

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS. 20 AND 58 OF 2014****WRIT PETITION NO. 20 OF 2014**

1. Shri P.N. Halshikar, son of N. Haldhikar, aged 52 years, Indian National, married, service, resident of C/o AGE E/ml, GE(NW), Shantinagar, Vasco-Da-Gama, Goa.
2. Shri Vithal Malvankar, aged 59 years, Indian National, resident of C/o E/M GE Gomantak, Mangor Hill, Vasco-Da-Gama, Goa.
3. Shri Babu J. Upardekar, son of J. Upardekar, aged 40 years, married, Indian National, service, resident of C/o GE(NW), Shantinagar, Vasco-Da-Gama, Goa.
4. Shri Chandrakant K. Gaonkar, son of K. Gaonkar, aged 45 years, Indian National, married, service, resident of C/o AGE/E/mll, GE(NW), Shantinagar, Vasco-Da-Gama, Goa.
5. Shri Popat L. Bhivshet, sone of Shri L. Nhieshet, aged 43 years, Indian National, married, service, resident of C/o AGE E/ml, GE(NW), Shantinagar, Vasco-Da-Gama, Goa.
6. Shri Digamber Dessai, aged 53 years, married, service, resident of C/o E/M GE Gomantak, Mangor Hill, Vasco-Da-Gama, Goa.

.... Petitioners

Versus

1. Registrar of Co-operative Societies, Government of Goa, having office at Sahakar Sankul, Patto, Panaji-Goa.
2. Shri Arun Y. Redkar, major age, married, Indian National, service, resident of C/o AGE EmI, GE(NW),

Shantinagar, Vasco-Da-Gama, Goa.

3. Shri V. Satyanarayana of major age, married, service, resident of C/o AGE EmI, GE(NW), Shantinagar, Vasco-Da-Gama, Goa.
4. Shri Krishna Fati Naik of major age, married, Indian National, married service, resident of C/o B/R II, GE Gomantak, Mangor Hill, Vasco-Da-Gama, Goa.

.... Respondents

Shri Devidas J. Pangam with Shri Luis Fernandes, Advocates for the Petitioners.

Shri Pravin Phaldessai, Additional Government Advocate for the Respondent No. 1.

Shri Gaurish Agni with Shri Eeshan Usapkar, Advocates for the Respondent Nos. 2 to 4.

WRIT PETITION NO. 58 OF 2014

1. Shri Arun Y. Redkar, major age (age not known), C/o AGE EmI, GE(NW), Vasco Shantinagar, Vasco-Da-Gama.
2. Shri V. Satyanarayana, major age (age not known), C/o AGE EmI, GE(NW), Shantinagar, Vasco-Da-Gama.
3. Shri Krishna Fati Naik, major age (age not known), C/o AGE B/R II, GE Gomantak Vasco, Mangor Hill, Vasco-Da-Gama, Goa.

.... Petitioners

Versus

1. Shri P.N. Halshikar, Chairman, major age (age not known), C/o AGE EmI, GE(NW) Vasco, Shantinagar, Vasco-Da-Gama.

2. Shri Vithal Malvankar, Vice Chairman, major age (age not known), C/o AGE EmI, GE Gomantak, Mangor Hill, Vasco-Da-Gama.
3. Shri Babu J. Upardekar, major age (age not known), C/o GE(NW) Vasco, Shantinagar, Vasco-Da-Gama.
4. Shri Chandrakant K. Gaonkar, major age (age not known), C/o AGE EmII, GE(NW) Vasco, Shantinagar, Vasco-Da-Gama.
5. Shri Popat L. Bhivshet, major age (age not known), C/o AGE EmI, GE(NW) Vasco, Shantinagar, Vasco-Da-Gama.
6. Shri Digamber Dessai, major age (age not known), C/o E/M GE Gomantak, Mangor Hill, Vasco-Da-Gama.
7. Registrar of Co-operative Societies, having office at 4th Floor, Sahakar Sankul, EDC Complex, Patto, Panaji-Goa.

.... Respondents

Shri Gaurish Agni with Shri Eeshan Usapkar, Advocates for the Petitioners.

Shri Devidas J. Pangam with Shri Luis Fernandes, Advocates for the Respondent Nos. 1 to 6.

Shri Pravin Phaldessai, Additional Government Advocate for the Respondent No. 7.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 4th OCTOBER, 2017

PRONOUNCED ON: 11th OCTOBER, 2017

COMMON JUDGMENT:

Both these petitions are between the same parties and involve common and connected questions of law and fact

and as such, they are being disposed of by this common judgment.

2. The brief facts necessary for the disposal of these petitions may be stated thus:

That, MES Employees Consumer Co-operative Society (Society, for short) is a Society registered under the Goa Co-operative Societies Act, 2001 (Act, for short). As per the Constitution and bye laws of the Society, the managing committee of the Society consists of nine members. The managing committee comprising of nine members was elected on 21.01.2009, for a period of five years i.e. from 21.01.2009 to 20.01.2014. Unfortunately, disputes and differences arose between the members of the managing committee. The members of the managing committee are divided into two groups. The first group consists of six members, who are the petitioners in Writ Petition No. 20/2014 (hereinafter referred to as party no. 1), while the other group consists of three members, who are the petitioners in Writ Petition No. 58/2014 (hereinafter referred to as party no. 2). These petitions are a result of simmering disputes between the two groups, which has led all the members of the managing committee being disqualified under Section 61(a) of the Act.

3. On hearing the learned Counsel for the parties, I find that the petitions can be disposed of on a short ground, where it may not be necessary to set out the facts in details. Suffice it to mention that a complaint was filed by the party no. 2 with the Assistant Registrar of Co-operative Societies, South Zone, Margao, alleging certain illegalities being committed by the party no. 1. In pursuance to the said complaint, an inquiry was conducted by the Junior Auditor/ Inspector, in which it was found that the last meeting of the managing committee was held somewhere in the month of February 2010 and thereafter, from March 2010 to July, 2011, no managing committee meetings were held. It was also found that the managing committee had failed to conduct the Annual General Meeting (AGM) for the years 2009-10 and 2010-11 as required by Section 72 of the Act. The Registrar of Co-operative Societies therefore issued a show cause notice dated 17.01.2013 to the members of the managing committee asking them to show cause as to why action should not be initiated against them in terms of Section 71 of the Act.

4. Both, party no. 1 and party no. 2 filed their replies, continuing with their spree of making allegations and counter allegations against each other.

5. According to the party no. 1, the party no. 2 was refusing to attend the managing committee meeting and had filed a dispute before the Assistant Registrar of Co-operative Societies, challenging the earlier AGM held on 14.10.2009. The said dispute was referred to the Registrar's Nominee, who by an order dated 02.09.2010, declared the AGM held on 14.10.2009 to be null and void. The party no. 2 challenged the same before the Co-operative Tribunal in Co-operative Appeal No. 16/2010 (Tribunal, for short). The learned Tribunal by judgment and order dated 23.08.2011, allowed the appeal and set aside the award of the Registrar's Nominee, thus, in effect restoring the validity of the meeting dated 14.10.2009. That has in turn been challenged by the party no. 2 before this Court in Writ Petition No. 610/2011. It was contended that the managing committee of the Society had convened an AGM on 19.09.2011 for the years 2009-10 and 2010-11, however, the party no. 2 preferred to remain absent and since, there was no quorum, the party no. 1 decided to call the meeting on 17.10.2011. The next AGM for 2011-12 was convened on 10.10.2012, however again, the party no. 2 remained absent and as there was no quorum, the AGM was called on 18.12.2012, in which some amendments to the bye laws were approved.

6. The party no. 2 contended that in the managing committee meeting held on 20.04.2009, it was unanimously resolved to hold the monthly meetings of the managing committee on the 10th of every month and in the event of it being a Sunday or a holiday, to hold it on 11th of the month. It is contended that inspite of this, the party no. 1 continued to convene the meetings on 5th and therefore, the party no. 2 could not remain present for such meetings. It was also contended that their objections to the confirmation of the minutes were not recorded. There are certain other allegations made against the party no. 1.

7. Notwithstanding the inter say dispute between the party no. 1 and party no. 2, both of them sought withdrawal of the show cause notice.

8. The Registrar of Co-operative Societies after hearing the parties and taking note of the facts and circumstances as set out above, came to the conclusion that the managing committee failed to comply with the statutory provisions of the Act, in holding the meeting of the managing committee and the AGM for the years 2009-10 and 2010-11 on the pretext that the validity of the meeting convened on 14.10.2009, is subject

matter of dispute before the appropriate Court. The learned Registrar further came to the conclusion that the members of the managing committee are deemed to have incurred disqualification to be elected and continue to be the members of the managing committee of the Society under Section 61(a) of the Act. In the result, the learned Registrar passed the following order:-

“The Managing Committee of the MES Employees Consumers Co-operative Society Ltd. stands disqualified in terms of Section 61(a) of the Goa Co-operative Societies Act, 2001 and therefore, I hereby Authorize Shri Harischandra S. Gawade, Special Auditor/Co-operative Officer and Mrs. Vilma D'Silva, Sr. Auditor/Sr. Inspector to arrange for the Constitution of a new Board of Directors in accordance with the 97th Constitutional Amendment, the Goa Co-operative Societies Act, 2001 and Rules made there-under and the Bye-laws of the said Society.

The Managing Committee shall hand over the entire charge of the Society to the Authorized persons, so as to enable him to make arrangements to constitute the new Managing Committee, within 30 days from the receipt of this order.”

Feeling aggrieved, the petitioners are before this Court.

9. I have heard Shri Pangam, the learned Counsel for the petitioners (in Writ Petition No. 20/2014) and Shri Agni, the learned Counsel for the petitioners (in Writ Petition No. 58/2014). I have also heard the learned Additional Government Advocate for the respondent no. 1/respondent no. 7-Registrar of Co-operative Societies. Perused record.

10. The learned Counsel for the petitioners have raised a limited issue as to the period for which such disqualification would operate. Although, it was not disputed during the course of the arguments at Bar that such disqualification is automatic, Shri Agni, the learned Counsel for the petitioners (in Writ Petition No. 58/2014) submitted that there has to be a declaration of such disqualification from the competent authority. Reliance in this regard is placed on a Division Bench judgment of this Court in the case of **Kerbaji Marotirao Shinde Vs. State of Maharashtra, (1988) Mh.L.J. 157**, which was a case involving disqualification of the members under Rule 58(2) of the Maharashtra Co-operative Societies Rules, 1961.

11. The learned Counsel for the petitioners in both the petitions submitted that the impugned order does not indicate

as to the date from which the period of five years shall commence. It is submitted that the Registrar can stipulate such date, where the members of the managing committee would be deemed to have incurred the disqualification. The learned Counsel for the parties submit that in a given case, the adjudication of such declaration of deemed disqualification can take even more than five years and in such a case, if, the period of five years is to run from date of such declaration, it will be quite unjust and cause serious prejudice to those who are declared unqualified. The submission therefore is that this Court may stipulate such a date, which cannot be beyond 01.01.2012.

12. The learned Additional Government Advocate for the respondent-Registrar of Co-operative Societies, in all fairness submits that in the absence of any date being fixed in the impugned order, an appropriate date may be stipulated, so that the Registrar of Co-operative Societies can hold fresh election as the functioning of the Society has come to a stand still for more than five years.

13. I have carefully considered the circumstances and the submissions made.

14. Section 61(a) of the Act, which is relevant for the purpose (as it stood prior to its amendment by Act No. 20 of 2014) reads as under:-

“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 nine months of closure of the society's accounting year;”

It can thus be seen that under Section 61(a) of the Act, the Directors of the Board shall be deemed to have incurred disqualification for being chosen as Directors and to be eligible as Directors for a period of five years, if during their tenure as Directors they fail to conduct the AGM within nine months (as the period stood then) of closure of the Society's accounting year.

15. It would also be necessary to note the provisions of sub sections (1) and (2) of Section 72 of the Act (as they stood prior to their amendment by Act No. 20 of 2014) as under:-

“72. Meetings and minutes - (1) The bye-laws of the society shall specify the frequency of and the manner in which the meetings of the board shall be held, so however that the board shall meet at least once in every three months.

(2) Every society shall in each co-operative year hold, in addition to any other meetings or general meetings, its annual general meeting within nine months from the close of the co-operative year and not more than fifteen months shall elapse between the date of an annual general meeting and that of the next.”

Thus, under sub section (2) of Section 72 of the Act, the managing committee is obliged to hold an AGM within nine months from the closure of the co-operative year and not more than fifteen months shall elapse between any AGM and that of the next year.

16. In the present case, the Registrar of the Co-operative Society has found that the members of the managing committee have failed to adhere to the statutory requirements in terms of Section 72 of the Act on the pretext that the matter pertaining to the earlier AGM convened during the year 2009 was pending.

17. A perusal of the provisions of Section 61(a) of the Act would show that once, the members of the managing committee/board of Directors fail to hold the AGM of the Society, within a period of nine months (as the period stood then) of the closure of the society's accounting year, the Directors shall be deemed to have incurred disqualification for a period of five years for being chosen as Directors and shall also be ineligible to continue as Directors of the Society.

Sub-section 2 of Section 72 of the Act also imposes an obligation on the members of the managing committee/board to hold the AGM within nine months from the closure of the co-operative year. The learned Counsel for the parties and the learned Additional Government Advocate informed during the course of the arguments at Bar that the accounting year of the Co-operative Society is co-terminus with the financial year i.e. from 1st April to 31st March of the succeeding year.

18. The impugned order would show that the petitioners have been disqualified *inter alia* for their failure to hold an AGM for the years 2009-10 and 2010-11. The co-operative year 2010-11 would end on 31.03.2011. As per Section 61(a), read with Section 72(2) of the Act, the AGM was required to be held within nine months from the closure of the co-operative year

i.e. by 31.12.2011. Thus, in my considered view, it would be appropriate to declare that the petitioners have incurred disqualification under Section 61(a) of the Act w.e.f. 01.01.2012.

19. In the case of **Kerbaji Marotirao Shinde** (supra), the Division Bench of this Court while holding that a declaration for such deemed disqualification is necessary (in relation to Rule 58(2) of the Maharashtra Co-operative Societies Rules), in a given case, such declaration could relate back to the date of disqualification itself (see para 5).

20. In this case, the impugned order does not show that any particular date is stipulated, from which the disqualification shall take effect and from which date, the period of five years shall commence. In any event, the impugned order does not show that period of five years is to be reckoned from the date of the said order. Section 71(a) of the Act, which *inter alia* provides for an appointment of an Administrator/Board of Administrator, provides that the Administrator/Board of Administrator can be appointed to manage the affairs of the Society, for a period not exceeding six months, which period at the discretion of the Registrar may be extended by a further

period not exceeding three months. However, the total period shall not exceed nine months in the aggregate, subject to the proviso to sub section (6) of Section 71 of the Act. The proviso to sub section (6) of Section 71 of the Act says that if, new board of Directors are not, or cannot be, constituted at the expiry of the term of the Board of Administrators, for any reason beyond the control of the Board of Administrators, the term of the Board of Administrators shall be deemed to be extended until the new Board of Directors is duly constituted by the bye laws. Be that as it may, the law envisages that such an arrangement of the management of the Society under an Administrator/Board of Administrators has to be for a limited period and in normal course, the Societies are required to be administered by the Board of Directors duly elected as per the bye laws of the Society. In the overall circumstances, it would be just and proper that the affairs of the Society are streamlined at the earliest, as the working of the Society has come to a stand still for more than five years now, on account of the unfortunate dispute between the two groups of the members of the managing committee.

21. In such circumstances, the following order is passed:

ORDER

(a) Writ Petition Nos. 20/2014 and 58/2014 are partly allowed.

(b) The impugned order is modified to the extent that the petitioners shall be deemed to be disqualified under Section 61(a) of the Act w.e.f. 01.01.2012.

(c) The Registrar of Co-operative Societies shall take immediate steps for constitution of new Board of Directors of the Society, in accordance with law.

(d) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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