IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION

WRIT PETITION (St.) NO. 30663 OF 2017

Sachin Nester Pereira
An Adult, Indian Inhabitant,
presently R/at "Nest", Naglaiwadi,
Saloli, Badami Stop, Giriz,
Vasai (W), Dist. Palghar .. Petitioner

v/s.

1. The State of Maharashtra

2. The Hon'ble Minister for Co-operation,
Mantralaya, Mumbai through the office
of the Government Pleader, High Court,
Appellate Side, Bombay

3. Shri. Cias J. Fernandes,
"Bethel" Nagbhat, Undalewadi,
Near Acton Cross, Sandor,
Vasai (W), Dist. Palghar

4. The Bessein Catholic Co-operative
Bank Ltd., a Schedule Bank
having its Head Office at Papdy Naka,
Tal. Vasai, Dist. Palghar

5. Commissioner for Co-operation and
Registrar, Co-operative Societies
Maharashtra State, Pune-1

6. Ryan Ignatius Fernandes
R/at "Orchid", Diwanwadi Papdy,
Vasai (W), Palghar – 401 207

7. Noel Anthony Vaz
Priyanvel, Digha, Kokaramwadi

Papdy, Tal. Vasai, Dist. Palghar

8. Jimmy M. Gonsalves
Anthony House, Ghas, Bharti
Post – Sopara, Tal. Vasai,
Dist. Palghar .. Respondents

Mr. Prasad Dani, Senior Counsel a/w Mr. Ajay Fernandes i/b Mangesh Chavan for the petitioner
Ms. Neeta Karnik a/w Mr. Kishor Patil, Mr. Pravin Fernandes for respondent no.6
Mr. S.H. Kankal, AGP for respondent nos. 1, 2 and 5
Mr. Anthony F. Foss for respondent nos. 7 and 8
Ms. Brian D'lima & Irine D'lima i/b M/s. D'lima & Associates for respondent no. 4.

CORAM : M.S. SANKLECHA, J.
DATED : 9th NOVEMBER, 2017

ORAL JUDGEMENT :-

1. At the request of Counsel, the Petition is finally heard at the stage of admission.

2. This petition under Article 227 of the Constitution of India impeaches the order dated 31st October, 2017 passed by the Hon'ble Minister for Co-operation (respondent no.2) State of Maharashtra. The impugned order dated 31st October, 2017 has been passed in Revision under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (the Act). It upholds the order dated 9th March, 2017 of the Commissioner and Registrar of Co-operative Societies

(respondent no.5) holding that the petitioner has ceased to be a member of the Board of Directors of the Bassein Catholic Co-operative Bank Ltd. (Bank) i.e. respondent no.4 w.e.f. 9th March, 2017 under Section 73CA of the Act. This cessation of directorship on the ground that the petitioner had became a father of third child on 20th March, 2016 i.e. during the tenure of his office.

3. The petitioner's grievance with the impugned order is principally on interpretation of Section 73CA of the Act i.e. dis-qualification therein does not apply if incurred during the tenure of office but only applies where disqualification is incurred before assuming office. Besides the grievance is of the procedure (including the decision making process) followed in holding that the petitioner had ceased to be a Director of respondent no.4 bank. It is to be noted that the vires of Section 73CA of the Act even to the extent it declares that a person becomes ineligible/ ceases to be a Director on having more than two children, is not challenged.

4. Briefly, the facts leading to the passing of the impugned order dated 31st October, 2017 and filing of this petition are as under :-

(a) On 23rd June, 2015, the petitioner was elected as a

Director of respondent no.4 bank in general elections held on 21st June, 2015. The tenure of the petitioner on the Board of Directors of respondent no.4 bank was for 5 years w.e.f. 23rd June, 2015 i.e. till 2020.

(b) In the midst of his tenure as a Director of respondent no.4 bank, the petitioner was blessed with a third child on 20th March, 2016. The aforesaid fact was brought to the notice of the Registrar – respondent no.5 by one Mr. Cias J. Fernandes – respondent no.3.

(c) In view of the above, on 15th October, 2016 the respondent no.5 issued a show-cause notice to the petitioner calling upon him to show-cause as to why he continues as a Director of respondent no.4-bank. This on the ground that on becoming a father of a third child on 20th March, 2016, he ceased to be a Director. The impugned notice dated 15th October, 2016 was issued under Section 73CA read with Section 78A of the Act.

(d) On 20th January, 2017, the petitioner responded to the show-cause notice dated 15th October, 2016. In his response, the petitioner did not dispute the fact that he is a father of three children. However, according to him, the third child was both conceived and delivered after he was elected to the post of Director to the respondent no.4 bank. Therefore, it was submitted that the disqualification under Section 73CA of the Act would not apply. It was further submitted by him that the vires of Section 73 CA of the Act is a subject of challenge before the Nagpur Bench of this Court being Writ Petition No.212 of 2017 and awaiting final decision. Therefore, it was submitted that these proceedings be adjourned till a decision is rendered on the constitutional validity of Section 73CA of the Act, by the Nagpur Bench of this Court in the above Writ Petition No.212 of 2017.

(e) On 9th March, 2017, the respondent no.5 - Registrar passed an order under Section 73 CA r/w Section 78A of the Act confirming the Show-Cause Notice dated 15th October, 2016. It held that the petitioner has ceased to be a Director of respondent no.4 bank in view of the fact that he now undisputedly has more than two children and is hit by Section 73CA(1)(vii) of the Act. Thus, ineligible to be remain as a Director of any Co-operative Society and had ceased as a Director of respondent no.4 bank.

(f) Being aggrieved with the order dated 9th March, 2017, the petitioner filed a Revision Application under Section 154 of the

Act to the State Government. In its Revision Application, the petitioner has contended that Section 73CA(1)(vii) of the Act cannot be applied retrospectively to unseat a sitting member of the Board of Directors of respondent no.4 bank. The critical date for disqualification to apply is the date of taking the seat on Board of Directors. It was also submitted that although Section 78A of the Act was invoked the respondent no.5 Registrar both in the notice as well as in his order, the federal society / bank in terms thereof was not consulted before passing the order dated 9th March, 2017.

(g) The petitioner thereafter was heard by the Minister on numerous dates, the last such date was 11th October, 2017 in support of its Revision Application. Thereafter, the impugned order dated 31st October, 2017, dismissed the petitioner's Revision Application.

5. Mr. Dani, learned Senior Counsel appearing in support of the petitioner states that the impugned order dated 31st October, 2017 is unsustainable in law on account of following :-

(a) On plain interpretation of Section 73CA of the Act, the disqualification therein is only applicable to a person having more than two children at the time a person is appointed, nominated, elected, co-opted as a member of the Board of Directors / Committee. It can have no application where a person such as the petitioner has a third child, during the tenure of his office to which he was elected.

(b) The impugned order is without reasons inasmuch as the petitioner's contention that in terms of Section 78A of the Act, the respondent no.5 Registrar before holding that he has ceased to be a Director of respondent no.4 bank, had not consulted the federal society / bank. This aspect/ grievance of the Petitioner has not been dealt with in the impugned order.

(c) Section 73CA of the Act has to be read with Section 78A of the Act. It is only when the Registrar holds that the petitioner has been dis-qualified and removed in terms of Section 78A of the Act, that the consequent order of the petitioner ceasing to be a member on the Board of Directors of respondent no.4 bank can be passed. The Registrar not having complied with Section 78A of the Act, cannot hold that the petitioner is dis-qualified and ceased to be a member of the Board of Directors of respondent no.4 bank.

(d) Rule 58 of the Co-operative Societies Rules, 1961 (Rules) which empowers the Registrar to issue an order of cessation of membership of committee of the Society such as on board of directors in this case, is ultra-vires the Rule making power in Section 165 of the Act. Thus, no power can be exercised by the Registrar under Rule 58 of the Rules to hold a person is dis-qualified from membership of the Committee / Board of Directors under Section 73CA of the Act.

6. On the other hand, Mr. Kankal, learned AGP for the State and Ms. Karnik, learned Counsel appearing for respondent no.6 support the impugned order dated 31st October, 2017 and submit as under :-

(a) Section 73CA of the Act makes it clear that the disqualification listed therein leads to cessation of office. This is for falling foul of its provisions, while in office and not necessarily in respect of its breach prior to election, appointment, nomination or co-option to the Board of Directors / Committee of the Society;

(b) The entire issue on procedural breach of non-removal of the petitioner under Section 78A stands concluded by the decision of the full bench of this Court in ***Narayan S/o Gujabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit, Yeotmal & Anr. 2009(6) Mh.L.J. 500.*** In the above case, the Court in the context of orders passed for cessation of a membership of the Committee / Board of Directors under Section 73FF of the Act being precursor to Section 73CA of the Act (identically worded) held that the invocation of Section 78 of the Act being precursor to Section 78A of the Act was not a *sine qua non* for holding that a person has ceased to be member under Section 73FF of the Act. The ratio of the above decision would apply to the present facts. This is primarily a case of cessation of a member in the Board of Directors and not removal; and

(c) Admittedly, the show-cause notice dated 15th October, 2016 and order dated 9th March, 2017 passed by the Registrar did invoke Section 78A of the Act while holding that the petitioner has ceased to be a Director of the respondent no.4 bank. However, a mere reference to an incorrect Section / provision of law will not make the proceedings / order bad in law, if the exercise of the power can be traced / sourced to another provision. In this case, the exercise of power by the Registrar in passing the order is traced to Rule 58 of the Rules.

7. Before considering the rival submissions, it would be useful to

reproduce the relevant provisions, which arise for consideration in the context of the submissions made by the rival parties.

> *"**73CA . [Dis-qualification of committee and its members]***
> *(A1) ....*
> *(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 elected appointed, nominated, co-opted or, for being a member of a committee, if he -*
> *(i) is a defaulter of any society;*
> *Explanation – For the purposes of this clause, the term "defaulter"*
> *(a) to (d) and (f) …. …. …. ….*
> *(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by pose under certificate of posting demanding the payment of dues;*
>
> (ii) …...
> *(iia) …....*
> (iii) …....
> *(iv) has incurred any dis-qualification under this Act or the Rules made thereunder*
> (v) …....
> (vi) …....
> *(vii) has more than two children :*
> *Provided that, a person having more than two children on the date of commencement of the Maharashtra Co-operative Societies (Third Amendment) Act, 2001 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase :*
> *Provided further that, a child or more than one child*

born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of dis-qualification mentioned in this clause.

Explanation – For the purposes of this clause –

(a) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;

(b) "child" does not include an adopted child or children."

(viii) ……..

(ix) ……..

2. A member who has incurred any dis-qualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

3. ……..

3A. …….

4. ………

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 <u>disqualified by or under this Act for being a member of the committee</u>, 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 officiated comes to a conclusion that the charges mentioned int eh notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, rules and by-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 removed 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 society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply.

(2) The provisions of sub-sections (3), (4), (5) and (6) if section 78 shall apply mutatis mutandis, in relation to supersession or removal under this section."

<u>Section 165</u>

(1) The State Government may for the whole or any part of the State and for any society or class of societies, make rules for the conduct and regulation of the business or such society or class of societies, and for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may."

(i) to (lxxv) ……

<u>Rules</u>

58 – Dis-qualification of committee and its members

When on communication by the Chief Executive Officer or society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73 CA and the Bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society;

Provided that, the Registrar shall decide the matter within sixty days from t he date of such communication or otherwise."

8. Before dealing with the grievance of the petitioner, the accepted / undisputed facts are that the petitioner :-

(i) was elected as Director of respondent no.4 bank on 23rd June, 2015 for a tenure of five years; and

(ii) during his tenure as a Director of respondent no.4 bank, he had been blessed with a third child on 20th March, 2016.

Although the vires of Section 73CA(1)(vii) of the Act has not been challenged, yet it is submitted by the petitioner that Section 73CA(1)(vii) of the Act on its interpretation would not apply in case a third child born after the petitioner has entered office as a Director on the Board of respondent no.4 bank.

9. It is submitted that the disqualification under Section 73CA(1)(vii) of the Act is by virtue of a person not being eligible to be member of the committee in case the person has more than two children, only at the time of his election, appointment, nomination, or co-option on the board of directors / committee. A disqualification incurred subsequent to he being elected, appointed, nominated, and co-opted, would not attract Section 73CA(1)(vii) of the Act. Thus, in such a case it is urged that there can be no cessation of membership of the committee. This interpretation is based on the words “shall be eligible for being elected, appointed,

nominated, co-opted or for being a member of Committee" would mean at the time of election. The word "eligible" means legally qualified i.e. capacity to hold a post in the absence of disqualification specified therein. The words which require consideration in sub-section(1) of Section 73 CA of the Act are "no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of the society". Thus, the plain reading of the above would indicate that a person who stands disqualified by various sub-clauses therein is not eligible i.e. capable of being elected, nominated, appointed, co-opted or for being a member of the Committee. The aforesaid clause if analyzed would read as :-

No person shall be eligible:

(a) for being appointed, nominated, elected, co-opted;

or

(b) for being a member of the Committee.

Therefore, the ineligibility would not only make a person incapable of being elected etc. but also from continuing as a member of the Committee. This is so as the words being elected, nominated, co-opted, appointed is a distinct class of persons who are dis-qualified from being considered for the office, in view of disqualification for being a member of the committee. Thus, where a person after being elected, incurs any disqualification indicated in Section 73CA of the Act, he becomes ineligible to be a member of the committee i.e. the second category. It is from the day he incurs the dis-qualification, that he becomes ineligible to continue as a member of the Committee/ Board of Directors.

10. The above view finds further support by sub-section (2) of Section 73CA of the Act, which declares that on incurring disqualification under sub-section (1) thereof, the person shall cease to be a member of the committee. This ceasing of being a member of the Committee is either because the person was already ineligible from contesting the election or being appointed, co-opted etc. because of the disqualification incurred earlier or became ineligible from continuing as a member on incurring of the dis-qualification after having became a member of the committee. Thus, the submission that sub-section (2) of Section 73CA of the Act is only restricted to those members of the committee, who had incurred any dis-qualification listed out in sub-section (1) thereof prior to their election, appointment etc. to the Board of Directors / Committee is

contrary to the plain reading of section. In fact, the interpretation advanced by the petitioner does violence to the plain language of Section 73CA of the Act. Besides, frustrating the stated purpose / object of the legislation in introducing Section 73CA of the Act which is that a person shall not be eligible to be appointed, elected, co-opted etc. if he has more than two children and he would also cease to be eligible, if he has more than two children after taking office as a member of the Committee. This, is clearly evident from plain reading of Section 73CA of the Act. If the submission of the petitioner is to be accepted, then, a defaulter of the society would only mean that the person has to be defaulter before he is elected, co-opted etc. as a member of the committee and thereafter he would have a license to commit a default in making due payment to the society and yet be a part of the committee which manages the Co-operative Society. In fact, the provisions of Section 73CA of the Act are self-operative and in a case like this one, where the petitioner does not dispute that he has more than two children, then instead of litigating, a member should *suo moto* tender his resignation as he happens to have more than two children during the tenure of his office. This in fact, is the statutory terms of his appointment/

election as a member of the committee. Thus, I do not find any merit in the petitioner's above contention.

11. It was next contended on behalf of the petitioner that the impugned order dated 31st October, 2017 has not considered and dealt with the petitioner's submission that in the absence of Section 78A of the Act being complied in its full rigour i.e. including consultation with the federal society, the petitioner could not have been held to be disqualified. Admittedly, this submission has not been dealt with in the impugned order. No doubt, the show-cause notice as well as the order dated 9th March, 2017 passed by the Registrar – respondent no.5 did invoke Section 78A of the Act and yet Section 78A was not complied with in its entirety inasmuch as consultation with the federal society was not done before unseating the petitioner from his elected post. This by holding the petitioner was disqualified to be a member of the committee. Even if the same is not referred to in the impugned order, the issue still is whether Section 78A of the Act applies in the present facts, as the exercise of power by the Registrar-Respondent No.5 is in terms of Rule 58 of the Rules. It is this specific provision which gives power to the

respondent to pass orders of cessation of membership of a committee in case of persons who incur disqualification under Section 73CA of the Act after following the principles of natural justice. It is axiomatic in law that once a power exists to perform a particular function, reference to an incorrect provision of law while exercising that function will not stop the Authority from performing the function nor would the exercise of such power be rendered illegal on that account, as held by the division bench of this Court in ***Anirudha Vs. Ramnivas Meena, 2005(4) Mh.L.J. 42***. In fact, as held by the Apex Court in ***M. Mani Vs. Sangeeta Theatre 2004(12) SC 278*** *"It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or reference is made to a wrong provision of law, that by itself does not vitiate the exercise of powers so long as the power does exist and can be traced to a source available in law".* Thus, in the absence of prejudice being shown by the Petitioner because of the impugned order non-dealing with its submissions, there is no reason to set aside the impugned order for fresh consideration. In fact, full opportunity was given to the Petitioner before me to establish that on consideration of the above submission in the present facts, the impugned order is unsustainable because of the above. This they were unable to establish.

12. The reliance by the respondents upon Rule 58 of the Rules to support the exercise of powers under Section 73CA of the Act is taken exception to by the petitioner. This on the ground that the conferment of power under Rule 58 of the Rules to the Registrar is ultra-vires the Rule making power under Section 156 of the Act. In particular, attention is invited to sub-section (2) to Section 156 of the Act to submit that in the absence of any specific clauses therein to make Rules to declare a person disqualified, the same is ultra-vires the Rule making power. This submission completely ignores the fact that sub-section (2) of Section 156 of the Act is without prejudice to the general power to make Rules under sub-section (1) thereof. In fact, the issue is now settled by the Apex Court in ***Assistant Collector of Central Excise Vs. Ramkrishna Kulwant Ravi , AIR 1989(SC) 1829***. In the above case, Rule 10A of the Central Excise Rules, 1944 (Excise Rule) was being challenged as being ultravires the Rule making power under Section 37 of the Central Excise Act, 1944 (Excise Act). The Court held that Section 37(1) of the Excise

Act enable the Central Government to make rules to *“carry into effect the purposes of the Act”.* Section 37(2) of the Excise Act enumerated the issues / matters for which the Rules could be made for. It provided *“in particular and without prejudice to the generality of the foregoing powers”*. Thus, the Court held that enumerated issue in sub-section (2) of Section 37 of the Excise Act was not exhaustive of the Rules, which could be made. Therefore, any Rule which could be shown to have been made *“to carry its effect the purpose of the Act”* will have an legitimate source. In this case, Section 165(1) and (2) of the Act are similarly worded. Therefore, Rule 58 of the Rules is not ultravires to Section 165 of the Act. The source of framing the Rule 58 of the Rules is found in Section 165(1) of the Act i.e. for carrying out purposes of the Act.

13. Moreover, in any event, the issue of Section 78A of the Act being applicable for invocation / implementation of Section 73CA of the Act is concerned, stand settled against the petitioner by the full bench decision of this Court in Narayan (supra) while dealing with Section 73 FF and 78 of the Act, which are admittedly the precursors to Section 73CA and 78A of the Act, and are similarly worded. The

full bench in Narayan (supra) had an occasion to consider the issue whether the cessation of membership under Section 73FF(2) of the Act is automatic or whether it is necessary to take action and pass an order of removal under Section 78 of the Act. The full bench has held that the provisions of Section 73 FF of the Act (precursor of Section 73A) and 78 (precursor of Section 78A) are independent provisions and operate in their respective fields. They are distinct and different. The Court held that the provisions of Section 73FF of the Act has to be applied with the minimum compliance to the principles of natural justice. Incidentally, now Rule 58 of Rules specifically provides for giving of notice and hearing the party concerned before holding that a person ceases to hold office as a member of managing committee under Section 78CA of the Act. The Court held that the removal as postulated under Section 78 is not *sine qua non* for holding cessation of a person's membership of the committee.

14. In fact, the question for consideration before the full bench in Narayan (supra) was as under :-

> *Whether the cessation of membership under Section 73FF(2) is automatic or whether it is necessary to take action and pass an*

order of removal under Section 78 of the Act?

This was answered in the negative by recording its answers to the question raised as under :-

> *"(a) Provisions of sections 73FF and 78 are independent provisions and operate in their respective fields on the stated grounds and their consequences are distinct and different. They are not even indispensably interdependent.*
>
> *(b) The declaration of a defaulter resulting in disqualification as contemplated under Section 73FF(1) has to be made by minimum compliance to the principles of natural justice which will have to be read into the provisions of section 73. The competent forum would be expected to issue a notice / intimation calling upon the member of the committee to show cause as to why he be not declared as a defaulter. Considering his reply, if any submitted, a declaration shall be made.*
>
> *(c) Once such a declaration is made in compliance with the provisions of Rule 58, the provisions of section 73FF(2) will come into play automatically and there shall be cessation of membership of the committee of that member and his seat shall be deemed to have fallen vacant, obviously not affecting his primary membership of the Society adversely unless otherwise removed / expelled from such membership in accordance with law.*
>
> *(d) <u>We make it clear that passing of an order of removal</u>*

as postulated under section 78(1) is not a sine qua non to invocation of the provisions for cessation of membership of the Committee in terms of section 73FF(2) of the Act.

(e) Consequences of disqualification incurred by a member of a Committee stated under section 73FF (1) are certainly distinct and different than the consequences flowing from an order made for removal under section 78(1) of the said Act - In a case under section 73FF, upon earning disqualification, there is cessation of membership of the Committee and automatic vacation of seat for the period as regulated under the provisions of section 73FFF – While the order of removal passed under Section 78(1) would remain in force unless disturbed / set aside by the Competent Authority under the provisions of the Act."

(emphasis supplied)

15. Thus, the aforesaid decision of the full bench of this Court in Narayan (supra) would cover the issue of invocation of Section 78A of the Act while holding a cessation of membership of a Committee under Section 73CA(1)(vii) of the Act against the Petitioner.

16. In the above view, **Petition dismissed**. No order as to costs.

(M.S. SANKLECHA, J.)

17. At this stage, Mr. Fernandes, learned Counsel appearing for the petitioner seeks stay of this order since the petitioner intends to challenge the same before the Apex Court. In the facts and circumstances of the case, there shall be a stay of this order for a period of 4 weeks from the date this order is uploaded and available on the High Court website. The above stay shall be on the same condition as that was operating during the pendency of the petitioner's Revision Application before the Hon'ble Minister i.e. the petitioner herein shall not pilot any major policy decisions or decision involving major financial repercussions to be bank.

(M.S. SANKLECHA, J.)