

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4824 OF 2018

Shaikh Naimuddin s/o Khajamoinoddin,
Age-50 years, Occu-Govt.Service,
R/o H.No.5-23-81 Dalalwadi,
Paithan Gate, Aurangabad

– PETITIONER

VERSUS

1. Deputy Registrar Co.op.Societies,
Aurangabad Taluka.
2. Govt.Medical College and Hospital
Employees Co.op.Credit Society Ltd.,
Aurangabad,
Through its Secretary,
3. Bhaskar s/o Jairam Bhalerao,
Age-Major, Occu-Now Retired,
Ghati Zopad Patti,
Aurangabad
4. The Divisional Joint Registrar,
Co.op.Societies, Aurangtabad,
5. The State of Maharashtra,
Through Co-operation Department,
Through G.P. High Court,
Aurangabad

– RESPONDENTS

Mr.N.R.Solunke, Advocate for the petitioner.
Mr.S.W.Munde, AGP for respondent Nos. 1,4 and 5.
Mr.S.M.Gunjal, Advocate for respondent No.2 (Absent)
Mr.N.S.Shah, Advocate for respondent No.3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/03/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/member of respondent No.2/Society is aggrieved by the order dated 31/03/2017, passed by the Deputy Registrar, Co-operative Societies, thereby disqualifying him in view of he being a defaulter u/s 73CA(1)(d) of the Amended Maharashtra Co-operative Societies Act, 1960. He is also aggrieved by the order dated 28/03/2018 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad, by which the decision dated 31/03/2017 has been sustained.

3. Learned Advocate for the petitioner has frankly stated that he is challenging his disqualification only on one ground, which is, that there was no effective consultation with the federal society by the Deputy Registrar, Co-operative Societies, before ordering his disqualification. Reliance is placed upon the judgment of this Court in the matter of **Keshav Venkatrao Sathawane Vs. Minister of State for Co-operation [1993(1) Mh.L.J. 903]** and the judgment of the learned Division Bench of this Court in the matter of **Narayan**

Kisanrao Samundre and others Vs. State of Maharashtra and others [2003(3) ALL MR 554].

4. I have considered the submissions of the learned Advocates for the respective sides and the learned AGP on behalf of the statutory authorities.

5. There is no debate that the Maharashtra Co-operative Societies Act, 1960 has undergone an amendment by Maharashtra Act No.16/2013 dated 13/08/2013. In view thereof, the provision permitting disqualification of an individual member under section 73 FF(1)(i) r/w Section 78(1), has now suffered the amendment, owing to which an individual member can now be disqualified under Section 73CA(1)(d).

6. Learned Advocate for the petitioner submits that there was no effective consultation with the federal society before he was disqualified.

7. Section 78(1) before the 2013 amendment reads thus :-

“78. Power of removal of committee or member, thereof –

(1) If, in the opinion of the Registrar, the committee of any

society or any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of co-operative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently [or where a 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 where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the federal society to which the society is affiliated, by order-”

Section 78(1) post amendment of 2013 reads as follows :-

*“78 – **Power of suspension of committee** (1) If, in the opinion of the Registrar, the committee makes a persistent default in performance of its duties or is negligent in the performance of its duties or is otherwise not discharging its functions properly and diligently, or there is a stalemate in the constitution or functioning of the committee, occasioned by resignation,*

disqualification of members of committee or otherwise, the Registrar, after giving the committee an opportunity of showing cause, in writing, if any, within fifteen days from the date of receipt of notice and after giving 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 prima facie exist, but are capable of being remedied with, he may by order-"

8. It is, therefore, obvious that the opening sentence of Section 78 as it stood prior to the amendment, carried the words, "*if, in the opinion of the Registrar, the Committee of any Society or any member of such committee makes default,*" This has been altered by the amendment to read as, *if, in the opinion of the Registrar, the Committee makes a persistent default in the performance of its duties or is negligent.....* As such, the specific words "*or any member of such Committee*" has been specifically deleted from Section 78(1) on account of the amendment."

9. The learned Advocate for the petitioner, the learned Advocates appearing on behalf of the respondents individual and the learned AGP submit that this is now a crystallized position that no effective consultation with the federal society is required, if the defaulting

member is to be disqualified u/s 73CA(1)(d), after the amendment. Learned Advocate for the petitioner further submits that he cannot cite any judgment post the amendment of 2013 which holds the view that even in the case of a disqualification of a member, effective consultation with the federal society would still be required, despite the amendment.

10. Considering the above, this petition, being devoid of merit, is therefore dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)