

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.338 OF 2018

Ramchandra G. N. Mule ... Petitioner

Versus

The State of Goa & Anr. Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. G. Panandiker,
Advocate for the Petitioner.

Mr. P. Faldesai, Additional Government Advocate for the
Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 26 October 2018.

P.C. :

By order dated 11 September 2018, the petition was directed to be added to the board of final disposal. Accordingly, it is taken up for disposal.

2. The Petitioner has challenged the order dated 26 February 2018, passed by the Respondent No.2- Registrar of Co-op. Societies

holding that the Petitioner has ceased to hold the post of Chairman of the Goa State Co-op. Union Ltd., Panaji, that is the Respondent No.3. In view of the limited submissions that are advanced at the bar, it is not necessary to enumerate all the details, except basic facts.

3. The Petitioner received a notice from the Respondent No.2 on 10 January 2018 stating that the Petitioner was serving as a Chairman of the Respondent No.3 since 7 January 2008 for a consecutive period of more than 10 years and as per Section 59(6) (Amended) of the Goa Cooperative Societies Act, 2001 such person ceases to be a Chairman and is not eligible for re-election for a period of five years. To this notice, the Petitioner sent his reply on 18 January 2018. By this reply, the Petitioner sought for a hearing. According to the Petitioner, the conclusion of the Registrar was factually not correct. Thereafter, the impugned order was passed on 26 February 2018 holding that the Petitioner ceases to be a Chairman of the Respondent No.3.

4. Mr. N. Sardesai, the learned Senior Advocate appearing for the Petitioner submitted that the order is passed without reference to the facts and according to the Petitioner, the conclusion reached by the Registrar is not warranted in the facts of the case. The learned

Senior Advocate submitted that if the Petitioner is given an opportunity to address the Registrar, he will demonstrate from the record that the conclusion of the Registrar was not warranted in law and on facts. Mr. Faldessai, the learned Additional Government Advocate submitted that as per the record available with the Registrar a conclusion has been reached by the Registrar. The learned Additional Government Advocate submitted that the Registrar is not averse to give an opportunity to the Petitioner however, now the post of the Chairman has been filled up and if the impugned order is set aside and the Petitioner is reinstated, there will be serious administrative difficulty. The learned Senior Advocate submitted that it will suffice if the Petitioner is given an opportunity.

5. Considering the facts and circumstances of the case and the nature of the statutory provisions, it cannot be said that the provisions can be applied without reference to the facts of the case. Even for application of this provision, enquiry into the fact cannot be excluded and must find a reference in the impugned order, especially when the Petitioner has sought for such a reference. In view of the fact that the impugned order does not refer to the facts, neither the representation of the Petitioner refers to any factual position, instead of this Court adjudicating the matter at the first instance, we are of the

opinion that the same exercise shall be done by the Registrar. We, however, accept the request made by the learned Additional Government Advocate not to set aside the impugned order.

6. Therefore, the writ petition is disposed of by the following directions.

- (i) The Petitioner will appear before the Registrar - Respondent No.2 on 2 November 2018 at 10.30 a.m.;
- (ii) The Registrar thereupon if the Petitioner makes a request to that effect will give an opportunity to the Petitioner to submit his explanation on facts in writing, and explaining his defence and thereafter pass an order as per law;
- (iii) We make it clear that the direction to the Registrar to hear the Petitioner is in the peculiar facts and circumstances of this case;
- (iv) In case if the outcome is in favour of the Petitioner, it can be given effect notwithstanding with the earlier order passed by the Registrar as above, and he is at liberty to pass an appropriate order in respect of the earlier order;
- (v) We make it clear that this order is not to be construed as affecting the functioning of the Chairman who is currently holding the post;
- (vi) After the representation is received from the Petitioner and the Petitioner is given an opportunity, the

Registrar will pass an appropriate order within a period of one month thereafter.

7. The writ petition is accordingly disposed of with the above directions.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.