C. Statement of Income of the Applicant provided by the Society - page 6. Hereto annexed and marked exhibit 'C' is a copy of Statement of Income of the Applicant provided by the Society.
- D. Form 16-A till 31-3-2023 - pages 7 to 9 Hereto annexed and marked exhibit 'D' is a copy of Form 16-A.
- E. Vodafone Antenna photograph taken by the Applicant on 15-10-2022 - page Hereto annexed and marked exhibit 'E' is a copy of Vodafone Antenna photograph.
- F. Airtel Antenna photograph taken by the Applicant on 15-10-2022 - page 11. Hereto annexed and marked exhibit F is a copy of Airtel Antenna photograph.
- G. Tata Antenna photograph taken by the Applicant on 15-10-2022 - page 12. Hereto annexed and marked exhibit 'G' is a copy of Tata Antenna photograph.
- H. Club House on Terrace photographs taken by the Applicant on 15-10-2022- page 13 to 17. Hereto annexed and marked exhibit 'H' is a copy of Club House on Terrace photographs.

29) Mere installation of telecommunication antennas by the Petitioner-Society for reducing monthly maintenance charges of its

members cannot be treated as a systematic activity for treating it as an 'industry'. Similar is the position in respect of club house of the Petitioner-Society. It is not the contention of the Petitioner that membership in the club house is allowed for outsiders. Club house is being operated for personal use of the members and merely because operation of the club house involves incurring of large-scale expenditure, it would still not mean a systematic commercial activity for treating the same as an 'industry'.

30) In my view therefore, the Labour Court has erred in dismissing the Application (IDA) No.111 of 2023 filed by the Petitioner.

WHETHER A COOPERATIVE HOUSING SOCIETY IS AN 'ESTABLISHMENT' FOR APPLICATION OF PG ACT?

31) So far as the Respondent's claim for payment of gratuity is concerned, the PG Act applies to the following entities under sub-section (3) of Section 1 of the PG Act:-

1. Short title, extent, application and commencement

xxx

(3) It shall apply to—

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as

the Central Government may, by notification, specify in this behalf.

(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

(emphasis added)

32) Section 2(f) of the PG Act defines the term 'employer' as under:-

2. Definitions.—In this Act, unless the context otherwise requires,

—
xxx

(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

- (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
- (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,
- (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the **establishment**, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

(emphasis added)

33) Thus, every 'establishment' within the meaning of law enacted by the State Government is governed by the provisions of the PG Act subject to employment of 10 or more persons. In State of

Maharashtra shops and establishments are governed by provisions of the Maharashtra Shops Act.

34) Under Section 2(4) of the Maharashtra Shops Act, the term 'establishment' has been defined as under:-

2. Definition.— In this Act, unless the context otherwise requires,

—
xxx

(4) "establishment" means an establishment which carries on, any business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce exchange or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture; and includes establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others), architect, engineer, accountant, tax consultant or any other technical or professional consultant; and also includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto; and includes shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 (63 of 1948), does not apply; and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act;

(emphasis added)

Thus, Section 2(4) of the Maharashtra Shops Act includes every establishment carrying on the business, trade, manufacture or other enumerated activities and includes even a society registered under the provisions of Societies Registration Act, 1860 or a charitable or other trust. Mr. Shukla has contended that Section 2(4) of the Maharashtra Shops Act thus consciously excluded a cooperative society registered under the MCS Act, 1960. However, that alone cannot be a factor for

inferring that the Legislature has intended to exclude every cooperative society from application of provisions of PG Act. To illustrate, a cooperative bank or cooperative sugar factory or cooperative credit society would be governed by the provisions of the PG Act notwithstanding the fact that they are registered under the provisions of MCS Act. This is because those societies carry on commerce, trade or business.

35) On perusal of definition of the term 'establishment' under Section 2(4) of the Maharashtra Shops Act, it is seen that the establishments covered under the definition are usually engaged in some sort of commercial activities. The term 'establishment' defined under Section 2(4) of the Maharashtra Shops Act essentially refers to entities engaged in some sort of commercial activities. Carrying on some form of business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce, exchange or profession is essential for coverage of an entity in the definition of the term 'establishment'. Section 2(4) of the Maharashtra Shops Act does not bring within its net any entity, which does not carry out a commercial, business or trade activity. To illustrate, while bringing in its net a charitable or other trusts, Section 2(4) of the Maharashtra Shops Act adds the caveat of carrying on business, trade or profession. Thus, a charitable trust, which does not carry on any business, trade or profession or any work in connection with or incidental or ancillary thereto would not be covered by the definition of the term 'establishment'. Thus, the activity of business, trade or commerce is essential for coverage of any entity in the

definition of the term 'establishment' under the Maharashtra Shops Act.

36) There is also another angle from which the issue of coverage of cooperative housing societies or associations of apartments in definition of the term 'establishment' can be considered. There can be no doubt that a residence or house is not an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops Act. If employees are engaged to look after maintenance of a residential bungalow, the said bungalow will not be an establishment within the meaning of Section 2(4) of the Maharashtra Shops Act. This is because activity of owner of that bungalow, who resides therein, in engaging employees/workers to look after the bungalow has no connection with any commerce, trade, business or profession. If a singular bungalow is not an establishment, whether multiple bungalows, managed through a collective body like a co-operative society, would become an establishment within the meaning of Section 2(4) of the Maharashtra Shops Act? The answer, to my mind, appears to be in the negative. Similarly, when a residential flat in a building is not an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops Act, an entity formed by all the residents for collective management of their houses would also not be an establishment within the meaning of Section 2(4) of the Maharashtra Shops Act. Merely because house owners come together and decide to manage their houses and building collectively and for that purpose, employ workers/employees, association of house owners would not be an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops Act. In my view,

therefore, provisions of PG Act would not apply to co-operative society or co-operative commercial premises/ societies.

37) The issue as to whether a cooperative society is covered by the definition of the term 'establishment' attracted attention of this Court in *Kiran Industrial Premises Co-op. Society Ltd.* (supra). The issue before the learned Single Judge of this Court was about application of provisions of Minimum Wages Act, 1948 and of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 (MRTU & PULP Act) to a cooperative society of industrial premises. Petitioner therein was a registered co-operative society under the MCS Act and had employed four persons as watchmen. The society had 200 members as owners of industrial units/ galas. The Society had several commercial premises in which commercial and trading activities were undertaken by owners of the units. On behalf of the watchmen, the union filed complaint of unfair labour practice under Section 28 of the MRTU & PULP Act complaining about non-payment of wages prescribed under the Minimum Wages Act. Item 17 of the Part I of the Schedule to the Minimum Wages Act covers/includes employment in any shop or commercial establishment. In the light of entry No.17 in Part-I of the Schedule, this Court examined definition of the term 'commercial establishment' under the then Bombay Shops and Establishments Act, 1948. This Court held in paragraphs 2 and 3 as under:-

2. We have to bear in mind that the petitioner society is a separate independent and distinct entity and a legal and juristic personality independent of its members who are the share holders of the society owning the premises in their own right. The business, trade or commercial activities of the members cannot be mixed up with the activities of the society and by no stretch of imagination can it

be said that the society is also carrying on the business, trade or commercial activities because its members are engaged in such activities, besides, it is neither pleaded nor proved, nor is there even a shred of evidence or material on record to conclude or even to infer that the society is engaged in any business, trade or commercial activities. The workmen have not led any evidence to prove that commercial activities were carried on by the society. There is a statement made in their evidence about the activities in the premises of the members but nothing about the society's activities. On the contrary the society's secretary has clearly stated that the society's work is of maintaining the society. Even in his cross-examination not even a whisper of activities of the society is put to him. No doubt a few questions were put to him about the commercial activities in the galas or the premises of the society owned by the members. The entire building is of industrial galas but that does not make the society itself a commercial establishment carrying on any trade, business or any commercial activities. It is clear that the society is a collective person of the members, who have organised themselves to maintain the society and to carry on its affairs in accordance with the bye-laws, rules and the Act. It is a distinct legal entity from the members. It collects the maintenance charges, service charges, property and water charges payable to the municipal corporation. It acts as a statutory agent to collectively represent the members. It looks after the maintenance of the building and renders services such as collecting the prescribed charges from the individual members and disburse or spend them in accordance with law for repairs, water charges, property taxes, payment of wages etc. and keeps proper accounts and get the accounts approved annually in its general meeting. There is no evidence or material to conclude or to infer what other activities are engaged in by the society. There is no pleading or proof to say that the society itself is carrying on the trade, business or a commercial activity such as sale or purchase of the premises or any goods or merchandise and it earns any income therefrom.

3. Let us now analyse the legal provisions. The claim of the employees for minimum wages is under the Minimum Wages Act. Item 17 of the Part 1 of the Schedule reads as under :-

"17 :- Employment in any shop or commercial establishment (not being an employment in any bank or an employment which is included) under any of the other entries in this Schedule.

Explanation.- For the purpose of this entry, the expressions, "Shop" and "Commercial Establishment" shall have the meaning respectively assigned to them in the Bombay Shops and Establishments Act, 1948."

The employees are claiming wages as prescribed for the commercial establishment under the Act and alleged failure to be an unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The term "commercial establishment" has been defined under the Bombay Shops and Establishments Act in Section 2(4) which reads as under :-

'Commercial establishment' means an establishment which carried on, any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession (and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes) a society registered under the Societies Registration Act, 1860 [XXI of 1860] and a charitable or other trust, whether registered or not, which carries on (whether for purposes of gain or not) any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment."

The concept of "commerce" or "commercial" is well known and has been the subject matter of umpteen number of Judicial decisions and I need not dwell on that point. **In my opinion based on the facts of the present case, the society cannot be said to be engaged in any commercial venture or a business, trade or profession.** There is no investment of capital nor is there any motive for profit or gain. Its a simple activity confined to the maintenance of the premises and payment of different statutory dues to the prescribed authorities and to employ the services of some persons to carry out such activities. There is no commercial aim or purpose to engage in the activities of the society. It is possible that out of its total receipts from the members, the society might have excess amount over its expenditure but that is not the test to hold that these activities are commercial in nature to dub the society as a commercial establishment. There is neither an object of profit nor a risk of making loss in the maintenance activities of the society. I, therefore, hold that the petitioner society is neither "a commercial establishment" nor "an industry" to attract the provisions of the Minimum Wages Act, 1948. ...

(emphasis added)

38) Thus, in *Kiran Industrial Premises Co-op. Society Ltd*, this Court drew a distinction between commercial activity carried out by members in premises of the society and the activity of the society

itself in managing the premises. The issue involved in the present case appears to be squarely covered by the judgment of this Court in *Kiran Industrial Premises Co-op. Society Ltd.* The Maharashtra Shops Act has replaced the Bombay Shops and Establishments Act, 1948. The term 'commercial establishment' appearing in Section 2(4) of the Bombay Act (Act of 1948) is now replaced by the term 'establishment' under Section 2(4) of the Maharashtra Shops Act. However, both under the definition of the term 'commercial establishment' under the Act of 1948 and 'establishment' under the Maharashtra Shops Act, the essential requirement is that the entity must carry on some trade, commerce or business. A cooperative housing society or an association of apartments formed for the purpose of collective management of affairs of the building cannot be said to be engaged in a business, trade or commerce. It is only those societies or associations which carry out some form of trade, business or commerce which would be covered by definition of the term 'establishment' under the Maharashtra Shops Act and would be liable to pay gratuity if 10 or more employees are employed. In the present case, Petitioner society does not carry out any trade or business.

39) The contention of Respondent that the employees of contractors engaged by the Petitioner society like security guards, housekeeping staff, etc. receive all statutory benefits and that the Manager directly engaged by it must also receive all the statutory benefits. The contention may appear to be attractive, but is misplaced. The contractors engaged by the society work for different entities. Those contractors are in the business of providing the workforce to various entities. They carry on systematic activity of trade or business

like an industry. They are also covered by definition of the term 'establishment' under the Maharashtra Shops Act. Therefore their employees are paid the statutory dues, including gratuity. Merely because such contract workers are deployed by the contractor to work for Petitioner society, the same would not convert Petitioner into an industry or establishment when it does not carry on any trade, commerce or business activity.

40) In my view therefore, Petitioner society cannot be treated as an 'establishment' within the meaning of the Maharashtra Shops Act and consequently the provisions of PG Act would not apply to the Petitioner society. The Controlling Authority has thus erred in rejecting Petitioner's Application seeking dismissal of Application (PGA) No.186 of 2023.

CONCLUSIONS

41) Conspectus of the above discussion is that the Petitioner-Society is neither an 'industry' within the meaning of Section 2(j) of the ID Act nor an 'establishment' within the meaning of Section 2(4) of the Maharashtra Shops Act, making the provisions of the PG Act inapplicable to it. Therefore, the proceedings filed by the Respondent under Section 33-C(2) of the ID Act and under the PG Act before the Labour Court and the Controlling Authority respectively are not maintainable and liable to be dismissed.

ORDER

42) Petitions accordingly succeed and I proceed to pass the following order:-

- (i) Order dated 17 January 2024 passed on Application at Exh. C-4 filed in Application (IDA) No.111 of 2023 is set aside and consequently, Application (IDA) No.111 of 2023 is dismissed.
- (ii) Order dated 17 January 2024 passed on Application at Exh. C-4 in Application (PGA) No.186 of 2023 is set aside and consequently Application (PGA) No.186 of 2023 is dismissed.

43) Writ Petitions are allowed in above terms and disposed of. Rule is made absolute in both the Petitions. Considering the facts and circumstances of the case there shall be no orders as to costs.

[SANDEEP V. MARNE, J.]