

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.305 of 2015**

1. Inland Water Transport Employees
Coop. Credit Society Ltd.,
A Society Deemed to have been
Registered under the Goa
Coop Societies Act,
By its Chairman, Shri Suresh
Narayan Salgaonkar, C/o Naik
General Stores, Shop No.616,
Malim, Bardez Goa.
2. Shri Suresh Narayan Salgaonkar,
Major in age,
Chairman, Inland Water Transport
Employees Coop. Credit Society
Ltd., C/o Naik General Stores,
Shop No.616, Malim, Bardez Goa.
3. Shri Sanjiv V. Panjekar,
Major in age, Director,
Inland Water Transport Employees
Coop. Credit Society Ltd.,
C/o Naik General Stores,
Shop No.616, Malim, Bardez Goa
4. Shri Vaikunth E. Chodankar,
Major in age,
Director,
Inland Water Transport Employees
Coop. Credit Society Ltd.,
C/o Naik General Stores,
Shop No.616, Malim, Bardez Goa
5. Mr. Manuel A. Fernandes,
Major in age,
Director,
Inland Water Transport Employees
Coop. Credit Society Ltd.,
C/o Naik General Stores,
Shop No.616, Malim, Bardez Goa .. Petitioners

V/s.

1. State of Goa,
Through its Chief Secretary,
Secretariat Complex,
Porvorim Goa.
2. Registrar of Cooperative Societies,
Government of Goa
4th floor, Sahakar Sankul,
EDC Patto Plaza, Panaji Goa
3. Asst. Registrar of Cooperative
Societies,
Office of the Asst. Registrar
of Cooperative Societies,
Government of Goa,
Central Zone, Sahakar Bhavan,
1st floor, Opposite Municipal
Market, Panaji, Goa. ... Respondents
- 1) Udesb Karmalkar,
Son of Dugu Karmalkar,
aged about 32 years,
Indian National,
Resident of H.No.313,
Karambolim, Kharibhat,
Karambolim, Tiswadi, Goa.
(Amendment is carried out
as per order dated 10/7/2015
passed by this Hon'ble Court
in MCA No.425/2015.) .. Intervenor

Mr. M. Amonkar, Advocate for the petitioners.

Mr. P. Faldessai, Additional Government Advocate for
the respondents.

Mr. J. P. Mulgaonkar, Advocate for the intervenor.

CORAM :- C. V. BHADANG, J.

DATE :- 1st August, 2016

JUDGMENT :

In this case, rule was issued on 24/07/2015 and hearing was expedited. Accordingly, this petition is taken up for final hearing at the instance of the petitioners, as the Assistant Registrar was proceeding to hold election of the Board of Directors of the petitioner no.1- society.

2. I have heard Shri Amonkar, the learned Counsel for the petitioners, Shri Faldessai, the learned Additional Government Advocate for the respondents and Shri Mulgaonkar, the learned Counsel for the intervenor.

3. The brief facts are that the petitioner no.1 is a Credit Society registered under the Goa Co-operative Society Act, 2001 (the Act, for short).

4. By the impugned order dated 31/03/2015, the Assistant Registrar of Co-operative Societies, in the exercise of powers under Sections 61(a) and 72(2) of

the Act (the Act, for short), has declared the Board of Directors of the petitioner society, having incurred disqualification for a period of 5 years from the date of issue of the order.

5. The Assistant Registrar has found that the statements of accounts of the society were not submitted as required by Section 73(4) of the Act nor a Annual General Body Meeting (AGM) was held during the co-operative year 2013-2014. The Registrar further found that the Board of Directors had failed to get the accounts of the Society audited and to file returns. The Registrar, therefore, came to the conclusion that the Board of Directors of the said Society were not interested in managing the affairs of the Society and in that view of the matter, the declaration about the Board of Directors, having incurred disqualification, has been given.

6. It is contended on behalf of the petitioners that there were certain disputes, which had arisen amongst the members of the Society, which had led to

the office premises of the Society being closed for some time. The office premises were subsequently shifted to another place, with the approval of the Assistant Registrar. In short, it is submitted that on account of all these developments, which were beyond the control of the petitioners, they could not hold the AGM and could not get the accounts audited and file returns. It is submitted that thus, the impugned order is not legal and proper as it does not properly consider the circumstances, which prevented the petitioners from complying with their statutory obligations.

7. The learned Counsel for the petitioners was at pains to point out that once a show cause notice is issued, it was expected that the Authorities look into the cause shown and then decide the matter. He, therefore, submits that the impugned order be set aside.

8. On the contrary, the learned Additional Government Advocate for the respondents has supported

the impugned order. The learned Additional Government Advocate points out that the provisions of Section 61 of the Act, are mandatory in nature and disqualification is automatic once the conditions as mentioned in the Section are satisfied. He submits that the Assistant Registrar has granted declaration of the disqualification, which was automatically incurred. The learned Additional Government Advocate points out that Section 61 of the Act, does not contemplate that the Authority can go into the cause or the circumstances, which prevented the Board of Directors from holding the AGM within time and to get the accounts audited and file return. It is submitted that in a given case, it would only be open to the Board of Directors to show that factually AGM was held within time as provided and the accounts were audited and returns were filed. However, once it is shown that these compliances were not made, the authorities cannot go into the reasons by which, the Board of Directors were prevented from complying with these provisions.

9. The learned Counsel for the intervenor also

supported the impugned order.

10. I have carefully considered the rival circumstances and the submissions made. With the assistance of the learned Counsel for the parties, I have perused record and gone through the impugned order.

11. Section 61 of the Act reads thus :

"61. Disqualification of all directors of the board.— Notwithstanding anything contained in the foregoing section, all the directors of the board shall, be deemed to have incurred disqualification for a period of five years for being chosen as directors and shall be ineligible to continue as directors of the society, if, during their term as directors of the society,—

(a) they did not conduct the annual general meeting within six months of closure of the society's accounting year;

(b) they did not conduct a requisitioned general meeting within the specified time;

(c) they did not place the accounts for the preceding co-operative year before the

general body at its annual general meeting.

(d) they willfully allow any of the disqualified director to continue on the board."

We are presently concerned with Section 61(a) and (c) of the Act. It is not in dispute that the petitioners had failed to conduct AGM within a period of nine months (as the section stood prior to its amendment with effect from 23/10/2014). It is also not in dispute that the petitioners had not placed the accounts of the preceding co-operative year before the Annual General Body at its AGM. The question is whether the Authority can go into the reasons, which prevented the petitioners from holding AGM and placing accounts before the Annual General Body, which are said to be beyond their own control. As a matter of fact, the Assistant Registrar has found that the reply submitted by the Chairman of the petitioner Society, was not convincing. Thus, on facts, the cause shown has not been accepted. However, that apart, the provisions of Section 61 would clearly show that it is couched in a mandatory language, whereunder the Board of Directors 'shall be deemed to have incurred

disqualification', for a period of five years, for being chosen as Directors and shall be ineligible to continue as Directors of the Society, if during their term as Directors of the Society, they do not conduct AGM within six months of closure of Society's accounting year and/ or do not place the accounts of the preceding co-operative year before the Annual General Body at its AGM. It can, thus, be seen that Section 61 does not envisage that such failure on the part of Directors has to be without a reasonable cause or a cause which is beyond their own control. Had the Legislature intended to provide for such a cause being shown, nothing prevented it from incorporating the same under Section 61 of the Act. In this regard, it may not be out of place to make a reference to Section 75(5) of the Maharashtra Co-operative Societies Act. Section 75 of the Maharashtra Co-operative Societies Act pertains to the Annual General Meeting. Subsection (5) thereof reads thus :

S.75(5). If default is made, in calling a general meeting within the period or, as the case may be, the extended period, prescribed under sub-sections (1), or in complying with sub-section (2), (3) or (4),

the Registrar may by order declare any office or member of the committee whose duty it was to call such a meeting or comply with sub-section (2), (3) or (4) and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being any officer or member of the committee for such period not exceeding three years, as he may specify in such an order and if the officer is a servant of the society, impose a penalty on him to [pay] an amount not exceeding one hundred rupees. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him."

(Emphasis supplied)

12. It can, thus, be seen that sub-section (5) of Section 75 of the Maharashtra Act provides that if a default is made, in calling a General Meeting within a period or as the case may be 'extended period' prescribed under subsection (1) or not complying with sub-sections (2), (3) and (4), the Registrar may, by

an order, declare any officer or member of the Committee, whose duty it was to call such a meeting or comply with subsections (2), (3) and (4) and who "without any reasonable excuse failed to comply with any of the aforesaid sub-sections" disqualified for being elected and for being any officer and member of the Committee for such a period not exceeding three years as he may specify. It can, thus, be seen that Section 61 of the Act does not provide for such default being without a reasonable cause as a basis for disqualification. The provisions of Section 61 are clear and mandatory in nature, whereunder once there is a default in holding AGM or placing the accounts of the preceding co-operative year before the AGM, the disqualification is automatic.

13. The petitioners have not brought to my notice any judgment, which takes a contrary view, holding that in appropriate case, the Directors can show cause or call upon the Authorities to look into the reasons for their failure to hold AGM or to place the accounts before the AGM. In that view of the matter, no case for interference in the impugned order is made out.

The petition is without any merit and it is,
accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA