

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4278 OF 2017

Nagnath Vasant Vankar and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4280 OF 2017

Ganpat Shankar Nikam and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4286 OF 2017

Chandahas Maruti Pawar and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4277 OF 2017

Dnyaneshwar Babruvan Shirsat and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4289 OF 2017

Shrikant Bharat Bandgar and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4285 OF 2017

Shrirang Subhash Pawar and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative

Societies and another ... Respondents

WITH
WRIT PETITION NO.4284 OF 2017

Balkrishna Vitthal Patil and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4282 OF 2017

Dattatraya Jagannath Gund and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4283 OF 2017

Hari D. Bachute and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4295 OF 2017

Prashant Madhukar Pawar and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4316 OF 2017

Santosh Shahaji Gaikwad and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

WITH
WRIT PETITION NO.4294 OF 2017

Bhosale Netaji Dadasaheb and others ... Petitioners
Vs.
The Divisional Joint Registrar, Co-operative
Societies and another ... Respondents

Mr. G. S. Godbole, Senior Advocate, i/b. Ms Jui Kanade a/w. (i) Mr. Akshay Petkar for Petitioners in W.P.No.4278 of 2017, 4286 of 2017, 4280 of 2017; (ii) Ms Shivani S. Samel for Petitioners in W.P.No.4295 of 2017, 4294 of 2017 & 4316 of 2017; (iii) Ms Ulka Saranjame for Petitioners in W.P.No.4284 of 2017, 4282 of 2017 & 4283 of 2017; (iv) Mr. Atharva Dandekar for Petitioners in W.P.No.4277 of 2017, 4285 of 2017 & 4289 of 2017.

Mr. A. Y. Sakhare, Senior Advocate a/w. Mr. S. D. Rayrikar, AGP for Respondents State in all the Petitions.

CORAM : R. G. KETKAR, J.

DATE : APRIL 19, 2017

ORDER :

Heard Mr. Godbole, learned Senior Counsel for petitioners and Mr. Sakhare, learned Senior Counsel for respondents-State in all the Petitions at length.

2. These Petitions take exception to the orders dated 06.01.2017, 07.01.2017 and 11.01.2017 passed by the respondent No.2, Assistant Registrar, Co-operative Societies, North Solapur, District Solapur as also the judgments and orders dated 31.03.2017 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune. By these orders, the authorities below have declared petitioners in all the petitions as disqualified under Section 73CA(1)(iv) read with Section 78A(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') read with bye-law No.9(A)(1) of resource societies.

3. Rule. Learned AGP waives service for respondents. Having regard to the nature of the controversy raised in these Petitions as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. As the common questions of law and fact arise in these Petitions, the same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Petitions, facts from Writ Petition No.4278

of 2017 are considered.

4. Honsal No.1 Vividh Karyakari Sahakari (Vikas) Sanstha Maryadit, Taluka North Solapur (for short 'society') was registered as a Resource Society with sub-classification as Service Resource Society under the provisions of the Act and Maharashtra Co-operative Societies Rules, 1961 (for short 'Rules') on 20.10.2012. Petitioner No.1, Nagnath Vasant Vankar became member of society on 04.10.2012. He did not avail loan from the society. Petitioner No.2, Appasaheb Arun Wankar became member on 04.10.2012. He did not avail loan from the society. Petitioner No.3, Dagadu Chanbasappa Kanade became member on 04.10.2012. He availed loan of Rs.90,000/- from the society on 19.09.2016. Petitioner No.4, Bapu Namdev Khedekar became member on 04.10.2012 and availed loan of Rs.20,000/- from the society on 24.06.2016. The elections of the society were held on 21.08.2015. In the notification issued on 31.12.2015, petitioners were shown in the category of 'general account holders / borrowers'. In the audit report of the year 2015-16, petitioners were not shown as borrowers.

5. As the petitioners were not shown as borrowers, on 08.11.2016, Assistant Registrar issued notice to the petitioners as to why they should not be disqualified under Section 73AAA(1) of the Act read with bye-law No.9(A)(1). The hearing was fixed on 22.11.2016. It appears that the notice was sent to the petitioners by R.P.A.D., which was refused. The hearing was fixed on 22.11.2016, 01.12.2016 and 05.01.2017 when the petitioners did not remain present. They did not file any reply. In exercise of powers conferred by Section 73CA(1)(iv) and Section 78A(1)(b), by order dated 06.01.2017, the Assistant Registrar declared petitioners as disqualified from continuing as members of the committee. It is not necessary to burden this judgment by referring to

other proceedings. Aggrieved by these decisions, petitioners instituted revision applications before the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune. Revision applications were dismissed on 31.03.2017. The authorities below have held that as the petitioners have not borrowed amount from the society, in view of bye-law No.9(A) (1) as also Section 73CA(1)(iv) and Section 78A(1)(b), petitioners have incurred disqualification for not availing loan from the society and accordingly they were disqualified from continuing as members of the committee. It is against these orders, petitioners have instituted the present Petitions.

6. In support of these Petitions, Mr. Godbole has invited my attention to Sections 73CA, 78A, 73AAA and Section 26 of the Act and Rules 20A, 58 and 64 of the Rules as also bye-laws No.6, 10(a), (b), (b-1) and (b-2). He submitted that Section 73CA provides for disqualification of committee and its members. Clause (iv) of Sub-section (1) thereof lays down that no person shall be eligible for being appointed, nominated, elected, co-opted or for being a member of a committee, if he has incurred any disqualification under the Act or Rules made thereunder. In other words, he submitted that the person is not eligible for being appointed, nominated, elected, co-opted or for being a member of a committee, if he has incurred any disqualification only under the Act or Rules and not under the bye-laws. The authorities below have held that as the petitioners have not availed loan from the society, as per bye-law No.9(A)(1), they have incurred disqualification. He submitted that the said finding is perverse and contrary to the express language employed in Section 73CA(1)(iv) of the Act.

7. He further submitted that Section 78A provides for power of supersession of committee or removal of member thereof. Section

78(A)(1) provides that where any member of committee stands disqualified by or under the Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved, remove the member. He submitted that society does not have Government shareholding. Society has also not availed loan or financial assistance in terms of any cash or kind or any guarantee by the State Government. He submitted that fourth proviso to Section 78A(1) lays down that nothing in this sub-section shall apply to a society, where there is no government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government. He submitted that Section 78A(1) is not applicable. He, therefore, submitted that basically invocation of powers under Section 78A in the facts of the present case itself was uncalled for.

8. Mr. Godbole invited my attention to Section 26 of the Act. Section 26(2) lays down that it shall be the duty of every member of a society to - (a) attend at least one general body meeting within a consecutive period of five years; (b) to utilize minimum level of services at least once in a period of five consecutive years as specified in the bye-laws of the society. He submitted that first proviso to Section 26(2)(b) of the Act lays down that a member who does not attend at least one meeting of the general body within a consecutive period of five years and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the bye-laws of such society shall be classified as non-active member. The second proviso thereto

lays down that when a society classifies a member as a non-active member, the society shall, in the prescribed manner, communicate such classification to the concerned member within thirty days from the date of close of the financial year. The third proviso lays down that when a non active member does not utilise minimum level of services as specified in the bye-laws, in the next 5 years from the date of classification as non-active member, he can be expelled under Section 35. The fourth proviso lays down that a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in the sub-section, be entitled to be re-classified as an active member. The fifth proviso lays down that if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification.

9. Rule 20A of the Rules prescribes mode of communication of classification of non-active member. The society is required to communicate such classification in Form 'W'. In the present case, he submitted that no such communication was made to the petitioners as per section 26(2)(b) second proviso read with Rule 20A. Rule 58 provides that when on communication by the Chief Executive Officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73CA and the bye-laws, after giving an opportunity of being heard, the Registrar is empowered to issue an order of cessation of membership of such member from the committee of the society. Rule 64 lays down the procedure of supersession of the committee and removal of members of the committee and other officers. He submitted that procedure under Section 26 read with Rule 58 and bye-law No.6 is not followed. That apart, bye law No.6(10)(a) provides for obtaining loan specified therein at least once in a period of 5 consecutive years. In the present case, the

window of 5 years is not yet over.

10. He submitted that bye-law No.6 deals with membership. Bye-law (6)(10)(a) defines 'active member' to mean 'a member, who attends at least one general body meeting within a consecutive period of 5 years and has availed short term loan (either in cash or kind) or medium term loan or long term loan, at least once within a consecutive period of 5 years'. Bye-law No.6(10)(b) deals with non-active member and lays down that a member who does not fulfill criteria laid down in clause (a) will be classified as non-active member. Even after he is classified as non active member, after complying the deficiencies in clause (a), he shall be reclassified as an active member.

11. He submitted that only because audit report of the financial year 2015-2016 shows that petitioners did not avail loan from the society, the authorities below were not justified in passing the impugned orders as window of five years is not completed.

12. Mr. Godbole submitted that Section 78A(1) is not applicable to the society as there is no government shareholding or the society has also not obtained any loan or financial assistance in terms of any cash or kind or any guarantee by the Government. He relied upon the decision of the Apex Court in the case of ***Union of India Vs. Dileep Kumar Singh, (2015) 4 SCC 421***, and in particular paragraphs 10 and 12 thereof. He, therefore, submitted that the impugned orders are liable to be set aside thereby dropping the proceedings initiated by the authorities below by invocation of powers under Section 73CA(A1)(1)(iv) and Section 78A(1)(b) of the Act.

13. On the other hand, Mr. Sakhare supported the impugned orders.

He submitted that Section 78A(1) is applicable in the facts of the present case. He submitted that Section 78A(1)(a) contemplates supersession of committee as also (b) removal of the member. Section 78A(1)(a) deals with supersession of the committee. The fourth proviso thereto lays down that sub-section (1) applies to the society, where there is no government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government. He submitted that the power is exercised under Section 78A(1)(b) and there is no proviso to sub-clause (b) in respect of removal of member. He submitted that the placement of fourth proviso in sub-clause (a) clearly shows that it is applicable only in respect of supersession of the committee and not for removal of the member, which is under sub-clause (b). He also invited my attention to Section 73AAA(1), which lays down that the committee shall consist of such number of members as may be provided in the bye-laws. Proviso thereto lays down that the maximum number of members of the committee shall not exceed 21. He submitted that the authorities below have concurrently held that the petitioners have incurred disqualification in view of Section 73CA(1)(iv) and Section 78A(1)(b) read with bye-law No.9(A)(1). He submitted that bye-laws as framed under the provisions of the Act have statutory force. The authorities below were therefore justified in passing the impugned orders by holding that petitioners have incurred disqualification under Section 73CA(1)(iv) as they are not borrowers. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India for interfering with the concurrent findings recorded by the authorities below.

14. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 26 of the Act lays down the rights and duties of

members. Section 26(2)(b), in so far as it is relevant, reads thus,

“26. Rights and duties of members

(1) ...

(2) It shall be the duty of every member of a society,-

(a) to attend at least one general body meeting within a consecutive period of five years:

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the Society;

(b) to utilise minimum level of services at least once in a period of five consecutive years as specified in the bye-laws of the society:

Provided that, a member who does not attend at least one meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the bye-laws of such society shall be classified as non-active member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the bye-laws, in next five years from the date of classification as non-active member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member:

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:”

15. Rule 20A of the Rules lays down mode of communication of classification of non-active member, which reads thus,

“20A. Mode of communication of classification of non-active member

If a member is classified as non-active member, the

society shall communicate such classification in Form 'W', to the concerned member within thirty days from the date of close of the financial year by Registered Post Acknowledgement Due, by Speed Post, by hand delivery, by e-mail or otherwise and also by publishing name or names of such members on notice board of the concerned society:

Provided that, on fulfillment of conditions, the member shall be reclassified as active member.”

16. It is not in dispute and no material is brought on record to indicate that procedure laid down under Section 26 read with Rule 20A was followed before declaring petitioners as non-active members. Section 73CA deals with disqualification of committee and its members. Section 73CA(1)(iv) which is relevant to decide controversy reads thus,

“73CA. **Disqualification of committee and its members.**

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-

(i) to (iii) ...

(iv) has incurred any disqualification under **this Act or the rules** made thereunder; or

...

(emphasis supplied)”

17. A perusal of above Section clearly shows that person shall be ineligible for being appointed, nominated, elected, co-opted or for being a member of a committee if he has incurred any disqualification under the **Act or the Rules** made thereunder. Provisions of Section 73CA(1) (iv) do not admit any doubt. The disqualification has to be incurred either under the Act or the Rules and not under the bye-laws. In the present case, apart from the fact that procedure under Section 26 read with Rule 58 and bye-law 6(10)(a) is not followed, the window of 5 years is not yet over. In other words, it cannot be said that petitioners have incurred disqualification under bye-law 6(10)(a). Section 78A lays down power of supersession of committee or removal of member.

Section 78A(1)(a) and (b) reads thus,

78A. Power of supersession of committee or removal of member thereof

(1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, rules and bye-laws, he may by order stating reasons therefor,-

(a) (i) supersede the committee; and
(ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place, or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding six months:

Provided that, the Registrar shall have the power to change the committee or any member thereof or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made under this sub-section:

Provided further that, such federal society shall communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of supersession or removal of a member and the Registrar shall be at liberty to proceed further to take action accordingly:

Provided also that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply and the committee shall not be superseded for a period exceeding one year:

Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government;

(b) remove the member:

Provided that, the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed:

Provided further that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply.

(2) ... ”

18. It is no doubt true that fourth proviso namely, 'nothing in this **sub-section** shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government', appears in sub-Section (1), clause (a) of Section 78A, which deals with supersession of committee. It does not appear below clause (b) dealing with removal of the member. Mr. Sakhare, therefore, submitted that the said proviso is applicable only in respect of the case of supersession of the committee and not in respect of removal of member. It is not possible to accept this submission. The proviso specifically lays down that **nothing in this sub-section** and not **nothing in sub-clause** shall apply to the society where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the government. It is not pointed out that in the present case, there is government shareholding in the society and that the society has obtained loan or financial assistance in terms of any cash or kind or any guarantee by the Government. Once this position is not disputed, Section 78A(1) will not apply to the society.

19. Mr. Godbole relied upon the decision of the Apex Court in **Union of India** (*supra*) and in particular paragraphs 10 and 12. In paragraph 10, the Apex Court reproduced Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Proviso to sub-section (2) thereof lays down that appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of **this section**. The Apex Court interpreted the expression “this section” in paragraph 12 and it was observed thus,

“12. It will be noticed that Section 47 proviso speaks of "this Section". The literal rule applied to this proviso would make it clear that it would apply to the entire Section, for otherwise the words used would have been "this sub-section". Quite apart from this, the language of this proviso is similar to the language of the proviso contained in Section 33. Both provisions speak of an exemption being granted having regard to the "type of work" carried on in any establishment. It is clear that given the "type of work" carried on by the armed forces or the CRPF before us, persons who have disabilities may not have any reservation for them at all pre- appointment, if exempted, for the simple reason that persons suffering with disabilities (which as defined under Section 2(t) means a person suffering from not less than 40% of any disability as certified by a medical authority) may be persons wholly unfit for service required in the defence of the country. It is obvious that, if at the appointment stage, persons with disabilities need not have vacancies in posts reserved for them, equally after suffering a disability during service, a person may for the self-same reason not be able to perform what is required of him in the defence of the nation, thereby justifying his discharge from service.”

20. The Apex Court held that the expression 'this section' in proviso to sub-section (2) of Section 47 makes it clear that it would apply to the entire Section, for otherwise the words used would have been “this sub-section”. In my opinion, the said judgment applies on all fours to the

present case. The fourth proviso extracted hereinabove would otherwise be worded, namely, 'provided also that nothing in this sub-clause will apply to a society, where there is no government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government'. In view thereof, it has to be held that sub-section (1) is not applicable in respect of society where there is no government shareholding or loan or financial assistance in terms of any case or kind or any guarantee by the Government, not only in respect of supersession of the committee but also in the case of removal of a member.

21. A perusal of the impugned orders shows that the authorities below have held that petitioners have incurred disqualification for not availing loan from the society in terms of bye-law No.9(A)(1). The authorities below have not held that petitioners incurred disqualification either under the Act or the Rules. During the course of arguments, Mr. Sakhare was not in a position to demonstrate that the petitioners have incurred disqualification either under the provisions of the Act or the Rules. Mr. Sakhare submitted that petitioners have incurred disqualification under the bye-laws. The bye-laws framed under the provisions of the Act have statutory force. It is not possible to accept this submission. In the case of ***Co-operative Central Bank Limited Vs. Industrial Tribunal, Hyderabad***, AIR 1970 SC 245, the Apex Court have observed in paragraph 10 thus,

“10. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society.

They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under Section 61 of the Act.”

22. In the light of the above discussion, the impugned orders cannot be sustained. It has to be held that the impugned orders are perverse and contrary to provisions of Section 73CA(1)(iv). Authorities below have also not considered provisions of Section 26 of the Act, which lays down that if a member does not utilise minimum level of services at

least once in a period of five consecutive years, as specified in the bye-laws of such society, he shall be classified as non-active member. In the first place, petitioners are not classified as non-active members. Secondly, the authorities below have also not considered window of 5 years. Thirdly, procedure under Section 26 read with Rule 58 and bye-law No.6 is not followed. For all these reasons, the impugned orders cannot be sustained and as such are liable to be set aside and are accordingly set aside. The impugned orders show clear non application of mind on the part of the authorities below and also that they have taken into account irrelevant factors, namely, bye-laws while declaring petitioners as disqualified. Hence, Petitions succeed and the same are allowed. The proceedings initiated in pursuance of notice dated 08.11.2016 stand dropped. Rule is made absolute accordingly with no order as to costs. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab